

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

ANALYTICAL GRAPHICS, INC.)	
)	
Plaintiff,)	No. 16-cv-1453
)	(Judge Marian Blank Horn)
v.)	
)	
UNITED STATES OF AMERICA,)	(Filed on November 4, 2016)
)	
Defendant.)	

APPLIED DEFENSE SOLUTIONS, INC.’S MOTION TO INTERVENE

Pursuant to Rule 7(b) of the Rules of the United States Court of Federal Claims (“RCFC”), Applied Defense Solutions, Inc. (“ADS”), by its undersigned counsel, respectfully moves to intervene as a matter of right in the above-captioned matter. Intervention is proper in accordance with RCFC 24(a) because ADS has timely applied for intervention; the United States Air Force has awarded the contract that is the subject of this dispute to ADS, and, therefore, ADS has an interest relating to the transaction which is the subject of this action; ADS’ protection of its interest will be impaired or impeded without its participation; and ADS’ interest will not be adequately represented by the existing parties. Alternatively, ADS should be permitted to intervene in accordance with RCFC 24(b) because ADS’ defense and the main action have questions of law or fact in common.

Respectfully submitted,

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CERTIFICATE OF FILING

Movant for Intervention has filed this document electronically via the ECF electronic filing Website of the United States Court of Federal Claims and in accordance with the Rules of the Court of Federal Claims, Appendix E, Rule 12 has, therefore, served notice on counsel of record.

Dated: November 7, 2016

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**APPLIED DEFENSE SOLUTIONS, INC.’S MEMORANDUM IN SUPPORT OF ITS
MOTION TO INTERVENE**

Pursuant to Rule 7(b) of the Rules of the United States Court of Federal Claims (“RCFC”), Applied Defense Solutions, Inc. (“ADS”), by its undersigned counsel, respectfully submits this Memorandum of Points and Authorities in support of its Motion to Intervene. As set forth below, ADS is entitled to intervene as a matter of right in accordance with RCFC 24(a). Alternatively, ADS should be permitted to intervene in accordance with RCFC 24(b).

I. STATEMENT OF FACTS

In this bid protest, plaintiff Analytical Graphics, Inc. challenges the decision of the United States Air Force (the “Air Force”) to make award of a contract to ADS under Solicitation (RFP) No. FA2550-16-R-8002 (the “Solicitation”). AGI has filed this protest after the United States Government Accountability Office (“GAO”) denied its protest concerning this same matter.

On November 4, 2016, AGI filed its complaint for declaratory and injunctive relief in the instant action. We do not yet have access to the Complaint, but we understand that, in it, AGI requests that this Court enter judgment for AGI overturning the award to ADS.

II. ARGUMENT

A. ADS Is Entitled To Intervene As A Matter Of Right

ADS is entitled to intervene in this action as a matter of right under RCFC 24(a), which provides that:

On timely motion, the court must permit anyone to intervene who: . . . claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

RCFC 24(a). *See also American Renovation & Constr. Co. v. United States*, 65 Fed. Cl. 254, 259 (2005) (an intervenor under RCFC 24(a) must “demonstrate (1) an interest in the subject matter of the litigation; (2) an impairment of that interest if intervention is denied; and (3) inadequate representation of its interest by the parties in the action.”).

In accordance with this rule, intervention is proper because ADS has timely applied for intervention; as a consequence of the Air Force's award decision, ADS has a strong economic interest in the transaction that is the subject of this action; ADS' protection of its interest will be impaired or impeded without its participation; and ADS' interest will not be adequately represented by the existing parties.

First, this motion is timely filed. It has been two days since AGI filed its complaint. A scheduling order has not yet been entered in the case. As there will be no delay in the resolution of this bid protest if ADS is permitted to intervene, there is no prejudice to any party if the Court grants this motion.

Second ADS has been identified as the awardee under the Solicitation, an award which AGI challenges in this protest. Accordingly, ADS has an interest in the underlying subject matter

of the instant case. Accordingly, ADS plainly has an interest in this protest such that it has the right to intervene under Rule 24(a).

Intervention is also proper because ADS' interests are not adequately protected by the Government. Courts only require a "minimal" burden to show that intervention is necessary on the ground that representation by existing parties may be inadequate. *Trbovich v. UMW*, 404 U.S. 528, 538 n.10 (1972). Although the Government will presumably zealously defend its award to ADS and the other awardees in furtherance of its own interest, ADS is in the best position to describe to the Court, if necessary, ADS-specific information contained in the administrative record, including ADS' proposal, as well as the harm ADS would suffer if the Court were to find that the Air Force improperly made award to ADS.

Moreover, the business interests of ADS, as the awardee, are not necessarily identical to the institutional interests of the Government. The Government has not made any claim in this litigation to be an adequate representative of ADS' interests. Moreover, it could not do so. Indeed, the Government could undertake corrective action in response to AGI's complaint which would not necessarily be in ADS' interest, and the Government is not obligated to protect the interests of ADS.

B. ADS Should Be Permitted to Intervene

Even if ADS is not permitted to intervene as of right, it should be permitted to intervene in accordance with RCFC 24(b), which provides that "[o]n timely motion, the court may permit anyone to intervene who: . . . has a claim or defense that shares with the main action a common question of law or fact." Neither AGI nor the Government can reasonably dispute that ADS' potential claims and defenses related to the Air Force's contract award to ADS have common

questions of law or fact with the issues presented by this bid protest which involves the same contract. Thus, ADS should be permitted to intervene in this bid protest.

III. CONCLUSION

For the foregoing reasons, ADS should be found to be entitled to intervene (1) as a matter of right under RCFC 24(a); or (2) by permission under RCFC 24(b).

Respectfully submitted,

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ORDER

HAVING READ AND CONSIDERED the Motion to Intervene and supporting Memorandum of Points and Authorities filed by Applied Defense Solutions, Inc. (“ADS”), along with any response thereto, the Court has determined that ADS’ Motion to Intervene as of Right should be, and hereby is GRANTED.

IT IS SO ORDERED.

November __, 2016

MARIAN BLANK HORN, Judge