ACEC
American Council of Engineering Companies

FAR CREDITS CLAUSE

ENSURE PAYCHECK PROTECTION PROGRAM BENEFITS FOR AMERICA'S ENGINEERING BUSINESSES

Paycheck Protection Program loans have been a critical lifeline that have enabled small engineering firms – including many women-owned and minority-owned firms – to maintain their payroll and meet other expenses. However, a provision in federal contracting rules could force engineering firms that qualify for loan forgiveness to give some of that needed assistance back. This policy is grossly unfair and essentially invalidates the core purpose of PPP loans. ACEC is requesting a clarification in the law to ensure that all firms that qualify for loan forgiveness – including America's engineering industry – are permitted to keep this critical assistance.

Background

Engineering firms working for State Departments of Transportation and federal agencies are subject to procurement rules based on the Federal Acquisition Regulation (FAR). The FAR includes a “credits” clause (under FAR 31.201-5) that was put in place to ensure that agencies benefit from any discounts a contractor receives on costs to be reimbursed under a contract. This provision is being interpreted to apply to forgiven PPP loans. According to guidance from the Federal Highway Administration, firms must provide a refund or a reduction in billing rates in the amount of forgiven PPP loans that are allocable to contract costs. Depending on how this policy is implemented, some firms could actually lose more than the amount of the federal loan, especially in the case of firms working for different state DOT or local transit agencies insisting on the credit and on multi-year contracts that lock in the reduced billing rate.

Key Points

- **This policy unfairly penalizes engineering firms** – construction contractors and other businesses working for State DOTs are not subjected this to restriction and can keep the full amount of their forgiven loans.
- **Firms were not advised of this requirement when they applied for PPP loans** – the application of the FAR credits clause to forgiven PPP loans was clarified in guidance issued months after the program was launched.
- **The disparate impact will fall most heavily on small, minority- and women-owned firms** that need the assistance the most.
- **It creates a disincentive for engineering companies to compete for work for public agencies** -- depriving the government of qualified engineering services, and it will hamper DOT efforts to expand small business and WDBE contracting opportunities.

Request

ACEC supports a simple fix to clarify that the FAR credits clause will not apply to forgiven PPP loans and urges Congress to take action to protect the industry from regulatory overreach.