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DECISION

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

FILE: B-211553 DATE: November 7, 1983

MATTER OF: Consulting Engineers Council of Metropolitan Washington

DIGEST:

GAO will not question a contracting agency's determination to secure services through competitive bidding procedures rather than through the procedures described in the Brooks Act for the selection of architectural or engineering firms unless the protester demonstrates that the agency intended to circumvent the Act.

The Consulting Engineers Council of Metropolitan Washington (CEC) protests the use of competitive procedures under request for proposals No. SA-83-RSB-0022 issued by the Department of Commerce for the assessment of the physical condition of the Herbert C. Hoover Building. CEC contends that the services should have been secured through the special procedures prescribed in the Brooks Act, 40 U.S.C. § 541 et seq. (1976), for the procurement of architectural and engineering (A-E) services. The Act declares it to be federal policy to issue public announcements of all requirements for A-E services and to negotiate contracts for the services on the basis of demonstrated competence and qualifications; the procedures do not include price competition.

We deny the protest.

The solicitation requires the contractor to perform the following five tasks with respect to the heating, ventilating and air conditioning equipment (HVAC):

1. Perform a limited physical inventory of equipment on floors 5 and 6 and statistically project from those results the situation on the remaining six floors,

2. Identify equipment components and determine which of them may need replacement,

3. Determine service lives for these components that may need replacement,

4. Develop detailed cost estimates for components that may need to be replaced, and

5. Determine annual cost estimates based on the most likely replacements over a 10-year period.

The solicitation contains an optional requirement to identify defects in the HVAC system and to analyze the defects "by engineering computation and/or professional judgment." Last, the solicitation sets for the optional requirements to perform steps (1) to (5) with respect to plumbing, electrical and elevator equipment.

The contracting officer determined that the statement of work required little more than gauging the scope of repairs and estimating costs, tasks which in his view are normally done by firms other than engineering firms. Therefore, Commerce employed standard competitive procedures to secure the services.

CEC argues that the tasks involved are required by the District of Columbia Code to be performed by an engineer. In particular, CEC contends that references to "statistical projection" in task (1) and to "engineering computation" and "professional judgment" in the optional requirement relating to HVAC defects indicate that an engineer must perform the contract. CEC also asserts that professional engineering judgment is required to identify the useful life and replacement costs of components. In sum, CEC believes that the agency either is not sufficiently astute to recognize an engineering requirement or is intentionally circumventing the Brooks Act.

CEC has not presented facts or argumentation which demonstrates that Commerce's conclusion--that the majority of the tasks, including the assessment of the remaining

useful life of components, the determination of replacement costs, and the performance of "statistical projections" to determine the status of floors not inventoried, are not uniquely required to be performed by engineers--is unreasonable. Moreover, although the option requirement to apply "engineering computations" and "professional judgment" to defects arguably constitutes an A-E service as CEC asserts, it does not follow that Brooks Act procedures had to be used in this procurement.

The Brooks Act does not require that contracts be awarded to A-E firms merely because architects or engineers might do part of the contract work. See Association of Soil and Foundation Engineers--Reconsideration, 61 Comp. Gen. 377 (1982), 82-1 CPD 429. Rather, the Act's procedures, and the restriction to A-E firms attached to them, apply to the procurement of services which uniquely or to a substantial or dominant extent require performance by a professionally licensed and qualified A-E firm. Ninneman Engineering--reconsideration, B-184770, March 9, 1977, 77-1 CPD 171. Of necessity, the determination concerning the applicability of the Act to a particular procurement is the responsibility of the contracting agency, not our Office, because it concerns the nature and the scope of the work to be done and the needs of the contracting agency. We have, therefore, recognized the broad discretion on the part of the agency to make these determinations and we will not disturb them unless the agency's conclusions are shown to be so unreasonable as to demonstrate an 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. Association of Soil and Foundation Engineers, 62 Comp. Gen. 297 (1983), 83-1 CPD 362.

Although CEC disagrees with Commerce's conclusions, on this issue, it has not established that the determination to procure the services competitively was so unreasonable as to warrant a conclusion that Commerce intended to circumvent the Brooks Act.

Therefore, we deny the protest.

for Milton J. Socolar
Comptroller General
of the United States