The American Institute Of Architects

Arbitrary Fee Limitations for Federal Contracts

The Challenge

Limiting fees in a broad inconsistent manner hurts competition. The current system impairs fairness, competition, innovation, and growth as well as reduces efficiency and effectiveness for taxpayers.

The Ask

Congress should direct the Federal Acquisition Regulation (FAR) Council to amend the FAR to align with clear statutory language and pass legislation to eliminate arbitrary fee limitations and mandate Qualified Based Selection (QBS) fair fee negotiations for all architectural and engineering (A/E) design contracts across the federal government.

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BACKGROUND

The 6% fee limitation for architectural and engineering (A/E) services on federal projects was first introduced in 1939 as a cost-control measure to support the nation's urgent defense buildup ahead of World War II. This cap was intended to apply only to a specific type of contract: "cost-plus-fixed-fee" contracts. These are characterized by a cost-reimbursement model with a fixed additional fee. However, despite legislative efforts to confirm this limitation's narrow scope, federal agencies frequently apply the 6% cap to other contract types, including "firm-fixed-price" contracts, the most common A/E contracting model used by the federal government. This unintended application conflicts with both the statutory language and congressional intent of the Brooks Act of 1972, which mandates a "Qualification-Based Selection" (QBS) process to ensure fair and reasonable fees for A/E services.

The Federal Acquisition Regulation (FAR) governs procurement practices for all federal executive agencies, including design services. However, the FAR currently does not restrict the 6% cap exclusively to cost-plus-fixed-fee contracts, resulting in widespread misapplication across all federal agencies, from agency to agency and from contracting officer to contracting officer. This inconsistency places smaller A/E firms, which have fewer resources to absorb or negotiate around arbitrary caps, at a competitive disadvantage, while also introducing inefficiency and uncertainty across federal contracting practices.

Congress clarified in 2011 that the 6% fee cap was intended solely for cost-plus-fixed-fee contracts. Nevertheless, the FAR's outdated language continues to allow misapplication of the cap to other contract types, especially firm-fixed-price contracts. This application is both legally questionable and inconsistent with the Brooks Act's intent to prioritize qualifications and fair fees in federal A/E contracts.

WHY DOES THE FEE LIMITATION NEED TO BE CLARIFIED OR ELIMINATED?

Arbitrary fee caps which limit fees in a broad, inconsistent manner hurts competition, particularly among small and mid-sized firms that often cannot afford the resources to navigate or mitigate restrictive caps. By limiting their ability to compete effectively, the 6% cap impairs innovation and job growth within the A/E industry, ultimately reducing the efficiency and effectiveness of federal projects. Congress's decision to increase the A/E fee limitation for defense contracts to 10% in the Fiscal Year (FY) 2024 National Defense Authorization Act (NDAA) demonstrates an acknowledgment of the outdated nature of the 6% cap.

In March 2024, the American Institute of Architects (AIA) petitioned the FAR Council (FAR-C) to clarify that the 6% limitation applies only to cost-plus-fixed-fee contracts, per statutory requirements. The General Services Administration (GSA) responded that it lacks the authority to initiate such a FAR amendment, interpreting the cap as intended for broader application. This response highlights the need for Congress to address the issue by directing FAR to align with the clear statutory language.

CONGRESSIONAL ASK

To correct this regulatory inconsistency, Congress should direct the FAR Council to update the FAR, ensuring the 6% fee limitation applies only to cost-plus-fixed-fee contracts, consistent with the statutory intent. Congress should harmonize A/E fees across all federal civilian and defense departments and contracts, increasing the limitation to reflect the increased demands on modern A/E services. Moreover, legislation eliminating arbitrary caps would enable greater competition and efficiency, ultimately benefiting taxpayers by fostering a more equitable and effective procurement environment.