

Advocacy Recommends that the Federal Acquisition Council Adopt further Modifications to the Proposed Fixed-Priced A&E Regulation

On July 6, 2009, The Office of Advocacy (Advocacy) of the U.S. Small Business Administration (SBA) submitted comments on the Federal Acquisition Regulation (FAR) Council proposed rule, Payments Under Fixed-Price Architecture and Engineering Contracts (A&E). A complete copy of Advocacy's comments may be accessed at <http://www.sba.gov/advo/laws/comments/>.

- The current regulation, FAR 52.232-10, mandates contracting officers to withhold 10 percent of the amounts due on each voucher. The government retains the withheld amount until the contracting officer determines that the work has been satisfactorily completed.
- The FAR Council proposes to revise FAR 52.232-10 to permit contracting officers to use their judgment to determine the amount of payment to withhold to protect the government's interests rather than automatically withholding 10 percent of each voucher.
- The proposed rule clarifies that the contractor will be paid any unpaid balance due at the successful completion of the design work.
- Small A&E firms are proposing further modifications to the proposed regulation to make the regulation consistent with Indefinite Delivery/Indefinite Quantity (ID/IQ) contracting practices. These firms are also proposing that the current proposed rule include mapping and other related services in the definition of design work.
- Advocacy commends the FAR Council for considering this proposed regulation in response to the Office of Advocacy's Regulatory Review and Reform (r3) initiative. The r3 program is a means for small business stakeholders to suggest needed reforms to existing burdensome regulations. The r3 program also reminds agencies of their responsibilities under Section 610 of the Regulatory Flexibility Act which requires agencies to consider whether their current regulations are still needed. The A&E small business community recommended this proposed regulatory change to Advocacy under the r3 initiative.

For more information, visit Advocacy's Web page at <http://www.sba.gov/advo> or contact Assistant Chief Counsel Major Clark by email at major.clark@sba.gov or by phone at (202)205-7150.