IN THE UNITED STATES COURT OF FEDERAL CLAIMS
BID PROTEST

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

JOINT STATUS REPORT AND MOTION FOR A SCHEDULING ORDER

Pursuant to the Court's April 17, 2024 order (ECF No. 33), plaintiff, AirBoss Defense Group, LLC (ADG), plaintiff-intervenor, String King Lacrosse LLC (StringKing), defendant, the United States, and defendant-intervenor, New York Embroidery Studio, Inc. (NYES), respectfully submit this status report and motion for a scheduling order.

As the Government reported in its April 15, 2024 status report (ECF No. 31), the Department of Health and Human Services (HHS) has revised its intended corrective action and will no longer cancel Request for Proposals No. 75A50322R00008. HHS now intends to reconsider its competitive range determination within the next thirty days, issue an amendment to the solicitation revising the current requirements, engage in discussions as needed, and solicit

revised final proposals. Thereafter, HHS will make a new award decision.

The Government believes that this corrective action moots this protest. *See, e.g.*, *Chapman Law Firm Co. v. Greenleaf Constr. Co*., 490 F.3d 934, 939 (Fed. Cir. 2007), and respectfully submits that these judicial proceedings should proceed in accordance with the following proposed schedule:

April 26, 2024	Government files motion to dismiss
May 10, 2024	Plaintiff and Plaintiff-Intervenor file response
May 17, 2024	Government and Defendant-Intervenor files reply

Along with its motion to dismiss, the Government intends to attach a declaration from the contracting officer for the solicitation at issue. The Government believes that these filings (along with its reply) will provide an adequate rationale for the agency's decision to take corrective action and demonstrate that this Court should dismiss the matter for lack of subject-matter jurisdiction due to mootness.

Plaintiff ADG believes that resolution of the Government's motion to dismiss depends entirely on the results of the actions that the Government has stated HHS will take, including whether HHS decides to include ADG in the competitive range and provide ADG with a meaningful opportunity to revise its proposal and be considered for award, and whether HHS amends the solicitation in a manner that clarifies the provisions of the solicitation that ADG has alleged HHS has misinterpreted or, in the alternative, are latently ambiguous. Plaintiff ADG respectfully submits that these judicial proceedings should proceed in accordance with the following proposed schedule:

April 23, 2024	Plaintiff-Intervenor StringKing files complaint.
May 3, 2024	Government files the Administrative Record Responding to ADG's Protest and Providing the Details of the Agency's Corrective Action, including any new competitive range determination, solicitation amendment, and discussion letters
May 24, 2024	Plaintiff and Plaintiff-Intervenor file Motions for Judgment on the Administrative Record ("MJAR")
June 14, 2024	Government and Defendant-Intervenor file Oppositions to Plaintiff and Plaintiff-Intervenor's MJARs and file Cross-MJARs
June 28, 2024	Plaintiff and Plaintiff-Intervenor file Replies in Support of their MJARs and file Oppositions to the Government and Defendant-Intervenor's MJARs
July 8, 2024	Government and Defendant-Intervenor file Replies in Support of their MJARs

Plaintiff ADG submits that the schedule above potentially avoids any further briefing at all, as ADG will have the opportunity to voluntarily dismiss its Amended Complaint if ADG determines, based on the corrective action actually taken by HHS, that its protest is moot. Plaintiff ADG further submits that the schedule above also allows for comprehensive briefing of all issues in the protest, if the Court concludes that HHS's corrective action does not moot the claims in ADG's Amended Complaint.

Plaintiff-Intervenor StringKing represents that it endorses the schedule proposed by ADG and would file its briefs on the dates proposed for ADG to file its briefs. Should the Court adopt ADG's briefing schedule, StringKing will file its complaint (as a Plaintiff-Intervenor) on or before April 23, 2024 if the Court is agreeable.

Defendant-Intervenor NYES represents that it has no opposition to either proposed schedule and defers to the Court's judgment on efficiency and convenience to the Court. If the Court adopts the government schedule, Defendant-Intervenor requests permission to file a reply as an Intervenor-Defendant by May 17, 2024. If the Court adopts Plaintiff's proposed schedule, NYES requests permission to file as an Intervenor-Defendant by June 14, 2024 and July 8.

Respectfully submitted,

/s/ Daniel P. Graham
Daniel P. Graham
Llewelyn M. Engel
MCDERMOTT WILL & EMERY LLP
500 North Capitol Street, N.W.
Washington, DC 20001
202-756-8890

Counsel for AirBoss Defense Group, LLC

April 17, 2024

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

PATRICIA M. McCARTHY
Director

s/ Franklin E. White, Jr.
FRANKLIN E. WHITE, JR.
Assistant Director

s/ Jana Moses
JANA MOSES
Trial Attorney
Commercial Litigation Branch
Civil Division
U.S. Department of Justice
P.O. Box 480
Ben Franklin Station
Washington, DC 20044
Tel: (202) 616-2279
Fax: (202) 307-0972
Jana.Moses@usdoj.gov

Attorneys for Defendant

OF COUNSEL:

Megan R. Nathan
Anthony E. Marrone
Attorneys
U.S. Department of Health and Human Services
Office of the General Counsel,
General Law Division
Washington, D.C. 20201

April 17, 2024