The American Institute Of Architects

Revising Fee Limitations for Federal Contracts

The Ask

AIA hereby respectfully requests that you contact the FAR Council by letter or phone call to urge them to amend the FAR to clarify that the 6% fee limitation for A/E services on non-military public projects applies only to cost-plus-a-fixed fee contracts and that the Brooks Act QBS standard applies to all other types of federal contracts for A/E services.

More Information

Alexander Cochran
alexandercochran@aia.org

Anne Law
annelaw@aia.org

Erin Waldron
erinwaldron@aia.org

BACKGROUND

There is a provision in federal law limiting the fee for architectural and engineering services (production and delivery of designs, plans, drawings and specifications) for federal public works projects to 6% of the estimated cost of the project, but only for “cost-plus-fixed-fee” contracts. These contracts are not commonly used by the federal government for A/E services.

The 6% fee limitation on A/E services was originally enacted in 1939 as a measure to contain cost during the ramp up to World War II, and was limited to cost-plus-fixed fee contracts. In 2011, Congress enacted a law to re-establish and clarify that the 6% fee cap was only for cost-plus-fixed-fee contracts. However, it is still applied to other contracts by federal agencies and contracting officers today.

The Federal Acquisition Regulation (FAR) governs the rules and terms for all executive agencies in their acquisition of supplies and services. Currently the FAR does not restrict the 6% fee limitation to solely cost-plus-fixed-fee contracts --which is inconsistent with the statutory provisions under which the regulation was promulgated. It has been applied more broadly by federal agencies and contracting officers to other types of procurement contracts, including the much more commonly used “firm fixed fee” contracts. This is contrary to congressional intent in enacting the Brooks Act of 1972, which establishes Qualification Based Selection (QBS) for architectural and engineering services for a fair and reasonable fee.

Contracting officers within GSA and other federal agencies applying the 6% fee limitation to other types of contracts, such as fixed fee contracts has caused inconsistencies in contracting practices from agency to agency and from contracting officer to contracting officer. The cap has also been applied inconsistently to which services are to be included and excluded as a “design service”, putting smaller firms at a competitive disadvantage when negotiating architectural and engineering contracts with the federal government.

These fee limitations are hurting the small, mid-sized and larger businesses that perform A/E services on behalf of the federal government. The result hurts the ability to get projects completed, limits competition, slows economic growth, reduces job creation and harms the A/E industry. Congress should direct the FAR Council to amend the FAR to clarify that the 6% fee limitation for A/E services on non-military public projects applies only to cost-plus-a-fixed fee contracts and that the Brooks Act QBS standard applies to all other types of federal contracts for A/E services.

WHY DOES THE FEE LIMITATION NEED TO BE REVISED?

Arbitrary “caps” on federal architecture and engineering design fees are unfair to architectural and engineering designers. In the 80 years that has passed since the cap was put into place, the scope of A/E services has drastically expanded. Recently the Congress passed and the President signed the National Defense Authorization Act which raised the fee limitation from 6% to 10% and signaled that the arbitrary 6% cap was too low on defense contracts.