



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-08-9340—National Exclusive Use Helicopters-Large Fire Support, Items 11 Hemet N905AL, Item 12 Casitas N116AZ, Items 13 Van Nuys N612RM, Item 16 San Bernardino N410GH and Item 23 Mariposa N3173U

Dear Mr. Metheny:

This letter serves as your notice that Contract AG-024B-C-08-9340, Item 11 Hemet, Item 12 Casitas, Items 13 Van Nuys, Item 16 San Bernardino, and Item 23 Mariposa, per 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.

First, with respect to three helicopters (N612RM, N905AL, and N410GH), 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." These three helicopters (N612RM, N905AL, and N410GH) currently weigh more than their equipped weight as bid, so they are in default of clause B-3.

Second, two of the three overweight helicopters (N905AL and N410GH) are further in default of the Contract because they cannot meet clause B-3's minimum performance specifications.

Third, with respect to all five helicopters under the Contract, Carson has violated both clause C-10 of the Contract (Operations), 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..

Accordingly, the Contract is terminated in its entirety pursuant to C-17(B).



Background

Prior to issuing the cure notices, the Agency conducted a re-inspection on two helicopters N61NH and N7011M to validate contract compliance concerns including the reweighing of these two helicopters. After the agency weighing it was determined the weights of the two helicopters were not as per 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. Our second concern was to obtain an explanation of why the performance charts Carson used in its initial proposal were different from the ones Carson used in responding to the first cure notice.

First Cure Notice dated September 29, 2008

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

Clause B-3 states: "Helicopter(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
N612RM	11026	11063	+37 lbs
N116AZ	11023	11016	
N905AL	11283	11880	+597 lbs
N410GH	11526	12173	+647 lbs
N3173U	10837	10788	

Based on the initial aircraft weights submitted, three 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. Three 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.

Besides failing to prove compliance with the weight requirement in clause B-3, Carson's response to the first cure notice raised additional concerns due to Carson's use of a performance chart that was different from the one submitted with its proposal.

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 weighing procedures developed by Carson helicopters not being followed. The appropriate documentation and recording of aircraft components were not clearly documented on applicable charts A and C and we were having difficulty following the process.

The second concern was the use of different performance charts. Carson submitted new performance charts that essentially revised the allowable payloads from what was initially submitted in Carson's original proposal.

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:

2nd round of weighing

	Initial A/C Weights	Revised A/C Weights	A/C Out of compliance
N612RM	11026	11063	+37 lbs
N116AZ	11023	11016	
N905AL	11283	11880	+597 lbs
N410GH	11526	12173	+647 lbs
N3173U	10837	10788	

Payload Discrepancies

Using the revised (correct) performance charts, Carson's response also showed the following performance payload calculations for each helicopter (the Contract required a minimum payload of 3,000 lbs for each Type I (Heavy) helicopter) with the exception of N3173U minimum payload is 2300 lbs:

	Initial Payload	Revised Payload	Difference	A/C Out of compliance
N612RM	4603	3578	-1025	
N116AZ	4606	3659	-947	
N905AL	4346	2345	-2000	X
N410GH	4103	2052	-2051	X
N3173U	4492	3887	-605	

Finally, in its December 10, 2008 response to the second cure notice, Carson acknowledges that an incorrect performance chart was submitted with its initial proposal and that "[t]he incorrect

performance chart was also subsequently propagated into Carson's internal flight manuals." See page 9.

Grounds for Termination

1. Carson's response to the second cure notice confirmed that three of the five helicopters remain out of compliance with clause B-3. See page 6. Those helicopters may be terminated for being above their equipped weights as bid in Carson's proposal.
2. Two of the three overweight aircraft (N905AL and N410GH) additionally fail to meet the Contract's minimum performance specifications once the revised (*i.e.*, correct) performance charts are used to calculate payload. Failure to meet the performance specifications is cause for termination.
3. The use of an improper performance chart in an operator's flight manuals violates clause C-10 of the Contract, as well as 14 CFR part 91 Clause C-10 states, "the Contractor shall operate in accordance with their approved FAA Operations Specifications and all portions of 14 CFR 91 (including those portions applicable to civil aircraft) and each certification under this Contract unless otherwise authorized by the CO." The relevant FAA regulation, 14 CFR 91.9(b) states, "[n]o person may operate a U.S.-registered civil aircraft ... unless there is available in the aircraft a current, approved Airplane or Rotorcraft Flight Manual, approved manual material ... or any combination thereof." The improperly modified performance chart that Carson included in its flight manuals was not "approved manual material." Therefore, Carson operated all five helicopters under this Contract in violation of section 91.9(b), as well as clause C-10 of the Contract.

As you know, Carson N612AZ, which had been assigned to this Contract, crashed on August 5, 2008. The crash constitutes a "mishap," as defined in the Contract at clause C-45. ("Mishaps include aircraft accidents, incidents-with-potential, aircraft incidents, aviation hazards and aircraft maintenance deficiencies."). Pursuant to clause C-17:

Following the occurrence of a mishap, the Contracting Officer will evaluate whether noncompliance or violation of provisions of the contract, the Federal Aviation Regulations applicable to the Contractor's operations, company policy, procedures, practices, programs, and/or negligence on the part of the company officers or employees may have caused or contributed to the mishap. The occurrence of the mishap may constitute default in the performance of the contract. A finding of default under the above cited conditions shall entitle the Government to exercise the right to terminate the contract for cause as provided in the "Contract Terms and Conditions" as stated herein.

I have determined that Carson's noncompliance with the contract clause C-10 and its violation of the Federal Aviation Regulations may have caused or contributed to the crash of N612AZ. This is because the inclusion of the falsified chart in the aircraft flight manuals made it available to flight crews for calculation of performance capability while conducting flight operations. Use of this chart would directly impact the final calculation of allowable weight the helicopter would be capable of safely carrying. True allowable payload under actual conditions would be less than

that shown in the load calculation and directly impacts the safe operation of the flight. This is not in compliance with FAA regulation as required in C-10 Operations. Besides failing to comply with the Contract's weight requirements and performance payload specifications, and to operate in compliance with clause C-10 and 14 CFR part 91, 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 operational and 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 cost.

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 [REDACTED]

Sincerely,

[REDACTED]

FRANK GOMEZ

CONTRACTING OFFICER