

*P. Ahearn*



Comptroller General  
of the United States  
Washington, D.C. 20548

## Decision

**Matter of:** H.T. Systems, Inc.

**File:** B-242070

**Date:** March 21, 1991

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George D. Huddleston for the protester.  
Millard F. Pippin, Department of the Air Force, for the agency.  
M. Penny Ahearn, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Award to only approved source for antenna switches to be supplied as government-furnished equipment in on-going government contract for conversion of F-106 aircraft to drone configurations was unobjectionable where agency reasonably determined that first article test of switch proposed by protester will be necessary before it can approve the firm as a source, and that testing of protester's switch cannot be completed to allow for timely delivery of antenna switches to conversion contractor.

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### DECISION

H.T. Systems, Inc. protests the rejection of its offer, and the Department of the Air Force's award of a contract to Micro Systems, Inc. under request for proposals (RFP) No. F04606-90-R-16050, for 48 antenna selector switches in support of an on-going government contract to convert F-106 aircraft to drone configurations. H.T. Systems, the low offeror, contends that its offer improperly was rejected on the basis that it is not an approved source; the protester maintains it has the capability to perform the requirement and that the agency should have given the firm an opportunity to show its technical acceptability through first article testing (FAT).

We deny the protest.

The antenna selector switches, to be provided as government-furnished equipment for the conversion contract, enable the drone aircraft to switch the control system between two antennas to ensure continued reception of ground control signals. Without the selector switch, drone remote control

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cannot be accomplished reliably. Loss of the signal for 6 seconds or more causes the drone to shut down, parachute to the ground, and end the mission. Therefore, the proper functioning of the switch is considered flight critical to the drone and its mission.

On May 25, 1990, the Air Force published notice in the Commerce Business Daily (CBD) of its intent to negotiate a sole-source contract with Micro Systems, Inc., the only known responsible source for the antenna switches.<sup>1/</sup> The solicitation, requesting firm, fixed prices for the switches, was issued on June 19 (with a closing date of July 19) on a restricted basis; it listed Micro Systems as the only previously identified source. However, it also invited other firms to submit offers, provided they could demonstrate their technical acceptability; solicitation clause M-25, "Evaluation of Proposals Submitted Based Upon Data Not Provided in the Solicitation," provided that offers from firms (such as H.T. Systems), not previously identified as sources for the requirement, would be considered for award only if the offeror: (1) identified the source of the data the offeror would use to perform the contract, (2) provided a set of the data, and (3) provided evidence that the item proposed would meet the Air Force's requirement. The clause specified that the foregoing was not a prequalification requirement, but was necessary to determine if the item proposed would meet the requirement, since the Air Force lacked a complete data package. The clause further advised that the decision of the contracting officer as to the adequacy of the data submitted was to be final.

The RFP provided for delivery of the switches to the conversion contractor no later than March 31, 1991. The solicitation noted that this delivery date was based on the assumption that award would be made by September 30, 1990, thus providing a 212-day lead time.

The Air Force received two proposals, one from Micro Systems with a total offered item price of \$38,811, and the other from H.T. Systems, with the low price of \$28,842. Based on the dollar difference between the two proposals, the agency determined that, if H.T. Systems' technical data were acceptable, it would be in the government's best interest to consider the firm's proposal. Consequently, on July 20, the contracting office forwarded H.T. Systems' proposal, which

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<sup>1/</sup> On June 1, 1990, the Air Force approved a justification for using other than full and open competitive procedures on the basis that the antenna switches were available from only one known source with a complete data package. See 10 U.S.C. § 2304(c)(2) (1988).

included a summary of the history of the switch and technical drawings, to agency engineering personnel for evaluation. By memorandum dated August 3, the engineering personnel determined that the information provided by H.T. Systems was primarily a description of the history of the antenna switch, but that if a proper technical proposal had been written, it would be adequate to describe the switch. The engineering personnel further concluded that the drawings submitted by H.T. Systems described the major items of the switch adequately, but not some of the minor items.

