

# JGAC Report

—by Laurence Socci

We have been working on many important government affairs issues this year. Although you may read about what we've been working on in the monthly Government Affairs Updates, I understand that a few members have experienced a disruption in delivery. If you are not receiving our updates, I encourage you to join our listserve and start getting our monthly updates. Below is an overview of the issues we have been working on.

## **Coastal State Renewable Energy Promotion Act — H.R. 1690:**

The recently introduced Coastal State Renewable Energy Promotion Act amends the Coastal Zone Management Act of 1972. It authorizes grants to eligible coastal states to support voluntary state efforts to initiate and complete surveys of portions of coastal state waters and federal waters adjacent to a state's coastal zone to identify potential areas suitable or unsuitable for the exploration, development, and production of renewable (wind, wave, current, tidal, or ocean thermal) energy that are consistent with the enforceable policies of coastal management plans. It also requires that suitable areas be given priority consideration by federal agencies for the siting, licensing, leasing, or permitting of renewable energy facilities.

## **National Geospatial Advisory Committee Update:**

The May 13 meeting of of the committee noted that about half of the current appointments to the NGAC will expire in January 2010. It is anticipated that there will be a Call for Nominations issued later this year for the next round of appointments. Similar to the process that was followed for the initial round of appointments, it is also anticipated that an interagency review panel will evaluate the nominations and make recommendations to the Office of the Secretary of the Interior. The Secretary will make the final decisions on appointments to the committee. We will continue to lobby the Secretary of the Interior for a seat at the NGAC table.

## **FEMA Releases New Elevation Certificate:**

The Office of Management and Budget (OMB) has approved the collection of information under OMB Circular # 1660-0008, which includes

the Elevation Certificate (FEMA Form 81-31) and the Floodproofing Certificate (FEMA Form 81-65). The new expiration date for both forms is March 31, 2012.

The only changes to the Floodproofing Certificate are the new expiration date and revised Paperwork Burden Disclosure Notice. For information on the changes made to the Elevation Certificate and Instructions, please go to the FEMA website at [www.fema.gov](http://www.fema.gov).

As stated in WYO Clearinghouse bulletin W-09008, dated February 26, 2009, FEMA will permit a "phase-in" of the revised Elevation Certificate on a voluntary basis. During a 12-month transition period beginning April 1, 2009, FEMA will accept either the new or the old form. This voluntary transition period will allow sufficient time for coordination and training of all affected NFIP stakeholders. Elevations certified on or after the last day of the transition period must be submitted on the new Elevation Certificate form bearing the expiration date of March 31, 2012. Please go to the FEMA website at [www.fema.gov](http://www.fema.gov) for more information about this certificate.

## **Preservation of Railroad**

**Monumentation:** Although the proposed legislation on the preservation of railroad monumentation legislation has not yet been introduced, we had many meetings on the issue and received many good responses. At each meeting, staffers asked how does the issue affect each Member of Congress' District or State. To answer that question more accurately and completely, we need letters of support from ACSM members. If this issue affects you, let us know about it. **The legislation won't get introduced unless Congress sees a real need for it.** A list of Members of Congress on

the House Railroad Subcommittee has been provided. If your Representative is on the list, we especially need to hear from you.

## **Democrats**

Corrine Brown, Florida, Chairwoman  
Dina Titus, Nevada  
Harry Teague, New Mexico  
Nick J. Rahall, II, West Virginia  
Jerrold Nadler, New York  
Elijah E. Cummings, Maryland  
Grace F. Napolitano, California  
Jason Altmire, Pennsylvania  
Timothy J. Walz, Minnesota  
Michael A. Arcuri, New York  
Christopher P. Carney, Pennsylvania  
Albio Sires, New Jersey  
Mark H. Schauer, Michigan  
Betsy Markey, Colorado  
Michael E. McMahon, New York  
Thomas S. P. Perriello, Virginia  
Peter A. DeFazio, Oregon  
Jerry F. Costello, Illinois  
Bob Filner, California  
Eddie Bernice Johnson, Texas  
Leonard L. Boswell, Iowa  
Rick Larsen, Washington  
Michael H. Michaud, Maine  
Daniel Lipinski, Illinois  
Steve Cohen, Tennessee  
Laura A. Richardson, California  
James L. Oberstar, Minnesota (ex officio)

