

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

BID PROTEST

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DYNCORP INTERNATIONAL LLC,)	
	Plaintiff,)	
and)	Case No. 19-1133 C
VECTRUS SYSTEMS CORPORATION ¹)	Judge Loren A. Smith
	Intervenor)	
)	
v.)	
)	
THE UNITED STATES,)	
	Defendant,)	
and)	
KELLOGG, BROWN & ROOT SERVICES, INC.)	
	Intervenor.)	
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AECOM MANAGEMENT SERVICES, INC.’S MOTION TO INTERVENE AND REQUEST FOR COURT TO SEEK A GAO ADVISORY OPINION

Pursuant to Rule 24 of the Rules of the United States Court of Federal Claims (“RCFC”) AECOM Management Services, Inc. (AECOM), respectfully requests leave to intervene in the above-captioned bid protest action filed by DynCorp International (DynCorp). Counsel for DynCorp and KBR oppose AECOM’s intervention in this matter.

¹ AECOM believes that Vectrus is properly viewed as a Defendant-Intervenor, but is following the caption which appears on the docket.

Counsel for Defendant the United States (DoJ) and Vectrus have not yet indicated whether they object. As shown below, AECOM has a direct and substantial interest in the outcome of these proceedings. AECOM filed a separate bid protest at GAO, that was to be decided not later than this Friday, August 9. AECOM's protest also challenged the awards in this procurement although, undersigned counsel is informed, that it made different arguments than DynCorp for the most part. The denial of DynCorp's protest, thus, should have had no bearing on AECOM's meritorious GAO bid protest. By filing the instant protest in this Court, however, DynCorp has deprived AECOM of a decision at GAO, its chosen forum. As an actual offeror with a substantial chance for award, AECOM has an interest in the outcome of this protest action.

Separately, and underlying AECOM's request that this Court seek an advisory opinion from GAO, there has already been a significant financial impact to AECOM from DynCorp's actions, which will compel AECOM to relitigate, and this Court to hear its arguments anew. Moreover, AECOM has lost its CICA stay and will need to seek injunctive relief on its own if it is not granted by the Court in this matter. Thus, AECOM has a direct interest beyond its status as a disappointed offeror. In the interest of efficiency and in order to salvage some value from AECOM's resources already expended, AECOM urges this Court to request an advisory opinion from GAO in AECOM's separate protest, which has been under consideration now for 98 days.

I. INTRODUCTION

Despite undersigned counsel urging DynCorp to wait for GAO's separate decision and requesting, at a minimum, the opportunity to seek outcome prediction from GAO in advance of DynCorp filing its Complaint, AECOM learned late yesterday from a

news alert, that DynCorp submitted a Complaint under seal Monday. DynCorp has jumped the gun to AECOM's great prejudice.

II. ARGUMENT

RCFC 24 allows for intervention as of right, and permissive intervention. The Court applies a presumption in favor of intervention when considering motions to intervene under Rule 24. *See Che Consulting, Inc. v. United States*, 71 Fed. Cl. 634, 635 (2006) *Cherokee Nation of Okla. v. United States*, 69 Fed. Cl. 148, 152 (2005); *see also Am. Mar. Transp., Inc. v. United States*, 870 F.2d 1559, 1561 (Fed. Cir. 1989).

A. Intervention Is Necessary To Avoid Prejudice To AECOM

When DynCorp precipitously filed its Complaint, AECOM had the benefit of a stay under the Competition in Contracting Act (CICA) and the guarantee of a dispositive GAO recommendation just four days away. By its actions, DynCorp, who failed to convince GAO of the merits of its own protest, stripped AECOM of its CICA stay and its guarantee of resolution by an inexpensive and efficient protest forum. If DynCorp is unable to secure preliminary injunctive relief before AECOM can protect its own interests via a separate Complaint and request for injunctive relief that it never expected it would have to file, it will be irreparably harmed.

B. AECOM Is Entitled To Intervene As Of Right

A prospective party has a right to intervene where its motion (i) claims an interest relating to the property or transaction that is the subject of the action; (ii) is so situated that disposing of the action may, as a practical matter, impair or impede the movant's ability to protect its interest; and (iii) the existing parties to the action do not adequately represent movant's interest. RCFC 24(a)(2). These conditions are met here as

AECOM has a direct interest in the LOGCAP V procurement, that will be affected by this litigation, and no other party can be expected to represent AECOM's unique interests in this matter. Thus AECOM should be allowed to intervene of right.

The transaction at issue here is the 10-year \$82 billion LOGCAP V multiple-award Indefinite Delivery, Indefinite Quantity (IDIQ) contracts for which both DynCorp and AECOM competed. As an actual offeror with a substantial chance of award, AECOM has a direct economic interest in the outcome of this bid protest. If this Court were to deny DynCorp's protest, or indeed to deny preliminary injunctive relief, AECOM would be directly harmed. And because AECOM was only days away from a dispositive recommendation from GAO, AECOM has *already* been impaired in its ability to protect its interests. Thus, from AECOM's perspective, its participation in at least the initial stages of this litigation is necessary just to mitigate any further harm from DynCorp's actions and/or failures to act. Finally, no party to the instant litigation has any interest in, much less the ability to adequately represent AECOM's interests in the subject matter of this litigation. The party whose interests are most closely-aligned is DynCorp. DynCorp's actions to date, including prematurely snatching jurisdiction from GAO days before a potentially favorable decision for AECOM show that it cannot be trusted to protect AECOM's interests.

C. In The Alternative, Permissive Intervention Is Appropriate

Even if this Court disagreed that AECOM qualifies for intervention of right, permissive intervention is appropriate. Under RCFC 24(b), the Court may permit a party to intervene that "has a claim or defense that shares with the main action a common question of law or fact." Here where AECOM and DynCorp are similarly-situated disappointed offerors,

