

DECISION

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

FILE: B-208925.3**DATE:** May 31, 1983**MATTER OF:** Association of Soil and Foundation
Engineers--Reconsideration**DIGEST:**

Prior decisions in which GAO declined to question a contracting agency's determination to secure services through competitive bidding procedures rather than the procedures prescribed in the Brooks Act for the selection of architectural or engineering firms are affirmed, since it has not been established that the decisions were based on errors of fact or law.

The Association of Soil and Foundation Engineers (ASFE) requests a second reconsideration of our decision concerning invitation for bids No. K5120136 issued by the Department of the Interior. The solicitation uses standard competitive procedures to secure soil boring and testing services needed to supply the state of Ohio with recommendations about stabilizing a site known as the Weidemeyer earthslip. ASFE has asserted that the services should have been secured through the special procedures prescribed by the Brooks Act, 40 U.S.C. § 541 et seq. (1976). We disagreed with this assertion and denied ASFE's protest in our initial decision on the matter, Association of Soil and Foundation Engineers, B-208925, January 4, 1983, 83-1 CPD 8. We affirmed that decision on reconsideration in Association of Soil and Foundation Engineers, B-209196; B-208925.2, April 5, 1983, 62 Comp. Gen. ____, 83-1 CPD _____. Upon further consideration of the matter, we affirm our prior decisions.

The major effort under the solicitation involves the drilling of soil samples, the installation of piezometers and the collection and laboratory testing of soil and rock samples. The contractor is required to submit a report that contains, among other things, the results of the laboratory testing and recommendations for "design load cases" and "soil design parameters for the various soil stratas encountered." The Department of the Interior determined

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that the engineering aspects of the requirement were insignificant and, consequently, procured the services through standard competitive procedures rather than the procedures set forth in the Brooks Act.

We upheld this determination in our previous decisions on the matter. ASFE argues that our conclusion was erroneous. Many of the contentions that ASFE now presents, however, are reiterations or reformulations of arguments and points of law that ASFE advanced in connection with our two previous considerations of this matter. We already have responded to these contentions. See Sanitary Ice Systems, Inc. - Reconsideration, B-204685.2, February 8, 1982, 82-1 CPD 109.

The remaining arguments advanced by ASFE do not persuade us that our previous decisions were erroneous. ASFE first takes issue with the standard of review enunciated in our decision on reconsideration. We stated that determinations of whether services uniquely or to a substantial or dominant extent require performance by an A-E firm,

"are based on the nature and circumstances of the work to be done and the needs of the contracting agency. Such determinations are the responsibility of the contracting agency, not our Office and, therefore, we have recognized broad discretion on the part of the agency in making such determinations. See Association of Soil and Foundation Engineers, B-204634, February 2, 1982, 82-1 CPD 77. We think that under the circumstances the proper role of this Office in these cases is to defer to the judgment of the agency unless the agency's conclusions are so egregious as to demonstrate a clear intent either to circumvent the Act or to

employ the noncompetitive procedures enunciated by the Act to secure services that should properly be solicited by competitive means."

ASFE believes that this standard leaves too much discretion in the implementation of the Brooks Act to Federal procurement officials. In ASFE's view most procurement officials are unfamiliar with the Brooks Act and prefer to use competitive bidding procedures to secure services.

We do not share ASFE's doubts concerning the competence of agency contracting officials. Contracting officials, of necessity, enjoy a broad degree of discretion in making certain procurement determinations, and the standard we enunciated was intended to impose a meaningful check against abuse while recognizing that the contracting agency is in the best position to determine its minimum needs and the nature and extent of the work to be done.

ASFE next maintains that our January 4, 1983 decision on reconsideration is internally inconsistent in that the decision acknowledges that design services secured in connection with a Federal construction project must be procured in accordance with Brooks Act procedures, but holds that it was proper for Interior to secure competitively the services in question here. ASFE asserts that the services involved here are design services relating to a Federal construction project.

As is evident from our previous decisions, we do not agree with ASFE that the contract is for design services and, therefore, we fail to perceive any internal inconsistency in our latter decision. Although ASFE disagrees with Interior's characterization of the services as nonprofessional, it has not demonstrated that Interior's position is so egregious as to demonstrate a clear intent to circumvent the Brooks Act.

We conclude that ASFE has not established that our prior decisions were based on an erroneous interpretation of either fact or law. Therefore, we affirm our decisions. Computer Data Systems, Inc.--Reconsideration, 61 Comp. Gen. 545 (1982), 82-2 CPD 75.


for Comptroller General
of the United States