



MAY 28 2004

GSA Office of Governmentwide Policy

MEMORANDUM FOR RONALD POUSSARD
DIRECTOR
DEFENSE ACQUISITION REGULATIONS COUNCIL

FROM: RODNEY P. LANTIER, DIRECTOR
REGULATORY AND FEDERAL ASSISTANCE
PUBLICATIONS DIVISION

SUBJECT: Application of the Brooks Act to Mapping Services

Attached are comments received on the subject FAR case published at 69 FR 13499, March 23, 2004. The comment closing is May 24, 2004.

<u>Response Number</u>	<u>Date Received</u>	<u>Comment Date</u>	<u>Commenter</u>
MappingNotice-1	05/20/04	05/19/04	USDA, Geoffrey Gabbott
MappingNotice-2	05/20/04	05/20/04	USDA, John Johnson
MappingNotice-3	05/19/04	05/19/04	USDA, John Varner
MappingNotice-4	05/19/04	05/19/04	Melinda McGann
MappingNotice-5	05/19/04	05/19/04	U.S. Geological Survey, Robert
MappingNotice-6	05/19/04	05/19/04	Michele Huffman
Mapping Notice-7	05/20/04	05/20/04	American Society for Photogrammetry and Remote Sensing
MappingNotice-8	05/21/04	05/21/04	Gary Florence
MappingNotce-9	05/21/04	05/21/04	MAPPS

<u>Response Number</u>	<u>Date Received</u>	<u>Comment Date</u>	<u>Commenter</u>
MappingNotice-10	05/21/04	05/21/04	U.S. Fish and Wildlife Service
MappingNotice-11	05/21/04	05/21/04	Techni Graphic Systems, Inc.
MappingNotice-12	05/21/04	05/21/04	Bureau of Land Management
MappingNotice-13	05/21/04	05/21/04	Robert Wright
MappingNotice-14	05/21/04	05/21/04	AeroMaps U.S.
MappingNotice-15	05/21/04	05/21/04	USDA, Diane Sharp
MappingNotice-16	05/21/04	05/21/04	Environmental Systems Research Institute, Inc.
MappingNotice-17	05/21/04	05/21/04	Western Air Maps, Inc.
MappingNotice-18	05/21/04	05/21/04	USFS
MappingNotice-19	05/21/04	05/21/04	Texas Boll Weevil Eradication Foundation, Inc.
MappingNotice-20	05/20/04	05/21/04	The Coliation for Government Procurement
MappingNotice-21	05/19/04	05/21/04	National States Geographic Information Council
MappingNotice-22	05/23/04	05/23/04	Tenix LADS, Inc.
MappingNotice-23	05/24/04	05/24/04	Intermountain Aerial Surveys

<u>Response Number</u>	<u>Date Received</u>	<u>Comment Date</u>	<u>Commenter</u>
MappingNotice-24	05/24/04	05/24/04	Aerial Services, Inc.
MappingNotice-25	05/24/04	05/24/04	Erdman, Anthony and Associates
MappingNotice-26	05/24/04	05/24/04	MH Harden Associtaes, Inc.
MappingNotice-27	05/24/04	05/24/04	Tammy Broussard
MappingNotice-28	05/24/04	05/24/04	USDA,Andrew
MappingNotice-29	05/24/04	05/24/04	Cartographer Geospatial Service & Technology Center
MappingNotice-30	05/24/04	05/24/04	William Dijak
MappingNotice-31	05/24/04	05/24/04	Marla Downing
MappingNotice-32	05/24/04	05/24/04	American Congress on Surveying and Mapping
MappingNotice-33	05/24/04	05/24/04	National Geospatial Intelligency Agency
MappingNotice-34	05/24/04	05/24/04	Eric Gustafson
MappingNotice-35	05/24/04	05/24/04	USDA, George Rohaley
MappingNotice-36	05/24/04	05/24/04	USDA, Michael Hoppus

<u>Response Number</u>	<u>Date Received</u>	<u>Comment Date</u>	<u>Commenter</u>
MappingNotice-37	05/24/04	05/24/04	U.S. Geological Survey, Susan McCullough
MappingNotice-38	05/24/04	05/24/04	John M. Chase
MappingNotice-39	05/24/04	05/24/04	DOC, Nancy Berrere
MappingNotice-40	05/24/04	05/24/04	DigitalGlobe Privileged/Proprietary Information.
MappingNotice-41	05/24/04	05/24/04	USDA, Allen Vandergriff
MappingNotice-42	05/24/04	05/24/04	John Steffenson
MappingNotice-43	05/24/04	05/24/04	Ron Tymico
MappingNotice-44	05/24/04	05/24/04	James McGinnis
MappingNotice-45	05/24/04	05/24/04	Air Force Center for Environmental Excellence
MappingNotice-46	05/24/04	05/20/04	USDA, E.Vaughn Stokes
MappingNotice-47	05/24/04	05/24/04	USDA, Dennis Lytle
MappingNotice-48	05/20/04	05/20/04	National Resources Conservation Service
MappingNotice-49	05/24/04	05/24/04	John Combs
MappingNotice-50	05/27/04	05/27/04	National Oceanic and Atmospheric Administration
Attachments			

<u>Response Number</u>	<u>Date Received</u>	<u>Comment Date</u>	<u>Commenter</u>
Mapping Notice-51	06/08/04	05/20/04	National Oceanic and Atmospheric Administration
Mapping Notice-52	06/08/04	05/20/04	ASPRS
Mapping Notice-53	06/15/04	06/15/04	COFPAES
Attachments			

Mapping Notice - 1



United States
Department of
Agriculture

Farm
Service
Agency

Aerial
Photography
Field Office

222 W 2300 S
Salt Lake City UT
84119-2020

801-975-3500 ext.207
801-975-3512 fax

Date: May 19, 2004

To: General Services Administration, FAR Secretariat (MVA)
1800 F Street NW, Room 4035, ATTN: Laurie Duarte
Washington DC 20405
MappingNotice@gsa.gov

From: W. Geoffrey Gabbott, Contracting Officer
USDA, Farm Service Agency, Aerial Photography Field Office
2222 West 2300 South, Salt Lake City, Utah 84119-2020
geoffrey.gabbott@apfo.usda.gov

Re: Mapping Notice

The proposed changes to FAR Subpart 36.601-4(a)(4) are not in the best interest of the general public and do not provide any useful additional benefit to the public or public safety. This proposed application of the Brooks Act as it applies to mapping services, if prescribed by the FAR, would negatively impact customers of USDA Programs and taxpayers, in the following ways:

1. By increasing the cost of procuring geographic information system (GIS) related products, including aerial photography, orthoimagery, satellite imagery, digitizing services, and other geospatial related products and services,
2. By restricting the utilization of small and/or small disadvantaged businesses from participating in GIS related procurements by requiring professional positions that are not necessary or required for the successful completion and delivery of quality products or services, and
3. Potentially reducing, canceling, or redirecting resources of USDA agency GIS programs due to increased costs of acquiring imagery or data.

The current regulation stated in FAR Subpart 36.6-4(a)(4) demonstrates the intent of the Brooks Act to assure public safety in surveying and mapping services "...associated with the research, planning, development, design, construction, or alteration of real property..." To require GIS related services and products, such as aerial photography acquisition, that are not directly associated with real property, to be subjected to architect & engineering standards of procurement, is unnecessary.



Handwritten note: 11/20/04 (w)

MAPPING NOTICE - 1

The acquisition of aerial photography, production of orthoimagery, or the creation of digitized farm field boundaries does not require the professional services of registered surveyors, architects or engineers. Many small businesses provide quality GIS related services and products without the professional surveyors, architects, or engineers that would be required under the proposed amendment. If they were required, most small businesses would be unable to participate in such procurements and would be forced to raise their prices if they wanted to. The professional architect & engineering services are not necessary or required for USDA projects and therefore will provide no measurable benefits for the additional cost. The potential increased costs for GIS products and services are estimated from 10% to 25% which would have a serious effect on USDA programs. If there are not sufficient funds to purchase the product or service required, the agency may have to reduce, cancel or redirect the funds to a less effective means of satisfying the requirement.

The U.S. Department of Agriculture has several major aerial photography and digital imagery acquisition programs, as well as geospatial data digitizing programs that may be negatively affected by the proposed amendment. These programs are all procured through the Contracting Office of the Farm Service Agency, Aerial Photography Field Office (APFO) located in Salt Lake City, Utah. The APFO has the responsibility of acquiring imagery and digital data for the agricultural and resource management agencies of the USDA including the Farm Service Agency (FSA), the Natural Resource Conservation Service (NRCS), the U.S. Forest Service (USFS), and other Federal Government Agencies outside the USDA.

There are three major USDA programs that would be seriously impacted: The FSA's National Agriculture Imagery Program (NAIP) with annual expenditures of \$20 million, the NRCS's National Resource Inventory program (NRI) with annual expenditures of \$6 million, and the USFS's Resource Aerial Photography program with annual expenditures of \$2 million. Each of these programs are currently being procured using "Best Value" contracting procedures (FAR Part 15) where technical proposals are evaluated and ranked separate from the pricing proposals. Then final source selection is determined by the overall ranking with technical and price scores combined, technical merit being more important than price. This best value procurement approach has successfully provided high quality products and services at very competitive prices resulting in significant savings to the customer and ultimately, the American Taxpayer.

In conclusion, the Brooks Act was designed to provide the highest quality mapping and surveying services where public safety is of the utmost importance, with regard to real property development or construction. The proposed application of these professional architect and engineering procedures to all mapping services is not in the best interest of the general public and does not provide any useful additional benefit to the public or public safety. Rather, it will increase costs to the taxpayers, with no higher quality service or product provided. A more productive change to the FAR would be to more directly apply the Brooks Act to real property development, as it was intended, rather than expand the application to requirements outside the original intent of the Act.



MAY 20 2004

Mapping Notice-2

United States
Department of
Agriculture

Farm and Foreign
Agricultural
Services

Farm Service
Agency

1400 Independence
Ave, SW STOP
0510
Washington, DC
20250-0510

Ms. Lauric Duarte
General Services Administration
FAR Secretariat (MVA)
1800 F Street, NW
Room 4035
Washington, DC 20405

Subject: Mapping Notice

Dear Ms. Duarte,

This letter provides comments to 48 CFR Part 36, Federal Acquisition Regulation (FAR); application of the Brooks Act to Mapping Services. As the Deputy Administrator of Farm Programs at the U S Department of Agriculture (USDA), Farm Service Agency (FSA), I am writing to strongly oppose any modifications to the FAR that expands the application of the Brooks Act qualifications based selection process (QBS) for a broader range of surveying and mapping services than currently provided for. Such a change is not in the best interests of the Government and will detrimentally affect USDA programs and partners, and consequently, its customers and the American taxpayer.

The current regulation stated in FAR Subpart 36.6-4(a)(4) clearly demonstrates the intent of the Brooks Act to assure public safety in surveying and mapping services "...associated with the research, planning, development, design, construction, or alteration of real property..." (emphasis added). FSA is not involved in design, repair or construction type tasks. FSA's imaging and mapping activities deal with agricultural features and generally cover large land areas, encompassing tens, hundreds and even thousands of acres. Extremely high degrees of precision and accuracy are not required for our projects and public safety is not an outcome of the information we collect. To require Geographic Information System (GIS) related services and products, such as aerial photography, Global Positioning System (GPS) field perimeter capture, digitization of crop field boundaries, production of orthoimagery, or development of rectified products from satellite imagery that are not directly associated with real property, be subjected to architect and engineering standards of procurement, will unnecessarily increase procurement costs and require the Agency purchase services it does not need.

For our agricultural activities, technology advances in hardware and software over the past few years have provided tools by which quality mapping products can be generated and disseminated by individuals with limited expertise rapidly and efficiently. FSA, as well as it's sister agencies in USDA, have been involved in a major modernization

Handwritten signature
5/24/04
(W)

Mapping Notice - 3



"John Varner"
<jvarner@fs.fed.us>
05/19/2004 11:39 AM

To: MappingNotice@gsa.gov
CC:
Subject: Fed Reg Comments

Thank you for allowing the public to comment on the proposal to change the Brooks Act.

As a professional forester and as one who is responsible for much of the mapping the Forest Service does in the Rocky Mountain Region, I see some potential problems associated with the proposal.

- The Brooks Act is intended to cover professional architectural and engineering services related to real property where high degrees of precision, accuracy, and safety are of paramount importance.
- FAR 36.601-4 specifically states that "mapping services that are not connected to traditionally understood or accepted architectural and engineering activities, are not incidental to such architectural and engineering activities or have not in themselves traditionally been considered architectural and engineering services shall be procured pursuant to provisions in Parts 13, 14, and 15." This is appropriate because it meets the objectives of the Brooks Act.
- Expanding the definition of surveying and mapping as suggested in House Report 105-746 would not be appropriate because it was never the intention of the Brooks Act to cover such a broad range of applications.
- The proposed change would encompass virtually all Forest Service geospatial applications (vegetation mapping, fire mapping, forest visitor maps, resource aerial photography). These applications do not require the precision and accuracy associated with Brooks Act architectural and engineering services.
- The proposed change would result in a large increase in costs to taxpayers without any additional benefit to the public or public safety.
- Current FAR guidance is adequate, appropriate, and does not require amending.

In some of the lesser populated western states, there are counties that do not have any, or very limited, professional architectural and engineering services at all. If the Brooks Act were to be changed, it would take a decade or more to have enough professional architectural and engineering services to do the work now being done with agency personnel in their normal work. Natural resource professionals have been producing resource maps for as long as the professions have been around. This does not require a high level of precision or accuracy the professional architectural and engineering services would provide.

By the proposed wording, no resource specialist could even do an inventory of their resource without a licensed architect or engineer as part of their crew.

The Forest Service does do land line surveying and use professional surveyors to do this work. Much of the time this is done by contracting with companies to provide this service. However, all of the remaining work done within the Forest Service, and other land management agencies, is only done to an accuracy used to generally find the location in the field and to

Mapping Notice - 4



"Melinda L McGann"
<mlmcgann@fs.fed.us
>

To: MappingNotice@gsa.gov
cc:
Subject: Mapping Notice

05/19/2004 12:12 PM

Thank you for allowing public comment on the Application of the Brooks Act to Mapping Services. I am a Federal geospatial professional and I believe the intent of the Brooks Act is implemented adequately by the current regulations. The title of the Brooks Act includes A&E and it is used for that purpose. To extend the definition to include natural resources applications is way beyond the Act's intent. You cannot engineer a stand of trees, a herd of elk, nor a wild fire for example. A&E precision and accuracy is not required for such work which is why the Brooks Act left it out. And, Competitive Sourcing mandates are requiring Federal Agencies to evaluate all their functions, of which mapping is one. If such functions make sense and are cost-effective to be procured, then there is already direction to do so. Keep the FAR unchanged.

Thank you, again.
Melinda McGann

Mapping Notice - 5



"Robert G Waltermire"
<bob_waltermire@usgs.gov>

To: MappingNotice@gsa.gov
cc:
Subject: Mapping Notice

05/19/2004 01:02 PM

To Whom It May Concern:

Application of the Brooks Act to natural resource mapping applications is totally inappropriate. Natural resource mapping does not require the same level of accuracy, and indeed, that level of accuracy is impossible to attain

in most cases due to the nature of soils, ground water, vegetation, and the distribution of animals and plants in general. I urge you to strongly oppose the Brooks Act to this category of mapping. If the Brooks Act were to be applied to this category of mapping, it would increase the costs to the public with no gain in the products produced and no benefit to the public safety. Please review the following:

- The Brooks Act is intended to cover professional architectural and engineering services related to real property where high degrees of precision, accuracy, and safety are of paramount importance. We do use FAR Part 36 acquisitions for these services.
- FAR 36.601-4 specifically states that "mapping services that are not connected to traditionally understood or accepted architectural and engineering activities, are not incidental to such architectural and engineering activities or have not in themselves traditionally been considered architectural and engineering services shall be procured pursuant to provisions in Parts 13, 14, and 15." This is appropriate because it meets the objectives of the Brooks Act.
- Expanding the definition of surveying and mapping as suggested in House Report 105-746 would not be appropriate because it was not the intention of the Brooks Act to cover such a broad range of applications.
- The proposed change would encompass much of the mapping completed by this office's geospatial applications (vegetation mapping, fire mapping, resource aerial photography). These applications do not require the precision and accuracy associated with Brooks Act architectural and engineering services.
- The proposed change would result in increased costs to taxpayers without any additional benefit to the public or public safety.
- Current FAR guidance is adequate, appropriate, and does not require amending.

Bob Waltermire
Leader - GIS and Remote Sensing Team

U.S. Geological Survey
Fort Collins Science Center (FORT)
2150 Centre Avenue, Building C
Fort Collins, CO 80526-8118

Telephone: 970-226-9344
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email: bob_waltermire@usgs.gov
Internet: <http://www.fort.usgs.gov>

Mapping Notice - 6



"Michele Huffman"
<MHuffman@fs.fed.us
>

To: MappingNotice@gsa.gov
cc:
Subject: comments on Mapping Notice (Application of the Brooks Act to
Mapping Services)

05/19/2004 01:08 PM

The Brooks Act is intended to cover professional architectural and engineering services related to real property where high degrees of precision, accuracy, and safety are of paramount importance. The Forest Service uses FAR Part 36 acquisitions for these services.

- FAR 36.601-4 specifically states that "mapping services that are not connected to traditionally understood or accepted architectural and engineering activities, are not incidental to such architectural and engineering activities or have not in themselves traditionally been considered architectural and engineering services shall be procured pursuant to provisions in Parts 13, 14, and 15." This is appropriate because it meets the objectives of the Brooks Act.
- Expanding the definition of surveying and mapping as suggested in House Report 105-746 would not be appropriate because it was not the intention of the Brooks Act to cover such a broad range of applications.
- The proposed change would encompass virtually all Forest Service geospatial applications (vegetation mapping, fire mapping, forest visitor maps, resource aerial photography). These applications do not require the precision and accuracy associated with Brooks Act architectural and engineering services.
- The proposed change would result in increased costs to taxpayers without any additional benefit to the public or public safety.
- Current FAR guidance is adequate, appropriate, and does not require amending.

I am concerned about proposed changes to FAR to expand it's influence to include geospatial mapping and data services that are well outside the scope of surveying and mapping services requiring architectural or engineering expertise. The field of geospatial mapping and analysis is very broad, ranging from natural resource applications to urban and civilian applications. For many of our geospatial applications the skills required are outside the skillset provided in the engineering, surveying, and architectural disciplines.

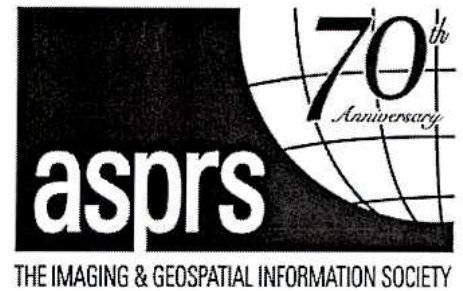
We currently contract geospatial mapping and analysis services when they make sense and are cost-effective for taxpayers. However, many of our routine geospatial mapping and analysis work in support of our agency's land management mission cannot be effectively contracted. Flexibility, responsiveness, and a solid understanding of the local resources and issues are essential to much of our work and cannot be provided by short term contractors. In addition, much of our geospatial analysis work requires natural resource or other expertise that mapping contractors frequently lack. We must have the flexibility to manage our agency programs in the most efficient and cost effective manners, and expanding the Brooks Act to cover all geospatial mapping would cripple our ability to do so.

Applying the Brooks Act to cover broader geospatial analytical and mapping

Notice - 6

applications than those requiring the skills of architectural and engineering experts is outside Congressional intent for the act, will be costly to American taxpayers, and counter-productive.

Michele Huffman
GIS Coordinator, Ashley NF
(970)263-5813, mobile (435)790-7025
fax (970)263-5819
email: mhuffman@fs.fed.us :-)



May 20, 2004

General Services Administration
FAR Secretariat (MVA)
1800 F Street NW
Room 4035
Washington, DC 20405
Attn: Laurie Duarte – “Mapping Notice”

Mapping Notice - 7

To the FAR Secretariat:

In recent years private mapping organizations have worked diligently to incorporate mapping services under the Qualifications Based Selection (QBS) type of procurement practice for federal contracting. While this approach is very valid for professional services, QBS is not necessarily appropriate for many mapping services not traditionally included within the definition of professional practice by the vast majority of state regulatory boards.

The American Society for Photogrammetry and Remote Sensing (ASPRS) has a vested interest in the future procurement practices for mapping services and the regulatory actions taken as a result thereof. The purpose of this letter is to provide information regarding the recent “Mapping Notice”, and to ensure that the Federal Acquisition Regulatory Council is well-informed in making the most appropriate decision regarding the content of, and the language used in the Federal Acquisition Regulation (FAR) policy 36.601-4(a)(4) and the application of the Brooks Act to mapping services. **As outlined below, ASPRS recommends that the FAR Council maintain the existing language as-is.**

Founded in 1934, ASPRS is a national/international scientific and educational organization of more than 6,000 geospatial information professionals, and 150 sustaining corporate members. The Society is devoted to advancing knowledge and improving understanding of the imaging and mapping sciences to promote responsible applications of photogrammetry, aircraft and satellite remote sensing, geographic information systems, and supporting technologies.

Federal Acquisition Regulation (FAR) policy 36.601-4(a)(4) was amended in 1999 by the removal of a reference to the National Imagery and Mapping Agency (NIMA). This reference was originally included in the policy to illustrate examples where QBS would not be used for the procurement of mapping services.

We understand that certain comments have been received indicating a perceived narrowing of the application of the Brooks Act for mapping services. Additional comments include a statement regarding the intent of Congress being, “to apply the Brooks Act to a wide scope of mapping services,” and requesting that FAR 36.601-4(a)(4) be amended to apply the Brooks Act to a broader range of mapping services.

notice 7

Page 2 of 2

As a result, we respectfully request the FAR Council review the existing language in 36.601-4(a)(4) and consider the options carefully. ASPRS interpretation of the existing language is that any mapping service of a professional nature must be procured by the federal government using QBS. This would essentially apply to most mapping services affecting the public health, safety and welfare while exempting few, if any. This interpretation of the existing language appears to allow sufficient freedom to qualify most mapping services for QBS procurement. Using such an interpretation, we do not believe that the removal of the reference to NIMA has narrowed the application of the Brooks Act, nor has it "shifted" the existing FAR policy.

Further, ASPRS recognizes at this time that many states do not currently consider non-design purposed mapping services to be a licensed or regulated professional activity. In many cases these services, therefore, do not currently formally qualify under the Brooks Act. However, ASPRS policy supports the licensure of photogrammetrists and selected GIS professionals provided it is accomplished in a fair and reasonable manner. While to date only a handful of states have enacted legislative or regulatory actions to define photogrammetry as a professional activity, thereby requiring the use of QBS for professional mapping services, we believe that this situation will change and we continue to endorse the use of qualifications-based acquisition practices for all professional surveying and mapping services.

Therefore, ASPRS recommends that the FAR Council maintain the existing language as-is. In our opinion, the existing language is broad and allows freedom for utilizing QBS for federal mapping services-related contracts. We believe no changes in the FAR are warranted at this time.

If you have specific questions concerning the ASPRS position on these issues, please contact the ASPRS Professional Practice Division Director, Mr. John Simmers, by email at John.Simmers@VirginiaDOT.org or by phone at (804) 786-2571.

Thank you for considering this position.



James R. Plasker
Executive Director

cc (via email): John Simmers, PPD
Mike Thomas, External Affairs
Excom

Mapping Notice-8



"Gary Florence"
<gflorence@photoscience.com>

To: MappingNotice@gsa.gov
cc:
Subject: Mapping Notice

05/21/2004 02:20 PM

I support QBS for mapping and urge a revision to the FAR to clarify this issue.

Sincerely,

Gary R. Florence
Photo Science, Inc.,
9800 Fourth Street North, Suite 402
Saint Petersburg, FL 33702
Phone: 727.576-9500
Fax: 727.576.9600
e-mail: gflorence@photoscience.com
www.photoscience.com

Mapping Notice - 9



Johnmapps@aol.com

05/21/2004 04:15 PM

To: MappingNotice@gsa.gov
cc:
Subject: Mapping Notice

May 21, 2004

General Services Administration
FAR Secretariat (MVA)
1800 F Street, NW., Room 4035
Washington, DC 20405

Attn: Laurie Duarte

RE: Federal Register
March 23, 2004
Volume 69, Number 56
Page 13499-13500
Proposed Rules
48 CFR Part 36 - Mapping in FAR Part 36

Dear Ms. Duarte:

MAPPS is a national association of more than 170 member firms engaged in a variety of mapping/geospatial activities. We are the Nation's oldest and largest association in this field.

MAPPS strongly supports the promulgation of a revision in the FAR, in section 36.601-(4)(a)(4). As outlined in our attached statement, we believe such a revision to clarify the government-wide application of FAR part 36.6 to a broad range of mapping services is not only desirable, but we believe Congress has mandated such a change.

Given that a significant change in this section of the FAR was previously made without public comment, we particularly commend you, the staff at OFPP, and others involved for issuing the notice for public comment on March 23, 2004.

Attached is our statement. We urge the prompt resolution of this important matter through promulgation of a final rule as soon as possible.

John M. Palatiello
MAPPS Executive Director
1760 Reston Parkway, Suite 515
Reston, VA 20190
p-(703) 787-6996
f-(703) 787-7550
e-john@mapps.org
w-www.mapps.org



MAPPS FAR Comment on Mapping Notice

Mapping Notice 9

May 21, 2004

Comment to: General Services Administration
FAR Secretariat (MVA)
1800 F Street, NW., Room 4035
Washington, DC 20405
Attn: Laurie Duarte

Re: Federal Register
March 23, 2004
Volume 69, Number 56
Page 13499-13500
Proposed Rules
48 CFR Part 36 - Mapping in FAR Part 36

From: MAPPS

Traditionally, government procurement procedures properly have emphasized awarding contracts to the lowest bidder, or using price as a dominant factor. For many goods which government purchases paper, office equipment, desks, even construction services this process serves the government and the taxpayer well. Specifications can be written, products can be inspected and tested and safeguards can be built in to assure saving money.

