



Comptroller General  
of the United States

Washington, D.C. 20548

**Matter of:** Alpha Technical Services, Inc.

**File:** B-251147

**Date:** March 15, 1993

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John P. Antony, Esq., for the protester.  
Fred L. Marrs, Esq., for Product Development Group, Inc., an interested party.  
Charles J. McManus, Esq., Department of the Navy, for the agency.  
Karin K. Fangman, Esq., and Elizabeth S. Woodruff, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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**DIGEST**

Agency award to only approved source was reasonable where the agency had provided protester a reasonable opportunity to become an approved source prior to the award.

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**DECISION**

Alpha Technical Services, Inc. (ATS), protests the award of a contract to Product Development Group, Inc. (PDG), under request for proposals (RFP) N00383-92-R-0087, issued by the Naval Aviation Supply Office (Navy) for engine trailers. ATS complains that it was denied an opportunity to compete because the agency did not expeditiously process ATS' request for source approval.

We deny the protest.

The RFP was issued December 16, 1991, for 21 aircraft engine lift trailers. The trailer is ground support equipment used to extract, transport, and install the F/A-18 aircraft engine and is intended for use on aircraft carriers and maintenance depots. The trailer was designed by PDG and is considered a highly specialized piece of equipment which must meet critical operational and reliability requirements. The trailer design is proprietary to PDG. Consequently, the solicitation was issued on a sole source basis. The RFP called for delivery of the trailers within 250 days after contract award, or approximately early October 1992. The closing date was January 15, 1992.

The procurement was synopsisized in the Commerce Business Daily (CBD) on November 22, 1991. The synopsis provided that only the source previously approved by the government for this item had been solicited (PDG) and that the item

required source approval prior to award. Unapproved sources were instructed to obtain from the Navy its Source Approval Information brochure for a list of the technical information required in support of a source approval request. The synopsis further advised that the information detailed in the brochure must be submitted with the request but that award would not necessarily be delayed pending approval of a new source.

The day the solicitation was issued, ATS expressed an interest in reverse engineering the PDG trailer and in submitting a proposal under the solicitation. The Navy postponed the closing date for 40 days at ATS' request based upon its claim that it had located a trailer to tear down for reverse engineering purposes. Five days later, despite this claim, ATS requested assistance from the Navy to locate a trailer. The Navy contracting officer informed ATS that she knew of no spare trailers available for ATS' use and that efforts to develop competition under this procurement were not possible because the technical data for the existing trailer, necessary for design comparison with a trailer design offered by ATS, was proprietary to PDG. In response, ATS informed the Navy that it had located a trailer suitable for reverse engineering and again requested postponement of the closing date. The Navy granted ATS' request and revised the closing date to March 23, 1992.

Both PDG and ATS submitted timely proposals, with ATS offering the lower cost. On March 25, 1992, ATS' technical data package was forwarded to the Navy's Source Development Group for source approval.<sup>1</sup>

The Navy postponed contract award for over 6 months while working on approving ATS as a source for the procurement. On May 15, 1992, the Source Development Group requested further technical information after an initial review of ATS' data package. This initial review revealed that ATS had failed to provide 8 of the 12 items required by the Navy's Source Approval Information booklet. On June 9, 1992, ATS provided some, but not all, of the

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<sup>1</sup>The Source Development Group is responsible for performing an initial review and evaluation to ensure that the technical data package in support of a source approval request is complete and adequate prior to forwarding it for final approval by the Naval Air Warfare Center.

requested information. ATS did not provide the remaining technical information until September 16, 1992.<sup>2</sup>

During the time the Navy was reviewing ATS' source approval request, a number of circumstances impacted on the need for the new trailers, including (1) new site activations requiring additional trailers, (2) the need to remove existing trailers from use to address a safety problem, and (3) an increased need for engine extraction due to the recent reduction in engine life time (as a result of an F/A-18 crash caused by engine failure). Due to these circumstances, the Navy had an immediate need for the trailers. The contracting officer requested a status report from the Source Development Group on ATS' ability to become an approved source and deliver under this procurement. The Source Development Group estimated that it would need an additional 330 days to complete the approval process, including 150 days for the first article testing, and 120 days for engineering evaluation. This estimate did not include the additional time that would be needed in the event of problems with the first article testing.

