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Rivada Pre-Award Bid Protest Court Document Highlights

The below listed items can be used as talking points if the subject of Rivada comes up in conversation. On March 31st, 2017 the Federal Claims Court released a redacted version of its findings related to the Rivada bid protest which Rivada lost and the Court ruled in favor of FirstNet. There is a lot that can be learned from the document. Below are a few statements found in the court documents that are attributed to the "Source Selection Authority" (SSA) or the Source Selection Evaluation Board (SSEB) who reviewed the Rivada proposal. As a reminder Rivada's plan was to sell spectrum through a wholesale market where those who want spectrum would bid for it on the open market. This has never been done anywhere, there are no identified buyers and is speculative at best. In addition, it would require the use of venture capital with high interest rates to fund the network build. There is one short sentence that will sum up all the points below. "Rivada does not have the skill, experience, vendor relations, money or the ability to borrow the money that is required to be a valid bidder for FirstNet". As stated in the court documents;

- The SSA found that the "substantial number of significant weaknesses and deficiencies" in Rivada's proposal "introduce[d] excessive, increased risks"
- The SSA concluded that Rivada's plan to sell excess capacity "create[d] a significant risk of unsuccessful performance under the contract."
- "Rivada's proposal did not adequately demonstrate that its proposed wholesale marketplace or [. . .] would be adopted by potential customers." Thus, Rivada's approach "create[d] a significant risk of unsuccessful performance under the contract."
- SSEB concluded that there was a significant risk that Rivada's wholesale revenue projections were too rosy, even leaving aside Rivada's proposed [. . .]. (observing that Rivada's proposal relied on questionable projections of [. . .] and [. . .]). Rivada does not challenge the reasonableness of the SSEB's assessment of risk with respect to its wholesale market projections.
- Rivada also complains that the agency erred in identifying Rivada's reliance on substantial, unconfirmed debt financing as a deficiency in its proposal. As noted, the SSA determined that, to successfully perform the contract, Rivada would need to "obtain substantial third-party funding." He concluded, however, that Rivada "did not provide acceptable evidence demonstrating that it could obtain" such financing.

- The SSEB determined that the letters, on their faces, did not constitute "an acceptable commitment to provide financing for Rivada"
- The SSA observed that Rivada "lack[ed] . . . executed agreements with the proposed members of the Rivada team for their respective scopes of work in the construction and operation of the NPSBN."
- To successfully complete performance, Rivada would need to enter into hundreds of subcontracts to complete the work it could not perform itself; but it lacked relevant experience managing subcontractors in ordinary settings, let alone in completing projects of this size and complexity.

The statements below relate to how handsets are built by companies such as Samsung and Apple. To get these companies to build a handset there must be tens of millions of users before they will add a chip for band 14.

- Rivada "did not sufficiently demonstrate a plan to ensure [the] availability of Band 14 devices."
- The SSA concluded that Rivada "w[ould] not be able to sell sufficient spectrum capacity in order to fulfill the requirements of its business plan" if it proved "unable to obtain the necessary Band 14 devices."

This last statement goes back to financing. As we all know to get a loan you must have collateral. Rivada was proposing to use the network and the spectrum as collateral. If Rivada failed, the financing company owns a network they have no ability to operate.

- Moreover, the SSEB believed that Rivada would "likely face significant challenges in collateralizing the assets related to the NPSBN contract to obtain the necessary financing" because the solicitation expressly "state[d] that NPSBN assets are not to become subject to any mechanic's or vendor's lien" and required that FirstNet, not the contractor, "remain the spectrum licensee post-award." Id. These provisions would "limit Rivada's ability to offer the FirstNet contract as collateral, or otherwise offer to transfer control of the network in order to support its ability to acquire acceptable financial funding." Id.