Sometimes, however, agencies mistakenly assume professional mapping services fall into this category.

Unfortunately, the assumption ignores the increase in costs to administer the preparation of detailed scopes of work and bid specifications, evaluation of numerous bids, and to remedy serious consequences of unprofessional surveying and mapping. Quality, therefore, should always be the primary focus in the competition for surveying and mapping procurements. Only after high quality performance is ensured should the focus turn to the contract price.

Fifty states impose strict educational and registration or licensing requirements for surveying professionals, and many including mapping in such licensing laws. The high standards established by organizations for their members exemplify the professional nature of their work.

State licensing standards and government procurement regulations for professional services should be designed to protect the public health and safety during and after contract performance. Indeed, some state licensing boards prohibit licensed professionals under their jurisdiction from engaging in competitive bidding to secure work.

If inaccurate, a map could cloud land titles or jeopardize subsequent construction designs, planning activities or program management that must rely on accurate mapping data. Just as a poorly designed dam can burst, subjecting the state to huge claims, so too can a poorly planned or executed map unleash a flood of problems, creating an impediment to the expeditious completion of a government project, causing substantial loss of time and money, and jeopardizing the public safety. Like a well made dam, a high quality map will stand the test of time and will ensure that the government can proceed with its design, construction or resource planning project based on

Notice - 9

complete and precise groundwork.

In addition to the direct cost of the contract, the government must be concerned about such consequent indirect costs as physical destruction of property or clouded claims that could result from poor quality workmanship.

The government should negotiate contracts for these services independent of other professional design or construction services to ensure that specialized mapping skills and technologies are evaluated properly and not overlooked. In this manner, the government will benefit from direct control of both the quality of the services and the map's development.

The use of negotiated procedures directs the focus of procurement activity where it should be, on the quality of the mapping services specifically suited to a given contract. All competitors must submit their qualifications to the procuring agency; the agency assesses the relative expertise of the competing firms; and the one most qualified firm is selected for the particular procurement. Such procedures produce a more cost effective survey than can be achieved under price bidding or best value procedures. Several reasons for this are as follows:

1. Negotiated procedures afford built-in protection, since either the selection process eliminates unqualified firms, or the negotiations reveal a firm's comparative lack of expertise. In either case, the problem is discovered before the contract is awarded, not after the job is done. Under price bidding procedures, however, the low bidder wins, regardless of the marginal capabilities it may have demonstrated previously.
2. The extreme difficulty of defining adequately, in advance of negotiations, the quantity and quality of the mapping and photogrammetric services to be secured is likely to lead to misunderstandings as to the scope of the services to be rendered and the expectations of the government concerning the services and the desired project. The negotiating process allows the government to work as a team with qualified professionals to refine the government's contract requirements and develop more tailored, economical mapping. Thus, in the pre-contract stage, the agency benefits from the professional's years of experience and demonstrated competence.
3. The government saves substantial administrative costs of preparing detailed specifications that would be required under price bidding procedures to avoid widely varying interpretations by competing bidder. The government also saves significant personnel costs if it can employ a few specialists to review qualifications, negotiate contracts and monitor or inspect performance -- rather than maintain the large staff needed to process numerous bids received on each procurement and evaluate the qualifications of each of those bidders, as well as execute and monitor contract performance.
4. Negotiated procedures ultimately result in more efficient, economical procurements for the competing professional firms as well as the government, because of the very nature of surveying and mapping. Since only the top ranked firms need to prepare boundary analyses and detailed estimates on the work, other competitors are free to pursue other contract opportunities without wasting money on a contract they will not win.

Notice - 9

5. The government benefits from the professional photogrammetist's fiduciary obligation to their client. Emphasis on the quality of the work establishes a relationship of cooperation and trust, whereas price competition pits honest professionals against competitors who are willing to cut corners or deliver substandard services to bid low. When the low bid is the primary selection criterion, the interests of unscrupulous or inexperienced contractors are advanced over the interests of the public. The low bid map often is inaccurate or incomplete because the government will pay far more, or contract with another to complete the project begun by the low bidder who went bankrupt trying to meet an unreasonably low contract price. Rather than an adversary relationship, which is promoted in competitive bidding procedures, the mapping professional should negotiate their work, and work as a team.
6. The government must be mindful of the indirect or hidden costs, such as legal fees, court expenses and insurance claims that it can incur when boundary, trespass and other property disputes are caused by outdated or erroneous maps. By negotiating contracts with private mapping professionals, the government can save in-house costs and increase mapping outputs significantly. Historically, more firms compete, and thus the government gets a better service at a fairer price, when QBS is used. Government inspection or quality control of a mapping project to monitor contract compliance is much more difficult than inspection of manufactured products or other professional services. The map's geographic scope is often immense, and the only effective way the government can check for accuracy is to retrace the entire map. Even a trained eye cannot find a map's critical flaws that could threaten the public's safety and its pocketbook in future years. Unlike materials, a map cannot be adequately sampled before and thoroughly tested after production. The client or owner is totally dependent upon the integrity of his mapping professional -- you might say he is at his mercy -- for even a bad mapping plan can look good. It often takes months or years before errors and problems are discovered.

Maps are tied to existing control points on the ground, the location and condition of which are uncertain until a survey is performed. Legal descriptions of boundaries may, or may not, indicate physical monuments. These physical monuments may or may not be still in existence on the ground. If they do exist, they may or may not be the original monuments, and they may or may not fit other physical evidence in the area. One cannot price the unknown.

Mapping is usually dependent on other existing surveys and recorded documents. The evaluation of such surveys or documents is a matter of judgment which cannot be made until the professional has researched the project, both in the field and in the repository of deeds. He may find that as the result of his new work, the existing survey may have to be rerun to achieve the accuracy required by the client, even though the records of the existing survey indicated otherwise beforehand. He may find deeds or other documents that will affect the interpretation of the client's land description. These conditions may not be known, nor even suspected, until the survey is substantially started.

Mapping is weather dependent. Cloud cover, storms, excessively hot weather, floods, rain, wind and other inclement conditions can delay or prolong an aerial photography and mapping project for indefinite periods of time. Precise leveling is extremely sensitive to the vagaries of weather. Fog affects sighting lengths. Wind affects instrumentation and measurement. Cloud cover prevents

Notice - 9

collection of data on project areas. Delays cost money. The decision to stop or delay the operation should be based on a determination that the quality of the result will suffer, rather than on a profit-loss motive.

The accuracy of a map depends upon the manner and the conditions under which the work is performed and not just on the accuracy of closures. A map could close within specified tolerances, but the work could be unacceptable because of the methods used.

By requesting bids, a client assumes the responsibility for defining the scope of the services required and, thus, does not take any advantage of the knowledge and background of qualified professional engaged in providing such services. All too few administrators and even engineers are knowledgeable in mapping, and their inadequacy in this regard is apparent in their requests for bids. The knowledgeable person is aware of the indeterminate nature of mapping. The reputable professional, if he is to bid, must either attempt to anticipate the many possible problems, determine which problems he feels will occur, and bid accordingly, or bid so high that he can include every possible condition (in which case he undoubtedly will not be the successful bidder). If an honest attempt is made and unforeseen conditions occur, the mapper faces the decision to adhere to the specifications, thereby producing an inferior product (which he cannot ethically do) or perform the work to the best of his ability, thereby operating at a loss. Either way, the client/taxpayer is the ultimate loser.

Numerous cases can be cited to prove that the lowest bid does not necessarily result in the lowest overall cost. The old cry, "Bid as low as you dare, but make your money on the extras," is inevitable and the resulting relationship between the government client and his surveyor assumes an arms length status which is not only not conducive to the completion of professional assignments, but in fact, effectively eliminates any exercise of professional judgment on the part of the mapper.

A broad coalition of design-related organizations supports qualifications-based selection procedures for surveying and mapping services. The Federal competence and qualifications-based selection law was codified in 1972 to protect the interest of taxpayers. It is Federal law because over the life of a project, the engineering and related design services account for less than one-half of one percent of total costs. Yet, these important services play a major role in determining the other 99.5 percent of the project's "life cycle costs", such as construction, operation, and maintenance. The same is true of the associated mapping or geographic information systems (GIS) project.

This process has been so successful at the Federal level that it is recommended by the American Bar Association in its model procurement code for State and local government. The ABA model code specifically includes surveying and mapping. More than half the States have enacted their own competence and qualifications-based selection laws for architecture, engineering, surveying and mapping services. Others use it as a standard procedure. No state has a specific law requiring bidding of these services.

LEGISLATIVE HISTORY

Notice - 9

The basis for present statutory authority for procurement of personal and professional services, such as surveying and mapping, can be traced back to an 1861 Appropriations Act. 12 Stat. 214 (1861). This Act provided for the appropriation of funds for various purposes, including the compensation of civilian surveyors. Section 10 directed that all contract for supplies or services be made by advertising for proposals "except for personal services." Id. at 220. A year later, the Attorney General ruled that a contract for surveying was a contract for personal services within the meaning of the Act and, therefore, could be made without advertisement and competitive bidding. 10 Op. Atty. Gen. 261 (1862). In reaching his decision, the Attorney General observed:

"...although this policy (price competition) is certainly desirable in all cases, there are yet some to which it cannot well be applied. Such are contracts for services which require special skill and experience... In all contracts for services which presuppose trained skill and experience, the public officer who employs the service must be allowed to exercise a judicious discrimination, and to select such as, in his judgment, possesses the required qualifications.

"Of this class are contracts for surveying the public lands. The service to be performed requires not only fidelity and integrity, but a certain kind of skill and knowledge, and the officer whose duty it is to let the contract, is bound to know that the person he employs possesses these qualifications. It is not half so important to have the work done cheaply as to have it done well, and the price to be paid for it, whilst it should be but fair and reasonable, out to be far from controlling consideration." (Id. at 262 (emphasis added).

From 1939 until 1972, the Congress enacted a number of statutes whose provisions and legislative history referenced selection of A/E and other professional consultant's services by traditional negotiation -- rather than competitive bidding -- procedures.

The common thread in all of these various enactments was that procurement of professional personnel, such as architects, engineers, surveyors and mappers, should be exempt from the various statutory requirements for military procurement by competitive price bids. The rationale for this policy decision, which the Congress made repeatedly from 1861 on, was that contracts from such services should be negotiated on the basis of demonstrated competence and qualifications for the type of professional services required and at fair and reasonable prices.

In 1972, the Congress responded by enacting Public Law 92-582, the Brooks Act. 86 Stat. 1278 (codified at 40 U.S.C. 541-544 (1976)). The purpose of the Act was: "to establish Federal policy concerning the selection of firms and individuals to perform architectural, engineering, "and related services" for the Federal government." See Preamble to Pub. L. No. 92-582, 86 Stat. 1278; H. Rep. No. 188, 92nd Cong., 2d Sess. 1 (1972).

This government-wide policy reflected the traditional approach used by both military and civilian agencies for many years. As the Senate Report explains: "Congress has made it clear on several occasions (e.g., H. Rept. 90-1869) that the traditional method of selecting architects and engineers is to be followed by the military agencies."

Since the military agencies are currently following the architect-engineer selection procedures as

Notice-9

set forth in H.R. 12807, and "would be expected to continue such procedures in accordance with the statement of policy contained in H.R. 12807, further amendment to the military procurement law is not deemed necessary." S. Rep. No. 1219, 92d Cong., 2d Sess., reprinted in (1972) U.S. Code Cong. & Ad. News 4771.2.

The Brooks Act defined "architectural and engineering services" as including, "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." 40 U.S.C. 541(3)(1976).

According to the Senate Report, the definition requires the utilization of the method of selecting provided in the bill for the procurement of architectural or engineering services, or also when the scope and nature of the proposal, to a substantial or dominant extent, logically falls within the unique expertise of these professions... The purpose of this definition is to encompass all of the services which architects and engineers might logically or justifiably perform. S. Rept. No. 1219, 92d Cong., 2d Sess., reprinted in (1972) U.S. Code Cong. & Ad. News 4773.

The terms "related," "incidental" and "ancillary" services were used throughout the Brooks Act and its legislative history to include other professional services that historically have been related to A/E services, such as surveying and landscape architecture. The Preamble, as well as the legislative history, of the Brooks Act reinforced an expansive reading of the term "incidental services." These sources stated as the express purpose of the legislation: "to establish Federal policy concerning the selection of firms and individuals to perform architectural, engineering and related services for the Federal Government,..." H. Rep. No. 1188, 92d Cong., 2d Sess. 1 (1972); S. Rep. No. 1219, 92d Cong., 2d Sess., reprinted in (1972) U.S. Code Cong. & Ad. News 4773.

The reports went on to define "professional services as those of an architectural or engineering nature," "...as well as "ancillary services", that member of these professions and those in their employ may logically or justifiably perform. The purpose of this definition is to encompass all of the services architects or engineers might logically or justifiably perform." Id

From the statutory language and legislative history of the Brooks Act it is evident that the Congress intended to "include" in the term "architectural and engineering services" other directly related services, such as surveying and mapping, that traditionally have been considered professional services, whether or not they actually constitute services "of architectural or engineering nature" (to use the words of the Brooks Act). The professional stature accorded to the surveying and mapping professions ranks them equal or at least incidental to A/E services, because they require similar professional skills, experience, educational and licensing qualifications.

Further indication that the definition of A/E services was broad in scope and the provisions of the bill were intended to cover other related licensed professionals is found in the following comments made during the Senate debate:

Mr. Jackson: This legislation would not establish any new policy regarding the procurement of architect-engineer services by Federal agencies, but it would confirm long-established existing practices whereby such professional services are secured by a professional selection and

Notice - 9

negotiation process under which the emphasis is on professional qualification and expertise for the specialized services which are needed from time to time for the Federal agencies to carry out their missions...we have over the years excluded professional services from the normal competitive bidding requirements for government purchase of services (41 U.S.C. 252(c), 10 U.S.C. 2304(a), 41 U.S.C. 5). Id. at 36182.

Mr. Randolph: Ask 10 A/E firms to bid on the design of a particular facility and many agencies will take the easy way out and select the low bidder. Under such circumstances, we may end up with a technically capable architect or engineer, but one who, for lack of experience or because of a desire to stay within his bid reduces the time spent on field surveys or in the preparation of detailed drawings, or in providing inspection services. As a result, the government may have saved itself a half of one percent to the cost of construction, operation or maintenance. Id. at 36188.

Senator Jackson's statement was useful in highlighting much of the precedents and statutory directives to the military and civilian agencies to use traditional negotiation procedures to procure personal professional services on the basis of professional qualifications and expertise.

For purpose of these comments and the instant rule-making notice, however, Senator Randolph's view of the importance of the Brooks Act's procedures is far more significant. Senator Randolph's support for the Brooks Act was based in part of his concern that corners would be cut in conducting field surveys, which, of course, includes topographic surveys, which are delivered to clients on maps. The Senator's statement would have made little sense if the Brooks Act procedures did not cover procurement of field surveys, including mapping.

Interpretation of the Brooks Act

Federal agencies continued to use the negotiation procedure for surveying and mapping procurements after enactment of the Brooks Bill, just as they had previously. In 1977, however, the Comptroller General issued what has become a landmark decision in the field of architecture, engineering, surveying and mapping. The matter of Ninneman Engineering - reconsideration (B-184770)(March 9, 1977) is significant not only for what the Comptroller said, but more importantly for what was not said, and how it has since been interpreted by federal agencies and subsequent GAO opinions.

In the initial Ninneman decision, 85-year old Jack Ninneman represented himself in his bid protest without knowledge of the legal precedents for surveying procurement by negotiation. After Mr. Ninneman prevailed, and without his knowledge, the Forest Service requested reconsideration. On reconsideration, the GAO adopted the Forest Service's arguments. A later GAO ruling followed with regard to mapping for the USGS.

The GAO and the Forest Service concluded that because the cadastral survey (boundary survey of national Forest System lands) involved in "Ninneman" was not related or "incidental" to any potential construction project, the survey properly could have been (but was not required to be) procured under competitive statutes and regulations. The GAO and the Forest Service interpretation that "incidental" meant a service incidental to a particular construction project was a

Notice-9

departure from the long-standing administrative practice that was codified by the Brooks Act. Neither the GAO nor the Forest Service, however, questioned the applicability of traditional procedures to construction-related surveying and mapping services. For purposes of this comment and the instant rule-making notice, it is also important to note that the Comptroller General in "Ninneman", upheld the Forest Service's authority to follow the procedures used. No decisions have been found in which the Comptroller General has concluded that no agency lacked the authority to follow traditional (or Brooks Act) procedures in selecting professionals. Indeed, in a 1966 opinion, the Comptroller General set forth a list of "the types of A/E services" which included "(s)urveys: Topographic, boundary utilities" among the services excluded by the General Services Administration from the six percent limitation.

See: U.S. Comp. Gen., B-152306, "Government-wide Review of the Administration of Certain Statutory and Regulatory Requirements relating to Architect-Engineer Fees", Report to the Congress 67 (Apr. 20, 1967) (reprinting the 1966 opinion).

Since 1977, some federal agencies determined that the "Ninneman" decision prohibited the use of Brooks Act procedures for surveying and mapping procurements, and A/E procurements not incidental to construction.

The Comptroller General has since ruled, however, that "the language of the (Brooks) statute does not limit the scope of the selection procedures to construction-related A/E services." The decision went on to point out that

"it is reasonable to assert that Congress intended the military to adhere to those traditional methods of A/E selection embodied in the Brooks Act to the same extent as the civilian agencies of the Federal Government. It is reasonable to read the exception for A/E contractor selection...as applying to A/E contract generally, rather than to construction only."

See: U.S. Comp. Gen., B-199548.2, Association of Soil and Foundation Engineers -- Reconsideration, August 13, 1982.

Since the date of that decision, Congress has codified the A/E selection procedures of 40 U.S.C. 541 et. seq. for use by military agencies. Congress included language in the Military Construction Codification Act (Pub. L. No. 97-214) to codify (a) the Comptroller General's decision (b) the military agencies' authority to use the "traditional" method of awarding architect-engineer contracts (as provided in annual Military Construction Authorization Act from 1970 through 1982) and (c) the original intention that surveying and mapping services were to be covered by the Brooks Act. The Act added a new Section 2855 to 10 U.S.C. to read as follows:

"2855. Law applicable to contracts for architectural and engineering services and construction design

Contracts for architectural and engineering services and construction design in connection with a military construction project or a military family housing project shall be awarded in accordance with title IX of the Federal Property and Administration Services Act of 1949 (40 U.S.C. 541 et.

Notice - 9

seq.)."

The reports of the House and Senate Committees on Armed Services (H. Rept. 97-612, S. Rept. 97-474) provide (at 19) that

"Architectural and engineering services and construction design include all engineering services and design required for a proposed military construction project -- site investigations, surveys and maps

As of October 1, 1982, the effective date of Pub. L. No. 97-214, all military agencies have been using Brooks Act procedures for surveying and mapping contracts.

Congress provided clear an unambiguous statutory authority in Public Law 98-63, a bill making supplemental appropriations for FY 1983.

"Contracts for architect and engineering services, and surveying and mapping services, shall be awarded in accordance with title IX of the Federal Property and Administration Services Act of 1949 (40 U.S.C. 541) et. seq.)." (H.R. 3069, page 11, 98th Congress, 1st Session)

As a result of that language, the Corps of Engineers (civil work division, which is not a title 10 agency) returned to the Brooks Act procedure for surveying and mapping procurements. The Corps also promulgated a broad and expansive definition of surveying and mapping subject to Brooks Act procedures (SEE EFARS 36.601-4), which is the basis for the language in the instant Federal Register notice.

In providing explanation of the provision, Congress appeared to have intended to make the authority both permanent and government-wide. Although the relevant language is provided in the Corps of Engineers section of the bill's accompanying report, (H. Rept. No. 98-207, 98th Congress, 1st Session. (at pp. 40 & 100)), the language is repeated under a section entitled "Changes in the Application of Existing Law" (at p. 111) without qualification or limitation of its application.

This fact was underscored by the Congress when the Competition In Contracting Act first passed the Senate. Prior to its inclusion in the Budget Deficit Reduction Act, (P.L. 98-369), the Senate considered and passed S. 338, the original Competition in Contracting Act, on November 11, 1983. During Senate debate on the bill, Senator Cohen, the bill's sponsor, and Senator Percy, a Senate manager of the Brooks Act in 1972, engaged in a colloquy to clarify the intent of Congress with regard to the application of the Brooks Act to surveying and mapping services.

Mr. Percy. Mr. President. I rise with an inquiry. The Competition In Contracting Act would revise the Federal Property and Administrative Services Act to broaden the requirements for competition, but the language of section 303 contains the words "...except as ...otherwise authorized by law..." carrying forward a very important distinction made in the Brooks Act, 40 U.S.C. 541. The distinction provides that architect and engineering services, defined as "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," may

Notice - 9

be procured by competitive negotiation -- a time-tested method for acquiring professional services of this kind. Am I correct that this important distinction will be preserved under the language of section 303?

Mr. Cohen. Yes; it would be preserved.

Mr. Percy. I thank the Senator. I have also been concerned that the Comptroller General has given an overly restrictive interpretation to this definition of architecture and engineering services, and has decided on several occasions that surveying and mapping services are not included. However, the issue has been more recently addressed in the Supplemental Appropriations Act for 1983. The section of that act appropriating funds for the Corps of Engineers of the Department of the Army provides that "contracts for architect and engineering services, and surveying and mapping services, shall be awarded in accordance with title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541 et seq.)..." Under this language, the Corps of Engineers will award contracts for mapping and surveying in accordance with the Brooks Act.

Mr. Cohen. That is a positive step. I think it is important to note, moreover, that this language does not only apply to the Corps of Engineers, but to all Government procuring agencies.

Mr. Percy. Would the Competition in Contracting Act then carry forward the construction of the Brooks Act contained in that language from the Supplemental Appropriations Act?

Mr. Cohen. That is correct.

Mr. Percy. I thank the Senator from Maine for his most helpful clarification.

See: Cong. Rec. (Daily Edition) Vol. 129, No.155, November 11, 1983, p. S.16007

It is apparent Congress intended to make application of the Brooks Act to surveying and mapping services permanent and government-wide. This is not only evident by the aforementioned colloquy between Senators Percy and Cohen, but also by the construction of the provision in the 1983 Supplemental Appropriation Public Law 98-63).

If Congress had intended for the appropriation language to be limited to the balance of FY 1983, the provision would have been prefaced by "None of the funds appropriated by this Act..." If Congress had intended for the language to be limited to the Corps of Engineers, the provision would have been prefaced by "The Secretary of the Army, acting through the Chief of Engineers is hereby authorized..." or similar qualifications and limitations.

During the 99th Congress, several actions were taken on pending legislation to once again clarify the intent of Congress that surveying and mapping services should be procured by the Brooks Act process.

Legislation reauthorizing Superfund, the Comprehensive Emergency Response, Compensation and Liability Act (CERCLA) (also known as "Superfund") to clean up hazardous waste sites includes a

Notice - 9

provision requiring use of the Brooks Act for Federal, State and private surveying and mapping contracts and subcontracts. The language provides

Sec. 118 (e) "...Response action contractors and subcontractors for program management, construction management, architectural and engineering, surveying and mapping and related services shall be selected in accordance with title IX of the Federal Property and Administrative Services Act of 1949.

See: 42 U.S.C. 9619(f)

Language to require the Defense Mapping Agency to use the Brooks Act for its surveying and mapping contracts was included in the Fiscal Year 1986 Department of Defense Appropriations Bill, H.R. 3629. It provided

"Sec. 8088. None of the funds appropriated in this Act shall be used for professional surveying and mapping services performed by contract for the Defense Mapping Agency unless those contracts are awarded in accordance with the selection procedures outlined pursuant to section 2855 of title 10, United States Code."

See: Public Law 99-190

The report of the Committee on Appropriations provided further clarification of the intent of the provision

"A new general provision (section 8088) has been added that directs the Defense Mapping Agency (DMA) to evaluate contractors for professional mapping, charting and geodetic services on the basis of demonstrated competence and qualifications. This general provision clarifies these professional mapping, charting and geodetic services as architecture, engineering and related services, requiring the services to be procured in accordance with 10 United States Code 2855 for military agencies and 40 United States Code 541 et. seq. for civilian agencies."

See: H. Rept. 99-253 Part I at pgs. 24, 93

Congress then followed that action the enactment of a number of additional pieces of legislation – all with the same intent; to provide for application of the Brooks Act to a broad, government-wide family of mapping services.

The Brooks Act itself was amended in 1988 (section 742 of PL 100-656 and section 8 of PL 100-679.

The definition of A/E services was modified to provide:

- (1) The term "architectural and engineering services" means—
 - (A) professional services of an architectural or engineering nature, as defined by State law, if applicable, which are required to be performed or approved by a person licensed, registered, or certified to provide such services as described in this paragraph;

Notice - 9

- (B) professional services of an **architectural** or **engineering** nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and
- (C) such other professional services of an **architectural** or **engineering** nature, or incidental services, which members of the **architectural** and **engineering** professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value **engineering** construction phase services, soils **engineering**, drawing reviews, preparation of operating and maintenance manuals, and other related services. (emphasis added).

Congress provided no limitation to this provision. The legislative history shows Congress intended a broad, government wide application of the provision. In debate in the Senate, Senator Breaux said:

“By surveying and mapping, I am referring to the many professional services the Government obtains from private surveying and mapping firms. This includes activities associated with measuring, locating, and preparing maps, charts, or other graphical or digital presentations depicting natural or man made features, phenomena and legal boundaries of the Earth, performance of which, under this provision, is provided by licensed, certified or otherwise qualified professionals, such as surveyors, geodesists and photogrammetrists. Under this provision, if there is an applicable State licensing law, it shall be followed.”

SEE: Congressional Record, Daily Edition, October 18, 1988, p. S16672-3.

