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DECISION

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

FILE: B-203086

DATE: August 24, 1981

MATTER OF: Association of Soil and
Foundation Engineers

DIGEST:

Where groundwater investigation services can be performed by other than architectural and engineering (A-E) firm, and are not incidental to professional A-E services, they may be secured through competitive procurement procedures, rather than selection method prescribed in Brooks Act, 40 U.S.C. § 541 et seq.

The Association of Soil and Foundation Engineers (ASFE) protests the use of competitive procedures under request for proposals (RFP) No. DA 81-002 issued by the Environmental Protection Agency (EPA). The RFP is for assistance in EPA's investigation of groundwater pollution at hazardous waste sites. ASFE contends that the RFP in effect requires the services of a licensed engineer and that the selection method for the procurement of architectural and engineering (A-E) services set out in the Brooks Act, 40 U.S.C. § 541 et seq. (1976), therefore should be used. We disagree.

The Brooks Act states that it is the Federal Government's 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, and without price competition. The Act'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 Act method. Ninreman Engineering--reconsideration, B-184770, March 9, 1977, 77-1 CPD 171.

[Protest of EPA Competitive Procurement Procedures]

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EPA reports that it determined that the questioned services can be performed by someone other than an engineer and, therefore, Brooks Act procedures do not apply.

The services required by the RFP include installing monitoring walls, taking of soil borings, performing laboratory analyses and providing expert testimony. The contractor is to supply the necessary personnel to furnish these services. The precise qualifications of the personnel are not delineated by the RFP. The RFP does, however, require offerors to submit prices for several categories of employees, including "project geologist/engineer" and "field geologist/engineer."

ASFE argues that the RFP's use of the term "geologist/engineer" establishes that engineering services are being sought so that Brooks Act procedures apply. ASFE further argues that the technical background needed to provide the required services is the type of background which is likely to be possessed by an engineer, and thus that EPA should be soliciting engineering services even if the agency did not intend to so indicate in the RFP.

We do not agree that it follows from the RFP's use of the words "geologist/engineer" that EPA is requesting services that only a licensed engineer can provide. Rather, we believe that the term simply denotes a person who is either a geologist or an engineer.

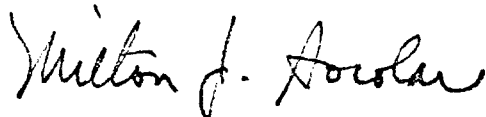
Concerning whether EPA actually does need professional engineering services, the determination of whether the Brooks Act should apply to a particular procurement must be based upon the circumstances of the work to be done and the needs of the agency involved. This determination is primarily the responsibility of the procuring activity, not our Office. Therefore, we will not question an agency's decision not to require an engineer for a particular service unless the protester shows that the determination was unreasonable. See Association of Soil and Foundation Engineers--Reconsideration B-200999.2, May 11, 1981, 81-1 CPD 367.

ASFE has not shown that EPA's decision that it does not need a licensed engineer for these services was unreasonable. In fact, ASFE does not really argue that the

Brooks Act requires that the services be performed by a professional engineer, but rather that it would be prudent for EPA to so require because in ASFE's view a professional engineer would "far more likely" be able to meet EPA's needs. In this respect, ASFE's assertion that the technical background required to perform certain of the functions involved is the same as that possessed by a professional engineer is not at all inconsistent with EPA's view that persons who are not engineers could perform the required services. Moreover, our review of pertinent state statutes fails to reveal a statute that requires that the contemplated work be performed by a professional A-E firm, and no such statute is cited by ASFE.

Under the circumstances, we cannot conclude that EPA's use of competitive procedures to meet its needs was improper.

The protest is denied.

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

Acting Comptroller General
of the United States