

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

COOK INLET TRIBAL COUNCIL, INC.,)
3600 San Jeronimo Drive)
Anchorage, Alaska 99508,)

Plaintiff,)

v.)

Civil Action No. 14-1835-(EGS)

CHRISTOPHER MANDREGAN, JR.,)
Director, Alaska Area Office,)
Indian Health Service,)

and)

ALEX M. AZAR II,)
Secretary, U.S. Department of Health)
and Human Services,)

and)

UNITED STATES OF AMERICA,)

Defendants.)
_____)

**DEFENDANTS' MOTION TO ALTER OR AMEND THE COURT'S
NOVEMBER 7, 2018, ORDER UNDER RULE 54(b), OR, IN THE ALTERNATIVE,
TO ALTER OR AMEND THE NOVEMBER 7, 2018, ORDER UNDER RULE 59(e)**

Defendants respectfully move to alter or amend, the Court's Order of November 7, 2018, pursuant to Federal Rule of Civil Procedure ("Rule") 54(b) and Local Civil Rule ("Local Rule"). *See* Order, ECF No. 38. That Order denied Defendants' cross motion for summary judgment; granted in part Plaintiff's motion for summary judgment; vacated Defendants' decision; and remanded the decision to the agency for a determination consistent with this Court's opinion. *See* Order at 1; *see also* Mem. Op. at 2, 39, ECF No. 39.

In the alternative, Defendants' move to alter or amend the November 7, 2018, Order pursuant to Rule 59(e) and Local Rule 7.1. Pursuant to Local Rule 7(a), Defendants respectfully refer the Court to the accompanying memorandum of points and authorities in support of this motion. A proposed order is also provided pursuant to Local Rule 7(c).

Undersigned counsel for Defendants met and conferred with counsel for Plaintiff about this motion pursuant to Local Rule 7(m). Plaintiff opposes this motion.

Dated: December 6, 2018

Respectfully submitted,

JESSIE K. LIU
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United States Attorney for the District of Columbia

DANIEL F. VAN HORN
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By: /s/

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Defendants.)

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
DEFENDANTS' MOTION TO ALTER OR AMEND THE COURT'S
NOVEMBER 7, 2018, ORDER UNDER RULE 54(b), OR, IN THE ALTERNATIVE,
TO ALTER OR AMEND THE NOVEMBER 7, 2018, ORDER UNDER RULE 59(e)**

On November 7, 2018, this Court issued an Order denying Defendants' cross motion for summary judgment; granting in part Plaintiff's motion for summary judgment; vacating Defendants' decision; and remanding the decision to the agency for a determination consistent with this Court's opinion. *See* Order at 1, ECF No. 38; *see also* Mem. Op. at 2, 39 ECF No. 39 (same). Defendants respectfully move to alter or amend the Order under Federal Rule of Procedure ("Rule") 54(b), or in the alternative Rule 59(e), and ask the Court to clarify two

points. First, Defendants seek to clarify that the Order is not a final appealable judgment. Second, Defendants ask the Court to limit its remand Order to the 2014 proposal at issue in this case.

I. STANDARD OF REVIEW

Rule 54(b) allows a district court to reconsider its decisions “at any time before the entry of a judgment adjudicating all the claims and all the parties’ rights and liabilities.” Rule 54(b); *see also Capitol Sprinkler Inspection, Inc. v. Guest Servs., Inc.*, 630 F.3d 217, 227 (D.C. Cir. 2011). District courts grant reconsideration under Rule 54(b) “as justice requires,” *Capitol Sprinkler*, 630 F.3d at 227, or, for example, when a court “has made a decision outside the adversarial issues presented to the Court by the parties.” *Singh v. George Washington Univ.*, 383 F. Supp. 2d 99, 101 (D.D.C. 2005). The Court has ““complete power over interlocutory orders . . . and should be able to revise them when it is consonant with equity to do so.”” *Langevine v. District of Columbia*, 106 F.3d 1018, 1023 (D.C. Cir. 1997) (quoting *Schoen v. Wash. Post*, 246 F.2d 670, 673 (D.C. Cir. 1957)); *see also Schoen*, 246 F.2d at 673 (“[W]here the interests of justice require it, th[e] court has plenary powers to set aside or otherwise modify its interlocutory orders at any time before final judgment.”). Determining if the “justice requires” standard has been met “involves an evaluation of all the circumstances, including whether a court misunderstood a party or made an error of apprehension.” *In re Papst Licensing GmbH & Co. KG Litig.*, 791 F. Supp. 2d 175, 184 (D.D.C. 2011); *see also id.* at 181 (providing a non-exhaustive list of factors considered). A court “has broad discretion to consider whether relief is ‘necessary under the relevant circumstances.’” *North v. U.S. Dep’t of Justice*, 892 F. Supp. 2d 297, 299 (D.D.C. 2012).

