

Washington, DC, March 29, 2010 – The Council on Federal Procurement of Architectural and Engineering Services (COFPAES) today applauded the Federal Acquisition Regulation Council (FAR Council) for revising one of the most onerous Federal rules impacting small business.

The FAR Council has published a final rule revising a clause applied to Federal contracts for architecture and engineering (A&E) services that mandated that 10 percent of fees be withheld or retained from a firm, regardless of the quality of the firm's performance.

In publishing the final rule, the regulations body said, "FAR Case 2008-015 amends the clause at FAR 52.232-10 "Payments Under Fixed-Price Architect-Engineer Contracts", to revise and clarify the retainage requirements. The contracting officer can (but is not mandated to) withhold up to 10 percent of the payment due in any billing period when the contracting officer determines that such a withholding is necessary to protect the Government's interest and ensure satisfactory completion of the contract. However, withholding the entire 10 percent is not required, and no withholding is required if the contractor's performance has been satisfactory. The changes clarify that retainage is optional and any amounts retained should not be held over beyond the satisfactory completion of the instant contract."

"This rule was an unbearable burden for the A&E community," according to Patrick Olson, P.E., L.S., (AERO-METRIC, Inc., Sheboygan, WI), Chairman of COFPAES. "The 10 percent retainage meant A&E firms were bankers to the government, providing interest free loans that often exceed a firm's profit margin on a contract. We had reports from member firms of millions of dollars in retainage, held for several years, on contracts where the firm receive the highest possible performance ratings. We are delighted this regulation has been changed."

COFPAES Administrator John Palatiello noted, "Given that architect-engineer contracts, including surveying and mapping contracts, are awarded on a qualifications based selection process, and a firm's experience and past performance are paramount factors in winning a contract, the retainage provision has little value to the government. Moreover, it was a severe cash flow burden on our member firms, particularly small businesses."

COFPAES noted that the retainage rule was identified by the Small Business Administration's Office of Chief Counsel for Advocacy as one of the most burdensome for small business in the office's 2008 Regulatory Review and Reform (R3) initiative (www.sba.gov/advo/r3/r3_services08.html). The revision to the FAR on A&E retainage is the first regulation to have gone through the entire R3 process, from nomination, through Advocacy endorsement, and to final regulatory revision.

"We commend former Chief Counsel for Advocacy Tom Sullivan and Assistant Chief Counsel for Advocacy Major Clark for their leadership on this important issue," Palatiello said.

To view the final rule, go to: <http://edocket.access.gpo.gov/2010/2010-5991.htm>

About COFPAES

COFPAES was formed in the 1960s to serve as the unified voice of the architectural, engineering (A/E) and related services profession on issues related to Federal contracting. Member organizations are the American Congress on Surveying and Mapping (ACSM), American Institute of Architects (AIA), American Society of Civil Engineers (ASCE), Management Association for Private Photogrammetric Surveyors (MAPPS) and National Society of Professional Engineers (NSPE). Throughout its history, COFPAES has focused on ensuring quality and competence in the procurement of professional A/E (including surveying and mapping) services. COFPAES serves the American public by assisting Congress and Federal agencies with policies to ensure that projects to satisfy the building, infrastructure, resource, defense, and security needs of the Nation are conducted in an efficient and quality manner. COFPAES is the unified voice of the community in support of the Brooks Act (40 USC 1101 and part 36.6 of the Federal Acquisition Regulation (FAR)), which provides for Qualifications Based Selection (QBS) of professional firms. More than 40 states have also enacted "Mini-Brooks Acts" for state government (and in some cases local government) procurement. The QBS process in the Brooks Act is also endorsed by the American Bar Association in its Model Procurement Code for State and Local Government, and client groups such as the American Public Works Association, the Associated General Contractors of America, and the Airport Consultants Council (ACC) – Federal Aviation Administration (FAA) best practices document. For information, visit the COFPAES web site, www.cofpaes.org.