

MAPPS, COFPAES, ASCE & NSPE
v.
United States of America

John Palatiello

MAPPS Executive Director

Presentation to Mapping Sciences
Committee

May 3, 2007

How many legs does a dog have if you call the tail a leg? Four. Calling a tail a leg doesn't make it a leg.

Abraham Lincoln

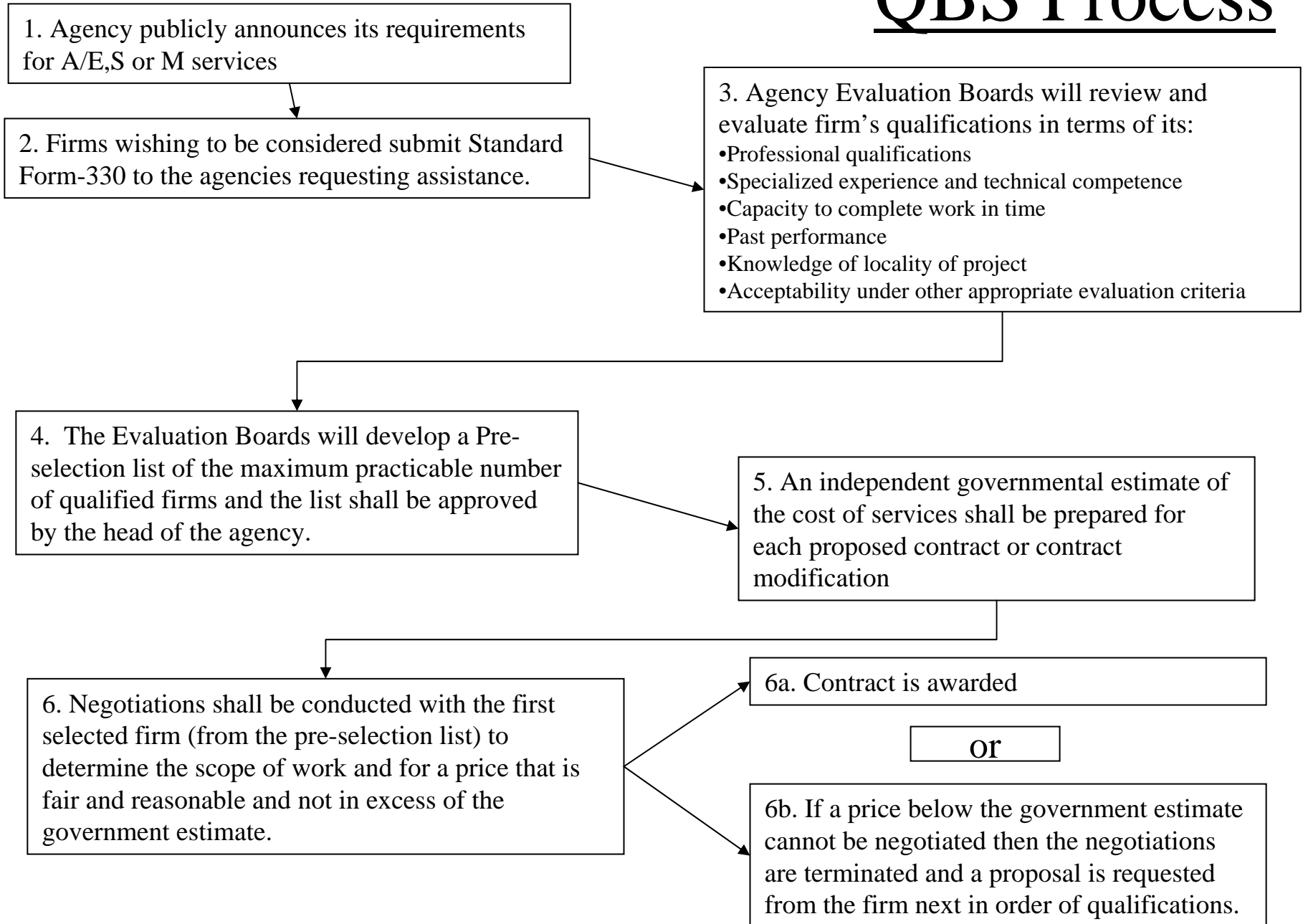
Brooks Act History

- Enacted 1972 as Public Law 92-582
- Surveying and mapping services were not specifically named, but were considered included

**BROOKS ACT, 40 U.S.C. §1101
QUALIFICATIONS BASED SELECTION
(QBS)**

- **Negotiate for architectural and engineering (including surveying and mapping) services**
- **Demonstrated competence and qualifications**
- **Professional services at fair and reasonable prices**

QBS Process



Brooks Act History

- Definition of A/E services was:

“The term ‘architectural and engineering services’ includes 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 and justifiably perform.”

