

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
Bid Protest

JACOBS TECHNOLOGY, INC., and
BUSINESS INTEGRA TECHNOLOGY
SOLUTIONS, INC.,

Consolidated Plaintiffs,

v.

THE UNITED STATES,

Defendant,

and

AMERICAN SYSTEMS CORPORATION,

Defendant-Intervenor.

Nos. 23-167C & 23-232C
(Judge Zachary N. Somers)

DEFENDANT’S PARTIALLY-CONSENTED MOTION FOR VOLUNTARY REMAND

Pursuant to Rule 52.2 of the Rules of the United States Court of Federal Claims, defendant, the United States, respectfully requests that the Court remand this case to the Defense Information Systems Agency (DISA) for 180 days to reconsider certain aspects of the challenged agency decision. We are making this motion in response to the complaints and motions for judgment on the administrative record filed by plaintiffs Jacobs Technology, Inc. (Jacobs) and Business Integra Technology Solutions, Inc. (Business Integra). We have contacted counsel for Jacobs, Business Integra, and defendant-intervenor American Systems Corporation (ASC) regarding this motion. ASC has consented to the remand, Jacobs stated that it does not intend to oppose, and Business Integra has stated that it does not consent.

Jacobs and Business Integra filed this post-award bid protest challenging the award decision DISA made in connection with the TEC II procurement, Solicitation No. HC102821R0006. Their challenges concerned various aspects of DISA’s evaluation of the

Technical/Management and Cost/Price evaluation factors. DISA wishes to reconsider its evaluation of those factors and intends to issue a new award decision based on its reconsideration, which may include revised evaluations. Because the final proposals DISA received on October 24, 2022 have either expired or are about to expire, as part of the remand, DISA intends to ask the offerors to re-validate their proposals and will reevaluate those proposals that are re-validated. In addition, during the remand, DISA intends to request from Jacobs the salaries for JITC-TEC I employees.

This Court has “the power to remand appropriate matters to any administrative or executive body or official with such direction as it may deem proper and just.” 28 U.S.C. § 1491(a)(2); *see also* RCFC 52.2(a). “[T]he agency may request a remand (without confessing error) in order to reconsider its previous position” “even if there are no intervening events.” *SKF USA, Inc. v. United States*, 254 F.3d 1022, 1029 (Fed. Cir. 2001). Although the Court has discretion whether to order such a remand, the Federal Circuit has made clear that “if the agency’s concern is substantial and legitimate, a remand is usually appropriate.” *Id.* at 1029. A remand here is requested in good faith and is in the interests of justice because it will provide DISA an opportunity to reconsider the award decision in light of plaintiffs’ allegations. During the proposed remand, the agency potentially could make decisions that would moot this action, in whole or in part, and may obviate the need for future litigation in this Court.

Although we are requesting a remand of 180 days out of an abundance of caution, we note that DISA currently anticipates being able to complete the reevaluation process in less time; should DISA, in fact, complete the remand sooner we will promptly let the Court and all the parties know. Once DISA completes the proposed remand proceedings, we propose that the parties file a joint status report setting forth their positions regarding whether further litigation is

necessary and, if so, a proposed schedule for that litigation. In the meantime, while DISA reconsiders the issues on remand, a stay of proceedings in this case is appropriate. As DISA will be reconsidering its prior evaluations, and its reconsideration might result in changes to its evaluations or award decision in ways that could change or moot the parties' arguments, continuing with merits briefing on the current record would waste the time and resources of the parties and the Court.

For these reasons, we respectfully request that the Court (1) grant this motion for a voluntary remand pursuant to RCFC 52.2, (2) remand this matter to DISA for 180 days, beginning on the date of the Court's order, for reconsideration of the award decision and any further administrative actions consistent with that reconsideration, (3) authorize, but not require, DISA to consider any further information that it may gather during the remand in accordance with any procedures DISA may establish for that purpose, (4) stay further proceedings in this case and vacate the existing schedule, and (5) order the parties to file a joint status report within seven days following the conclusion of the remand proceeding that sets forth the parties' positions regarding whether further litigation is necessary, and, if so, proposes a schedule for further proceedings.

Finally, we request that the Court suspend the current briefing schedule, ECF 44, until this motion for remand is resolved.

Respectfully submitted,

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