In the House, Rep. Myers commented:

(s)ince the measure known as the Brooks Act was enacted in 1972, there have been a number of Comptroller General decisions which have had the effect of narrowing the application of the law, particularly in the field of surveying and mapping. The purpose of the new definition in the bill before us is to recognize the realities of current professional practice and new technology in engineering and related disciplines. It also clarifies the intent of Congress with regard to those relevant GAO decisions ... It is the intent of the new definition and an identical provision in the House-passed OFPP Act ... to clarify and make permanent the application of the Brooks A/E Act to the services of surveying and mapping firms and other appropriate services for all Federal agencies.

SEE: Congressional Record, Daily Edition, October 12, 1988, p. H10058-9.

Also in the House, Rep. Livingston commented:

The provision in title VII will clarify and make permanent the application of the Brooks A/E law to services of surveying and mapping firms and other appropriate services to all Federal agencies ...

SEE: Congressional Record, Daily Edition, October 12, 1988, p. H10056.

When the House gave final approval to one of the bills amending the Brooks Act, Rep. Mavroules raised questions concerning the new definition's applicability to the Defense Mapping Agency (later named the National Imagery and Mapping Agency and then the National Geospatial-Intelligence Agency). As a result of that colloquy (SEE: Congressional Record, Daily Edition, October 12, 1988, p. H10613), DMA viewed certain of its contracts for services as exempt.

That single-agency exemption was later reflected in the FAR in 36.60-1. It read:

“However, mapping services such as those performed by the Defense Mapping Agency that are not connected to traditionally understood or accepted architectural and engineering activities or have not themselves traditionally been considered architectural and engineering services shall be

Notice - 9

procured pursuant to provisions in parts 13, 14 and 15." SEE FAR 36.601-4(a)(4), Federal Register, Daily Edition, June 25, 1991, p. 29129.

Since the time that FAR provision was promulgated, Congress again repeatedly sought to change the provision and obviate the Marvoulos colloquy.

Congress clarified the aforementioned FAR provision when it enacted section 403 of Public Law 101-574. It provided:

"Pursuant to section 742 of Public Law 100-656, modifications to Part 36 of the Federal Acquisition Regulation (48 CFR Part 36) shall specify that the definition of architectural and engineering services includes surveying and mapping services to which the section procedures of Subpart 36.6 of the Federal Acquisition Regulations apply."

Again, Congress did not exempt any agency, did not limit this provision to certain agencies and did not limit it to certain types of mapping services. This call for a revision to the FAR is what has finally been published in the instant matter.

The application of the Brooks Act qualification based selection (QBS) process to DMA, and other agencies, was again reinforced by Congress in 1992:

"Solicitations for the award of contracts for architectural and engineering services issued by a Military Department or a Defense agency shall comply with the requirements of subsections (a) and (b) of section 2855 of title 10, United States Code." SEE Section 202(d) of Public Law 102-366.

Congress again addressed the single agency exempted (Defense Mapping Agency) in FAR 36.601-4(a)(4), when it included language in the appropriations for that agency. SEE H. Rept. 104-617, to accompany H.R. 3610, 104th Congress, the fiscal year 1997 Defense Appropriations bill and H. Rept. 104-863, to accompany H.R. 3610, Public Law 104-208; and H. Rept. 105-265 (H.R. 2266, PL 105-56, 105th Congress, the fiscal year 1998 Defense Appropriations bill.

Moreover, the 1999 Defense Appropriations bill clearly and unambiguously settled the matter. It provided:

"None of the fund in this Act may be used by the National Imagery and Mapping Agency for mapping, charting and geodesy activities unless contracts for such services are awarded in accordance with the qualifications based selection process in 40 U.S.C. 541 et. seq. and 10 U.S.C. 2855: Provided, that such agency may continue to fund existing contracts for such services for not more than 180 days from the date of enactment of this Act; Provided further, that an exception shall be provided for such services that are critical to national security after a written notification has been submitted by the Deputy Secretary of Defense to the Committee on Appropriations of the House of Representatives and the Senate." SEE section 8101, Public Law 105-262

Finally, in House Report 105-746, to accompany this language the Appropriations Conferees said:

Notice-9

"The conferees included a general provision (Section 8101) to provide permanent clarification of the application of the "Brooks Act" qualifications based selection (QBS) process to surveying, mapping, charting and geodesy contracts of the National Imagery and Mapping Agency (NIMA). The conferees expect the officials responsible for the Federal Acquisition Regulations (FAR) to strike and revise the last sentence of section 36.601-4(a)(4) of the FAR (48CFR 36.601-4(a)(4)) to define "Surveying and mapping" in such a manner as to include contracts and subcontracts for services for Federal agencies for collecting, storing, retrieving, or disseminating graphical or digital data depicting natural or man made physical features, phenomena and boundaries of the earth and any information related thereto, including but not limited to surveys, maps, charts, remote sensing data and images and aerial photographic services."

It should be noted that DMA/NIMA/NGA now uses the FAR part 36 process for its contracting for these services. It is also noted that the matter of application of this provision of law and regulation to surveying and mapping services has also been consistently upheld by the Comptroller General (SEE Forest Service, Department of Agriculture, Request for Advance Decision, B-233987, July 14, 1989; White Shield, Inc., B-235522, September 21, 1989; and White Shield, Inc., B-235967, October 30, 1989).

Therefore, MAPPS believes OFPP and the FAR Council is not only authorized and justified, but indeed is required by law to revised the FAR in 36.601-4(a)(4) to read as follows:

"Contracting officers should consider the following services to be "architect-engineer services" subject to the procedures of this subpart: Professional surveying and mapping services of an architectural or engineering nature. Surveying is considered to be an architectural and engineering service and shall be procured pursuant to 36.601 from registered surveyors or architects or engineers. Mapping associated with the research, planning, development, design, construction or alteration of real property is considered to be an architectural or engineering service and is to be procured pursuant to 36.601. ~~However, mapping services such as those performed by the Defense Mapping Agency that are not connected to traditionally understood or accepted architectural and engineering activities, are not incidental to such architectural and engineering activities or have not in themselves traditionally been considered architectural and engineering services shall be procured pursuant to provisions in parts 13, 14, and 15.~~ Contracts and subcontracts for surveying and mapping including activities associated with measuring, locating and preparing maps, charts, or other graphical or digital presentations depicting natural or man made features, phenomena, and legal boundaries of the Earth, performance of which, under this provision, is provided by licensed, certified or otherwise qualified professionals, such as surveyors, geodesists and photogrammetrists, including but not limited to surveys, maps, charts, remote sensing data and images and aerial photographic services, shall be awarded pursuant to 36.601."

John M. Palatiello
MAPPS Executive Director
1760 Reston Parkway, Suite 515
Reston, VA 20190
p-(703) 787-6996
f-(703) 787-7550
e-john@mapps.org
w-www.mapps.org

Mapping Notice - 10



Deb_Green@fws.gov

05/21/2004 02:22 PM

To: MappingNotice@gsa.gov

cc: Barb_White@fws.gov, Alan_Fisher@fws.gov, Deb_Green@fws.gov,
rpearsall@usgs.gov

Subject: Mapping Notice: 48 CFR Part 36, Federal Acquisition Regulation;
Application of the Brooks Act to Mapping Services

To: The FAR Secretariat

Re: Mapping Notice: 48 CFR Part 36, Federal Acquisition Regulation;
Application of the Brooks Act to Mapping Services

Due Date for Comments: On or before May 24, 2004

Thank you for the opportunity to comment on the current policy set forth in FAR 36.601-4(a)(4) pertaining to selection procedures for the acquisition of mapping services. The general opinion of the U.S. Fish and Wildlife Service mapping community is that the current provisions prescribed by the FAR are appropriate and do not require any changes.

While application of the Brooks Act to a wider scope of mapping services may not adversely affect large-scale federal procurements, a major drawback would be its application to small contracts and subcontracts for these services. The negotiated price for many of the Service's contracts range from <\$5,000 to \$25,000. An amendment to the current procedures would require field offices with limited staff to conduct extensive contract research and negotiations for procurements at these lower dollar thresholds. Therefore, the current provisions in FAR parts 13, 14, and 15 are more appropriate and should not be amended.

Deb Southworth Green
National GIS Coordinator
U.S. Fish and Wildlife Service
Division of Information Technology Management
Tel: 303-274-3574
Fax: 303-275-2318

Mapping Notice - 11



"Dee Vaidya"
<dvoidya@tgstech.co
m>

To: MappingNotice@gsa.gov
CC:
Subject: Mapping Notice

05/21/2004 02:48 PM

Ladies and Gentlemen,

Please note, we support QBS for mapping and urge a revision to the FAR to clarify this issue.

Thank you,

Dee Vaidya
President & CEO
Techni Graphic Systems, Inc.
2345 Gateway Drive
Wooster, OH 44691
Tel: 330-263-6222
Fax: 330-263-6294
Email: DeeV@tgstech.com
Web: www.tgstech.com

Mapping Notice - 12



Ed_Harne@blm.gov

05/21/2004 04:00 PM

To: MappingNotice@gsa.gov
cc: Joe_Federline@blm.gov
Subject: Subject: Mapping Notice: Application of the Brooks Act to Mapping Services

Ms Laurie Duarte

General Services Administration

FAR Secretariat (MVA)

1800 F Street, NW, Room 4035

Washington, DC 20405

Dear Ms Duarte:

This letter is in response to the GSA's request for comments on 48 CFR Part 36, Federal Acquisition Regulation; Application of the Brooks Act to Mapping Services. As the Bureau of Land Management's Senior Geographic Scientist, I am opposed to extending FAR Part 36 QBS provisions to all mapping, remote sensing, or other geospatial data services for the following reasons:

· Agency technical staff and procurement officials should determine when A/E QBS procedures apply. When design issues are present or precise measurements are required for architectural or real property issues, we can and do use A/E QBS procedures.

The Brooks Act is intended to assure professional products where design is critical and architecture or real property is at issue. However, much of the Bureau's resource imaging and mapping does not require highly accurate measurements nor involve the site-specific impacts of buildings, roads, and property boundaries. Our staff is capable of making such determinations and frequently uses QBS procedures for such services as land surveys.

· Requiring A/E QBS procedures for all "mapping services" is far too broad and will be detrimental to the efficiency and effective operation of our geographic science activities.

One example of the mapping required by the bureau is mapping of wildlife habitat boundaries. Such work requires only a coarse interpretation; no precise measurements are needed. It makes no sense to require precise geo-positioning accuracy when delineating coarse natural resource boundaries. To do so is to produce a more costly product with no real increase in accuracy.

· Current Federal Policies permit latitude in specifications for geospatial data.

There is no requirement for aerial imagery or geospatial data to be mapped to a particular specification or precision. The Federal Geographic Data Committee has established metadata documentation that requires the accuracy

Notes 12

of all geospatial data be individually defined and associated with the data. Subsequent users can immediately determine if the accuracy of a given data product will meet their needs.

Using QBS procedures when not warranted will incur unnecessary expense and delay. Technology has reduced the need for professional services for activities such as GPS mapping and digital imagery. GPS permits individuals with relatively little experience to generate adequate resource mapping products. Requiring contractors to have a professional license to provide the government with such products negates much of the cost savings of GPS technology.

Likewise, advances in digital imaging and image processing software have simplified the creation of rectified aerial photography or orthophotos. Professional architectural and surveying skills are no longer required. Orthophotography has become a commodity that any company with the appropriate equipment can produce. Imagery can be ordered to a specification and then inspected to verify that the specification was met.

Mandatory application of A&E QBS procedures will inhabit interagency partnerships. Of great concern is the requirement to extend QBS procedures to subcontracts for survey and mapping activities. Many Federal agencies partner with state and local governments for mapping activities, especially aerial photography. Sometimes, the state or local government assumes the acquisition responsibility. This proposed change would require that the contract be awarded using QBS procedures, potentially against the preferences of the local procurement agent. This will hamper our efforts to partner with state and local governments, as they will resist assuming the additional delay and cost of QBS procedures.

In conclusion, we believe the intent of the Brooks Act is to allow the government to contract for professional architect and engineering services where design, precision, accuracy, and safety are paramount. However, it also allows agencies to use cost based selection procedures when it is appropriate. Most of the Bureau of Land Management's geospatial activities do not require A&E QBS. We deal with natural resource values that gradually transition across the landscape. Precise measurements are not required. In addition, we desire to take advantage of new imaging and mapping technologies, and the economies they provide. To require A&E QBS procurement procedures will unnecessarily lengthen the contracting process, delay delivery of products and services and needlessly incur additional cost. Federal agencies must retain the flexibility to determine when it is appropriate for a professional A/E product and when a cost-competitive procurement will more efficiently meet their needs.

Sincerely,

Ed Harne
Bureau of Land Management
Headquarters Office
Geographic Sciences (WO-210)
202 452-5007

Mapping Notice-13



"Robert Wright"
<rawright@msn.com>
05/21/2004 04:53 PM

To: MappingNotice@gsa.gov
cc:
Subject: mapping notice

Please be advised I am against the changes proposed by the MAPPS organization.

I believe them to detrimental to the government obtaining a fair and reasonable price for mapping services.

It is a proposal to benefit a few "good ol boys" who wish to keep any competition out of the process and protect their way of doing business with the government.

My contact information is below.

Bob Wright

[Get Your Own Free Email Business Card](#) | [Add to an online address book](#)
[Click to See Sender's Card](#)

809740_a22cd.ewp

Mapping Notice -14



"Tony Follett"
<afollett@aeromap.co
m>

To: MappingNotice@gsa.gov
cc:
Subject: Mapping Notice

05/21/2004 05:16 PM

To Whom It May Concern,

In my 30+ years of contracting with government agencies for photogrammetric services I have seen significant improvements in the policy and practice of procuring these services. Although great strides have been made with QBS, further clarification and emphasis needs to be placed on use of QBS and regulations enumerated in the FAR.

In my experience, many agencies comply with the letter and intent of the FAR. However, there are still some agencies that are not clear on procurement requirements, and unfortunately some who chose to ignore the required process for procuring professional photogrammetric services. Therefore, I am writing to state my unqualified support in using QBS for mapping, and urge further revisions to the FAR to remove any ambiguity about using QBS.

Thank you for your consideration of my comments.

Regards,

Tony Follett
Senior Vice-President and Division Manager
AeroMap U.S.
2014 Merrill Field Drive
Anchorage, AK 99501
Tel 907-272-4495
Fax 907-274-3265
Cell 907-223-4809
Web www.aeromap.com



Mapping Notice-15

MAY 24 2004

United States
Department of
Agriculture

Ms. Laurie Duarte
General Services Administration
Federal Acquisition Regulation Secretariat (MVA)
1800 F Street, NW
Room 4035
Washington, DC 20405

Farm and Foreign
Agricultural
Services

Farm Service
Agency

1400 Independence
Ave, SW
Stop-0517
Washington, DC
20250-0517

Subject: Mapping Notice

Dear Ms. Duarte:

This letter provides comments to 48 CFR Part 36, Federal Acquisition Regulation (FAR); application of the Brooks Act to Mapping Services. As the Executive Sponsor for Geographic Information Systems (GIS) activities, the Department of Agriculture (USDA), Farm Service Agency (FSA), I strongly opposes any modifications to the FAR that expands the application of the Brooks Act qualifications based selection process (QBS) for a broader range of surveying and mapping services than are currently provided for. FSA asserts that such a change is not in the best interest of the Government and will detrimentally affect USDA programs and partners, and consequently, its customers and the American taxpayer.

The current regulation stated in FAR Subpart 36.6-4(a)(4) clearly demonstrates the intent of the Brooks Act to assure public safety in surveying and mapping services "...associated with the research, planning, development, design, construction, or alteration of real property..." (emphasis added). FSA's imaging and mapping activities support agricultural programs and applications such as crop reporting, farm record maintenance, and field perimeter measurement. It is not used for architectural or engineering (A&E) applications or to design or construct real property such as buildings, dams, bridges, or roads. Extremely high degrees of precision and accuracy are not required for our projects and public safety is not an outcome of the information we collect. To require GIS-related services and products, such as aerial photography, Global Positioning System field perimeter capture, digitization of crop field boundaries, production of orthoimagery, or development of rectified products from satellite imagery that are not directly associated with real property, be subjected to architect and engineering standards of procurement will unnecessarily increase procurement costs and require the Agency to purchase services it does not need.

For our agricultural activities, technology advances in hardware and software over the past few years have provided tools by which quality mapping products can be generated and disseminated rapidly and efficiently by individuals with limited expertise. FSA, as well as its sister agencies in USDA, have been involved in a major modernization initiative that provided appropriate hardware, GIS software, and training to USDA Service Center offices across the Nation. Requirements of the Federal Geographic Data

Notice - 15

Ms. Laurie Duarte

Page 2

Committee metadata standards are incorporated and adhered to. Geospatial data, such as aerial photography and digital orthoimagery, form the base layer or backdrop of the system by which FSA staff compiles cropping reports, updates farm related production data, and performs a host of other day-to-day activities to compile, track, and disseminate agricultural information. Any changes to the FAR that expand the Brooks Act to include the storing, retrieving, or disseminating of graphical or digital data goes far beyond the scope of the Brooks Act's original intent. The Government should not have to pay additional procurement costs and eliminate vendor competition to take advantage of technology advances. Instead, the technology advances should support cost reduction and procurement of GIS data, services, and technology should be through fair and open competition.

Proposed changes will also restrict small and/or small disadvantaged businesses from participating in GIS-related procurements by requiring professional positions that are not necessary or required for the successful completion and delivery of quality products or services. Many small businesses currently provide quality GIS-related services and products through technology advances and without professional surveyors, architects, or engineers. It allows them to keep their costs down and to be competitive. Small/disadvantaged businesses have proven they can deliver quality products, and the Government should have the ability to utilize them in GIS-related contracts as appropriate.

FSA administers the National Agriculture Imagery Program (NAIP). In 2003, it acquired imagery for over 1,000 counties during the growing season to use for program implementation and compliance. This imagery is instrumental in helping Government program managers effectively utilize limited funding and staff resources while continuing to provide quality programs and services. NAIP also encourages partnerships with other Federal, State, and local entities and adheres to the Office of Management and Budget and the General Accounting Office guidance to increase coordination between these entities, leverage funding, and reduce duplicative acquisition investments. Specifications for this program are very well defined and products are procured using "Best Value" contracting procedures where technical proposals are evaluated and ranked separate from the pricing proposals. Final source selection is determined by the overall ranking with technical and price scores combined. Through best value procurement procedure, FSA was able to acquire Statewide aerial photography and digital orthoimagery at an average of \$12 per square mile in an accelerated time frame. The U.S. Geological Survey (USGS), in past imagery acquisition programs, has used A&E/QBS contracts to produce similar deliverables. The USGS deliverables are estimated at \$40 to \$50 per square mile and result in products significantly more costly without noticeable improvement in quality or timeliness.

Notice-15

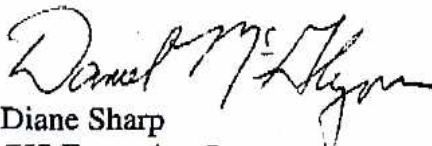
Ms. Laurie Duarte
Page 3

In the administration of NAIP, FSA set a precedent to successfully provide high quality products and services at very competitive prices that result in significant savings to the Government, our State and local partners, and the American taxpayer. Any proposed amendment of the FAR to apply the Brooks Act to a broader range of re-defined "surveying and mapping services" will negate those positive advances. In these times of severely constrained budgets, such an amendment will negatively impact our ability to implement Agency programs, result in possible reduction or cancellation of those programs, and likely require redirection of limited resources to less effective means of satisfying business requirements.

FSA does not support applying a broader range of re-defined surveying and mapping services to the Brooks Act. However, the USDA Forest Service recently drafted a possible alternative provision to determine where procurement for professional "mapping services" is applicable and which FSA could support. The recommendation is to have all potential procurements pass a three-part test involving real property, scale, and accuracy. If the mapping services product will be used for research, planning, development, design, construction, or alteration of real property, and if the scale is 1:1200 or larger and its horizontal positional accuracy is 0.3 meters or less (Circular Error Probability 95 percent of 0.3 meters), then Part 36 provisions should be considered. This fine scale and accuracy implies a precision where professional services would be beneficial for the final product. In cases where this type of precision is not required, the Government would not be required to pay additional cost or exclude competition for services it does not need.

The Brooks Act was designed to provide the highest quality mapping and surveying services where health, welfare, and public safety, with regard to real property development or construction, are concerned. A FAR amendment that would encompass all surveying and mapping activities is not in the best interest of the Government and does not provide any useful additional benefit to the public or public safety.

Sincerely,

for 
Diane Sharp
GIS Executive Sponsor
Farm Service Agency



Mapping Notice -16

May 21, 2004

General Services Administration
FAR Secretariat (MVA)
1800 F Street, NW
Room 4035
ATTN: Laurie Duarte
Washington, DC 20405

Re: Mapping Notice

Dear Ms. Duarte:

As way of introduction, Environmental Systems Research Institute, Inc. (ESRI), is a California corporation with its corporate headquarters in Redlands, California, with regional offices located throughout the United States. ESRI is the industry and worldwide market share leader in the field of geographic information systems (GIS). ESRI's GIS software and related mapping services support diverse applications for private sector businesses, education, military, federal, state, and local government users on a worldwide basis.

On behalf of ESRI, I am writing to you in response to the Federal Acquisition Regulatory Council's ("FAR Council") request for public comment on 48 CFR Part 36—Federal Acquisition Regulation; Application of the Brooks Act to Mapping Services, as published in the March 23, 2004 edition of the *Federal Register* (69 FR 13499). Or stating the issue another way, whether the procurement processes mandated in FAR subpart 36.6 which implement the Brooks Act (P.L. 92-582) should be expanded to include a broader range of "mapping services."

ESRI is pleased to have this opportunity to submit these comments in order to articulate ESRI's corporate position on the issue presented. ESRI requests that the FAR Council not amend the current language that differentiates between the various types of "mapping services" as articulated in FAR 36.601—4(a)(4) in an effort to expand the application of the Brooks Act to a broader range of "mapping services" that are completely unrelated to traditionally understood and accepted architectural, engineering, and surveying activities ("A&E Services"). The procurement policies and procedures should continue to vary depending on the nature of the mapping services sought in order to provide the federal government with the most procurement options. Expanding the application of the Brooks Act to a broader range of mapping services is not in the best interest of the federal government nor the U.S. taxpayers.

Rather than amend FAR 36.601—4(a)(4) with overly broad and vague or overreaching language, the FAR Council could consider providing better regulatory guidance to federal government department or agency's Contracting Officers by clarifying the last sentence of FAR 36.601—4(a)(4) and explaining what types of mapping services fall outside the scope of "traditionally understood or accepted A&E activities." In doing so, such clarifications would aid these Contracting Officers in rendering consistent interpretation and application of FAR 36.601—4(a)(4).

ESRI is of the belief that the current regulatory language articulated in FAR 36.601—4(a)(1), (2), (3), and the first two sentences of subparagraph (4) adequately frames the scope of traditionally understood or accepted A&E Services to be procured using the processes at FAR 36.600 et seq. which implements the Brooks Act. It is ESRI's further belief that the legislative history back in 1972 related to the original Brooks Act reflects and supports that more narrow interpretation contrary to the one commenter's stated broader interpretation. On those occasions where a federal government department or agency seeks to procure mapping services within the definitional scope of traditionally understood or accepted A&E Services, ESRI has and will continue to compete for those procurement contracts pursuant to FAR 36.600 et seq. that implements the Brooks Act processes.

With that said, there have been tremendous technological advancements made in the area of GIS technology since 1972. With the resulting widespread adoption, application, and use of GIS technology to

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MVA
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perform geospatial analyses for nearly limitless applications, completely unrelated to traditionally understood or accepted A&E Services, A&E activities are now a subset in the overall universe of mapping services. The ever expanding non-A&E, geospatial applications using GIS technology and related mapping services will not displace nor render such traditional A&E Services obsolete, but rather these non-A&E, geospatial applications build on the traditional A&E efforts. Most of these non-A&E, geospatial applications and resulting analyses can and are regularly performed without the need, oversight, or additional expense of an architect, engineer, or surveyor.

Therefore, ESRI urges the FAR Council to consider the following:

- **Differentiate Between Other Mapping Services vs. Traditional A&E Services.** GIS technology and related mapping services have more in common with applied "information technologies" (IT) than they do with the traditionally understood and accepted A&E Services that "are directly and immediately related to the research, planning, development, design, construction, or alteration of real property, including the professional services associated with the construction of buildings, roads, bridges, and other physical infrastructure." (*Emphasis added.*) That definition provides guidance into the legislative intent of the Brooks Act and establishes a clean, conceptual dividing line between what constitutes traditional A&E Services and those mapping services beyond the scope of traditional A&E Services. Attempts to bring GIS-related mapping services under the definitional umbrella of traditionally understood and accepted A&E Services by creating a new, overly inclusive subdefinition for "mapping services" is misplaced, technologically inaccurate, and runs counter to the legislative intent of the Brooks Act.

Also, any such amendment to FAR 36.601—4(a)(4) would then have the appearance of being overly broad and vague, overreaching, protectionist, exclusionary, and anticompetitive in nature to the sole benefit of any special interest group for the traditionally understood and accepted A&E Services. The proposed amendment could effectively result in the monopolization and centralized control over the application and management of new, emerging geospatial technologies.

- **Maintain Procurement Options.** GIS technology and related mapping services have become a critical information exchange and analysis technology used by every branch of the U.S. government and the military to analyze geospatial relationships. In a post-9/11 world where our national security is of paramount importance to the country and the citizenry, Congress and the FAR Council should not be promoting legislation or regulatory change that potentially limits or inhibits the Department of Defense, National Geospatial Agency, Homeland Security, NASA, or any other similarly situated federal agency from acquiring GIS software or related mapping services through timely, efficient procurement mechanisms like the GSA Schedule, Blanket Purchase Agreements, or SmartBUY. ESRI urges the FAR Council to maintain all available procurement options for acquiring and using these GIS software and related mapping services by our federal government's military and civilian agencies including the GSA Schedule, SmartBUY, individually negotiated Blanket Purchase Agreements (BPA), sole source acquisition, Qualification Based Selection (QBS) processes proscribed in the Brooks Act, where applicable, or any other procurement mechanism that will allow these responsible federal government agencies to respond in a timely fashion under the circumstances.

