

## PROCUREMENT GUIDELINES COMMITTEE

### SUMMARY OF DRAFT FOR REVIEW COMMENTS AND RESPONSE

February 23, 2009

**1) Comment(s):** Best Value procurement methods, including both price and qualifications factors, have many advantages over QBS for procurement of many mapping services. The Guidelines do not adequately justify why QBS should be the preferred method for professional services. QBS is not the only procurement method that emphasizes qualifications; other methods are more commonly used for many mapping services. The Guidelines should be changed to provide unbiased guidance on all commonly used procurement methods.

**Response:** Procurement methods can be categorized into three basic processes: 1) Selection based on price alone, 2) Weighted selection based on a combination of price and qualifications and 3) Selection based on qualifications with price subsequently determined through a negotiation process. This last process is commonly referred to as qualifications based selection or QBS.

The Guidelines aim to provide guidance for determining the best way to get what you need for a fair and reasonable price commensurate with the services performed. The QBS process is the most widely accepted process for professional services such as engineering, architecture and surveying. Professional organization endorsements of QBS (including the American Public Works Association, American Bar Association and several others) are outlined in the Guidelines. Documentation explaining the benefits of QBS and its applicability to procurement of professional services is extensive; references to various documents supporting QBS are provided in the Guidelines references section.

The committee discussed different selection processes at great length. Based on research of procurement processes adopted by other professions, discussions of case studies for geospatial mapping procurement and discussions of personal experiences, the committee felt that a majority of the arguments justifying QBS processes for engineering, surveying and other professions also applied to professional geospatial mapping. The Guidelines document and the drafting committee fully recognize that the Brooks Act QBS process is not the only means of acquiring a qualified firm to do the work and that cost based methods are often used. This is addressed in the second to last bullet in the Executive Summary and in related sections of the full text.

After extensive discussion and research, the committee elected to take the following approach in drafting the Guidelines: 1) Selection based on qualifications with price subsequently determined through a negotiation process is recommended as the preferred method; this is supported by existing ASPRS policy and the strategic plan. 2) If agency requirements are such that price must be submitted as part of the initial response, then the Guidelines recommend a specific "separate sealed envelope" process and outline specific criteria that should be met to avoid common potential pitfalls of a cost based process. 3) Selection processes such as low bid and weighted selections where cost is submitted concurrently with qualifications place too much emphasis on cost and are not recommended for professional services procurement.

**Proposed Action:** *Respond to the organizations who have raised concern about the Guidelines endorsement of QBS to: 1) Clarify that the intent is to recommend QBS, based on the reasons stated above, but not to suggest it is required in all cases and 2) Invite them to suggest specific clarifications or revisions if they feel that this is not clear in the document. Any specific recommendations for clarification of the language or specific proposals for further work received prior to the Baltimore conference will be passed on to the ASPRS Board for consideration.*

**2) Comment: The following theoretical and philosophical arguments in opposition to QBS were included in the comments received.**

The QBS process lacks competition based on price

Relying on QBS only (to the exclusion of any cost whatsoever), opens up potential pricing abuse.

In a price competition, ethical firms should be able to provide the same product and service at the same price they would have offered through the QBS process. If that were not true, then you are admitting that QBS will inflate prices and supply products and services that go beyond what is required.

QBS favors established firms and is unfair to new firms with new approaches.

QBS stifles competition and innovation

QBS is a closed door process

Most local jurisdictions and regional government agencies do not have the luxury of devoting staff resources and time needed to develop a comprehensive base of potential remote sensing vendors. Cost information contained in proposals provides a starting point for groups with limited experience and in-house resources.

Work product specifications are well defined for many mapping products

QBS removes cost as a significant selection criteria; cost ought to be an important factor

QBS precludes a fair comparison between different approaches and firms, which is essential to fostering innovation and making an informed client decision

A technical-plus-price procurement allows all parties to know what they are getting up front, without turning it into a low-bid procurement.

Price competition results in the most cost-effective overall approach. QBS results in inflated costs and/or services that exceed the actual project requirements.

When approached constructively, price is just as much an equal factor as qualifications and project requirements.

