



MAY 11 2005

GSA Office of the Chief Acquisition Officer

MEMORANDUM FOR RONALD POUSSARD
DIRECTOR
DEFENSE ACQUISITION REGULATIONS COUNCIL

FROM: RALPH J. DESTEFANO, DIRECTOR
REGULATORY AND FEDERAL ASSISTANCE
DIVISION

SUBJECT: FAR Case 2004-001, Improvements in contracting for Architect-Engineer Services

Attached are comments received on the subject FAR case published at 70 FR 11737;

March 9, 2005. The comment closing date was May 9, 2005.

<u>Response</u> Number	<u>Date</u> <u>Received</u>	<u>Comment</u> <u>Date</u>	<u>Commenter</u>
2004-001-1	05/05/05	05/05/05	Pete Schreiber
2004-001-2	05/06/05	05/06/05	AIA
2004-001-3	05/09/05	05/09/05	MAAPS
2004-001-4	05/09/05	05/09/05	COFPAES
2004-001-5	05/09/05	05/09/05	ASCE
2004-001-6	05/09/05	05/09/05	ACEC
2004-001-7	05/12/05	05/12/05	ESRI

Attachments

2004-001-1



"Pete Schreiber"
<pschreiber@esri.com>

05/05/2005 10:21 PM

To: farcase.2004-001@gsa.gov
cc:
Subject: Clarification: FAC 2005-01/FAR case 2004-001

Dear Ms. Duarte:

I am reviewing the above captioned interim rule, and need a clarification. It indicates that the definitions in 40 USC 541 would be removed and replaced with definitions in 40 USC 1102. I am looking at these sections online and 541 is related to A-E Services, but 1102 appears to have nothing to do with A-E Services. Is that an incorrect citation to USC Title 40, Chapter 22, Section 1102 (Federal Triangle Property)? Thank you for the clarification.

Pete

2004-001-2

THE AMERICAN INSTITUTE OF ARCHITECTS



May 6, 2005

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

**Comments: FAC 2005-01, FAR Case 2004-001
Federal Acquisition Regulation; Improvements in Contracting for
Architect-Engineer Services**

Dear Ms. Duarte:

The American Institute of Architects (AIA) represents the professional interests of America's architects. As AIA members, more than 75,000 licensed architects and allied design professionals express their commitment to excellence in design and livability in our nation's buildings and cities. Members adhere to a code of ethics and professional conduct that assures the client, the public, and colleagues of an AIA member architect's dedication to the highest standards in professional practice.

The AIA hereby submits comments to the interim rule "Federal Acquisition Regulation; Improvements in Contracting for Architect-Engineer Services" (FAC 2005-01, FAR case 2004-001), published by the Department of Defense, General Services Administration, and the National Aeronautics and Space Administration on March 9, 2005.

The AIA strongly supports the use of qualifications-based selection (QBS) for the procurement of professional architectural and engineering (A/E) services for public projects and fought for enactment of the Brooks Architect/Engineer Act (P.L. 92-582, 40 U.S.C. 1101 et seq.) in 1972. Using qualified architects and engineers ensures that government facilities will be built using the highest design, engineering and construction standards available. Congressional reports have found that price-based selection of A/E services diminished the quality of design received by the Federal government and jeopardizes public health, welfare and safety, and a 1985 AIA report found that QBS was more efficient and less costly to state governments than a low-bid process.

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In recent years, architects, engineers, surveyors, mapping professionals and others have expressed growing concern that Federal agencies are violating the Brooks Act by procuring A/E services through means other than QBS. Examples of Brooks Act violations include instances of agencies procuring A/E services through Federal Supply Service (FSS) multiple award schedules that award contracts based on price alone, and allowing contractors to subcontract A/E services to firms without using QBS. In addition, a number of FSS multiple award schedules have invited abuse of the Brooks Act without establishing any corresponding enforcement mechanism to prevent such abuse.

The AIA supported the enactment of Section 1427 (b) of the Services Acquisition Reform Act of 2003 (Title XIV of P.L. 108-136). The AIA believes that the interim rule, while well-intentioned, will do little to prevent abuses of the Brooks Act that currently take place. Furthermore, without any clear and feasible enforcement mechanism, there is no reason to believe that the interim rule will cause Federal agencies to change existing behaviors.

