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Decision

Matter of: Cellco Partnership dba Verizon Wireless

File: B-420911

Date: November 1, 2022

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DIGEST

Protest challenging terms of solicitation on grounds that agency is impermissibly using commercial acquisition procedures to obtain non-commercial products and services is denied where record shows that the solicited requirements are available commercially.

DECISION

Cellco Partnership d/b/a Verizon Wireless (Verizon), of Annapolis Junction, Maryland, protests the terms of request for proposals (RFP) No. 36C10B22R0118, issued by the Department of Veterans Affairs (VA) to acquire enterprise-wide mobile communications devices and services. Verizon argues that the RFP is inconsistent with commercial practices and includes certain terms and conditions that are inadequately defined and should be clarified.

We deny the protest.

BACKGROUND

The RFP contemplates the award of three fixed-price contracts for a base period of six months, followed by eight 1-year options and an additional 6-month option, to provide mobile devices and related wireless services to the agency at installations throughout the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, Saipan, and the Philippines, as well as services outside the United States on a

temporary basis. RFP at 14, 91.¹ The solicitation contemplates the awards to be made on a low-priced, technically acceptable (LPTA) basis, with award of 50 percent of the agency's requirement to be made to the lowest-priced technically acceptable offeror, 40 percent of the agency's requirement to the second lowest-priced technically acceptable offeror, and 10 percent of the agency's requirement to the third lowest-priced technically acceptable offeror. RFP at 92. The agency is conducting this acquisition as a commercial acquisition under Federal Acquisition Regulation part 12, and much of Verizon's protest focuses on whether the agency properly may conduct the procurement as a commercial acquisition.

In its protest, Verizon initially objected to the agency's use of LPTA procedures (protest allegation I A). Verizon also challenged certain requirements relating to the provision of a public safety network for first responders and for public safety purposes that Verizon characterized as unduly restrictive of competition based on its position that the solicitation provisions "tracked" products offered by a competitor, AT&T Mobility, LLC (protest allegation II A). Verizon also argued that certain other solicitation provisions are unduly restrictive of competition, including requirements for local control and incident response tools that control network resources; real-time visibility into the network's health; dedicated public safety customer support; and greater interoperability throughout the first responder and public safety community (protest allegation II B). Verizon further argued that certain RFP provisions are inadequately defined, including solicitation terms relating to voice plan requirements for basic phones versus smart phones (protest allegation IV A); solicitation terms relating to the provision of a public safety network (protest allegation IV B); and solicitation terms relating to *ad hoc* reporting requirements (protest allegation IV D).

The agency provided a detailed response to these allegations and, based on its review of the agency's report, Verizon withdrew all of these challenges to the solicitation (protest allegations I A, II A, II B, IV A, IV B, and IV D) in its comments. Protester's Comments at 1-2, 4 n. 1. Verizon's remaining allegations principally relate to the question of whether the solicited services are consistent with customary commercial practice, and by extension, whether the agency's use of commercial acquisition procedures is appropriate and permissible.

DISCUSSION

In its protest, Verizon identifies 12 particular solicitation provisions that it maintains are inconsistent with customary commercial practice.² According to the protester, these 12

¹ All citations to the RFP are to the version of the solicitation conformed through amendment No. 0009 provided by the agency with its report.

² The solicitation provisions to which Verizon objects are: (1) a requirement that contractors provide network coverage as demonstrated by a specified signal strength at all locations and requires firms to provide customized solutions at those locations where the signal strength is inadequate; (2) a requirement that contractors provide customized,

solicitation requirements call for offerors to provide a level of tailored services not customarily offered on a commercial basis. Verizon therefore maintains that the agency cannot properly conduct the acquisition using the procedures applicable to the acquisition of commercial items.

We find no merit to Verizon's protest. We discuss our conclusions in detail below.

In procurements involving the acquisition of commercial items, Federal Acquisition Regulation (FAR) section 12.301(a) requires that contracts shall, to the maximum extent practicable, include only those clauses: (1) required to implement provisions of law or executive orders applicable to the acquisition of commercial items; or (2) determined to be consistent with customary commercial practice. In establishing acquisitions for commercial items, agencies must conduct market research to address, among other things, customary practices regarding the provision of the commercial items. FAR 10.002(b); *Blue Origin Florida, LLC*, B-417839, Nov. 18, 2019, 2019 CPD ¶ 388 at 17-18. Consistent with this approach, FAR section 12.302(c) bars the tailoring of solicitations for commercial items in a manner inconsistent with customary commercial practice unless a waiver is approved in accordance with agency procedures.

