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**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** Aircraft Braking Systems Corporation

**File:** B-261968

**Date:** November 16, 1995

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Albert C. Ruehmann III, Esq., for BF Goodrich Aerospace, an interested party.

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## DIGEST

Protest that agency denied protester reasonable opportunity to compete because the time allowed to qualify its wheel and brake assembly was insufficient is denied where the record establishes that the protester had as much time as its competitor to qualify its assembly prior to the issuance of the instant solicitation and the agency reasonably determined that it could not delay the procurement until the protester obtained source approval.

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## DECISION

Aircraft Braking Systems Corporation (ABSC) protests any award under request for proposals (RFP) No. F42630-95-R-22041, issued by the Department of the Air Force to acquire an improved wheel and brake assembly for certain F-16 aircraft to replace those supplied by ABSC under a prior contract. ABSC primarily argues that a solicitation requirement for radial tire compatibility exceeds the requirements of the original equipment manufacturer's (OEM) design specifications, is unduly restrictive, and impermissibly favors its competitor, BF Goodrich Aerospace (BFG).

We deny the protest.

The F-16 C/D fleet consists of two blocks, or types, of aircraft, block 40/42 and block 50/52. The wheel and brake assemblies sought under the RFP are a part of the main landing gear for the aircraft. They are considered flight critical items because a failure of the wheel and brake assembly during operation of the aircraft could significantly affect flight safety. The prime contractor and OEM of the F-16 fleet is General Dynamics Corporation, Fort Worth Division. The OEM equipped the block 40/42 aircraft with a wheel and brake assembly manufactured by ABSC, and the block 50/52 aircraft with a wheel and brake assembly manufactured by BFG. The ABSC 40/42 assembly and the BFG 50/52 assembly were each qualified to the

same OEM design specification. ABSC and BFG were the sole source suppliers of replenishment spares; ABSC for the 40/42 block and BFG for the 50/52 block.

In 1991, BFG sought source approval for its wheel and brake assembly to be used on the block 40/42 aircraft. The Air Force performed a 2-year field service evaluation (FSE) by installing the BFG assembly on a limited number of block 40/42 aircraft. The FSE established that BFG's assembly was fully interchangeable with the ABSC 40/42 assembly, and has an expected life of 767 landings, compared to the ABSC assembly which has an expected life of 250 landings. The BFG assembly was approved for use on the block 40/42 aircraft in December 1993.

Meanwhile, the agency states, since being put into operational use, ABSC's F-16 block 40/42 wheel and brake assembly has not met the expected performance standards. Specifically, field use and performance tests of the ABSC assembly demonstrated that the brakes were averaging only 250 landings before replacement of carbon heat stacks was required. This performance average was contrary to the design specification requirement that the brake life "shall be at least 500 aircraft brake usage sequences (i.e., landings)" with a design goal of "1000 aircraft brake usage sequences." Other performance problems with the ABSC assembly were identified as severe wheel corrosion, inadequate heat shielding, extensive torque cracking, deformed rotor channels, inadequate brake heat stacks, and locked brakes.

In 1990 and 1991, the Air Force experienced severe reliability and maintenance problems with the 40/42 fleet because the service life of the ABSC assembly continued to be shorter than expected. This gave rise to degraded aircraft support in the form of depleted inventory and continuous back orders. The agency incurred excessive manpower and replacement costs, as it frequently had to ask ABSC to accelerate delivery of replenishment spares to ensure continued aircraft support. ABSC did accelerate delivery of some wheel components but was not able to improve delivery of the more urgent brake parts. Consequently, the wheel and brake were placed on the agency's critical item list in December 1993, and the brake heat stack was added in December 1994.

