



# ACSM

government affairs update



## September 2011 ACSM/NSPS Government Affairs Update

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**LightSquared GPS Update** --- Congress recently held a number of hearings on the LightSquared/GPS issue; and we expect Congress to hold several more hearings.

One such Congressional hearing was before the House Science Committee. ACSM asked members to contact Chairman Ralph Hall's office regarding surveyors' concerns about the issue. Surveyors from around the country responded to our call and flooded Chairman Hall's office with calls and e-mails. It was such a huge outpour of responses, that Chairman Hall's staff contacted ACSM and asked that we relay to members that Chairman Hall got the message. But ultimately, the LightSquared issue will not be solved in Congress, but rather at the FCC.

The House Committee on Small Business contacted ACSM and requested a meeting to learn how LightSquared's plans will affect surveying professionals and their use of high precision GPS. ACSM met with Committee staff and explained the problems that surveyors will face from a small business perspective. We offered many ideas, suggestions and antidotes which the staff will take to Chairman Sam Graves (R-MO) for consideration.

After the Congressional hearings, in which many Federal officials testified that LightSquared's plans would hurt Federal agencies' use of GPS; LightSquared announced that it has partnered with Javad GNSS, a GPS manufacturer, to develop a system that, it claims, will eliminate related interference issues for high precision GPS devices. We have not heard the details of this partnership, or how the proposed Javad GNSS system will affect the current problems.

On September 13, 2011, the FCC issued a Public Notice that states, in part, that the FCC, in consultation with the National Telecommunications and Information Administration (NTIA), has determined that additional targeted testing is needed to ensure that any potential commercial terrestrial services offered by LightSquared will not cause harmful interference to GPA operations.

In summary, Congressional hearings are still going on and FCC-ordered testing will continue. For more detailed information on this important issue, go to [www.saveourgps.org](http://www.saveourgps.org) and watch for more updates.

**FEMA Floodmap Coalition News** --- The FEMA Floodmap Coalition met recently with FEMA officials to get an update on the Floodmap program. A number of issues were discussed at the meeting. One of the topics discussed was the National Flood Insurance Program (NFIP) re-authorization legislation that passed the House of Representatives and is currently in the Senate. One of the key points of the legislation involves re-authorization of the Technical Mapping Advisory Council (TMAC). The House version of the bill (H.R. 1309) proposes that TMAC rewrite mapping guidelines in 12 months. FEMA would then have 6 months to accept the new guidelines. The Senate version does not have that proposal. ACSM is working to make sure we once again have a seat on the TMAC.

FEMA also discussed proposed funding levels for the FY12 RiskMAP budget and program measures. FEMA officials see a significant cut to funding for the RiskMAP program that will impact new levee engineering and mapping policy and procedures as well as coastal mapping programs.

ACSM once again raised our continued concern about the accuracy of the floodmaps being produced and the additional concern that projected funding cuts do not have a negative affect on floodmap accuracy.

**COFPAES Delegate Meeting** --- COFPAES recently held its Fall Delegate meeting. With this meeting, ACSM Delegate, Joe Dolan, ended his one year term as COFPAES Chairman. Thanks, Joe – we appreciate your hard work.

COFPAES Delegates discussed a number of key issues, here are the highlights.

*GSA Schedule—Abuse on A/E service contracts.* COFPAES engaged the law firm, Crowell & Moring to write a brief on the legal conflict between GSA Schedules affecting A/E services and the Brooks Act. COFPAES staff will use the brief provided by Crowell Moring during our upcoming meetings with Congress and Federal agencies. As the Delegates discussed this issue, we had a fascinating conversation about the GSA contracting process. It gave Delegates and staff a deeper understanding of the process.

*Design-Build Study*— For several years, COFPAES has discussed problems members experience with design-build implementation. A scope for an independent study was developed by COFPAES on the issue and staff held meetings with several parties, including agencies and Congressional staff, to explore a study. The Office of Advocacy of the Small Business Administration has included a design-build study as a potential topic in a recent request for proposals for contractor support. The focus on this study will primarily be the impact of design-build on small business.

*Policy on Inherently Governmental Function* --- The Office of Federal Procurement Policy has issued its long-awaited policy on inherently governmental functions. COFPAES commented on the initial draft in 2010, as did ACSM. Few of the concerns expressed or recommendations made by COFPAES and ACSM were included in the final policy.

In ACSM's original comments, we stated a concern about the designation of "construction of buildings or structure intended to be secure from electronic eavesdropping or other penetration by foreign governments" as an inherently governmental function. That item is now listed as an example of functions closely associated with the performance of inherently governmental functions.

The policy letter also states that its purpose is to, among other things, "clarify that determining the criticality of a function depends on the mission and operations, which will differ between agencies and within agencies over time." This statement seems to suggest that federal agencies --- on their own --- can determine what is and what is not an inherently governmental function. The full Federal Register

Notice can be found here:

<http://frwebgate2.access.gpo.gov/cgi-bin/PDFgate.cgi?WAISdocID=BVRZHd/0/2/0&WAIAction=retrieve>

*QBS Implementation, Enforcement and Application* --- COFPAES Administrator, John Palatiello facilitated a session on current challenges to QBS and possible strategies for addressing these threats. Among the threats to QBS discussed were: the economy, the GSA Schedule, strictly construction-related service contracts, design-build, and reduced agency in-house A/E acquisition workforce.

The Delegates discussed a number of questions related to the issue including: (1) Is QBS still relevant or is it an anachronism --- a throwback to a bygone era? (2) Is there a problem? Is there a threat? (3) What should COFPAES do to respond to the threat and remedy the situation?

The Delegates determined that QBS was still relevant. All organizations stated that their members thought QBS and the Brooks Act were very important to the profession and should continue to be protected. But they did recognize that there is a problem and a threat that needs to be addressed. The Delegates discussed several possible solutions to the problems QBS faces. Those possible solutions include: education and public relations effort to promote the value of QBS; lobby for more bidding bans by state licensing boards; re-write/amend the Brooks Act; create a mini-COFPAES organization in each state; revitalize and strengthen the QBS facilitator program.

It was agreed that Administrator Palatiello would send around a copy of the Brooks Act for all COFPAES organizations to review and identify areas to re-write and amend.

**COFPAES Federal Markets Conference** --- COFPAES recently held a very successful Federal Markets Conference in conjunction with the Delegate meeting. Approximately 55 A/E professionals (including many surveyors) attended the conference. 14 speakers from a number of Federal agencies spoke about their particular agency's procurement process as well as opportunities for A/E consultants to provide services to the federal government.

Congressman Mick Mulvaney (R-SC) gave a keynote address at lunch and spoke about a number of legislative issues, including the status of the 3% withholding tax legislation; which he expects to pass the House of Representatives by Christmas.

Some of the Federal agencies that participated in the Conference were: GSA, BLM, Bureau of Prisons, U.S. Air Force, U.S. Customs and Border Protection, Army Corps of Engineers, naval Facilities Engineering Command, Federal Highway Administration, Bureau of Oversea Buildings Operations, U.S. Agency for International Development.

One common theme from all of the speakers was the prevalent use of design-build in the contracting process. One of the speakers noted that design-build is the number one contracting vehicle throughout agencies.

COFPAES received many positive comments about the conference, and it plans to host similar conferences in the future.

COFPAES will post the presentations of the presenters on its website at [www.cofpaes.org](http://www.cofpaes.org).