Despite the clear statutory language of the Brooks Act, the FSS has continued to allow A/E services to be awarded under multiple award schedules, in particular the Professional Engineering (871), Information Technology (70), Environmental Services (899), and the Comprehensive Furniture Management Services (71-II-K) Schedules. The Professional Engineering schedule, for example, lists chemical, civil, electrical, and mechanical engineering, and surveying as services provided under the Schedule. The schedule further identifies numerous services that can be acquired under the Schedule, including performing studies, testing and evaluation, that are clearly defined in 40 U.S.C. 1102 (2) as services protected under the Brooks Act.

The AIA has also been made aware of other instances of agencies violating the Brooks Act by awarding multiple-year design-build contracts with multiple extension options that involve A/E services based upon cost instead of qualifications; and by awarding indefinite delivery-indefinite quantity (IDIQ) contracts to multiple firms and then requiring the firms to compete against one another based upon cost to perform actual work.

One real-life example is a contractor that has been placed on the Furnishing Schedule. Because this contractor also offers design and electrical engineering services on its schedule, a Federal agency could theoretically acquire its services to re-design an office via this Schedule, using a low-bid process.

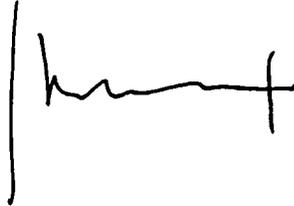
In addition, although the FSS has indicated that it provides disclaimers on its schedules to inform agencies that A/E services must be procured pursuant to the QBS procedures outlined under FAR 36.6, there is no evidence to suggest that agencies are following this information, and there exists no method for the FSS to enforce it.

The AIA believes that the GSA must work to ensure compliance with the Brooks Act by taking the following steps:

- The Federal Supply Service must step up its enforcement efforts to ensure that existing multiple award schedules are not exploited by agencies to bypass QBS procedures.
- All A/E services currently offered under multiple award schedules, in particular the Professional Engineering (871), Information Technology (70), Environmental Services (899), and the Comprehensive Furniture Management Services (71-II-K) Schedules, must be removed from the Schedules.
- The GSA must work to end abuses of multi-year IDIQ contracts and design-build contracts that allow agencies to circumvent the Brooks Act.
- The GSA must provide clear advice and training for all contracting officers across the federal government, via its "Get It Right" program or other vehicles, about current law and the requirement that A/E services be acquired exclusively through the QBS procedures outlined in FAR 36.6.

The AIA stands ready to work with the GSA to ensure that the government continues to acquire architectural and engineering services based upon qualifications, helping to protect the health, safety and welfare of the millions of federal employees and members of the public who use federal facilities.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ronald Faucheux'. The signature is written in a cursive style with a vertical line on the left side.

Ronald Faucheux, Esq., PhD
Vice President, Government Advocacy

A handwritten signature in black ink, appearing to read 'J. Thomas Wolfe'. The signature is written in a cursive style.

J. Thomas Wolfe, Esq.
Senior Director, Federal Affairs

2004-001-3



"John Palatiello"
<john@mapps.org>
05/09/2005 02:41 PM

To: farcase.2004-001@gsa.gov
cc:
Subject: FAC 2005-01, FAR case 2004-001-- Improvements in Contracting for
A/E Services

May 9, 2005

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

RE: FAC 2005-01, FAR case 2004-001-- Improvements in Contracting for A/E Services

Dear Ms. Duarte:

The Management Association for Private Photogrammetric Surveyors (MAPPS) is pleased to have the opportunity to comment on FAC 2005-01, FAR case 2004-001-- Improvements in Contracting for A/E Services, published in the Federal Register on March 9, 2005 (Volume 70, Number 45). MAPPS is a national trade association of more than 170 member firms engaged in the full spectrum of surveying, mapping and "geospatial" services.