Given the critical shortage of 40/42 assembly spares and the reliability and maintenance problems associated with the ABSC assembly, in January 1994, the Air Force determined that it was in the agency's best interest to replace the existing ABSC 40/42 assembly with the BFG assembly, which had previously been qualified for use on the 40/42 aircraft and had a documented performance rate of 767 landings, which was closer to the design objective of 1,000 landings. A life-cycle cost (LCC) analysis performed by the agency concluded that purchase of an improved, upgraded 40/42 assembly was both technically feasible and cost effective as the benefit of such an approach would be realized through the end of the system life. On June 7, 1994, the Air Force published a notice in the Commerce

Business Daily (CBD) stating its intent to issue a sole source contract to BFG for a quantity of 40/42 assemblies. The proposed sole source award was canceled on September 16, as the agency realized that it could not justify a sole source acquisition since there were two qualified sources, ABSC and BFG.

In August 1994, ABSC met with procurement officials regarding its 40/42 assembly. At that time, ABSC representatives acknowledged that certain problems existed in its assembly and proposed improvements which it wanted the agency to adopt. Along with these proposed improvements, ABSC offered a 10-year performance warranty for its wheel and brake frame and a 3-year, 825-landing index warranty for its brake. ABSC further stated that it had developed a radial compatible wheel. Thereafter, in September, ABSC submitted an unsolicited proposal as a follow-up to its presentation. The Air Force returned this unsolicited proposal as it had decided to discontinue the sole source acquisition and anticipated issuing a competitive solicitation.

On January 6, 1995, the Air Force published a synopsis in the CBD to identify interested sources with the capabilities to produce a replacement wheel and brake assembly for the block 40/42 F-16 aircraft. The synopsis advised that the replacement system should provide a wheel design that can accommodate both a bias ply and a radial ply tire, and a brake design that can provide a minimum of 750 landings before repair or replacement. The synopsis also stated that the replacement wheel and brake must fit within the present envelope of the 40/42 wheel well fitting, and be compatible with existing aircraft/landing gear in form, fit and function. The agency received eight expressions of interest in response to the notice.<sup>1</sup> On April 12, the Air Force synopsisized its requirement in the CBD; that notice restated the additional qualification requirements previously identified in the January 6 synopsis, including the bias ply and radial ply tire requirement for the replacement wheel and brake system.

The RFP was issued on June 16, and, as amended, established the closing date for receipt of proposals as July 31. The RFP contained three clauses relevant to this protest. Clause I-70, "Qualification Requirements," is the provision at Federal Acquisition Regulation (FAR) § 52.209-1, and stated that the acquisition is subject to a qualification requirement and that contract award would not be delayed to give an offeror an opportunity to meet the standards specified for qualification. Clause L-518, "Specified Standard for Qualification," as modified by clause L-140, stated that in addition to the OEM specification requirements as amended, the proposed replacement wheel and brake assembly must satisfy the additional qualification requirements set forth in the RFP statement of work as of the date of award.

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<sup>1</sup>The protester submitted a second unsolicited proposal in February which was returned by the agency without action.

ABSC objects that the requirement for radial tire compatibility precludes it from competing. The protester points to clause I-70 and modified clause L-518 in the solicitation as support for its contention that the agency changed not only the OEM qualification requirements, but also the means of demonstrating qualification so as to limit the acquisition to BFG. In this regard, ABSC states that it cannot obtain the material needed to produce a qualification article for testing in time for award.<sup>2</sup>

The Air Force maintains that the qualification requirements do not favor BFG and that the agency provided a reasonable time frame for ABSC to qualify its assembly. According to the agency, radial tire usage on the F-16 wheel assembly was an Air Force initiative which was conveyed to representatives from ABSC, BFG, and other tire manufacturers which met with Air Force representatives and the OEM on May 16, 1991. This discussion was later confirmed by the OEM in a follow-up letter to the attendees dated June 12, 1991. Since ABSC and BFG representatives participated at the May 16 meeting and subsequently received the OEM's June 12 follow-up letter, the Air Force maintains, both firms knew of the agency's desire for radial tire usage on the wheel assembly and had an equal opportunity to develop and qualify their wheel assemblies. Only BFG sought and obtained source approval for its wheel assembly; consequently, the agency argues, ABSC's own lack of diligence is the reason why its assembly is not currently qualified for radial tire compatibility. In any event, the agency reports that it will not delay award until ABSC obtains approval since it is in a critical supply position due, in large part, to the serious performance, operational readiness and pilot safety problems caused by ABSC's 40/42 assemblies.