Brooks Act History

- Surveying and mapping were removed, not by Congress, but by a GAO bid protest decision.

Ninneman Engineering - Reconsideration, B-184770, March 9, 1977 ; USGS decision

ENACTMENT OF THE BROOKS ACT FOR THE MILITARY

- 10 U.S.C. 2855, added by the 1982 Military Construction Codification Act, 96 Stat. 153, et seq.
- H. Rept. 97-612 and S. Rept. 97-474 includes “**surveys and maps**” in description of architectural and engineering service for a proposed military construction project.

OTHER STATUTES APPLYING BROOKS ACT TO SURVEYING AND MAPPING

- 1983 Supplemental Appropriations Act
- 1983 Competition in Contracting Act
- 1986 Superfund Amendments, Section 119(f)
- 1986 Water Resources Act, Section 918
- 1986 Defense Appropriations Act, Section 8087
- 1987 Defense Appropriations Act
- 1987 Highway Act, Section 111(2)(A)
- 1987 Airport and Airway Safety and Capacity Expansion Act, Section 109(g)
- 1988 Energy and Water Development Appropriations Act, Section 377(b)

Brooks Act History

- In 1988, Congress enacted a new definition of A/E services, offered by Rep. Jack Brooks himself, with the support of COFPAES, ACSM and MAPPS.

Brooks Act History

- 40 U.S.C. 1101 (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

Brooks Act History

(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

Brooks Act History

(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)

AMENDMENTS TO THE BROOKS ACT

- Business Opportunity Development Reform Act of 1988, Pub. L. 100-656, 102 Stat. 3853, Section 742
- Office of Federal Procurement Policy Act Amendments of 1988, Pub. L. 100-679, 102 Stat. 4055, Section 8
- Both added “surveying and mapping services” to Brooks Act definition of “architectural and engineering services.”
- “Mavroules colloquy” exempts certain DMA (later NIMA, NGA) contracting

SMALL BUSINESS ADMINISTRATION REAUTHORIZATION AND AMENDMENTS ACT OF 1990

Pub. L. 101-574,

104 Stat. 2814, Section 403

- **“Pursuant to section 742 of Public Law 100-656, modification to Part 36 of the Federal Acquisition Regulation (48 C.F.R. Part 36) shall specify that the definition of architectural and engineering services includes surveying and mapping services to which the selection procedures of Subpart 36.6 of the Federal Acquisition Regulation apply.”**

SMALL BUSINESS CREDIT AND BUSINESS OPPORTUNITY ENHANCEMENT ACT OF 1992,

Pub. L. 102-366, 106 Stat. 986, Section 202(c)

- “(d) RELATIONSHIP TO OTHER APPLICABLE LAW. – Solicitations for the award of contracts for architectural and engineering services (**including surveying and mapping**) 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.”

OMNIBUS CONSOLIDATED APPROPRIATIONS ACT of 1997

PUB. L. 104-208

- House Rept. 104-617: The Committee **directs** that any proposals to increase private contracting [**for mapping, charting and geodetic activities**] should be done in compliance the **normal qualifications based selection process** found in 40 U.S.C. 541 and 10 U.S.C. 2855.
- Conference Report, H. Rept. 104-863: “The Conferees concur ...[DMA’s] private contracting be conducted in compliance with the **normal qualifications based selection process** found in 40 U.S.C. 541 and 10 U.S.C. 2855.”

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 1999

SECTION 8101

- “None of the funds in this Act may be used by [NIMA] for mapping, charting, and geodesy activities unless contracts for such services are awarded in accordance with qualification based selection process in 40 U.S.C. 541, et seq. and 10 U.S.C. 2855.”

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 1999

- 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, 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’.”

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 1999

- Conference Report (House Rept.) 105-746:
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 (48 CFR 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.”

FAR Definition

- 36-601-4(a)(4) – 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.

FAR Definition

- 36-601-4(a)(4) –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.

Old FAR Definition

- 36-601-4(a)(4) – 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.

New FAR Definition

- 36-601-4(a)(4) – 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.

Florida

Surveying Licensing Law

"Surveyor and mapper" includes the term "professional surveyor and mapper" and means a person who is registered to engage in the practice of surveying and mapping under §. 472.001-472.037. For the purposes of this statute, a surveyor and mapper means a person who determines and displays the facts of size, shape, topography, tidal datum planes, legal or geodetic location or relation, and orientation of improved or unimproved real property through direct measurement or from certifiable measurement through accepted photogrammetric procedures

Georgia

Surveying Licensing Law

“Land surveying means any service, work, or practice...as applied to: (F) Utilization of measurement device or systems, such as **aerial photogrammetry...land information systems**...for evaluation or location of property, easement, or right of way boundaries; (G) The preparation and perpetuation of **maps**...representing these services”

North Carolina

- **Surveying Licensing Law**

“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

- **Surveying Licensing Law**

“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**...”

