

In the United States Court of Federal Claims

Nos. 24-451, 24-456, 24-463, 24-483, 24-495, 24-515, 25-519, 24-525, 24-532, 24-535, 24-539, 24-540, 24-542, 24-547, 24-553, 24-571, 24-578, 24-579, 24-584, 24-588, 24-590, 24-604, 24-618, 24-623, 24-630, 24-654, 24-655, 24-673, 24-797

TECHNATOMY CORP., et al.,

Plaintiffs,

v.

THE UNITED STATES,

Defendant,

and

GOVCIO, LLC, et al.,

Intervenor-defendants.

Consol. No. 24-451
(Filed November 4, 2024)

ORDER

The government moves to stay the proceedings and to remand this case to the United States Department of Veterans Affairs (VA) for 120 days to reconsider its source selection decision. ECF No. 458 at 1. Fourteen of twenty-nine protesters¹ and all fifteen intervenors² consent to or do not

¹ The fourteen protesters are 360 Innovative Solutions, Clearview Technologies, DecisionPoint-Agile Joint Venture, Government Healthcare Solutions, Intevets, Kahu, Mission Training, Nine Line Medical, Peregrine Digital Services, Taurian Consulting, Technatomy, Thunderyard, Tista Science and Technology, and Vector Innovative Solutions.

² The intervenors are Booz Allen Hamilton, Canopy Health, CGI Federal, Cognosante, Digipathy, ECS Federal, GovCIO, JTech, ManTech Advanced Systems, RP and Partners,

oppose the government's request for a voluntary stay and remand. *Id.* at 5. Seven protesters³ did not take a position on the motion by the time it was filed, and eight protesters⁴ stated that they oppose the motion. *Id.* at 5-6. Of those, only two protesters, King Street Technology Partners and General Dynamics Information Technology, filed written oppositions to the remand motion. ECF Nos. 460, 464.

The court has “the power to remand appropriate matters to any administrative or executive body or official” in “any case within its jurisdiction.” 28 U.S.C. § 1491(a)(2); Rule 52.2(a) of the Rules of the Court of Federal Claims. The government “may request a remand (without confessing error) in order to reconsider its previous position,” and “the reviewing court has discretion over whether to remand.” *SKF USA, Inc. v. United States*, 254 F.3d 1022, 1029 (Fed. Cir. 2001). If the government's request is not “frivolous or in bad faith,” and the “agency's concern is substantial and legitimate, a remand is usually appropriate.” *Id.*

The government argues that, after the court issued its opinion granting in part and denying in part the government's motion to dismiss and the protesters filed their amended complaints, “the complete universe of claims challenging the source selection decision at issue is now known.” ECF No. 458 at 2. With that guidance, the government believes it is equipped to take administrative action, including “reevaluation of proposals, consideration of new evidence gathered during the

Science Applications International, T4 Designs, VCH Partners, Veterans EZ Info, Zetta Solutions.

³ The seven protesters are CSE Vets, Innovenue, Insignia Technology Services, Pinnacle Computer Technology, Systematic Innovations, VA Technology Innovation, and Veterans First Technologies.

⁴ The eight protesters are Arrow ARC, Freedom Technology Partners, General Dynamics Information Technology, Intellect JV, King Street Technology Partners, Omni Cares, T4NG2 JV, and Vision Technology Group.

inquiry related to potential collusion, and issuance of a new source selection decision that supersedes the previous decision at issue.” *Id.* at 3. The government adds that remand, rather than corrective action while this case continues, will “ensure efficient case management and ... conserve judicial and private resources.” *Id.* at 3 n.1. Further, by remanding the case, the government could possibly “moot this action, in whole or in part, and may obviate the need for further litigation.” *Id.* at 4.

King Street and General Dynamics respond that the government has failed to articulate substantial or legitimate reasons for the court to grant a remand. ECF Nos. 460, 464. They assert that the court should apply a test, first articulated by the Court of International Trade and applied by this court in *Keltner*, to evaluate the government’s reasons; that test inquires whether “1) the agency provided a compelling justification for its remand request, 2) the need for finality ... does not outweigh the justification for voluntary remand presented by the agency, and 3) the scope of the agency’s remand request is appropriate.” ECF No. 460 at 2; ECF No. 464 at 4 (both citing *Keltner v. United States*, 148 Fed. Cl. 552, 564 (2020)). Both argue that the VA would have to commit, and has not committed, to a particular course of action to resolve the protesters’ concerns. ECF No. 460 at 2; ECF No. 464 at 4-6. General Dynamics adds that this court has held that similar language in the remand request—“the right to ‘consider any further information that the agency may gather during the remand in accordance with any procedures that the agency may establish for that purpose’”—was insufficient to warrant remand in another case. ECF No. 464 at 5 n.2 (quoting *Amentum Services, Inc. v. United States*, No. 21-2029, 2021 WL 5871734, at *2 (Fed. Cl. Dec. 10, 2021) (emphasis omitted)). And both argue that the drawbacks of the delay from a remand and the need for finality outweigh the government’s arguments in favor of a remand. ECF No. 460 at 2-3; ECF No. 464 at 4-6.