Qualification requirements are government requirements for testing or other quality assurance demonstrations that must be completed before the award of a contract. 10 U.S.C. § 2319(a) (1994); FAR § 52.209-1. Among other things, agencies must provide an opportunity for qualification before award by publishing notice in the CBD and inserting the FAR § 52.209-1 clause in the solicitation. FAR §§ 9.205 and 9.206-2; see ABA Indus., Inc., B-250186, Jan. 13, 1993, 93-1 CPD ¶ 38.

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<sup>2</sup>In response to the RFP, ABSC submitted three proposals: the two previously submitted unsolicited proposals which offered various "improvements" to the existing 40/42 assembly, and the third proposal for its proposed FSX assembly, which the protester states meets the additional requirements, including radial tire compatibility. The two "improvement" proposals were rejected by the agency because they lacked technical data required for evaluation and qualification. The third proposal, for the FSX assembly, was withdrawn by the protester on August 24, on the ground that there was insufficient time for the firm to retest to the additional qualification requirements.

The agency's position is correct. First, there is no requirement that an agency delay a procurement in order to provide a potential offeror an opportunity to demonstrate its ability to become approved. 10 U.S.C. § 2319(c)(5). In this case, the Air Force has determined that it needs to make an immediate award because there is a critical shortage of 40/42 assemblies. ABSC has presented no information or argument establishing that there in fact is no shortage of the assemblies. Thus, there was nothing improper in the Air Force's decision not to delay the procurement while ABSC obtained source approval. See Aircraft Instruments Co., B-233609, Mar. 6, 1989, 89-1 CPD ¶ 241.

We also find nothing improper in the manner in which the Air Force applied the qualification requirements here. Specifically, while ABSC complains that it lacked sufficient time to qualify its assembly to the radial tire compatibility requirement, the record shows that more than 3 years passed between the May 16, 1991, meeting with agency officials, the OEM, ABSC, and BFG regarding the use of radial tires on the wheel assembly and the solicitation's issuance on June 16, 1995. As stated previously, during this 3-year period, BFG sought and obtained qualification of its assembly, while ABSC did not. ABSC has not explained, and the record does not show, why ABSC failed to diligently pursue qualification of its assembly to the radial tire compatibility requirement during this period. Nor does the protester explain why it did not pursue approval of its proposed FSX 40/42 assembly, which it claims is "fully qualified," after the agency synopsisized its requirement (on January 6 and April 12), for a replacement system with a wheel design that can accommodate both bias and radial ply tires. Contractors generally should seek qualification in advance and independent of any specific acquisition (as BFG did). ABSC's failure to do so was the direct cause of its failure to obtain source approval in time to compete for the current award. See Texstar, Inc., B-239905, Oct. 9, 1990, 90-2 CPD ¶ 273; Radalab, Inc., B-225662.2, May 15, 1987, 87-1 CPD ¶ 519. ABSC had the same

qualification opportunity as its competitor, BFG, and the qualification requirement is not improperly restrictive just because the firm desires additional time to complete the qualification process. Id.<sup>3</sup>

The protest is denied.

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<sup>3</sup>ABSC initially raised a number of related arguments concerning the decision to replace rather than retrofit the ABSC assembly. For example, ABSC argued that the wheel and brake assembly for the 50/52 fleet should be made a part of this replacement/retrofit procurement, and that in favoring the BFG assembly, the Air Force adversely affected ABSC's foreign military sales contracts. These arguments are in large part untimely, see 4 C.F.R. § 21.2(a)(1), or otherwise have no bearing on the propriety of the award. In any case, ABSC abandoned the issues. By letter dated September 18, 1995, the protester stated that it is "simply protesting the change in the qualification requirements which change prevented any supplier other than BFG the opportunity to qualify." Similarly, in an October 4 response to the agency's supplemental memorandum of law, the protester reasserted that "[t]he specification/performance requirements were not contested, only the shortening of the time frame to show qualification so to preclude any BFG competitor from qualifying."