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Statement of the  
Council on Federal Procurement of Architectural & Engineering Services  
(COFPAES)  
to the  
Subcommittee on Contracting and Workforce  
House Committee on Small Business  
hearing on  
“Contracting Away Accountability-Reverse Auctions in Federal Agency Acquisitions”  
December 11, 2013

Since its inception in 1966, the Council on Federal Procurement of Architectural & Engineering Services (COFPAES) has provided the design community with a common voice on federal procurement law and regulations. COFPAES continues to serve the American public as a well-known and respected forum for the consideration of policy and operational changes in the selection procedures for design professionals. Because of its emphasis on professionalism in the procurement process, COFPAES assists the federal government in assuring that the design of projects to satisfy the building, infrastructure, resource, and program management needs of our Nation are conducted in an efficient and quality manner. Throughout its history, COFPAES has focused on ensuring quality and competence in the procurement of professional architectural and engineering (A/E) services, including surveying and mapping services. COFPAES serves the American public by assisting Congress and federal agencies with policies to ensure that projects to satisfy the building, infrastructure, resource, defense, and security needs of the Nation are conducted in an efficient and quality manner. The member organizations of COFPAES are the American Institute of Architects, American Society of Civil Engineers, MAPPS - the association of private geospatial firms, National Society of Professional Engineers, and National Society of Professional Surveyors.

COFPAES is pleased to submit this statement for the record of the December 11, 2013 hearing of the House Committee on Small Business, Subcommittee on Contracting and Workforce, on “Contracting Away Accountability-Reverse Auctions in Federal Agency Acquisitions”.

Over the past decade or more, the federal government’s in-house A/E capability has been reduced. Retirements, attrition, recruitment and shifting priorities have all contributed to changes in the federal personnel structure that has resulted in fewer federal employees trained, qualified and actually engaged in evaluating, awarding and managing Federal A/E contracts. Notwithstanding this workforce reduction, the federal government’s demand and expenditures for A/E services has remained steady or in some cases increased.

The loss of an A/E acquisition workforce has caused a number of undesirable trends in A/E procurement. Federal contracts for A/E services have become larger in dollar value, longer in duration, bundled with other services, and less competitive. The advantages of QBS are being diminished. Moreover, given that the private A/E market is overwhelmingly comprised of small businesses, the trend has resulted in the creation of a virtual oligopoly. There are now fewer A/E contracts. They are now for longer time periods, with some potentially lasting 15 years when options are exercised. The use of design-build procedures, once reserved for rare and unique projects, has become more common. And the advent of GSA Federal Supply Schedules for services has resulted in rampant abuse of such schedule contracts in violation of the QBS law. And the rise of reverse auctions has threatened the public health, welfare and safety when applied to services that are considered A/E services under the Brooks Act 40 U.S.C. 1101 et. seq. and part 36.6 of the Federal Acquisition Regulation (FAR). None of these trends favor the government, and the taxpayer, and they certainly put small business A/E firms at a disadvantage.

The reason for this trend is simple - - supply and demand - - within the federal government. Fewer government A/E professionals experienced in acquisition are responsible for awarding more work. The decline in the federal A/E acquisition workforce led Congress to enact section 1414 of Public Law 108-136 and a provision in the 2008 National Defense Authorization Act, - 41 USC 1704(h).

For purposes of federal procurement, A/E services are defined in federal law (40 U.S.C. 1101) as:

- (A) professional services of an architectural or engineering nature, as defined by State law, if applicable, which are required to be performed or approved by a person licensed, registered, or certified to provide such services as described in this paragraph;
- (B) professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and
- (C) such other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.

Unlike many products, for which the government awards contracts to the lowest bidder, or other services, which are awarded based on the “best value”, A/E services have long been recognized as having a significant impact on public health, welfare and safety. Moreover, A/E services amount to 1/10th of 1 percent of the life cycle cost of a project or program, but the quality of the A/E services determines the price and efficiency of the other 99.9 percent. As a result, Congress has long recognized the efficiency and economy of selecting firms for A/E services “on the basis of demonstrated competence and qualification for the type of professional services required”,

and negotiating a fee with the most qualified firm only after the firm's credentials have been established. This process, which is commonly known as qualifications based selection, or QBS, is codified in 40 U.S.C. 1101 et.seq. and is implemented in the Federal Acquisition Regulation in 48 CFR 36.6. The definition in the FAR closely follows the statutory definition above and provides further clarification of the application of QBS to surveying and mapping, in subpart 36.601-4:

(a) Contracting officers should consider the following services to be "architect-engineer services" subject to the procedures of this subpart:

(1) Professional services of an architectural or engineering nature, as defined by applicable State law, which the State law requires to be performed or approved by a registered architect or engineer.