MAPPS has, for several years, been in discussions with GSA over our concern about abuse of the Federal Supply Schedule (FSS) contracts. MAPPS strongly opposes the use of the FSS for the acquisition of architectural and engineering (including surveying and mapping) services, as defined in the Brooks Act (40 U.S.C. 1101 et. seq.) and FAR part 36.6.

While we support the interim rule, we are deeply concerned that it does not go far enough and may be inadequate to prevent violations of Federal law and abuse of the FSS.

MAPPS strongly supported the enactment of section 1427(b) of Public Law 108-136. We support the intent of the law, and the interim rule, to prevent the misuse of the FSS on contracts that should be selected and awarded pursuant to the Brooks Act (40 U.S.C. 1101 et. seq.) and FAR part 36.6.

In order to achieve that goal, we recommend that in each place where the term "architect-engineer" is used, it be replaced with "architectural and engineering (including surveying and mapping) services". Moreover, in FAR part 16.505 (a)(8)(ii), we suggest that the language be reworded to read as follows, "Require the direct supervision of an architect, professional engineer, surveyor or mapping professional licensed, registered or certified in the State ..."

This suggested revision is consistent with the wording in the Brooks Act, the Brooks Act clarification in several provisions of law, including Public Law 98-63; Public Law 100-656 (sec. 742); Public Law 100-679 (sec. 8); Public Law 101-574 (sec. 403); Public Law 102-366 (Sec. 202(d)); H.Rept. 104-863 to accompany H.R. 3610, Public Law 104-208; H.Rept. 105-265 to accompany H.R. 2266, Public Law 105-56, and the FAR in part 36.6.

Congress has, for more than 20 years, indicated that the Brooks Act applies to surveying and mapping services. For example, Congress included language in the Military Construction Codification Act (Pub. L. No. 97-214) to codify military agencies' authority to use the Brooks Act method of awarding architect-engineer contracts (as provided in annual Military Construction Authorization Act from 1970 through 1982). 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. seq.)." (NOTE the Brooks Act was subsequently re-codified in 40 U.S.C. 1101- et. 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 ... "

The application of the Brooks Act to surveying and mapping services has been upheld by the Comptroller General, in several cases, including B-235522, B-235967, B-233089.3, B-233987, and B-233987.2.

The Comptroller General has ruled 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.

Congress provided a permanent, clear and unambiguous mandate that all Federal contracts for surveying and mapping services be awarded via the Brooks Act in 1983. In Public Law 98-63, a bill making supplemental appropriations for FY 1983, law was enacted as follows: "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).

This fact was underscored by the Congress when the Competition in Contracting Act first passed the Senate. (See: Cong. Rec. (Daily Edition) Vol. 129, No.155, November 11, 1983, p. S.16007).

"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."

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,

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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).

This clarification is implemented in the Federal Acquisition Regulation in 48 C.F.R. 36.601-4(a)(4)), 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 and engineering service and is to be procured pursuant to section 36.601.”

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.”

The Brooks Act requires agencies to comply with applicable state licensing law when determining the Act's application to a contract. It should be noted that mapping and geographic information systems is defined as part of surveying in numerous state licensing laws, including example, Virginia, North Carolina, South Carolina, Florida, California, New Mexico, South Dakota, and others). The GSA Schedules on Professional Engineering, Information Technology and Environmental Services all include services which violate this law by permitting firms not so licensed to be on Schedule contracts, and permitting agencies to award such contracts,

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notwithstanding their violation of the law.

MAPPS has long been deeply concerned that GSA is facilitating the violation of Federal Law and the FAR by providing a process by which agencies can purchase A-E services, including surveying and mapping, off the FSS. Our pleadings with GSA, including our proposed revisions to the FSS, have fallen on deaf ears at GSA.

We urge these revisions to the FAR and an investigation into the FSS, with appropriate revisions to the schedule contracts themselves to assure that the spirit and intent of section 1427(b) of Public Law 108-136 is followed and implemented.

