

APD ALERT



SIX PERCENT FEE LIMITATION FOR ARCHITECT-ENGINEER SERVICES CONTRACTS AND TASK ORDERS

PURPOSE

This Alert replaces the former Facilities Division Policy Guidance Memorandum No. 02-004 to provide information and policy on the services and costs that are legally chargeable and those reasonably excluded under statutory limitation for Architect-Engineer (A-E) services.

REFERENCES

- 41 U.S.C. 254, Contract Requirements
- Public Law 92-582, The Brooks Act
- FAR 36.6, Architect-Engineer Services
- FAR 15.4, Contract Pricing

POLICY

- a. The Federal Acquisition Regulation (FAR) Part 15.404-4(c)(4)(i)(B) states in part, “The Contracting Officer shall not negotiate a price or fee that exceeds the statutory limitations... for architect-engineer services for public works or utilities, the contract price or estimated cost and fee for production and delivery of designs, plans, drawings, and specifications shall not exceed 6 percent of the estimated cost of construction of the public work or utilities, excluding fees.”
- b. Contracting Officers (COs) will not pay an A-E firm any more than 6 percent of the estimated cost of construction (ECC) of a particular project for preparing, producing, and delivering designs, plans, drawings, and specifications. The limitation also applies to contract modifications.
- c. COs must ensure that they comply with this fee limitation for all contracts and task orders, including contract modifications, for A-E design services. Proposals from A-E firms should be sufficiently detailed so that a determination of applicable and excluded costs can be made and must contain a statement regarding compliance with the 6 percent fee limitation. The contract or task order file’s Price Negotiation Memorandum shall contain documentation that distinguishes between the applicable costs and those that are

excluded from the limitation, thus substantiating compliance. The attached spreadsheet, Cost Summary for A-E Fee Limitation, can be used to document the A-E costs subject to the fee limitation.

SERVICES/COSTS APPLICABLE TO THE 6 PERCENT FEE LIMITATION

The following types of expenses are considered to be included within the 6 percent fee limitation:

- a. All efforts, whether expended by a contractor's in-house workforce or outsourced to a different firm(s), that are an integral part of the actual preparation and production of designs, drawings, plans, specifications, and cost estimates ("putting the ink to the paper" efforts), including any changes as a result of design reviews and value engineering reviews;
- b. Overhead and general and administrative (G&A) rates on the applicable efforts;
- c. Work not initially included in the contract;
- d. Redesign efforts due to changes in the program; and,
- e. Contracts/Task Orders to develop the bridging documents (bridging documents are considered design) for a design/build contract.

SERVICES/COSTS EXCLUDED FROM THE 6 PERCENT FEE LIMITATION

The following list contains examples of activities considered to be inapplicable to the 6 percent fee limitation:

- a. Site visits during the planning, study, pre-design, and construction administration/management/monitoring phases;
- b. Feasibility, functional, and economic studies, and resultant reports;
- c. Determination, definition, and preparation of program requirements or design criteria, and resultant reports;
- d. Environmental assessments, impact statements, and supporting data and resultant reports;
- e. Field, topographic, boundary, property, utilities, and right-of-way surveys, and any resultant reports;
- f. Subsurface explorations and borings, soils and materials testing, and resultant reports;

- g. Special surveys or studies on such aspects as parking, traffic, historic preservation, and energy conservation, and resultant reports;
- h. Flow gauging, readings, measurements, and model testing, and resultant reports;
- i. Structural, electrical, and mechanical investigations of an existing facility where current information is unavailable, and resultant reports;
- j. Models, renderings, photographs, and other presentation material;
Preparation of as-built drawings and measured drawings of existing facilities;
- k. Preparation and review of operation and maintenance manuals;
- l. Special consultant services not normally available in organizations of A-Es that are not specifically applied to the actual preparation of working drawings or specifications of the project for which the services are required;
- m. Construction phase services (e.g., management, supervision, or inspection of construction; and review of shop drawings, submittals, samples, etc.);
- n. Permits and applications;
- o. Travel and per diem;
- p. Overhead and G&A rates on excluded efforts;
- q. The cost of reproducing, distributing and/or mailing drawings and specifications to offerors and plan rooms, as well as for design and follow-up reviews;
- r. Profit;
- s. Efforts during joint reviews (e.g., formal meetings and/or teleconferences) with Government personnel of designs, drawings, plans, specification, and cost estimates during the various stages or progression of design (e.g., 15, 35, 50, 95, 100 percent design progression), as well as value engineering reviews and follow-up reviews;
- t. Any other services not normally considered to be an integral part of the preparation, production, and delivery of designs, plans, drawings, and specifications;
- u. Services associated with design/build acquisitions; and,
- v. Design/Build contracts (design/build is considered “construction”).

DETERMINING COMPLIANCE WITH THE LIMITATION

- a. For contracts and task orders, once final agreement on price has been reached, the costs related to the excludable elements are deducted from the total price. Then, divide the resultant price by the ECC. This will provide the percentage value of the design efforts relative to the costs of the project. Any percentage, 6 percent or less, is compliant with the fee limitation.
- b. Modifications and equitable adjustments to an A-E contract are also subject to the 6 percent fee limitation. When modifying an A-E contract, a determination must be made as to whether or not the work should be included within the definition of design services. If so, the total which the Government pays for all such design work as modified may not exceed 6 percent of the estimated construction cost of the project after the change.

For modifications for work not initially included in the contract, apply the 6 percent limit to the revised total ECC. For modification where redesign is required, the following method should be used:

1. Add the ECC of the redesigned features to the original ECC;
2. Add the contract cost for the original design to the contract cost for redesign; and,
3. Divide the total contract design cost by the total ECC. The resulting percentage may not exceed the 6 percent statutory limitation.

APD POINT OF CONTACT

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Attachment

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