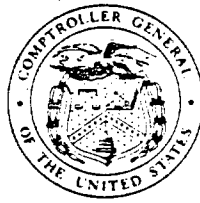


DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

66212

FILE: B-184222

DATE: November 25, 1975

MATTER OF: Systems Analysis and Research Corporation

97685

DIGEST:

Sole-source award of contract will not be disturbed where contracting officer's Determination and Findings to negotiate on a sole-source basis is supported by record indicating that awardee was only known source with capability to satisfy procuring activity's requirements within stated time frame established for urgent procurement. Fact that previous award of related contract was made to same contractor on sole-source basis or that protester was under a quick response contract with procuring agency does not cast doubt on propriety of instant sole-source award.

Systems Analysis and Research Corporation (SARC) protests the sole-source award of a contract, DOT-OS-50257, to Simat, Helliesen & Eichner, Inc. (SH&E) by the Department of Transportation (DOT) for an analysis of policy options for restructuring international air routes.

This protest stems from the publication of the referenced procurement in the Commerce Business Daily. The advertisement stated that negotiations were being conducted with SH&E since available specifications were considered inadequate. Also, a related competitive procurement, under request for proposals No. DOT-OS-60001, simultaneously was published in the Commerce Business Daily for "expert research, analysis and regulatory support assistance for analysis of restructuring proposals for U.S. international air transport."

The protester alleges that both requirements originally were designed as one procurement and subsequently were divided. The firm assumes that a regulatory proceeding eventually will be instituted covering the substance of both procurements and, therefore, argues that the requirements under both, as a practical matter, will go to the initial sole-source contractor. SARC believes it is qualified to perform all of the work required and contends it has been unfairly and unlawfully denied the

opportunity to compete for either procurement. A decision, therefore, is requested regarding the validity of the initial sole source award.

In its initial report the agency explained the basis for its decision to contract with SH&E on a noncompetitive basis, as follows:

"In May 1975, this Department was required to develop options for restructuring international air routes to support Presidential decisions affecting international transportation. In this instance the events and Congressional Hearings on the subject necessitated expedited action to obtain the required analytical information. The Department was faced with a rapidly moving situation, which required a short term capability for detailed analysis of international aviation route structure policy alternatives. The urgency was against the background of the immediate prospect of a carrier's default on loan obligations and a prospect of agreement on financing between the carrier and a foreign nation. The Department must complete a thorough and detailed review of all Government options by mid-August if the Government is to maintain its ability to control a rapidly deteriorating situation.

"It was determined that because of urgency it was impracticable to obtain competition. Simat, Helliesen and Eichner, Inc., because of prior related experience on other DOT contracts, could conduct the required work within the urgent time frame. Accordingly, a sole source justification was approved, and a letter contract was issued on June 2, 1975, to SH&E."

The procuring agency subsequently was requested to furnish the supporting documentation. Its supplemental submission refers to the negotiation authority in 41 U.S.C. 252(c) (10) (1970) and in Federal Procurement Regulations 1-2.210(a) (1) (1964 ed.), which permits negotiation of contracts on a sole source basis when it is impracticable to secure competition because supplies or services can be obtained from only one person or firm. The documentation also explains the agency's need for analysis and the tight deadline, in part, as follows:

"The principal factor in the current situation causing a need for fast DOT reaction is the imminent default of [a carrier] on its * * * bank credit agreement. DOT anticipates that an event of default will occur on May 31, 1975. Financial results will consequently reflect such default in late June 1975. At that time, the USG may be presented with a demand by the company's creditors that waiver of the terms of the agreement by the creditors be contingent on assurances of a USG program for resolving the U.S. flag carrier situation. Such a demand, if made by the creditors of the company, must be met by a firm response by the USG, based on a comprehensive and detailed analysis of the situation as it then exists. Such a response will be required in late June or early July. DOT will be required to make its considered recommendation to an Economic Policy Board Task Force at that time.

"DOT expects that [the carrier's] creditors will reluctantly agree to waive default until September 30, 1975, at which time the credit agreement expires. At that time, further credit will be unavailable to [the carrier]. Any new support to the company by financial institutions will thereafter be contingent on a plan to restore U.S. flag international air carrier operations to economic viability. A DOT assessment of USG options for contributing to a regulatory environment for such a plan must be made by August 15, 1975, in order to allow sufficient lead-time for an agreement to be reached between [the carrier] and its banks."

Regarding the decision to negotiate solely with SH&E, the written justification states, in part, as follows:

"The work required in this procurement flows from earlier work performed by and for DOT in evaluating policy options for U.S. international air carriers. The major part of the proposed work will follow directly from contractor efforts in Contract DOT-OS-50147. That contract is being performed by SH&E. No other firm can meet DOT requirements to conduct the required work within the time frame of DOT's need. Qualification of another contractor would require at minimum six to eight weeks of elapsed time and

constant DOT staff attention, in order to ensure that the contractor had the requisite familiarity with the basic analyses conducted for DOT under [SH&E's] contracts DOT-OS-50009 and DOT-OS-50147. This delay would be caused by the need to review traffic and cost data for many hundreds of individual international air transport markets, and by the need to transfer the complete approach and information base of SH&E to an alternate contractor. Any delay would be accompanied by a measure of risk that an alternate contractor could not meet the high standards of performance and adherence to due dates required of DOT in the next 75 days.

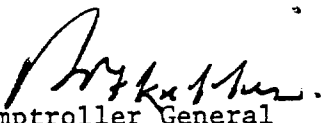
"Because delay cannot now be tolerated, and because DOT cannot now knowingly assume the unnecessary risk involved in use of an untested contractor, SH&E is the sole available source for the proposed work."

In our opinion, the documentation in the record supports the agency's anticipated timing problem. The fact that anticipated due dates may not have been certain was apparently due to the complexities of a carrier's financial situation rather than to matters under the Government's direct control. Although SARC points out that since it was under a quick response contract (Basic Ordering Agreement) the Government should have contacted it to establish its ability to respond to the Government's needs, we think such contact was not essential in view of the fact that only SH&E possessed the precise prior experience which reduced the time needed for performance of the instant contract. While SARC alleges that SH&E's prior related contract leading to the instant award was made on a sole source basis, we do not consider such fact to be a sufficient basis for objection in the absence of a timely and valid protest regarding the prior award. Similarly, in the absence of a timely and valid protest we will not consider SARC's objections to another allegedly related procurement action which SARC contends was improperly awarded to SH&E at a much higher price (65 percent) than was offered by SARC.

Since a noncompetitive award is justified where time is of the essence and only one known source can meet the Government's needs within the required time frame, this protest must be and is denied. Hughes Aircraft Company, 53 Comp. Gen. 670 (1974), 74-1 CPD 137.

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Finally, SARC complains that it was unable to obtain a clear understanding of the work statements and that DOT withheld the data relevant to the sole source award to SH&E. However, it appears that DOT required SARC to put its request for information in writing and that the firm did not do so. Since we have denied SARC's protest the delay in obtaining the work statement and justification for the noncompetitive procurement did not work to SARC's prejudice.


Deputy Comptroller General
of the United States