ACEC
American Council of Engineering Companies

October 19, 2026

William F. Clark
Director, Office of Government-wide Acquisition Policy
Regulatory Secretariat Division (MVCB)
General Services Administration
1800 F Street, NW
Washington, DC 20405

RE: Comments to Revolutionary FAR Overhaul: (FAR Cases 2026-003, 2026-006, 2026-010, 2026-011) – Construction and Architect-Engineer Contracts

Dear Director Clark and Members of the FAR Council:

The American Council of Engineering Companies (ACEC) – the business voice of the engineering industry – appreciates the opportunity to provide comments and perspective on the Trump Administration's initiative to overhaul the Federal Acquisition Regulation (FAR) and streamline the federal procurement process. ACEC represents nearly 5,500 engineering firms and more than 600,000 engineers, architects, land surveyors and other specialists nationwide, many of whom hold federal agency-specific or multiple award contracts and will be directly impacted by these changes.

The comments to follow provide input and seek clarification on the proposed rules published in the *Federal Register* on September 18, 2026, pursuant to Executive Order 14275, *Restoring Common Sense to Federal Procurement*.

ACEC certainly supports the goal of modernizing the FAR, reducing redundant administrative burdens, and promoting regulatory clarity. In response to the Council's Phase 1 regulatory overhaul in September 2025, ACEC raised significant concerns regarding proposed changes to FAR Part 36 that risk undermining Qualifications-Based Selection (QBS), reducing award transparency, and complicating procurement administration. QBS is required for Architect-Engineer Services under 40 U.S.C. 1101-1104. Consequently, QBS is federal law, not just acquisition policy. We are pleased to see that several of our core recommendations have been incorporated into the September 2026 proposed rules. At the same time, critical shortfalls remain that must be addressed in the final rule to properly implement federal law, safeguard public safety, taxpayer value, and sound procurement policy.

## I. Commendation and Support for Positive Regulatory Changes

ACEC commends the FAR Council for incorporating important structural and procedural improvements in the September 2026 proposed rule that directly align with feedback submitted in our September 2025 comments:

1. **Structural Separation of Architect-Engineer (A/E) Services and Construction Regulations:** In our 2025 comments, ACEC highlighted that comingling A/E subparts with construction regulations created administrative confusion and increased the risk of improper procurement methods. We applaud the FAR Council for restructuring Part 36 to establish distinct subparts for Construction (FAR 36.101 and 36.201) and A/E Services (FAR 36.102 and 36.202). This logical separation minimizes ambiguity and reinforces proper procurement workflows.
2. **Explicit Scope Rules for Surveying and Mapping Services (FAR 36.102-2(d)):** We commend the explicit establishment in FAR 36.102-2(d) that surveying and mapping associated with the research, planning, development, design, construction, or alteration of real property are architectural and engineering services that must be procured pursuant to QBS under FAR 36.102 and 36.202. Clearly delineating these professional services from non-traditional mapping protects technical integrity.

While the September 2026 proposed rule marks meaningful progress, several key issues remain unaddressed or create new administrative challenges for engineering firms and contracting officers alike.

## II. Omission of Explicit Minimum A/E Selection Criteria in FAR Regulatory Text

ACEC requested inserting into FAR 36.102-2 the five long-standing FAR source selection criteria (professional qualifications, specialized experience, capacity to perform, past performance, and location knowledge) that implement 40 U.S.C. 1103(d) to ensure adherence to the requirements of 40 U.S.C 1101-1104. Instead, the proposed rule relies generally on evaluating SF 330 Part I and Part II submissions under FAR 36.102-2(c), 36.202-1(b)(1), and 36.202-5(b) without listing the five criteria explicitly in the regulatory text. *Reference: Proposed 36.102-1, 36.202-1, 36.202-5(b)*

Proposed 36.102-1 requires public announcement of all A/E requirements, and 36.202-1 directs source selection evaluation boards to evaluate firms' SF 330 submissions. Neither section identifies the specific criteria boards are to consider, and nothing requires the public announcement to identify the evaluation criteria. By contrast, and appropriately, proposed 36.101-2(b)(2) lists the phase-one evaluation factors for two-phase design-build in detail.

Effective use of QBS depends on engineering firms knowing in advance how they will be judged. Without a regulatory baseline, criteria will vary widely and unnecessarily by agency and office, and small firms will bear the most negative impact.

