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## Decision

**Matter of:** T-Mobile USA, Inc.

**File:** B-418394

**Date:** April 8, 2020

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### DIGEST

Protest challenging terms of the solicitation is denied where the record shows that the challenged solicitation provisions adequately identify the salient characteristics of the brand name or equal requirement and are not unduly restrictive of competition.

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### DECISION

T-Mobile USA, Inc., of Bellevue, Washington, protests the terms of request for quotations (RFQ) No. 9594CS20Q0004 issued by the Court Services and Offender Supervision Agency (CSOSA) for the provision of cellular services on a brand-name or equal basis. The protester argues that the solicitation fails to adequately identify the salient characteristics necessary for the brand name or equal requirement, and that the requirement is unduly restrictive of competition.

We deny the protest.

### BACKGROUND

CSOSA is an independent federal agency providing probation and parole supervision services in the District of Columbia. Among other things, the agency is required to “monitor the activities of its offenders at all times, maintain communication with [law enforcement], and carry out local safety initiatives.” Agency Req. for Dismissal at 6. The RFQ, issued on December 9, 2019, using the procedures set forth in Federal Acquisition Regulation (FAR) subpart 8.4, sought quotations from vendors holding General Services Administration Federal Supply Schedule (FSS) 70 (Information Technology) contracts. Agency Report (AR), Tab 4, RFQ, at 3. The solicitation was

further restricted to FSS contract holders with a “public safety plan” under special item number (SIN) 132-53 (Wireless Mobility Solutions).<sup>1</sup> Id. at 1. The resulting task order was to consist of a 1-year base period and four 1-year options, each with a single contract line item number (CLIN) for cellular services with enhanced priority-type features, which the agency identifies as “AT&T FirstNet or equal.” Id. at 2.

The agency amended the solicitation twice.<sup>2</sup> The first amendment was issued to incorporate pages that were missing from the RFQ. See AR, Tab 5, Amendment 0001. The second amendment was issued to incorporate various changes to the solicitation, including answers to questions asked by various vendors. AR, Tab 6, Questions from Verizon Wireless; Tab 7, Questions from T-Mobile USA, Inc.; Tab 8, Amendment 0002. As relevant to this protest, amendment 0002 revised the salient characteristics required by the solicitation, based on questions the agency had received from vendors. See AR, Tab 8, Amendment 0002, at 3-4. After the issuance of the second amendment, T-Mobile filed this protest with our Office, challenging the terms of the solicitation.

## DISCUSSION

T-Mobile challenges the solicitation in two respects. First, the protester argues that the “technical requirements are ambiguous and fail to clearly identify the salient characteristics of the brand name item (FirstNet).” Protest at 7-10. Second, T-Mobile contends that the “requirements for a private network with priority and pre-emptive capabilities are unduly restrictive.” Id. at 10-18. We have considered all of the protester’s allegations and find that they do not afford a basis on which to sustain the protest. We address each argument, in turn.

### Interested Party

As a preliminary matter, we address the agency’s contention that T-Mobile is not an interested party to bring the protest before our Office. Specifically, the agency argues that because T-Mobile does not have a public safety plan, nor does the firm provide preemptive and priority cellular services for public safety organizations, it cannot be a prospective bidder and does not have the requisite direct economic interest in the procurement to be an interested party to protest. Req. for Dismissal at 14.

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<sup>1</sup> The solicitation does not define the term “public safety plan,” nor does the record provide any detail about the public safety plan requirement. In its comments on the agency report, T-Mobile states that it “does not offer a public safety plan under SIN 132-53, because T-Mobile does not offer a dedicated public safety network.” Comments at 4.

<sup>2</sup> The agency did not provide a conformed copy of the RFQ with the agency report. References to the solicitation refer to the original RFQ, unless citation to the amendments is specifically indicated.

T-Mobile responds that, “but for the [a]gency’s requirement for a dedicated public safety network, T-Mobile would have submitted a responsive proposal.” Comments at 3. The protester argues that because it challenges the unduly restrictive terms of the solicitation, it is an interested party here. Id. at 4. In support of its position, T-Mobile cites to our decision, Helionix Systems Inc., for the proposition that where the protester “challenges the terms of a solicitation that allegedly deterred it from competing, and the remedy sought is the opportunity to compete under a revised solicitation, the protester is an interested party to protest the terms of the solicitation, even if it did not submit an offer under the challenged solicitation.” Protest at 2, citing Helionix Sys., Inc., B-404905.2, May 26, 2011, 2011 CPD ¶ 106, at 3.

