

DECISION

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

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FILE: B-208086.2 **DATE:** November 29, 1982
MATTER OF: Timberland-McCullough, Inc.--
Reconsideration

DIGEST:

The Brooks Act procedures for securing professional architect-engineer services do not apply to preliminary road location surveying in Oregon merely because the state's land surveyor registration law describes land surveying as a "branch of the practice of engineering," and the service therefore should be procured through normal competitive procedures. The reason is that Oregon has distinct standards and examinations, and certification and registration requirements, for land surveyors and "professional engineers," so that a professional land surveyor in Oregon is not required to exhibit the professional engineering capability necessary of a professional engineer in Oregon.

Timberland-McCullough, Inc. requests that we reconsider our decision denying the firm's protest against the Forest Service's use of standard competitive procedures to secure preliminary road location surveying in the Umpqua National Forest under solicitation No. R6-15-82-63. Timberland-McCullough, Inc., B-208086, September 24, 1982, 82-2 CPD 273. We affirm the decision.

Timberland-McCullough had argued that the surveying should be procured in accordance with the special procedures set forth in the Brooks Act, 40 U.S.C. § 541 et seq. (1976), for the Federal Government's procurement of architect-engineer (A-E) services. These procedures do not include price competition. We stated our position that both the language of the Brooks Act and its legislative history indicate that the Act's procedures apply whenever the state in which desired services are to be performed requires an A-E firm to meet a particular degree of professional A-E

capability in order to perform them, or the services logically or justifiably may be performed by a professional A-E firm and are incidental to A-E services which clearly must be procured by the Brooks Act method.

We found that the procurement of surveying in the Umpqua National Forest did not meet those criteria and therefore was not subject to the Brooks Act. We first pointed out that the solicitation required only that the contractor have a land surveyor licensed in Oregon, and the Oregon licensing requirements for land surveyors are distinct from licensing requirements for architects and engineers. Concerning the second criterion, we noted that while surveying logically or justifiably could be performed by an A-E firm, the surveying involved was independent of any actual A-E project; the surveying therefore was not incidental to professional A-E services which must be procured by the Brooks method. We therefore concluded that the survey should be procured under competitive statutes and regulations, not under the selection method prescribed in the Brooks Act.

In the reconsideration request, Timberland-McCullough first argues that within the professions concerned a preliminary road location survey is considered "construction-related and incidental to engineering design." That factor, however, simply does not establish that the Brooks Act procedures apply. Rather, as stated in our September 24 decision, the procedures apply only if a service meets one of the two criteria set out in the statute itself.

Second, Timberland-McCullough suggests that land surveying indeed is a professional A-E function under Oregon law, so that the first Brooks Act criterion applies. Timberland-McCullough supports its view with the following definition of the "practice of land surveying" in paragraph (2) of Oregon Revised Statutes (ORS) 672.005 (1981 ed.):

"'Practice of land surveying' means that branch of the practice of engineering in which:

(a) Surveys are made to determine area or topography * * *, or

(b) Surveys are made to establish lines, grades, or elevations * * *."

Paragraph (1) of the statute defines the "practice of engineering" as:

"(a) Any professional service or creative work requiring engineering education, training and experience; and

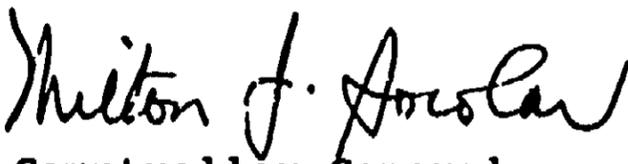
"(b) The application of special knowledge of the mathematical, physical and engineering sciences to such professional services or creative work as consultation, investigation, evaluation, planning, design and services during construction * * *."

Notwithstanding that ORS 672.005(2) describes land surveying as a branch of the practice of engineering, we do not agree with Timberland-McCullough that Oregon law compels the use of Brooks Act procedures for the surveying in issue. This is because Oregon law has separate registration requirements for engineers (ORS 672.020) and for surveyors (ORS 672.025), and because certification as a professional land surveyor (ORS 672.125(2)) is distinct from certification as a professional engineer (ORS 672.125(1)). Also, under Oregon law the examinations and standards needed for registration as a professional engineer (ORS 672.255 (3)) are distinct from those needed to qualify as a professional land surveyor (ORS 672.255(5)). The result is that a professional land surveyor in Oregon, while engaged in "a branch of the practice of engineering," is not required to exhibit the professional engineering capability necessary of a professional engineer in Oregon. Since Oregon law thus does not require a land surveyor to show a particular degree of A-E capability before the firm can engage in surveying in the state--to qualify as a land surveyor one must demonstrate land surveying expertise, not professional engineering expertise--the Brooks Act procedures do not apply.

Timberland-McCullough's last point is that we improperly have limited the use of the Brooks Act procedures in procuring surveys to construction-related efforts. That simply is not the case, however. Our position as stated in our September 24 decision is that even if construction is not involved, the Brooks Act procedures apply if surveying is the subject of a

state A-E licensing requirement, and that if construction is involved, activities such as surveying undoubtedly will be subject to the Brooks Act at least as incidental services.

Since Timberland-McCullough has not presented any facts or points of law to warrant reversal of our prior decision, the decision is affirmed. 4 C.F.R. § 21.9(a)(1982).

for 
Comptroller General
of the United States

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