

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

AIRBOSS DEFENSE GROUP, LLC,

Plaintiff,

V.

THE UNITED STATES,

Defendant,

and

**NEW YORK EMBROIDERY
STUDIO, INC.,**

Defendant-Intervenor.

Case No. 1:24-cv-00365-CFL
Judge Charles F. Lettow

STRING KING LACROSSE LLC'S, UNOPPOSED MOTION TO INTERVENE

Pursuant to Rule 24 of the Rules of the United States Court of Federal Claims (“RCFC”), String King Lacrosse LLC (“StringKing”), respectfully files this Motion to Intervene as a Plaintiff-Intervenor in the above-captioned bid protest. StringKing submitted a timely offer pursuant to the Department of Health and Human Services, Administration for Strategic Preparedness and Response’s (“HHS,” “Agency,” or the “Government”) Request for Proposal No. 75A50322R00008 (the “RFP” or the “Solicitation”). Counsel for StringKing has conferred with counsel for Plaintiff, AirBoss Defense Group, LLC (“AirBoss”); Defendant, the United States; and Defendant-Intervenor, New York Embroidery Studio, Inc. (“NYES”), and all parties stated that they do not object to StringKing intervening in these proceedings.

I. FACTUAL BACKGROUND

On June 28, 2022, the Agency issued the Solicitation, and on November 22, 2022, StringKing timely filed its initial proposal. Then, on September 27, 2023, the Agency issued a

notice of unsuccessful offer to StringKing and informed StringKing that the Contract had been awarded to NYES. After requesting and receiving a debriefing from the Agency, StringKing filed a protest at the Government Accountability Office (“GAO”) challenging the Agency’s award to NYES on multiple bases on October 4, 2023.

On October 27, 2023, the Agency filed a Notice of Corrective Action and sought to dismiss StringKing’s protest as academic. StringKing objected to the Agency’s corrective action on October 31, 2023, arguing that it did not remedy StringKing’s protest, but GAO dismissed StringKing’s protest on November 3, 2023. Following that dismissal, on November 13, 2023, StringKing filed an agency-level protest against the Agency’s corrective action but never received a decision on the merits.

On February 16, 2024, the Agency issued Amendment 0008 to offerors in the competitive range. Amendment 0008 set February 28, 2024, as the due date for revised proposals. Further, and critically, Amendment 0008 also removed shelf-life as a consideration from the Agency’s best value determination. StringKing then filed a protest with GAO challenging Amendment 0008 on February 26, 2024, protesting, among other things, the Agency’s removal of shelf life as a factor in the Solicitation.

On March 26, 2024, HHS informed GAO that it intended to take corrective action. HHS stated that it would cancel the Solicitation; terminate NYES’s contract; “[r]eview and reconsider the Agency’s requirement for isolation gowns, to include shelf-life considerations, which may include additional or updated market research and a new or revised acquisition plan for a new solicitation”; and would “[t]ake other actions, as deemed necessary and appropriate by the Agency.” (ECF Docket No. 27-1.) GAO gave StringKing an opportunity respond to HHS’s Notice of Corrective Action, which StringKing did, objecting again to the Agency’s proposed

corrective action on March 28, 2024. Finally, on April 9, 2024, GAO dismissed StringKing's protest, finding that the Agency's proposed corrective action rendered StringKing's protest academic.

II. THE COURT SHOULD GRANT CFI'S INTERVENTION AS A MATTER OF RIGHT.

Under RCFC 24(a)(2), "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." The "requirements for intervention are to be construed in favor of intervention." *Cherokee Nation of Okla. v. United States*, 69 Fed. Cl. 148, 152 (2005) (citing *Am. Mar. Transp., Inc. v. United States*, 870 F.2d 1559, 1561 (Fed. Cir. 1989)).

StringKing has a direct economic interest in the outcome of this action. First, as an actual offeror in the competitive range of this procurement, StringKing has a direct and cognizable interest in this litigation. *See, e.g., Quantico Tactical Inc. v. United States*, 149 Fed. Cl. 395 (2020) (noting that an offeror in the competitive range of a procurement was permitted to intervene in a pre-award protest). Additionally, StringKing has an interest in protecting the confidential and proprietary information contained in its proposal, which will likely be produced in the Government's Administrative Record.¹ *See Northrop Grumman Information Tech., Inc. v. United States*, 74 Fed. Cl. 407 414-15 (2006) (finding that "trade secrets and proprietary information are the very type of interest the protection of which justifies intervention under Rule 24(a)").