Additionally, the adoption, application, and use of geospatial analysis by federal government departments or agencies like the Departments of Health and Human Services (including the Center for Disease Control, National Institutes of Health, etc.), Labor, Education, Energy, and others is rapidly expanding. Such mapping services and geospatial uses are for providing better delivery of critical social services that are completely unrelated to traditional A&E Services. ESRI urges the FAR Council to clearly differentiate between these different types of uses and allow for the continued procurement for these non-A&E activities pursuant to the provisions in FAR parts 13, 14, and 15.

- **Maintain Transactional and Cost-Saving Efficiencies.** The GSA Schedule is performing exactly as it was envisioned and intended by improving transactional efficiencies, lowering costs to the federal government including civilian agencies like Bureau of Land Management, USGS, and NOAA who are responsible for the management of large geospatial data, information and analysis assets, and being more fiscally responsible to the U.S. taxpayers. Narrowing procurement options and adding unjustified

Notice-16

FAR Council - Mapping Notice
May 21, 2004
Page 3

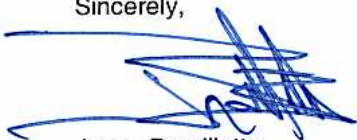
or unwarranted additional layers of A&E supervision will only increase the cost of certain projects to the federal government and ultimately the U.S. taxpayers. Further, amending and broadening the range of mapping services under FAR 36.601—4(a)(4) runs counter to precedents set by the government's streamlining of the Federal Acquisition Regulations processes, Executive Orders, and OMB Circulars including, but not limited to, the National Spatial Data Infrastructure, the Geospatial One-Stop and SmartBUY initiatives, the E-Government Act, the Paperwork Reduction Act, and a growing trend of federal government agencies, as well as state and local governments, to utilize the GSA Schedule to comply with their mission statements and accomplish important geospatial-related tasks.

Following the logic of the amendment proponent's argument, then the FAR Council could be approached in the future to preclude the acquisition for example of hardware or software from GSA Schedules because of the possibility that those items could under other circumstances be elements of a complex system/solution. Additionally, OMB's SmartBUY initiative was a mandated effort to further streamline and build in procurement efficiencies for the federal government departments and agencies that would result in huge cost savings to the U.S. taxpayer. As a major technology vendor to the federal government, ESRI was asked to participate in the SmartBUY initiative. After considerable time, effort, and negotiations, ESRI became the first major technology vendor to enter into a SmartBUY agreement with the federal government. Thus, ESRI urges the FAR Council not to adopt a regulatory change that would be in conflict with or minimize the efforts related to the SmartBuy initiative. ESRI's federal government customers have already expressed concern as to the potential impact of this proposed regulatory change would have on their ability to use the new SmartBUY agreement.

- **Licensure Issues.** There are no federal licensure standards for architects, engineers, or surveyors, which has always been the exclusive purview of the 50 states and their respective licensing boards. Additionally, state licensure standards are not uniform and vary from state to state. The proposed expansion of A&E Services to a broader range of mapping services potentially creates a jurisdictional issue as between federal government agencies and state licensing boards, not to mention compliance confusion depending on whether the contract is domestic or international in scope. This licensure issue is complex, has a long history, and is further complicated by the fact that it involves the application of emerging technologies. Broadening the range of mapping services that would fall within the purview of A&E Services opens up a host of issues that cannot be adequately addressed merely by amending this regulatory language.
- **Support New Emerging Growth Tech Sector.** The geospatial market is valued at between \$2 to \$5 billion annually and growing. U.S. industrial policy and economy benefits from the fact that these U.S. software companies and service-related vendors are the worldwide leaders in this tech sector category. In addition to domestic considerations, GIS technology and related mapping services are a positive factor in the international export trade and the U.S. balance of trade payments that is vital in a downturned U.S. and world economy. Adoption of the proposed change in current regulatory coverage in FAR Section 36.601—4(a)(4) as it pertains to the procurement of mapping services will have a negative impact on a critical U.S. growth industry.

In summary, ESRI does not support an amendment which would apply the Brooks Act to a broader range of "mapping services" under FAR 36.601—4(a)(4). Applying the Brooks Act to a broader definition of "mapping services" would result in increased costs without a corresponding, positive benefit to the federal government. ESRI appreciates this opportunity to provide its comments to the FAR Council on this subject. If you have any questions regarding ESRI's comments please do not hesitate to contact me. ESRI would welcome the opportunity to discuss this issue with the FAR Council at greater length.

Sincerely,



Jason Brouillette
ESRI Corporate — Federal

mapping-17



"Scott Perkins"
< sperkins@westernair.com >

To: MappingNotice@gsa.gov
cc:
Subject: QBS for mapping

05/21/2004 06:07 PM

As a small business engaged in providing mapping services to the Federal Government,
We support QBS for mapping and urge a revision to the FAR to clarify this issue.

Scott Perkins, VP
Western Air Maps, Inc.
9401 Reeds Road
Overland Park, KS 66207

ph 913-652-9911
fax 913-652-9933

Mapping-18



"Elise M Bowne"
<embowne@fs.fed.us>
05/21/2004 08:34 PM

To: MappingNotice@gsa.gov
cc:
Subject: mapping notice comments

To whom it may concern,

Please note the following comments on the mapping notice in the Federal Register:

The Brooks Act is intended to cover professional architectural and engineering services related to real property, where high degrees of precision, accuracy, and safety are of paramount importance. FAR Part 36 acquisitions are already used for these services in our agency.

FAR 36.601-4 specifically states that "mapping services that are not connected to traditionally understood or accepted architectural and engineering activities, are not incidental to such architectural and engineering activities or have not in themselves traditionally been considered architectural and engineering services shall be procured pursuant to provisions in Parts 13, 14, and 15." This is appropriate because it meets the objectives of the Brooks Act.

Expanding the definition of surveying and mapping as suggested in House Report 105-746 would not be appropriate because it was not the intention of the Brooks Act to cover such a broad range of applications.

The proposed change would encompass virtually all Forest Service geospatial applications (vegetation mapping, fire mapping, forest visitor maps, resource aerial photography). These applications do not require the precision and accuracy associated with Brooks Act architectural and engineering services. Most of these applications and uses of mapping cannot be separated from the daily performance of the employees. It is an integral part of daily work processes. Since over 70% of the functions of the agency have a spatial component, the costs of such a proposed change are immense.

The proposed change would result in increased costs to taxpayers without any additional benefit to the public or public safety. In fact, in the area of fire mapping, it could significantly delay and limit mapping services to the incidents, not to mention increasing the cost of nearly every incident. It could also hinder the fire suppression effort.

The current FAR guidance is adequate, appropriate, and does not require amending.

Respectfully,

Elise Bowne
GIS Specialist
National Fire Plan
USFS, Region 2
303-275-5209
embowne@fs.fed.us

**TEXAS
BOLL WEEVIL
ERADICATION
FOUNDATION, INC.**



P.O. Box 5089 ♦ Abilene, Texas 79608-5089 ♦ Voice: (325) 672-2800 ♦ Fax: (325) 672-5034

May 21, 2004

Mapping Notice-19

General Services Administration
FAR Secretariat (MVA)
1800 F Street, NW
Room 4035
Washington, DC 20405

ATTENTION: Laurie Duarte

Subject: Application of the Brooks Act to Mapping Services

Dear Ms. Duarte:

The Texas Boll Weevil Eradication Foundation, Inc., ("Foundation") would like to provide comments to the Federal Acquisition Regulatory Council (FAR Council), concerning proposed changes to the Federal Acquisition Regulation (FAR) addressing the application of the Brooks Act to mapping services.

The Foundation is a user of digital orthoimagery obtained from the USDA-Farm Service Agency. The mapping system assists us in verifying the locations of cotton fields. It is critical to program success that the Foundation has the resources to locate all fields planted to cotton prior to the time cotton plants in those fields become hostable for boll weevil reproduction. Failure to accomplish this allows boll weevils to reproduce and spread, resulting in multiple, unnecessary chemical applications.

In addition, USDA-FSA is currently assisting the Foundation through sharing of their digitized Common Land Units database. This information is used to associate FSA field and tract numbers with boll weevil eradication field numbers. This is an essential component for processing assessments, failed acres rebates, and stalk destruction rebate.

Any changes that affect the availability or cost of this critical information will negatively impact the efficiency of boll weevil eradication and will increase the cost of eradication to Texas cotton farmers.

As we understand the current regulation stated in FAR Subpart 36.601-4(a)(4), the intent of the Brooks Act is to assure public safety in surveying and mapping services associated with the research, planning, development, design, construction, or alteration of real property is considered to be an architectural and engineering (A&E) service and must be procured using the processes at FAR 36.601, which implements Public Law 92-582, as amended, also know as the "Brooks Act". This policy for handling mapping services has been in effect since 1991 and is based, in large part, on the 1988 statutory changes to the Brooks Act.

*Rec'd
MVA
5/29/04*

Notice 19

May 21, 2004

● Page 2

Current mapping data used by FSA and the Foundation cover large agricultural land areas that do not require high degrees of precision and accuracy to satisfy program requirements. Technology advances over the past few years has produced excellent mapping products that are easily understood by individuals in the field. Current aerial photography and digital orthoimagery products meet or exceed mapping requirements associated with agricultural information needs. Requiring services and products subject to architect and engineering standards would logically result in increased costs without a justification of needs.

The Foundation recommends that the FAR Council not amend the current FAR application of mapping services and allow the current contract processes to remain in place.

Thank you in advance for your consideration in this matter.

Sincerely,



Richard O. Newman
Chief Administrative Officer

Officers

Paul J. Caggiano
President
Edward L. Allen
Executive Vice President

Counsel

Robert D. Wallick
Steptoe & Johnson

Board of Advisors

Bruce Crawford
Eastman Kodak
Michael Davison
Canon, U.S.A., Inc.
Lynette K. Dempsey
Ecolab, Inc.

Mike Dering
ServiceBench

Michael Edgell
3M

Harry H. Fuchigami
Silicon Graphics

Gus Ghazarian
Savin

Bill Hillsman
Booz Allen & Hamilton

Mary Ruth Haworth
SAIC

Thomas Hodges
Xerox

John A. Howell
Dorsey & Whitley, LLP

Pete Johnson
Matrix Automation, Inc.

Michael Kratt
Herman Miller, Inc.

Allan Lawrence
Hewlett-Packard

Bruce Leinster
IBM

Robert Holman
Johnson & Johnson

Edward Naro
*Northrop Grumman
Information Technology*

Judy Owen
Agilent Technologies

Susan Plaia
Steelcase

Linda Rodden
Dell

Steve Robinson
Knoll

Mary Jane Sweeney
Gateway

Richard Tucker
Baxter Healthcare Corporation

Tom Walker
Haworth

25
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1979-2004*



Mapping 20

1990 M Street, NW • Suite 400 • Washington, D.C. 20036 • (202) 331-0975 • Fax (202) 822-9788

www.coalgovpro.org

May 20, 2004

GSA FAR Secretariat (MVA)
1800 F Street, N.W., Room 4035
Washington, D.C. 20405.
Attention: Laurie Duarte

RE: March 23, 2004 Federal Register Mapping Notice

Dear Ms. Duarte:

The Coalition for Government Procurement is pleased to submit comments on the current application of the Brooks Architect and Engineering Act (Brooks A&E Act) relative to mapping services (*Federal Register* March 23, 2004). We believe strongly that the current distinction between mapping services and construction related services should not be changed.

The Coalition is a 330-member association of companies selling commercial services and products to the federal government. Our members include small and large businesses and account for approximately 70% of all sales made through the GSA Multiple Award Schedule program. Many of our members offer geo-spatial and other non-real estate related mapping services via such contracts. For 25 years the Coalition has worked *with* federal agencies toward the creation of common sense acquisition methods.

Mapping associated with the research, planning, development and similar services associated with the development of real property is currently considered to be an architectural and engineering service. Hence, the procurement of this type of mapping is covered by the Brooks Architecture and Engineering Act. Such procurements are conducted by the provisions contained in FAR Part 36. The Coalition believes that this is an important distinction governing a highly specific type of acquisition.

Since the creation of this type of these rules, however, the commercial market has developed numerous different types of uses for non-real property related mapping services. One significant category is the evolution of geo-spatial imaging services. These services, along with other mapping offerings, provide commercial enterprises with a variety of solutions that meet an array of needs, not all of which are real-estate related.

... representing commercial service and product suppliers to the Federal Government.

*David
5/21/04*

Mapping-20

There are also a wide variety of acquisition methods open to commercial geo-spatial mapping customers and other mapping service buyers. These acquisition methods can be tailored to meet specific needs and situations. The Coalition believes that federal buyers should have the same range of options open to them that their commercial counterparts currently enjoy.

The Coalition believes that current federal acquisition rules provide just this type of flexibility. Geo-spatial mapping services can, for example, be procured via GSA schedule contracts or other traditional commercial item acquisition methods. This ability to easily acquire geo-spatial and other non-real property mapping services is a popular option with government buyers. The availability of such services via schedule contracts allows procurements to be conducted at the "speed of need" while still providing fair competition from a range of qualified providers.

The Coalition is aware of the confusion that arose over this issue in the late 1990's when Congress passed narrowly-focused legislation on the use of fiscal year 1999 funds for the acquisition of geo-spatial and related mapping services. We support the original position of the FAR Council that this direction was not a major change intended to impact procurements beyond the 1999 fiscal year. This position is, we believe, consistent with on-going federal practice from both before and after FY 1999. Geo-spatial and other mapping services were and are widely procured using schedule contracts and other commercial item acquisition methods.

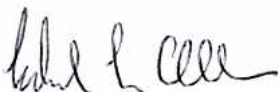
Far from there being any problems with the acquisition or use of such data, federal customers seem pleased with both the quality of the services provided and the robust competition that exists in the federal market. In fact, the ability to quickly obtain geo-spatial services through commercial acquisition methods has been important to the government's national defense and homeland security operations.

Making a change now to force such procurements through Brooks A&E Act parameters would deprive federal buyers of a popular and efficient acquisition method. It would reduce competition, increase acquisition time lines, and most likely increase prices as firms that are competitive today are driven out of the marketplace. Re-regulating procurement of such services would reduce the government's capability to quickly meet emerging terrorist or security threats. Most importantly, we believe a change now would be an improper application of Congressional intent, intent that is now over five years old and cannot be applied to today's realities.

The Coalition is opposed to removing existing flexibilities and re-regulating government procurement. In addition, the association would oppose any rule that would limit competition and drive up procurement costs. We believe that no further action is required of the FAR Council on this issue and urge that existing flexibilities that are consistent with well-framed commercial item acquisition rules be retained.

We appreciate this opportunity to comment.

Sincerely,



Edward L. Allen
Executive Vice President

NSGIC



National States Geographic
Information Council

167 West Main Street
Suite 600
Lexington, KY
40507
t: 859-514-9208
f: 859-514-9188
e: nsgic@amrinc.net

May 19, 2004

General Services Administration
FAR Secretariat (MVA)
1800 F Street, NW, Room 4035,
Washington, DC 20405.

ATTN: Laurie Duarte

Dear Ms. Duarte:

I am writing to you on behalf of the Board of Directors of the National States Geographic information Council (NSGIC) and our State Government members. NSGIC is an organization of States committed to efficient and effective government through the prudent adoption of geospatial information technologies. Members of NSGIC include delegations of senior state geographic information system managers from across the United States. Other members include representatives from federal agencies, local government, the private sector, academia and other professional organizations. A rich and diverse group, the NSGIC membership includes nationally and internationally recognized experts in geographic information systems (GIS), geospatial data production and management, and information technology policy.

Segments of the private mapping industry want the Federal government to expand the authority of the Brooks Act's qualifications based selection process by including language in FAR 36.601-4(a)(4) such that "surveying and mapping shall include contracts and subcontracts for services for Federal agencies for collecting, storing, retrieving, or disseminating graphical or digital data depicting natural or man made physical features, phenomena, or boundaries of the earth and any information related to such data, including but not limited to surveys, maps, charts, remote sensing data, and image or aerial photographic services." They would further have you make the Brooks Act mandatory for state and local government through Federal grant and contract programs. NSGIC believes that the widened definition would create an impediment to federal assistance programs for state and local governments that come through contracts and grants. Each of these entities has existing law and regulation to control their respective acquisition programs and most, if not all, have provisions for utilizing professional services when deemed appropriate.

NSGIC generally agrees that when personal property rights or public safety are affected by mapping programs, that professional services should be employed to produce those maps. In addition, we agree that projects involving significant expenditures of public funds for mapping services should assure that professional services are used. However, NSGIC is

Mapping notice

Mapping 21

Received - MVA
5/21/04

opposed to the current effort to extend the authority of the Brooks Act for the following reasons.

Nearly all government programs are involved with the collection of data that include geographic components. For example, consider the following location-based government data.

- waterfowl population counts on a particular waterway for management of natural resources
- nearest milepost marker location of vehicle accidents on roads used for highway planning efforts
- bus or METRO stops and routes to help inform citizens about easy transport
- pot holes on urban streets in need of repair
- access points where water quality samples are taken to monitor stream health

These are simply a few of the millions of examples of government data and programs that would be negatively impacted by increasing the scope of FAR 36.601-4(a)(4). Associated costs will surely reach into the billions of dollars if the definition is expanded. There is no practical purpose in requiring the use of the Brooks Act by state and local governments for every component of these programs that are intended to provide public service and manage our resources. The industry's suggested changes to include "storing, retrieving, or disseminating graphical or digital data depicting natural or man made physical features, phenomena, or boundaries of the earth and any information related to such data, including but not limited to surveys, maps, charts, remote sensing data, and image or aerial photographic services" would have a profoundly negative impact on government and its ability to serve the nation's citizens. **We request that you do not extend the scope of FAR 36.601-4(a)(4) in the suggested manner.**

NSGIC supports development of the National Spatial Data Infrastructure (NSDI). The technology behind the NSDI helps to create intelligent maps and databases that enable public and private decision makers to make better informed and timely decisions in a wide array of governmental areas. This technology can affect such diverse areas as economic development, delivery of health and human services, environmental protection, facilities management, taxation, education, emergency management, and transportation. GIS systems and data are rapidly becoming primary tools in government and the private sector because they are visual, integrated, intelligent, analytical, and cost-effective.

NSGIC believes that the current regulatory coverage in FAR 36.601-4(a)(4) as it pertains to the acquisition of mapping services is adequate to protect

Mapping - 21

the interests of private industry and to ensure that government procurements for mapping services result in the production of quality products.

Thank you for this opportunity to comment on the proposed changes to the Federal Acquisition Regulations. Please contact William Burgess, NSGIC's Washington Liaison, if you require any further comment from the National States Geographic Information Council (NSGIC). He may be reached at 410.544.2005 or by E-mail at william.burgess@comcast.net.

Sincerely,

A handwritten signature in cursive script that reads "William F. Johnson". The signature is fluid and extends to the right with a long, sweeping tail.

William F. Johnson, President
National States Geographic Information Council

Mapping - 22



"SPURLING Tom"
<Tom.SPURLING@Tenix.com>

To: MappingNotice@gsa.gov
cc: "JANUS Michael" <Michael.JANUS@Tenix.com>
Subject: Mapping Notice

05/23/2004 04:55 PM

Dear Sirs

Please be advise that we support QBS for mapping and urge revision to the Federal Acquisition Regulations to clarify the issue.

Tom Spurling
President
Tenix LADS Inc
2548 Beach Boulevard
Biloxi, MS

Mapping-03



Tom
<tom@ias-map.com>
05/24/2004 07:12 AM
Please respond to Tom

To: MappingNotice@gsa.gov
CC:
Subject: Mapping Notice

General Services Administration
FAR Secretariat (MVA)
48 CFR Part 36

Attention: Laurie Duarte

Ms Duarte:

We at Intermountain Aerial Surveys support the QBS procedures for selecting mapping consultants for government contracts. These regulations should also include States and other Prime Consultants seeking these professional services when federal funds are involved. We believe the FAR should be very clear on this issue.

Tom O. McCullough

Intermountain Aerial Surveys
2078 West 2300 South
Salt Lake City, Utah 84119

(Phone) 801.972.5932
(Fax) 801.972.0501

tom@ias-map.com

Mapping 24



"Tully, Mike"
<mtully@aerialservices
inc.com>

To: MappingNotice@gsa.gov
cc:
Subject: mapping notice

05/24/2004 09:03 AM

The FAR act is being considered for revision (FAR 36.601-4(a)(4)).
We support QBS for mapping and urge a revision to the FAR to clarify this issue.
Thank you.

Mike Tully
President & CEO
Aerial Services, Inc.

319.277.0436 ph
877.ASI.4GIS toll free
AerialServicesInc.com

Mapping - 25



"Debbie Cohen"
<CohenD@erdmananthony.com>

To: MappingNotice@gsa.gov
cc:
Subject: Mapping Notice

05/24/2004 10:24 AM

We support QBS for mapping and urge a revision to the FAR to clarify this issue.

Herbert T. Gauch
Erdman, Anthony and Associates
2165 Brighton Henrietta Townline Rd.
Rochester, NY 14623

Mapping -26



ronald.domsch@og.ge.
com

05/24/2004 10:39 AM

To: mappingnotice@gsa.gov
cc:
Subject: Mapping Notice

M. J. Harden Associates supports QBS for mapping and we strongly urge you to revise the FAR to clarify this issue.

MJH strongly supports the proposed revision to the FAR Definition of A/E Services. MJH believes the revision to clarify the government-wide application of FAR Part 36.6 to a broad range of mapping services is not only desirable, but that Congress has mandated such a change.

Ron Domsch
General Manager
MJ Harden Associates, Inc.
1019 Admiral Blvd
Kansas City, MO 64106

T 816 889 1110
F 816 889 1350
M 816 916 8532
D *279-1110
E ronald.domsch@og.ge.com

Mapping 27



"Tammy Broussard"
<tbroussard@3001data
.com>

To: MappingNotice@gsa.gov
cc:
Subject: MAPPING NOTICE

05/24/2004 11:11 AM

We hereby offer our support of the continued use of QBS methods for architect, engineering, surveying and mapping contracts on all the federal government procurements.

Mapping 28



"Andrew Lister"
<alister@fs.fed.us>
05/24/2004 11:12 AM

To: MappingNotice@gsa.gov
cc:
Subject: comments on "mapping notice"

Dear sir or madame,
I'd like to submit a comment on the "mapping notice" comment request of which I've been informed -- the one found in Federal Register / Vol. 69, No. 56 / Tuesday, March 23, 2004, on p. 13499.

As I understand it, there is a proposal to alter the Brooks Act to include a broader definition of mapping. This would lead to other mapping activities, like natural resources applications and remote sensing, to be contracted out. I strongly oppose this for a variety of reasons.

1. I believe the Brooks Act as written contains an adequate definition, and it should be kept as originally intended.
2. I feel that architectural and engineering mapping is a very specific subdiscipline of mapping, and that other types of mapping, like natural resources mapping, remote sensing, etc, could not be adequately performed by contractors who do not necessarily have a close tie to the agencies for which they are working. For example, a GIS technician working for a contractor would make maps as told, but would not perform as well as a Forest Service employee that joined the Forest Service out of a commitment to the mission, and who would incorporate a broad range of additional considerations into geospatial analyses that he or she conducted.
3. Natural resources mapping requires a broad range of skills -- not just technical skills, but an understanding of the biological, social and political implications of land management. Contractors might be able to adequately produce deliverables, but federal employees who are hired for a position generally have a broader understanding of land management and will perform better, ultimately saving the taxpayer money.

If you have any questions, please feel free to contact me.
Andrew Lister

 Andrew J. Lister
 Research Forester
 USDA Forest Service, Northeastern Research Station
 Forest Inventory and Analysis Unit
 11 Campus Blvd, Suite 200
 Newtown Square, PA 19073
 (610) 557-4038
 alister@fs.fed.us
 http://www.fs.fed.us/ne/fia

Mapping-29



"Andrea Rodriguez"
<arodriguez@fs.fed.us
>

To: MappingNotice@gsa.gov
cc:
Subject: Federal Acquisition Regulation; Application of the Brooks Act to
Mapping Services

05/24/2004 11:24 AM

Please consider the following comments:

Expanding the definition of surveying and mapping as suggested in House Report 105-746 would not be appropriate because it is not the intended purpose of the Brooks Act to cover such a broad range of mapping applications. The Brooks Act is intended to cover mainly high accuracy mapping applications for architectural and engineering purposes.

The above proposal would encompass all Forest Service geospatial applications, including those that do not require the precision and accuracy associated with the Brooks Act architectural and engineering services. This would result in increased costs to taxpayers without any additional benefit to the public or public safety.

Andrea Rodriguez, Supervisory Cartographer
Geospatial Service & Technology Center
2222 West 2300 South SLC, UT 84119
Voice: (801) 975-3461
Fax: (801) 975-3478
Email: arodriguez@fs.fed.us



"William Dijak"
<wdijak@fs.fed.us>
05/24/2004 12:04 PM

To: MappingNotice@gsa.gov
cc:
Subject: Mapping notice

Mapping-30

As written the Brooks Act is intended to cover professional architectural and engineering services related to real property where high degrees of precision, accuracy, and safety are of paramount importance. Agencies do use FAR Part 36 acquisitions for these services.

FAR 36.601-4 specifically states that "mapping services that are not connected to traditionally understood or accepted architectural and engineering activities, are not incidental to such architectural and engineering activities or have not in themselves traditionally been considered architectural and engineering services shall be procured pursuant to provisions in Parts 13, 14, and 15." This is appropriate because it meets the objectives of the Brooks Act.

The intent of House Report 105-746 was to address issues of high precision mapping. Expanding the definition of surveying and mapping as suggested in House Report 105-746 would not be appropriate because it was not the intention of the Brooks Act to cover such a broad range of applications. Precision mapping is a different issue than geospatial analysis. Geospatial analysis goes far beyond precision mapping it examines the spatial relationships of objects instead of just precisely locating objects.

The proposed change would result in increased costs to taxpayers without any additional benefit to the public or public safety.

Current FAR guidance is adequate, appropriate, and does not require amending.

