

NOS Contracting Policy for Survey and Mapping Services

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Background:

NOAA promulgated an Ocean and Coastal Mapping Contracting Policy in response to the Omnibus Public Land Management Act of 2009 (Pub. L. 111–11), specifically the Ocean and Coastal Mapping Integration Act (Act), 33 U.S.C. 3501 et seq., which states: “The Administrator shall continue developing a strategy for expanding contracting with non-governmental entities to minimize duplication and take maximum advantage of nongovernmental capabilities in fulfilling the Administration’s mapping and charting responsibilities.” House Report 108–56, which accompanied the FY2005 Consolidated Appropriations Act, had previously directed NOAA to expand contracting with nongovernmental entities, but at that time, Congress limited this to hydrographic services programs funded under the “Mapping and Charting” section of the NOAA Budget. The 2009 contracting policy broadens the scope of NOAA’s contracting efforts beyond “hydrographic services” to include “ocean and coastal mapping” services as defined in the Act.

NOAA primarily utilized the Hydrographic Services Review Panel (HSRP), a Federal Advisory Committee, and the public comment process to reevaluate its 2006 Hydrographic Services Contracting Policy. NOAA first sought input from the HSRP on the revised policy during a June 22, 2009, open public meeting/teleconference. During the meeting, the HSRP requested more time to review the revised policy and asked to have the topic discussed at the next regularly-scheduled meeting. NOAA placed the topic on the agenda for the September 23–24, 2009, HSRP meeting in Duluth, Minnesota. In the interim, NOAA published an August 19, 2009, notice in the Federal Register seeking public comment on the draft policy and providing a Web page whereby the public could review additional relevant documents, including the 2006 policy, a summary of proposed changes, and the Act. In addition to this public comment period, the public had an opportunity to provide both written and verbal comment at the June 22, 2009, and September 23–24, 2009, HSRP open public meetings. The Federal Register Notices announcing these two meetings, published on June 3, 2009, June 9, 2009, and September 2, 2009, stated the opportunities to provide both written and verbal comment at the two meetings. Written public comments were distributed to the members of the HSRP.

At the September 23–24, 2009, public meeting, the HSRP discussed the proposed draft NOAA Ocean and Coastal Mapping Contracting Policy and made the following recommendation: “The HSRP finds that NOAA’s existing Hydrographic Services Contracting Policy is fairly and adequately constructed. The HSRP recommends that NOAA limit revisions to the policy, making only those precise language changes required to conform to the Ocean and Coastal Mapping Integration Act.”

NOAA subsequently made limited revisions to the 2006 policy. The intent of the revisions is to broaden the scope of the policy beyond hydrographic services to include other NOAA ocean and coastal mapping activities and to clarify some of the wording in the 2006 policy.

Below is a summary of the substance of responsive public comments received and the resulting changes made to the policy based on those comments. Seven sets of comments were received; however, several comments were considered non-responsive to the draft policy.

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Public comments were received that expressed concern that the revised language would potentially establish a new policy rationale and justification to avoid contracting, decrease contract support, or increase the opportunity for funds to be used by NOAA to compete with private industry. However, the revised policy does not reflect a change in NOAA's intent, which remains to contract for ocean and coastal mapping services when contracting is determined to be a cost-effective method of obtaining these services and to the extent funding is available.

Public comments were received that included concern over draft language that three conditions must be satisfied before NOAA contracted for ocean and coastal mapping services: the existence of qualified commercial sources, when contracting is determined to be the most cost-effective method of conducting these functions, and funding is available. After consideration, NOAA retained these conditions in the policy.

Public comments were received that included positive feedback concerning NOAA's use of Title IX of the Federal Property and Administrative Services Act (Brooks Act). It was requested that NOAA provide clarification in the policy of the statement "where otherwise deemed appropriate" when applying Title IX. NOAA believes the policy, as written, is clear. NOAA will procure the acquisition of hydrographic data in accordance with Title IX. When procuring the acquisition of data that are not considered hydrographic data, NOAA will, in compliance with the Federal Acquisition Regulations, use its discretion in determining the most appropriate contracting vehicle to use, including Title IX.

Public comments were received that included concern over the removal of a reference to NOAA's annual hydrographic training and field procedures workshops. This section was removed from the policy because it was not directly related to the contracting process; however, it is NOAA's intent to invite NOAA contractors to future workshops. Also, as stated in the policy, future training opportunities for contractors are envisioned at NOAA's Ocean and Coastal Mapping Training Center, once established.

Public comments were received that expressed concern over draft language which provided examples of mapping activities that NOAA considers inherently governmental. After review, NOAA concurred that several of the draft examples were not inherently governmental and therefore eliminated those from the final policy.