## **Republicans**

Bill Shuster, Pennsylvania, Ranking Member  
Thomas E. Petri, Wisconsin  
Jerry Moran, Kansas  
Gary G. Miller, California  
Henry E. Brown, South Carolina  
Timothy V. Johnson, Illinois  
Sam Graves, Missouri  
Jim Gerlach, Pennsylvania  
Charles W. Dent, Pennsylvania  
Lynn A. Westmoreland, Georgia

Jean Schmidt, Ohio  
Candice S. Miller, Michigan  
Vern Buchanan, Florida  
Robert E. Latta, Ohio  
Brett Guthrie, Kentucky  
Aaron Schock, Illinois  
Anh "Joseph" Cao, Louisiana  
Pete Olson, Texas

**COFPAES Delegate Meeting:** The spring meeting of COFPAES delegates and staff was addressed by a number of speakers. Participants heard from Bruce Ware, USACE who described the USACE Prospect Training program. We also heard from James Harper, Jr., FTA Office of Federal Procurement, on the FTA grant program for state and local governments transportation projects. FTA received quite a bit of stimulus funding from the federal government for which there is now competition. The third speaker, Dean Smith of GSA, described how the GSA is using its share of the stimulus funding. Major Clark, Office of Advocacy for the SBA, focused on the issue of the 10% retainage on A/E contracts (more on this topic later) included in the recently released Federal Register Notice.

In the afternoon session, delegates considered several bills currently in Congress that contain Qualification Based Selection language relating to the procurement of A/E services. These included: H.R. 1262, the Water Quality Financing Act, H.R. 1770/S. 732, the Dam Rehabilitation and Repair Act, H.R. 1520, the Federal Land Asset Inventory Reform Act and H.R. 915 FAA Reauthorization. COFPAES supports the QBS language in all of these bills.

With regard to the Federal Register Notice we proposed the FAR rule on retainage on A/E contract and the proposed Freedom from Government Competition Act. At a previous COFPAES meeting, AIA raised a concern about a standard clause provision in part 52 of the FAR that authorizes contracting officers to impose retainage of fees on A/E contracts. Not only is this burdensome to A/E firms, but there appears to be no statutory or regulatory authorization of the clause. In 2007, the SBA solicited troublesome regulations under its "Regulatory Review and Reform" (3R) Pro-

gram. COFPAES submitted the retainage issue, and it made the SBA top 10 list. The Federal Register Notice was initiated because of COFPAES' action on this issue. The Delegates discussed language that will be used in COFPAES' comments on the Notice.

We learned about a proposed bill that will be introduced by Rep. Duncan of Tennessee and Senator Thune of South Dakota called the "Freedom from Government Competition Act." Similar bills have been proposed in the past, which COFPAES endorsed. The bill does not mandate contracting out, but establishes a process by which agencies review in-house commercial activities for potential private-sector performance. The bill, by definition, preserves QBS. ACSM Delegate Joe Dolan noted that ACSM would support this proposed bill.

The last issue of the day was a discussion about COFPAES' intent to propose legislation that would benefit the A/E community. The legislation is intended to encourage A/E professionals, including surveying and mapping professionals, to assist the transformation of America's cities and towns into low carbon producing, renewable energy consuming, and environmentally sensitive places to live and work in while ensuring their economic viability. During a brainstorming session, a white paper was proposed outlining a logical path to proceed on this issue. You'll hear more about this issue as we move forward.

