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

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B-118678

APR 5 1978

The Honorable Frank Church
United States Senate

Dear Senator Church:

We refer to your letter of January 10, 1978, enclosing correspondence you received concerning Federal procurement and the profession of surveying. You suggest that two of our recent decisions reflect a usurpation of the states' surveyor licensure requirements by Federal procurement regulation, which you believe was not intended by Congress.

The decisions you reference are Ninneman Engineering-reconsideration, B-184770, March 9, 1977, 77-1 CPD 171, and United States Geological Survey, B-118678, May 6, 1977, 77-1 CPD 314. Copies are enclosed, as well as is a copy of our initial decision in Ninneman Engineering, B-184770, May 11, 1976, 76-1 CPD 307. In the March 9, 1977, decision we considered whether cadastral surveys must be procured in accordance with the Brooks Bill, 40 U.S.C. § 541 et seq. (Supp. V, 1975), which states the Federal Government's policy in the procurement of architect-engineer (A-E) services. Our findings in that decision served as the basis for the May 6, 1977, decision, which involved certain mapping services.

The Brooks Bill declares it to be Federal policy to publicly announce all requirements for architectural and engineering services and to negotiate contracts for such services on the basis of demonstrated competence and qualification and at fair and reasonable prices. In Ninneman Engineering-reconsideration, we outlined the procedures prescribed in the Bill as follows:

> "Generally, the selection procedures prescribed require the contracting agencies to publicly announce requirements for A-E

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services. (This represents a change in the traditional method of obtaining A-E services.) 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 'no less than three firms regarding anticipated concepts and the relative utility of alternative methods of approach' for providing the services requested. (The discussion requirement is also a change in the traditional selection method.)

"Based on established and published criteria, the contracting agency then ranks in order of preference no less than three firms deemed most highly qualified. The legislative history makes it clear that the criteria to be used in ranking the firms for selection and final negotiation should not include or relate, either directly or indirectly, to the fees to be paid the firm. S. REP. No. 1219, 92d Congress, 2d Sess. 8 (1972); H.R. REP. No. 1188, 92d Congress, 2d Sess. 10 (1972).

"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 fee."

The Bill defines A-E services at 40 U.S.C. § 541(3) to include "those professional services of an architectural or engineering nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform." The issues before us arose because we were advised that performance of the surveys and the mapping services are not unique to professional A-E firms but are often performed by them. In this connection, it is not our position, as represented in the correspondence enclosed with your

letter, that surveying is not a "professional" service. On the contrary, we recognize that states may require that land surveyors be licensed by the State. We also recognize, however, that states may have separate registration requirements for architects and engineers.

In considering whether Brooks Bill procedures applied to cadastral surveys, or whether agencies could instead use standard competitive procurement procedures, we reviewed the legislative history of the Bill. The history shows that the first part of the above definition, "professional services of an architectural or engineering nature," refers to services which are either unique to the A-E profession, or to a substantial or dominant extent logically fall within the particular expertise of its members. See S. Rep. No. 1219, 92d Cong., 2d Sess. 7 (1972); H.R. Rep. No. 1188, 92d Cong., 2d Sess. 7 (1972). Those services would essentially consist of design and consultant services traditionally obtained in connection with Federal construction and related programs, including alteration and renovation projects. S. Rep., supra, 1; H.R. Rep., supra, 1. Since we were advised that cadastral surveys could be adequately and properly performed by other than an architect or an engineer, the cited phrase in the definition at 40 U.S.C. § 541(3) could not be a basis to require their procurement by Brooks Bill procedures.

However, we were also advised that cadastral surveys may "logically or justifiably" be performed by professional A-E firms. Thus, their procurement would in fact be subject to the Brooks Bill if, as stated in the second part of the definition, they are "incidental" to otherwise professional A-E services, as described above.

We therefore concluded that where such services are to be performed in conjunction with "professional services of an architectural or engineering nature," which clearly must be procured by the Brooks Bill

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procedures, they should be contracted for in the course of the procurement of the professional A-E services under the Brooks Bill method. A number of the types of services which may be considered "incidental" are listed at Federal Procurement Regulations § 1-4.1002(c) (1964 ed. amend. 150).

We trust that the above discussion and the enclosed material serve the purpose of your inquiry.

Sincerely yours,

(Signed) Elmer B. Staats

Comptroller General
of the United States

Enclosures (3)