



MAPPS v. United States:

Setting the Record Straight: A Response to MAPPS

In a recent press release concerning the pending case of *MAPPS v. United States* (E.D. Va. No. 1:06cv378), MAPPS has charged the *amici curiae* (“friends of the court”)* with making a “terribly inaccurate” and “categorically untrue” allegation concerning the consequences for the GIS and computerized mapping industries if MAPPS were to win the lawsuit. Although the federal judge hearing the case will issue a decision soon enough, the decision will not necessarily address the “allegation” in question, since it is not one of the issues that the judge must decide to resolve the case. It is therefore important for the broader mapping community to have access to the following information and to draw its own conclusions about this issue.

The “Exclusion” Issue

In its legal brief, the *amici* clearly described the consequences if MAPPS were to succeed in imposing its interpretation of the Brooks Architect-Engineers Act (40 U.S.C. §§ 1101 – 1104) on the federal government. In those circumstances, the Act would not only insulate the award of *all* federal mapping contracts from price competition, but also *exclude* everyone but licensed architects, engineers and surveyors from being eligible to receive *any* federal mapping contract. See Amicus Curiae Brief at 2 (Jan. 24, 2007). The *amici* explained that this result would follow from the language of the Brooks Act itself, which limits the award of contracts for “architectural and engineering” (A&E) services to “firms.” *Id.* Significantly, the Act defines “firms” in a special way – it is limited to individuals or business entities “permitted by law to practice the profession of architecture or engineering.” 40 U.S.C. § 1102(3).

MAPPS’ Responses to the Court

In the lawsuit itself, MAPPS had several opportunities to respond to this argument, but did not squarely do so.

In its written response to the amicus brief, MAPPS acknowledged to the court that there were potential restrictions on the eligibility of non-licensed individuals and entities to obtain federal mapping contracts. However, it chalked those restrictions up to state law, as incorporated into the Brooks Act by section 1102(2)(A). See MAPPS Response at 2-3 (Feb. 1, 2007) (quoting 11 U.S.C. § 1102(2)(A) (incorporating state law definitions of A&E services)). The response did not mention section 1102(3), described above. Thus, MAPPS overlooked the salient fact that this latter section defines and limits the universe of “firms” eligible for the award of federal contracts that are subject to the Brooks Act.

* The *amici* are the Association of American Geographers (AAG), the GIS Certification Institute (GISCI), the Geospatial Information & Technology Association (GITA), the University Consortium for Geographic Information Science (UCGIS), and the Urban and Regional Information Systems Association (URISA).

In the hearing that the court conducted on February 23, MAPPS again alluded to the “assumption” of the *amici* that “applying [Brooks Act contract award] procedures automatically bars noncredentialed or nonlicensed people, nonlicensed companies or nonlicensed individuals.” *See* Transcript at 37:10 – 24 (Feb. 23, 2007). Rather than explaining why that “assumption” might be wrong, MAPPS instead acknowledged that “[t]hat may be the practical effect.” *See id.* at 37:25. Again, however, MAPPS chalked this “practical effect” up to state law, as incorporated into the Brooks Act by section 1102(2)(A). *See id.* at 37:25 – 38:2.

Thus, MAPPS never addressed and has remained silent to this day on the effects of section 1102(3) of the Brooks Act, defining “firms,” and the related procedures of sections 1103 and 1104 of the Act for selecting and awarding contracts to “firms.” This is a critical oversight.

How the Brooks Act Excludes Award to Non-Licensed Entities

Under the selection procedures of section 1103 of the Brooks Act, a federal agency procuring A&E services, as those services are defined by the Act, must “conduct discussions with at least 3 *firms*” and from them select and rank, in order of preference, at least 3 *firms*” for price negotiations. 40 U.S.C. §§ 1103(c) & (d) (emphasis added). Under section 1104, the agency must then attempt to negotiate a contract with “the most highly qualified *firm* selected under section 1103” 40 U.S.C. § 1104(b) (emphasis added). Hence, if a particular federal mapping contract is subject to the Brooks Act, it can be awarded only to a “*firm*” – that is, an individual or legal entity “permitted by law to practice the profession of architecture or engineering.” 40 U.S.C. § 1102(3).

Contrary to what MAPPS has suggested, this consequence is not limited to services that *state* law may define as A&E services and for which *state* law may require licensure – that is, the services covered by section 1102(A) of the Brooks Act. In sections 1102(B) and (C), the Brooks Act describes covered contracts beyond those for which state law requires licensure. Under these latter two sections, a services contract could be subject to the Brooks Act even if pertinent state law does not define those services as A&E services or require licensure to perform those services.

Conclusion

For the foregoing reasons, if a particular mapping contract is determined to be subject to the Brooks Act – either (1) because state law “defines” the type of mapping in question as A&E services and requires licensure, or (2) because the type of mapping in question is related to “surveying” and, thus, is “traditionally understood” to be A&E services, or (3) because, if MAPPS were to win, *all* mapping services of every sort and description would be subject to the Act – then the Brooks Act would prohibit the federal government from awarding the contract to anyone other than a licensed architect or engineer.

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