The Agency's Market Research

The record shows that the agency performed initial market research by issuing a request for information (RFI) soliciting responses from prospective vendors. Agency Report (AR) Exh. 13, Request for Information (RFI). The agency received responses from five concerns, including the protester, AT&T and T-Mobile, the three largest providers of mobile communications products and services in the United States, along

non-automated notifications of system outages; (3) a requirement that contractors provide the agency with signal readings and network information that is not customarily provided commercially, and that Verizon considers proprietary; (4) a requirement that contractors provide technology refreshes or updates to all network components in addition to mobile phones at no additional cost; (5) a requirement that contractors agree to a variety of information technology security requirements that are inapplicable to commercial "off-the-shelf" equipment (such as mobile phones) and commercial wireless network services; (6) a requirement that firms use a capped, not-to-exceed percentage for purposes of calculating the cost associated with taxes and other surcharges; (7) a requirement for provision of visual voicemail without specifying the devices for which such a service is required; (8) a requirement that contractors provide rich communications services; (9) a requirement that contractors provide 4th generation (4G) or higher data rates at all locations, regardless of whether or not the agency is using devices compatible with higher data rates, and regardless of where the service is being provided; (10) a prohibition against the use of commercial end user licensing agreements or terms of service other than data rights; (11) a requirement that contractors provide customized packing slips and labels for all shipped devices; and (12) a requirement that contractors provide out-of-warranty devices.

with two small business concerns, MetTel Federal and Real Mobile, Inc. AR, Exh. 14, Responses to the RFI. After reviewing the responses, the agency determined that Verizon, AT&T and T-Mobile were technically capable of meeting the agency's requirements, but that the two small business concerns were not. AR, Exh. 5, Market Research Memorandum for the Record, at 4.

The agency then issued the solicitation and received a large number of questions from Verizon concerning whether certain of the agency's requirements, as detailed in the solicitation, were consistent with customary commercial practice. In an effort to determine whether the issues identified by Verizon in its questions raised a concern relating to the customary commercial products and services available in the marketplace, the agency provided AT&T and T-Mobile with a list of seven questions and asked whether the aspects identified by Verizon in its questions were customary commercial products and services offered by those firms.

The record shows that, in response to the agency's seven questions, AT&T advised that some--but not all--of the seven identified requirements were offered as part of its customary commercial products and services. AR, Exh. 4, Agency Commerciality Memorandum, at 3-5. T-Mobile advised the agency that it provided each of the seven identified requirements to its commercial customers.³ *Id.* Based on this additional market research the agency concluded that the solicited requirements were provided commercially by at least one of the three major providers of mobile communications products and services. *Id.*

Thereafter, Verizon filed the instant protest which, as noted, identified the 12 requirements that it maintains are not customarily provided commercially. The record shows that, after filing its initial agency report, the VA took the additional market research step of providing AT&T and T-Mobile a redacted version of Verizon's protest and asking each firm whether each of the 12 requirements identified in Verizon's protest were provided to either its individual commercial customers or their business/enterprise commercial customers.

In response to the agency's inquiry, AT&T advised the agency that it provided some--but not all 12--of the agency's requirements to both its individual commercial customers, as well as to its business/enterprise commercial customers. AR, Exh. 19, Additional Commerciality Market Research Memorandum, Attach. 2, AT&T Response Worksheet. T-Mobile advised the agency that it provides all 12 of the agency's requirements to its business/enterprise commercial customers, and that it provides three of the agency's requirements to its individual commercial customers. *Id.*, Attach. 1, T-Mobile Response

³ The protester and agency agree that the appropriate point of comparison for purposes of determining what constitutes customary commercial practice is whether the requirement in question is provided to business/enterprise-type commercial customers, but not necessarily individual consumer customers. So, for example, a particular requirement might not be provided to a family of four purchasing mobile phone services, but might be provided to an enterprise-type customer such as a large corporation.

Worksheet. The agency concluded that this additional market research confirmed its earlier market research conclusion that the solicited requirements are commercially available. AR, Exh. 19, Additional Commerciality Market Research Memorandum, at 2.

Verizon's Objections

Verizon raises a number of objections to the agency's market research. We discuss each of Verizon's objections below.

