

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

HAWKER BEECHCRAFT DEFENSE)	
COMPANY, LLC,)	
)	
Plaintiff,)	BID PROTEST
)	
v.)	No. 11-897C
)	(Judge G. Miller)
THE UNITED STATES,)	
)	
Defendant.)	

DEFENDANT'S NOTICE OF CORRECTIVE ACTION

Pursuant to Rule 1 of the Rules of the United States Court of Federal Claims ("RCFC"), defendant, the United States, respectfully provides notice that the United States Air Force ("Air Force") intends to take corrective action in this case by: 1) setting aside the award to Sierra Nevada Corporation ("SNC"); 2) reinstating Hawker Beechcraft Defense Company, LLC ("Hawker") to the competitive range under the procurement; 3) accepting new proposals from the parties, based upon the existing solicitation in its original form, or as amended; 4) conducting meaningful discussions with the parties; 5) reevaluating proposals in accordance with the terms of the solicitation; and 6) reserving the right to conduct a whole new competition. The Air Force intends to set aside the award on March 2, 2012. The United States thereafter intends to file a motion to dismiss this protest without prejudice.

In its complaint, Hawker alleges multiple errors in the Air Force's decision to exclude Hawker from the competitive range, asserts that the Air Force ignored deficiencies in Sierra Nevada's proposal, and claims that it was subjected to disparate treatment. Memorandum in Support of Motion for Judgment Upon the Administrative Record at 6-44. It seeks declaratory relief and a permanent injunction requiring the Air

Force to: 1) set aside the award to SNC; 2) reinstate Hawker to the competitive range under the procurement; 3) conduct meaningful discussions with Hawker; 4) request new final proposal revisions; and 5) reevaluate proposals in accordance with the terms of the solicitation. Motion for Judgment Upon the Administrative Record at 1-2.

On March 2, 2012, the Air Force intends to set aside the contract that it awarded to SNC on December 22, 2011. It will, thereafter, reinstate Hawker to the competitive range, accept new proposals from Hawker and SNC, conduct meaningful discussions with the parties, and reevaluate proposals in accordance with the terms of the solicitation. The Air Force also reserves the right to conduct a whole new competition. Because the Air Force has agreed to provide all of the relief that Hawker seeks in its complaint, the Air Force intends to file a motion to dismiss Hawker's complaint as moot once it has set aside the award. *Eskridge Research Corporation v. United States*, 92 Fed. Cl. 88, 94 (2010) ("It is well established that '[w]hen, during the course of litigation, it develops that the relief sought has been granted or that the questions originally in controversy between the parties are no longer at issue, the case should generally be dismissed.") (citing *Chapman Law Firm Co. v. Greenleaf Constr. Co.*, 490 F.3d 934, 939 (Fed. Cir. 2007)).

In anticipation of taking the corrective action discussed above and filing the appropriate papers to dismiss, the United States respectfully requests that the Court defer the briefing scheduled in this matter. Defendant's Motion for Judgment Upon the Administrative Record is currently due today, February 28, 2012. We will move to dismiss this bid protest by March 5, 2012.

Respectfully submitted,

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