

General Services Administration  
FAR Secretariat (MVA)  
1800 F Street NW Room 4035  
Washington DC 20405  
Attention: Ms. Laurie Duarte

Subject: FAR Case 2002-029: Contract Bundling

Dear Ms. Duarte:

The Council on Federal Procurement of Architecture & Engineering Services (COFPAES) appreciates the opportunity to comment on a proposed rule to amend the Federal Acquisition Regulation (FAR) to limit bundling and expand the access of small businesses to federal contracting opportunities. This rule, which was published in the Federal Register on January 31, 2003, is designed to implement the recommendations of the Office of Management and Budget (OMB) in its report entitled "A Strategy for Increasing Federal Contracting Opportunities for Small Business."

COFPAES is a coalition of the nation's four leading professional societies in the architecture/engineering (A/E) community. Our member organizations are the American Congress on Surveying and Mapping, the American Institute of Architect, the American Society of Civil Engineers, and the National Society of Professional Engineers.

COFPAES commends the Administration for its efforts to address the growing concern for contract bundling. The A/E community is deeply concerned about the affects of bundling on the ability of our members to provide professional services to the government consistent with the statutory and regulatory emphasis on quality, competence and qualifications found in 40 USC 541, 10 USC 2855 and FAR part 36. These are the citations to the "Brooks Act" qualifications based selection (QBS) process for A/E services.

Given this statutory requirement, as implemented in the FAR, we offer the following comments on the proposed bundling rule as it applies to A/E services:

1. Some exception, clarification or separate process should be established for A/E services. This distinction is justified due to the QBS process required by statute and regulation. The rationale for this special treatment is provided below.
2. The new FAR 7.104(d) cannot apply to A/E services due to the statutory requirements of 10 USC 2855(b) and the Small Business Competitiveness Demonstration Program Act of 1988 (P.L. 100-656), as amended, 15 USC 644 note.
3. COFPAES opposes the introduction of the definition of "single contract" to FAR 2.101, particularly as it applies to ID/IQ contracts for A/E services. This definition is harmful to the A/E community, including the Federal clients that private A/E firms serve. When used properly, ID/IQ contracts awarded via the FAR part 36 QBS process can be a highly competitive and efficient contracting strategy. Such as process also affords small firms

considerable Federal prime and sub contracting opportunities. However, we do support the effort to limit, or indeed eliminate, the use of the GSA Federal Supply Service Schedule (GSA-FSS) for A/E contracts (including those for such A/E services as mapping, remote sensing and geographic information systems (GIS)). We urge that the proposed regulations be amended to:

- a. Specifically prohibit the use of the GSA-FSS for any A/E service under 8.404. This would include the so-called □Professional Engineers Services□ schedule, the Environmental Services schedule, the Information Technology Services schedule, or any other GSAFSS schedule. Use of these schedules for A/E services is not authorized by statute, and indeed is a violation of the Brooks A/E Act. This should be made clear in the FAR.
- b. Specifically prohibit to bundling of A/E services and non-A/E services, particularly if the end result is to make a selection and award via a procurement methodology other than the QBS process pursuant to 40 USC 541 and FAR part 36. The only exception should be the design-build process authorized under FAR part 36.300 and 10 USC 2305a and 41 USC 253m.
- c. Limit the definition in 2.101 to those instances in which the bundling under an ID/IQ contract for A/E services would replace two or more previous contracts with small business primes with one bundled contract on which it is not likely that small businesses could be competitive as a prime contractor.

4. COFPAES strongly supports the proposed emphasis on contractor compliance with small business subcontracting plans and use of such compliance as a past performance evaluation factor. COFPAES also strongly supports the proposal□s recognition of the important role small business subcontractors play in Federal procurement. Section 714(b) of P.L. 100-656, required OFPP to develop a simplified data collection system to collect data on the participation of small business concerns as subcontractors under prime contracts for A/E services. However, that provision expired on September 30, 1997 without OFPP or SBA implementing such a program. COFPAES strongly supports the implementation of such a subcontracting reporting and monitoring system in the context of the bundling regulation. We believe this can be a significant contribution toward establishing a meaningful government-wide subcontracting measurement system. It is our view that given the past expression of support from Congress for such a system for A/E services, and the fact that there was a failure on the part of OFPP and SBA to implement this statutory requirement. We believe that using the □testing□ authority for new and innovative procedures that is provided in the OFPP Act, a system such as COFPAES comment that outlined in section 714(b) of P.L. 100-656 can and should be implemented in the FAR bundling regulations.

We deeply appreciate this opportunity to comment and would welcome any discussion on our recommendations.

Sincerely,

Thomas W. Brooks, Jr., PLS  
COFPAES Chairman