On August 8, the procurement office sent a memorandum back to the engineering office requesting a description of exactly what was needed from H.T. Systems to clarify the proposal. In a reply memorandum dated September 4, the engineering personnel responded that the technical material submitted with H.T. Systems' proposal was insufficient to qualify the proposed offeror and that successful testing of a first article would be necessary to qualify the firm as an alternate source.

The procurement office again questioned what the deficiencies were and the engineering personnel responded by memorandum dated September 26 that, although the technical information package submitted by H.T. Systems was incomplete, it indicated that the firm had a working knowledge of the antenna selector switch, and its personnel appeared qualified to build an acceptable selector switch based on their previous experience with drone tracking. Finally, the question of whether H.T. Systems could be approved as a source resulted in a meeting between the procurement and engineering offices. After the meeting, the engineering personnel submitted an October 3 memorandum to the procurement office. Specifically, the engineering personnel determined that H.T. Systems' data package did not contain either a test procedure to verify that the proposed antenna switch met the necessary technical and operational requirements, or an indication that its proposed switch had been verified by testing and, if so, the results. The engineering personnel concluded that the protester could not be approved as a source of supply for the switches until such time as they fabricated a prototype, tested it, and provided acceptable test results to the Air Force, or submitted a first article switch to the Air Force for testing.

In order to determine if there was sufficient time for a FAT, the buyer contacted the government-furnished equipment manager for the conversion contract and was told that delivery by March 31 was a necessity for the conversion contract schedule and that further slippage would be unacceptable. The buyer then contacted Micro Systems and was told that the firm could meet that delivery date, provided award was made by early November. Based on this information, the Air Force

concluded that there was insufficient time for H.T. Systems to complete a FAT. The agency notified H.T. Systems by letter dated November 2 that it was approved conditionally for the switch, contingent upon successful completion of a FAT, but that the current award could not be delayed for a FAT, due to the required delivery date of March 31. However, the agency indicated to the firm that the next requirement for the switch would be solicited under competitive procedures, with a FAT requirement.

The agency made award to Micro Systems on November 9, 1990; this left a 142-day lead time for manufacture of the switches. H.T. Systems filed this protest with our Office on November 15. Authorization to continue performance in the face of the protest was approved by the Air Force on November 27, based on the best interests of the government. See 31 U.S.C. § 3553(d)(2)(A)(i) (1988).

H.T. Systems argues that the data it submitted was sufficient under clause M-24 to support a determination of technical acceptability, and that award therefore should have been made to it as the low offeror, with a FAT requirement as deemed necessary. H.T. Systems contends that, contrary to the Air Force's determination, sufficient time in fact existed for a FAT in this procurement; specifically, the protester maintains that if a FAT had been requested even as late as the time of the November 9 award, the firm could have manufactured a prototype and tested it within 30 days, thus completing the FAT by December 10, which would have allowed it sufficient time to meet the required March delivery date. In this regard, the protester argues that the agency's delay in the evaluation and notification to the firm of the need for a FAT effectively deprived the firm of the opportunity to demonstrate that its switches would meet the agency's requirements, and therefore improperly prevented it from competing under the solicitation.

An agency properly may reject a proposal from an alternate source on a noncompetitive procurement if that unapproved source does not demonstrate that it can meet the agency's technical and schedule requirements. JTP Radiation, Inc., B-233579, Mar. 28, 1989, 89-1 CPD ¶ 315. An agency may require a FAT as a condition of source approval, even where the RFP does not explicitly reference any testing requirements, if the data and evidence submitted by the alternate source in its proposal do not satisfy the agency that its requirements will be met. MMC/PHT Co.--Recon., B-230599.2, July 27, 1988, 88-2 CPD ¶ 90; see also JTP Radiation, Inc., B-233579, supra.

