

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20540

FILE: B-207849

DATE: July 20, 1982

MATTER OF: Department of Energy Request for Decision

DIGEST:

Brooks Act procedure for selecting architectural or engineering (A-E) firms to perform A-E services does not apply where the contracting agency reasonably determines that a contract for technical support services can be performed by persons who simply have engineering training and does not require a professionally licensed A-E firm.

The Department of Energy (DOE) has requested our opinion regarding the applicability of the procedure set out in the Brooks Act (40 U.S.C. § 541 et seq. (1976)) to the procurement of services from engineers to review and analyze engineering-related reports prepared by grant applicants. The Brooks Act procedure, which must be followed in procurements of professional architectural and engineering (A-E) services, does not include price competition. DOE's solicitation (request for quotations 82-04), which requires that the contractor's review team be comprised of "degreed" engineers (persons who have completed formal engineering training), indicates that the selection decision will include consideration of the competitor's prices. DOE's request follows the filing with DOE of a protest by the American Consulting Engineers Council that the procurement improperly does not conform to the Brooks Act procedure.

In our view, the Brooks Act does not apply in this situation.

The Brooks Act applies to the procurement of services which uniquely or to a substantial or dominant extent logically require performance by a professionally licensed and qualified A-E firm. Such services essentially consist of design and consultant services typically relating to Federal construction or related projects. Ninneman Engineering--reconsideration,

B-184770, March 9, 1977, 77-1 CPD 171. In our recent decision in Association of Soil and Foundation Engineers -- Reconsideration, B-201395.2, May 6, 1982, 61 Comp. Gen. ____, 82-1 CPD 429, aff'd, B-201395.3, June 23, 1982, 82-1 CPD ____, we stated that whether a procurement uniquely or to a dominant extent requires performance by an A-E firm necessarily is a matter within the sound discretion of the contracting agency to decide. The legislative history of the Act, we stated, does not require that contracts be awarded to A-E firms merely because architects or engineers will perform any part of the contract work. Consequently, we concluded that a contracting agency, within the bounds of sound judgment, is free to decide that a particular award need not be restricted to professional engineering firms, even if the specifications call for the use of engineers.

DOE has concluded that it requires a contractor who can provide personnel having a technical background, demonstrated by completion of an engineering course of study, but that the Government does not require the services of a licensed professional engineer. The materials DOE has submitted to our Office indicate that the agency's primary concern in selecting a contractor is to hire a firm experienced in the administration of energy-related grant programs. The contractor is to review the technical suitability of proposed work and to assess the value of proposals in fulfilling the objectives of the supported program, which is to promote, fund, and encourage the development of ideas concerning energy conservation.

As stated above, it is within the contracting agency's judgment to decide that a professional engineering firm is required to meet agency needs that may necessitate some engineering work. We simply see no basis for questioning DOE's judgment that the services of a licensed professional engineer are not required for the assistance sought by this RFQ. Thus, the Brooks Act procedure would not apply in this instance.

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