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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Mounts Engineering
File: B-223650; B-224446; B-224447
Date: September 12, 1986

DIGEST

1. Where performance of mine subsidence surveys does not require architectural and engineering (A-E) services and is independent of any A-E project, competitive procurement procedures may be used in lieu of selection method prescribed in the Brooks Act, 40 U.S.C. § 541 et seq. (1982).

DECISION

Mounts Engineering (Mounts) protests the method of procuring services under three solicitations, S0368012, S0368010 and S0368011, issued by the Department of Interior's Bureau of Mines (Bureau) for subsidence monitoring at several mine sites in West Virginia.

The protest is denied.

All three solicitations called for a surveyor and crew to conduct surveys and to provide the Bureau with the resultant data which the Bureau will use to develop or update techniques for the prediction of surface ground movements over underground coal mining activities. Mounts contends that this work is incidental to and related to architectural and engineering (A-E) services and as such it must be procured through the special procedures prescribed in the Brooks Act, 40 U.S.C. § 541 et seq. (1982), for the procurement of A-E services.

Mounts initially alleges that under West Virginia law, this type of work is included within the practice of professional engineering. Mounts also contends that the Bureau's technical project officers conducting the investigation and evaluating the results are engineers and geologists and if this evaluation were performed by a contractor, the contractor would have to be selected using Brooks Act procedures. It

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contends therefore that the surveying services are incidental to A-E services. Further, Mounts states that the Bureau has been procuring these services under Brooks Act procedures for the last 2 years.

The Bureau argues that the decision to use competitive rather than Brooks Act procedures is supported by decisions of this Office such as Ninneman Engineering--Reconsideration, B-184770, Mar. 9, 1977, 77-1 C.P.D. ¶ 171. In that decision we held that where a survey is independent of an A-E project, the survey may properly be procured under competitive statutes and regulations. The Bureau states that the surveying services are not being procured as a part of any A-E project and no incidental A-E contract exists or is contemplated.

The issues raised in this protest are similar to those raised in Umpqua Surveying Company, B-199348, Dec. 15, 1980, 80-2 C.P.D. ¶ 429, in which we restated the rule in Ninneman Engineering--Reconsideration, B-184770, supra; as follows:

" . . . Brooks [Act] . . . 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 a professional A-E firm or its employees and are 'incidental' to 'professional' A-E services, which clearly must be procured by the Brooks [Act] method."

In Umpqua we held that Brooks Act procedures need not be used since the solicitation required only that the contractor have a land surveyor licensed in Oregon, and the Oregon licensing requirements for land surveyors were separate and distinct from licensing requirements for architects and engineers. Here, Mounts has conceded that West Virginia provides for a separate licensing of land surveyors from that of architects and engineers. Mounts, however, contends that surveying is a part of engineering. The criterion to be applied, however, is whether the state requires an A-E firm to perform the services required. Umpqua Surveying Company, B-199348, Dec. 15, 1980, supra. There is no showing that West Virginia requires that A-E firms perform these surveying services.

Although an A-E firm could perform the services here, the surveying services are not a part of any A-E project and therefore they are not incidental to professional A-E services which must be procured by the Brooks Act method.

The fact that Bureau engineers evaluate the contractors work has no bearing on the method of procurement since the services are simply not a part of any A-E project.

Finally, with respect to Mounts allegation that for the last 2 years these services have been procured using Brooks Act procedures, the Bureau notes that of the last nine surveying procurements, seven have been procured using normal competitive procedures and two using Brooks Act procedures. Moreover, each procurement must be judged separately taking into account the individual circumstances of the work to be done in each case. Association of Soil and Foundation Engineers, B-199970, June 8, 1981, 81-1 C.P.D. ¶ 455.

The protest is denied.

for Seymour Efiros
Harry R. Van Cleave
General Counsel