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DECISION

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

FILE: B-201395.3 DATE: June 23, 1982

MATTER OF: Association of Soil and Foundation Engineers--Second Request for Reconsideration

DIGEST:

Brooks Act procedure for selecting architectural or engineering firms does not apply to a procurement, even though engineers will be used to perform part of the work, where the prime contractor itself does not have to be an engineering firm to perform the contract successfully. Prior decision is affirmed.

The Association of Soil and Foundation Engineers (ASFE) has requested reconsideration of our decision in Association of Soil and Foundation Engineers--Reconsideration, B-201395.2, May 6, 1982, 61 Comp. Gen. ___, 82-1 CPD ___. There we affirmed our decision in Association of Soil and Foundation Engineers, B-201395, July 17, 1981, 81-2 CPD 43, where we had denied ASFE's protest that Brooks Act (40 U.S.C. § 541, et seq. (1976)) procurement procedures should have been used by the Federal Highway Administration (FHWA) in procuring centrifuge testing of model pile group foundations. We stated that the Brooks Act procedures did not apply because, even though engineers would be used in performing the contract, FHWA had reasonably concluded that it was unnecessary for the contractor itself to be a professional engineering firm in order to perform the contract successfully.

According to ASFE, our decision should be modified because it would permit federal agencies to obtain architectural and engineering (A-E) services from firms which are legally forbidden to provide them under state and local law. ASFE continues to insist that the scope of the Brooks Act should be interpreted so that only licensed or registered engineers may lawfully respond to work statements which call for the use of licensed engineers to any extent.

In our prior decision we stated that:

"We are mindful of ASFE's argument that under state laws only licensed or registered engineers may lawfully respond to work statements which call for the use of engineers. We note, however, that under the Maryland statute cited by ASFE, performance by a corporation of research for the Federal Government is exempted from this requirement, 75-1/2 Anno. Code of Maryland § 19(5) (1980). In any event, we are not saying that non-engineers should be permitted to do engineering work. We are merely saying that a contracting agency, within the bounds of sound judgment, is free to decide that a particular award need not be restricted to professional engineering firms, even if the specifications call for the use of engineers. Of course, if the agency determines that a contract award should be restricted to A-E firms, the Brooks Act selection procedure must be used. Otherwise, the procedure is not applicable. Ninneman Engineering--reconsideration, supra."

Thus, we did not say that non-engineers should be permitted to do engineering work. Our prior decision dealt only with the question of whether the prime contractor had to be an engineering firm itself. We concluded that since the prime contract could be successfully performed by various types of firms, the procurement should not be restricted to engineering firms, even though engineers will be used to perform part of the work. Although AFSE disagrees, we think that our prior decision is consistent with the intent and purpose of the Brooks Act.

Prior decision affirmed.

for Milton J. Socolar
Comptroller General
of the United States