**Recommendation:** ACEC urges the FAR Council to reinsert the five core selection criteria explicitly into FAR 36.102-2 regulatory text. Frontline contracting officers rely almost exclusively on the text of the FAR rather than referring to the underlying statutes. Omitting these explicit benchmarks removes essential guardrails for QBS evaluations.

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. In 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) Successful past performance on similar work;*
*(5) Knowledge of the location of the work.*

Rationale

The benchmarks in the existing 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 on behalf of agency clients and the taxpayer. Removing these criteria may inadvertently erode the rigor and transparency of the QBS framework. While the overhauled changes suggest additional flexibility for agencies to determine qualifications, the proposed text 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 both the letter and the intent of U.S.C. 40 Chapter 11.

As currently structured and applied by federal agencies, QBS ensures the most qualified design team is hired at a fair and reasonable price 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 agency and the top ranked firm negotiate a scope of work, evaluating different design options that will enhance performance, save money or achieve other metrics. The agency and firm then negotiate a fair and reasonable price based on a clearly defined scope of work.

The FAR previously required agencies to consider a company's professional qualifications, specialized experience, capacity to accomplish the work, past performance, and knowledge of the locality. The language in the FAR should clearly state these elements for selection and what factors cannot be considered such as price. Without clear standards, agency compliance will lack consistency and the benefits of using QBS in terms of cost savings and project success will be diluted.

## III. Lack of Clarity on Procurement Applicability When Engineering Services Are Dominant

The proposed rule lacks an explicit applicability provision establishing that FAR Part 36 QBS procedures must govern whenever a statement of work is substantially or dominantly composed of architectural and engineering tasks. Otherwise, price-related factors could be considered when they should not be considered.

**Recommendation:** Without clear dominance rules, agencies risk inappropriately procuring professional design services under general service procurement rules elsewhere in the FAR, circumventing statutory QBS requirements. ACEC recommends adding explicit text in FAR

36.102 establishing Part 36 applicability whenever A/E services represent the primary or dominant scope of work.

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 12, 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.*
>
> *(3) Substantiality and dominance is automatically established when the architect-engineering services involve impact on public safety, security, and project life-cycle costs.*

Rationale

The professional services industry is not monolithic – neither are engineering services.

A common parent NAICS code does not, by itself, establish a common competitive market. NAICS categories were designed to classify industries for statistical purposes, not necessarily to define the markets in which firms compete.[1] Broad groupings can therefore create false equivalencies among firms serving different customers and mission requirements. The inverse is also true. Similar sounding services can serve the same customers but perform vastly different services. The federal government itself properly differentiates A/E Services from other engineering services in its public reporting of federal spending; it is therefore reasonable to similarly differentiate between A/E Services and other engineering services at procurement.

Currently, NAICS Code 541330 (Engineering Services) aggregates two fundamentally different business models:

- **Licensed design professionals** focused on real property, the built environment, civil works, and civilian infrastructure (such as buildings, roads, dams, bridges, and water systems).
- **Manufacturing, defense, and management giants** engaged in the design, development, and utilization of aerospace equipment, military weapons, machines, materials, instruments, and processes.

Just because a scope of work is listed as NAICS Code 541330 (Engineering Services), does not necessarily mean that it should follow QBS procedures. ACEC member companies regularly perform facilities services under GSA OASIS+ although professional design services are not the target scope of work for much of that contract. Additionally, Army Marketplace for the Acquisition of Professional Services (MAPS), the combination of Information Technology

[1] U.S. Census Bureau, Economic Census: NAICS Codes & Understanding Industry Classification Systems (explaining that NAICS is a production-oriented, hierarchical classification system that groups establishments according to similarities in the processes used to produce goods or services), Census NAICS guidance (last visited Sept. 16, 2026).

Enterprise Solutions 3 – Services (ITES-3S) and Responsive Strategic Sourcing for Services (RS3), the Army Contracting Command-Aberdeen Proving Ground use NAICS 541330 as the anchor for the Technical Services domain (engineering, logistics, manufacturing readiness, technology insertion, integration, interoperability), while routing IT-centric work into the Emerging IT (541512) and Foundational IT (541519) domains. The functions historically associated with 541510 are now captured under 541512, which MAPS already uses for the Emerging IT domain, and 541614 skews more toward logistics and process consulting than the systems engineering and integration work that has dominated RS3 and ITES-3S type scope. RS3has primarily covered C5ISR engineering, RDT&E, and logistics support services under engineering or R&D NAICS codes, versus facilities or design Architecture & Engineering Services (A/E) work.

