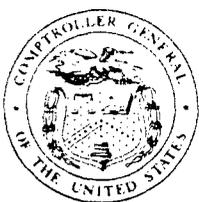


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DECISION

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

FILE: B-199654

DATE: November 24, 1980

MATTER OF: Umpqua Surveying Company

Protest Against Forest Service Use of Competitive Procurement Procedures

DIGEST:

Where performance of cadastral land survey does not require architectural and engineering (A-E) services and is independent of A-E project, competitive procurement procedures may be used in lieu of selection method prescribed in Brooks Bill, 40 U.S.C. § 541 et seq. (1976).

Umpqua Surveying Company protests the Department of Agriculture Forest Service's use of competitive procurement procedures under request for proposals (RFP) No. R6-80-194N for cadastral land surveying services. Umpqua contends that cadastral surveys, which are surveys relating to the boundaries and subdivisions of land, are by definition architectural and engineering (A-E) services which therefore must be procured in accordance with the Brooks Bill, 40 U.S.C. § 541 et seq. (1976), rather than by competitive RFP. However, based on the facts in this case, we believe the agency acted properly in procuring these services under competitive statutes and regulations.

The Brooks Bill prescribes a method of contractor selection when certain conditions are met; absent those conditions, general competitive procedures may be used. In this regard, the Brooks Bill declares it to be Federal policy to publicly announce all requirements for "architectural and engineering services," and to negotiate contracts for such services on the basis of demonstrated competence and qualifications and at fair and reasonable prices. 40 U.S.C. § 542. "Architectural and engineering services" are defined at 40 U.S.C. § 541(3) to include "those professional services of an architectural or engineering nature as well as incidental services that members

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of these professions and those in their employ may logically or justifiably perform." The Federal Procurement Regulations implementing the Brooks Bill define "architectural and engineering services" at section 1-4.1002(c) (1964 ed., amend. 150) as:

"* * * those professional services associated with research, development, design and construction, alteration, or repair of real property, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform. * * *"

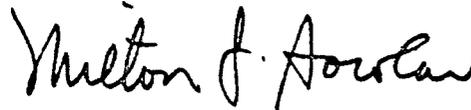
We considered the definition of A-E services in our decision in Ninneman Engineering-reconsideration, B-184770, March 9, 1977, 77-1 CPD 171, which also dealt with a cadastral land survey. We found that both the language of the Brooks Bill and its legislative history indicate that the Bill's procedures apply whenever (1) the controlling jurisdiction requires an A-E firm to meet a particular degree of professional capability in order to perform the desired services, or (2) the services "logically or justifiably" may be performed by an otherwise professional A-E firm or its employees, and are "incidental" to "professional" A-E services, which clearly must be procured by the Brooks Bill method.

With regard to the first definitional criteria above, we believe it is clear in the instant case that the Forest Service did not require that the cadastral land survey be performed by an A-E firm. We note that while the RFP required the contractor's land surveyors to obtain appropriate licenses and permits from the states in which work was to be performed (Oregon, Washington, California, Idaho, or Nevada), this provision did not require performance by an A-E firm because only land surveyor licensing was required which is separate and distinct from licensing requirements for architects and engineers in these states. Under this criteria, therefore, no A-E services were included in the instant requirement.

Moreover, we do not believe that the instant requirement consists of A-E services under the second Ninneman definition. While it is arguable that the instant cadastral land survey (which requires research of land records, evaluation of existing surveys, corner searches, and the monumentation of public land survey corners) could "logically or justifiably" be performed by an A-E firm, as we discussed above, such was not the requirement here. Furthermore, we are advised by the Forest Service that the instant survey requirement is "completely independent of any A-E project"; therefore, the survey is not "incidental" to professional A-E services which clearly must be procured by the Brooks Bill method. Consequently, the instant survey is not considered A-E services for purposes of the Brooks Bill.

In summary, the cadastral land survey here which did not require performance by an A-E firm and which was not incidental to an A-E project could properly be procured under competitive statutes and regulations in lieu of the selection method prescribed in the Brooks Bill.

The protest is denied.



For the Comptroller General
of the United States