**Coastal Barrier Mapping:** On April 7, 2009 the U.S. Fish and Wildlife Service released to the public its report to Congress, *John H. Chafee Coastal Barrier Resources System Digital Mapping Pilot Project*, and announced the start of a 90-day public comment period. The report, which was directed by the Coastal Barrier Resources Reauthorization Act of 2000 (P.L. 106-514), highlights the benefits of updating Coastal Barrier Resources System (CBRS) maps with more accurate and precise digital maps in order to better protect people, coastal areas, and natural resources. The link below will direct you to the U.S. Fish and Wildlife Service website where you can review the Report to Congress as well as the Draft Maps. Comments are due

by July 6, 2009 ([http://www.fws.gov/habitatconservation/coastal\\_barrier.html](http://www.fws.gov/habitatconservation/coastal_barrier.html)).

### **Federal Register Notice on Presidential Memorandum on Government Contracting:**

The notice appeared in the Federal Register on May 29. The Presidential Memorandum on Government Contracting, issued on March 4, 2009, establishes a framework for improving critical components of the federal acquisition system and management of the Federal Government's "multi-sector" workforce of federal employees and private-sector contractors. The Memorandum directs the Office of Management and Budget (OMB), to improve, in consultation with federal agency leadership, and strengthen federal contracting practices and to seek input from the public on the most effective ways to achieve this goal. Section 321 of the National Defense Authorization Act (NDAA) for Fiscal Year 2009 further directs OMB to clarify the definition of an inherently governmental function and to develop criteria to be used by agency heads to identify other functions that should only be performed by federal employees. The Presidential Memorandum is available at [http://www.whitehouse.gov/briefing\\_room/PresidentialActions/pg2/](http://www.whitehouse.gov/briefing_room/PresidentialActions/pg2/). Section 321 may be found at [http://www.rules.house.gov/110/text/110\\_hr5658.pdf](http://www.rules.house.gov/110/text/110_hr5658.pdf).

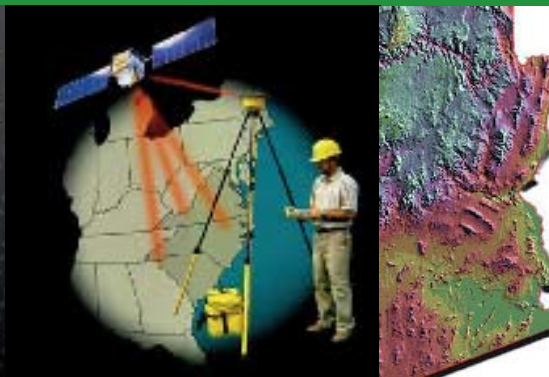
In furtherance of the President's Memorandum and section 321 of the FY 2009 NDAA, OMB invites interested parties from both the public and private sectors to provide comments on: (1) Maximizing the use of competition; (2) improving practices for selecting contract types; (3) strengthening the acquisition workforce; and (4) clarifying when functions should be performed by federal employees and when contractors may be appropriately considered.

### **Federal Register Notice on the 10% Retainage on A/E Contracts:**

The Federal Acquisition Regulation (FAR) 52.232-10, Payments under Fixed-Price Architecture-Engineer Contracts, currently requires the contracting officer to withhold 10% of the amounts due on each voucher; however, payment may be made in full during any month in which the contracting officer determines the performance to be satisfactory. The Government retains



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the withheld amount until the contracting officer determines that the work has been satisfactorily completed. The contracting officer may release the amounts withheld in excess to the contractor when it is determined that the work is substantially complete, and when the contracting officer determines that the amount retained is in excess of the amount adequate for the protection of the Government's interests.

This rule proposes the revision of FAR 52.232-10 to permit contracting officers to use their judgment regarding the amount of payment withheld to apply under fixed-price architecture-engineer contracts (based on an assessment of the contractor's performance under the contract) so that the withheld amount can be applied at the level necessary to protect the Government's interests. This is in contrast to the current requirement that contracting officers withhold 10 percent on all payments. Thus, the rule proposes to revise paragraphs (b) and (c) of the contract clause at FAR 52.232-10 to state that the contracting officer may (rather than shall) withhold up to 10 percent of the payment amount due and that the amount of withholding shall be determined based upon the contractor's performance record. The rule also makes several related editorial changes, including one that clarifies that the contractor will be paid any unpaid balance due to include withhold amounts at the successful completion of the design work.

