American Council of Engineering Companies
Comments on the Defense Federal Acquisition Regulation Supplement:
Exemption from Design-Build Selection Procedures (DFARS Case 2018-D011)

The Federal government uses a number of “delivery systems” to design and construct infrastructure projects and public buildings. The traditional approach, where the agency separately hires an engineering firm to design the facility and a construction firm to build it, has been supplemented over the years by new systems, including design-build, where engineering and construction firms form teams to compete for work and take the project from concept to completion. Both the traditional form of project delivery, as well as newer mechanisms like design-build, can be very effective depending on the specifics of each project and the needs of the agency client.

Design-build has been used widely by Federal agencies to efficiently deliver projects to the public, but its use has also highlighted shortcomings. First, the proposal phase for design-build competitions can be very expensive for both the teams and the agencies, particularly when the agencies do not reduce the competitors to only those with the highest qualifications and capabilities. Often an ineffectively filtered shortlist can include 10 or more teams. These teams must then develop extensive design concepts and cost proposals, which require substantial time and resources, while agencies devote additional time and resources on final evaluations.

For this reason, ACEC opposes the proposed amendment to the DFAR and strongly supports maintaining the limitation of five teams for the second phase of a 2-phase design-build procurement and requiring contracting officers to justify in writing the need for additional offerors. The first phase being an evaluation of submitted qualifications and capabilities. Providing blanket authority to exceed that number based on contract size, type of contract, or contracting officer’s discretion negates the benefits of limiting the selection to only the most qualified and capable offerors and potentially gives rise to lower qualified offerors winning work based on artificially low bids.

Removing a reasonable cap on the second (proposal) phase of the design-build process will add costs both for industry as well as our government clients. Doing so will also have the effect of reducing participation by the best engineering firms, which incur much of the cost in these competitions and frequently without reimbursement. A streamlined design-build process benefits government agency and the public and focus the proposal phase of competition to the strongest teams best equipped to deliver a successful project to the client.

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