



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Mounts Engineering

File: B-230790; B-230791

Date: April 13, 1988

DIGEST

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

DECISION

Mounts Engineering protests the use of standard competitive procedures to secure subsidence monitoring services at mine sites in Cambria County, Pennsylvania, and Vinton County, Ohio, under two solicitations, S0388002 and S0388008, issued by the Department of Interior's Bureau of Mines (Bureau). Mounts contends that the required surveying work is incidental to and related to architectural and engineering (A-E) services and as such it must be procured in accordance with the special procedures set forth in the Brooks Act for the federal government's procurement of A-E services. See 40 U.S.C. § 541, et seq. (1982).

The protest is denied.

Mounts alleges that the required surveying is part of a study investigating the subsidence of land due to underground mining and that under Pennsylvania 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. It contends therefore that the surveying services are incidental to A-E services.

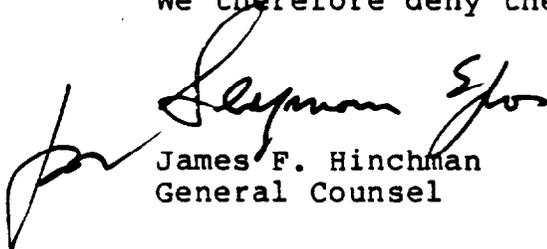
The Bureau argues that the decision to use competitive rather than Brooks Act procedures is supported by decisions of this Office such as Ninneman Engineering--
Reconsideration, B-184770, Mar. 9, 1977, 77-1 CPD ¶ 171. In that decision we held that where a survey is independent of

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.

We have held that both the language of the Brooks Act and its legislative history indicate that the act's procedures, which do not include price competition, apply whenever (1) the controlling jurisdiction in which the desired services are to be performed requires an A-E firm to meet a particular degree of professional capability in order to perform them, or (2) the service 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. AAA Engineering and Drafting, Inc., et al., B-225605, May 7, 1987, 87-1 CPD ¶ 488; Timberland-McCullough, Inc., B-208086, Sept. 24, 1982, 82-2 CPD ¶ 273; Ninneman Engineering--Reconsideration, B-184770, supra.

Thus, one criterion in determining Brooks Act applicability is whether the state requires an A-E firm to perform the services required. See Mounts Engineering, B-223650, et al., Sept. 12, 1986, 86-2 CPD ¶ 293; Umpqua Surveying Co., B-199348, Dec. 15, 1980, 80-2 CPD ¶ 429. Here, there is no showing that either Pennsylvania or Ohio requires that A-E firms perform these surveying services. Also, with regard to whether the services logically may be performed by professional A-E firms and are incidental to professional A-E services, although an A-E firm apparently could perform the services here, the record indicates that the surveying services are not part of an 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 contractor's work has no bearing on the method of procurement. Mounts Engineering, B-223650, et al., supra. Thus, we cannot find that the agency's conclusion that these solicitations are not subject to the Brooks Act was improper.

We therefore deny the protest.


James F. Hinchman
General Counsel