



September 8, 2025

Dr. Kevin Rhodes
Senior Advisor, Office of Federal Procurement Policy
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

RE: Comments to Revolutionary FAR Overhaul: Part 36 - Construction and Architect-Engineer Contracts

Dear Dr. Rhodes:

The American Council of Engineering Companies (ACEC) – the business voice of the engineering industry – appreciates the Trump Administration’s initiative to overhaul the Federal Acquisition Regulations (FAR) and streamline the federal procurement process. ACEC represents nearly 5,500 engineering firms and more than 600,000 engineers, surveyors, architects, and other specialists nationwide, many of which hold federal agency-specific or multiple award contracts and will be directly impacted by these changes. Many of the changes in the Revolutionary FAR Overhaul are long overdue and will save time, save taxpayer dollars, reduce regulatory burdens, and promote economic competitiveness.

We are pleased to provide input and seek clarification on the proposed changes to Part 36 - Construction and Architect-Engineer Contracts released on July 24, 2025. While we support some of the modifications, we want to avoid potential unintended consequences and better align Part 36 revisions to our mutually shared goals of creating the most agile, effective, and efficient procurement system possible.

In particular, three changes made to Part 36 risk future innovation, project acceleration, and cost-efficient project delivery by weakening the foundation of how America hires engineers:

- Removal of Specific Architect-Engineer Minimum Selection Criteria
- Lack of Clarity When Engineering Services Are Dominant
- Reduced Transparency in Awards and Debriefs

More specifically, we are concerned that loss of specificity in some sections will foster inconsistency and subjectivity in procurement. This could create additional administrative delay, inefficiency, and cost for our government clients. The resulting confusion may discourage participation from highly qualified American companies, most of whom are small businesses, which could then result in a loss of innovation, application of cost-saving approaches, reduced workforce capacity to deliver projects more quickly, and elevated safety and delivery risks.

Background on Qualifications-Based Selection (QBS) for Architecture and Engineering Services
The core of FAR Part 36 for Architect-Engineer Contracts is implementation of a Qualifications-Based Selection (QBS) process. QBS is a competitive procurement approach for selecting and retaining design professionals that puts the emphasis on qualifications and experience at the front end of the competition to achieve final project performance and cost objectives. Firms compete for work based on professional experience, technical expertise, past performance, capacity, location and other factors necessary for successful project delivery.

Time and again, research and post-project completion reviews have conclusively documented that projects utilizing the QBS procurement framework for engineering services have better outcomes for owners in terms of cost, risk schedule, and innovation. University studies have shown that QBS saves time, saves taxpayer money, delivers innovation, and results in better project outcomes.¹ Architectural-Engineering Services (A/E Services) represent a small portion of lifetime ownership costs (~2%), but are perhaps the most significant influencers of infrastructure safety, cost savings, innovation, performance, and durability through the life of the project. Simply put, the investment in engineering services through the competitive selection of qualified design professionals saves hundreds of billions later in reduced change orders, repairs, lawsuits, accidents, and risks to American lives.

Congress recognized these merits when codifying QBS procedures in 1972 (40 U.S.C. 1101-1104) and then later expanded those requirements to many other federal infrastructure programs, including highways and airports under President Reagan in 1987, and for water infrastructure programs in 2014. This is a well-established, proven, and reliable procurement framework that is the envy of the world when buying design services. The American QBS framework protects U.S. jobs and delivers safe, modern infrastructure.

Executive Summary – Overall Changes Provide Too Little Specificity

We agree with the need to streamline the FAR and agency administrative requirements so that projects and programs can be delivered more quickly and in a cost-effective manner. America builds the best when it hires the best, which means selecting design services with emphasis on qualifications versus who comes in with the cheapest bid.

The revisions in Part 36 introduce a level of ambiguity in certain requirements and presume that government parties know and will consistently apply correct processes and procedures under applicable statutes. While the new 36.102-1 references 40 U.S.C. 1102, which defines A/E Services, nothing in the new sections reinforces the statutory requirement that only QBS can be used for acquiring those services.

Further, the new language does not identify specific minimum selection criteria for A/E services. The FAR previously followed the statutes and required agencies to consider a company's professional qualifications, specialized experience, capacity to accomplish the work, past performance, and knowledge of the locality. There is significant merit in delineating in the FAR, and not just in a buying guide or other non-regulatory reference material, the minimum criteria

¹ ACEC Research Institute Study Shows QBS Saves Clients Time and Money; 2022. Found at: <https://www.acec.org/news/last-word-blog/post/acec-research-institute-study-shows-qbs-saves-clients-time-and-money/>

for selection and what factors cannot be considered. Without clear standards, contracts may go to firms with little experience or poor track records. Eliminating minimum criteria altogether will lead to government and industry inefficiency, waste, and potential fraud in procurement, increased costs and delays in executing projects, reduced innovation, reduced competition, and unsafe results.

