



File Code: 6320

Date: February 18, 2009

Mr. Steve Metheny, Exec. Vice President
Carson Helicopters, Inc.
828 Brookside Blvd.
Grants Pass, OR 97526

Subject: **Termination for Cause** - Contract No. AG-024B-C-08-9354—National Exclusive
Use Initial Attack Helicopter Services, Items 1 John Day, Item 3 Missoula, Item 4
Twin Bridges, Item 5 Ogden and Item 9 Santa Ynez.

Dear Mr. Metheny:

This letter serves as your notice that Contract AG-024B-C-08-9354 (the Contract), Item 1 John Day, Item 3 Missoula, Item 4 Twin Bridges, Item 5 Ogden and Item 9 Santa Ynez, per Contract Terms and Conditions – (FAR 52.212-4)(m) **Termination for Cause**, is terminated effective immediately. Carson Helicopters, Inc. (Carson) is directed to no longer perform any services under this contract. The Government shall not be liable to Carson for any amount for supplies or services not accepted, and Carson shall be liable to the Government for any and all rights and remedies provided by law.

The decision to terminate for cause is based on Carson's responses to two cure notices sent by the Forest Service on September 29, 2008 and on November 11, 2008 and Carson's failure to comply with the contract terms and conditions. Specifically, Carson is in default of clause B-3 of the Contract, which states, "[h]elicopter(s) under initially awarded contract(s) under this solicitation shall remain at or below contracted helicopter equipped weight as bid." Four of the five helicopters under the Contract weigh more than their equipped weight as bid.

In addition, three of the five helicopter (N61NH, N103WF and N725JH), including the one helicopter that does comply with the clause B-3 weight requirement (N725JH), are not in compliance with the minimum performance specifications stated in clause B-3 for Type I (Heavy) helicopters performing at 7,000 feet and 20 degrees Celsius. Failure to meet the Contract's minimum performance specifications constitutes an additional reason for terminating these three helicopters.

Finally, with respect to all five helicopters under the Contract, Carson has violated both clause B-3 Aircraft Performance Specifications and C-10 Operations of the Contract and 14 CFR 91.9 (the Federal Aviation Administration (FAA) regulations), by using in its operations an improperly modified performance chart that was propagated into Carson's internal flight manuals.

For all of the above reasons, the Contract is terminated in its entirety.



Background

Prior to issuing the cure notices, the Agency conducted a re-inspection of two helicopters (N61NH and N7011M) to validate contract compliance concerns, which included reweighing these two helicopters. After the aircraft were reweighed by the agency, the agency determined the weights of the two helicopters were not in compliance with Carson's initial bid proposal. The discrepancy with the weights prompted the first cure notice requesting the reweighing of all five helicopters under this contract. A second cure notice was issued to clarify two concerns. The first concern was to clarify the weights provided in response to the first cure notice and to explain why the revised weighing procedures identified in the first cure notice were not being followed. The second concern was why the performance charts used in the initial proposal were different from those used to respond to the first cure notice.

First Cure Notice dated September 29, 2008:

A cure notice was sent to Carson on September 29, 2008 with a revised reply due date of October 17, 2008. The cure notice specifically requested that Carson reweigh the helicopters and confirm the helicopter equipped weights as submitted under the initial proposal in accordance with clause B-3 of the Contract.

Clause B-3 Aircraft Performance Specifications (Minimum) states: "[h]elicopter(s) under initially awarded contract(s) under this solicitation shall remain at or below contracted helicopter equipped weight as bid. Helicopters will be allowed 1% above the awarded contracted helicopter equipped weight during the contract option period(s)." Contrary to the implication in Carson's second response letter, the Forest Service has not exercised any options on this contract, which is still in its base year. Therefore, the 1 percent allowance does not apply.

Carson Helicopters response to first Cure Notice

The response from Carson Helicopters identified the following weights:

	Initial Contract A/C Weights	Revised A/C Weights	A/C Out of compliance
N61NH	11353	11653	+300 lbs
N103WF	11341	11771	+430 lbs
N725JH	12023	12014	
N7011M	11347	11445	+98 lbs
N4503E	11356	11581	+225 lbs.

Based on the initial aircraft weights submitted, four of the five helicopters do not comply with clause B-3. The cure notice stated that weights to be validated shall remain at or below contracted equipped weight as bid. Aircraft weights were to be equal to or less than the weights identified in the initial proposal. The justification provided by Carson for the error in aircraft weights was due to incorrect calibration of the scales and incorrect weighting procedures. Carson developed revised weighing procedures after the cure notice was sent which complied with the manufactures recommendations. Four of the five aircraft identified above are out of compliance and do not meet the initial weights as submitted in the initial proposal.

It is the contractor's responsibility to ensure that all information submitted is current and accurate. Faulty scales or outdated weighing procedures will not relieve the company of the

responsibility to ensure accuracy of all facets of the operation, including accurate weighing of aircraft during performance of the Contract.

Second Cure Notice dated November 11, 2008

A second cure notice was issued to address additional concerns on the weighing of aircraft due to the revised weighting procedures developed by Carson that were not being followed. The appropriate documentation and recording of aircraft components were not clearly documented on applicable charts A and C and which was confusing.

