

Legal Opinion: GCH-0005

Index: 2.206

Subject: Applic. of Brooks Act Procedures to PHA Procurement

October 24, 1991

Mr. Michael E. Kennedy  
President  
Kennedy Associates/Architects  
Suite 2100  
100 North Broadway  
St. Louis, Missouri 63102

Dear Mr. Kennedy:

By letter dated October 3, 1991, Senator Christopher S. Bond asked us to respond directly to your inquiry concerning application of Brooks Act procedures to public housing agency procurement of architectural and engineering services. Specifically, you believe that the Brooks Act (P.L. 92-582) requires that architects and engineers selected for public housing work be selected in conformance with quality-based selection (QBS) procedures.

Under the United States Housing Act of 1937, HUD provides financial assistance in the form of grants to public housing agencies for the development and modernization of low-income public housing. Consequently, procurement actions of property and services are accomplished by the public housing agencies which are the grant recipients, and not by the Federal Government. Public Law 92-852 amended the Federal Property and Administrative Services Act of 1949 to establish QBS procedures for selection of individuals and firms to perform architectural and engineering services for the Federal Government. The procedures established by Public Law 92-852 are not applicable to procurements by Federal grantees.

You object to the provisions of the HUD regulations which afford public housing agencies the option to procure architectural and engineering services either by QBS procedures or by competitive proposals under which price is a selection factor. The provisions to which you object are contained in 24 CFR 85.36(c)(3)(v). On March 11, 1988 (48 FR 8034), a final rule was promulgated as a "common rule establishing consistency and uniformity among the Federal agencies" with grant programs in the administration of grants. Subpart B Pre-Award Requirements (p. 8040) includes the provision to which you object. After consideration of public comments on a proposed rule, the Office of Management and Budget decided not to mandate QBS selection processes "because to do so would override many State and local

procurement rules which provide for the consideration of price in

the selection of firms for certain A/E services."

Of course, if State law requires public housing agencies to use QBS in the procurement of architectural and engineering services, the Federal regulatory requirements are consistent with this requirement.

I hope the information provided has been helpful.

Very sincerely yours,

Ivan A. Ransopher  
Assistant Secretary (Acting)