

THE CURIOUS CIRCUMSTANCES that led to the SunPass debacle were years in the making

How and why Florida hired Conduent State & Local Solutions is the focus of an investigation by the state's chief inspector general and questioning by lawmakers, who were barraged with angry calls about SunPass.

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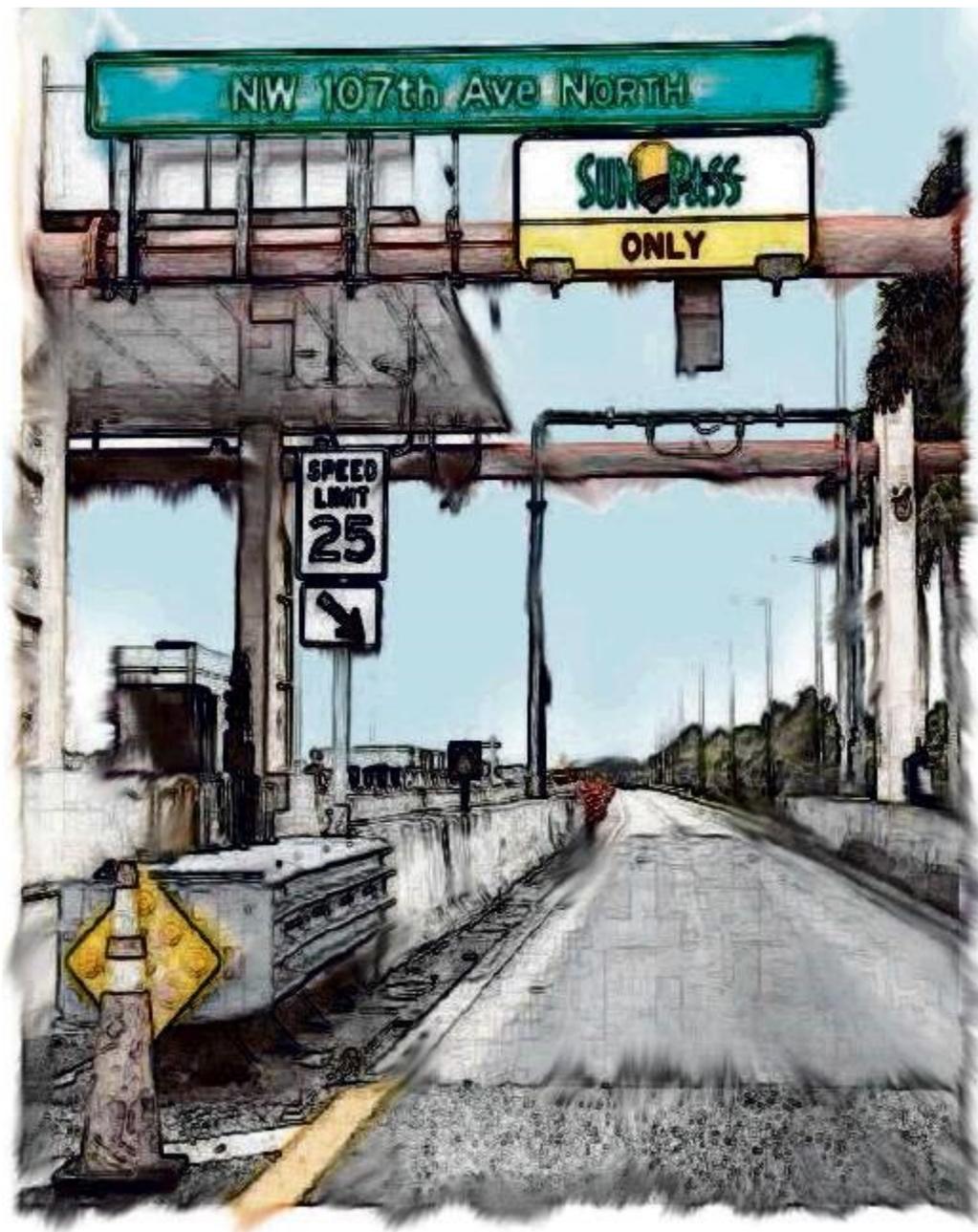
TALLAHASSEE

Seven years ago, Florida lawmakers gave the state transportation department a mission: hire a company to take over tolls and customer service calls for the four turnpike authorities.