William D. Dijak
GIS Specialist
North Central Research Station
202 ABNR Bldg, U.M.C.
Columbia, MO 65211
Ph: 573-875-5341 ext. 241

Mapping 31



"Marla Downing"
<mdowning@fs.fed.us
>

To: MappingNotice@gsa.gov
cc:
Subject: Mapping Notice

05/24/2004 01:03 PM

In regard to the "Mapping Notice" or the suggested amendment to the Federal Acquisition Regulation (FAR); Application of the Brooks Act. As a private citizen, I believe the regulation should not be amended to include Mapping Services.

The proposed change would result in increased costs to taxpayers without any additional benefit to the public or public safety. Also:

- The Brooks Act is intended to cover professional architectural and engineering services related to real property where high degrees of precision, accuracy, and safety are of paramount importance. The federal government does use FAR Part 36 acquisitions for these services.
- FAR 36.601-4 specifically states that "mapping services that are not connected to traditionally understood or accepted architectural and engineering activities, are not incidental to such architectural and engineering activities or have not in themselves traditionally been considered architectural and engineering services shall be procured pursuant to provisions in Parts 13, 14, and 15." This is appropriate because it meets the objectives of the Brooks Act.
- Expanding the definition of surveying and mapping as suggested in House Report 105-746 would not be appropriate because it was not the intention of the Brooks Act to cover such a broad range of applications.
- The proposed change would encompass virtually all Forest Service geospatial applications (vegetation mapping, fire mapping, forest visitor maps, resource aerial photography). These applications do not require the precision and accuracy associated with Brooks Act architectural and engineering services.
- Current FAR guidance is adequate, appropriate, and does not require amending to meet the needs and wants of the American public.

Marla C. Downing
2815 Garrett Drive
Fort Collins, CO 80526
970.377.8095

Mapping-39



"Curt Sumner"
<CSumner@ACSM.net
>

To: "MappingNotice@gsa.gov" <MappingNotice@gsa.gov>
cc:
Subject: mapping notice

05/24/2004 02:20 PM

General Services Administration, FAR Secretariat (MVA)
1800 F. Street, NW
Room 4035, Atten: Ms. Laurie Duarte
Washington, DC 20405

Re: Mapping Notice

Dear Ms. Duarte:

American Congress on Surveying and Mapping (ACSM) represents over 7,000 surveying and cartography professionals. We strongly support the proposed expansion of the Brooks Act to certain mapping services not currently covered under the Act, as set forth in the March 23, 2004 Federal Register Notice.

The policy set forth in FAR 36.601-4(a)(4) for the handling of mapping services clearly covers surveying and mapping services in the traditional sense; however, the surveying and mapping profession is constantly evolving in such a way that services previously considered "non-traditional", or not accepted as an architectural-engineering activity, are now commonplace. Therefore, it is necessary for FAR 36.601-4(a)(4) to be expanded to reflect the growth of the profession.

Additionally, we strongly support the continued use of Qualifications Based Selection (QBS) for A/E services, including surveying and mapping services. Any expansion of FAR 36.601-4(a) (4) should continue to keep surveying and mapping services under the QBS process.

If you have any questions, or need more information, please feel free to contact me.

Curtis W. Sumner, LS
Executive Director, ACSM
240-632-9716, ext. 106
csumner@acsm.net

Mapping 33

From the National Geospatial-Intelligence Agency

This is in response to the Federal Register dated March 23, 2004. The Federal Acquisition Regulatory Council published a notice inviting comments on a proposal to expand the application of the Brooks Act to a wider range of mapping and related data services. Specifically the Council is seeking comment on:

"... the mapping (acquisition) policies articulated in FAR 36.601-4(a)(4) so it, the CAAC, and the DARC may review the effectiveness of current policy in selecting quality firms to perform mapping services and consider if a FAR change should be pursued. Accordingly, respondents are encouraged to discuss advantages and drawbacks of the current regulatory coverage in FAR 36.601-4(a)(4) as it pertains to the acquisition of mapping and suggest alternative new provisions, if any, that they believe would be more appropriate."

The current language has served the National Geospatial-Intelligence Agency (NGA) well in acquiring mapping services. For mapping services that are not connected to architectural and engineering activities, NGA believes best value acquisition procedures that include cost as a selection factor must remain available to the Government. The flexibility in contracting types allowed under the FAR and the processes NGA currently use are working well. We do not wish to limit NGA's ability to use the best contracting method for a given situation.

A change to the regulations such as an expansion of the definition of surveying and mapping would restrict competition by preventing firms that are not registered as architectural and engineering firms (many of whom are small businesses) from competing in the selection acquisition process as a bidder. NGA believes an expansion would reduce the pool of qualified firms wishing to bid on our mapping services requirements. Many firms that could provide NGA with high quality mapping services would be precluded from competing in our requirements. Not only does this concern us from the standpoint of not being able to provide the taxpayer with the potentially most qualified firm, it is also a concern in terms of capacity. A smaller pool of potential contractors might not be able to meet NGA mapping services needs.

Thank you for the opportunity to provide these comments. If you have questions, please contact Mr. Shelley Welch on 301-227-7854.



"Eric Gustafson"
<egustafson@fs.fed.us
>

05/24/2004 02:43 PM

To: MappingNotice@gsa.gov
cc: "Thomas Schmidt" <tschmidt@fs.fed.us>, "Rob Doudrick"
<rdoudrick@fs.fed.us>, "James Gooder" <jgooder@fs.fed.us>
Subject: Comment on the Application of the Brooks Act to Mapping Services

Mapping-34

This comment is provided on behalf of the researchers in my Research Work Unit and at the North Central Research Station of the Forest Service.

We conduct a great deal of spatial ecological, forestry and social research, for which we rely on spatial data analysis tools such as Geographic Information Systems. The output of these activities is often mapped products, but the primary goal is to conduct spatial analysis and modeling to discover new scientific relationships and make scientific predictions in a spatial context. We use these spatial analysis and mapping tools on a daily basis as an integral part of our research protocols, much as a CPA or bookkeeper uses a desktop calculator.

Because we study ecological and social systems and processes, which are spatially characterized as gradients and probabilistic interactions over broad spatial scales, the level of spatial accuracy is often quite coarse. The level of accuracy needed for engineering applications is simply not appropriate for ecological and forestry research.

Given this background, the Brooks Act as currently interpreted is consistent with the mapping work that we do, and the proposed changes would hamper our ability to conduct our research. The Brooks Act is intended to cover professional architectural and engineering services related to real property where high degrees of precision, accuracy, and safety are of paramount importance. When the Station has facility engineering projects, we do comply with the Brooks Act. But to apply such requirements to our research program would increase costs, reduce effectiveness and timeliness, and do nothing to improve public safety.

In conclusion, we believe that the long-standing policy regarding the application of the Brooks Act to mapping services should not be changed.

Sincerely,

Eric J. Gustafson
Project Leader, Landscape Ecology Unit
North Central Research Station
5985 Highway K
Rhineland, WI 54501-9128
tel. 715-362-1152 fax: 715-362-1166
http://www.ncrs.fs.fed.us/4153/eric_gustafson.asp



Natural Resources Conservation Service
Resource Inventory Division
5601 Sunnyside Avenue
Beltsville, MD 20705-5475

Mapping Notice - 35

General Services Administration
FAR Secretariat (MVA),
ATTN: Laurie Duarte
1800 F Street, NW, Room 4035
Washington, D.C. 20405

May 24, 2004

Dear Ms. Duarte:

Subject: FAR "Mapping Notice"

As a matter of introduction, I have served as the National Remote Sensing Leader for the Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS) for the past 10 years in which I'm responsible for managing and providing technical and program leadership for our remote sensing requirements nationwide. Before my current position, I spent over 20 years in similar roles for geographic information systems (GIS) and cartography. I not only feel qualified but appreciate the opportunity to provide comments pertaining to 48 CFR Part 36, Federal Acquisition Regulation; Application of the Brooks Act to Mapping Services published in the Federal Register on March 23, 2004.

The current FAR states "that mapping associated with the research, planning, development, design, construction, or alteration of real property is considered to be an A&E service ..." These activities are within the realm of civil engineering and including them as an A&E service is appropriate. However, expanding the scope of A&E services by re-defining "mapping services" to include all remote sensing, aerial photography, graphical and digital data and services is wrong for the following reasons:

Definitions.

Definitions are critical to understanding this issue, expanding the FAR to include remote sensing and aerial photography is outside the boundaries of what these disciplines cover.

- a. Architecture is defined as "The art and science of designing and erecting buildings." (The American Heritage Dictionary, 2nd edition.)
- b. Engineering is defined as "The application of scientific and mathematical principles to practical ends such as the design, construction, and operation of efficient and economical structures, equipment, and systems." (The American Heritage Dictionary, 2nd edition.)
- c. Remote sensing is defined as "The science and art of obtaining information about an object, area, or phenomenon through analysis of data acquired by a device that is not in contact with the object, area, or phenomenon under investigation." (Remote Sensing and Image Interpretation, Lillesand and Kieffer, 4th edition.)

Remote Sensing – A Discipline Neutral Science.

- a. Remote sensing as a science is discipline neutral. Data acquired by remote sensing systems have unlimited applications. Most applications of remote sensing include land use and land cover interpretation; soil survey; agriculture, forestry, geography, rangeland management, urban and regional planning; wetland monitoring; wildlife and ecological assessments; natural resource inventory and analysis; and environmental

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5/24/04*

monitoring. The uses of remote sensing to support these applications have nothing in common with A&E. Remote sensing has some A&E applications such as use of imagery or surveying necessary to design and construct appurtenances such as bridges, dams, railroads or highways.

b. Electrical and optical engineers are involved in the design and construction of cameras and sensors for airborne and satellite remote sensing systems. There is no issue with these types of services falling within the Brooks Act however; this aspect is not defined within the scope of the proposed re-definition of mapping services.

c. In academia where the science of remote sensing is taught; remote sensing is almost always found in the departments of either geography, geology, or forestry. If remote sensing was closely allied with the disciplines of architecture and engineering, one would think it would be taught in these departments at universities.

Proposed Re-definition of "surveying and mapping"

The proposed re-definition of "surveying and mapping" subject to the Brooks Act qualifications based selection process is extremely broad. For example, services acquired for "the collecting, storing, retrieving or disseminating graphical or digital data" is far more appropriate to be obtained from firms specializing in Geographic Information Systems (GIS) and Information Technology (IT) instead of architecture and engineering companies.

GIS technology and commercial-off-the-shelf software for GIS and remote sensing now permit individuals from any background with relatively little GIS experience the capability to generate high quality mapping products. Requiring licensed architects and engineers to provide the government with these products through the Brooks Act is unnecessary, and defeats the cost savings and efficiencies gained by using this software.

Technical advances made in capturing aerial imagery just about negate the need for ground surveying for the types of imagery and aerial photography that USDA requires. With the use of airborne global positioning systems (GPS) and digital sensors instead of film cameras; map images can be produced relatively easy and rapidly from GIS and remote sensing software without any engineering support. USDA agencies have been contracting for aerial photography and imagery services for more than 50 years. Advances in technology over time have simplified the entire process; it doesn't make sense that these services now require licensed architects and engineers who needlessly will demand higher wages at the expense of USDA agencies.

Contracts for aerial, satellite, GIS, graphical and other geodata must be compatible with our enterprise GIS. In order to keep our data consistent nationwide; USDA and other federal agencies developed exacting standards and specifications for geodata collection and use. With these specifications, there is no need for firms to do any new "research, planning, development, design" for the types of imagery and geodata products contracted for by USDA.

I urge the FAR Council not to apply the proposed re-defined "mapping services" to only the Brooks Act. These services have more in common with GIS technology and geospatial data services than architectural and engineering related services.

Thank you for providing me the opportunity to comment on this proposed revision.

Sincerely,

George M. Rohaley
National Remote Sensing Leader

The Natural Resources Conservation Service provides leadership in a partnership effort to help people conserve, maintain, and improve our natural resources and environment.

An Equal Opportunity Provider and Employer

Mapping -36



"Michael Hoppus"
<mhoppus@fs.fed.us>

To: MappingNotice@gsa.gov
cc:
Subject: Re: comments on "mapping notice"

05/24/2004 03:05 PM

Dear sir or madame,

I'd like to submit a comment on the "mapping notice" comment request of which I've been informed -- the one found in Federal Register / Vol. 69, No. 56 / Tuesday, March 23, 2004, on p. 13499.

As I understand it, there is a proposal to alter the Brooks Act to include a broader definition of mapping. This would lead to other mapping activities, like natural resources applications and remote sensing, to be contracted out. I strongly oppose this for a variety of reasons.

I have worked with contractors in remote sensing/ GIS/ and cartography at both the EPA, in Las Vegas and at the US Forest Service for twenty years. If the work is very specific, does not require knowledge of the local resources and conditions, does not require research or response to unexpected issues, and can be measured in terms of deliverable per unit of money, a contractor can work. For most of what the Forest Service needs in terms of remote sensing and mapping products, routine classifications and mapping dont work. Quality work requires a long term relationship and commitment to the resource for which the map is made to help manage. It requires skills that go beyond cartography, such as forestry and statistics. The maps are usually an active process that improve to an acceptable level only when evaluated over time from a managers point of view...not a cartographer's. The contractor has only one motivation...profit. Of course the work has to meet certain defined specifications of accuracy. But if a better map can be made with anothers day's worth of effort, it isnt accomplished unless the contract is modified. Contractors drain the corporate knowledge away form resource manager's staffs until the resource managers dont know what is possible for a given cost. And they are able to raise the cost to government for map production if they are the only available workers. They are willing to sell snake oil...or try dubious methods...if the price is right. Its not their map and they dont have to live with it. Its a little like contracting out the military. Mercenaries work...until the profit isnt worth the cost. Look at the contract work for mapping out the spotted owl habitat done for the Pacific North West in the late 80's. 6 miilion dollars for a map that could not be used for management or decision making. The Forest service is still paying...but the contractor got the money and moved on. That will be the rule, not the exception, if there is no "in house" remote sensing/mapping expertise. And one only gets that expertise by making maps...which they would be prohibited from doing. This isnt USGS topomap making...this is a piece of forest management and research. Dont screw this up.

If you have any questions, please feel free to contact me.
Michael Hoppus

Michael Hoppus
Research Forester
USDA Forest Service, Northeastern Research Station
Forest Inventory and Analysis Unit
11 Campus Blvd, Suite 200
Newtown Square, PA 19073

Mapping-37



"Susan E McCullough"
<smccullo@usgs.gov>

To: MappingNotice@gsa.gov
cc: "Pat Corrigan" <Pat_Corrigan@ios.doi.gov>
Subject: Mapping Notice

05/24/2004 03:11 PM

U.S. Geological Survey is submitting the below comments in response to the Mapping Notice published in the Federal Register on March 23, 2004. The paper version of these comments was signed by the USGS Bureau Procurement Chief on May 21, 2004, and has been forwarded to the U.S. Department of the Interior, Office and Acquisition and Property Management for submission to the Council. As comments are due today, that office advised us also to forward them directly to you.

Subject: FAR Council Mapping Notice

As one of the Government's premier mapping agencies, the U.S. Geological Survey contracts for many of the services covered by the proposed definition. USGS would like to submit the following comments in response to this notice.

1. Our experience is that Contracting Officers do not have unusual difficulty applying the first two parts of the current Brooks Act definition, covering (a) services required by applicable state law to be performed by registered surveyors or architects and engineers, and (b) services associated with design or construction of real property. The part of the statutory definition that may be applied inconsistently among different Contracting Officers and different agencies is part (c), covering services which "logically or justifiably require performance by registered architects or engineers or their employees" (including surveying and mapping). To some extent, this variation is unavoidable, as the Act requires this decision to be made by the Contracting Officer on a case-by-case basis (B-233987; B233987.2, Forest Service, Department of Agriculture--Request for Advance Decision, 7/14/1989).

The services this proposal would add to the definition of A-E services would require the FAR Council to make the determination that all these services are covered by paragraph (c) of the statutory definition. That statute, however, leaves it to the Contracting Officer to determine whether the required services must be logically restricted to registered architects or engineers or their employees under paragraph (c). This requirement for a case-by case determination would seem to preclude making this decision through a FAR rulemaking or by rote application of agency policy.

2. While the Architect-Engineer selection procedures prescribed in FAR 36.6 are considered full and open competition, the decision to apply the Brooks Act procedures is also a restriction on competition, in that non-A-E firms would be excluded from participation as prime contractors. Some of the services covered by the proposed, expanded definition are currently being lawfully performed, for both federal and non-federal clients, by firms that do not employ architects, engineers or registered land surveyors. Extending the Brooks Act would cut otherwise qualified and capable contractors out of the competition for these services. We believe this restriction on competition cannot be justified under the Competition in Contracting Act for services not clearly covered by the Brooks Act itself.

mapping - 37

3. We believe that any clarification or revision of the A-E definition needs to be in line with the intended scope of the statute. The proposed, expanded definition would go well beyond the actual language of the statute.

a. USGS objects to the proposal that services relating to the storing, retrieving and dissemination of data be considered an architect-engineer service. These data services are not services associated with design or construction of real property, they are not required by applicable state law to be performed by registered surveyors or architects and engineers, nor do they "to a substantial or dominant extent logically fall within the unique expertise of these professions." Historically, USGS contracts for data management services (digital, photographic and paper map products) have been performed by other than A-E firms and awarded using FAR Part 15 best value selection methods. We do not believe the Brooks Act authorizes us to exclude these firms from future competitions, nor do we believe such a restriction is generally necessary to meet the agency's needs.

b. USGS also objects to the breadth of data encompassed in the proposed definition. We would agree that restricting data acquisition services to A-E firms is necessary and appropriate for some types of data, for example for base data layers (such as boundary data) and instances where base maps are being compiled from original land surveys. The term remote sensing data, however, encompasses a broad range of imagery - LIDAR, satellite, aerial photography, and geomagnetic data. Much of this data is routinely offered for sale, either as existing products or on a service basis, by firms other than A-E firms, and is not clearly covered by the statutory definition.

c. USGS would also object to any definition of A-E service that included acquisition or processing of research data (such as seafloor mapping, geologic mapping or species distribution data) even if that data is or can be plotted on a map.

/signed/

Scott G. Morton

Chief, Office of Acquisition and Grants

Susan McCullough
Office of Acquisition and Grants
U.S. Geological Survey
205 National Center
Reston, VA 20192
Phone: 703-648-7355

Mapping Notice 38



"John M Chase"
<jchase@fs.fed.us>
05/24/2004 03:43 PM

To: MappingNotice@gsa.gov
cc:
Subject: re: Mapping Notice

To whom it may concern:

I believe including USDA Forest Service natural resource mapping and remote sensing activities in an expanded definition of surveying and mapping as outlined in House Report 105-746 would jeopardize the goals and mission of the agency, waste public funds, and decrease the availability, utility, and timely distribution of mapping products to their end users. Please consider the following points during your discussion of the proposed action.

- FAR 36.601-4 specifically states that "mapping services that are not connected to traditionally understood or accepted architectural and engineering activities, are not incidental to such architectural and engineering activities or have not in themselves traditionally been considered architectural and engineering services shall be procured pursuant to provisions in Parts 13, 14, and 15." This is appropriate because it meets the objectives of the Brooks Act.
- Expanding the definition of surveying and mapping as suggested in House Report 105-746 would not be appropriate because it was not the intention of the Brooks Act to cover such a broad range of applications.
- The proposed change would encompass virtually all Forest Service geospatial applications (vegetation mapping, fire mapping, forest visitor maps, resource aerial photography). These applications do not require the precision and accuracy associated with Brooks Act architectural and engineering services.
- The proposed change would result in increased costs to taxpayers without any additional benefit to the public or public safety.
- Current FAR guidance is adequate, appropriate, and does not require amending.

Thanks for considering my comments.

Sincerely,

John Chase

=====
John M. Chase
GIS/Remote Sensing
PNW-FIA
USDA Forest Service
620 SW Main St.
Suite 400
Portland, OR 97205
tel 503.808.2089
fax 503.808.2020
jchase@fs.fed.us

Mapping Notice - 39



nbarrere@doc.gov

05/24/2004 05:30 PM

To: MappingNotice@gsa.gov

cc:

Subject: Mapping Notice (DOC's Public Comments)

The U.S. Department of Commerce offers the following in response to Federal Acquisition Council's request for comments regarding Federal Acquisition Regulation guidance addressing the application of the Brooks Act to mapping and surveying.

1. FAR guidance on surveying and mapping is ambiguous and inconsistent with the Brooks Act. Coverage should be clarified.
2. The FAR should recognize that federal procurement methods have evolved substantially since 1972 (when the Brooks Act was passed) and surveying and mapping can best be procured using best value techniques.
3. It is not the Government or taxpayer's best interest to extend the Brooks Act solicitation procedures to survey and mapping services because price reasonableness is difficult to determine, the procurement cycle time is too arduous, and the process does not recognize efficient operating practices.
4. Use of Part 36 of the FAR for surveying and mapping services strays too far from the original intent of the Brooks Act, namely - to address traditional architectural design and civil engineering associated with real property, buildings, bridges, dams and the like. It should be revised accordingly.
5. The FAR should be amended to require or at least permit competitive best value procedures when acquiring survey and mapping services. It has been estimated that major Commerce programs in the National Oceanographic and Atmospheric Administration and Bureau of Census could save tens of millionsof taxpayers dollars if Part 15 procedures could be used to acquire surveying and mapping.

Please contact Nancy Barrere, DOC's Office of Acquisition Management, at Nbarrere@doc.gov, with any questions about this submission. Thank you.

Mapping Notice -40



"Shawn Thompson"
<sthompson@digitalglobe.com>

To: MappingNotice@gsa.gov
cc: "Dawn Sienicki" <dsienicki@digitalglobe.com>
Subject: Mapping Notice

05/24/2004 03:26 PM

Attached please find our response to the request for comments on the application of the Brooks Act to Mapping Services. If you have any questions, please contact me at the number below or Ms. Dawn Sienicki at 202-662-3734. Thanks for the opportunity to provide comments.

Shawn Thompson
Sr. Director of Legal Services
DigitalGlobe, Inc.
ph: (303) 682-4927
fax: (303) 682-3848
e-mail: sthompson@digitalglobe.com <mailto:sthompson@digitalglobe.com>

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Mapping Services Response.doc

**FEDERAL ACQUISITION REGULATION; APPLICATION OF THE BROOKS ACT TO MAPPING SERVICES:
RESPONSE TO THE REQUEST FOR COMMENTS
FEDERAL REGISTER MARCH 23, 2004**

The Federal Acquisition Regulatory Council should provide guidance for the application of the Brooks Act to mapping services in the FAR for a number of reasons. A primary reason is that the definition of a service as opposed to a good needs to be expanded and clarified. The mapping industry has changed over the past few years. Today maps are created using data from a variety of sources in automated processes that result in goods. In some cases, the sources of the data or the processes employed have eliminated the technical requirement for surveying. Second, the distinction between mapping products, which are outside of FAR 36, and mapping services that are covered by FAR 36, is unclear. Third, FAR 36 as currently written is inconsistent with statutes and policies that followed the passage of the Brooks Act and various sections of the FAR.

The technology used in developing maps has evolved dramatically since the passage of the Brooks Act. Highly accurate maps can now be produced without the use of surveying activities. This blurs the line between goods and services. Formerly, a map resulted from the application of services and the purchaser of the services owned the map. Satellite imagery digital elevation maps from other satellites can be processed using standard GIS software programs to produce highly accurate maps without the use of any service and the use of these products is then typically licensed. Technology can be expected to continue to improve the accuracies of maps produced in this manner. This must be acknowledged in the revision to the FAR 36.601-4(a)(4).

FAR 36.601-4(a)(4) states "Mapping associated with the research, planning, development, design, construction, or alteration of real property is considered to be an architectural and engineering service" and requires professional surveying. The section identifies as services the process that results in a map or mapping product. Since the resulting map is a tangible product, the labeling of the process as services is confusing. As noted above, today's technology can create a map without "services" although the regulations could be read to label the process that creates the product a service. The regulation further confuses this by the condition that the map be tied to "the research, planning, development, design, construction, or alteration of real property." This implies that an identical map used for other purposes is a good. Clearly there is a need to have professional surveyors involved for certain projects that require high accuracy when other sources for the accuracy are not available, but it is essential that this be clearly identified.

The 1992 Land Remote Sensing Policy Act (the Act) found that it is in the best interests of the U.S. to stimulate development of the commercial market for unenhanced data and value-added services, and with the creation of a licensing structure for the operation of commercial remote sensing systems, gave birth to the commercial remote sensing industry. Last April the U.S. Commercial Remote Sensing Space Policy (the Policy) was announced. The fundamental goal of the Policy is to advance and protect U.S. national security and foreign policy interests by maintaining the nation's leadership in remote sensing space activities, and by sustaining and enhancing the U.S. remote sensing industry. Today the U.S. is the world leader in the field of commercial remote sensing.

The Brooks Act and FAR 36.601-4 preceded both the Act and the Policy. Given the Policy goal of U.S. national security is increasingly important today, it is imperative that FAR 36 should be reconciled to support this goal. FAR 36.601-4 creates confusion of when a professional surveyor might be required. A second area that requires review and editing is the last sentence of FAR 36.601-4(a)(4) which states that FAR 13, 14, and 15 procurement processes should be used for mapping services that are not architectural and engineering related. This could create an unwarranted assumption that these services would not be able to be purchased under FAR 12. However, FAR 2.1 includes in the definition of Commercial Item those services provided to the general public. Mapping services that are not architectural and engineering related and provided to the general public may be purchased under FAR 12.

Suggestion: The regulation should be reviewed and edited to clarify the distinction between goods and those services requiring professional surveying consistent with the Act and the Policy. The regulation should not stifle the continued growth of the commercial remote sensing industry. The line should have the flexibility to take into account the technological advances that will be achieved in the future. We suggest a structure such as when the project requires the employment of licensed registered land surveyor(s) to obtain geodetic survey control for the production of DEM's, orthophotos and or vector mapping, a professional

Notice 48

mapping service is being provided under the Brooks Act. However, when products employing commercially available DEMS and GCPs are required, it is a commercial product and it is not subject to the Brooks Act. The ability to contract under FAR 12 should be expressly noted. The suggestions provide a benefit to the general public of giving the Government the ability to leverage advances in technology for use in mapping and surveying projects.

