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Contractor Sues Air Force Over Photography In-Sourcing

By Richard Vanderford

Law360, New York (April 27, 2011) -- Defense contractor Fisher-Cal Industries Inc. sued the U.S. Air Force on Tuesday in Washington, challenging a decision to in-source photography work at a base.

Fisher-Cal, which did the photography work under contract for one year at Dover Air Force Base in Delaware, said the military violated its own rules when it chose to have U.S. Department of Defense staffers do the job. The DOD was required to conduct a cost-benefit analysis, Fisher-Cal said.

"Assuming arguendo that defendants conducted an economic cost analysis, it was unreasonable," the company said in its complaint.

Though most similar protests would go through the U.S. Government Accountability Office or U.S. Court of Federal Claims, Fisher-Cal said it's entitled to bring its complaint in a federal court because it's only trying to force the government to comply with its own regulations.

"Plaintiff does not seek money damages," Fisher-Cal said. "Thus, the Contract Disputes Act does not apply."

Fisher-Cal began providing around-the-clock on-location photography at Dover AFB in October 2009, after signing a one-year contract, according to the complaint. The contract gave the DOD the option to renew it for up to four years, Fisher-Cal said.

The DOD gave Fisher an additional six months of work, but decided in March that it would hire DOD staffers to replace Fisher-Cal, according to the complaint.

The staffers' salaries can exceed \$60,000, not including benefits, Fisher-Cal said. Fisher-Cal could do the work itself for more than 50 percent less money, it said.

Under 10 U.S. Code § 2463, a section that covers armed forces contracts, the DOD must do a cost-benefit analysis to determine whether it makes sense to in-source work or use private contractors, Fisher-Cal said.

The evidence suggests that the department ignored the rule, the company said.

"Defendants' in-sourcing decision is not based upon any standard," Fisher-Cal said.

Based in Willingboro, N.J., Fisher-Cal bills itself as a supplier of photojournalism services to the DOD.

A representative for the U.S. Department of Justice declined to comment.

Lawrence J. Sklute of Sklute & Associates represents Fisher-Cal.

The case is Fisher-Cal Industries Inc. v. U.S., case number 1:11-cv-00791, in the U.S. District Court for the District of Columbia.

--Editing by John Williams.
