

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
BID PROTEST**

BLUE ORIGIN FEDERATION, LLC,)	
)	
Plaintiff,)	
)	
v.)	
)	
THE UNITED STATES,)	No. 21-1695C
)	(Judge Richard A. Hertling)
Defendant,)	
)	
and)	
)	
SPACE EXPLORATION TECHNOLOGIES)	
CORP.,)	
)	
Defendant-Intervenor.)	

**DEFENDANT’S UNOPPOSED COMBINED MOTION FOR LEAVE TO FILE
THE SEALED ADMINISTRATIVE RECORD VIA DVD AND TO AMEND SCHEDULE**

Pursuant to Rules 7(b) and Appendix E of the Rules of the United States Court of Federal Claims (RCFC), defendant, the United States, respectfully requests leave to file the sealed administrative record on a series of Digital Versatile Discs (DVDs). Additionally, pursuant to RCFC 6(b) and 6.1, the United States respectfully requests that this Court amend the schedule it set for the filing of the administrative record in this matter and for subsequent briefing in this case. Pursuant to the Court’s order dated August 19, 2021 (ECF No. 23), the administrative record is due on August 27, 2021. Under the proposed amended schedule, the administrative record would be filed on September 3, 2021. Counsel for plaintiff, Blue Origin Federation, LLC (Blue Origin), indicated on August 27, 2021, that Blue Origin does not oppose this motion. Counsel for defendant-intervenor, Space Exploration Technologies Corp. (SpaceX), indicated on August 27, 2021, that SpaceX does not oppose this motion.

Good cause exists to grant this motion. The administrative record in this case is extraordinarily voluminous, consisting of hundreds of individual documents and over seven gigabytes of data. The record comprises a variety of file types and sizes, many of which present significant challenges in processing, preparing and, we anticipate, filing and transmitting the record to the Court and to the parties.

Filing and transmitting the administrative record in this case presents several logistical challenges. The record comprises hundreds of individual Portable Document Format (PDF) files, as well as a variety of files in other formats. Where possible, we have converted files in non-PDF formats to PDF. However, not all files that comprise the AR can be converted to PDF, at least with the software available. It is our understanding that files of these types cannot be uploaded to the Court's case management/electronic case files (CM/ECF) system. Moreover, some of these files exceed the maximum limit for a single file for the Court's CM/ECF system, currently set at 50 megabytes. *CM/ECF File Size Limit Increased to 50 MB*, U.S. Court of Federal Claims, *available at* <https://www.uscfc.uscourts.gov/node/2892>. Breaking up these files may not be feasible, and even if feasible risks loss of data in the process.

Given the need to break up these large files and the sheer quantity of documents to upload, we would have to file the record across a number of separate docket entries. We would either have to upload approximately *several hundred* separate PDF documents, or attempt to combine the files that are less than 50 megabytes to reduce that total number of uploads, each of which brings additional opportunity for the system to crash. And combining the hundreds of files that are less than 50 megabytes into 50-megabyte PDF files poses its own challenges. Adobe Acrobat, the software we use to process and combine PDFs, does not consistently handle

more than several dozen PDFs at one time without hanging or crashing. Thus, although Acrobat allows the user to split a PDF into smaller files of a specified size, it cannot combine several hundred files at one time without crashing. We have tried several different ways to create 50-megabyte files for more efficient filing, all without success thus far. Even adding pagination to many of the voluminous PDFs, which contain resource-intensive graphics and layouts, has presented challenges.

Additionally, the combined size of the files presents problems for electronic filing. The administrative record measures over seven gigabytes of data. Even if we could easily combine many smaller PDF files into files just under the 50 megabyte limit for individual files – and, as we explain above, we have not been able to do so successfully or efficiently – that would still represent well over 100 separate PDFs. Uploading that many large PDFs to CM/ECF can be problematic. The Court’s website notes that “[w]hen uploading the attachments, if you experience delays or failure, add fewer attachments to complete the filing and then include the remainder of the attachments in a supplemental filing.” *CM/ECF FAQ*, U.S. Court of Federal Claims, *available at* www.uscfc.uscourts.gov/cmecf-faq#PDF.¹