Statements in the Agency's Market Research

First, Verizon argues that the agency's own market research shows that the solicited requirements are not commercially available. In this connection, Verizon directs our attention to the fact that the agency's initial market research materials state that the agency's requirements cannot be met using the General Services Administration's Federal Supply Schedule (GSA FSS) contracts for mobile communications devices and services. See e.g. AR, Exh. 5, Market Research Memorandum for the Record, at 2; Exh. 8, Acquisition Plan, at 7.⁴ Verizon notes that the agency's market research describes the products and services available under the GSA FSS contracts as "the same" as the products and services available commercially, and reasons that it necessarily follows that what is available under the GSA FSS contracts is synonymous or coextensive with the products and services offered commercially.

Verizon's position misconstrues the evidence in the record and relies on a flawed premise, namely, that the agency's passing remark about the products and services available under the GSA FSS contracts is necessarily dispositive of what is available commercially. Both of the documents referenced by the protester were prepared before the agency took the additional step of querying AT&T and T-Mobile about the commercial availability of the 12 specific requirements identified by Verizon.

When the agency actually asked AT&T and T-Mobile--twice--about the commercial availability of the requirements identified by Verizon, AT&T advised that some of the 12 requirements were provided by it commercially, and T-Mobile advised that all of the 12 requirements were provided by it commercially. AR, Exh. 4, Agency Commerciality Memorandum, at 3-5; Exh. 19, Additional Commerciality Market Research Memorandum and Attachments. Verizon's position also ignores the fact that the GSA FSS contracts are government contracts, not commercial contracts. The GSA FSS contracts demonstrate only what is available under a particular government contracting program, not necessarily what is available commercially. The agency's additional market research shows what is actually available commercially.

The Conclusion Reached in the Agency's Initial Market Research

⁴ Both references cited by the protester are identical *verbatim* passages taken from two different documents in the record.

Verizon argues next that the agency's market research demonstrates that, of the five firms that responded to the agency's initial market research, two firms (MetTel Federal and Real Mobile, Inc.) were found incapable of meeting the agency's requirements, and two other firms (AT&T and Verizon) represented that only some or none of the solicited requirements were available. AR, Exh. 13, Agency RFI; Exh. 5, Market Research Memorandum for the Record. Verizon therefore argues that "most" of the commercial carriers do not offer the solicited products and services commercially.

Once again, Verizon's argument misconstrues the evidence in the record. The agency's initial market research never solicited information about what products and services were available commercially. The agency's RFI simply sought general information about the capabilities of prospective vendors; in fact, the RFI does not even include the terms "commercial" or "commercially available." AR, Exh. 13, RFI.

The record shows that the agency's initial conclusions about the information obtained in response to the RFI were confined to the question of whether the respondents were technically capable of meeting the agency's requirements, and had nothing to do with whether the respondents provided the agency's requirements commercially. AR, Exh. 5, Market Research Memorandum for the Record. The fact that MetTel Federal and Real Mobile were found incapable of meeting the agency's requirements was thus confined to the question of their technical capabilities, and had nothing to do with the availability of commercial products and services from those firms.

As discussed, when the agency actually queried the technically capable vendors, one--AT&T--represented that it offered some of the 12 requirements commercially, and the other--T-Mobile--represented that it offered all 12 requirements commercially. AR, Exh. 4, Agency Commerciality Memorandum; Exh. 19, Additional Commerciality Market Research Memorandum and Attachments. In addition, the fact that the agency's market research shows that AT&T only provides some of the 12 requirements (and, apparently, that Verizon either does not, or is unwilling, to provide any of the 12 requirements) does not demonstrate that the 12 requirements are not provided commercially. The agency's research shows that one of the major carriers actually does provide all 12 of the requirements commercially.

The Timing of the Agency's Market Research

Verizon argues next that the timing of the agency's market research should lead us to conclude that it is somehow inaccurate or otherwise does not reflect the true nature of the products offered by AT&T or T-Mobile. Verizon characterizes the questions sent to AT&T and T-Mobile during the protest as "*post hoc*" questions. The protester appears to suggest that, because the questions were posed during the protest, it undermines the reliability of the answers given because AT&T's and T-Mobile's answers could have been colored by concerns about the viability of their proposals, which have already been submitted.

We have no basis to conclude that, simply because the questions were asked during the pendency of Verizon's protest, we should have reason to doubt the reliability of the answers given by AT&T and T-Mobile. First and foremost, Verizon has not produced any evidence that would draw into question the answers given by its competitors. It has not shown, for example, that there is any objective evidence to demonstrate that either company does not offer the products and services commercially that they have represented they offer. Both companies are large, nationwide businesses that publically and routinely describe their offered products and services in great detail. Notwithstanding that fact, Verizon has not made any showing that there is information inconsistent with the representations the firms made when questioned by the agency.

