

April 16, 2009

MAPPS Comments Before IRS Public Hearing: Re: IRS Section 3402(t)

Commissioner Shulman, and other Distinguished Staff, Panelists and Guests:

Thank you for the opportunity to discuss the implementation of Internal Revenue Code Section 3402(t). This is a very important issue that stands to impact many people, firms, entities and organizations nationwide. My name is John Byrd, and I'm the Government Affairs Manager for the Management Association for Private Photogrammetric Surveyors (MAPPS).

Formed in 1982, MAPPS is the only national association exclusively comprised of private firms in the remote sensing, spatial data and geographic information systems field in the United States. Current MAPPS memberships span the entire spectrum of the geospatial community, including Member Firms engaged in satellite and airborne remote sensing, surveying, photogrammetry, aerial photography, LIDAR, hydrography, bathymetry, charting, aerial and satellite image processing, GPS, and GIS data collection and conversion services. MAPPS also includes Associate Member Firms, which are companies that provide hardware, software, products and services to the geospatial profession in the United States and other firms from around the world. MAPPS provides its 150+ member firms opportunities for networking and developing business-to-business relationships, information sharing, education, public policy advocacy, market growth, and professional development and image enhancement.

MAPPS is also a member of the Government Withholding Relief Coalition (the Coalition), led by the U.S. Chamber of Commerce. The Coalition was formed to seek repeal of Section 511 of Public Law No. 109-222, which mandates the sweeping new requirement that Federal, state and local governments withhold 3% of their payments for goods and services (the government withholding regime). We continue to advocate vigorously for repeal of this misguided and far-reaching law.

The 3% withholding is an onerous amount by itself. However, it will be a particular burden on firms in the architecture-engineering field, including surveying and mapping firms. "A/E" firms are already subject to a 10% retainage pursuant to the Federal Acquisition Regulation FAR (48 CFR 52.352-10). So our members, many of which are small businesses, are looking at an effective 13% withholding on federal contracts. This will be devastating. You would be killing small business. With today's economy resulting in slower business and declining revenues, as well as a crunch on credit, the combined 13% withholding will drive firms out of business. We're in the mapping business, not the banking business. Small firms cannot afford to be making interest free loans to Uncle Sam on 13 % of their revenue on government contracts. That is more than their profit!

MAPPS is grateful that the SBA's Office of Advocacy included the retainage of 10% of architecture-engineering (including surveying and mapping) firms on its 2008 Regulatory Review and Reform (R3) top ten list of regulations harmful to small business. However, having the 3% retainage added to the 10% retainage is beyond insult to injury. Given the current economic climate, A/E Firms (including those mapping and surveying), and especially small businesses will be hurt the most as they will face a 13% retainage- not just the 3% or the 10%, BUT 13%!

This regulation is a costly and burdensome mandate on A/E firms generally and small firms in particular. We have yet to be shown what the statutory authority or origin is for this standard FAR clause. Our investigation has shown that agencies have found a loophole in the Prompt Payment Act (31 U.S.C. 3901, et seq.), inasmuch as the Act applies upon agency "acceptance" of deliverable by contractors, but the retainage is imposed upon invoicing. This provides agencies an ability to delay acceptance of deliverables for an indefinite period of time,

without penalty, resulting in small businesses providing interest free loans to the government! This is a costly, unfair and burdensome requirement on small businesses.

MAPPS appreciates this opportunity to share our heightened concerns for all A/E firms (including mapping and surveying), and all small businesses that would face 3%, or currently face 10% or, in some instances 13% for withholding and retainage respectively. MAPPS looks forward to working with the IRS, and other Federal agencies to remedy these significant hurdles many businesses currently and/or will soon face.