Moreover, PDF files often contain links, bookmarks, and other digital artifacts that cause problems when uploading those files to CM/ECF. As the Federal Circuit’s Electronic Filing Procedures manual explains, “[w]hen uploading a document to CM/ECF, the system checks for

¹ As late as 2016, the Court’s Appendix E limited the number of files that may constitute a single filing to 11 (i.e., the main document and 10 attachments). The Clerk’s office has previously informed us, in connection with the record we filed in a series of very large consolidated protests, that although there is now no theoretical limit on the number of attachments that may be submitted, the CM/ECF system starts to slow down and “time-out” if trying to add large numbers of attachments.

whether the document contains encryption, scripts, links, form fields, or executables. The system will not accept any files with these items.” See *Electronic Filing Procedures*, Clerk’s Office, U.S. Court of Appeals for the Federal Circuit 29 (Oct. 2019, ver. 2.4), available at www.cafc.uscourts.gov/sites/default/files/cmecf/ElectronicFilingProcedures.pdf. To overcome this, “users must lock or ‘flatten’ the PDF document before filing.” *Id.* (“To flatten a PDF document, print the document as a PDF and then save the document.”). Many of the administrative record documents here contain such information, including links and attachments. Printing all of the PDF files to “flatten” them would require significant time and resources.² And, for the reasons explained above, combining all the separate PDFs into several volumes for flattening has not proved to be efficient, because of the propensity for Acrobat to crash when dealing with large files such as those that comprise the administrative record.

Filing the administrative record on DVDs instead of via the CM/ECF system will greatly alleviate the logistical challenges described above, and is the most efficient method of filing the record. Moreover, this method will allow files to remain intact, eliminating the chance of inadvertent data loss in the processing of files for upload to the CM/ECF system. Additionally, filing the administrative record on DVDs will make the record easier to navigate and review for the Court and the parties. Documents can be organized neatly and sequentially by tab number, rather than filing combined PDF files that span multiple tabs and, at times, start and stop mid-tab, as the alternative approach may necessitate. The United States intends to sequentially Bates

² Flattening the documents also removes bookmarks that may otherwise be helpful in navigating these voluminous PDFs.

stamp all documents in the administrative record, making reference to the Bates-stamped page number simple and consistent.

Finally, conversion of some non-PDF files, for example large spreadsheets in Microsoft Excel format, renders the files difficult to read. Filing the administrative record via DVD would allow us to file both the converted PDFs and the original native files, allowing for quick reference for the parties and the Court if the PDFs prove difficult to decipher.

For the reasons described above, additional time is also necessary to finish compiling and processing the administrative record for filing. Additionally, personnel availability challenges within the agency has delayed collection and review of some additional documentation that may be part of the administrative record. Specifically, from August 21-27, 2021, NASA's senior leadership, including many key personnel related to the Human Landing System Option A procurement, attended the 36th Annual Space Symposium in Colorado Springs, Colorado. Travel to and from and participation in this important conference has hindered the agency's ability to collect and review documents in the possession of these individuals, and process appropriate documents for inclusion in the administrative record.

In light of these challenges, the United States respectfully requests that the Court extend the deadline to file the administrative record by seven days, from August 27, 2021, to September 3, 2021. In light of this delay, the United States recognizes that other dates in the expedited schedule set by the Court will have to shift accordingly. As such, despite the significant harm to the agency resulting from further delays, the agency reluctantly agrees to extend the voluntary stay of performance of the contract awarded to SpaceX by seven days, to November 8, 2021.

The United States respectfully requests that the Court amend the existing litigation schedule to adopt the following dates instead:

Action	Date
United States Files Administrative Record	September 3, 2021
Blue Origin Files Any Motions Regarding Contents of the Administrative Record	September 10, 2021
United States and SpaceX Respond to Any Motions Regarding Contents of the Administrative Record	September 16, 2021
Parties File Cross-Motions for Judgment on the Administrative Record	October 1, 2021
Parties File Replies in Support of Cross-Motions on the Administrative Record	October 13, 2021
NASA Voluntary Stay of Performance Expires	November 8, 2021

The United States respectfully requests that the Court schedule oral argument at a time that the Court deems appropriate

For these reasons, the United States respectfully requests that the Court grant this unopposed combined motion for leave to file the administrative record via DVD and to amend the schedule.

Respectfully submitted,

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