For one lucky company, the reward was an estimated \$600 million over 14 years.

But the company the state hired — Conduent State & Local Solutions — got too lucky, competitors alleged.

Records show state officials lowered the minimum requirements and deviated from their own policies to



Miami Herald file photo photoillustration LAGARCIA/MH staff

Conduent State & Local Solutions won a \$600 million contract to overhaul Florida's electronic tolling system, SunPass, but the rollout in 2018 was fraught with delays and problems resulting in a backlog of millions of unpaid tolls.

botched the takeover of the tolling system by over-billing customers or missing their payments.

In a letter to state Sen. Tom Lee, R-Thonotosassa, last month, the Florida Department of Transportation's new secretary said officials are committed to answering questions about the procurement "to the very best of our ability and in a fully transparent manner."

But the department did not say why some decisions were made, or if taxpayers got the best possible deal.

THE INITIAL REQUIREMENTS

negotiate only with Conduent, even though they could have sought better deals with the company's competitors.

Those competitors accused state officials of outright bias toward Conduent, whose lobbyist was close to then-Gov. Rick Scott. And the companies felt they had a strong case. They had submitted bids lower than Conduent's offer by up to \$47 million, and one had better technical scores.

When the companies protested, the state paid \$3.6 million to get one to go away.

How and why Florida decided to hire Conduent is now the subject of an investigation by the state's chief inspector general and questioning by lawmakers, who were barraged with angry calls last summer about SunPass. It

In 2012, when Florida transportation officials agreed to create a one-stop shop for the state's tolling systems, they first set minimum requirements for companies that wanted to process tolls in the nation's third most populous state.

Companies had to be able to process at least 1 billion toll transactions per year and manage 4.5 million accounts. That's about the number of transactions and accounts the state was already processing in a fragmented and outdated system across Florida.

But then, Florida officials lowered those minimum requirements — twice.

The new standard: Companies had to handle just 500 million transactions and 2.25 million accounts.

The decision came at the urging of a contractor with the engineering firm HNTB hired by the state to help with the bidding process. The reason given was that initial requirements were keeping "a number of companies" from applying for the job, officials said.

When asked about the new standard, a transportation department spokeswoman couldn't say why it was changed, referring instead to testimony from the contractor helping with the bid process.

In a 2015 deposition, the HNTB contractor, Tim Garrett, said the standard was lowered after several companies lost interest in the project. But he didn't know why they lost interest, or whether Conduent had complained about the high standards.

State transportation officials won't say which companies were excluded. But according to depositions and court filings, executives at two companies suspected one company in particular: Conduent.

A behemoth in America's tolling industry, Conduent, then known as Xerox, was managing tolling operations in several states.

And it had powerful connections. Records show that in 2012, the same year that lawmakers asked for the SunPass contract, Conduent hired powerful Tallahassee lobbyist Brian Ballard, a Scott supporter and host of the governor's \$3 million inauguration festivities.

Last year, it was disclosed that Scott and his wife had invested at least \$5 million in a hedge fund that held shares of Conduent worth \$127 million, though it's unclear for how long they had that investment. In May, Scott attended a fundraiser for his successful U.S. Senate campaign in the Dallas home of Darwin Deason, a major Conduent shareholder.

In its SunPass application, Conduent cited its New Jersey and New York tolling jobs, which both had "in excess of 500 million" transactions per year — a vague number barely above the new lowered minimum.

Two other companies — Cubic, based in San Diego, and Accenture, based in Ireland — did not have tolling systems in America. But Cubic cited its experience in a similar field, processing transactions for New York's MetroCard system. Accenture touted its experience handling more than 12 billion transactions each year for Deutsche Bank.

Conduent's limited capacity for transactions led to some of the problems Floridians experienced when Conduent took over tolls last year, according to Gerry O'Reilly, a state department of transportation district secretary.

"The system was completely overwhelmed," O'Reilly said. "There just wasn't enough horsepower there to process it all."