We find that T-Mobile has adequately challenged the terms of the solicitation as ambiguous and unduly restrictive of competition, and has proffered that but for the restrictions it would have submitted a quotation. As such, the protester is an interested party, and the agency’s request for dismissal is denied.

### Salient Characteristics

T-Mobile argues that the “stated requirements do not adequately describe the salient characteristics of the FirstNet cellular services the [a]gency allegedly requires.” Protest at 7. The protester argues that the solicitation fails to describe what constitutes an “enhanced priority type of feature,” what makes the features “uniquely required by public safety entities,” or how these features differ from “general basic public services.” Id. at 9. T-Mobile also argues that use of the term “AT&T FirstNet or equal” in the prefatory language to the solicitation’s list of salient characteristics “appears to add additional mandatory, but undefined, features.” On the latter argument, the protester proffers that “[i]t is impossible, however, for an offeror to assess whether it provides a network core that manages and directs all communication functions in the same way that FirstNet does.” Id. at 9-10.

The agency responds that the solicitation “clearly state[s] the requirements to which responsive proposals may be submitted,” and points to the fact that another vendor (other than AT&T) submitted a proposal in response to the solicitation.<sup>3</sup> Req. for Dismissal at 17.

The Competition in Contracting Act of 1984 requires a contracting agency to specify its needs and develop specifications and purchase descriptions in a manner designed to promote full and open competition with due regard for the goods or services to be acquired. 41 U.S.C. § 3301(a). Generally, a solicitation must contain sufficient

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<sup>3</sup> The agency’s memorandum of law (MOL), submitted in response to the protest, simply referenced the agency’s earlier request for dismissal, and asserted that the request “fully explains the [a]gency’s position and arguments as to why the protest has no merit and should be dismissed.” MOL at 1-2. In a teleconference call with the parties, counsel for the agency confirmed that the request for dismissal was to be treated as the agency’s arguments on the merits of the protest.

information to allow offerors to compete intelligently and on a relatively equal basis. CWTSatoTravel, B-404479.2, Apr. 22, 2011, 2011 CPD ¶ 87 at 12. Where the agency states its requirements in terms of “brand name or equal,” the solicitation must also state the salient characteristics to identify for prospective offerors the essential features of the product which will meet the agency’s functional requirements. Adams Magnetic Prod., Inc., B-256041, May 3, 1994, 94 CPD ¶ 293 at 3. There is no legal requirement that a competition be based on specifications drafted in such detail as to eliminate completely any risk for the contractor or that the procuring agency remove all uncertainty from the mind of every prospective offeror. Salient Fed. Sols., Inc., B-410174, Nov. 6, 2014, 2014 CPD ¶ 350 at 2.

Here, the solicitation includes Federal Acquisition Regulation (FAR) provision 52.211-6, Brand Name or Equal, which requires the agency to include a description of the characteristics and level of quality that will satisfy its needs. RFQ at 16. This provision also requires the agency to describe the salient physical, functional, or performance characteristics that equal products must meet to be considered for award. Id. The agency defined the salient characteristics in the solicitation as follows:

C.4.1.1. Contractor operation of its own private network core dedicated to public safety communications.

C.4.1.2. Network core shall manage and direct all communication functions, such as network access and call routing; and

C.4.1.3. Dedicated public safety core network operates with priority pre-emptive services.

RFQ at 4-5. The third salient characteristic was later amended to require:

C.4.1.3. Dedicated public safety core network operates with priority pre-emptive services, i.e., Law Enforcement/Public Safety designated priority voice and data services at all times above provider’s standard consumer cellular networks available to the general public.

AR, Tab 8, Amendment 0002, at 4.

Our review of the record shows that the solicitation provides sufficient details to enable vendors to compete intelligently and on a relatively equal basis, and specifically is not vague with respect to the salient characteristics required to be considered for award. While, T-Mobile references the solicitation language describing the agency’s requirements (i.e., “enhanced priority type of feature,” “uniquely required by public safety entities,” and “general basic public services”), this language is not provided as salient characteristics, and is not identified as such in the solicitation. Protest at 9. In this regard, the solicitation language referenced by the protester is found in the prefatory language (section C.4.1) preceding the list of salient characteristics (sections C.4.1.1 - C.4.1.3); the prefatory language are not salient characteristics in-and-of

themselves.<sup>4</sup> RFQ at 4. As discussed above, the solicitation only contained three salient characteristics for the “equal” requirement to the stated AT&T FirstNet brand-name.

