

COFPAES

Council On Federal Procurement of Architectural & Engineering Services

January 11, 2010

Daniel I. Gordon, Administrator
Office of Federal Procurement Policy
Executive Office of the President
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Dear Mr. Gordon:

Congratulations on your nomination and confirmation as Administrator of the Office of Federal Procurement Policy (OFPP). We look forward to working with you to advance best practices in Federal acquisition, including the time-tested and proven qualifications based selection (QBS) process for architecture, engineering and related (A/E) services, codified in 40 U.S.C. 1101 et. seq., and implemented in part 36.6 of the Federal Acquisition Regulation ("Brooks Act").

COFPAES (www.cofpaes.org) is one of the oldest procurement-related coalitions in Washington. COFPAES speaks as the unified voice of the A/E community in support of the QBS process and other issues related to A/E procurement. COFPAES was a leading advocate for the creation of OFPP in 1974 and has worked closely with the office since its inception.

I would like to bring to your attention a vexing and protracted issue. COFPAES would welcome the opportunity to finally put this matter to rest.

For several years, COFPAES worked with the General Services Administration (GSA), and with your predecessors and the OFPP staff, in an attempt to assure that the GSA's Schedule contracts are implemented properly. Regrettably, despite repeated and continuous efforts by COFPAES and previous efforts by OFPP, GSA still offers A/E related services via its Schedule contracts, in violation of the Brooks A/E Act.

A variety of GSA Schedule programs, including but not limited to Professional Engineering Services (871), Environmental Services (899), Information Technology (70), Mission Oriented Business Integrated Services (874), and Temporary Administrative and Professional Staffing (736), offer A/E services, based on price, in violation of the Brooks Act. Moreover, Congress specifically addressed this issue in Section 1427 of the Services Acquisition Reform Act (Public Law 108-136).

Nevertheless, we continue to witness GSA offering A/E services through its Schedule contracts. In fact, COFPAES counsel advised GSA that the use of the term "Professional Engineering Services" is a violation of state

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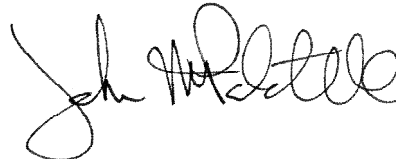
licensing laws, as well as extensive case law, governing the practice of Professional Engineering.

In a meeting at OFPP, then Associate and Acting Administrator Robert Burton discussed this issue with COFPAES and GSA officials. It was made clear that such violations were inappropriate and that corrective action must be taken. OFPP reproached the GSA on the practice, but the agency did not implement the necessary changes. Since that meeting, there has been significant turnover in the GSA political leadership and career staff. COFPAES also engaged in a considerable number of meetings with GSA to explore the establishment of a QBS-compliant GSA Schedule program for A/E services, but again, the personnel at GSA changed and the effort was never finalized.

Our concern is that GSA has not revised its Schedule contracts and has no process in place to monitor or enforce the law with regard to the abuse of the Schedule contracts for A/E services. Recent activities, such as the SMARTBUY contract for GIS and the award of ARRA-funded surveying and mapping work by the Bureau of Land Management are contemporary reminders of how the system is being abused and how GSA is facilitating the violation of the Brooks A/E Act.

We would like to meet with you to share our considerable documentation on this frustrating issue. We look forward to working with you and hope we can develop a workable solution.

Sincerely,

A handwritten signature in black ink, appearing to read "John M. Palatiello". The signature is fluid and cursive, with the first name "John" being particularly prominent.

John M. Palatiello
Administrator