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. Adding non-A/E services to contracts to reduce the ratio of A/E services total value to contract total value in order to avoid QBS should never be an option. When public safety is on the line, our country needs licensed professional engineers.

## IV. Post-Award Debriefings for A/E Contracts

ACEC expressed concern in 2025 that eliminating debriefing mandates would erode transparency, increase protest risks, and discourage firm participation. We strongly support the addition of FAR 36.202-3(f), which explicitly mandates that debriefings of successful and unsuccessful A/E firms may be held after final selection and will be conducted, to the extent practicable, in accordance with FAR 15.301. Restoring debriefings ensures transparency and continuous improvement across the design community. *Reference: Proposed 36.202-3(f); 15.300 in FAR Case 2026-003*

**Recommendation:** Revise 36.202-3(f) to require a debriefing upon written request from a firm that was evaluated, conducted to the extent practicable in accordance with 15.301**.**

Rationale
Proposed 36.202-3(f) provides that A/E debriefings "may be held" after final selection. Proposed 15.300 states that Part 15 debriefing procedures do not apply to A/E selections, though they should be followed with reasonable modification. Together, these improperly leave A/E debriefings to agency discretion.

A debriefing is the only feedback an A/E firm receives on an SF 330 submission, which represents a substantial investment, particularly for a small firm. Proposals submitted in procurements and their evaluation basis are outside of firms' ability to FOIA the procurement results. When an agency provides insufficient insight into its evaluation and award rationale, an unsuccessful offeror may have little practical means to assess whether the competition was conducted fairly without filing a protest. Without a reasonable understanding of how to provide a competitive qualifications proposal, firms are unlikely to enter the federal market, or to remain in that market; this has negative effects on the capacity of the federal industrial base.

In 2025 testimony, the GAO reported that protests of Department of Defense/War (DoD) procurements declined by approximately 48 percent from fiscal years 2015 through 2024, compared with an approximately 32 percent decline in all GAO protest filings. GAO identified enhanced DoD debriefings as one of several possible contributors to these declines, while noting that the reasons were uncertain. This experience supports strengthening communication, without suggesting that debriefings alone explain the trend.[2]

## V. Subcontracting Self-Performance Calculations in Design-Build Contracts

Changes in construction contracting rules, specifically surrounding limits on self-performance and subcontracting, create secondary impacts for A/E firms acting as DOR subcontractors under Design-Build (DB) arrangements.

**Recommendation:** The FAR Council must clarify in Part 36 that design fees provided by A/E subcontractors are excluded from prime contractor self-performance percentage calculations, preventing distortions of labor and small business participation metrics.

## VI. No Part 36 Procedure for Orders Under Large MATOC and IDIQ Contracts

FAR Case 2026-006 permits multiple-award A/E contracts provided that "selection of contractors and placement of orders are consistent with part 36." Proposed 36.202 addresses selection for a contract but says nothing about placing orders. Meanwhile, proposed 16.607-2(c)(1)(iv) requires price or cost to be considered as a factor in every order, with no exception for A/E services.

In recent years, most Federal A/E work has been placed as task orders. Taken together, the two rules direct contracting officers to a Part 36 procedure that does not exist, while the Part 16 default would introduce price into A/E order selection when doing so is not permitted under 40 U.S.C. 1101-1104 and should not be permitted in the FAR.

The proposed rule and accompanying guidance fail to address persistent inefficiencies in large-scale Multiple Award Task Order Contracts (MATOCs) and Indefinite Delivery/Indefinite Quantity (IDIQ) contract vehicles. For example, a source of waste is the cost to government and industry of competing for, administering, and maintaining large pools of contract holders when many receive little or no work; duplicative proposal efforts at the task-order level; or vehicles established without a sufficiently defined acquisition pipeline.

**Recommendation:** Add a section to subpart 36.2 for task orders under A/E indefinite-delivery contracts and MATOCs that include A/E services, stating that orders are placed on the basis of qualifications for the specific requirement with price negotiated with the selected firm. Coordinate a corresponding exception in 16.607-2(c)(1)(iv) and 16.607-5(a)(3).

