
COFPAES

Council On Federal Procurement of Architectural & Engineering Services

May 31, 2010

Office of Federal Procurement Policy
ATTN: Mathew Blum
New Executive Office Building, Room 9013
724 17th Street, NW
Washington, DC 20503

Dear Mr. Blum:

The Council on Federal Procurement of Architectural & Engineering Services (COFPAES) is a coalition of the nation's leading professional societies and trade associations of practitioners in the architecture, engineering, surveying and mapping fields. COFPAES provides a unified voice for its member organizations – the American Congress on Surveying and Mapping (ACSM), American Institute of Architects (AIA), American Society of Civil Engineers (ASCE), Management Association for Private Photogrammetric Surveyors (MAPPS), and National Society of Professional Engineers (NSPE) – representing more than 300,000 **public and private** practice architects, engineers, surveyors and mapping professionals, including the vast majority of those that serve as contractors to the Federal government and those in the employ of the Federal government. COFPAES has for more than 35 years provided the unified voice of the A/E community on Federal procurement issues.

We appreciate this opportunity to comment on the proposed policy on the inherently governmental definition.

As an organization of both private contractors and Federal employees, COFPAES takes a middle-of-the-road view on the issue of in-house versus contractor performance. We believe Federal agencies with requirements for A/E services should have a core, in-house staff capability in order to properly plan, develop and maintain public works and environmental programs; to perform in house engineering functions, tasks and projects; to manage and oversee work contracted out to private engineering firms and to maintain the mission and services legislatively mandated for the government agency. On the other hand, COFPAES believes it is not in the public interest for government agencies to compete with engineers in private practice.

COFPAES is deeply concerned about the discussion of “Construction of buildings or structures intended to be secure from electronic eavesdropping or other penetration by foreign governments” under the “illustrative list ... of functions that are closely associated with the performance of inherently governmental functions.” Our concern is the fact that this language could result in the design and construction of **all** Federal buildings and structures being deemed closely associated with the performance of inherently governmental functions and a gray area with regard to whether such design and construction could be performed by contract to the private sector. There is very little practical experience among personnel in the Federal government in using the codes, specifications and technologies that are needed to design and build offices and other structures that are secure from eavesdropping. The Federal government has traditionally relied on private sector architects, engineers and construction contractors for these activities. We are concerned that this language will result in a wholesale in-sourcing of a commercial, historically-contract activity. We urge that this example be stricken from the list of “closely associated” activities.

**American Congress on
Surveying and Mapping**
6 Montgomery Village Avenue
Suite 403
Gaithersburg, MD 20879
240/632-9716 Fax 240/632-1321

American Institute of Architects
1735 New York Avenue, NW
Washington, DC 20006
202/626-7405 Fax 202/626-7365

**American Society of
Civil Engineers**
101 Constitution Avenue, NW,
Suite 375 East
Washington, DC 20001
202/789-7842 Fax 202/789-7859

**Management Association for Private
Photogrammetric Surveyors**
1856 Old Reston Avenue
Suite 205
Reston, VA 20190
703/787-6996 Fax 703/787-7550

**National Society of Professional
Engineers**
1420 King Street
Alexandria, VA 22314
703/684-2862 Fax 703/836-4875

1856 Old Reston Avenue, Suite 205, Reston, VA 20190
Phone: 703/787-4748; Fax: 703/787-7550; Email: john@cofpaes.org;
Web: www.cofpaes.org

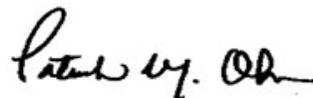
We also suggest revision or removal of the reference to “professional and technical services”. A/E and related (surveying, mapping, etc.) services have long been considered professional services and in large measure have been contracted to the private sector. We believe the use of the term “professional and technical services” should be removed from the policy, clarified, or discussed in the context of accepted “commercial activities”. As presented in the draft proposal, the use of that term could have unintended consequences that would be harmful to the balance between government and contractor performance of professional A/E services.

While it is a longstanding legal doctrine that state licensing requirements cannot be imposed on Federal employees, based on the Supreme Court decision in *Johnson v. State of Maryland*, 254 U.S. 51 (1920), COFPAES and its member organizations have long advocated and encouraged appropriate licensure of Federal employees in responsible charge of the government’s A/E activities. Congress has also indicated its support for the state licensing system for practitioners in the A/E field, as evidenced by the definition of A/E services in the “Brooks Act” (40 USC 1101). However, given the fact that there is no requirement that Federal employees in architecture, engineering, surveying and related disciplines be licensed, we are deeply concerned that the draft policy, particularly in the aforementioned provisions, could result in unlicensed Federal employees being in responsible charge of critical A/E projects. This would result in a serious threat to public health, welfare and safety.

One area where the Federal government should pay particular attention to the performance of inherently governmental functions is in A/E acquisition. COFPAES has long been deeply concerned about the decline in the Federal A/E acquisition workforce. Congress attempted to address this issue with the enactment of section 1414 of the Services Acquisition Reform Act (SARA), enacted in Public Law 108-136, but we found the implementation of this provision to be insufficient and unsuccessful. The lack of an adequate A/E acquisition workforce, to perform widely-accepted inherently government A/E activities, has resulted in corner-cutting in A/E procurement, including a narrowing of the applicability of the Brooks A/E Act (40 USC 1101), abuse of the GSA Federal Supply Schedule contracts, and an over-reliance on design-build contracting. COFPAES once again urges OFPP review the implementation of section 1414 of SARA and adopt the recommendations made by COFPAES.

In summary, COFPAES urges a careful review of the draft policy to assure that it does not result in an unlevel playing field between the legitimate roles of Federal employees and private contractors in the delivery of A/E projects to the taxpayers. The policy should be vigilantly reviewed and revised to assure that it does not result in unintended consequences, such as an insourcing of A/E services that would impair the ability of the government to deliver A/E projects in a timely and cost effective manner, or jeopardizing public health, welfare and safety.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick M. Olson".

Patrick M. "Pat" Olson, PE, PLS, CP
Chairman