

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

Alexandria Division

2016-11-18 11:11 AM

TELEPHONE: 703-688-1234

MANAGEMENT ASSOCIATION FOR)
PRIVATE PHOTOGRAMMETRIC)
SURVEYORS,)

COUNCIL ON FEDERAL PROCUREMENT)
OF ARCHITECTURAL AND)
ENGINEERING SERVICES,)

NATIONAL SOCIETY OF)
PROFESSIONAL ENGINEERS,)

AMERICAN SOCIETY OF CIVIL)
ENGINEERS,)

Plaintiffs,)

v.)

UNITED STATES OF AMERICA,)

Defendant.)

Civil Action No. 1:06-cv-378 (TSE/BRP)

**ANSWER TO FIRST AMENDED COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF OR MANDAMUS**

Pursuant to Federal Rule of Civil Procedure 8(b), Defendant United States of America, through undersigned counsel, respectfully submits this Answer to Plaintiffs' First Amended Complaint for Declaratory and Injunctive Relief or Mandamus ("First Amended Complaint").

FIRST DEFENSE

The Court lacks subject matter jurisdiction over Plaintiffs' claims.

SECOND DEFENSE

Plaintiffs have no clear right to the relief sought and the United States has no clear duty

to revise the Federal Acquisition Regulation (“FAR”) as requested by Plaintiffs.

THIRD DEFENSE

The United States has not unlawfully withheld or unreasonably delayed any action that it is required by law to take.

FOURTH DEFENSE

The United States’ action at issue in this case was not arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.

FIFTH DEFENSE

The United States has not acted in excess of statutory jurisdiction, authority, limitation, or right.

SIXTH DEFENSE

The United States answers the allegations in the numbered paragraphs of Plaintiff’s First Amended Complaint as follows:

1. This paragraph contains Plaintiffs’ characterization of their action, to which no response is required.
2. The United States denies that Congress has directed revision of 48 C.F.R. § 36.601-4(a)(4). The remainder of the paragraph contains Plaintiffs’ characterization of their action, to which no response is required.
3. The United States is without knowledge sufficient to respond to the allegations of this paragraph.
4. The United States is without knowledge sufficient to respond to the allegations of this paragraph.
5. The United States is without knowledge sufficient to respond to the allegations of this

paragraph.

6. The United States is without knowledge sufficient to respond to the allegations of this paragraph.
7. The United States is without knowledge sufficient to respond to the allegations prior to the semi-colon. The United States denies the remaining allegations of this paragraph.
8. The first sentence of this paragraph is Plaintiffs' identification of the Defendant, to which no response is required. To the extent a response is required, the first sentence is admitted, except to aver that the correct name of the regulatory body is the Federal Acquisition Regulatory Council ("FAR Council"). The United States admits the allegations in the second sentence of this paragraph, except to deny Plaintiffs' identification of the present Administrator for General Services and the Administrator of Federal Procurement Policy. The United States avers that the present Administrator for General Services is Lurita A. Doan, and the present Administrator of Federal Procurement Policy is Paul Denett. The United States admits the allegations contained in the third and fourth sentences of this paragraph.
9. The allegations contained in the first two sentences of this paragraph state a conclusion of law to which no response is required. To the extent a response is required, the United States denies that the Court has jurisdiction over this action and admits that venue in the Eastern District of Virginia is proper. The United States is without knowledge sufficient to respond to the remaining allegations of this paragraph.
10. The United States admits the first sentence of this paragraph. The United States further admits that Plaintiffs have accurately quoted 40 U.S.C. § 1101.
11. The United States denies the allegations in this paragraph, except to admit that Congress

amended 40 U.S.C. § 1102 in 1988 and that Plaintiffs have accurately quoted 40 U.S.C. § 1102.

12. The United States denies the allegations contained in this paragraph, except to admit that in 1991, in response to Congress's 1988 amendment to 40 U.S.C. § 1102, the FAR Council issued a final rule that amended the FAR at 56 Fed. Reg. 29124, 29128-29 (June 25, 1991). The United States avers that Plaintiffs have not accurately quoted the selected portion of the 1991 rule, and that 48 C.F.R. § 36.601-4(a)(4) (1991) accurately states:

(a) Contracting officers should consider the following services to be "architect-engineer services" subject to the procedures of this subpart:

....

(4) Professional surveying and mapping services on 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 and 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 § 36.601. However, mapping services such as those typically performed by the Defense Mapping Agency that are not connected to traditionally understood or accepted architectural and engineering activities, are not incidental to such architectural and engineering activities or have not in themselves traditionally been considered architectural and engineering services shall be procured pursuant to provisions in parts 13, 14, and 15.