CHOOSING CONDUENT

Deciding which company would handle the SunPass job was left to the leaders of the four turnpike authorities. The process was led by the head of the Florida Turnpike Enterprise, Diane Gutierrez-Scaccetti, who had overseen the New Jersey Turnpike Authority before coming south.

As head of the Turnpike Enterprise, Gutierrez-Scaccetti reported to Ananth Prasad, who was then the secretary of the Florida Department of Transportation. Prasad reported to Scott.

Accenture clearly won the technical rankings, which evaluate things like price, the experience of the company and team members. Of the eight people on the state's technical review panel, four ranked Accenture first. Conduent came in second, with two first-place votes, and Cubic was third, also with two first-place votes but with fewer second-place votes.

When it came to price, Cubic and Accenture ranked first and second, in that order. Cubic was cheaper than Conduent by \$47 million.

Those results were given to Gutierrez-Scaccetti and the three leaders of the expressway authorities.

What they did next led to more than a year of litigation.

Under Florida law, transportation officials were required to pick the companies they wanted to negotiate with and then determine which one provided the "best value."

Under state transportation department rules, they were required to negotiate with the three companies that made the final list.

Instead, Gutierrez-Scaccetti and the heads of the Orlando and Tampa expressway authorities chose to negotiate only with Conduent. If those negotiations failed, they would then negotiate with another company.

Gutierrez-Scaccetti said she wanted Conduent because it had done tolls and she believed it was the safest choice.

"I'm a bit risk averse," she said, according to a transcript of a 2014 meeting.

Joe Waggoner, the head of the Tampa-Hillsborough Expressway Authority, and Laura Kelley, the then-interim director of Orlando's expressway authority, agreed. (On Kelley's recommendation, the Central Florida Expressway Authority board would later back out of the deal, citing uncertainty over the costs. State officials didn't allow Kelley to participate in the negotiations with Conduent, records show.)

Executives for Accenture and Cubic filed protests, alleging transportation officials broke Florida law and their own procurement policies by choosing to negotiate only with Conduent.

They also pointed to potential conflicts of interest. The head of the state team negotiating with Conduent was a former Conduent employee. Members of the state's consulting team were previously employed by a major Conduent subcontractor.

The technical review team and selection committee "merely created an illusion of a competitive procurement, but the contract award decision was in fact solely placed in the hands of the Turnpike director," a lawyer for Accenture wrote.

Cubic's lawyer noted that Gutierrez-Scaccetti flew to New Jersey for an industry conference less than two weeks before the selection meeting. After the conference, she delayed her flight to meet with Conduent representatives and one of its subcontractors.

State employees involved in awarding contracts are prohibited from discussing the bidding with the competing companies before the selection is made, but in a 2014 deposition, Gutierrez-Scaccetti denied discussing the contract when she met with Conduent officials, asserting that she discussed developing a transponder unrelated to the SunPass project. Cubic's lawyers claimed it appeared improper. Gutierrez-Scaccetti, who is now commissioner of the New Jersey Department of Transportation, did not respond to requests for comment.

Prasad declined to comment. Chris Hartline, a spokesman for Scott, said the former governor was not responsible.

"Scott's office was not involved in agency contracts, but he has been clear that if there was wrongdoing, action should be taken to hold people accountable," Hartline said.

THE LOSERS SEEK A LEGAL OPTION

Appeals from Cubic and Accenture stalled when an administrative law judge ruled against them, concluding that potential conflicts were harmless and that state officials were allowed to deviate from policy and conduct negotiations with only one company.

A department spokeswoman said Wednesday that bids can deviate from policy if the new process is spelled out in the bid process.

Cubic appealed the decision, and a three-judge panel agreed enough with Cubic's argument to stop the state's negotiations with Conduent until the case could be heard in full. Negotiations would be delayed by months or a year.

That's when then-Florida Department of Transportation Secretary Prasad met with Cubic's executives and, in a highly unusual move, asked them to drop their case in exchange for a \$3.6 million settlement.

Part of the stated rationale for the settlement was that state officials were buying intellectual property in Cubic's bid, which sometimes happens when a losing bidder has a good idea.

But state officials can't say now whether the idea was ever used.