ACEC urges the FAR Council to incorporate specific task-order procurement guardrails into Part 36 to ensure IDIQ vehicles are tied to bona fide requirements, preserve robust competition, and are used effectively to protect public safety and taxpayer value.

[2] U.S. Government Accountability Office, Bid Protests: Key Features and Trends, GAO-25-108652, July 22, 2025. https://www.gao.gov/assets/gao-25-108652.pdf

Rationale:
Task orders for A/E services under MATOC or IDIQ contracts should be procured using QBS requirements for all the same reasons A/E prime contracts are required to be procured within 40 U.S.C. 1101 – 1104.

## A/E Fee Cap From the 1930s

ACEC supports changes and clarifications to the Architecture-Engineering fee cap that limits the fee cap on contracts for A/E services to only cost-type contracts. This proposed rule represents progress on the concerns we have raised over the past few decades, but especially since DFARS Case 2024-D019. However, additional changes are needed to ensure the proposed rule appropriately recognizes design professional expertise and risk. *Reference: Proposed 15.404-9(c)(4)(ii-iii)*

ACEC advocates for contracting officers' responsibility to expand the use of lump sum (fixed-price) contracts for public infrastructure projects. This is primarily because traditional cost-plus models are increasingly misaligned with modern technology and workforce needs.

**Recommendation:** Clarify the broader phrase "cost-type contracts" to the specific statutory term "cost-plus-a-fixed-fee contract." Title 41 Section 3905(b)(3) expressly applies the six percent limitation to "a cost-plus-a-fixed-fee contract."

To 15.404-9(c)(4)(ii): After "…public works or utilities…" add "…firm fixed price contracts should be sought. If circumstances make cost-plus-fixed-fee contracting more appropriate,...", delete "…using cost-type contracts…" and leave the remainder.

Rationale
In 1939, a 6% fee limitation on certain contracts for architectural and engineering services for federal projects was enacted into law. We understand that the fee limitation was introduced in part as a cost-control measure in advance of the U.S. government's rapid defense build-up prior to entering World War II. When this policy was put in place, engineering generally accounted for approximately 6% of the cost of a construction project. Since then, however, the nature of the support the industry provides and the projects themselves have become more complex and at times risky, and the fee limitation has constrained the ability of our federal clients to negotiate contract terms that reflect that risk and complexity.

Traditional cost-plus-fixed-fee (CPFF) arrangements reward the number of billable hours logged. Under that old framework, if an engineering firm invests in cutting-edge digital design tools, Building Information Modeling (BIM), or generative AI to do a week's worth of work in a few hours, they are penalized financially by billing fewer hours. Lump sum contracts decouple compensation from hours worked, allowing firms to invest in productivity-enhancing technology and focus on delivering the best value to the client agency. We support broadening the use of lump sum contracts by all federal agencies and giving those agencies maximum flexibility to negotiate contract terms with engineering firms commensurate with project scope and risk.

## VII. Lowest Price Technically Acceptable (LPTA)

ACEC has strongly advocated against the use of Lowest Price Technically Acceptable (LPTA) procedures for professional services. *Reference: Proposed 15.102-2*

There is a long line of congressional action that LPTA does not work for professional services – including Section 880 of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year 2019 that was finalized under FAR Case 2018-016, with the final rule becoming effective on February 16, 2021. These restrictions on the use of LPTA are applicable government-wide.

Despite this, many of our member companies have experienced barriers getting agencies to fully follow these procedures – especially in civilian agencies like the Environmental Protection Agency (EPA). Many of our members perform Environmental Consulting Services under NAICS code 541620 where evaluation criteria are adjusted to weigh price but otherwise do not describe their evaluation criteria as LPTA. It is "LPTA like" or "LPTA by another name."

**Recommendation:** The FAR Council should strengthen proposed FAR 15.102-2 to expressly prohibit LPTA when differences in technical capability or workforce qualifications materially affect mission outcomes, or when differences in performance have that effect. Where LPTA is permitted, the justification should explain why those concerns do not make it unsuitable for the work. Agencies should retain the ability to use best value tradeoffs or highest technically rated selection with a fair and reasonable price, with solicitations explaining how the chosen approach will work. Implementing guidance should help contracting officers assess mission value and the risks and long-term costs of performance when choosing a selection method.