Here, the protester's proposal did not include any test plan or test results showing that the firm's proposed switch had been verified to meet the Air Force's requirements. Nor was there any indication in the proposal that H.T. Systems had ever manufactured the switch. Since these switches were critical to the successful operation of the drone aircraft, we think the Air Force reasonably determined that the protester had not adequately demonstrated that it could manufacture a compliant item, and that a FAT would be necessary for this purpose were the protester to receive the award under this RFP. See JTP Radiation, Inc., B-233579, supra.

Given the propriety of the FAT requirement, it follows that it was proper for the Air Force to consider whether H.T. Systems could complete a FAT in time to ensure that the March delivery date would be met. We find from the record that the Air Force reasonably determined that H.T. Systems could not, timely complete a FAT.<sup>2/</sup> The protester's 30-day estimate of the time it would need to manufacture a prototype and conduct a FAT appears to be a best case scenario that does not allow for delays that might occur if there were problems completing a successful FAT. In fact, there would be no assurance that approval would take only 30 days, and the agency is not obligated to take the risk that H.T. Systems would fail the FAT and thus delay delivery of the switches beyond the required date. See Howmet Corp., B-232421, Nov. 28, 1988, 88-2 CPD ¶ 520. Moreover, the protester does not attempt to explain how it could have met the March delivery schedule, which would have required it to perform a FAT and to complete manufacture within 142 days, when the experienced manufacturer of the switches, Micro Systems, needed that amount of time just to produce the switches, without a FAT.

We conclude that the Air Force properly determined that H.T. Systems did not demonstrate in its proposal that it could meet the Air Force's technical requirements; that the agency therefore properly imposed a FAT requirement for source approval; and that the agency then reasonably determined that the FAT could not be completed in time to assure timely delivery. We therefore have no basis to question the rejection of the firm's offer.

We do not agree with H.T. Systems that the Air Force improperly delayed the source approval process such that it effectively denied the firm an adequate opportunity to become approved. Under 10 U.S.C. § 2319(b)(6) (1988), an agency imposing a qualification requirement--that is, a requirement for testing or other quality assurance demonstration that must

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<sup>2/</sup> We note that there is no dispute as to the necessity for delivery by March 31.

be satisfied by a prospective offeror or its product in order to become qualified for an award--must ensure that an offeror seeking qualification is promptly informed as to whether qualification has been obtained and, if not, promptly furnished specific information as to why qualification was not attained. See Rotair Indus., B-239503 et al., Aug. 24, 1990, 90-2 CPD ¶ 154. This statutory provision is mirrored in Federal Acquisition Regulation § 9.202(a)(4).

Evaluation of H.T. Systems' proposal took approximately 90 days, and the agency then took another 30 days to determine if there was sufficient time for a FAT under the required delivery schedule, and to notify the firm of its conditional approval. We do not find this length of time unreasonable per se. In fact, the contracting office's extensive inquiry of the engineering office fairly supports the Air Force's position that it was interested in having H.T. Systems qualified as a second source, and that it was seeking to advance that process. In this regard, the memoranda between the contracting and engineering offices show coordination between the different activities within the Air Force to determine what information was needed to approve the firm as an alternate source. The memoranda contain no indication of undue delay by the Air Force; rather, to the extent that any delay existed, it appears to have resulted from the agency's efforts to include H.T. Systems for the purpose of promoting competition for the requirement.

While the protester contends that the agency should have notified the firm of the need for a FAT at the time of the October 3 engineering report, which allegedly would have allowed the protester sufficient time to complete a FAT, the record shows that, at that time, the agency had not yet determined whether possible delivery delays from any FAT would be acceptable. The agency's full consideration of the potential negative impact of a FAT before making award to H.T. Systems with provision for a FAT did not constitute an impermissible delay.<sup>3/</sup>

The protest is denied.

  
for James F. Hinchman  
General Counsel

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<sup>3/</sup> On the other hand, it appears that H.T. Systems itself did not promptly seek approval. The source approval requirement was issued on June 19, but the protester did not request source approval until it submitted its proposal on July 17. See Texstar, Inc., B-239905, Oct. 9, 1990, 90-2 CPD ¶ 273.