(2) Professional services of an architectural or engineering nature associated with design or construction of real property.

(3) Other professional services of an architectural or engineering nature or services incidental thereto (including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals and other related services) that logically or justifiably require performance by registered architects or engineers or their employees.

(4) Professional surveying and mapping services of an architectural or engineering nature. Surveying is considered to be an architectural and engineering service and shall be procured pursuant to section 36.601 from registered surveyors or architects and engineers. Mapping associated with the research, planning, development, design, construction, or alteration of real property is considered to be an architectural and engineering service and is to be procured pursuant to section 36.601.

COFPAES is deeply concerned that reverse auctions have been attempted by federal agencies. We know of three instances in which such a process, which COFPAES believes to be in violation of the Brooks Act, was attempted.

In once such instance, Solicitation Number 0040073949, issued on April 5, 2013, the U.S. Geological Survey, Department of the Interior, announced its intention "to conduct an online competitive reverse auction to be facilitated by the third-party reverse auction provider, FedBid, Inc." This reverse auction was for an aerial geophysical survey, using the standard NAICS code (541360), which the federal government defines as "Geophysical Surveying and Mapping Services. This industry comprises establishments primarily engaged in gathering, interpreting, and mapping geophysical data. Establishments in this industry often specialize in locating and measuring the extent of subsurface resources, such as oil, gas, and minerals, but they may also conduct surveys for engineering purposes. Establishments in this industry use a variety of surveying techniques depending on the purpose of the survey, including magnetic surveys, gravity surveys, seismic surveys, or electrical and electromagnetic surveys."

The solicitation was set aside for small business, with a small business size standard of \$14 million. These are the NAICS Code and size standard for such surveying and mapping services ordinarily subject to the Brooks Act. The Solicitation was released on April 5 with the reverse auction to be conducted on April 9. For a professional service such as a geophysical survey, this is insufficient time for a firm, particularly a small business, to investigate, analyze and develop a proposal.

The scope of work is consistent to the requirements of the Brooks Act. It required the aerial geophysical survey, including GPS elevations, precise XYZ positions of observed field measurements, and positions computed using the WGS-84 datum and the NAD27 datum. This is clearly a surveying service.

This procurement was executed in such secrecy and haste that COFPAES nor its member organizations were aware of it in time to lodge a protest or attempt to advise the contracting agency of its violation of the law.

Solicitation G13PS00201 was issued by the USGS in August of 2013 for 4-band (true color and near infrared) digital orthoimagery at 0.05 meter ground sample distance, and stereo imagery for select portions of the Edwin B. Forsythe National Wildlife Refuge in coastal New Jersey. This included aerial photography, airborne GPS, rectified image maps, and elevation data. This is clearly a professional surveying and mapping service, yet was proposed to be carried out by FedBid, Inc. as a reverse auction. Fortunately, the public was protected as MAPPS, a COFPAES member organization, contacted the USGS officials responsible for such services and the auction was canceled. The work was assigned as a task order to a firm already under a USGS Geospatial Products and Services (GPSC) contract, a Brooks Act-compliant ID/IIQ contract.

On December 28, 2012, the U.S. Army, Fort Benning, Georgia, issued Solicitation Number: 001025774 for a reverse auction for digital orthophoto mapping, through FedBid, Inc. The response date was January 11, 2013. Officials at Fort Benning were advised by MAPPS that the scope of work was for engineering-related surveying and mapping services as defined by the Brooks Act, the FAR, Corps of Engineers regulations, and applicable Comptroller General decisions. Moreover, such services are the practice of land surveying, as defined by the State of Georgia, § 43-15-2, Code of Georgia, requiring compliance with 40 USC 1101 and FAR 36.6, requiring performance by a Georgia licensed surveyor. Finally, any Georgia licensed surveyor who responds to the solicitation with a price quote would be in violation of state conduct regulation 180-6-.06.1. The Army did not require a surveyor licensed in Georgia.

COFPAES is deeply concerned about this flagrant disregard for the law. The public health, welfare, and safety are jeopardized when reverse auctions are used in lieu of the statutory requirements of the Brooks Act and the FAR, as well as when state licensing law is ignored. Moreover, such processes put law abiding small business architecture, engineering, surveying and mapping firms at a competitive disadvantage.

COFPAES looks forward to working with the Committee on Small Business, other committees of Congress with jurisdiction over this matter, and the relevant federal agencies to assure that reverse auctions are no longer inappropriately applied to A/E services.