

AT&T is apparent selection to build FirstNet, as Rivada Mercury files protest over elimination from bid

[Urgent Communications](#)

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Fri, 2016-12-02 11:12

Rivada Mercury is protesting its elimination from consideration to become [FirstNet](#)'s contractor to build and operate the much-anticipated nationwide public-safety broadband network (NPSBN)—an action that points to AT&T as the selected bidder, although court documents indicate that the award likely will be delayed until at least March.

Rivada Mercury's claims that the U.S. Department of Interior (DOI)—the government agency overseeing the procurement process for the FirstNet contractor in accordance with the Federal Acquisition Regulation (FAR)—erred in eliminating the Rivada Mercury bid. Led by Rivada Networks, the bidding team is seeking a ruling that its exclusion from the final "competitive range" phase of the federal procurement was "arbitrary and capricious," requesting a permanent injunction on the contract award until the Rivada Mercury bid is evaluated fully.

"We believe our exclusion from the competitive range was wrong, both as a matter of law and the facts," Rivada Networks spokesman Brian Carney said during an interview with [IWCE's Urgent Communications](#). "We are contesting that decision to get put back into the competitive range. We don't think a competitive range of one is very competitive, nor is it in the interest of public safety, taxpayers or the government."

Rivada Mercury was informed that its bid was being dismissed from consideration on Oct. 17—the same day similar notification was given to the offeror team led by pdvWireless. The protest was filed on Nov. 21, and a redacted version of the lawsuit was made available for public viewing on Wednesday.

"On October 17, 2016, the contracting officer informed Rivada Mercury that its proposal had been excluded from the competitive range, because it was not among the most highly rated proposals," according to Rivada Mercury's lawsuit protesting the procurement decision. "Based on industry intelligence, Rivada Mercury understands that the competitive range was reduced to only one offeror."

Although Rivada Mercury does not name the AT&T offeror team as the lone remaining bidder for the nationwide FirstNet initiative, AT&T is the only publicly announced offeror that has not acknowledged that it was removed from contention. In addition, AT&T has been added as a "defendant-intervenor" for the U.S. government in the Rivada Mercury protest lawsuit—a status that would not have been granted unless the carrier was the winning bidder, according to legal sources.

AT&T's motion to intervene as defendant reinforces the notion that the telecom giant is the evaluation team's top choice to be FirstNet's nationwide contractor.

"Because AT&T is within the competitive range and stands a substantial chance of receiving the award in this procurement, AT&T has a direct interest in the outcome of this case," the AT&T motion states. "As an offeror whose proposal was accepted into the competitive range and who is currently seeking to be awarded the contract under this procurement, AT&T has direct and substantial economic interests at stake in this case, and its disposition clearly could impair those interests."

“Furthermore, AT&T understands that Rivada’s complaint seeks permanent injunctive relief, which could delay and/or disrupt the procurement and directly harm AT&T’s financial interests.”

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Court documents include a schedule that calls for final written motions in the litigation to be filed on Feb. 16, while oral arguments in the protest case still need to be scheduled. If this schedule is met, a ruling on Rivada Mercury’s protest likely would not be made until March, at the earliest, according to multiple sources.

If the Rivada Mercury protest is denied, the FirstNet contractor award to AT&T could be announced soon after. If Rivada Mercury succeeds in its protest bid, an award announcement would be delayed until corrective procurement procedures can be executed.

Timing of the award—with a signed deal between FirstNet and the selected contractor—is important to state and public-safety officials, because the FirstNet deployment timeline included in the request for proposals (RFP) is determined from that point. For instance, state plans are scheduled to be distributed to governors six months after the award is made, and the first phase of FirstNet buildout is slated to be completed a year after the award.

In October, pdvWireless announced that its bidding team had been removed from consideration on the same day as the Rivada Mercury consortium, which is led by Rivada Networks. During the past several weeks, Rivada Mercury officials have declined to answer when asked by *IWCE’s Urgent Communications* whether the bidding team received a notification that its proposal had been dismissed, as pdvWireless had announced.

While pdvWireless acknowledged its elimination from consideration in a regulatory filing just days after being informed by procurement officials, none of the companies involved in the Rivada Mercury team chose to do so. Carney noted that pdvWireless is a publicly traded company, while Rivada Networks is not.

“We informed our partners, but we didn’t have a duty to make a public declaration about it,” Carney said during an interview with *IWCE’s Urgent Communications*.

Both pdvWireless and Rivada Mercury were removed from consideration by the U.S. Department of Interior prior to the evaluation process reaching the final “competitive range” stage, which is when negotiations—known as “discussions” in the FAR—are allowed with the top bidders. In the lawsuit, Rivada Mercury claims that its dismissal from consideration was improper.

“[The U.S. Department of] Interior’s wrongful exclusion of Rivada Mercury from the competition eliminated a strong, viable competitor from this important procurement and reduced the field to a single remaining competitor,” the lawsuit states. “In doing so, Interior failed to make any reasoned or explicit determination that Rivada Mercury had no reasonable chance of being selected for award following discussions. In fact, Interior failed to conduct proper discussions as it was required to do.

“If Rivada Mercury had properly been allowed to remain in the competition, FirstNet, the nation’s first responders who will eventually be using the NPSBN, and the taxpayer would benefit from the better value gained through robust competition.”

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Specifically, the Rivada Mercury protest—heavily redacted to protect proprietary information—alleges that the DOI conducted premature discussions that were “not meaningful” and “misleading, because they did not address the

actual concerns the evaluators had with Rivada Mercury's proposal and that, apparently, resulted in its wrongful exclusion from the competitive range.

"Had Rivada Mercury had an opportunity to respond to these concerns, or had these concerns been appropriately identified, Rivada Mercury could have explained its proposal—or changed aspects of it—to resolve these evaluation concerns," according to the lawsuit. "Interior could have thus kept its competitive procurement viable by retaining Rivada Mercury in the competition."

The protest lawsuit also claims numerous examples of evaluation errors by DOI.

"Interior's identification of perceived deficiencies and significant weaknesses was, in some cases, the result of applying unstated evaluation criteria, making unwarranted assumptions, misreading Rivada Mercury's proposal, or arbitrarily increasing the risk associated with a particular concern," the lawsuit alleges.

A FirstNet spokesperson provided the following prepared statement on the matter:

"Rivada Mercury LLC (Rivada) has filed a bid protest with the U.S. Court of Federal Claims (CFC)," according to the FirstNet statement. "The Department of Justice's Commercial Litigation Branch, Civil Division has assigned counsel to defend against Rivada's protest and is the counsel that will represent the interests of FirstNet and the federal government in this case. FirstNet program counsel, along with DOI and DOC counsel, will support DOJ's efforts. We have no further comment, as the matter is pending litigation."

AT&T declined to comment for this story. Calls by *IWCE's Urgent Communications* to officials representing the U.S. Department of Justice were not returned in time to be included in this article.

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