

CLIENT ALERT

Nothing to Discuss: COFC Denies Protest to Exchanges with Offerors in Massive FirstNet Procurement

April 6, 2017

In a [decision released publicly](#) on March 31, 2017, the Court of Federal Claims denied a protest challenging a competitive range determination that left AT&T, represented by C&M, as the last remaining contender to win a 25-year contract to build and operate a nationwide public safety broadband network. The network will consolidate public safety use of the radio spectrum and prioritize first responders in times of crisis, while granting AT&T claim over large amounts of unused spectrum, as well as \$6.5 billion for construction costs. The Court held, among other things, that the relatively extensive exchanges between the offerors and the agency before the competitive range determination was made were “communications,” not “discussions,” under the FAR because the agency neither intended to accept, nor permitted, proposal revisions. The Court also held that the government reasonably rejected the protester’s proposal where it coupled unacceptable financial risk with a questionable business model. For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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