This case originated from a recommendation in the Small Business Administration's Regulatory Review and Reform (r3) initiative. The current withholding provisions negatively impact the cash flow of architect-engineer contractors and may, in some instances, result in the withholding of amounts that exceed reasonable amounts to protect the Government's interests.

### **Department of the Interior Appropriations Bill Passes House of Representatives:**

Included in the bill is \$950 million to the Bureau of Land Management for tasks including cadastral surveying. Interestingly, \$1.1 billion went to the USGS with the provision "that no part of this appropriation shall be used to pay for more than one-half of the cost of topographic mapping or water resources

data collection and investigations carried out in cooperation with states and municipalities."

**USGS Coalition Meeting with USGS Acting Director, Suzette Kimball:** Most of the conversation focused on the Department of the Interior appropriations bill. Director Kimball informed the meeting that geospatial mapping and other geospatial related activities are "an underpinning in all other USGS activities," therefore, there is funding for those activities throughout the appropriations bill. She also noted that geospatial activities have been moved from the Geospatial Information Office (GIO) to the Geographic Office and that lone Taylor is the new head of geospatial activities.

**AmericaView Geospatial Imagery Mapping Program Act.** The recently introduced legislation calls on the Secretary of the Department of the Interior, acting through the Director of the USGS, to establish and maintain a national remote sensing education, outreach, and research program within the USGS to advance the availability, timely distribution, and widespread use of geospatial imagery for education, research, assessment, and monitoring purposes in each state. The purposes of the AmericaView program are: (1) to increase accessibility to, and expand the use of, remote sensing data in a standard, easy-to-use format by federal, state, local, and tribal governments, communities, educational institutions, and the commercial sector; and (2) to assist each StateView program (the AmericaView program of an individual State, comprised of educational institutions and State and local governments) in establishing the cooperative infrastructure necessary to increase access to geospatial imagery for research and educational purposes. The Secretary, acting through the AmericaView project, shall support the geospatial imagery mapping research and educational programs of each State by cooperating with states to (a) identify new geospatial imagery mapping needs and infrastructure, and (b) to define, consolidate and maintain AmericaView's data requirements. Also, the Secretary, acting through the AmericaView program, shall maintain AmericaView in each state to (a) share and cooperate in the development of

geospatial imagery mapping applications, education, and training infrastructure; (b) cooperate with the AmericaView project to develop nationally consistent standards for geospatial imagery mapping in each state; (c) expand the number of geospatial imagery mapping courses taught at educational institutions and provide training, remote sensing data, and teaching tools to educators; (d) expand geospatial imagery mapping research at research educational institutions; (e) expand the knowledge and use of geospatial imagery and map products in the current workforce through outreach programs, workshops, and other training opportunities; (f) build partnerships with local governments to identify unique research and development needs and geospatial imagery mapping pilot projects; (g) promote cooperation and sharing of expertise regarding geospatial imagery among participating States and within each participating State; and (h) enable the States to provide geospatial imagery to the USGS. We are exploring what role surveyors and mapping professionals can play in this program.

**Floodmap Coalition Update.** Funding for the map modernization program ended with the FY 08; it will take 2 to 3 years to turn that money into updated maps. The FY 09 funds will be used as a bridge between Map Modernization and the Risk MAP program. Under the latter, the majority of the funding will concentrate on coastal, levee, and other riverine flood map update projects. The goals of Risk MAP are to: (1) address gaps in flood hazard data, (2) help the public to understand the risks associated with flood hazards in a way that causes the public to actively reduce those risks, (3) lead communities to effectively engage in risk-based mitigation planning, (4) provide an enhanced digital platform that improves Risk MAP management, improves communication and sharing of risk data to all levels of government and the public, and (5) align risk analysis programs to enhance decision-making capabilities through effective risk communication and management. For more information on FEMA's Risk MAP program, go to <http://hazards.fema.gov>.

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