First, the court agrees with the government (ECF No. 466 at 2-7) that *Keltner* imposes a higher standard—requiring a compelling justification—than the Federal Circuit in *SKF*. This court is bound to follow the Federal Circuit’s standard. *See West Coast General Corp. v. Dalton*, 39 F.3d 312, 315 (Fed. Cir. 1994) (“Court of Federal Claims decisions, while persuasive, do not set binding precedent for separate and distinct cases in that court.”). Beyond the standard articulated in *SKF*, the Federal Circuit has explained that agencies generally have inherent power to reconsider their decisions. *Tokyo Kikai Seisakusho, Ltd. v. United States*, 529 F.3d 1352, 1360-61 (Fed. Cir. 2008) (collecting cases and noting that “[t]he power to reconsider is inherent in the power to decide”).

Second, the government has given enough information about its intended actions on remand. The government explains that it will consider the concerns that remain after the court’s decision on the motion to dismiss, in view of the protesters’ amended complaints, particularly addressing the allegations of collusion and the information in various databases, noted in this court’s decision on the motion to dismiss, that may be relevant to the issue of veterans employment. *See* ECF No. 458 at 3; ECF No. 466 at 6-9; *see iFIT Inc. v. Vidal*, No. 24-1041, 2024 WL 1953601, at *1 (Fed. Cir. May 3, 2024) (granting the agency’s remand request where the agency stated that it would reconsider its decision in light of the court’s recent opinion and address all of the private party’s concerns). And while General Dynamics argues that the government’s request is not specific enough under *Amentum*, it does not propose narrower remand language (*see* ECF No. 464 at 4-6 & n.2), particularly in light of the varied concerns of dozens of other offerors. Furthermore, even if the remand resolves only some of the concerns brought by the twenty-nine protesters, fifteen intervenors, and the numerous other offerors, that is still worthwhile. *See Lau v. Merit Systems Protection Board*, No. 22-1289, 2022 WL 1741130, at *1 (Fed. Cir. May 31, 2022).

Third, the fact that the administrative record and motions for judgment on the administrative record have been filed does not prevent a remand. *See In re Xencor, Inc.*, No. 23-2048, 2024 WL 244319, at *1 (Fed. Cir. Jan. 23, 2024) (explaining that even though “it would have been preferable for the [government] to have filed [its remand] motion before [the plaintiff] expended the time, money, and effort to file its brief,” the remand request was not improper, frivolous, or in bad faith (cleaned up)). Furthermore, parties’ effort is not wasted. *See In re Bursey*, No. 16-2675, ECF No. 21 at 3 (Fed. Cir. Apr. 28, 2017). After the remand, nothing prevents the parties from relying on the record that has already been compiled—as supplemented to include the remand proceedings—and repeating any arguments that the VA fails to address on remand. And, as the government points out (ECF No. 466 at 8-9), if the protesters were to prevail on judgment on the administrative record, the remedy would be a remand for the VA to reconsider its decision—the same remedy the government requests now.

The government provides substantial and legitimate reasons to remand the case to the agency. Thus, the government’s motion is **granted**. The court **remands** this case to the VA for 120 days to reconsider the challenged decision and take any further administrative actions consistent with that reconsideration. The court further authorizes, but does not require, the VA to consider any further information that the agency has gathered or may gather in accordance with procedures that the agency may establish for that purpose. The parties may seek an extension of the remand for good cause. The case is **stayed** for the duration of the remand.

The parties **shall file** a joint status report by January 6, 2025, updating the court on the progress of the remand proceedings. The parties **shall file** another joint status report within five business days after the remand ends, stating whether the parties believe further litigation is necessary and, if so, proposing a schedule for further case management, including a date for

submitting any additions to the administrative record and deadlines for briefing cross-motions for judgment on the administrative record.

IT IS SO ORDERED.

s/ Molly R. Silfen
MOLLY R. SILFEN
Judge