ACEC
American Council of Engineering Companies
100 Years of Excellence

David A. Raymond
President & CEO

September 24, 2010

Mr. Keith Brau
Office of the Associate Chief Counsel
Internal Revenue Service, Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

Re: CC:PA:LPD:PR (Notice 2010-51)

Dear Mr. Brau:

On behalf of the American Council of Engineering Companies (ACEC) – the national voice of America's engineering industry – I am writing to provide our comments on implementation of the new Form 1099 requirements contained in the Patient Protection and Affordable Care Act of 2010.

ACEC members – numbering more than 5,500 firms representing hundreds of thousands of engineers and other specialists throughout the country – are engaged in a wide range of engineering works that propel the nation's economy, and enhance and safeguard America's quality of life. This expensive new requirement will burden engineering firms of all sizes at a time when many are struggling to survive in this tough economy. ACEC is especially concerned about the impact on small firms, forcing them to spend limited resources on tracking and reporting purchases of goods and services that could instead be used to reinvest in the business and create jobs.

Current rules require a firm to file IRS Form 1099 for services that cost more than $600 purchased from any business that is not incorporated. The new health care law expands this mandate significantly, covering both the purchase of services and goods, as well as purchases from any business entity, including corporations.

This change in the law is expected to result in hundreds of millions of additional Form 1099s filed with the IRS. ACEC member firms both large and small will be required to devote substantial additional resources to keeping track of payments and filing the necessary forms. As an example, Degenkolb Engineers in San Francisco, California currently files approximately 30 Form 1099s a year. Under the new rules, the firm expects to file just under 2500 forms. This process will also involve getting taxpayer identification numbers for each of the firm's vendors.

T 202-347-7474 F 202-898-0068 DRAYMOND@ACEC.ORG
1015 15TH STREET, NW, 8TH FLOOR WASHINGTON, DC 20005-2605 WWW.ACEC.ORG

The administrative work associated with these new requirements could lead firms to consolidate their purchases of goods and services with fewer, larger vendors in order to reduce the number of Form 1099s they file. In the process, smaller vendors would lose business.

According to the request for public comments, the guidance will state that payments made by credit card do not need to be reported on a Form 1099. This exception is based on implementation of a separate law that mandates information reporting for credit card transactions. This approach may reduce the number of Form 1099s a firm must file. However, it will increase complexity because the firm must track how each payment is made and file the appropriate forms accordingly. Once again, this record-keeping will impose a particular burden on small firms, and customers might choose vendors that accept payment by credit card or require their vendors to do so. This would add credit-card processing costs for vendors, which may not be able to pass those costs along to their customers.

Another concern is that there could be a mismatch between amounts reported to the IRS for taxpayers that use the cash basis method of accounting. If a firm that uses cash accounting pays a vendor in December 2012 for goods or services rendered, that firm will send a Form 1099 in January 2013. However, if the vendor also uses cash accounting and does not receive the payment until January 2013, the vendor will not recognize the income until it files its 2013 tax return. This appears to create a discrepancy in the timing of information the IRS will receive about the vendor's income from the customer and the vendor.

Finally, firms are concerned about the increased potential for errors with the magnitude of additional Form 1099s. The complexity of reporting these transactions raises the possibility that a firm's customer might misreport payments. This could lead to a subsequent disparity between the income reported by a firm and the payments reported by its customers. It is unclear how the IRS would address such errors and what impact they would have on the taxpayer.

ACEC has endorsed legislation that would repeal this provision of PPACA. Enforcement of the federal tax code must strike an appropriate balance between collecting taxes owed and placing unwarranted burdens on private industry during this process. We believe that the excessive paperwork associated with the expanded Form 1099 provision greatly outweighs the additional taxes that would be collected.

Sincerely,

David A. Raymond
President & CEO