Second, and in any event, the record shows that the agency has at all times diligently sought to ascertain the best and most current possible information about the commerciality of the products and services offered by the three main providers. The record shows that agency issued the RFP on June 13, 2022, and, shortly thereafter received a list of 88 questions from Verizon.⁵

In an effort to evaluate Verizon's questions the VA queried AT&T and T-Mobile about seven specific issues (not all of the seven concerns were issues subsequently raised in Verizon's protest to our Office, but the seven concerns were raised by Verizon in questions to the agency that subsequently were published in a series of successive solicitation amendments). AR, Exh. 4, Agency Commerciality Memorandum, at 3-5; see *also* Contracting Officer's Statement of Facts at 3-4 (detailing the agency's issuance of question and answer amendments to the RFP).

In response to its initial questions, the agency received answers that, as detailed above, showed that AT&T offers some--and T-Mobile offers all--of the products and services to its business/enterprise commercial customers that were initially questioned by Verizon. AR, Exh. 4, Agency Commerciality Memorandum. The record thus shows that the agency sought to establish the commerciality of its solicited requirements as soon as it became apparent that at least one vendor had concerns. The agency conveyed that vendor's concerns to the other two vendors *verbatim*, and was able to establish that at least one of the three major providers offered all of the requirements questioned by Verizon.

Thereafter, Verizon filed the instant protest. As noted, the agency sought again to confirm the commerciality of its requirements that were questioned by Verizon, and sent AT&T and T-Mobile redacted copies of Verizon's protest to obtain their respective positions on these issues. As noted, at least T-Mobile has represented that all 12 of the questioned requirements are provided on a commercial basis to its business/enterprise commercial customers.

⁵ The agency advises that it addressed many of Verizon's concerns through changes to the RFP. Inasmuch as Verizon's protest to our Office raised only 12 concerns relating to the commerciality of the solicited requirements, we conclude that any other concerns Verizon initially may have had with the solicitation have been resolved to its satisfaction.

In the final analysis, the record shows that the agency has at all times exercised due diligence in seeking to establish the commerciality of its solicited requirements. When the VA initially became aware of Verizon's concerns about the commerciality of its requirements, it solicited the views of the other vendors capable of meeting its requirements; it learned that at least one vendor provided all of the identified services commercially. When Verizon continued to raise concerns in its protest about the commerciality of the solicited requirements, the agency once again solicited the views of the other vendors capable of meeting its requirements; once again, it learned that at least one of the vendors provides all of the solicited services commercially.

On this record, we have no basis to question either the timing of the agency's market research efforts, or the veracity of the answers provided to the agency by the other two vendors based on when they provided their responses to the agency. Verizon, for its part, has not provided argument or evidence that would draw into question this basic conclusion, and we are aware of no legal requirement that an agency's market research efforts necessarily must be confined to a particular period of time in order to be valid.

The Nature of the Agency's Market Research Inquiries

Verizon argues next that the agency posed the "wrong question" to AT&T and T-Mobile. In this connection, Verizon draws our attention to language appearing in the worksheets sent to AT&T and T-Mobile. These worksheets have several columns, and at the top of two of the columns, the agency asked whether each firm offered the identified product or service to its commercial customers under terms and conditions "similar" to those offered to the federal government. AR, Exh. 19, Attach. 1, 2. Verizon suggests that its competitors could have been misled or confused by the wording of the questions into thinking that it was not necessary for them to offer "identical" products or services to their commercial customers, only that the offered products be "similar."

Verizon again mischaracterizes the record. The agency sent AT&T and T-Mobile the worksheets via e-mail. The contents of the e-mails, rather than the wording appearing in the worksheet columns, demonstrates that the agency's inquiries were made to elicit clear responses from AT&T and T-Mobile about the commerciality of their offered products and services, as well as the precise concerns identified by Verizon itself. The e-mails both specifically reference Verizon's redacted letter of protest to our Office and include the following *verbatim* quotation from Verizon's protest:

[T]he RFP seeks customized wireless services that are not typically provided in the commercial market, and it also includes various terms that are not consistent with customary commercial practice. The requirements, on their face, may not seem particularly remarkable, but a number of them would require overhauling the existing commercial networks that currently serve millions of customers--all without ensuring that users will actually get service.