We also fail to see how the agency’s use of the term “AT&T FirstNet or equal” in the same prefatory language renders the salient characteristics ambiguous as asserted by the protester. While T-Mobile argues that “[i]t is impossible . . . for an offeror to assess whether it provides a network core that manages and directs all communication functions in the same way that FirstNet does,” this, however, is not the requirement articulated in the solicitation. Protest at 9-10. In this regard, the solicitation permitted vendors to propose FirstNet as their solution, or an equal solution that meets the stated salient characteristics.<sup>5</sup> It is these salient characteristics that are the relevant solicitation provisions for purposes of articulating the minimum requirements under a brand-name or equal procurement. As T-Mobile has not shown that the salient characteristics are ambiguous, and we conclude that the solicitation is sufficiently detailed in this regard, this protest ground is denied. See Adams Magnetic Prod., Inc., supra.

#### Unduly Restrictive Language

T-Mobile next argues that even if the solicitation is not ambiguous, it is unduly restrictive of competition. The protester argues that the stated salient characteristics are not “reasonably necessary for the [a]gency to meet its need for ‘sustained, reliable communication services.’” Protest at 11. T-Mobile asserts that while “FirstNet has the capability to perform vital prioritization and pre-emption services to ensure that first responders have network access when those networks might otherwise be overloaded and inaccessible,” FirstNet does not “ensure that day-to-day users--such as CSOs [community supervision officer]--will experience network coverage that is superior to other cellular providers in any given geographic area.” Id. at 13. According to T-Mobile, the agency improperly equates the need for “sustained, reliable day-to-day coverage” with the private network priority and preemption capabilities available through FirstNet. Id.

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<sup>4</sup> The prefatory language, in full, states:

**C.4.1** The Contractor shall provide cellular (voice and data) services with the enhanced priority type of features (**AT&T FirstNet or equal**) that are uniquely required by public safety entities required by public safety entities to replace the existing general basic public services. AT&T FirstNet or equal must include:

RFQ at 5 (emphasis in original).

<sup>5</sup> We note that salient characteristics usually are, by definition, descriptive of certain features of the brand name product which are required by the government to meet its functional needs. Adams Magnetic Prod., supra at 4.

The agency responds that the solicitation was not unduly restrictive because it was “tailored based on the [a]gency’s needs, given the [a]gency’s public safety mandate and law enforcement partnerships.” Req. for Dismissal at 19. According to the agency, “T-Mobile cannot dictate what the [a]gency’s needs are or substitute T-Mobile’s judgment for that of the [a]gency who is better equipped . . . in determining that a more enhanced and prioritized cellular service is necessary to meet the [a]gency’s needs.” Id. at 20.

The determination of a contracting agency’s needs and the best method of accommodating them are matters primarily within the agency’s discretion. Trailboss Enterprises, Inc., B-415812.2, et al., May 7, 2018, 2018 CPD ¶ 171 at 4. When a protester challenges a salient characteristic included in a brand name or equal solicitation as unduly restrictive of competition, we will review the record to determine whether the restrictions imposed are reasonably related to the contracting agency’s minimum needs. Persistent & Determinant Techs. LLC, B-408342, Aug. 22, 2013, 2013 CPD ¶ 198 at 2. The adequacy of the agency’s justification is ascertained through examining whether the explanation is reasonable, and withstands logical scrutiny. GlobaFone, Inc., B-405238, Sept. 12, 2011, 2011 CPD ¶ 178 at 3. Once the agency establishes support for the challenged solicitation term, the burden shifts to the protester to show that it is clearly unreasonable. Id.

Here, we agree with the protester that the salient characteristics are restrictive. In this regard, T-Mobile has challenged the solicitation’s language related to the “FirstNet brand name or equal” requirement, and states that, “[h]ad the Agency removed these provisions, T-Mobile would have been eligible to compete and would have a substantial likelihood of receiving the award.” Protest at 18. The protester also challenges the agency’s need for the restrictive requirement, arguing that the agency’s legitimate need is for “sustained, reliable day-to-day coverage,” and not the private network priority and preemption capabilities available with FirstNet. Id. at 13.

As the protester has shown that the salient characteristics are restrictive, we now turn to whether the agency has establishing that the restrictive specification is reasonably necessary to meet its legitimate needs. GlobaFone, Inc., supra. We conclude that it has.

The solicitation states that the agency requires cellular services with enhanced priority-type features to support its CSOs who monitor offenders that are on parole or probation. RFQ at 4. Moreover, CSOs are required “to perform duties throughout the entire geographical area of Washington, D.C. . . . where sustained reliable communications are absolutely required.” Id. The RFQ further states that “CSOs must have the ability to communicate to the various law enforcement and community justice partners at any time while performing their duties.” Id. Finally, the RFQ states that it is “a critical need to have sustained reliable voice and data coverage and priority services, when needed.” Id. at 5.