Mapping Notice 41



Allen.VanderGriff@FA
S.USDA.GOV

05/24/2004 02:59 PM

To: MappingNotice@GSA.gov
cc:
Subject: 48 CFR Part 36

Ms, Duarte,

Attached are the Foreign Agricultural Service, U.S. Department of Agriculture comments to 48 CFR Part 36, Federal Acquisition Regulations of the Brooks Act to Mapping Services.

Thanks,

Allen Vandergriff
Director
Production Estimates and Crop Assessment Division
Foreign Agricultural Service
U.S. Department of Agriculture



(See attached file: FAS_FAR.doc) FAS_FAR.doc

Notice 41

May 24, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat (MVA)
1800 F Street, NW, Room 4035
Washington D.C. 20405

Subject: FAR Mapping Notice

Dear Ms. Duarte:

This letter provides the Foreign Agricultural Service (FAS) agency response and addresses GSA's request for comments to the notice pertaining to 48 CFR Part 36, Federal Acquisition Regulation: Application of the Brooks Act to Mapping Services. FAS is opposed to the proposed revision in 48 CFR Part 36 for the following reasons.

FAS is the largest purchaser of satellite imagery within the federal civil agencies. We strongly object to the reference to remote sensing in the notice. Remote sensing data encompasses a broad range of information collected by satellite, aircraft, in-situ truck-mounted, or hand-held sensors. This data is offered for sale, either as existing products or on a service basis, by firms other than A-E firms, and is not clearly covered by the statutory definition. We acquire satellite imagery to cover all the major agricultural areas of the world. This imagery is collected by U.S.- and foreign-owned satellite-based sensors and downloaded/processed by U.S. and foreign ground stations, governments, and companies.

The global imagery market helps determine the price per image. Decreasing cost of production resulting from increases in computing power, Global Positioning Systems (GPS) technologies, and algorithm efficiency, continuously push satellite imagery prices down. Putting remote sensing into the A-E only category would decrease our ability to maximize the benefits available to the U.S. taxpayer and reduce the efficiency in purchasing imagery. For our applications, remotely sensed imagery should be considered a commodity, even when the imagery is orthorectified or other value-added services are applied to the imagery.

The idea that acquiring remotely sensed imagery from A-E firms would provide better value to the government is mistaken. The concept that an orthorectified image with an 80-meter pixel is best purchased via A-E is absurd. Most of the imagery we obtain is processed through automated production algorithms. No professional surveyor goes out into the field to collect control points to correct this imagery. No bridge, road, or building will be located based on a 1:1,000,000 satellite image. Unless scale, accuracy, and purpose are added to the definition of what should include as A-E, firms will challenge the use of any imagery of the surface of the earth simply by arguing that we are researching real property.

Notice - 41

Ms. Laurie Duarte

2

We feel that GSA could take this opportunity to make the definition of what should be covered by A-E clearer and more limited. We agree with our sister agency, the Forest Service, that "If the mapping services product will be used for research, planning, development, design, construction, or alteration of real property, and if the scale is 1:1200 or larger, and its horizontal positional accuracy is 0.3 meters or less (Circular Error Probability 95 percent of 0.3 meters), then Part 36 provisions should be considered. This fine scale and accuracy implies a precision where professional services would be beneficial for the final product. The final product could be suitable for engineering public works, cadastral, and other precision applications."

Clearly, acquiring the imagery FAS needs to monitor global crop conditions should not be included under A-E services.

In addition, FAS objects to the proposal that services relating to the storing, retrieving, and dissemination of data be considered an A-E service. These data services are not services associated with design or construction of real property; they are not required by applicable state law to be performed by registered surveyors, architects, or engineers.

Requiring Part 36 A-E QBS procedures for all mapping and remote sensing services would substantially increase costs to the taxpayers, with no better products being produced to meet our requirements. Adding to the scope of what is covered under 48 CFR Part 36 will result in the bundling of products, services, computers, and systems for remote sensing and mapping applications. The proposed FAR change is not in the best interest of the Government and will not result in additional benefits to public health and safety.

Sincerely,

Allen Vandergriff
Director
Production Estimates and Crop Assessment Division
Foreign Agricultural Service
U.S Department of Agriculture

e-mail: Vandergriff@fas.usda.gov
phone: 202-720-0872

FAS/USDA/PECAD/Avandergriff/mj/00888/05/24/04/farmapping

Mapping Notice 42



"JOHN STEFFENSON"
<jsteffenson1@msn.co
m>

To: MappingNotice@gsa.gov
cc:
Subject: Mapping Notice

05/24/2004 10:26 AM

Please see attached letter in MS Word format.

Regards,

John Steffenson



JS Brooks Act letter 5-24-04.d

Notice-42

John Steffenson
1226 James Circle
Lafayette, Colorado 80026
May 26, 2004
General Services Administration
FAR Secretariat (MVA)
1800 F Street, NW
Room 4035
ATTN: Laurie Duarte
Washington, DC 20405
Dear Ms. Duarte:

I am writing with regard to the Federal Acquisition Regulatory Council's (FAR Council) request for public comment on 48 CFR Part 36—Federal Acquisition Regulation; Application of the Brooks Act to Mapping Services, as published in the March 23, 2004 edition of the Federal Register.

As a mapping professional who has been employed in the mapping services for over 25 years with more than half of that in public service and the rest in private industry, it is my opinion that the aforementioned changes proposed by the FAR Council are unnecessary and I believe anticompetitive in nature and even have the appearance of doing the bidding of special interests who are only interested in furthering the business goals of traditional A&E businesses and not in the best interests of the Federal government or the American taxpayer. If such amendments are allowed to take place, it could have the effect of severely limiting competition to the point of creating a monopoly over a broad segment of the geospatial industry.

Notice - 42

I believe that the current regulatory language articulated in FAR 36.601—4(a)(1), (2), (3), and the first two sentences of subparagraph (4) provide adequate definition of traditionally understood or accepted A&E Services. If anything, the FAR Council should consider clarifying the last sentence of FAR 36.601—4(a)(4) by explaining what types of mapping services fall outside the scope of “traditionally understood or accepted A&E” services using the more narrow interpretation that I believe was the original intent dating back to 1972. That definition of A&E services that “are directly and immediately related to the research, planning, development, design, construction, or alteration of real property including the professional services associated with the construction of buildings, roads, bridges and other physical infrastructure” in, in my mind, provides a very clear distinction between traditional A&E services and what could be an incredibly broad array of “mapping services”. Broadening this, in my opinion, runs counter to the original legislative intent of the Brooks Act.

GIS and related mapping services have as much to do with information technology as they do with traditional A&E services. They build on the traditional A&E services such as geodetic and planmetric surveys by adding data, analyses and geospatial intelligence for a wide variety of industries and applications completely outside the traditionally understood and accepted A&E services. Any such broadening of the regulatory language could have sweeping negative impacts on a very diverse industry of which traditional A&E service providers are an important component but only a component and it would severely limit the options available to government officials and artificially raise the costs for mapping services outside the scope of traditional A&E services.

In summary, I urge the FAR Council not to accept any amendment of the implementing language under FAR 36.601—4(a)(4) that broadens the definition of “mapping services”.

Sincerely,

/s/ John Steffenson

Mapping Notice - 43



"Ronald P Tymcio"
<rtymcio@fs.fed.us>
05/24/2004 09:02 PM

To: MappingNotice@gsa.gov
cc:
Subject: Regarding "Mapping Notice" Federal Register / Vol. 69, No. 56 /
Tuesday, March 23, 2004, on p. 13499.

Here are my comments regarding this issue :

- FAR 36.601-4 specifically states that "mapping services that are not connected to traditionally understood or accepted architectural and engineering activities, are not incidental to such architectural and engineering activities or have not in themselves traditionally been considered architectural and engineering services shall be procured pursuant to provisions in Parts 13, 14, and 15." This is appropriate because it meets the objectives of the Brooks Act.
- Expanding the definition of surveying and mapping as suggested in House Report 105-746 would not be appropriate because it was not the intention of the Brooks Act to cover such a broad range of applications.
- The proposed change would encompass virtually all Forest Service geospatial applications (vegetation mapping, fire mapping, forest visitor maps, resource aerial photography). These applications do not require the precision and accuracy associated with Brooks Act architectural and engineering services.
- Creating maps for the display and analysis of natural resource data requires a broad range of knowledge and skills. The knowledge and skills go beyond the technical aspects of the map creation. A knowledge of land and resource management is also required in the mapping process.
- The proposed change would result in increased costs to taxpayers without any additional benefit to the public or public safety.
- Current FAR guidance is adequate, appropriate, and does not require amending.

Ron Tymcio
Forest Inventory and Analysis
Rocky Mountain Research Station
Ogden, Utah 84401
email: rtymcio@fs.fed.us
Phone : 801-625-5554
<http://fsweb.ogden.rmrs.fs.fed.us>

Mapping Notice - 44



"James P McGinnis"
<jmcginnis@fs.fed.us>

To: MappingNotice@gsa.gov
cc: "William Belton" <wbelton@fs.fed.us>
Subject: mapping notice - recommendations/response

05/24/2004 06:30 PM

My responses are related to mapping notice - in response to 48 CFR Part 36 Federal Acquisition Regulation; Application of the Brooks Act to Mapping Services:

- The Brooks Act is intended to cover professional architectural and engineering services related to real property where high degrees of precision, accuracy, and safety are of paramount importance. We do use FAR Part 36 acquisitions for these services.

- FAR 36.601-4 specifically states that "mapping services that are not connected to traditionally understood or accepted architectural and engineering activities, are not incidental to such architectural and engineering activities or have not in themselves traditionally been considered architectural and engineering services shall be procured pursuant to provisions in Parts 13, 14, and 15." This is appropriate because it meets the objectives of the Brooks Act.

- Expanding the definition of surveying and mapping as suggested in House Report 105-746 would not be appropriate because it was not the intention of the Brooks Act to cover such a broad range of applications.

- The proposed change would encompass virtually all Forest Service geospatial applications (vegetation mapping, fire mapping, forest visitor maps, resource aerial photography). These applications do not require the precision and accuracy associated with Brooks Act architectural and engineering services.

- The proposed change would result in increased costs to taxpayers without any additional benefit to the public or public safety.

- Current FAR guidance is adequate, appropriate, and does not require amending.

Bottom line: please do not expand this definition



(Embedded image moved to file: pic18318.gif) pic18318.gif

MappingNotice-46



"Locklair Deborah Civ
AFCEE/TDG"
<Deborah.Locklair@br
ooks.af.mil>

To: "MappingNotice@gsa.gov" <MappingNotice@gsa.gov>
cc: "Strom Randie A Col AFCEE/TD" <Randie.Strom@brooks.af.mil>,
"Smith Mark H LtCol AFCEE/TD" <Mark.H.Smith@brooks.af.mil>
Subject: Proposed changes to FAR 36.601 - 4(a)(4)

05/24/2004 04:23 PM

Thank you for the opportunity to comment on proposed changes to FAR 36.601 - 4(a)(4).

The Air Force Center for Environmental Excellence (AFCEE) has been working with geographical information systems (GIS) and other computer modeling capabilities since its inception in 1991. While the acquisition of the varied services required to support the technology is often through our own Architecture and Engineering (A&E) contracts, we also use GSA contracts to quickly obligate funds, to spiral develop our applications, and also to reach firms that are not A&E firms. These non-A&E firms have unique cartographic and GIS skill sets that are often more qualified to perform the multiple tasks required to setup and maintain our GIS systems world wide than our A&E firms.

AFCEE requests the FAR remain unchanged. Additionally, the Brooks Act not be used to limit government and public access to technology developments that traditionally have not been considered Engineering services for "at risk" work.

The following paragraphs provide background information on GIS use and my understanding of the Brooks Act. I have also attached a portion of a document prepared by General Services Administration (GSA) related to a protest by someone with a similar interest in applying the Brooks Act to AF GIS acquisitions through GSA. The person who protested our contract represents several organizations as an executive director and would like to include the profession or science of geodesy in the A&E definition. I apologize in advance for not having access to the whole opinion, but it was all I was provided by the GSA contracting officer.

Background and use of GIS

GIS is a visual portal to information. Rather than performing a word or phrase search to the hundreds of data sources we have, it is done by location.

The GIS interface is typically an aerial photograph with specific locations and features (like buildings, roads or wetlands) linked to other data, to include tables of data and photographs. The GIS enables the data from multiple sources to be retrieved, analyzed and the results often displayed graphically (i.e. show me all the wetlands less than 1 acre in size within 10,000 feet of this building.) Aerial photographs can be taken from space or from aircraft. Acquisition of aerial photographs are typically through NIMA, other Federal agencies or from aerial mapping companies. These aerial photographs are then studied and manipulated in order to link data to specific locations or features that are annotated on the photographic maps. When the aerial photographs are taken, surveyed markers are sometimes used to help the scientists "ortho-rectify" or try and manipulate the photographs to line up with a chosen geodetic reference grid (prepared by a licensed surveyor) and a chosen projection. The process is not perfect and these aerial maps can not be used for design or construction purposes. They are not accurate enough.

The aerial photograph accuracy can vary from 9 foot pixel size to 4 inch pixel size. It requires a minimum of 4 pixels to be able to determine the

Notice 46

shape of an object on a photograph. The accuracy of the GIS would allow someone to "see" an object if it were 81 to 16 inches square, respectively. While this is not accurate enough to build a building, it is accurate enough for us to get close enough to find a lost hiker or a manhole cover very quickly. Building designs typically have accuracy requirements to within fractions of feet or inches. You can not use GIS to replace the need for engineers and surveyors in planning, design or construction.

GIS mapping technology is used by the average citizen daily. For example, most people are familiar with MapQuest type activities...tell me how to get from location A to location B, or show me where the boat ramp is in this State Park...this is a use of GIS mapping technology. The DoD uses similar capability for visitors trying to find an office or building. We also use it for command and control operations, similar to Homeland Defense type responses. An example might include; where is the valve to turn the water off due to a line break? By linking the data electronically in the GIS, we can now determine which buildings will be affected by the water being cut off and automatically email or call affected users. We also use the GIS much like UPS does...tracking shipments of goods or equipment. The same technology can be used to improve the efficiency of equipment delivery based on real time data of available aircraft or trucks. Scheduling of service calls can also be made more time efficient by using the technology to plan a route and schedule appointments that minimize "backtracking."

Using GIS technology, we currently put transponders on vehicles and personnel to help locate them in time of need. The aerial photography and other mapping data, like USGS Quads, assist our efforts to reach these valuable assets quickly by conveying the terrain and vegetation. Similar information assist our law enforcement officers as they respond to break-ins or family disturbances. By linking the GIS map to hazardous waste locations to weather data and models, we can generate the size and shape of the area where the hazardous materials will go if spilled or burned. By linking the GIS map to accident information or equipment information, statistical analysis within the GIS software can be used to display anomalous data...helping us to determine if we need to re-design an intersection or predict when a certain type of valve or pipe may fail, based on failures of similar equipment.

None of the GIS capabilities above require the use of licensed or registered engineers or surveyors. Most of the work can be performed by A&E firms or through the firms by sub-contractors.

The GIS capability we use is related to the technology developed by, and still used by, NIMA. The technology is being furthered by advances such as Airborne Light Intensity Detection and Ranging (LiDAR). LiDAR is often used with aerial photography acquisition to gather data related to the height of buildings and vegetation using technology similar to sonar. Like aerial photography, it must also be reviewed and manipulated to make sure it correlates with known surveyed locations and elevations. This activity is not performed by engineers or surveyors.

Additionally, the ability for hikers or non-surveyors to acquire and use digital Global Positions Systems (GPS) to accurately determine location or delineate a path and display that information on a GIS is also becoming very affordable. Similar systems are available to download GIS data and aerial photography into vehicles, laptops and handhelds. Forester use ATVs and a portable GPS device to delineate the area of a controlled or accidental burn. This burn information is tracked for ecosystem impacts and future controlled burns.

Use of all the technology above requires us to look at the source and accuracy of the information loaded into GIS. We must use professional judgment as to determine the appropriate use of the data for our needs.

Notice 46

Metadata for these data sources is important to make sure we use the technology appropriately. Metadata is data about the data: who gathered, when gathered, why was it gathered, what is the accuracy of the location information, and what is source and accuracy of any associated data. We then make decisions on whether or not to include or exclude that dataset in our analysis.

Many of the Department of Defense (DoD) services acquire GIS capability through our A&E contracting avenues, because that is what we are most familiar with and have easy access to those firms. The capability is typically setup and maintained in our engineering shops where we have the computers and the technicians who maintain the points, lines and polygons linking the feature location to other data sets. Except for A&E firms that support NIMA deliverables, most of our contractors sub-contract the mapping portion of this work to specialty firms that also support NIMA deliverables. These deliverables include aerial photography and concurrently acquired LiDAR elevations, manipulation of the aerial for ortho-rectification, and delineation of selected visual locations. Only a small portion of this effort requires a licensed surveyor, none of this effort requires a licensed engineer. It does require the art and science of cartography and geodesy professionals.

Most GIS mapping of the same area by different professionals will not line up perfectly. The aerial photography requires manipulation to fit the "map" to the survey locations within the accuracy tolerances requested. The photos and existing data are "rubber-banded" (stretched or compressed) to provide a best fit. Users of this type of data know and understand that it can not be used for "targeting" or construction purposes.

Brooks Act Understanding

It has been my understanding that the Brooks Act was meant to prevent the Federal Government from being forced to select the lowest bid for "at risk" work that required the use of licensed or certified engineers or surveyors. To me, "at risk" work means projects where, if done by inexperienced staff, could result in negative impact to life, health and safety, or financial harm. This would typically be plans for new construction/renovation, the "as-built" building designs, the detailed surveying for property boundaries and potential impact to underground easements. Our "NIMA-like" GIS deliverables are not accurate enough to design for construction requirements. Our deliverables do allow us to look at a potential location on the GIS map and, based on the information linked to it, make preliminary judgments to perform the planning and design evaluation at the appropriate locations. An example would be a need to locate a new building. Based on the square footage and use, the GIS can help locate potential areas to be considered and bring in other data (i.e. wetlands delineations, utility easements, contaminated soil data) that might reduce the number of sites that undergo full planning analysis...all in a matter of seconds. This reduces the time and effort of the licensed planner and engineer, but does not reduce the need for their services for the detailed plans and drawings.

By providing a visual of the surrounding area and/or buildings, we can quickly decide not to build a weapons storage area or a new rifle range within 50 feet (or whatever appropriate distance applies) of a day care center. That decision does not require the use of licensed planners or engineers. Another example could be related to Homeland Security. You might need to know where the critical shut offs are for electric, gas and water to a building that is damaged or taken over by terrorists. The GIS limits access to this data by login, to authorized users only, and can direct utility workers to the general location of the manhole cover, usually within 3 feet. This can significantly reduce time to find the location. If additional photographic or design information is linked to the GIS, that

Notice 46

information can be available to the utility worker, or authorized supervisor, expediting performance time of the required action. That decision does not require the use of licensed planners or engineers.

In summary, the acquisition of data for our GIS capability within the AF requires a various team of technical and scientific staff. This staff may or may not be part of an A&E firm. The only portion of the work to build a GIS that requires a licensed or certified engineer, planner or surveyor is the acquisition of location information, which is typically less than 15% of the data gathering cost...incidental to the total cost. The location information usually supplements existing drawings and databases, and may or may not need to be certified by a licensed surveyor (depending on the accuracy.) Currently, GPS equipment is available to the general public that meet our accuracy needs, this was not true 10 years ago. I believe the Brooks Act does not, and should not apply to GIS or "NIMA" type mapping projects. These are not maps that meet the 3 prong test of the Brooks Act:

1. professional services of an architectural or engineering nature, as defined by State law, if applicable, which are required to be performed or approved by a person licensed, registered, or certified to provide such services as described in this paragraph;
2. professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property;

AND (please note this is not an "OR")

3. such other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.

Thank you again for the opportunity to comment.

Respectfully,

Debby Locklair

Deborah Locklair, PE

HQ AFCEE/TDG

3300 Sidney Brooks

Brooks City-Base, TX 78235

210.536.3516

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<<SOWAirForceSurveyingandMapping.doc>>



SOWAirForceSurveyingandMapping.

Notice 46

On February 3, 2004, this office submitted a response to Ms. Susan Houser regarding a Statement of Work (SOW) for Project ID No. PY574211T6. The "General" section of the SOW indicates this requirement is for "GIS for Communication Utility Collection at Multiple Air Combat Command (ACC) Installations". The Introduction of the SOW states: "The USAF GeoBase [was] requested to review the SOW and provide a determination as to whether this workprogram comprises an overarching effort across the combat support spectrum to replace the many overlapping mapping investments with one digital map linked to current infrastructure databases. The mission of the USAF GeoBase is to "attain, maintain, and sustain one geospatial info structure requirement" with a vision of "one installation, one map". The Headquarters Air Force Geo Integration Office (HAF GIO) in AF/IL is charged with leading this necessary transformation through execution of the four dimensions of the GeoBase program; Strategic GeoBase, Expeditionary GeoBase, GeoReach, and Garrison GeoBase.

As part of the strategy for implementing GeoBase throughout Air Combat Command (ACC), one of the primary strategies is to develop and maintain precise and reliable geospatial information. The intent is to develop data in accordance with the CADD/GIS Center's Spatial Data Standards for Facilities, Infrastructure, and Environment (SDSFIE), and to assist in the creation of a Common Installation Picture (CIP) for all installations in the command. Additional Mission Data Sets (MDS) specific to functional missions and requiring special access considerations will be supplied and maintained by functional data stewards and viewed in conjunction with the CIP to enhance situational awareness capabilities.

This office was requested to review the SOW and make a determination as to whether the requirement could be performed under the Professional Engineering Services Acquisition.

Our review of the SOW raised concerns that this requirement was possibly related to mapping and surveying for real property and therefore, should be procured in accordance with the Brooks Act, FAR Part 36. These concerns were outlined in our response.

As a continuing attempt to clarify and offer assistance regarding this SOW, your attention is called to Mr. Peppin's e-mail message of February 6, 2004, which states: "[t]his requirement is for a GIS which acts as a portal to access information from existing databases. It includes the gathering of existing information about the communications lines and supporting data, either tabular or drawings, and putting them on an existing GIS system that has the appearance of a map, like Mapquest on steroids." Mr. Peppin offers information from the client that indicates the system will not be used for comprehensive planning related to construction. Predominantly, this message indicates the system is to be utilized for mapping and surveying that's not related to real property, however, further in the body of the message the following is offered: "Can an engineer or a planner use the GIS to make a more informed initial decision...yes, because he can see what is around anything he plans to do."

Several Comptroller General's Decisions have been reviewed in an effort to bring closure to this issue. Comptroller General's Decision B-235967 was issued as a result of the Forest Service's issuance of a request for proposals (RFP) for cadastral survey work at the Clearwater National Forest, Idaho. The contracting officer believed after the Federal Acquisition Regulation (FAR) definition of architectural and engineering (A&E) services was amended, cadastral surveying no longer fell within the definition of A&E services.

The court upheld the protest, indicating "[t]he contracting officer's determination that cadastral surveying does not fall within the definition of A&E services was based on clause (B) of the 1988 amendment which includes under the definition of architectural or engineering services those services performed by contract that are "associated with research, planning, development, design, construction, alteration, or repair of real property." Further, the Decision indicates that "clause (C) of the 1988 amendment includes in the definition of the term "architectural and engineering services" "other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including ...surveying and mapping...services"

The decision "specifically rejected the contracting officer's position that the test to be applied is whether the services is incidental to an A&E project; rather, [it was] concluded that, based on the 1988 amendment, the test now includes whether the service is of an architectural or engineering nature, or an incidental service, which members of the architectural and engineering professions may logically or justifiably perform."

In Comptroller General's Decisions B-233987 and B-233987.2, the Department of Agriculture requested an advance decision on the proper interpretation of the revised definition of architectural and engineering services. The primary question was whether various services enumerated in the 1988 amendment of the definition of A&E services, including mapping and surveying, required the use of specialized A&E procedures prescribed by the Brooks Act when those services are not being procured incidental to or in conjunction with traditional A&E projects.

The decision clearly indicates that A&E services include: "[o]ther professional services of an architectural or engineering nature (including surveying and mapping, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals and other related services) that the contracting officer determines should logically or justifiably be performed by members of the architectural and engineering professions (and individuals of their employ)."

The FAR Part 36.601-4, Implementation, paragraph (a)(4) indicates the following (sections in bold text for emphasis): "Professional surveying and mapping services of an architectural or engineering nature. Surveying is considered to be an architectural and engineering service and shall be procured pursuant to section 36.601 from registered

surveyors or architects and engineers. Mapping associated with the research, planning, development, design, construction, or alteration of real property is considered to be an architectural and engineering service and is to be procured pursuant to section 36.601. **[However, mapping services that are not connected to traditionally understood or accepted architectural and engineering activities, are not incidental to such architectural and engineering activities or have not in themselves traditionally been considered architectural and engineering services shall be procured pursuant to provisions in Parts 13, 14, and 15].**

Decision:

Based on the various e-messages received, it appears that the overall consensus between FTS and the Air Force is that this requirement falls within the guidelines of the mapping services that are not connected to traditionally understood or accepted architectural and engineering activities, are not incidental to such A&E activities or have not in themselves traditionally been considered A&E services. If this is the case, it can be procured pursuant to provisions in FAR Parts 13, 14, and 15.

Since I am not an expert in the field of A&E, assistance was requested from our Public Buildings Services (PBS) office. Mr. Wade Belcher of PBS has provided the following comments:

“After reviewing the proposed Statement of Work and going through our past experience with FAR definitions of architect-engineer services (including serving as Chief Professional Services Contracts Branch and Director, Procurement Policy within PBS from 1978 - 1993), I offer the following:

1. Based on GSA and other agencies' experiences with various professional associations/societies that wished to include their services under the Brooks Act coverage, mapping and surveying normally applied to coast and geodetic surveying and related mapping to determine meets and bounds, topography, etc.
2. The services described in the proposed SOW would obtain most information from existing data, including maps/surveys, for the purpose of locating specific elements within a defined area. I would offer this service to be similar to laying out a grid for arranging sensors/monitors. This is further supported by the potential use of GPS information.
3. The final work product is a digital locating tool to identify where key elements are on any of the defined locations with a high degree of accuracy.