John M. Palatiello, Executive Director
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2004-001-4



"John Palatiello"
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05/09/2005 12:43 PM

To: farcase.2004-001@gsa.gov
cc:
Subject: FAC 2005-01, FAR case 2004-001-- Improvements in Contracting for
A/E Services

May 9, 2005

General Services Administration

Regulatory Secretariat (VIR)

1800 F Street, NW

Room 4035

Washington, DC 20405

Attn: Laurie Duarte

RE: FAC 2005-01, FAR case 2004-001-- Improvements in Contracting for A/E Services

Dear Ms. Duarte:

The Council on Federal Procurement of Architectural and Engineering Services, (COFPAES), is a coalition, formed in the 1960's, of the American Society of Civil Engineers, National Society of Professional Engineers, American Institute of Architects, American Congress on Surveying and Mapping and Management Association for Private Photogrammetric Surveyors. COFPAES works to provide a common and consistent position on Federal procurement of A/E services to Congress and Federal agencies. COFPAES is pleased to comment on FAC 2005-01, FAR case 2004-001-- Improvements in Contracting for A/E Services, published in the Federal Register on March 9, 2005 (Volume 70, Number 45)

COFPAES strongly opposes the use of the GSA Federal Supply Schedule (FSS) for the acquisition of architectural and engineering (including surveying and mapping) services, as defined in the Brooks Act (40 U.S.C. 1101 et. seq.) and FAR part 36.6. We support the interim rule, but we are deeply concerned it is inadequate to prevent violations of Federal law and abuse of the FSS.

With regard to the proposed and interim rule, COFPAES strongly supported the enactment of section

2004-001-4

1427(b) of Public Law 108-136. While we support the interim rule, we recommend that in each place where the term "architect-engineer" is used, it be replaced with "architectural and engineering (including surveying and mapping) services". Moreover, in FAR part 16.505 (a)(8)(ii), we suggest that the language be reworded to read as follows, "Require the direct supervision of an architect, professional engineer, surveyor or mapping professional licensed, registered or certified in the State ..."

This suggested revision is consistent with the wording in the Brooks Act, is consistent with the Brooks Act clarification in several provisions of law, including Public Law 98-63; Public Law 100-656 (sec. 742); Public Law 100-679 (sec. 8); Public Law 101-574 (sec. 403); Public Law 102-366 (Sec. 202(d)); H.Rept. 104-863 to accompany H.R. 3610, Public Law 104-208; H.Rept. 105-265 to accompany H.R. 2266, Public Law 105-56.

Congress has, for more than 20 years, indicated that the Brooks Act applies to surveying and mapping services. For example, Congress included language in the Military Construction Codification Act (Pub. L. No. 97-214) to codify military agencies' authority to use the Brooks Act method of awarding architect-engineer contracts (as provided in annual Military Construction Authorization Act from 1970 through 1982). 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. seq.)." (NOTE the Brooks Act was subsequently re-codified in 40 U.S.C. 1101- et. 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 ... "

The application of the Brooks Act to surveying and mapping services has been upheld by the Comptroller General, in several cases, including B-235522, B-235967, B-233089.3, B-233987, and B-233987.2.

This clarification is implemented in the Federal Acquisition Regulation in 48 C.F.R. 36.601-4(a)(4)), 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

2004-001-4

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.”

Finally, it should be noted that mapping is defined as part of surveying in numerous state licensing laws, (See for example, Virginia, North Carolina, South Carolina, Florida, California, New Mexico, South Dakota, and others)

COFPAES is deeply concerned that this proposed and interim FAR provision is not adequate to prevent misuse and abuse of the FSS. There are three schedules, Professional Engineering Services, Information Technology, and Environmental Services, that have FAR part 36.6 services on them. It is unreasonable, counterproductive, and as a result of section 1427 (b) of PL 108-136 to have A-E services on a FSS, when using the FSS for A-E (including surveying and mapping) services is prohibited. COFPAES strongly urges the renaming of the Professional Engineering Services Schedule to the Technical Services Schedule, and the removal of all A-E services (including surveying and mapping) for the three aforementioned schedules. COFPAES has submitted specific proposals for such revisions to GSA. It is unconscionable that GSA is facilitating the violation of Federal Law and the FAR by providing a process by which agencies can purchase A-E services, (including surveying and mapping) off the FSS. Moreover, COFPAES is concerned that there is no transparency, monitoring or enforcement process to assure that these schedules are not misused.