Relying on independent judgment and independent oversight by the contractor is fundamentally flawed when the industry players themselves dispute how the terms and concepts in the industry language are to be interpreted.

Where so many of the quality/process aspects are not standardized, relying on a contractor to police itself is a recipe for uneven bidding and uneven performance.

It should be incumbent upon the client to dissect the proposal to understand the price structure accordingly. Evaluating price concurrently does not force the service provider to submit a proposal that sacrifices quality for cost and it does not require the client to choose the least expensive option.

A much better approach than solely relying on qualifications based selection for quality work is to utilize independent QA/QC.

**Response:** *The committee is aware that many people oppose QBS. This is the case in all other professions that endorse QBS and is no exception here. There is extensive material and documentation on QBS demonstrating that the process does work and that most of these objections either do not apply or are the exceptions and not the rule. The references section includes links to several of these resources; though these references nearly all focus on engineering, surveying and architecture and do not specifically address geospatial mapping concerns.*

**Proposed Action:** *1) A subcommittee of the Guidelines group is developing a document addressing each of these concerns in context of geospatial mapping. These justifications will be attached as a resource to address these common misunderstandings of the QBS process. 2) Review the references section and consider "grouping" references into categories.*

**3) Comment: The document does not adequately define key controversial terms**

**Proposed Action:** *Finalize a glossary, focusing on controversial and confusing terms. Confusion between what constitutes qualifications based selection processes is still an issue and can be addressed here.*

**4) Comment: The Guidelines do not recognize the importance of geospatial mapping products, and the key differences between products and services.**

**Proposed Action:** *1) Expand the existing Products section to better identify the role of products in geospatial mapping; continue to reference the existing Products vs. Services matrix to distinguish between products and services. 2) Meet with the representatives that developed the "participating firms memo" to assist in that group's development of a companion document to address product procurement; coordinate with that group to ensure that the current services Guidelines document will facilitate a companion document and that their work does not conflict with the services Guidelines.*

**5) Comment(s): The Guidelines, and some entities on the drafting committee, attempt to classify all mapping services as surveying services requiring a professional license. The Guidelines document is a**

**continued effort to expand the application of the Brooks Act to include a broader range of “mapping services” that are completely unrelated to architectural, engineering and surveying. The Guidelines, and some entities on the drafting committee, conclude that the Brooks Act applies to and is required for all mapping services.**

**Response:** *This is not true. That is not the intent of the document and nowhere does it state or imply that all mapping services should be licensed or that the Brooks Act should be expanded.*

**Proposed Action:** *Respond to the organizations that raised or endorsed this concern to clarify that this is not the intent of the document; request that they provide specific references to the language that resulted in this interpretation and provide suggestions for changes to ensure that this is not the message we send. Revise document as needed to avoid confusion.*

**6) The Guidelines address methods of selection, but do not provide detail on the actual technical implementation of procurement criteria. Common criteria used to evaluate qualifications should be addressed. ASPRS could provide an invaluable service by providing example RFP documents, technical specifications and contract language.**

**Response / Action:** *Add a section or sections to the document to address implementation. Much of this language existed in the old document and still applies. Sample RFP's, technical specifications and contract language are too widely varied, dynamic and case specific. This information would be outdated almost immediately. However, numerous resources exist to assist organizations in implementing QBS procurements. The proposed section will include reference to these resources as well as a list of some of the primary resources available.*

**7) Comment: The State of Virginia saved significant cost by using price as a selection criteria among top rated firms. A QBS process requiring negotiating price with the top ranked firm would have cost significantly more.**

**Response:** *The Virginia approach very closely paralleled the alternative approach outlined in the Guidelines. In particular, photogrammetric mapping professionals were involved in the RFP and selection process. The committee recognizes that, if a qualified photogrammetrist is involved in this way, this approach can be successful for highly standardized projects. This is addressed in the second to last bullet of the Executive Summary and in related sections of the full text. However, the drafting committee disagrees that QBS would have necessarily cost more or that the QBS process cannot achieve a competitive price. It is the opinion of the drafting committee that the QBS price negotiation process could have been equally as successful and cost effective. This process would have allowed the State to evaluate proposed labor sources, rates and labor estimates and reject any cost or approach that was not competitive.*

**Proposed Action:** *The misconception that QBS always results in higher cost is addressed in the QBS justifications and misunderstandings document prepared by the subcommittee.*

**8) Comment: Confusion around licensure of professional photogrammetric services may cause agencies unneeded expense and complication; the NCEES Model Rules should be used to distinguish services that are “high-quality referential but not authoritative”.**

*Response:* ASPRS and the Guidelines document adopt and endorse the NCEES Model Law and Model Rules definition of surveying. This is stated in the document and further demonstrated by the distinction between “survey” and “non-survey” services in the services matrix.