NOAA Ocean and Coastal Mapping Contracting Policy

The National Oceanic and Atmospheric Administration (NOAA) recognizes that qualified commercial sources can provide competent, professional, and cost-effective ocean and coastal mapping services and expertise to NOAA in support of its diverse mapping missions. NOAA also recognizes that providing mapping services is a core mission requirement of NOAA under the 1947 Coast and Geodetic Survey Act, Hydrographic Services Improvement Act of 1998 (as amended), and other laws and authorities. In the interest of public and environmental safety and the furtherance of scientific knowledge, the Federal Government's responsibility for executing its ocean and coastal mapping missions is manifest and non-delegable. However, it is incumbent upon NOAA, as recommended by the Hydrographic Services Review Panel, a Federal Advisory Committee, to maintain operational ocean and coastal mapping core

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capabilities and supplement its operational capacity by contracting for ocean and coastal mapping services where appropriate and to the extent of available funding.

This policy statement documents the framework and conditions under which contracting will be employed to ensure an open and consistent approach. To support this policy, NOAA will maintain a dialogue with private sector organizations and constituent groups.

For the purposes of this policy and as defined in the Ocean and Coastal Mapping Integration Act, the term “ocean and coastal mapping” includes the acquisition, processing, and management of physical, biological, geological, chemical, and archeological characteristics and boundaries of ocean and coastal areas. This also includes hydrographic services. As defined in the Hydrographic Services Improvement Act, the term “hydrographic services” means the management, maintenance, interpretation, certification, and dissemination of bathymetric, hydrographic, shoreline, geodetic, geospatial, geomagnetic, tide and water level, and current information, including the production of nautical charts, nautical information, databases, and other products derived from hydrographic data. It is NOAA’s intent to advance contracting and adhere to the principles of this policy to meet its diverse ocean and coastal mapping requirements.

It is the intent of NOAA to contract for ocean and coastal mapping services when such contracts are determined to be a cost-effective method of obtaining these services and to the extent funding is available. NOAA will procure ocean and coastal mapping services from qualified sources in accordance with its legal authorities, the Federal Acquisition Regulations (FAR), and the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 101 et seq.). Where required by law or where otherwise deemed appropriate, NOAA will procure the acquisition of hydrographic data¹ in accordance with Title IX of the Federal Property and Administrative Services Act (40 U.S.C. 1101 et seq.).²

NOAA may determine that a particular ocean and coastal mapping activity is inherently governmental or otherwise not subject to contracting. NOAA ocean and coastal mapping activities not subject to contracting may include, but are not limited to, services necessary to: (1) Monitor the quality of NOAA products; (2) promulgate and promote national and international technical standards and specifications; (3) conduct basic research and development and ensure the rapid transfer of derived technologies to the private sector; and (4) maintain the integrity and accuracy of Federal geodetic, navigational, and other databases.

To facilitate the leveraging of government mapping resources, NOAA will continue to make its coastal geospatial and hydrographic services contracts with private-sector companies available to State and local government entities that have a need for the services provided by these contracts and can provide adequate funding.

NOAA may task qualified commercial sources with ocean and coastal mapping services in any part of the U.S. Exclusive Economic Zone, territorial sea, Great Lakes, inland waters, and coastal watersheds for any mission related purpose. The government’s interests in and responsibilities for mapping vary broadly and experience has shown that maintaining flexibility is key to responding to the nation’s changing needs for geospatial data. Ancillary Statements and Actions As recommended by the Hydrographic

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Services Review Panel, NOAA will continue to utilize a mix of in-house and private-sector resources to accomplish its ocean and coastal mapping missions. Costs and productivity will be monitored within each category (i.e., public and private) to ensure best use of mapping resources. NOAA will continue to seek the optimal resource allocation between in-house and private-sector resources based on the strength of the governmental interest, the total requirement for ocean and coastal mapping services, and the particular operational capabilities of either government or private-sector resources that may make one resource more suitable for a given situation. NOAA will continue to examine ways to improve its contracting processes, including minimizing the turnover frequency of contracting personnel and reducing the length of time required to award contracts and task orders. NOAA will continue to offer debriefings to successful and unsuccessful contractors after final contractor selection has been made in order to assist contractors with identifying significant weaknesses or deficiencies in their submissions. NOAA will continue with its efforts to establish an Ocean and Coastal Mapping Training Center, which, as conceived, will support NOAA's in-house hydrographic and acoustic surveying training requirements. In addition, the Center would provide training to NOAA and private sector contractors in techniques, standards, and technologies that support NOAA's many ocean and coastal mapping activities. Such training would be beneficial to current or prospective NOAA contractors seeking to improve their capabilities and proposal submissions.

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¹*Hydrographic data means information that is acquired through hydrographic, bathymetric, photogrammetric, lidar, radar, remote sensing, or shoreline and other ocean- and coastal-related surveying; geodetic, geospatial, or geomagnetic measurements; tide, water level, and current observations; and is used in providing hydrographic services.*

²*Commonly known as the "Brooks Act" or A&E (Architectural or Engineering) contracting services, Title IX contracts are negotiated and awarded on the basis of demonstrated competence and qualifications (qualification-based selections or QBS) as opposed to price.*