The following sections present the engineering industry's observations of the potential effect of the changes and provide recommended alternatives to meet the government's objectives in simplifying the language of the FAR. We respectfully request your consideration of our recommended revisions.

Removal of A/E Selection Criteria (36.602-1 / 36.603)

• **FAR Overhaul Change:** Eliminates explicit evaluation criteria within the QBS process for A/E Services.

• **Effect:** Increased costs, schedule delays, reduced project performance, reduction in innovation, and safety impacts resulting from the selection of firms and people who may be unqualified, with little or no relevant past experience, a track record of poor performance, and/or with insufficient capacity to perform the proposed work.

• **Risks:**

- Decrease in government procurement efficiency due to agencies independently developing and adopting their own procurement guidance and procedures.
- Decrease in industry efficiency and increase in costs due to lack of uniformity and unpredictability in any agency's government procurement practices, and this is magnified across the entire federal enterprise.
- Loss of private innovation due to non-participation of current firms in the marketplace due to the introduction of new barriers by the government to their participation.

Recommendation

To make procurement more efficient, consistent, concise, understandable and focused on core procurement requirements, we recommend adding short and simplified source selection criteria from existing FAR 36.602-1. To 36.102-2 "Contracting procedures and competition" add the following paragraph:

(c) Source Selection Criteria to comply with 40 U.S.C 1103 (d) must include the following:

- (1) Professional qualifications necessary for satisfactory performance of required services;*
- (2) Specialized experience and technical competence in the type of work required;*
- (3) Capacity to accomplish the work in the required time;*
- (4) Past performance on similar work;*
- (5) Knowledge of the location of the work.*

Rationale

By removing the specified selection criteria from the FAR, each agency head will have the burden of determining appropriate selection criteria and publishing them to comply with 40 U.S.C 1103 (d). This will increase the pages of regulations and scale of bureaucracy since each agency will need to develop and publish their own selection criteria. Procurement inefficiencies

will grow further as firms will be required to develop specialized Standard Form 330 documents to respond to solicitation with a focus on different elements dependent on each agency's selection criteria. Notably, the current SF-330 does not include information about a firm's capacity to perform the work in the required time.

While the new 36.102-1 references 40 U.S.C. 1102, which defines A/E Services, nothing in the new sections reinforces the law's requirement that only QBS can be used for acquiring those services. The only specific mention of price related factors in selection is buried in 36.101-2(b)(2)(iii) and that is for two-phase design-build. The scattering of A/E Services related subparts (e.g., 36.102 and 36-202) between Construction subparts creates confusion and increases the potential for errors and/or misuse.

The benchmarks in 36.602-1 are not only foundational to the integrity of the QBS process but also serve as critical indicators of a firm's ability to deliver successful project outcomes. Removing these criteria may inadvertently erode the rigor and transparency of the QBS framework and bias the selection toward price earlier in the competition. While the overhauled changes suggest additional flexibility for agencies to determine qualifications, such flexibility, if not clearly defined, risks introducing further ambiguity and inconsistency into the source selection evaluation process. Without strong safeguards, agencies may interpret this discretion as permission to consider cost as a proxy for qualifications, or worse, as a direct selection factor. This would violate the intent of U.S.C. 40 Chapter 11 and incentivize a race to the bottom, where firms compete on price rather than quality, innovation, or long-term value which, as stated earlier, will lead to cost and schedule inflation.

As it is currently structured and applied by our federal clients, QBS ensures the most qualified design team is hired at a fair and reasonable cost to the government. The QBS framework puts the emphasis on qualifications and performance data at the front end of the competition with the goal of identifying a short list of the top three most qualified companies – in order of preference – for the project in question. From there the client and the top ranked firm negotiate a scope of work, evaluating different design options that will enhance performance. The client and firm then negotiate a fair and reasonable price based on a clearly defined scope of work.

As previously cited research has demonstrated this process and sequence minimizes cost and schedule increases during the construction phase. ACEC's recommended language to 36.102-2 will clarify the application of QBS by our federal clients to deliver these outcomes to the taxpayer.

A/E Dominant Requirements Removed (36.101 / 36.601-3c&d)

- **FAR Overhaul Change:** Removal of Part 36 precedence over any inconsistencies in other FAR Parts.
- **Effect:** Opens door for less-qualified firms; increases subjectivity and price-driven awards.
- **Risks:**
 - Increases risk to the government by potentially selecting unqualified firms and resultant lower quality and higher construction cost outcomes – thereby wasting taxpayer money on projects with higher construction costs, more future maintenance need, and less safety.
 - Fails to ensure that public facilities are safe for American families.