Rationale

For services where differences in technical approach, workforce qualifications, management, or performance materially affect mission outcomes, treating technical acceptability as a pass or fail threshold can prevent agencies from recognizing strengths that reduce risk or improve results. The lowest evaluated price may provide poor overall value if it comes at the expense of capabilities necessary for successful performance. For complex or knowledge-based services, the final rule should emphasize selection methods that assess differences in quality and mission value and reinforce restrictions on the use of LPTA.

Highest technically rated selection with a fair and reasonable price can provide an alternative when technical excellence is central to the requirement. It should remain an available method alongside best value tradeoffs, with contracting officers empowered to select the evaluation approach that best fits mission needs. Agencies should explain why the chosen method suits the acquisition and disclose how they will address technical ties, unreasonable prices, and exchanges with offerors. Clear procedures would support informed acquisition decisions and give industry a predictable basis for competition.

## VIII. Cross-References With Other RFO Changes

With a limited comment period, it is difficult to catch cross-references that omit key clarifications from even the most recent of congressional and executive actions. Because of the

streamlining efforts, Part 36 becomes more complex and potentially confusing. ACEC encourages further organizational refining and user-friendly cross-referencing in the FAR Companion guide to ensure consistent implementation across executive agencies.

Below is a selection of FAR Part 36 norms that have inconsistent, incomplete, or nonexistent cross-references and clarifications.

A/E Services Are Not Commercial Services
*Reference: Proposed 36.102-4(a); 12.200(b) in FAR Case 2026-003*

Proposed 36.102-4(a) excludes the A/E clauses, including 52.236-23, Responsibility of the Architect-Engineer Contractor, and 52.236-25, Requirements for Registration of Designers, from contracts for commercial services. This assumes A/E services may be acquired as commercial services. Part 12, however, addresses only construction as a commercial service (12.200(b)) and is silent on A/E services, while proposed 36.102-2(a) requires all A/E services to be acquired by negotiation and qualifications-based selection.

As drafted, a contracting officer could treat A/E services as commercial, apply Part 12 evaluation procedures, and omit the clauses that establish the designer's professional responsibility and registration.

**Recommendation:** State in 36.102-2 and in 12.200 that A/E services subject to 40 U.S.C. chapter 11 are acquired exclusively under 36.102 and 36.202, and that 52.236-23 and 52.236-25 apply to those contracts. Revise 36.102-4(a) accordingly.

Fair Opportunity Procedures Mistakenly Require Price in A/E Order Selection
*Reference: Proposed 16.6 scope (A/E paragraph); 16.607-2(c)(1)(iv); 16.607-2(c)(2)(v)(B); 16.607-5(a)(3)*

The scope of proposed subpart 16.6 permits multiple-award A/E contracts provided that "selection of contractors and placement of orders are consistent with part 36." The ordering procedures that follow do not carry that limitation forward. Proposed 16.607-2(c)(1)(iv) requires price or cost to be considered in every order, 16.607-5(a)(3) requires disclosure of cost or price factors, and the multiphase approach in 16.607-2(c)(2)(v)(B) initially considers contractors on price.

The companion Part 36 rule (FAR Case 2026-010) contains no procedure for A/E orders. A contracting officer following the Part 16 text would introduce price into A/E order selection, inconsistent with the qualifications-based selection the preamble itself recognizes at section II.C.8.

**Recommendation:** Add an exception to 16.607-2(c)(1)(iv) and 16.607-5(a)(3) for orders for A/E services, with a cross-reference to Part 36, and coordinate with FAR Case 2026-010 so Part 36 states how A/E orders are placed.

Reverse Auction Between Parts 36 and 17
*Reference: Proposed 36.101-1(c); 17.702-2(a)(2)(ii) in FAR Case 2026-006*

Proposed 36.101-1(c) directs contracting officers to 17.802-2 for the reverse auction restriction. FAR Case 2026-006 places reverse auctions in subpart 17.7, with the restriction at 17.702-2. 17.702-2(a)(2)(ii) in turn permits reverse auctions at or below the Simplified Acquisition Threshold (SAT) unless prohibited by regulation or statute, citing 36.002(c) and 36.102. Neither of those sections states a prohibition per FAR Case 2015-038.