The contracting officer determined that because of an increasingly urgent requirement for the trailers, the Navy had to proceed with contract award. On September 30, 1992, the contracting officer received approval to negotiate with PDG, as a firm other than the low offeror. On October 15, 1992, PDG was awarded the contract. ATS was advised that the contract had been awarded to PDG. ATS submitted a protest to the contracting officer on October 26, 1992. Before any action was taken on the administrative protest, ATS filed this protest with our Office on October 30, 1992. Notwithstanding the protest, the Navy has continued performance of the contract based on urgent and compelling circumstances and the best interests of the government. See 31 U.S.C. § 3553(d) (1988); 4 C.F.R. § 21.4(b).

ATS asserts that it was denied an opportunity to compete for award under this RFP by the government's failure to expeditiously approve ATS as a source. Specifically, ATS asserts that the Navy's source approval review could have been shortened had they consulted with the Air Force concerning a similar trailer for which it had been approved as a source, and that the Navy violated its own source

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<sup>2</sup>While ATS claims that it provided Navy engineers all the information necessary in June, the record shows that it was not until September 16 that ATS provided details concerning the source of components and subassemblies. This information was necessary in order to determine component compatibility.

approval processing procedures by not completing ATS' review within 180 days of receiving its request.

The Competition in Contracting Act of 1984 requires agencies to obtain full and open competition in their procurements through the use of competitive procedures. 10 U.S.C. § 2304(a)(1) (1988). Accordingly, when an agency restricts contract award to an approved source, it must give nonapproved sources a reasonable opportunity to qualify. Classic Manufacturing, B-249776, Dec. 14, 1992, 92-2 CPD ¶ 412. This includes informing a potential offeror of the requirements that must be satisfied in order to become qualified, acting promptly on requests for qualification, and if qualification is not obtained, promptly furnishing specific information to the potential offeror as to why qualification was not attained. 10 U.S.C. § 2319(b).

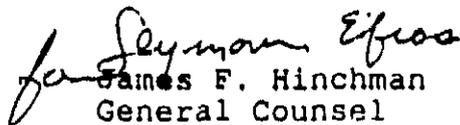
There is no evidence that the Navy acted unreasonably in processing ATS' source approval request. Although ATS submitted a proposal, it did not provide a complete data package for review as required by the Navy's source approval procedures until September 16, almost 6 months after it submitted its proposal. In addition to the delay caused by ATS' incomplete data package, the Navy's review of ATS as an alternate source was substantially complicated by the fact that the design data for the PDG trailer was proprietary to PDG and was not available for comparison with the ATS design. The Navy solicited PDG to provide a complete technical data package for its trailer. At the same time, the Navy began to develop independently the technical requirements and evaluation tests procedures needed to evaluate ATS' design. The Navy is currently developing a detailed statement of work for the item.

By the time ATS submitted all of its data, the Navy had an immediate need for the trailers and its estimate indicated that even after Navy develops an adequate statement of work for this item, it would take ATS approximately 330 days before it could deliver its first production unit. ATS has not refuted this estimate. In contrast, PDG offered to produce all 21 trailers within 240 days from the date of award. We have recognized that an agency is not required to delay a procurement indefinitely in order to provide a potential offeror an opportunity to demonstrate its ability to become an approved source. See Florida Ordnance Corporation, B-247363.4, Aug. 31, 1992, 92-2 CPD ¶ 138; Tekstar, Inc., B-239905, Oct. 9, 1990, 90-2 CPD ¶ 273. In light of the Navy's need for 21 trailers, it was reasonable for the Navy to award a contract to PDG for these units while it worked with ATS to approve it as an alternate source.

Regarding the Air Force's approval of a similar ATS trailer, the Navy did, in fact, consult with the Air Force. It verified that ATS was an approved source for a similar trailer, but it also found that ATS had not undergone first article testing, had not produced a trailer for the Air Force, and did not have a contract with the Air Force for the production of trailers.

ATS also argues that the Navy's source approval procedures require that the approval process be completed within 180 days of submitting the request. The referenced Navy Source Approval Information booklet prescribes processing time frames and status reports. The procedure does not require approval in 180 days, but rather requires that the Navy advise contractors, if additional time is needed, when it estimates approval will be provided. The record reflects that the Navy was in regular contact with ATS during the source approval process.

The protest is denied.

  
James F. Hinchman  
General Counsel