

Subject: SmartBuy RFQ 348667**Date:** Tuesday, March 31, 2009 1:26 PM**From:** Nick Palatiello <nick@mapps.org>**To:** John Palatiello <john@cofpaes.org>**Conversation:** SmartBuy RFQ 348667**From:** John Palatiello [mailto:john@cofpaes.org]**Sent:** Friday, March 20, 2009 5:05 PM**To:** 'Karen_Siderelis@ios.doi.gov'; 'stephen.bell@gsa.gov'; 'Prof. Ivan DeLoatch'; 'Wallach Steven P Mr NGA-TX USA CIV'; 'Howell, Michael'; 'michael.hargrove@gsa.gov'**Subject:** SmartBuy RFQ 348667

On behalf of the Council on Federal Procurement of Architectural and Engineering Services (COFPAES), which includes the American Congress on Surveying and Mapping, American Society of Civil Engineers, American Institute of Architects, National Society of Professional Engineers and MAPPs, I would like to thank all those involved in the CAD/GIS Software "SmartBuy" activity for the work that was done to more clearly articulate the statement of work (SOW) to distinguish between software and support thereof on one hand and services on the other.

The recently SOW is a vast improvement over the draft that was released last fall. We believe the final SOW does a much better job of focusing the procurement on software, and not on services.

The SOW includes the following disclaimer: "Note: This procurement DOES NOT include professional engineering services as prescribed under the Brooks Act."

We are concerned that this statement does not adequately or accurately reflect the requirements under the law or the FAR. We believe the SmartBuy procurement will still be open to abuse and misuse.

The Brooks Act (40 USC 1101 et seq) and the FAR (definition of A/E services in part 2.101 and implementation in part 36.601-4) covers a much broader range of services than just "professional engineering services". Therefore, the disclaimer in SmartBuy must be broader.

Therefore, we urge that a modification to RFQ 348667 be issued so that the SOW provides -

"This procurement does not include the following services:

(A) "Architect-engineer services", as defined in 40 U.S.C. 1102, and FAR part 2.101 and 36.6:

(1) Professional services of an architectural or engineering nature, as defined by State law, if applicable, which are required to be performed or approved by a person licensed, registered, or certified to provide such services;

(2) Professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and

(3) Such other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.

(B) Surveying is considered to be an architectural and engineering service and shall be procured pursuant to section 36.601 from registered surveyors or architects and engineers. Mapping associated with the research, planning, development, design, construction, or alteration of real property is considered to be an architectural and engineering service and is to be procured pursuant to section 36.601."

Given that SmartBuy will also be available to state and local government, it is imperative that not only Federal procurement law is followed to the letter of the law, but that compliance with state licensing law is enforced as well. Any service that falls within State law definitions of the practice of architecture, engineering, surveying (or mapping and GIS, which are included in several state laws) must be exempt from SmartBuy.

We appreciate your attention to this request and its prompt implementation. Given the poor track record GSA has with implementing a process for monitoring and enforcing Federal law with regard to the Brooks Act vis-à-vis other Federal Supply Schedules (PES, IT, Environmental Services, MOBIS, etc), we look forward to working with all the agencies involved in the CAD-GIS SmartBuy on such a monitoring and enforcement process. We would be pleased to meet with you regarding this important issue.

John M. Palatiello
COFPAES Administrator
1856 Old Reston Avenue
Suite 205

Reston, VA 20190
john@cofpaes.org <mailto:john@cofpaes.org>
www.cofpaes.org <http://www.cofpaes.org>