MANY STATES RESTRICT OR PROHIBIT COMPETITIVE BIDDING FOR PROCUREMENT OF MAPPING AND SURVEYING SERVICES BY LICENSED PRACTITIONERS

- State licensing Board regulations prohibit bidding by licensed practitioners.
- Licensure of mappers, photogrammetrists and other measurement practitioners is included in licensure requirements for surveyors in many states
- “Mapping” is included in the definition of “surveying”

ALABAMA

- **Chap. 330-X-14 Professional Conduct (Code of Ethics)**
 - Practice (Canon IV), 330-X-14-.05 (f): “The engineer or land surveyor shall not participate in procurement practices (bid submittals) which do not first determine the qualifications of the engineer or land surveyor prior to entering into fee negotiations for services being sought.”
 - Ethics (Canon V), 330-X-14-.06 (a) 14: “ The engineer or land surveyor shall not...participate in procurement procedures for engineering or land surveying services either by providing the bids or in requesting bids from other professional engineers or land surveyors where bidding is the primary consideration.”

GEORGIA

- **Conduct 180-6-.06(1):** “The engineer or land surveyor shall solicit or accept professional employment only on the basis of his/her qualifications and competence for proper accomplishment of the work.”

MAPPS, COFPAES, ASCE & NSPE V.

United States of America

- The U.S. Government has promulgated provisions in the Federal Acquisition Regulation (FAR) (48 CFR 36.6) that are in conflict with the Brooks Act (40 USC 1101)
- Seeks injunctive relief by directing the government to revise the FAR consistent with the Brooks Act as directed by Congress on numerous occasions and in several enacted provisions of enacted legislation.

USACE-FARS

36.601-4 Implementation.

(a)(4)(A) In USACE "surveying and mapping services" includes activities associated with measuring, locating and preparing maps, charts, or other graphical or digital presentations depicting natural and man-made physical features, phenomena, and legal boundaries of the earth,

DHS GMO

- Congress recently reinforced the classification of surveying and mapping as part of the geospatial field, related to architecture and engineering, when it enacted section 8201 of S. 2845, which became Public Law 108-458. The law includes the following definitions --
- “(A) GEOSPATIAL INFORMATION- The term ‘geospatial information’ means graphical or digital data depicting natural or manmade physical features, phenomena, or boundaries of the earth and any information related thereto, including surveys, maps, charts, remote sensing data, and images.
- (B) GEOSPATIAL TECHNOLOGY- The term ‘geospatial technology’ means any technology utilized by analysts, specialists, surveyors, photogrammetrists, hydrographers, geodesists, cartographers, architects, or engineers for the collection, storage, retrieval, or dissemination of geospatial information, including--
 - (i) global satellite surveillance systems;
 - (ii) global position systems;
 - (iii) geographic information systems;
 - (iv) mapping equipment;

- Would the MAPPS, COFPAES, et al limit all Federal geospatial contracts solely to licensed architects, engineers or surveyors?

SF 330
A-E Qualifications
Discipline/Function Codes

Aerial Photographer
Cartographer
Geodetic Surveyor
GIS Specialist
Hydrographic
Surveyor

Land Surveyor
Photo Interpreter
Photogrammetrist
Remote Sensing
Specialist

SF 330

A-E Qualifications

Experience/Profile Codes

Aerial Photography: Airborne and
Imagery Collection and
Analysis

Cartography

Charting: Nautical and
Aeronautical

Digital Elevation and Terrain
Model Development

Digital Orthophotography

Environmental and Natural
Resource Mapping

GIS Services: Development,
Analysis, and Data Collection

Geodetic Surveying:

Ground and Airborne

Geospatial Data Conversion:
Scanning, Digitizing, Compilation,
Attributing, Scribing, Drafting

Hydrographic Surveying

Land Surveying

Mapping Location/Addressing
Systems

Photogrammetry

Remote Sensing

Surveying; Platting; Mapping; Flood
Plain Studies

Topographic Surveying and Mapping

NIMA Omnibus Prime Contractors

- 3001 Inc
- Autometric, Inc.
- Azimuth, Inc.
- EarthData International
- ESRI
- Marconi Integrated
Systems
- Geonex
- Harris Corp.
- Intergraph
- Logicon Geodynamics
- MRJ Technology
Solutions
- Raytheon Systems
- SAIC
- Space Imaging
- Spatial Data Integrations

NGA – GGI Prime Contractors

- 3001
- BAE
- Boeing
- Harris
- SAIC
- TechniGraphic Systems (TGS)

John M. Palatiello
MAPPS Executive Director

1760 Reston Parkway

Suite 515

Reston, VA 20190

(703) 787-6996

www.mapps.org

john@mapps.org