13. The United States denies the allegations contained in this paragraph.
14. The United States admits that the selected portion of the "Small Business Administration Reauthorization and Amendments Act of 1990", Pub. L. 101-574, § 403, 104 Stat. 2814, 2832-33 (1990), quoted in this paragraph is accurately quoted, with emphasis added.
15. The United States admits that the selected portion of the "Small Business Credit and

Business Opportunity Enhancement Act of 1992,” 15 U.S.C. § 644 Note, Pub. L. 102-366, § 202(d), 106 Stat. 986, 994 (1992), quoted in this paragraph is accurately quoted, with emphasis added.

16. The United States denies the allegations contained in the first sentence of this paragraph. The United States admits that the partial sentence of House Report 104-617 quoted in the second sentence of this paragraph is accurately quoted, with emphasis added. The United States admits that the selected portion of a sentence in House Report 104-863 quoted in the third sentence of this paragraph is accurately quoted, with emphasis added.
17. The United States denies the allegations contained in this paragraph, except to admit that Plaintiffs have accurately quoted Section 8101 of the 1999 Defense Appropriations Act, Pub. Law 105-262, § 8101, 112 Stat. 2279, 2320 (1998). The United States avers that Plaintiffs have not accurately quoted House Report 105-746, and that the selected portion of House Report 105-746 accurately states:

The conferees included a general provision (Section 8101) to provide permanent clarification of the application of the "Brooks Act" qualifications based selection (QBS) process to surveying, mapping, charting and geodesy contracts of the National Imagery and Mapping Agency (NIMA). The conferees expect the officials responsible for the Federal Acquisition Regulations (FAR) to strike and revise the last sentence of section 36.601-4(a)(4) of the FAR (48 CFR 36.601-4(a)(4)) to define "Surveying and mapping" in such a manner as to include contracts and subcontracts for services for Federal agencies for collecting, storing, retrieving, or disseminating graphical or digital data depicting natural or man made physical features, phenomena and boundaries of the earth and any information related thereto, including but not limited to surveys, maps, charts, remote sensing data and images and aerial photographic services.

H. R. Rep. No. 105-746, at 165 (1998).

18. The United States denies the allegations contained in this paragraph, except to admit that

in a Federal Register Notice dated March 23, 2004, the FAR Council sought comments concerning whether guidance in the FAR addressing application of the Brooks Act to mapping services should be amended. The United States avers that Plaintiffs have not accurately quoted the Federal Register Notice, and that the Federal Register Notice quoted accurately states, in part, that the FAR Council was considering:

whether guidance in the Federal Acquisition Regulation (FAR) addressing the application of the Brooks Act to mapping services should be amended. The FAR currently requires application of the Brooks Act's qualifications based selection process to certain types of mapping services while precluding application in other instances.

69 Fed. Reg. 13499 (Mar. 23, 2004).

19. The United States denies the allegations contained in this paragraph, except to admit that the selected portion of the April 19, 2005 Federal Register notice quoted in this paragraph is accurately quoted.
20. The United States denies the allegations contained in this paragraph.
21. The United States incorporates by reference its responses to the allegations contained in paragraphs 1-20.
22. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent a response is required, the allegations of this paragraph are denied.
23. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent a response is required, the allegations of this paragraph are denied.
24. The United States incorporates by reference its responses to the allegations contained in

paragraphs 1-23.

25. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent a response is required, the allegations of this paragraph are denied.
- 26., The United States incorporates by reference its responses to the allegations contained in paragraphs 1-25.
27. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent a response is required, the allegations of this paragraph are denied.
28. The United States incorporates by reference its responses to the allegations contained in paragraphs 1-27.
29. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent a response is required, the allegations of this paragraph are denied.

The remaining paragraphs contain a prayer for relief to which no response is required.

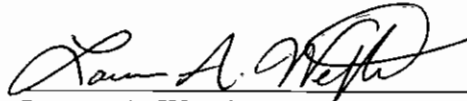
All allegations of the complaint not previously expressly admitted or denied are hereby denied.

The United States requests that the Court deny Plaintiffs the relief requested, order Plaintiffs to bear the United States' costs in defending against this action, and grant the United States any other relief that is just and proper

Respectfully submitted,

CHUCK ROSENBERG
United States Attorney

By:



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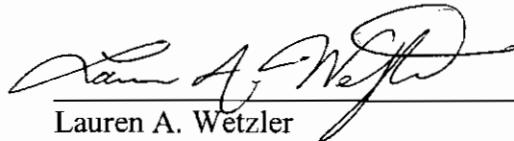
Fax: (703) 299-3983

CERTIFICATE OF SERVICE

I hereby certify that on December 1, 2006, a true and correct copy of the foregoing Answer was served upon Plaintiffs by electronic mail and first-class mail, postage pre-paid, at the following addresses:

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