Protest at 2. The e-mails then asked the following question:

On pages 20-57 (of 65) of the protest, Verizon provides a list of 12 areas (A-L) from VA's solicitation that it considers to be inconsistent with customary commercial practice. *Please let us know if you provide some or all of the questioned areas to your customers. We recognize that you might provide some of these to your individual customers and others only to your larger business clients, which would obviously be more analogous to VA's requirements; however, VA does not have any insight into your business-to-business dealings or arrangements, only that your website basically states that your company custom tailors your services to meet the needs of your business customers.*

E-Mails to AT&T and T-Mobile, Aug. 30, 2022 (emphasis supplied).

It is thus apparent from the agency's communications with AT&T and T-Mobile that the firms understood what the agency was asking them. Both firms had copies of the Verizon redacted protest detailing both the specific solicitation provisions to which it was objecting, and the basis for Verizon's concerns; and both firms were specifically asked whether they offered the products and services that Verizon claimed were not available commercially (either to individual or to business/enterprise commercial customers). On this record, we have no basis to conclude either that the agency asked the "wrong question" or that AT&T or T-Mobile may have been confused or misled by the agency's inquiry.

The Probity of the Agency's Market Research

Finally, Verizon argues that the fact that T-Mobile offers the 12 requirements commercially does not demonstrate that these services are actually available commercially. In this connection, Verizon has presented information that it claims demonstrates that T-Mobile's market share of the business/enterprise mobile communications market is small in comparison to the total market share held by it and AT&T (Verizon claims that T-Mobile's share of the business/enterprise market sector is only about 10 percent). Verizon therefore argues that T-Mobile's offerings in the business/enterprise market sector do not reflect the broader commercial availability of the 12 requirements. In support of its position, Verizon directs our attention to our decision in *Red River Waste Solutions, LP*, B-411760.2, Jan. 20, 2016, 2016 CPD ¶ 45.

The fact that T-Mobile may not have a market share of the business/enterprise mobile communications business sector as large as the market share currently enjoyed by AT&T and Verizon does not establish that the 12 requirements are not available commercially. The definition of the terms "commercial product" and "commercial service" do not stipulate any particular market share thresholds for establishing commerciality; they provide generally only that the product be sold, leased, licensed or provided to the general public and that the service is offered and sold competitively in substantial quantities in the commercial marketplace. See *generally*, FAR 2.101. As discussed at length above, T-Mobile has represented unequivocally that it currently

offers all 12 of the protested requirements to its business/enterprise commercial customers. It necessarily follows that these requirements are available commercially.

We also do not find our decision in the *Red River Waste Solutions, LP, supra.* case applicable to the circumstances of the current case. In that case, the agency was soliciting solid waste management services at a single location, Fork Polk, Louisiana, on a price-per-ton basis and the protester argued such a pricing method was not a customary commercial practice. The agency defended its solicitation of the services on a commercial basis by, among other things, identifying a single company located over 1,500 miles away in upstate New York that priced its services on a per-ton basis. In effect, in an industry where the services are performed locally by thousands of different vendors, the agency found a vendor somewhere that priced its services on a per-ton basis. On that record, we found that the fact that a single firm offered its services on that basis did not establish that it was a customary commercial practice.

Here, in contrast, the agency is soliciting mobile communications products and services on a nationwide basis, and all parties agree that there are effectively just three large concerns capable of providing those services. Of those three firms, one has represented that it provides all 12 of the contested requirements on a commercial basis, and a second firm has represented that it offers some of the 12 requirements on a commercial basis. The simple fact of the matter is that the contested services are offered commercially.

In sum, we conclude on this record that the products and services being solicited are commercially available, and that the agency properly has solicited its requirement on a commercial basis. We therefore deny this aspect of Verizon's protest.

Remaining Considerations

Verizon also advanced two additional arguments, one relating to the award scheme contemplated under the RFP, and a second relating to the "refresh rate" for mobile devices. We briefly discuss these issues.

