

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
BID PROTEST

AIRBOSS DEFENSE GROUP, LLC,	)	
	)	
Plaintiff,	)	
	)	
and	)	
	)	
STRING KING LACROSSE, LLC,	)	No. 24-365
	)	(Judge Hadji)
Plaintiff-Intervenor,	)	
	)	
	)	
v.	)	
	)	
THE UNITED STATES,	)	
	)	
Defendant,	)	
	)	
and	)	
	)	
NEW YORK EMBROIDERY STUDIO, INC.,	)	
	)	
Defendant-Intervenor.	)	

DEFENDANT’S MOTION TO DISMISS

Pursuant to Rule 12(b)(1) of the Rules of the United States Court of Federal Claims, defendant, the United States, respectfully requests that the Court dismiss this case because the Department of Health and Human Services’ (HHS) corrective action is complete and moots the current protest. As the Government has reported in previous status reports and during status conferences with the Court, HHS made contract awards to plaintiff, plaintiff-intervenor, and defendant-intervenor, and on September 13, 2024, HHS issued post-award debriefing letters. Status Report, ECF No. 89. There is no indication that a live case or controversy remains for the Court to resolve. *Cf. Nat’l Air Cargo Grp., Inc. v. United States*, 127 Fed. Cl. 707, 717 (2016) (“In cases where the agency has taken corrective action that resulted in a new evaluation

and source selection decision, the court must review the agency's new decision. . . . The initial agency decision typically will not present a live controversy after corrective action, making moot those errors alleged in an initial decision.”) (citing *Tenica & Assocs., LLC v. United States*, 123 Fed. Cl. 166, 171 (2015) and *Coastal Env't'l Grp., Inc. v. United States*, 114 Fed. Cl. 124, 129 (2013)).

On September 20, 2024, when undersigned Department of Justice counsel informed the parties that the Government would be seeking dismissal on mootness grounds, counsel for plaintiff AirBoss indicated, “ADG’s position is that it’s protest is not moot, but that a settlement agreement is feasible based on the award decision if the parties will simply commit to not challenging the awards in new protest litigation.” Counsel for plaintiff-intervenor String King indicated that “[i]t is StringKing’s preference that the matter be settled as proposed by Airboss to allow all parties certainty as they move forward on this contract. In the event that does not occur, StringKing would be agreeable with dismissal even though the agency’s actions have not necessarily mooted the protest, so long as the dismissal does not impact its ability to protest in the future (utilizing the arguments pressed here) if it is displaced from all or part of its award in the future.”

In the Government’s September 20, 2024 status report, we advised the Court that if plaintiff and plaintiff-intervenor had not moved to voluntarily dismiss this case by September 27, 2024, the Government would file a motion to dismiss this case for lack of subject-matter jurisdiction on mootness grounds. Status Report, ECF No. 89.

Plaintiff and plaintiff-intervenor have failed to demonstrate any basis, and none exists, for the Court to retain jurisdiction over this protest. It is well-established that justiciability, including mootness, is a question of subject-matter jurisdiction. *CW Gov’t Travel, Inc. v.*

United States, 46 Fed. Cl. 554, 556 (2000) (citing *N.C. v. Rice*, 404 U.S. 244, 246 (1971)).

Because the Court does not possess jurisdiction to decide moot claims, dismissal is warranted.

Respectfully submitted,

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