We urge these revisions to the FAR and the FSS.

Respectfully,

G. Michael Ritchie, PE, LS

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American Society of Civil Engineers

2004-001-5

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May 9, 2005

General Services Administration
Regulatory Secretariat (VIR)
1800 F Street NW
Room 4035
Washington, D.C. 20405

ATTN: Laurie Duarte

RE: FAC 2005-01, FAR Case 2004-001

The American Society of Civil Engineers (ASCE) is pleased to comment on the interim rule published on March 9, 2005, 70 Fed. Reg. 11,736, relating to improvements in contracting for architectural and engineering services under the Federal Acquisition Regulation (FAR).

ASCE supports adoption of the rule, with one amendment. The rule should extend the use of qualifications-based selection (QBS) procedures to those mapping and surveying services identified by Congress in the Brooks Architect-Engineers Act of 1972, as amended, 40 U.S.C. 1101 *et seq.*

THE INTERIM RULE

The interim rule establishes improvements in contracting for architect-engineer services. It clarifies the FAR to ensure that all architectural and engineering services contracted from the private sector must use the QBS procedures established under FAR subpart 36.6

The rule states:

This interim rule is of particular interest to contracting officers who acquire architect-engineer services. It clarifies to contracting officers that architect-engineer services offered under multiple award schedule contracts or under Federal governmentwide task and delivery order contracts must--

- Be performed under the supervision of a licensed professional architect or engineer; and

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- Be awarded in accordance with the quality-based selection procedures in FAR Subpart 36.6.

In addition, the rule clarifies to contracting officers that task orders issued under an indefinite delivery contract must be issued using the procedures in FAR Subpart 36.6 if the services being acquired specify, substantially or to a dominant extent, the performance of architect-engineer services. This rule implements section 1427 of the Services Acquisition Reform Act of 2003 (Pub.L. 108-136).

Section 1427 was enacted to ensure that architectural and engineering services contracts were to be awarded under the QBS procedures of the Brooks A-E Act and not the multiple award procedures of the Federal Supply Service. ASCE concurs in the intent of this legislation and supported its passage.

ASCE COMMENTS

We encourage the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council to amend the interim rule to explicitly authorize the use of the QBS process for the awarding of contracts entailing mapping and surveying services. This would conform the FAR to the intent of Congress when it amended the Brooks A-E Act to include mapping and surveying in the coverage of the Act.

Specifically, Congress has applied the QBS procedures to

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.

40 U.S.C. 1102(2)(C) (emphasis added).

We believe the Councils' recent action in FAR Case 2004-023 in denying full QBS coverage to all mapping and surveying contract awards was incorrectly decided. See 70 Fed. Reg. 20,329 (Apr. 19, 2005).

The Councils based their decision on language in the SBA Reauthorization and Amendments Act of 1990, Pub.L. 101-574, that stated that QBS requirements apply to "surveying and mapping services to which the selection procedures of Subpart FAR 36.6 [sic] ... apply."

2004-001-5

The Councils interpret this phrase to limit QBS coverage to certain mapping and surveying services. Such an interpretation is misguided, however. The phrase does no more than re-state in unmistakably plain language the coverage of the Brooks A-E Act already quoted. The CAAC and the DARC need to bring the FAR into conformance with the Act by requiring the use of QBS procedures for all mapping and surveying services contracts in the manner intended by Congress.

Thank you for your consideration of these comments. If you have any questions, please do not hesitate to contact Brian Pallasch or Michael Charles of the ASCE Government Relations Department at (202) 789-7850.

