



Key Points

- *Existing Federal Acquisition Regulation (FAR) 48 CFR 52.232-10 provides for a 10% withholding of fees on firms providing fixed price A&E services.*
- *The Small Business Administration (SBA) estimates that more than 230,000 small architect and engineering firms are in the federal procurement system.*
- *This regulation reduces the cash flow to small A/E firms that contract with the federal government, creating a disincentive for firms to perform government design work.*
- *A change in this regulation will encourage more firms to enter the federal procurement market.*

Eliminate Federal Retainage Rules on Design Services

AIA Position

The American Institute of Architects (AIA) supports the elimination of a federal procurement regulation that allows federal agencies to withhold up to 10 percent of an architect's or engineer's fees until the end of a design project. This retainage is far beyond what is customary for other services and places a huge, unnecessary burden on small design firms trying to take part in the federal procurement process.

Action Sought

The AIA urges Congress to pass legislation to eliminate the 10 percent retainage on architects and engineers who contract with the federal government.

Explanation and Justification

The Federal Acquisition Regulation (FAR) rule for fixed-price architectural-engineering services, [48 CFR 52.232-10](#), allows federal agencies to impose a 10 percent withholding, or retainage, of fees on firms providing architectural and engineering services. The 10 percent withholding for design services is out of line with other federal contract payment regulations, which typically have no withholding fee or a maximum of a five percent withholding.

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. The SBA has recommended that the FAR Council either remove or reduce this retainage, as it has done with other services.