



July 6, 2009

Mr. Al Matera
Director, Office of Acquisition Policy
General Services Administration
FAR Secretariat
Washington, DC 20405

Re: FAR Case 2008-015 – Retainage on A/E Services Contracts

Dear Mr. Matera:

The American Institute of Architects (AIA) is the leading professional society for the nation's architects, with more than 84,000 architects and emerging professionals across the country. The AIA has served as the voice of the architecture profession since 1857.

The AIA commends the FAR Council for initiating a proposal to make retainage discretionary for Federal A/E contracts. The withholding restricts the cash flow for small businesses with little benefit to government, and in some instances is in addition to any bonding requirements. In some cases, A/E firms are having 10 percent withheld from each phase of the project. Therefore, in a three-phase design project, for example, a firm could actually see 30 percent withheld from their fee.

For small design firms with very small profit margins and tight cash flows, having 10 percent (or greater) of their fee held back for what could be years is a very troubling and unnecessary burden and a strong deterrent for small A/E firms to seek federal government contracts. This retainage runs counter to the intent of the Brooks Act, which requires federal agencies to select A/E firms based on qualifications, not on financing.

In February 2008, the Small Business Administration (SBA) announced its 2008 Top 10 Rules for Review and Reform, part of a program designed to identify and address federal rules creating barriers to small business that should be reviewed and may need reforming. In choosing the top 10, the SBA reviewed more than 80 suggestions received from small businesses and associations. The SBA identified the 10 percent retainage on A/E firms services as one of the final top 10 regulations for suggested reform.

We support the FAR Council's proposed rule change. The AIA further supports the comments submitted by the Council on Federal Procurement of Architectural and Engineering Services (COFPAES) that make additional recommendations. In particular, we support a change to the way in which contracting officers release excess retainage. The current rule allows contracting officers to release excess retainage after the work is substantially complete. The AIA supports a revision that would make this mandatory. As such, the AIA believes that the language governing the release of this excess should be changed from "may" to "shall."

The AIA commends the work of the FAR Council on this issue and looks forward to working with you in the future. If you have any questions, please contact Biljana Kaumaya, manager, federal regulatory relations, at bkaumaya@aia.org or 202-626-7381.

Sincerely,

A handwritten signature in black ink, appearing to be 'AG', written in a cursive style.

Andrew L. Goldberg, Assoc. AIA
Senior Director, Federal Relations