To the best of my knowledge, understanding and belief, these services would not come under the definitions of architect-engineer services provided under the Brooks Act, Pub. L 92-582, and implemented under FAR 36.”

Notice - 46

The only possible caveat here would be the Comptroller General's Decisions referenced herein which indicates that cadastral surveying (which is a public record, survey, or map of the value, extent, and ownership of land as a basis of taxation) is A&E. This is not surveying and mapping for the purpose of future development but simply, that to be used for the purpose of taxation.

Based on my review of the SOW and referenced changes thereto, e-messages from the procuring activity offering further detail of the requirement, in particular, that it is not surveying and mapping of real property nor would it be utilized for future plans of development for real property, and the information supplied by our PBS A&E expert, I believe this requirement is not A&E. The contracting officer at the task order level, however, must still make a final decision.

Research has been done to assure this service is not currently provided on other Federal Supply Schedules. The Environmental Schedule under SIN 899-7 has Geographic Information Systems services; however, it is only in support of an agency's environmental program. Schedule 66 II Q has Surveying Equipment under SIN 66-613 and Global Positioning Systems under SIN 66-614. There have been plans to include these services under this schedule, however, currently only equipment is available. Therefore, in the best interest of the customer, I believe these services should be procured using the Professional Engineering Services Schedule-a broad based engineering acquisition tool where any type of professional engineering services may be procured unless exceptions have been made thereto.



United States
Department of
Agriculture

Forest
Service

Washington Office

Mapping Notice - 46

14th & Independence SW
P.O. Box 96090
Washington, DC 20090-6090

File Code: 7100

Date: MAY 20 2004

Ms Laurie Duarte
General Services Administration
FAR Secretariat (MVA)
1800 F Street, NW, Room 4035
Washington, DC 20405

Subject: Mapping Notice

Dear Ms Duarte:

This letter provides the Forest Service agency response and addresses GSA's request for comments pertaining to 48 CFR Part 36, Federal Acquisition Regulation; Application of the Brooks Act to Mapping Services.

The Forest Service has strong reservations about extending FAR Part 36 QBS provisions to additional areas of mapping and remote sensing services. We believe individual agency procurement officials should determine the applicability of Architect/Engineer procurement methods. Requiring the use of A/E QBS procedures for our entire agency's "mapping services," whether that is aerial photography, GPS perimeter mapping, or developing rectified products from satellite imagery, is an unnecessary expense for the level of accuracy we often require. For more precise measurements, and for professional A/E geospatial requirements that involve real property, we will continue to utilize A/E QBS procedures as is the current practice.

The original intent of the Brooks Act was to assure that professional architectural and engineering products be developed where real property was concerned. The Forest Service uses A/E procurement methods extensively for these functions. The problem with extending these methods for all contracted "mapping services" is that natural resource imaging and mapping often does not require highly accurate measurements nor involve the site-specific impacts of buildings, roads, and property boundaries. Mapping areas of vegetation stress, for example, are often subject to interpretation. It makes little sense to require an unnecessarily high degree of geo-positioning accuracy when delineating relatively coarse vegetation attributes.

Another primary consideration involves technology. Technology is replacing the need for professional services in a number of areas. Recent advances in software now permit individuals with relatively little experience to generate adequate mapping products. Requiring contractors to have licensing in order to provide the government with those products dilutes the cost savings of utilizing the software. An example of this is the ability to rectify digital aerial imagery to a US Geological Survey Digital Orthoimagery Quadrangle (DOQ). Through the use of Leica Geosystem's Imagine Orthobase product, it is possible to create orthophotos (aerial imagery that appear to be map-like, with distortions removed) rapidly and efficiently. A professional firm is not required to perform this operation, and the results would be no better if one were utilized.



Notice-46

The government should not have to pay additional procurement costs, and eliminate private sector cost competition, in order to take advantage of these mapping software advances.

A contrary argument in favor of utilizing professional services for the development of all mapping products is that they may, at some future time, be inappropriately used for work requiring precise measurements. Therefore, all mapping products should be professionally prepared. This argument is easily dismissed by properly adhering to the requirements of the Federal Geographic Data Committee (FGDC) metadata standards. These standards require an accuracy statement, and therefore, inappropriate use can be avoided. All federal civil agencies are in the process of complying with the FGDC metadata standards so maps and map-like products that require only a moderate level of accuracy are documented as such.

As requested in the notice, an alternative provision is suggested. A potential remedy for determining where procurement for professional "mapping services" is applicable is to have all potential procurements pass a three-part test involving real property, scale, and accuracy. If the mapping services product will be used for research, planning, development, design, construction, or alteration of real property, and if the scale is 1:1200 or larger, and its horizontal positional accuracy is 0.3 meters or less (Circular Error Probability 95% of 0.3 meters), then Part 36 provisions should be considered. This fine scale and accuracy implies a precision where professional services would be beneficial for the final product. The final product could be suitable for engineering public works, cadastral, and other precision applications. Certainly no reasonable individual would rely on a map that had an acceptable error of 10 meters to locate a structure or right-of-way where adjacent impacts are important. Therefore, the government should also not be required to pay additional costs, and exclude competition, for mapping services it does not need for the precision of the product desired.

Clearly, the intent of the Brooks Act is to allow the government to contract for professional architect and engineering services where a high degree of precision, accuracy, and safety are required for the project. This professional requirement is deemed so important, and it overshadows the cost component so significantly, that cost becomes negligible. Many of our geospatial applications fall outside this intent and cost to the government is considered a very important factor. The danger of requiring Part 36 A/E QBS procedures for all mapping services is that it will increase costs to the taxpayers, with no better product for many of our requirements. Federal agencies need the flexibility to determine the relative merit between the need for a professional A/E product and a cost-competitive procurement.

Sincerely,


E. VAUGHN STOKES
Director of Engineering

cc: Frederick Norbury, Dale J Fabian, Greg Smith, Richard Guldin, Tom Harbour, Charles Dull, Tom Bobbe, Robin Carroll

United States Department of Agriculture



Natural Resources Conservation Service
P.O. Box 2890
Washington, Dc 20013

MAPPING Notice 47

General Services Administration

May 24, 2004

FAR Secretariat (MVA)
ATTN: Laurie Duarte
1800 F Street, NW, Room 4035
Washington, D.C. 20405
MappingNotice@gsa.gov

Dear Ms. Duarte:

RE: FAR Case: Mapping Notice

I would like to take this opportunity to provide comments pertaining to 48 CFR Part 36, Federal Acquisition Regulation; Application of the Brooks Act to Mapping Services published in the Federal Register on March 23, 2004 reference "Mapping Notice".

Over the past five years the USDA Service Center Agencies (SCA) of Farm Service Agency, Natural Resources Conservation Service, Rural Utilities Service, Rural Business and Cooperative Service and Rural Housing Service have made a significant investments to implement Geographic Information Systems (GIS) in our 2560 plus collocated offices. The proposed amendment will have a very serious impact on our ability to maintain the productivity and customer service improvements gained by automating our field offices with geospatial technologies.

Geospatial data like aerial photography and digital orthoimagery form the backdrop image that field offices use for orientation and ground reference in carrying out natural resource planning, inventory and assessment. If enacted, this revision will increase the SCA costs to procure, store and disseminate geospatial related products such as aerial photography, orthoimagery and other geographic information system (GIS) data. For example, the SCA staff estimate that based on information obtained from the USGS, and their use of the Brooks Act for digital Orthoimagery that our cost would increase from about \$12 per square mile to \$40 - \$50 per square mile. If acquisitions were to be made under the guidelines of the proposed amendment, acquisition costs for the SCA would have increased by as much as \$15-\$20 million

The USDA SCA, U.S. Forest Service, and Foreign Agriculture Service are the largest buyers and users of aerial photography, satellite imagery, remote sensing and related geospatial services in the civilian sector of the government. The general public along with these USDA agencies have the most to lose if this amendment is revised. We are very satisfied with the contracting options the current FAR provides to purchase aerial photography, orthoimagery and geospatial data products under full and open competition. The quality and timeliness of the deliverables purchased using the "best value" approach have been excellent and are done at very competitive prices resulting in savings to our agency and taxpayers.

I urge you to take these concerns seriously as all USDA SCA programs supported by aerial photography, imagery and geospatial data will be severely impacted by this proposed amendment.


Dennis J. Lytle
USDA SCA GIS Team Lead and USDA COTR

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224/04
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Mapping Notice 48

United States Department of Agriculture



Natural Resources Conservation Service
P.O. Box 2890
Washington, Dc 20013

General Services Administration
FAR Secretariat (MVA)
ATTN: Laurie Duarte
1800 F Street, NW, Room 4035
Washington, D.C. 20405
MappingNotice@gsa.gov

May 20, 2004

Dear Ms. Duarte:

RE: FAR Case: Mapping Notice

I would like to take this opportunity to provide comments pertaining to 48 CFR Part 36, Federal Acquisition Regulation; Application of the Brooks Act to Mapping Services published in the Federal Register on March 23, 2004 reference "Mapping Notice". The U.S. Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS) strongly opposes modifying the FAR 36.601-4(a) (4) to apply the Brooks Act qualifications based selection process to a much broader range of re-defined "surveying and mapping" services. If enacted, this revision will increase NRCS costs to procure, store and disseminate geospatial related products such as aerial photography, orthoimagery and other geographic information system (GIS) data. GIS data procured by NRCS through the FAR is not used or required for architectural and engineering applications. Revising the FAR as "one commenter" proposed will not provide measurable benefits nor improve the quality of the geospatial products for the additional costs that will be needed to pay licensed professionals for these services.

The existing FAR regulation clearly states that "mapping services that are not connected to traditionally understood or accepted architectural and engineering activities, are not incidental to such architectural and engineering activities or have not in themselves traditionally been considered architectural and engineering services shall be procured pursuant to provisions in Parts 13, 14, and 15." The use of the Brooks Act (FAR Part 36) is intended for architectural and engineering services that require surveying and mapping for the architectural design and construction of appurtenances on real property such as bridges, buildings, dams, levees, canals, and highways.

The NRCS uses the Brooks Act exclusively for architectural and engineering contracts such as the construction of agricultural waste lagoons, stream restoration, dam construction and dam rehabilitation projects. We agree that architectural and engineering services are appropriate for structural and construction purposes but absolutely disagree that the pure acquisition of aerial photography, digital orthoimagery and GIS data for natural resource planning, inventory and assessment is required to be done by registered surveyors, architects or engineers. With today's use of airborne GPS and off-the-shelf GIS technology; "surveying" services are not even required for the acquisition of aerial photography, production of orthoimagery and other geospatial data purchased by NRCS through the FAR procedures.

We are very satisfied with the contracting options the current FAR provides to purchase aerial photography, orthoimagery and geospatial data products under full and open competition. We purchase these products using the "best value" contracting approach where technical proposals are evaluated and rated separately from the pricing proposals; we do not use the low bid method. Final source selection is determined by the overall ranking of technical and pricing scores combined. The current FAR provides us the best value pricing, on-schedule delivery and strict conformance with USDA, NRCS and Federal Geographic Data Committee geospatial standards and specifications. The quality and timeliness of the deliverables purchased using the "best value" approach have been excellent and are done at very competitive prices resulting in savings to our agency and taxpayers.

Many of the firms performing our aerial photography, orthoimagery and geospatial data development work are small businesses. In FY-2003, a small business aerial photography firm received an award from the Secretary of Agriculture for their excellent performance on our National Resource Inventory projects. If the Brooks Act is mandated for these types of services and products; many small businesses will be locked-out from bidding by not being able to compete with the larger A&E firms having licensed surveyors, architects and engineers.

The U.S. Geological Survey's (USGS) use of the Brooks Act has resulted in contracts for aerial photography and digital orthoimagery that cost significantly more than USDA's contracts. The USGS contracts do not provide increased accuracy or improvement in quality and delivery timeliness over the USDA contracts that utilize the FAR. In FY-2003, NRCS cost shared with the Farm Service Agency and others state partners to purchase aerial photography and digital orthoimagery in 14 states (529,349 square miles) at \$12 per square mile. Based on information obtained from the USGS, their use of the Brooks Act for similar deliverables is estimated at \$40 - \$50 per square mile. If acquisitions had been made under the guidelines of the proposed amendment, acquisition costs for NRCS and our partners would have increased by as much as \$15-\$20 million. With federal agencies being faced with less money to spend each year, it is very important that we continue to have the procurement options to purchase these products at the best possible value.

We are also very concerned that we will not be able to leverage our funds by cost-sharing with long-standing state and local-level partners if the Brooks Act is mandated for the broad scope of mapping services re-defined in the proposed amendment. We coordinate closely with our state and local partners and often a partner chooses to administer and manage aerial photography and orthoimagery contracts that also meet our requirements. The proposed amendment will restrict the use of federal funds for non-Brooks Act contracts at the state and local level and diminish our opportunities for additional cost savings through state-federal partnerships.

Over the past five years the NRCS has made a significant investment to automate over 3,000 county field offices through the purchase of computer hardware, geodata and ESRI Arc GIS software. Geospatial data like aerial photography and digital orthoimagery form the backdrop image that field offices use for orientation and ground reference in carrying out natural resource planning, inventory and assessment. The proposed amendment will negate future progress and efficiencies gained by automating our field offices with geospatial technologies as we need to continue to refresh and update our geospatial data at reasonable prices to maintain our GIS systems.

The NRCS and sister USDA agencies of the U.S. Forest Service, Foreign Agriculture Service and the Farm Service Agency are the largest buyer and user of aerial photography, satellite imagery, remote sensing and related geospatial services in the civilian sector of the government. The general public along with the NRCS and our sister agencies have the most to lose if this amendment is revised. We urge you to take our concerns seriously as all USDA farm and conservation programs supported by aerial photography, imagery and geospatial data will be severely impacted by this proposed amendment.

We appreciate the opportunity to provide comments. Our staff has many years of professional expertise in the use of GIS and remote sensing technologies; we are available to work with the FAR committee as appropriate if need be.

Sincerely,



MAURICE J. MAUSBACH,
Deputy Chief
Soil Survey and Resource Assessment

cc:

Tom Weber, Associate Chief, NRCS, Washington, DC

Dwight Holman, Deputy Chief, Management, NRCS, Washington, DC

Wayne M. Maresch, Director, Resource Inventory and Analysis Division, NRCS, Washington, DC

The Natural Resources Conservation Service provides leadership in a partnership effort to help people conserve, maintain, and improve our natural resources and environment.

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Mapping Notice 49



"John Combs"

<jcombs@airsurvey.com>

m>

To: MappingNotice@gsa.gov

cc:

Subject: Mapping Notice - QBS Process for Mapping Services

05/24/2004 08:44 AM

Please be advised that our firm supports the application of the Brooks Act, (QBS), process for the procurement of Photogrammetric Mapping and related services.

John Combs
Air Survey
Dulles, VA
703-471-4510
jcombs@airsurvey.com

Input of NOAA's National Ocean Service

Federal Register Request for Comments on the FAR's Application of 48 CFR Part 36:
Application of the Brooks Act to Mapping Services

The National Oceanic and Atmospheric Administration's Ocean Service (NOS) contracts for surveying and mapping services to meet a range of agency requirements. Offices in NOS that regularly require surveying and mapping include: the Office of the Coast Survey, the Office of the National Geodetic Survey, the Coastal Services Center, and the National Centers for Coastal Ocean Science. The Hydrographic Services Improvement Act of 1998 requires NOS to use Brooks Act procedures for the *acquisition* of "hydrographic data," as defined in the Act.

Contracting is integral to meeting agency mission requirements. NOS should have discretion to use procurement mechanisms that best meet a particular need and its fiscal responsibilities. An assumption that the sole way to procure quality services is through the Brooks Act is not true. Procurement law has been substantially revised since the Brooks Act was originally enacted. Today, agencies can craft proposals prioritizing quality and that do not bind them to procure services from the lowest bidder. Quality services can and are procured using standard procurement authorities (FAR 13, 14, and 15). Finally, the Brooks Act in and of itself is no guarantee of quality service and its processes raise concerns about whether services are always procured at the best value to the public.

To the extent that there is confusion in procurement laws—whether it be in statutes, the FAR, or consistency between the two—NOS supports a revision that gives agencies discretion on use of the Brooks Act and that would not unduly broaden the definition of surveying and mapping. NOS stresses that these views do not alter its firm commitment to contracting for surveying and mapping services or to meeting its statutory requirements. The key point is that *when contracting for surveying and mapping services agencies should have the flexibility and discretion to determine the contracting mechanism that best meets agency requirements and provides the best value to the public.*

Reasons for providing agencies discretion and for not broadening the scope of the definition of surveying and mapping activities under the Brooks Act include:

- Otherwise qualified U.S. firms, including small businesses, may not qualify as A-E firms under new regulations. The exclusion of qualified firms serves no public purpose.
- New regulations may disallow obtaining services under the GSA Schedules that are currently available through that mechanism. NOS has been satisfied with services procured under these Schedules and does not believe that the Brooks Act contracting mechanism would improve the level of performance or product quality.
- Brooks Act contracts are intended for professions which have strict apprenticeship and licensing requirements and that must adhere to federal or state standards, i.e., building codes. Services that could be covered under a broader definition of surveying and mapping, such as database management or other IT services, do not require licensing or adherence to federal, state or industry standards. Thus the intent of the Brooks Act does not apply to the proposed, broader definition of A&E activities.

May 20, 2004

General Services Administration
FAR Secretariat (MVA)
1800 F Street, NW
Room 4035
ATTN: Laurie Duarte
Washington, DC 20405

Dear Ms. Duarte,

After coordinating with its procurement, program and legal offices, the National Oceanic and Atmospheric Administration (NOAA) provides the following response to the Federal Acquisition Regulatory Council's request for comments regarding the guidance in the Federal Acquisition Regulation (FAR) addressing the application of the Brooks Act to mapping and surveying. The arguments put forth herein are summarized as follows:

1. FAR guidance on surveying and mapping is ambiguous and inconsistent with the Brooks Act.
2. Federal procurement methods have evolved substantially since 1972 (when the Brooks Act was passed) and surveying and mapping can best be procured using best value techniques.
3. It is not the Government or taxpayer's best interest to extend the Brooks Act solicitation procedures to survey and mapping services because price reasonableness is difficult to determine, the procurement cycle time is too arduous, and the process does not recognize efficient operating practices.
4. Use of Part 36 of the FAR for surveying and mapping services strays too far from the original intent of the Brooks Act, namely – to address traditional architectural design and civil engineering associated with real property, buildings, bridges, dams and the like.

Finally, this response identifies a way in which FAR Part 36 can be revised to accommodate more effective price reasonableness determinations, and FAR Part 15 can be modified to accommodate the qualification based selection procedures outlined in the Brooks Act.

FAR GUIDANCE IS UNCLEAR AND INCONSISTENT

Despite the existence of language in FAR 36.601-4(a)(4) mandating the use of Brooks Act procurement procedures for certain surveying and mapping activities, the extent and limitations of this requirement remain unclear. The statutory and regulatory definitions of "architecture and engineering services" are conflicting and GAO case law does little to clarify which surveying and mapping services must be procured using the procedures of the Brooks Act.

The definition of "architecture and engineering services" in the Brooks Act includes surveying and mapping services, which members of the architecture and engineering professions may logically or justifiably perform. 40 U.S.C. § 1102(2)(C) (2004). This definition could be read quite broadly. FAR 36.601-4(a)(4), on the other hand, provides a significantly narrower and conflicting definition.

The Brooks Act defines "architectural and engineering services" as:

- 1. professional services of an architectural or engineering nature, as defined by State law, if applicable, which are required to be performed or approved by a person licensed, registered, or certified to provide such services as described in this paragraph;*
- 2. professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and*
- 3. such other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operation and maintenance manuals, and other related services.*

For comparison, FAR 36.601-4(a)(4) reads as follows:

(4) Professional surveying and mapping services of an architectural or engineering nature. Surveying is considered to be an architectural and engineering service and shall be procured pursuant to section 36.601 from registered surveyors or architects and engineers. Mapping associated with the research, planning, development, design, construction, or alteration of real property is considered to be an architectural and engineering service and is to be procured pursuant to section 36.601. However, mapping services that are not connected to traditionally understood or accepted architectural and engineering activities, are not incidental to such architectural and engineering activities or have not in themselves traditionally been considered architectural and

engineering services shall be procured pursuant to provisions in Parts 13, 14, and 15.

The first sentence of the FAR definition seems to limit the application of the Brooks Act to those surveying and mapping services of “an architectural or engineering nature.” The Brooks Act definition is not limited in this way. Further, the FAR provides no guidance for determining whether a particular service is of an architecture or engineering nature. The second sentence appears to conflict with the first sentence because it categorizes all surveying as an architecture or engineering service.

The third sentence conflicts with both the Brooks Act definition and the first sentence of FAR 36.601-4(a)(4) because it limits the application of the Act’s procedures to only those mapping services associated with research, planning, development, design, construction, or alteration of real property. The FAR provides no definition of the term “associated with.”

The fourth, fifth, and sixth sentences exclude mapping services that are neither “connected,” “incidental to traditionally understood or accepted architectural and engineering activities,” nor “traditionally considered A-E services” from Brooks Act procedures. Yet, the FAR fails to define “connected to” and “incidental to.” Additionally, no guidance is provided as to how to determine what activities are “traditionally understood or accepted” to be architectural and engineering activities. Similarly, there is no clear way to determine which mapping services have “traditionally been considered A-E services.”

The relevant GAO decisions do not help to integrate the FAR definition into the broader definition provided by the Brooks Act. Read together, the decisions indicate that surveying and mapping services should be procured pursuant to Brooks Act procedures where it is: (1) “incidental to” services of an A-E nature that a member of the A-E profession may logically or justifiably perform; (2) part of an A-E project and should be performed by traditional A-E firms; (3) a “traditional” surveying and mapping service; or (4) is “traditionally performed by architects and engineers.” See *Forest Serv., Dep’t of Agric. – Request for Advance Decision*, B-233,987, B-233,987.2, 89-2 CPD ¶ 47; *White Shield, Inc.*, B-235,522, 89-2 CPD ¶ 257; *Fodrea Land Surveys*, B-236,413, 89-2 CPD ¶ 364. These holdings present additional ambiguities and conflicts. In order to clarify the application of the Brooks Act to surveying and mapping services significant revisions are necessary.

FEDERAL PROCUREMENT METHODS HAVE SUBSTANTIALLY EVOLVED SINCE 1972

Based on the published notes from 1972, there was an understandable rationale behind the passage of the Brooks Act. It is not in the Government’s best interest to consider price as the sole or principal factor in selecting a firm to design, alter or repair real property. Further, the distinction of one design over another is often subjective and not a quantifiable business risk for a firm considering Federal A/E work. Industry might also

argue that it is impractical to require A/E firms to invest the substantial resources and estimates necessary to identify a design and associated price without any assurance of award. Finally, and perhaps most importantly, real property must be constructed in a manner that protects the safety of the occupants and integrity of the structure, and thereby should only be done by licensed professionals. Low cost competitions are counterproductive to obtaining the best design.

Since 1972, however, Federal procurement techniques have substantially evolved. In 1972, awarding to the lowest price (or lowest bid) was the dominant method of selection, and competition was not emphasized as strongly as it is today. There have been many substantial changes to the Federal Acquisition Regulation since that time. These changes include the Office of Federal Procurement Policy Act, Competition in Contracting Act, Federal Acquisition Streamlining Act, Clinger-Cohen Act, and most recently, the Service Acquisition Reform Act. It does not appear the Brooks Act, or its advocates, have responded to these changes to the FAR that create a more effective set of solicitation methods that can do what was envisioned by the Brooks Act.

For example, the Competition in Contracting Act of 1984 (CICA) advocated, among other things, the importance of competition to secure price reasonableness. Federal officials were substantially challenged to seek out competitive opportunities and evaluate offers against fair, objective, and transparent criteria. By applying the principles of CICA and later rewrites of FAR Part 15, Federal procurement professionals have overwhelmingly advocated the selection of vendors that represent the "best overall value to the Government." Rather than using price as the sole selection criteria, a best value analysis gives substantial weight to non price factors and supports a reasoned analysis of all merits of a proposal as well as a tradeoff of non-price factors with the proposed price. Notwithstanding subtle differences in procedure, a best value analysis can, in many respects, achieve the same qualification-based selection outcome as outlined in the Brooks Act. Industry groups that advocate the qualification based selection technique outlined in the Brooks Act do not recognize this substantial evolution in Federal procurement methods. Moreover, qualification based selection techniques preclude the element of value analysis. Using best value analysis, the Federal contracting officer can stipulate the application and extent of professional certification that must be associated with a survey or mapping work product. In addition to openly soliciting all potential sources, the Contracting officer can identify evaluation criteria that advocate selection of the highest quality firms with the specific skills and professional certifications necessary to deliver a survey or prepare a map. Moreover, a best value analysis often makes price secondary to a firm's technical skills, management approach, and record of past performance. Once these factors are evaluated, the contracting officer can make a best value analysis by including price.

Most of the language and literature used by industry sources that advocate expanding the Brooks Act refer to the Government accepting "bids." "Bid" is a term of art often used with Invitation for Bids (IFBs), particularly in the construction industry. It is clear that surveying and mapping work, as well as A/E work, would not be appropriate for IFBs. Accordingly, "offer" or "proposal" is the term of art that is defined by the FAR, and most

often used by Federal officials when acquiring these services. An “offer” or “proposal” is distinguished from a “bid” since it allows for a discussion between the offeror and the Government relative to the proposed technical skills, approach, or other non price and price related factors. Ultimately, the Government has the flexibility to logically consider all attributes of the offers, and make award to the one that represents the best overall value to the Government. Industry groups fail to acknowledge this point because it illustrates how Federal officials can make logical decisions that achieve better value for the taxpayer, without following the antiquated methods outlined in the Brooks Act.