Under the alternative standard, Rule 59(e) allows a court to alter or amend a final judgment “to correct a clear error or prevent manifest injustice.” *Foster v. Sedgwick Claims Mgmt. Servs., Inc.*, 842 F.3d 721, 735 (D.C. Cir. 2016). A court’s power to alter or amend “lie[s] within the discretion of the Court.” *AARP v. EEOC*, 292 F. Supp. 3d 238, 241 (D.D.C. 2017). Motions to alter or amend a judgment “are intended to permit the court to correct errors of fact appearing on the face of the record, or errors of law.” *Hammond v. Kempthorne*, 448 F. Supp. 2d 114, 118 (D.D.C. 2006). A party may file a motion to alter or amend within 28 days after the entry of judgment. *See* Rule 59(e). A motion to alter or amend under Rule 59(e) stays the deadline for filing a notice of appeal until the entry of an order disposing of the motion. *See* Fed. R. App. P. 4(a)(4)(A)(iv).

II. ARGUMENT

A. Defendants seek to clarify that the Order is not a final judgment.

Defendants seek to alter or amend this Court’s November 7, 2018, Order, to clarify that the Order was not a final judgment. Rather than grant the final relief Plaintiff seeks in this case, this Court’s November 7 Order and accompanying Opinion vacated the agency’s decision; remanded that decision to the agency for a determination consistent with this Court’s Opinion; and “closed this case, with such closure being without prejudice to a motion to re-open” following this agency proceeding. Order, at 2; *see also* Op. at 2, 39 (same). Defendants believe this remand order is not a final judgment. *See N.C. Fisheries Ass’n, Inc. v. Gutierrez*, 550 F.3d 16, 19 (D.C. Cir. 2008) (“a district court’s remand order is not normally ‘final’ for purposes of appeal”); *Pueblo of Sandia v. Babbitt*, 231 F.3d 878, 880 (D.C. Cir. 2000). This rule for remand orders promotes judicial economy and efficiency by avoiding the inconvenience and cost of two appeals: one from the remand order and one from a later district court decision reviewing the

proceedings on remand. *Pueblo of Sandia*, 231 F.3d at 880 (citing *In re St. Charles Preservation Investors, Ltd.*, 916 F.2d 727, 729 (D.C. Cir. 1990)). It also leaves open the possibility that an appeal may prove unnecessary if the remanded proceedings satisfy all parties. *Id.* Plaintiff nevertheless appears to construe the Order as a final judgment, as demonstrated by its filing of a bill of costs, *see* ECF No. 40, and a motion for fees and costs under the Equal Access to Justice Act, *see* ECF No. 41 (Nov. 29, 2018). Defendants respectfully request that the Court clarify that it did not intend its Order to serve as a final judgment in this case, and that, should it be necessary, the parties retain the ability to appeal the Order after the proceedings on remand, the case is re-opened, and the Court later issues a final judgment.

B. Defendants request that the Order be limited to the 2014 proposal at issue in the case.

The Court's November 7, 2018, Order remanded Plaintiff's contract proposal for a determination "regarding the amount of facility support costs that should be funded as [CSC], *beginning with the 2014 contract to present.*" Order at 1–2 (emphasis added). However, this case (No. 1:14-cv-01835) only involves the agency's declination of Plaintiff's 2014 proposal. *See* Compl. ¶ 3, ECF No. 1, and the parties' cross motions for summary judgment only addressed that 2014 proposal. *See* Pl.'s Mot. for Sum. J., ECF No. 13; Defs.' Opp'n to Pl.'s Mot. for Sum. J. & Cross Mot. for Sum. J., ECF No. 15. Separate cases involving Plaintiff's contracts for 2015–2016 (No. 14-cv-02005) and its 2017 proposal (No. 18-cv-00632) are still pending, and Plaintiff has not submitted proposals for 2018 or 2019. This Court has also directed the parties to file a joint recommendation for further proceedings in case numbers 14-cv-02005 and 18-cv-00632. *See, e.g.,* Minute Order, *Cook Inlet Tribal Council v. Burwell*, No. 14-cv-2005 (D.D.C. Nov. 7, 2018). Accordingly, Defendants respectfully request that the Court alter or amend its November 7, 2018, Order in this case to clarify that it is limited to the 2014 proposal at issue in

this case.

CONCLUSION

For the foregoing reasons, this Court should grant Defendants' motion to alter or amend.

Dated: December 6, 2018

Respectfully submitted,

JESSIE K. LIU
D.C. BAR # 472845
United States Attorney for the District of Columbia

DANIEL F. VAN HORN
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