The FAR Case 2026-006 preamble says reverse auctions may not be used for A/E services or two-phase design-build at any dollar value, but the regulatory text relies on Part 36 to say so, and Part 36 does not.

**Recommendation:** Correct the cross-reference in 36.101-1(c) to 17.702-2. Add a specific sentence to 36.102-2 and 36.101-2 stating that reverse auctions may not be used to select A/E firms or to conduct two-phase design-build selections, regardless of dollar value.

Short Selection Process for A/E Contracts At/Below the Simplified Acquisition Threshold (SAT)
*Reference: Proposed 36.202-4; 13.001(b)(1) in FAR Case 2026-003*

Proposed 13.001(b)(1) in FAR Case 2026-003 directs contracting officers acquiring A/E services at or below the SAT to "follow the short selection process at 36.202-4." Proposed 36.202-4 permits the short processes only "when authorized by the agency," and otherwise requires the full procedures.

**Recommendation:** Align the two: revise 13.001(b)(1) to state that A/E services at or below the SAT are acquired under 36.202, including the short selection process when authorized by the agency.

Advance Notice and Estimated Magnitude of Construction
*Reference: Proposed 36.101-4; Preamble VIII.A (OMB 9000-0037)*

Proposed 36.101-4 retains the 15 U.S.C. 644(w) solicitation notice only when award to a small business is anticipated, and the preamble discontinues the pre-solicitation notice collection covering 36.213-2. Proposed Part 36 does not require the notice or solicitation to state the estimated magnitude of the project.

Magnitude drives bonding. Primes, subcontractors, and sureties use magnitude to decide whether to pursue a project and to arrange capacity, and small construction firms with limited bonding depend on it most.

**Recommendation:** Require construction notices and solicitations to state the estimated magnitude of the project in price ranges, and confirm that the Part 5 rule continues to provide advance notice of construction requirements.

Site Visits and Preconstruction Conferences
*Reference: Preamble II.B.2, II.D.2; removal of 52.236-26, 52.236-27, 14.207*

We agree that contracting officers have inherent authority to hold site visits and conferences. Site visits are among the most important pricing inputs for construction bidders, particularly firms

without prior work at an installation, and practices will vary by office without a standard provision.

**Recommendation:** Publish the FAR Companion content concurrently with the final rule, with model solicitation language stating the date and access procedures for the site visit, and whether attendance is mandatory.

Removal of 52.236-1, Performance of Work by the Contractor
*Reference: Preamble II.D.2; proposed 15.404-7 and 52.215-22/23 in FAR Case 2026-003*

The preamble proposes removing this clause as a restriction on competition because not all construction primes self-perform certain scopes. The clause also protects schedule, safety, quality, and surety underwriting by ensuring the prime has its own forces on the work.

Full removal is inconsistent with the companion rule. Proposed 15.404-7 in FAR Case 2026-003 retains a review and written determination when an offeror plans to subcontract more than 70 percent of the work, reflecting the same concern about the prime's value added. Removing the construction-specific tool while retaining the general one leaves construction contracting officers with less flexibility than other buyers.

**Recommendation:** Retain the clause with a permissive prescription for use when the contracting officer determines that a self-performance requirement is necessary, or state in 36.101-1 that agencies may establish one in the solicitation.

Removal of 52.236-4, Physical Data
*Reference: Preamble II.D.2; proposed 36.101-7(a), 36.301(b)(1)*

The preamble reasons that 52.236-3 serves the same intent. Subsurface and site data, however, is often furnished as reference information rather than incorporated into the contract. Whether data is a contract indication determines how claims are resolved under 52.236-2, Differing Site Conditions, which proposed 36.101-7(a) retains and 36.301(b)(1) directs contracting officers to administer.

**Recommendation:** Add a requirement to 36.101-3 that the solicitation identify the physical data the Government is furnishing (e.g. borings, geotechnical reports, survey and utility information) and whether each item is part of the contract.

Transition and Proposed Renumbering of Part 52 Provisions and Clauses
*Reference: Preamble II.E.3 (comment requested)*

Construction and A/E programs rely on long-duration task order contracts, and contractors' subcontract templates, flow down matrices, surety forms, and accounting systems reference clause numbers directly.

