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

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B-195552 September 4, 1979

Mr. Thomas E. Leath
Director of Agency Evaluation
State Reorganization Commission
228 Solomon Blatt Building
1105 Pendleton Street
Columbia, South Carolina 29201

DLG02484

Dear Mr. Leath:

We refer to your letter of July 19, 1979, concerning the application of ~~the~~ Brooks Bill, ~~40 U.S.C. § 541 et seq. (1976)~~, to contracting with South Carolina landscape architects in ~~connection with~~ Federal building projects. In a subsequent telephone conversation with Mr. Jerold Cohen of this Office you stated that your primary concern was whether the Brooks Bill requires that a state maintain a licensing requirement for its landscape architects in order that they be eligible for contracts for Federal projects.

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 qualification 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 of these professions and those in their employ may logically or justifiably perform." Services that do not fall within that definition therefore would not be subject to the Brooks Bill procedures.

We considered the definition at 40 U.S.C. § 541(3) in our decision in Ninneman Engineering-reconsideration, B-184770, March 9, 1977, 77-1 CPD 171 (copy enclosed), which is discussed in the April 5, 1978, letter to Senator Church that you reference. 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 architect-engineer (A-E) firm to meet a particular degree

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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. In the latter case, the services should be contracted for in the course of the procurement of the professional services. See also United States Geological Survey, B-118678, May 6, 1977, 77-1 CPD 314, involving mapping services (copy enclosed).

Thus, the Brooks Bill merely prescribes a method of selection when certain conditions are met; absent those conditions, general competitive procedures may be used. It follows that the Bill does not necessitate that a state have a licensing, or similar, requirement for its landscape architects for them to be eligible to compete (under Brooks Bill or other procedures) on Federal projects.

We hope that the above is responsive to your concern.

Sincerely yours,

Deputy Comptroller General
of the United States

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