Award Scheme

As noted, the RFP contemplates the award of three contracts, one contract for 50 percent of the agency's requirements to be awarded to the lowest-priced technically acceptable offeror, a second contract for 40 percent of the agency's requirements to be awarded to the second-lowest-priced technically acceptable offeror, and a third contract for the remaining 10 percent of the agency's requirement to be awarded to the third-lowest-priced technically acceptable offeror. The RFP further provides that the mobile communications services are to be provided at specific service delivery points (SDPs) located throughout the United States and its territories, see RFP at 16, 92, and Attach. A, VA Facilities List, and provides that the SDPs to be awarded to each offeror (along with the lines to be awarded) will be identified by the agency after contract award. *Id.*

Verizon points out that because the SDPs are in different locations this necessarily means that existing network signal strength at each SDP will vary (for example, a rural SDP will have less robust signal strength than an SDP located in a major metropolitan area). The RFP also requires the contractor to provide supplemental network components (such as signal boosters) in those locations that do not have an adequate existing network signal strength. According to Verizon, the agency's refusal to identify ahead of time which lines or SDPs will be awarded to which contractor makes it impossible to price the requirement intelligently because the offerors do not know which locations that require signal enhancement will be awarded to them. According to Verizon, all of the "problem" SDPs or lines will end up with the contractor that is awarded the 10 percent contract.⁶

We find no merit to this aspect of Verizon's protest. As an initial matter, while agencies are required to provide offerors with sufficient information to prepare their proposals and compete on a comparatively equal basis, this requirement does not oblige agencies to provide so much detail as to entirely eliminate all risk to the contractor or remove all uncertainty from every potential offeror's mind. *Inksuk A-S*, B-420527.2, May 26, 2022, 2022 CPD ¶ 132 at 8. Risk is inherent in most types of contracts and firms must use their professional expertise and business judgment in anticipating a variety of influences affecting performance costs. *Id.* Agencies may offer for competition a proposed contract that imposes maximum risks on the contractor and minimum burdens on the agency. *Id.* Thus, the fact that this aspect of the requirement imposes some risk on the offerors does not render it improper.

In addition, as the agency points out, a minimum requirement for being found technically acceptable is that the offeror must have adequate signal strength in at least 90 percent of the SDPs, and all three offerors have already installed signal enhancing solutions at many VA locations (for example, the agency notes that Verizon has installed signal enhancing solutions at some [deleted] VA locations nationwide). It necessarily follows that all three carriers likely already have the capability to meet the signal strength requirement at virtually all VA's SDPs.

In any event, even if the protester is correct that all of the "problem" SDPs will end up being awarded to the firm receiving just 10 percent of the agency's requirement, logic

⁶ The RFP requires each contractor to ensure adequate signal strength at those SDPs where it has been selected to perform and includes a process for resolving signal strength deficiencies. Performance Work Statement (PWS), Section 5.8. The RFP permits the agency to switch providers in those instances where the selected contractor fails to provide adequate signal strength at a particular location. *Id.* Verizon suggests that, in those instances where there is difficulty providing adequate signal strength, the selected contractor will simply fail to provide it, and thereby essentially force the agency to switch to another provider. Verizon therefore reasons that the firm receiving award of the 10 percent portion of the agency's requirement necessarily will end up with all of the "problem" SDPs or lines.

dictates that the selected firm will be the most insulated from risk, given that it will have offered the highest price. In view of these considerations we find no merit to this aspect of Verizon's protest.

Technology Refresh Requirements

Finally, Verizon argues that the RFP includes two inconsistent provisions relating to the periodic requirement to refresh equipment.

Section 5.11 of the PWS requires the contractor to notify the agency of changes to the commercial marketplace and technologies for wireless devices and services that could result in the need to change or upgrade any devices, plans or network components. RFP at 25. This section requires the contractor to update all legacy devices to the new network technology within a 24 month period.

Section 5.11.1 of the PWS, on the other hand, provides that when there are changes to a contractor's network technology at a particular SDP, the contractor will have a 1-year period of time to migrate all devices within the SDP once the network is deployed.

A reading of these two provisions together shows that they are not inconsistent. The first provision only requires the contractor to notify the agency of any changes to the commercial marketplace or technology that could affect the agency's services, and affords the contractor up to 24 months to upgrade all legacy devices that may be affected. In contrast, the second provision only applies in specific SDPs where a network upgrade has been completed, and requires the contractor to migrate all devices within the SDP to the new technology within one year once the new network technology has been deployed.

The first requirement is a network-wide upgrade requirement that applies not just to devices, but also to network components and service plans, and the contractor is afforded a 24-month period to accomplish this transition. The second requirement is an SDP-specific requirement that only applies once a network upgrade has been accomplished, presumably at the tail end of the 24-month period during which the network upgrade is to be accomplished. We see no inconsistency in these requirements; rather, they appear complimentary. Under the circumstances, we deny this aspect of Verizon's protest.

The protest is denied.

Edda Emmanuelli Perez
General Counsel