¹ In fact, StringKing understands that its unredacted GAO protest has already been produced in this protest. (See ECF Docket No. 23.)

The Court's disposition of AirBoss's protest, no matter the outcome, would affect StringKing's rights as a competitor. First, the Court's resolution of AirBoss's challenges to the Agency's consideration of shelf-life will affect StringKing's economic interest in this action.² As an offeror in the competitive range of the procurement, and an offeror that placed a key emphasis on its shelf-life in its proposal, how the Court evaluates AirBoss's shelf-life challenges will affect StringKing's interest as a competitor, as a determination that the Agency can reasonably not consider shelf-life affects StringKing's proposal and procurement strategy. Further, given the Government's newly-proposed corrective action, whether the Court even permits the protest to move forward or allows the Agency to undertake its proposed corrective action would clearly affect StringKing, as not dismissing the protest would raise the shelf-life concerns noted above, while dismissing the protest means StringKing must compete again for the procurement. Finally, the Court's disposition of the protest may, as a practical matter, impede StringKing's ability to protect its proprietary information. While protected information is subject to the Court's Protective Order, information can be released from under the Protective Order through the redaction process. (ECF Docket No. 15 at ¶ 12.) StringKing's proprietary information may be

² StringKing acknowledges that, under RCFC 24(c), a motion to intervene must be "accompanied by a pleading that sets out the claim or defense for which intervention is sought." However, due to the nature and timing of the Agency's proposed corrective action, StringKing requests that it be permitted to file a pleading, to the extent the Court deems a pleading is required, following its intervention if the Court does not dismiss the protest or, alternatively, state its claims in a Motion for Judgment on the Administrative Record. StringKing's main concern in this procurement, as stated in this Motion and as it would present in a required pleading, is the Agency's removal of shelf-life as a consideration in its evaluation. Lastly, while a pleading may be required, the Court has permitted intervention by intervenor-plaintiffs without any pleading and allowed the intervenor to file a pleading at a later date. See *M.E.S., Inc. v. United States*, 104 Fed. Cl. 620 (2012) (granting motion to intervene, finding that intervenor's "failure to attach a 'pleading that sets out the claim or defense for which intervention is sought,' 'as required by RCFC 24 (c), was a harmless procedural defect," and instructing intervenor to file a complaint-in-intervention by a later date).

released through the redaction process, which would clearly impede its ability to protect such information should it not be permitted to intervene.

Additionally, neither of the current parties can adequately represent StringKing's interests. The Government does not adequately represent StringKing's interests as a competitor because the Government's interest is in preserving its discretion and achieving the larger goals of HHS. *See, e.g., Coastal Int'l Sec., Inc. v. United States*, 93 Fed. Cl. 502, 526 (2010) (government could not adequately represent defendant-intervenor's interests where "it has the responsibility to represent only [the agency's] interests."). In fact, the Government and StringKing are opposed in this action, given StringKing's opposition to the Government's proposed corrective action and opposition to Amendment 0008 of the Solicitation. Nor can AirBoss or NYES, as fellow competitors in the instant procurement, adequately represent StringKing's interests. Because StringKing's interest in the procurement will be affected by the outcome of this bid protest, and because no other party would adequately represent StringKing's interests, StringKing should be permitted to intervene in this protest as a matter of right.

Accordingly, intervention is appropriate, as StringKing meets the requirements of RCFC 24(a)(2).

III. ALTERNATIVELY, THE COURT SHOULD GRANT PERMISSIVE INTERVENTION.

Alternatively, pursuant to RCFC 24(b), 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." In exercising its discretion to grant permissive intervention, the Court "must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." RCFC 24(b)(3).

Since StringKing has an economic interest as an actual offeror in the competitive range that opposes the Government's proposed corrective action, its protest will share common questions of law and fact with AirBoss's protest against the Government's corrective action. Additionally, StringKing's challenge of the Government's consideration of shelf-life in the Solicitation also shares common question of law and fact with AirBoss's complaint.

Further, StringKing's intervention will not delay or prejudice adjudication of the existing parties' rights. StringKing agrees to comply with any Scheduling Order entered by the Court regarding any forthcoming motion to dismiss from the Government along with any subsequent deadlines set by the Court for briefing on the merits of the protest. (See ECF Docket No. 28.) Therefore, in the alternative to intervention as a matter of right, StringKing should be granted permissive intervention.

IV. CONCLUSION

For the foregoing reasons, StringKing respectfully requests that the Court grant its timely motion to intervene.

Dated: April 12, 2024

Respectfully submitted,

HOLLAND & KNIGHT LLP

/s/Eric S. Crusius

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