Our second concern was the use of different performance charts. New performance charts were submitted that revised the allowable payloads from what was initially submitted in Carson's original proposal. Clause "B-3 Aircraft Performance Specifications" clearly states which performance charts are to be used in determining payload calculations for the purpose of proposal evaluations. Section E-3 of the solicitation also addresses the requirement for utilization of appropriate performance chart information to be used.

Carson Helicopters response to second Cure Notice

Carson responded to the second cure notice on December 10, 2008.

The response from Carson Helicopters identified the following weights from the second round of weighing:

	Initial A/C Weights	*Revised A/C Weights	A/C Out of compliance	Change from 1 st cure notice
N61NH	11353	11653	+300 lbs.	
N103WF	11341	11754	+413 lbs.	-17 lbs.
N725JH	12023	12014		
N7011M	11347	11445	+98 lbs.	
N4503E	11356	11581	+225 lbs.	

*Weight shown here is the weight Carson submitted in its response, minus 125 lbs, to reflect a contract modification that added soundproofing and audio components, and therefore resulted in an increase in each aircraft's weight .

Now, four of the five helicopters are out of compliance with clause B-3, because they have been confirmed as weighing more than their equipped weights as bid in Carson's proposal.

Payload Discrepancies:

In addition, using the revised (correct) performance charts, which Carson did not use in its initial proposal, and using the revalidated calculations described below, three out of the five aircraft do not meet the minimum performance payload specification of 3000 lbs at 7,000 feet and 20 degrees Celsius. All of the payloads reflect weights without the tank and snorkel.

	Initial Payload	Revised Payload	With +125 lbs. for contract modification	A/C Out of compliance	Revalidated
N61NH (L)	4712	2987	3112	X	2965 (Supp. 6)
N103WF (L)	4724	2886	3011	X	2846 (Supp. 6)
N725JH (L)	4042	2626	2751	X	2604 (Supp. 6)
N7011M (S)	4718	3645	3770		3770 (Supp. 5)
N4503E (S)	4709	3509	3634		3634 (Supp. 5)

Three of the five helicopters, using revalidated calculations, are not in compliance with the minimum payload requirement of 3,000 lbs.

When we received Carson's response to the second cure notice, we performed a recalculation of payload using current weight and performance charts (*i.e.*, the weights and charts Carson included in its response). In this process, we noticed that Carson submitted, in its response, incorrect computed gross weights. Using the corrected computed gross weights resulted in revalidated numbers shown above in the right-hand column. For example, the correct calculation for N725JH would include a computed gross weight of 17,353 and not the 17,500 Carson submitted. The correct computed gross weight is important because it affects the aircraft allowable payload. Using the correct computed gross weight of 17,353 results in an allowable payload of 2604 and not 2626. The additional 125 lbs for interior and flight control covers was removed from the helicopter's equipped weight. The revalidated numbers are the correct numbers, and they confirm that three aircraft are out of compliance.

Grounds for Termination

In its two responses, Carson has failed to correct the deficiencies in its performance. Namely, it has failed to keep aircraft at or below their equipped weight and failed to meet performance payload specifications.

Besides failing to comply with the Contract's weight requirements and performance payload specifications, Carson has not demonstrated that it is capable of submitting accurate weight data during performance of the Contract. Incorrect data compromises allowable payloads, which in turn affects flight safety for contract and agency personnel both in the air and on the ground. The allowable payload determines how much weight the aircraft can carry for the current environmental conditions and, if incorrect, safety is compromised.

Carson has years of experience working with this agency and clearly understands the responsibilities of ensuring accurate data is submitted for evaluation purposes. Despite this, the company is having difficulty managing its operations in a manner consistent with the Contract's requirements.

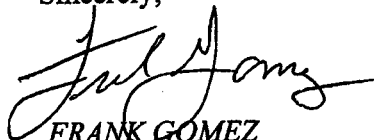
Conclusion

It is the Government's intent to reprocure the terminated contract services. The Government, to the extent possible, will mitigate all reprocurement costs. Once the reprocurement is completed the Government will inform Carson of the reprocurement costs.

This is the final decision of the Contracting Officer. You may appeal this decision to the agency board of contract appeals. If you decide to appeal, you must, within 90 days from the date you receive this decision, mail or otherwise furnish written notice to the agency board of contract appeals and provide a copy to the Contracting Officer from whose decision this appeal is taken. The notice shall indicate that an appeal is taken. The notice shall indicate that an appeal is intended, reference this decision, and identify the contract by number. With regard to appeals to the Civilian Board of Contract Appeals (CBCA), you may, solely at your election, proceed under the board's small claim procedure for claims of \$50,000 or less or its accelerated procedure for claims of \$100,000 or less. Instead of appealing to the CBCA, you may bring an action directly in the United States Court of Federal Claims (except as provided in the Contract Disputes Act of 1978, 41 U.S.C. 603 regarding Maritime Contracts) within 12 months of the date you receive this decision.

If you have any questions, please call me at (208) 387-5347.

Sincerely,



FRANK GOMEZ
CONTRACTING OFFICER