

DECISION



188417 *Merney*
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-201395

DATE: July 17, 1981

MATTER OF: Association of Soil and Foundation
Engineers

DIGEST:

Where contracting agency determines that model testing of pile group foundation can be performed by other than architectural or engineering (A-E) firm, and this determination is not shown to be in conflict with State statute and is independent of other A-E projects, competitive procurement procedures may be used in lieu of negotiated selection method prescribed in Brooks Bill, 40 U.S.C. § 541, et seq. (1976).

The Association of Soil and Foundation Engineers (ASFE) protests against the competitive procedures used under a request for proposals (RFP) issued by the Federal Highway Administration, Department of Transportation, for the investigation of the behavior of pile group foundations. The proposed research concerns the centrifuge testing of two model pile groups and a comparison of the behavior of the model groups with that of the corresponding prototypes.

The ASFE contends that such an investigation requires the expertise of a licensed engineer, thereby invoking the negotiated selection method the Brooks Bill requires for the procurement of any architectural or engineering (A-E) service. The ASFE maintains that although this research is not limited to geotechnical engineers, the work must be performed by an individual permitted by law to practice engineering. This contention is based on the fact that the RFP calls for the principal investigator to be familiar with the " * * * principles of soil mechanics and analytical and practical methods used in pile group design." The ASFE believes that only a professional engineer duly licensed

[Protest of Competitive Procurement Procedures]

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by the State possesses this knowledge, and that the performance of the research by any other party constitutes a violation of both State law and the Brooks Bill, 40 U.S.C. § 541, et seq. (1976).

The Federal Highway Administration (FHWA) argues that the research requires knowledge of several professional disciplines in addition to engineering and that the project can be competently performed by numerous organizations other than A-E firms. In fact, FHWA states that the only technically acceptable offer came from a small business firm established to provide consulting engineering services. The FHWA therefore asserts that this project is not limited to performance by engineers and that competitive procedures may be used instead of the negotiated selection method prescribed in the Brooks Bill.

The Brooks Bill declares it to be Federal policy to publicly announce all requirements for A-E services and to negotiate contracts for these services on the basis of demonstrated competence and qualification. In our decision in Ninneman Engineering--Reconsideration, B-184770, March 9, 1977, 77-1 CPD 171, we established that the Bill's procedures apply whenever (1) a State statute requires a registered A-E firm to perform the desired services, or (2) the services may logically or justifiably be performed by a registered A-E firm and are incidental to A-E services which clearly must be procured by the Brooks Bill method.

The contracting agency has maintained that this research does not require the high level of capability normally associated with a professional A-E firm. Our Office has consistently held that a procuring agency has the primary responsibility of assessing its minimum needs and determining the services required to meet those needs. Association of Soil and Foundation Engineers--Reconsideration, B-200999.2, May 11, 1981, 81-1 CPD 367; General Exhibits, Inc., B-195536, January 15, 1980, 80-1 CPD 43. Without evidence that the FHWA's determination is unreasonable, we cannot substitute our judgment for that of the contracting agency. Association of Soil and Foundation Engineers--Reconsideration, supra.

Consequently, we must conclude that the contract can be competently performed by someone other than an engineer and that the contract is not brought within the purview of the Brooks Bill.

Moreover, our review of appropriate State statutes fails to reveal a statute that requires that model testing of pile group foundations be performed by professional A-E firms, and no such statute is cited by ASFE.

The next issue for consideration is whether the research contract is incidental to an A-E project that requires procurement by the Brooks Bill's method.

The ASFE contends that the language and legislative history of the Brooks Bill do not restrict application of the bill's procedures to A-E services used solely for construction activities, but instead apply to all requests for engineering services by the Government. The ASFE maintains that since geotechnical engineers may logically and justifiably conduct this research and most probably will incorporate the results of the research into pile foundation design, the Brooks Bill negotiated selection method must be used.

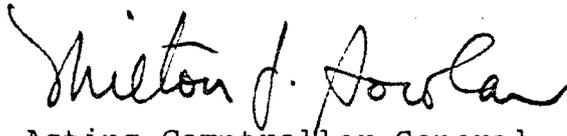
Although the ASFE is correct in stating that the Brooks Bill procedures are not limited to engineering services provided for construction projects, the procedures do not apply to every procurement of engineering services that merely may logically or justifiably be performed by an A-E firm. Only where such services are to be performed in conjunction with professional services of an architectural or engineering nature must the nonprofessional services be procured according to the Brooks Bill method. Ninneman Engineering--
Reconsideration, supra.

Apparently, the performance of model testing of pile group foundations by an A-E firm is both logical and justifiable. However, this contract is not being performed in conjunction with any A-E project. The fact that the investigation results may later be used to improve pile foundation designs does not render the

contract incidental to professional services of an architectural or engineering nature. Accordingly, the research can properly be procured under competitive statutes and regulations.

Finally, the ASFE contends that the FHWA's procurement regulations are themselves in violation of the Brooks Bill. Our review of FHWA's procurement regulations reveals that they comply with both the letter and spirit of the Brooks Bill. 23 C.F.R. § 172 (1980).

The protest is therefore denied.

A handwritten signature in cursive script, reading "Milton J. Fowler".

Acting Comptroller General
of the United States