*Proposed Action:* Request that the organization who submitted this comment provide specific references to the language that resulted in this interpretation and request that they specifically identify what aspects of the Guideline’s interpretations of “survey” category services they are objecting to. Revise document as needed to avoid confusion.

**9) Comment: The Guidelines need to address pre-solicitation actions.**

*Response / Action:* This will be addressed in the additional section proposed as an action item in response to comment #6.

**10) Mapping services are generally not related to architecture and engineering; the FAR only requires the Brooks Act for services requiring a licensed engineer or architect and does not apply to surveying or surveying and mapping.**

*Response:* These assertions are false. It is very true that not all mapping services are related to architecture and engineering and the Guidelines do not imply otherwise. However, many engineering applications do rely on accurate geospatial mapping to support planning and final design activities and many applications of photogrammetry and related remote sensing (such as LiDAR) are specifically intended for the sole purpose of supporting engineering design and construction. Historically this has been one of the primary applications of photogrammetric mapping and it is still a key component of the mapping work done for engineering firms, State DOT’s, the Corps of Engineers and City and County public works departments.

Licensed survey services are specifically identified in the FAR as being within the scope of services that require Brooks Act procurement. Reference the following excerpt from the FAR and the following links regarding accepted interpretation and implementation of the FAR:

“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.”

Full text, Brooks Act Procurement Process, FAR 36.6 --

[http://www.acquisition.gov/far/current/html/Subpart%2036\\_6.html](http://www.acquisition.gov/far/current/html/Subpart%2036_6.html).

U.S. Army Corps of Engineers Engineer FAR Supplement, EFARS (refer to section 36.601-4)

<http://www.hq.usace.army.mil/cepr/efars/part36.pdf>

The Guidelines document does not state or intend to state that all mapping services are surveying or that all mapping services require Brooks Act procurement under the FAR. The Guidelines document defers to

*the NCEES Model Law / Model Rules or to specific State Law in the State in which the work is to be performed to identify what aspects of the proposed work should be considered surveying with regards to interpreting the FAR or State procurement laws. It is the opinion of the Guidelines committee that in the absence of specific State Laws addressing mapping services, the NCEES Model Law and Model Rules should be used to determine what services should be considered as surveying with regards to interpretation of the FAR. This is stated in bullet #14 and related sections of the full text.*

**11) Comment: AGC endorsement of QBS may be in error.**

**Response / Action:** *The AGC web-site does include materials endorsing QBS procurement; however, it is unclear as to whether or not they officially endorse QBS. Delete reference to AGC endorsement unless this endorsement can be confirmed.*

**12) Comment: Document should address outsourcing**

**Response / Action:** *Outsourcing by itself is a separate issue and beyond the scope of the document. However, where the work will be performed, and who will be performing it, is a key qualifications consideration and can be considered in the section on QBS implementation proposed in response to comment #6.*

**13) Comment: Document is too long**

**Response / Action:** *It is long. And it will be longer after the proposed actions listed above are incorporated. The Executive Summary and attachments are intended to address this. For final distribution we will consider ways that these can serve as stand alone documents.*

**14) Comment: Local Governments and Utilities Must be Included on the Drafting Committee**

**Response:** *The committee included representatives of Federal and State agencies. Input from local jurisdictions, utilities and others has been solicited informally by the committee and also formally through Hot Topic sessions and panel presentations at one fall and two Spring conferences. In response to that input, the committee developed the alternative process outlined in the second to last bullet. Further, the intent of the draft review for comment was to solicit input from all aspects of the geospatial mapping community. However, it is true that no local government personnel were included on the drafting committee and this comment will be passed along to the ASPRS Board.*