# What can COFPAES do for you?

How many ACSM members know what COFPAES is and what it does on regular basis for the architecture and engineering (A/E) community? **—by Laurence Socci**

If you compete regularly for Federal contracts, COFPAES works to make sure the competition is fair and does not automatically go to the lowest bidder. COFPAES does this by working to preserve, protect, and defend the Brooks Act; a long-standing law passed by Congress to ensure that architectural and engineering services—including surveying and sometimes mapping services—are acquired by qualifications based selection.

COFPAES is an acronym for Council on Federal Procurement of Architectural and Engineering Services. It is a coalition of the nation's leading design professional societies and associations. It was formed in 1966 to provide a common voice for the profession on federal procurement issues. COFPAES members are the American Institute of Architects, American Society of Civil Engineers, National Society of Professional Engineers, Management Association for Private Photogrammmetric Surveyors, and American Congress on Surveying and Mapping.

Joseph Dolan serves as ACSM's delegate to COFPAES and I serve as ACSM's staff representative and handle the day to day issues. Two times a year, COFPAES delegates from all member organizations, along with staff from each member organization, meet in Washington, D.C. to learn from federal government officials on the subject of federal procurement of A/E services. The delegates and staff also meet to discuss issues important to members of the organizations represented in COFPAES.

One of these issues is a concern expressed by our members about RFP solicitations from the federal government for surveying services on a federal contract which call for the price for the services to be placed in the bid. Such solicitations are a violation of the Brooks Act because they have made "price" to be the deciding factor in the selection process. Under the Brooks Act, the highest qualified firm should get the contract, not the lowest bidder.

When we learn about such price bids, we immediately contact the COFPAES administrator and request an investigation. If it is, in fact, a solicitation that violates the Brooks Act, a letter is written by COFPAES on behalf of ACSM and sent to the contracting officer, informing him that we feel the solicitation violates the Brooks Act. More often than not, the solicitation is pulled and reissued in compliance with the Brooks Act.

You may be wondering, "Okay, so what? Why is qualifications based selection so important?" It's important because it makes sure the federal contract is awarded based on demonstrated competence and qualifications. The Senate Report authorizing the Brooks Act states, "Under this system, A/Es are under no compunction to compromise the quality of the design or the level of effort they will contribute to it in order to meet the lower 'fee' quotations of other A/Es." [*S. Rept. 92-1219; Sept. 25, 1972.*]

Since qualifications based selection (QBS) is the law in more than 30 states (and the practice in most others), and many state licensing laws or ethics codes and regulations prohibit practitioners from engaging in price competition to secure work, compliance with the Brooks Act protects surveying professionals from violating their own state laws and ethical practices.

But COFPAES also works on a number of other issues benefitting ACSM members. One of them concerns the greater use of "design build" rather than the conventional "design-bid-build" process by the federal government. Many small A/E firms are concerned that since there has been no Congressional review of whether savings or efficiencies are being achieved using the design-build process, they are at a disadvantage and lose out on prospective work.

Earlier this year, COFPAES scored a big victory for the members of its member organizations. After months of work on the "10 percent retainage on A/E contracts, the Federal Acquisition Regulation (FAR) clarified its position on the rule, in Item VI—Payments Under Fixed-Price Architecture and Engineering Contracts (FAR Case 2008-015)

This rule amends clause FAR 52.232-10 Payments Under Fixed-Price Architect-Engineer Contracts with revised retainage requirements. The contracting officer can withhold up to 10 percent of the payment due in any billing period when he or she determines that such a withholding is necessary to protect the Government's interest and ensure satisfactory completion of the contract. However, withholding the entire 10 percent is not required, and no withholding is required if the contractor's performance has been satisfactory. The changes thus clarify that retainage is *optional* and *any amounts retained should not be held over beyond the satisfactory completion of the instant contract*. In this economy, it was a welcomed ruling.

COFPAES works on other issues too numerous to discuss here. To learn more about what COFPAES can do for you and your business, visit the COFPAES website at www.cofpaes.org.

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