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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SACRAMENTO

10  
11 AT&T Corp.,  
12 Petitioner,  
13 v.  
14 California Governor's Office of Emergency  
Services,  
15 Respondent.  
16

Case No.  
**VERIFIED PETITION AND COMPLAINT  
FOR WRIT OF MANDATE AND FOR  
INJUNCTIVE AND DECLARATORY  
RELIEF**  
  
Verified Petition Filed: May 16, 2019  
Trial Date: None Set

BY FAX

1           Petitioner AT&T Corp. alleges as follows:

2           1.       This case concerns Respondent California Governor’s Office of Emergency  
3 Services’ (“OES”) recent Request for Proposals (“RFP”) to solicit bids to build Next Generation  
4 911 Services (“NG 911”). Exs. 1–2.<sup>1</sup> As an industry leader in the provision of such services,  
5 Petitioner AT&T Corp. (hereinafter “AT&T”) has notified OES that AT&T intends to submit a  
6 bid to provide NG 911 services, but reserved its right to bring this petition.

7           2.       Specifically, the RFP contains the following three unlawful requirements that OES  
8 has refused to remove, thereby forcing AT&T to file this petition for writ of mandate:

9               **First**, the RFP requires each bidder to file a tariff with the California Public Utilities  
10 Commission (“CPUC”), thereby submitting to the jurisdiction of the CPUC with respect to NG  
11 911 services. However, under California law, the CPUC is prohibited from exercising  
12 jurisdiction over NG 911 Internet Protocol (IP)-enabled services. Pub. Util. Code § 710.

13               **Second**, as part of the required tariff (to be submitted to the CPUC on June 7, 2019), each  
14 bidder is required to publicly disclose its prices for providing the services prior to the final  
15 selection of the winning bidder and negotiations over the final price. In addition to the tariff  
16 infirmity, this requirement is illegal because OES must competitively bid the work for the NG  
17 911 system. Forcing bidders to disclose their pricing in advance of the selection of the winning  
18 bidder (including the negotiations of the final price) violates the purposes and objectives of  
19 California’s competitive bidding statutes. This required public disclosure also is contrary to  
20 provisions in the RFP that state that bidders’ proposals will be kept confidential prior to award of  
21 the contract.

22               **Third**, the RFP contains an annual price cap—called a “not to exceed” or “NTE” price—  
23 of approximately \$38,000,000 for the state-wide Prime Contract and an annual NTE amount of  
24 approximately \$10,000,000 for a “typical” Region. The RFP provides that if any proposal’s total

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26           <sup>1</sup> Exhibit 1 is a true and correct copy of Part 1 of RFP No. 6026-2018, as revised by  
27 Addendum No. 2, released on May 2, 2019. Exhibit 2 is a true and correct copy of the Cost  
28 Workbook associated with RFP No. 6026-2018, as revised by Addendum No. 2, released on May  
2, 2019. RFP No. 6026-2018 also contains a voluminous Part 2, which is not cited herein and  
therefore has not been attached to this Petition.

1 price exceeds the NTE amounts, that proposal will be deemed to be “non-compliant” with the  
2 terms of the RFP. However, the NTE is illegal because under California law, it was incumbent  
3 upon OES to rely upon “substantial evidence” for the NTE levels, so as to assure that they are not  
4 “arbitrary, capricious, entirely lacking in evidentiary support, or procedurally unfair.” See  
5 *Associated Builders and Contractors, Inc. v. San Francisco Airports Com.*, 21 Cal.4th 352, 374  
6 (1999). But there is no evidence in the record, let alone “substantial” evidence, supporting the  
7 NTE levels and, based upon AT&T’s experience with NG 911 services, these NTEs appear to be  
8 grossly understated. While OES has stated in conclusory fashion that the NTE levels are based  
9 on “industry research” and nothing more, it did not disclose the purported research in the RFP,  
10 has refused to disclose it in response to AT&T’s requests (including a Public Records Act  
11 request), and recently refused to remove the NTE amount from the RFP.

12 3. This dispute requires prompt judicial intervention. By this petition, AT&T  
13 requests that the Court:

14 a. Issue a writ directing OES to withdraw the current RFP and, if it chooses, issue a  
15 new RFP that (i) omits the requirement that bidders submit a tariff to the CPUC, and (ii) if OES  
16 includes an NTE in the new RFP, that it be supported by substantial evidence establishing how  
17 any such NTE is calculated and that the NTE is rationally related to the scope and requirements  
18 set forth in the RFP; and

19 b. Grant a temporary restraining order and preliminary injunction staying the RFP  
20 process pending a trial of this matter.

21 4. If provisional relief is not granted, the RFP’s unlawful requirements will cause  
22 immediate harm to AT&T because the tariff is required to be filed no later than June 7, 2019  
23 (thereby illegally requiring that AT&T submit to the jurisdiction of the CPUC as to its IP-enabled  
24 NG 911 services, and forcing AT&T to publicly disclose its pricing at that time). In addition,  
25 proper bids cannot be submitted until it is determined whether there is a basis for enforcing the  
26 NTE levels based on substantial evidence. By contrast, maintaining the status quo of the existing  
27 911 system until this matter is resolved will not harm OES and will assure the safe operation of  
28 California’s public safety system until the writ petition can be decided.