**Recommendation:** If renumbering proceeds, publish a complete old-to-new crosswalk with the final rule, allow a reasonable transition period, and state that existing contracts and orders need not be modified solely to reflect new numbers.

## IX. Using a FAR Based Contract vs. Other Transition Authority

The FAR should be the standard for federal procurement, yet a troubling trend is threatening to undermine it. Driven by the FY26 National Defense Authorization Act (NDAA), military services are increasingly bypassing the FAR in favor of Other Transaction Authority (OTA)—specifically 10 U.S.C. Section 2808a for "repair and construction." This shift threatens to render FAR Part 36 virtually meaningless, potentially disrupting over 50% of the A/E services federal market. While innovation is necessary, greater reliance on non-FAR instruments could reduce the relevance and consistency of FAR Part 36 across a substantial portion of the federal A/E market. The preferable approach is to modernize the FAR through the Regulatory FAR Overhaul and Executive Order 14275 so that it can support current and future defense infrastructure needs while preserving established acquisition protections. OTAs should remain an exception rather than become common practice.

**Recommendation:** Permit the FAR to explicitly use project delivery methods appropriate to the project even if they are not specifically outlined in the FAR. The FAR should be modernized to enable these collaborative, phased, delivery methods while retaining the accountability, consistency, and protections that have developed within the federal acquisition system.

Rationale

The driving force behind this shift is the growing demand for Progressive Design-Build (PDB) project delivery. ACEC originally supported giving the military explicit congressional authority to utilize PDB, recognizing its success as a commercial best practice. However, individual military branches are now aggressively pushing project leaders toward PDB or traditional Design-Build, forcing them to obtain cumbersome approvals just to consider trusted delivery methods such as Design-Bid-Build that might be appropriate to the project. More concerning is the widespread perception among the military services that PDB can only succeed outside the constraints of the FAR. This mindset has driven them straight toward “Section 2808a” OTA agreements, creating substantial uncertainty and business risk for the engineering firms responsible for delivering military infrastructure.

Operating outside the FAR places an immense, uninsurable burden on the engineering industry. The FAR has decades of baked-in certainties regarding dispute resolution, cybersecurity compliance, and professional liability. In stark contrast, OTA "articles" are entirely negotiable and frequently contain uninsurable contract terms. For all but the largest firms, these custom agreements force companies to bleed time and money on lawyers and professional liability insurance companies just to determine if bidding is viable. When disputes inevitably arise under an OTA, the recourse often leads straight to the Court of Federal Claims—the longest and most expensive legal route available. To foster innovation without forcing design professionals into financial and legal peril, the government must provide clarity and certainty through two clear paths forward.

First, the government must find an administrative or legislative path to successfully execute Progressive Design-Build within the FAR framework. We would like to work collaboratively with the FAR Council and, if necessary, ask Congress for further legislative action to provide the authority and framework to achieve evolving project delivery methods within the FAR.

Second, military services must immediately adjust administrative policies regarding the execution of OTAs. As these agreements emerge, absolute transparency is vital for ensuring robust industry participation. OTA opportunities should be formally integrated into Acquisition Business Forecasts to allow firms sufficient time to build collaborative teams and innovate solutions before signing. Furthermore, all OTA opportunities must be publicly posted on SAM.gov. Finally, the government must establish a consistent application framework. Industry cannot efficiently navigate a fragmented landscape where the U.S. Army Corps of Engineers (USACE), the Naval Facilities Engineering Systems Command (NAVFAC), and the U.S. Air Force (USAF) all operate under variations of execution. We must standardize these processes and permanently enshrine fair protective terms for the design professional. This is best accomplished within the FAR.

## X. Conclusion

ACEC sincerely appreciates the FAR Council's dedication to improving the federal acquisition system under Executive Order 14275. The positive changes in the September 18, 2026 proposed rule demonstrate a commitment to regulatory clarity and professional procurement standards. By addressing the remaining shortfalls outlined above—particularly restoring explicit QBS evaluation criteria and establishing clear engineering dominance rules—the FAR Council can ensure that federal procurements protect public safety, optimize taxpayer value, and foster a strong, competitive design community.

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. For follow-up questions or more information about these comments, please contact Bradley Saull at 202-682-4342 or bsaull@acec.org.

ACEC
AMERICAN COUNCIL OF ENGINEERING COMPANIES

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.[3] 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

[3] 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