December 1, 2015

General Services Administration
Regulatory Secretariat (MVCB)
ATTN: Ms. Flowers
1800 F Street NW, 2nd Floor
Washington, DC 20405

Dear Ms. Flowers:

The American Council of Engineering Companies (ACEC) – the national association of the engineering industry – respectfully submits comments on the proposed guidance on Improvement in Design-Build Construction Process (FAR Case 2015-018) (published on October 8, 2015). ACEC supports the efforts of the FAR Council to limit the number of second-phase finalists on military and civilian design-build projects that are greater than $4 million.

The most widely used form of design-build procurement is the so-called two-phase process, which requires teams to first submit information to the contracting officer detailing the qualifications of the design and construction members. The contracting officer reviews the qualifications and notifies the teams if they are selected for the next phase. In the second round, the design team develops detailed, expensive plans for use in the development of a cost proposal. The design group develops these plans generally without any reimbursement by the federal government or other participants, resulting in firms bearing significant costs to participate in the project.1

The industry standard for two-phase design-build competitions calls for three to five finalists in the second round. However, in recent years, firms have frequently reported examples of 10 or more finalists in the second round. The current civilian statute states that the federal contracting officer should follow the industry standard, but the officer, at her or his own discretion, may increase the number of finalists when it is “in the Federal Government’s interest and is consistent with the purposes and objectives of the two-phase selection process.”2 This exception causes issues for both the industry and for the contracting officer. The industry is risking greater exposure as more firms — small, medium, and large — are spending valuable resources developing expensive plans and specifications that have a lower chance for a successful bid. The contracting officer must review each of the plans and be prepared to give feedback to each team that does not win the project. With the increase in finalists, the government spends more time on proposal

review, and introduces greater opportunity for underbidding which impacts the project later. This dynamic has driven many highly qualified firms, including small businesses, to stay out of the federal market, making the market less competitive and depriving the taxpayer of qualified providers.

The current FAR proposal is a step in the right direction to address this problem, by requiring a senior contracting official to approve any projects which have more than five second phase finalists and are greater than $4 million. ACEC urges the Council to add a reporting requirement on these exceptions, which will allow for the government and for industry to determine if there are significant issues with procurements, while increasing the transparency on the overall process.

ACEC thanks the FAR Council for the valuable work to improve the procurement process for engineering firms. Thank you for your consideration.

Sincerely,

[Signature]

David A. Raymond
President and CEO