Respectfully submitted,

THE AMERICAN SOCIETY OF CIVIL ENGINEERS

2004-001-6



"Camille Fleenor"
<cflenor@acec.org>
05/09/2005 04:55 PM

To: farcase.2004-001@gsa.gov
cc:
Subject: FAC 2005-01, FAR case 2004-001

Camille Fleenor
Director, Federal Procurement Policy
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FAR Secretariat.doc

2004-001-6

May 9, 2005

General Services Administration
Regulatory Secretariat
1800 F Street, NW
Room 4035
Washington, D.C. 20405

Re: FAC 2005-01; FAR Case 2004-01, Improvements in Contracting for Architect-Engineering Services

The American Council of Engineering Companies (ACEC) is pleased to submit comments regarding the above referenced interim rule to the Federal Acquisition Regulations (FAR). ACEC strongly supports the interim rule, also enacted in section 1427(b) of Public Law 108-36, as it provides additional guidance on the proper acquisition of architect-engineering (A-E) services.

ACEC has long been concerned about the use of the Multiple Award Schedules program for the acquisition of A-E services, particularly on the Professional Engineering, Information Technology and Environmental Services schedules. The interim rule clarifies existing law mandating that A-E services be acquired using qualifications-based selection (QBS) procedures.

ACEC is in discussions with GSA regarding the engineering industry's concerns and believe that the agency has taken several positive steps to prevent the acquisition of A-E services on its Multiple Award Schedules. Last year, GSA modified the web page for its Professional Engineering Services schedule to include language stating that the schedule could not be used to procure A-E services. GSA is also working to implement a training program for contracting officers that includes guidance on the acquisition of A-E services and is in the process of reviewing past contractor task orders for compliance with federal law governing A-E procurement. ACEC looks forward to working with GSA to assure that the agency continues to make progress on this important issue.

ACEC also appreciates GSA's efforts to work with the engineering industry regarding the possible creation of an A-E schedule that is compliant with the Brooks Act. ACEC believes that a streamlined procurement mechanism such as a GSA schedule specifically for A-E services may encourage federal agencies to properly procure these services, thereby eliminating the misuse of existing GSA schedules.

ACEC represents 5,700 independent engineering companies throughout the United States. Our members are engaged in the development of America's transportation, environmental, industrial, and other vital infrastructure. ACEC members include small, medium and large companies, many of which provide services to federal agencies

Thank you for the opportunity to comment on the interim rule.

2004-001-6

Sincerely,

James Blake
Vice Chair
ACEC's Federal Agencies and Procurement Advocacy Committee

2004-001-7

.8-""!;1.

May 12, 2005

A TTN: Michael O. Jackson
General Services Administration
Regulatory Secretariat (VIR)
Room 4035
1800 F Street, NW Washington,
DC 20405

Re: F AC 2005-01, FAR case 2004-001

Dear Mr. Jackson:

Pursuant to a telephone conversation with Julia Wise on Monday, May 9, 2005, I brought to her attention that the public was not able to adequately review and comment on the proposed conversion of this interim rule to the formation of a final rule because the citation to 40 U.S.C. 1102 pointed to incorrect information. Searching the U.S.C. Code section for the text of 40 U.S.c. 1102 at the GPOAccess Website and the Legal Law Institute Website at Cornell University, respectively, returned information on "Federal Triangle Property" and not the intended definition of "Architectural-Engineering Services." Ms. Wise reviewed both Websites, and came to the same conclusion that the citation points to the wrong information. Therefore, she accorded my client a few extra days extension in order to submit its public comments on this matter.

So long as this proposed final rule (1) is not intended to further expand the definitional scope of "Architectural-Engineering Services" beyond its traditional meaning of professional services of an architectural or engineering nature performed on real property as currently set forth in Section 1427 of the Services Acquisition Reform Act of 2003 (Title XIV of P.L. 108-136), and (2) the intent of the final rule is limited to the proposed amending of the current definition section by deleting the citation to "40 U.S.c. 541" and replacing it with the citation to "40 U.S.C. 1102," then Environmental Systems Research Institute, Inc. (ESRI) does not object to the formation of the final rule. On the other hand, if it is the intent to further expand the traditionally understood definition of "Architectural-Engineering Services," then ESRI would go on the record as officially objecting to any such definitional expansion of the term in forming the final rule on this subject.

On behalf of ESRI, we thank the Regulatory Secretariat for this opportunity to provide our public comment on this matter.

Sincerely,

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Michael O. Schreiber, Esq.
Supervising Attorney
Contracts and Legal Services Department
ESRT