Recommendation

To avoid confusion over the precedence of 40 U.S.C 1101 – 1104 above other procurement methods for A/E contracting, we recommend adding short and simplified wording from existing FAR 36.601-3 as follows:

To 36.102-2 “Contracting procedures and competition” add the following paragraph:

(e) Applicability

(1) Sources for contracts for architect-engineer services must be selected in accordance with the procedures in this subpart rather than the solicitation or source selection procedures prescribed in parts 13, 14 and 15.

(2) When the contract statement of work includes both architect-engineer services and other services, the contracting officer must follow the procedures in this subpart if the statement of work, substantially or to a dominant extent, specifies performance or approval by a registered or licensed architect or engineer.

Rationale

The overhauled version removes provisions in FAR 36.101 related to the applicability of Part 36, most notably the requirement that Part 36 take precedence over any inconsistent requirements in other FAR Parts (such as FAR Part 15). It also removes the requirement that contracts for both construction and supplies or services include clauses applicable to the predominant part of the work. This could potentially mean that contracts will include clauses relevant to both construction and the provision of supplies or services, creating additional confusion and risk.

While the first lines of FAR 36.601-3 mention sustainability and recovered materials, provisions c and d are not related to sustainability requirements. Rather, they are about addressing the potential for combining A/E services with other services in contracts and the need to use QBS whenever A/E services are dominant. We want to clarify that “dominant” means whenever public safety, functional performance, and/or life-cycle costs could be impacted. Like most FAR provisions, there is extensive case law affirming the statutory mandate to use QBS procurement procedures. When public safety is on the line, our country needs licensed engineers – period.

Reduced Transparency in Awards & Debriefs (36.213-4 / 36.607)

- **FAR Overhaul Change:** Limited release of award details; debriefs no longer expected.
- **Effect:** Hinders transparency and confidence in the source selection.
- **Risks:**
 - Potential for increased industry protest activity due to loss of transparency.
 - Potential for fraud in selection processes leading to negative eventual project outcomes and waste in the spending of infrastructure and facility funds.
 - Reduced industry efficiency/increased costs (which inevitably are passed to the government) and reduced diversity, capacity, and strength in the professional industry serving government agencies.

Recommendation

To increase government procurement efficiency and promote selection effectiveness for A/E contracting, we recommend adding short and simplified wording as follows:

Notice of award.

When a notice of an award is issued, it must be done in writing or electronically and shall contain the information required by 14.408.

Release of information on firm selection.

(a) After final selection has taken place, the contracting officer must release information identifying only the architect-engineer firm with which a contract will be negotiated for certain work. The work should be described in any release only in general terms, unless information relating to the work is classified. If negotiations are terminated without awarding a contract to the highest rated firm, the contracting officer may release that information and state that negotiations will be undertaken with another (named) architect-engineer firm. When an award has been made, the contracting officer must release award information, (see 5.401).

(b) Debriefings of successful and unsuccessful firms will be held after final selection has taken place and will be conducted, to the extent practicable, in accordance with 15.503, 15.506(b) through (f), and 15.507(c).

Rationale

Transparency is a key hallmark of the QBS procurement process. Offerors and taxpayers deserve to know why contracts are awarded and that public funds are invested in the most qualified service providers. The removal of these provisions leads to less transparency and eliminates the debriefing language for A/E contracts. It is possible that the Part 15, Contracting by Negotiation, debrief provisions in FAR 15.505 and 15.506 could be construed to also cover A/E contracts since they are not specifically excluded in the language, but that is not worth the risk. For clarity, a provision should be added that specifically covers debriefings for A/E contracts.

Effective post-award debriefings or explanations are critical to instilling confidence in the source selection process. Debriefings enable industry to apply lessons learned to improve future proposals. Industry expends tremendous resources in responding to solicitations. The government's willingness to share info in the debriefing/explanation is one of the few things an unsuccessful offeror gets out of its investment in its unawarded proposal. Debriefings are important to strengthen relationships and to improve future competitions, which lead to enhanced services to the taxpayer.

Conclusion

This overhaul must protect taxpayers from waste and ensure that public facilities are safe for federal agency users such as our warfighters and American families. We are committed to working with the Administration and FAR Council to find solutions without significant business disruption, prevent any confusion with other conflicting laws and regulations, and ensure a vibrant marketplace for professional engineers to unleash a golden age of American infrastructure.

Thank you for your consideration of our industry's recommendations and perspectives.

Respectfully,



Linda Bauer Darr
President & CEO