

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-184330

DATE: April 26, 1976

MATTER OF: Systems Technology Associates, Inc.

DIGEST:

Agency's determination to procure sole-source in order to complete and "prove out" contractor's prior research and development work, completion of which was deferred because of higher priority needs, does not constitute an abuse of discretion.

Systems Technology Associates, Inc. (STA) has protested the award of contract No. DOT-FR-54190, in the amount of \$2,229,355 to ENSCO Inc. (ENSCO) on a sole-source basis.

Briefly stated, the procurement involves the refurbishment, fabrication, assembly and test of various electronic systems to produce a set of railway track geometry inspection vehicles. Two Government-owned hospital cars were to be refurbished to assure road-worthiness and suitability for accommodating track geometry measurement devices. One of these vehicles (T 5) was required to be equipped with upgraded equipment removed from an existing car, T 2, and the existing car T 2 would then be equipped with an upgraded track geometry system to be acquired under this contract. Also, a complete set of recently developed or nearly developed track geometry measurement devices was required to be integrated into the second hospital car, T 6, and tested.

The protester contends that it has developed and produced fully automatic telemetry systems for railway track geometry for performance at slow and high train speeds. It believes that the instant procurement's basic objective is within its experience and capability and it contends that the agency's justification for the sole-source procurement is unwarranted in several respects. Although Systems Technology originally protested all of the above procurement actions, its response to the agency report concentrates its objections on the agency's sole-source justification for the portion of the work pertaining to car T 6. The firm recognizes that there is "some merit" to the sole-source procurement of the remaining portion of this contract. Accordingly, we will confine our consideration to the objections raised relative to car T 6.

The record shows that the Railroad Administration had a research and development type contract with ENSCO for a first generation track geometry measurement system. Subsequently, however, partially completed developments were set back by a higher priority need to inspect track for compliance with safety standards due to the "criticality of railroad track condition." As a stopgap measure, the research and development equipment and crews were pressed into service to inspect railway track and the developmental system remained partially completed. The agency states that the work required on car T 6 represents the completion of its on-going developmental efforts. It believes that sole-source procurement is justified because of the engineering risks in transferring unfinished developmental work to another contractor. The agency's objective is to "prove-out" its prior investment in research and development work performed by the contractor.

The instant procurement, as it relates to car T 6, reflects an attempt to provide a facility where the Government's developmental efforts will be concluded without interference from operational requirements. The agency report states that "t/he objective in T 6 is to bring to a conclusive status the nearly completed Ensco research work -- with the resulting functioning unit to serve as one demonstrated system in a possible spectrum of proven systems."

The protester contends that the sole-source justification for car T 6 is deficient since it does not take into consideration that there will be two other cars which will incorporate the contractor's prior developmental work. In addition, Systems Technology believes the procuring agency should not ignore the developments made by it and others in funding research and development efforts. It is argued that others could accomplish the work in a more efficient and effective manner.

It is generally our policy not to question a contracting officer's decision to make a sole-source award unless it is clear from the record that such action amounts to an abuse of discretion. Hughes Aircraft Company, 53 Comp. Gen. 670 (1974), 74-1 CPD 137.

We generally agree with the view that research and development work awarded on a sole-source basis would be unjustified if fair consideration is denied to relevant advances accomplished by other firms at their own expense. However, we believe the Railroad Administration may justifiably seek to "prove out" prior research and development work, completion of which was deferred.

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The engineering risks in transferring unfinished work to another contractor are properly discretionary judgments to be made by the procuring agency and we find no clear abuse of such discretion in this case. Even though the contractor's prior developmental work is to be incorporated into two additional vehicles, the work contemplated for car T 6 goes beyond the work previously accomplished by the contractor. In such circumstances, we can not object to the sole-source award of car T 6.

Accordingly, the protest is denied.

Paul G. Levenson
For the Comptroller General
of the United States