Dear Ms. Hughes:

The Management Association for Private Photogrammetric Surveyors (MAPPS) is a national association of more than 180 private geospatial services, data, and processing firms (www.mapps.org). Our members are often contractors to Federal agencies to provide a variety of geospatial-related professional services, including a number of NGA prime and sub-contractors.

We are respectfully writing to express our concern for the procurement process utilized in the GeoInt Data Services (GDS) contract draft solicitation and that it is not currently proposed to follow the traditional qualifications based selection (QBS) process, as provided in 40 USC 1101 and FAR part 36.6. (QBS is codified for title 10 agencies in 10 USC 2855. The Comptroller General ruled that the provision in 10 USC 2855 is not limited to construction-related contracts See: ASFE reconsideration, B-199548.2, August 13, 1982)

Our concern is based on the following:

For more than a decade, MAPPS and NGA have maintained a strong partnership, open dialogue and a formal liaison. The MAPPS-NGA liaison meets at least once each year and often more than once per year. Never has NGA expressed to the firms in MAPPS any problems, dissatisfaction or opposition to the QBS process. In fact, all reports were that, particularly with the GGI contracts in recent years, the process was working well. MAPPS values its relationship, indeed its partnership, with NGA. It is in the spirit of that partnership that we express our respectful concern for the proposed process and urge the continuation of the use of FAR part 36 QBS procedures in the upcoming procurement, consistent with the longstanding commitment of NGA with MAPPS and Congress, as outlined below.

- MAPPS and NGA have mutually supported the QBS contracts in GGI to a point where MAPPS has promoted those contracts to other agencies for their use and, in fact, MAPPS and NGA have jointly made presentations at conferences in the community to encourage other government agencies to utilize the NGA QBS contracts.

- NGA, as the successor to NIMA, has an establish policy, signed by the agency director, that it is the agency’s policy to fully employ “qualifications-based selection for procurement of geospatial production services”. (PD 8600R1, 10 September 1997, signed by NIMA Director, Admiral J.J. Dantone, Jr.) MAPPS has not been advised that such policy has been rescinded, revised or in jeopardy. MAPPS has never been asked to engage in a dialogue on revision of the policy.’
The law and FAR are clear on this matter. The mapping services in GDS have traditionally been considered architect-engineer and related services by NGA (and NIMA) for more than 15 years, through the NIMA Omnibus contracts and the NGA GGI contracts.

In the Conference Report on the 1998 Defense Department Appropriations Act in 1997, Congress codified PD 8600R1, and stating Congress “expects the National Imagery and Mapping Agency (NIMA) to abide by it commitment and recent Policy Directive 8600R1 that a qualifications based selection (QBS) process for mapping, charting and geodesy contracts will be used” (See H. Rept. 105-265).

In the Conference Report on the 1999 Defense Department Appropriations Act in 1998, Congress also codified PD 8600R1, and stated that the clarifying amendment provided in this legislation was “to provide permanent clarification of the application of the ‘Brooks Act’ qualification based selection (QBS) process to surveying, mapping, charting and geodesy contracts with the National Imagery and Mapping Agency (NIMA).” (See H. Rept. 105-746, p.165, to accompany PL 105-262, section 8108, 112 Stat. 2279, 2320, 1998).

Congress again acknowledged the use of QBS by NIMA when it stated, “The National Imagery and Mapping Agency (NIMA) has been required to begin using Architectural and Engineering contracting procedures for all production contracts. This has lead to the development of the ‘Omnibus Contract’ program, allowing NIMA to replace 67 individual production contracts with one contract vehicle for all geospatial information and imagery intelligence requirements. The conferees agree that the omnibus contract program is a special congressional interest item”. (Defense Department Appropriations Act, FY 2001, in H. Rpt. 106-754)

Many of the services sought by NGA are similar to those acquired by contract by other Federal agencies. These agencies consistently use the QBS process. Consequently, they have been “traditionally considered” A/E services, as stated in FAR part FAR 36.601-4(a)(4)).

The services being sought is clearly “mapping associated with the research, planning, development, design, construction or alteration of real property” which FAR 36.601-4(a)(4) requires to be “considered to be architectural or engineering services and is to be procured pursuant to 36.601.”

There is no provision of law or regulation that exempts NGA from complying with QBS.

Congress amended the Brooks Act in 1988 (sec. 742 of PL 100-656 and sec. 8 of PL 100-679). That legislation specifically provides for application to surveying and mapping contracts and performance by surveying and mapping firms.

Congress specifically addressed and clarified this provision as it affects NGA in 1992 (PL 102-366, 106 Stat. 986, Section 202(c)). “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.”
QBS is a "competitive procedures" as defined in 10 U.S.C. § 2302 and 41 U.S.C. § 259. In the NIMA Omnibus and NGA GGI contracts, NGA received more competitive qualifications proposals using QBS than other, recalcitrant Federal agencies receive when they have not used QBS for less sophisticated services. Failure by NGA to use QBS on GDS will result in less competition.

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).

The application of the Brooks Act QBS process to work outside the United State was specifically addressed by Congress when the 1988 Brooks Act amendment specifying its application to surveying and mapping was enacted when Rep. Livingston said in Congressional debate, “mapping work outside the United States would not be governed by State law. So the fact of the matter is this provision is governed by State law, only if applicable. The effect of this amendment will be to open … mapping contracts to more firms because there would not be an applicable state law to limit competition to architects or engineers” (SEE Congressional Record, Daily Edition, October 12, 1998, p. H10056)

Moreover, the services in GDS are the practice of land surveying, as defined by numerous state laws. This requires compliance with 40 USC 1101 (10 USC 2855) and FAR 36.6, requiring performance by a licensed surveyor in such state.

Any licensed surveyor who responds to the GDS solicitation with a price quote is in violation of state conduct regulation in several states. (SEE, for example, Georgia 180-6-.06.1. [http://rules.sos.state.ga.us/docs/180/6/06.pdf])

Finally, MAPPS has provided NGA with a detailed analysis of the background on this issue and applicable law and regulation in support of the requirement to follow the QBS statutes. NGA has not responded to, or disputed, that documentation. MAPPS believes such a response and like-analysis is in order before NGA proceeds with the GDS procurement.

I would appreciate your reply and please let me know if you have any questions.

Sincerely,

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