The contracting officer explains that its CSOs are required to work directly with its public safety partners and other law enforcement partners. AR, Tab 14, Contracting Officer's Statement, at 1. According to the agency, "[t]his requires continual communication with its public safety partners/law enforcement partners 24 hours/day inclusive of weekends, holidays, and national emergencies." Id. As a result, the agency states that "ensuring that communication capabilities are effective at all times is of paramount importance to successfully fulfilling the [a]gency's public safety charge." Id.

Finally, the agency states that "during times when the nation's capital is on high alert and emergency services are engaged, communication between [agency] officers and third parties are impacted and thereby creates an increase[d] risk to Officers and to the public if containment strategies need to be engaged." Req. for Dismissal at 2-3. Preemptive and priority cellular services, according to the agency, will help it to "minimize disruption to internal communications and communication with the [a]gency's law enforcement partners. Id. at 3.

Our review of the record does not cause us to question the agency's need here. In this regard, while T-Mobile attempts to reframe the agency's legitimate need as "sustained, reliable day-to-day coverage," it is evident from the record that the agency has articulated an additional requirement for ensuring communication capabilities during national emergencies, when emergency services are engaged, and generally available services may be impacted. Given the agency's public safety mission, the need for such additional services is reasonable.

We are also provided no basis to question the agency's determination that the restrictive specification is reasonably necessary to meet this need. As T-Mobile admits, "FirstNet has the capability to perform vital prioritization and pre-emption services to ensure that first responders have network access when those networks might otherwise be overloaded and inaccessible." Comments at 10. It is this type of service that the agency seeks to meet its need for ensuring communication capabilities during national emergencies, when emergency services are engaged, and generally available services may be impacted. As articulated by the agency, preemptive and priority cellular services will help it to minimize disruption to internal communications and communication with the agency's law enforcement partners when emergency services are engaged, and communication between agency officers and third parties are impacted. Req. for Dismissal at 2-3.

In sum, on this record, we conclude that the agency has shown that the restrictive specifications are reasonably necessary to meet its legitimate need.<sup>6</sup> We now turn to

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<sup>6</sup> T-Mobile also asserts that "the goal of FirstNet is to prioritize communication among first responders during large events or disasters when public networks may otherwise be inaccessible because of the large number of users attempting network access." Comments at 11. Based on this fact, the protester argues that the agency's justification fails to articulate why CSOs, who may communicate with law enforcement partners but

whether T-Mobile has shown that the challenged solicitation term is clearly unreasonable. We conclude that it has not.

The protester asserts, for example, that “the [a]gency improperly failed to consider whether one provider’s ‘general basic public services,’ could in fact provide better coverage in the designated geographic area than another provider’s ‘priority pre-emptive’ service.” Comments at 13. T-Mobile further argues that “the [a]gency never considered whether public networks might actually provide superior coverage in the particular geographic area in which the CSOs operate, thereby meeting the Agency’s need for ‘sustained, reliable communication services’ throughout the designated geographic area.” Id. at 14.

T-Mobile’s arguments, however, miss the mark as the protester focuses only on the agency’s need for sustained, reliable communication services, but wholly fails to address the agency’s legitimate need for ensuring communication capabilities during national emergencies, when emergency services are engaged, and generally available services may be impacted. Under this scenario T-Mobile presents no argument, and, as such, it has not met its burden to show that the agency’s restrictive specification was clearly unreasonable.<sup>7</sup>

The protest is denied.

Thomas H. Armstrong  
General Counsel

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who are not themselves first responders, require these priority and preemptive services. Id. However, as discussed, given the agency’s public safety mission, the agency’s articulated need for such additional services to communicate with first responders in those instances is unobjectionable.

<sup>7</sup> T-Mobile also argues that, “to the extent the Agency believes that communication with law enforcement during an emergency preempts the need for sustained, reliable communication day-to-day, the [a]gency has failed to demonstrate that such a need is legitimate.” Comments at 12. In this regard, the protester asserts that the record includes no documentation relating to this need, and the solicitation contains no references to emergency situations or “the Agency’s need to prioritize CSO/law enforcement communication during emergencies.” Id. We disagree. We have reviewed the record, and conclude it does not support the protester’s myopic interpretation. As discussed above, our review indicates that the record is sufficient to support the agency’s actions in this regard.