



82-1 cpd 287

FILE: B-204695

DATE: March 26, 1982

MATTER OF: Applied Management Engineering, P.C.

## DIGEST:

The use of noncompetitive selection procedures for the procurement of services which do not require performance by a professional architect or engineer is improper.

Applied Management Engineering, P.C. protests the award of a contract to E. L. Hamm and Associates by the Department of the Navy. The contract is for the preparation of detailed statements of work for the functions performed by the employees of the Maintenance Division of the Public Works Department at Naval Air Station, Cecil Field, Florida. We sustain the protest.

The Navy treated this procurement as one for professional engineering services and followed the selection procedures for architectural and engineering (A-E) services set forth at Defense Acquisition Regulation (DAR) §§ 18-401 et seq. (1976 ed.). These procedures are in accordance with the Brooks Bill, 40 U.S.C. § 541 et seq. (1976).

Applied Management contends that the contract award to Hamm was improper because Hamm is not a registered A-E firm. The Navy reports that due to the nature of the services being procured, a registered engineer is not required. Applied Management argues that if that is the case, then the use of the A-E selection procedures for this procurement was improper. We agree.

The procedures followed by the Navy provide that selection of A-E firms for professional services contracts shall not be based upon competitive bidding, but rather upon the professional qualifications necessary for the satisfactory performance of the services required. DAR § 18-402.1. Under the procedures, the requirement for A-E

services must first be publicly announced. The contracting agency then evaluates A-E statements of qualifications and performance data already on file with the agency, and statements submitted by other firms in response to the public announcement. Thereafter, discussions must be held with at least three firms regarding technical qualifications, experience, organization, capacity, current workload, immediate availability, key individuals who will do the work, anticipated concepts, relative utility of alternative methods of approach, and other relevant factors, except fee. DAR § 18-402.2. X

Based on established and published criteria, the contracting agency then ranks in order of preference no less than three firms deemed most highly qualified. Id. Negotiations are held with the A-E firm ranked first. Only if the agency is unable to agree with the firm as to a fair and reasonable price are negotiations terminated and the second ranked firm invited to submit its proposed price. DAR § 18-306.2. X

These procedures represent a significant departure from the general requirement for price competition in the procurement of supplies and services for the Federal Government. See Ninneman Engineering--reconsideration, B-184770, March 9, 1977, 77-1 CPD 171. Consequently, in our view, their use should be confined to those situations to which they clearly apply. Conversely, when the services of a professional architect or engineer are not required, the use of the noncompetitive A-E selection procedures in DAR § 18-401 is improper. By the Navy's own admission, professional A-E services are not required here. Therefore, we conclude that the use of A-E noncompetitive selection procedures in this procurement was improper.

Since the contract is to be completed by June 18, 1982, leaving only about three months in the contract term, we believe that no corrective action is possible at this time. However, we are recommending to the Secretary of the Navy that appropriate action be taken to prevent similar deficiencies in future procurements.

The protest is sustained.

*Milton J. Arolov*  
 for Comptroller General  
 of the United States