IT IS NOT IN THE GOVERNMENT OR TAXPAYER’S BEST INTEREST TO EXTEND BROOKS ACT PROCEDURES TO ACQUIRING SURVEYING AND MAPPING SERVICES

In general, Brooks Act procedures do not promote the best value solution. Rather, these procedures emphasize the skills of the company as the only selection criteria, leaving the Federal contracting officer to struggle with documenting why the price demanded by the contractor is fair and reasonable. There is no basis for comparison. For this reason, and others as outlined below, it is not in the best interest of the nation to extend Brooks Act procedures to acquiring surveying and mapping services.

Since Brooks Act procedures preclude the collection of competitive pricing, procurement officials must use the least desirable, and most time consuming techniques for verifying price reasonableness. It is a widely held belief that the proposed price associated with services acquired using Brooks Act procedures is difficult to verify in terms of reasonableness. Often the decision is mired with a tight time constraint to make award before the funding is lost. If a contracting officer is unable to verify the reasonableness of the most highly qualified offeror’s price, s/he must break off discussions, and pursue the second most qualified vendor. This requires a repetition of the process (and time) necessary to solicit an offer, evaluate its merits, and enter into discussions. When deciding to break off discussions, the contracting officer must also hold a controversial discussion with the highest qualified vendor letting them know that no further negotiations will be pursued. This is a no-win discussion since both parties have already invested a lot of time and money into the process. Depending on the time of year, the pressure to make award and obligate the funds, or meet a project’s deadline, causes rational contracting officers to lament between staying with the current source, or cutting it off altogether, and seeing what is behind door number two. This is not an effective use of time for both parties, and no way to ensure the taxpayer’s interests are protected.

Only after breaking off discussions with the first vendor and engaging the second does a contracting officer have a reasonable basis to compare prices. This is a time consuming process that is in no-one’s best interest. In fact, it frustrates industry because it has entered into good-faith negotiations, and it frustrates the Federal procurement community because it is unable to ensure the proposed costs are, in fact, reasonable.

The FAR offers several techniques for determining price reasonableness. Among them are comparisons of proposed prices to historical information or other price measures. For hydrographic surveying work, parametric measures for price comparison/verification are impractical. For example, NOAA gathers parametric data associated with the conduct of hydrographic surveys such as cost per survey mile. However, this historical data is often an inconsistent baseline for use in evaluating current offers because there are too many variables that affect the overall price. For hydrographic survey work, costs per survey mile are contingent on the size of the ship, its operating costs, the mobilization and demobilization costs, the survey technique and equipment used, the depth of the water, the conditions of the ocean, and the time of year (e.g., weather). Absent this comparable data, price reasonableness is most often determined based on the least-preferred and most time-consuming method of cost analysis.

Every day, the Federal Government successfully acquires complex defense and IT systems from the highly qualified vendors without using Brooks Act procedures. Some industry groups promoting A/E contracting techniques might advocate the qualification based selection techniques outlined in the Brooks Act because they do not feel the Government is capable of making a reasonable vendor selection for a complex project using any other method. However, all Federal Agencies, and particularly the Department of Defense, have successfully purchased, from highly qualified vendors, complex systems and hardware using FAR Part 15 methods. In fact, there are many examples of Part 15's success as a solicitation method for acquiring highly complex information technology (IT) services and major weapons systems. Both of these procurement types require a design phase that involves professionals with advanced degrees and professional certifications. Often the software and IT systems are installed in major infrastructure applications that directly protect the health and safety of the public. The FAA, for example, has quality assurance testing procedures, and documentation standards for all IT code used in its air traffic control network. Customized software applications must meet CMM Level I, II, or III documentation standards. In today's networking environment, a network engineer must carry certain certifications of training in order to modify and maintain server networks. Airplanes modified and outfitted for military use must meet aeronautical standards for flight safety that are often prescribed and certified by aeronautical engineers. Accordingly, it is not clear why the techniques used to procure complex IT systems and major weapons systems would not be sufficient to acquire surveying and mapping services.

Mapping and survey costs are not controlled by the 6% cap associated with traditional design-build A/E services. Without any cap on the A/E firm's price, there is no limit or control over how much the A/E firm can propose for its services. Indeed, this leaves the contracting officer to struggle with verifying price reasonableness, and no real gauge to measure success.

The Brooks Act process favors large business. The Small Business Act and FAR Part 19, encourages Federal contracting officers to affirmatively support small businesses, and other socio-economically targeted groups. Often these businesses are either just starting in a field, or lack the years of experience gained by larger, more established firms. FAR

Part 36 and the Brooks Act mandate the selection of the most highly qualified firms – which includes the extent of a firm and program manager’s experience. By restricting contracting officers to negotiate only with the “highest qualified firms,” they are precluded from considering smaller (or newly established) companies that may be getting established in the field, or are introducing a promising new technique.

USE OF PART 36 OF THE FAR FOR SURVEYING AND MAPPING SERVICES STRAYS TOO FAR FROM THE ORIGINAL INTENT OF THE BROOKS ACT.

The Brooks Act was created to specifically address the method by which Federal officials acquire traditional Architectural Engineering services namely – design and civil engineering associated with real property, buildings, bridges, dams and the like. Expanding Architectural and Engineering work beyond services directly associated with design, construction or alteration of real property has already created too much confusion because there is no logical link to the original intent of the act, and the benefits of using this unique method of acquiring A/E services. Brooks Act contracts are intended for architect and civil engineering professions which have a traditional relationship to real property. Mapping, however, includes a much broader set of services such as database management, GIS, or other information technology related support, that do not bear a traditional relationship to real property.

Brooks Act procedures do not promote efficient operating practices. It is in industry’s interest to expand Brooks Act procedures as far as possible because there is no price competition. It is beneficial for them to receive awards through a qualification based selection process because they do not have to be efficient or economical. In a capitalistic society, companies operating in a mature market must promote efficient and economical operations in order to sustain growth and their customer base. This includes identifying more efficient operating practices and using new technologies. Under the Brooks Act, companies have not incentive to do this.

BEST VALUE SELECTION TECHNIQUES ARE THE MOST EFFECTIVE METHOD FOR ACQUIRING SURVEY AND MAPPING SERVICES

Federal procurement professionals are capable of acquiring survey and mapping support using non-Brooks Act procedures. In fact, by applying solicitation and selection procedures outlined in other areas of the FAR, a Federal contracting officer can satisfy the spirit of the Brooks Act WITH competitive pricing.

The Brooks Act prescribes a process whereby the most highly qualified firms are identified, and negotiations entered into with the most highly qualified. A best value analysis conducted in accordance with FAR Part 15 can accomplish the goal of the Brooks Act. Specifically, FAR Part 36 can be modified in a way that allows the contracting officer to consider the price of competing offers in order to determine the overall reasonableness of the most highly qualified vendor’s price. A description of this idea (for collecting pricing information without violating the Brooks Act provisions) is set forth below:

From a solicitation perspective, the Brooks Act's prescription of a "Qualification Based Selection" is unique from FAR Part 15 because it requires the Agency to consider the technical merits of a vendor before price. The best value technique prescribed by FAR Part 15 require price be considered as a part of the overall analysis of an offer. I submit both goals can be accomplished with one small change in the procedures outlined in FAR Part 15. Specifically, contracting officers acquiring services outlined by the Brooks Act, could solicit competitive offers that include the proposed price. The technical evaluation phase should consider the technical attributes of each offer without regard (or knowledge of) the proposed price. Once the top vendors are identified, discussions may be entered into with the most technically qualified vendor. HOWEVER, the contracting officer may consider the prices proposed by the other most qualified vendors when making his/her determination of price reasonableness. In effect, the contracting officer now has competitive offers from which s/he may gain a better understanding of the pricing merits of the most highly qualified vendor's proposal.

There are two approaches to modifying the FAR to reflect the above procedure. One approach would be to remove Part 36, and integrate the elements of the Brooks Act into Part 15 as prescribed above. Another, less time-consuming approach would be to modify FAR Part 36 to allow the contracting officer to obtain price proposals from all vendors OR the top 3 vendors, and only consider them when evaluating the most highly qualified offer's price for reasonableness.

Arguably, a complete revision of the FAR to remove Part 36, and incorporation of the unique requirements of the Brooks Act into other sections of the FAR is too broad for the scope of the FAR Council's immediate issue under evaluation. However, it is worthwhile for the FAR Council to consider the merits of removing FAR Part 36, and revising other sections including 15, 13 and 12, to reflect the intent of the Brooks Act when acquiring Architectural Engineering services.

Preparing competitive pricing for survey and mapping services is not overly burdensome and will create efficiencies in the Federal procurement process. Some industry groups advocating the use of A/E qualification based selection procedures are firmly against providing competitive pricing. For design, alteration and repair of real property, industry groups might argue it is not practical to develop competitive pricing because to do so would be too onerous and selection too subjective. However, unlike design and alteration or repair of real property, survey and mapping services do not require extraordinary effort in order to identify a competitive price. Often these services are acquired using known equipment and an easily quantifiable level of effort. In fact, NOAA has been acquiring survey and mapping services for years where vendors are very comfortable in pricing the services without extraordinary effort. Accordingly, it is logical to state that proposals for survey and mapping services can be priced with a reasonable degree of accuracy and without extraordinary effort.

Further, to the extent that there is clarity (and a more narrow scope) of what services must be acquired using Brooks Act procedures, Federal contracting officers will have

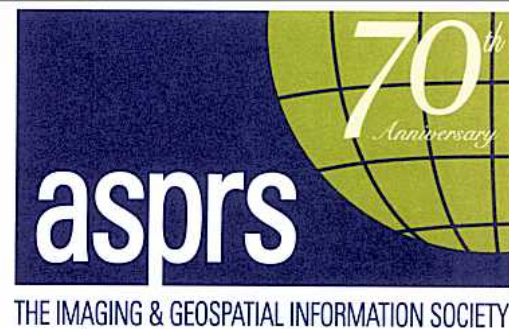
more time to process procurement actions, rather than resolve questions about which technique should be applied. This is a critical point. Many hours are spent each day by Federal contracting officers debating what constitutes an A/E procurement. A lot of this is associated with the apparent breadth of the recent expansion of A/E procedures to survey and mapping services.

CONCLUSION

It is not in the Government's best interest to expand application of Brooks Act procedures to include surveying and mapping services. Brooks Act procedures do not promote economy and efficiency. Applying Brooks Act procedures beyond design, construction and repair of real property creates confusion because there is no logical connection between the reason for the special method and the services being acquired. The Federal Government's procurement methods have substantially evolved since 1972, when the Brooks Act was initiated. This evolution has identified and promoted best value selection methods using competition. There are many examples of contracts awarded to highly qualified firms for very complex systems using non A/E selection procedures. Contracting professionals are capable and willing to identify the best procurement strategy for acquiring surveying and mapping services without being forced to use one specific and antiquated method.

POINT OF CONTACT

Should you have any questions about the content of this response, please feel free to contact Bob Ransom at (301) 713-0820 x108. Bob Ransom is an employee of the National Oceanic and Atmospheric Administration (NOAA), a Bureau operating under the U.S. Department of Commerce. He is the Head of the Contracting Office supporting NOAA's Ocean Service, Marine Fisheries Service, and Research Office. Mr. Ransom is a Certified Professional Contract Manager with 20 years of Federal contracting experience.



May 20, 2004

General Services Administration
FAR Secretariat (MVA)
1800 F Street NW
Room 4035
Washington, DC 20405
Attn: Laurie Duarte – “Mapping Notice”

Mapping Notice 52

To the FAR Secretariat:

In recent years private mapping organizations have worked diligently to incorporate mapping services under the Qualifications Based Selection (QBS) type of procurement practice for federal contracting. While this approach is very valid for professional services, QBS is not necessarily appropriate for many mapping services not traditionally included within the definition of professional practice by the vast majority of state regulatory boards.

The American Society for Photogrammetry and Remote Sensing (ASPRS) has a vested interest in the future procurement practices for mapping services and the regulatory actions taken as a result thereof. The purpose of this letter is to provide information regarding the recent “Mapping Notice”, and to ensure that the Federal Acquisition Regulatory Council is well-informed in making the most appropriate decision regarding the content of, and the language used in the Federal Acquisition Regulation (FAR) policy 36.601-4(a)(4) and the application of the Brooks Act to mapping services. **As outlined below, ASPRS recommends that the FAR Council maintain the existing language as-is.**

Founded in 1934, ASPRS is a national/international scientific and educational organization of more than 6,000 geospatial information professionals, and 150 sustaining corporate members. The Society is devoted to advancing knowledge and improving understanding of the imaging and mapping sciences to promote responsible applications of photogrammetry, aircraft and satellite remote sensing, geographic information systems, and supporting technologies.

Federal Acquisition Regulation (FAR) policy 36.601-4(a)(4) was amended in 1999 by the removal of a reference to the National Imagery and Mapping Agency (NIMA). This reference was originally included in the policy to illustrate examples where QBS would not be used for the procurement of mapping services.

We understand that certain comments have been received indicating a perceived narrowing of the application of the Brooks Act for mapping services. Additional comments include a statement regarding the intent of Congress being, “to apply the Brooks Act to a wide scope of mapping services,” and requesting that FAR 36.601-4(a)(4) be amended to apply the Brooks Act to a broader range of mapping services.

As a result, we respectfully request the FAR Council review the existing language in 36.601-4(a)(4) and consider the options carefully. ASPRS interpretation of the existing language is that any mapping service of a professional nature must be procured by the federal government using QBS. This would essentially apply to most mapping services affecting the public health, safety and welfare while exempting few, if any. This interpretation of the existing language appears to allow sufficient freedom to qualify most mapping services for QBS procurement. Using such an interpretation, we do not believe that the removal of the reference to NIMA has narrowed the application of the Brooks Act, nor has it "shifted" the existing FAR policy.

Further, ASPRS recognizes at this time that many states do not currently consider non-design purposed mapping services to be a licensed or regulated professional activity. In many cases these services, therefore, do not currently formally qualify under the Brooks Act. However, ASPRS policy supports the licensure of photogrammetrists and selected GIS professionals provided it is accomplished in a fair and reasonable manner. While to date only a handful of states have enacted legislative or regulatory actions to define photogrammetry as a professional activity, thereby requiring the use of QBS for professional mapping services, we believe that this situation will change and we continue to endorse the use of qualifications-based acquisition practices for all professional surveying and mapping services.

Therefore, ASPRS recommends that the FAR Council maintain the existing language as-is. In our opinion, the existing language is broad and allows freedom for utilizing QBS for federal mapping services-related contracts. We believe no changes in the FAR are warranted at this time.

If you have specific questions concerning the ASPRS position on these issues, please contact the ASPRS Professional Practice Division Director, Mr. John Simmers, by email at John.Simmers@VirginiaDOT.org or by phone at (804) 786-2571.

Thank you for considering this position.


James R. Plasker
Executive Director

cc (via email): John Simmers, PPD
Excom

Mapping Notice-53



Cecelia L. Davis

06/15/2004 11:08 AM

To: LaRhonda M. Erby-Spriggs/MVA/CO/GSA/GOV@GSA
cc:
Subject: Fwd: Mapping Notice

Hi LaRhonda,
This comment is in for COFPAES and he said that it is not posted. Please have it posted.
Cecelia L. Davis
Procurement Analyst
General Services Administration
Office of Acquisition Policy
(202) 219-0202

----- Forwarded by Cecelia L. Davis/MVP/CO/GSA/GOV on 06/15/2004 11:07 AM -----



COFPAES@aol.com

06/09/2004 06:51 AM

To: cecelia.davis@gsa.gov
cc:
Subject: Fwd: Mapping Notice

The COFPAES comment on the Mapping Notice does not appear to be among the comments on the web site you sent me. These comments were filed on May 14, 2003.

John Palatiello

COFPAES Administrator

Content-Transfer-Encoding: 7bit

Return-path: <COFPAES@aol.com>

From: COFPAES@aol.com

Full-name: COFPAES

Message-ID: <12e.41a75959.2dd6791c@aol.com>

Date: Fri, 14 May 2004 15:33:48 EDT

Subject: Mapping Notice

To: MappingNotice@gsa.gov

MIME-Version: 1.0

X-Mailer: 9.0 for Windows sub 5111

Content-Type: multipart/related; boundary=part2_1d5.2355c60b.2dd6791c_boundary

The Council on Federal Procurement of Architectural & Engineering Services (COFPAES) is a coalition of the American Congress on Surveying and Mapping, American Institute of Architects, American Society of Civil Engineers, National Society of Professional Engineers and the Management Association for Private Photogrammetric Surveyors. Formed in 1967, COFPAES is the primary advocate for the "Brooks Act" qualifications based selection (QBS) process, codified in 40 USC 541 et. seq., and implemented is FAR part 36.6.

We strongly support the implementation of a FAR revision to clarify the intent of Congress with respect to government-wide application of the "Brooks Act" and its qualifications based selection process to a variety of mapping services.

LEGISLATIVE HISTORY

The Brooks Act was enacted in 1972 as Public Law 92-582 to codify the government's long-standing and traditional method of select of firms for architect-engineer services.

Due to Comptroller General rulings, particularly the infamous Ninneman decision, Congress in 1988 amended the Brooks Act to revise the definition of services subject to the Brooks Act, and specifically included the term "surveying and mapping". COFPAES strongly supported that effort, which was enacted in section 742 of PL 100-656 and section 8 of PL 100-679. As noted in debate in the House, "there have been a number of Comptroller General decisions which have had the effect of narrowing the application of the law, particularly in the field of surveying and mapping." (See statement of Rep. Myers of Indiana, Congressional Record, Daily Ed., October 12, 1988, p. H10058-9.)

Rep. Myers went on to say the intent of the legislation before the Congress was "to clarify and make permanent the application of the Brooks A/E law to the services of surveying and mapping firms and other appropriate services for all Federal agencies".

Despite Mr. Myers' statement, the uncertainty over the application of the Brooks Act to a broad range of mapping activities contracted by all agencies was created by a colloquy between Rep. Mavroules of Massachusetts and Rep. Brooks of Texas. It had the effect of exempting from the Brooks Act certain contracting by the agency then known as the Defense Mapping Agency (DMA) [NOTE: DMA has since been succeeded by the National Imagery Agency (NIMA) and, most recently, the National Geospatial-Intelligence Agency (NGA)].

The 1988 legislation codified a new statutory definition of A/E services in 40 U.S.C. 541(3). "The term "architectural and engineering services" means--

(A) professional services of an architectural or engineering nature, as defined by State law, if applicable, which are required to be performed or approved by a person licensed, registered, or certified to provide such services as described in this paragraph;

(B) professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and

(C) such other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services. (emphasis added)

When this legislation was implemented in the FAR implemented, with DMA (later NIMA) exception.

The FAR definition in 48 CFR 36.601-4(a)(4) said:

“Contracting officers should consider the following services to be "architect-engineer services" subject to the procedures of this subpart:

Professional surveying and mapping services of an architectural or engineering nature.

Surveying is considered to be an architectural and engineering service and shall be procured pursuant to 36.601 from registered surveyors or architects or engineers. Mapping associated with the research, planning, development, design, construction, or alteration of real property is considered to be an A&E service and must be procured using the process in FAR 36.601. However, mapping services, such as those procured by the National Imagery and Mapping Agency, that are not connected to traditionally understood or accepted A&E activities, are not incidental to such A&E activities or have not themselves traditionally been considered A&E services, shall be procured pursuant to provisions of FAR part 13, 14 and 15.

Since that time, several bills were enacted by Congress to clarify government-wide application of the QBS/FAR part 36 process to a wide range of mapping services. These include PL 101-574 (sec. 403), PL 102-366 (sec. 202(d)), H..Rept. 104-863 (H.R. 3610; PL 104-208), H.Rept. 105-265 (H.R. 2266; PL 105-56) and the 1999 Defense Appropriations Act (PL105-262, sec. 8101).

PL105-262, by statute, repealed the “Mavroules colloquy” from 1988. It extended the FAR part 36 QBS process to mapping services contracted by NIMA. That provision read as follows:

SEC. 8101. None of the funds in this Act may be used by the National Imagery and Mapping Agency for mapping, charting, and geodesy activities unless contracts for such services are

awarded in accordance with the qualifications based selection process in 40 U.S.C. 541 et seq. and 10 U.S.C. 2855: Provided, That such agency may continue to fund existing contracts for such services for not more than 180 days from the date of enactment of this Act: Provided further, That an exception shall be provided for such services that are critical to national security after a written notification has been submitted by the Deputy Secretary of Defense to the Committees on Appropriations of the House of Representatives and the Senate.

House Report 105-746 stated:

“The conferees included a general provision (Section 8101) to provide permanent clarification of the application of the ‘Brooks Act’ qualifications based selection (QBS) process to surveying, mapping[IMAGE], charting and geodesy contracts of the National Imagery and Mapping Agency (NIMA). The conferees expect the officials responsible for the Federal Acquisition Regulations (FAR) to strike and revise the last sentence of section 36.604(a)(4) of the FAR (48 CFR 36.604(a)(4)) to define ‘Surveying and mapping in such a manner as to include contracts and subcontracts for services for Federal agencies for collecting, storing, retrieving, or disseminating graphical or digital data depicting natural or man made physical features, phenomena and boundaries of the earth and any information related thereto, including but not limited to surveys, maps, charts, remote sensing data and images and aerial photographic services’.”

As a result, NIMA then used QBS for its Omnibus and Global Geospatial Intelligence contracts.

The FAR definition was changed in an erroneous fashion. While Congress clearly intended to remove a single agency – NIMA - from the exception, the FAR change in FAR Case 98-023 created a new government-wide exception.

The old provision; “Mapping services, such as those procured by the National Imagery and Mapping Agency, that are not connected to traditionally understood or accepted A&E activities, are not incidental to such A&E activities or have not themselves traditionally been considered A&E services, shall be procured pursuant to provisions of FAR part 13, 14 and 15” became, “Mapping services that are not connected to traditionally understood or accepted A&E activities, are not incidental to such A&E activities or have not themselves traditionally been considered A&E services, shall be procured pursuant to provisions of FAR part 13, 14 and 15.

Consistent with House Report 105-746, as well as PL 101-574 (sec. 403), PL 102-366 (sec. 202(d)), H.Rept. 104-863 (H.R. 3610; PL 104-208), H.Rept. 105-265 (H.R. 2266; PL 105-56) and the 1999 Defense Appropriations Act (PL105-262, sec. 8101), the FAR should be changed to strike the last sentence in 36.601-4(a)(4) and replace it with “surveying and mapping shall include contracts and subcontracts for services for Federal agencies for collecting, storing, retrieving, or disseminating graphical or digital data depicting natural or man made physical

features, phenomena, or boundaries of the earth and any information related to such data, including but not limited to surveys, maps, charts, remote sensing data and image or data and aerial photographic services.”

STATE LAW

The Brooks Act requires agencies to use the QBS process for services that require performance by a licensed professional. A review of the state laws providing for licensing of surveyors shows that the broader range of mapping services fall within the state law definitions, thus requiring Brooks Act compliance. Thus state law supports our FAR recommendation. The following are illustrative state laws:

Arizona- “Land surveying practice” means... (d) Measurements by angles, distances and elevations... for the purposes of determining their size, shape, topography... and the preparation of... maps.

New Mexico- “Practice of land surveying means any service or work... which involves the application of principles for: (3) the application of photogrammetric methods used to derive topographic and other data;...”

North Carolina- “Practice of land surveying- providing services such as mapping... determining the configuration or contour of the earth’s surface or the position of fixed objects on the earth’s surface by... photogrammetry. Creating, preparing, modifying data... land information systems and geographic information systems...”

South Carolina - “The practice of Tier A land surveying... including the topographical alignment... for the preparation of maps, plats... also includes aerial surveys and photogrammetric compilation... preparation of topographic maps and surveys... GIS...”

Wyoming- “Land surveying practice means... Measurement by angles, distance, elevations... for determining... topography, and the preparation and perpetuation of field note records and maps...”

GAO RULINGS

GAO has ruled the Brooks Act applies to surveying and mapping services (SEE Forest Service, B-233987, July 14, 1989; White Shield, B-235522, September 21, 1989; and White Shield, B-235967, October 30, 1989). The Comptroller General has never limited the application of the Brooks Act on surveying and mapping since enactment of the 1988 law providing the new definition. Moreover, GAO ruled in White Shield, B-235967, October 30, 1989 that the Brooks Act is NOT limited solely to A/E firms, but includes surveyors.

This interpretation is followed by agencies such as NIMA, USGS and the Corps of engineers in their contracting practices and policies. (SEE EFARS 36.601-4 (7)(B) – “(B) The performance of surveying and mapping services will not be limited to registered or licensed architect-engineer firms, but will also include surveying and mapping professionals such as licensed surveyors, geodesists, and cartographers.”)

CONCLUSION

In conclusion, Congress has never passed legislation limiting Brooks Act application to mapping. The single agency “excepted” in a 1988 House colloquy (DMA-NIMA-NGA) now complies with QBS. Congress has passed several provisions of law (House Report 105-746, as well as PL 101-574 (sec. 403), PL 102-366 (sec. 202(d)), H.Rept. 104-863 (H.R. 3610; PL 104-208), H.Rept. 105-265 (H.R. 2266; PL 105-56) and the 1999 Defense Appropriations Act (PL105-262, sec. 8101), to provide for broad, government wide use of the QBS process for mapping services and specifically directed that FAR part 36.601-4 be revised. The FAR was changed (FAR case 98-023) from a single agency exception to government-wide, inconsistent with intent of Congress and without public comment. The FAR Council is not only justified, but indeed is required by law to revise

FAR 36.601-4(a)(4) to strike last sentence and insert: “Surveying and mapping shall include contracts and subcontracts for services associated with collecting, storing, retrieving, or disseminating graphical or digital data depicting natural or man made physical features, phenomena, or boundaries of the earth and any information related to such data, including but not limited to surveys, maps, charts, remote sensing data and image or data and aerial photographic services.”

We urge the prompt promulgation of such a rule.

Notice-53

Sincerely,

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