ACEC

AMERICAN COUNCIL OF ENGINEERING COMPANIES

October 9, 2020

The Honorable Marco Rubio
Chairman
Committee on Small Business & Entrepreneurship
U.S. Senate
Washington, DC 20510

The Honorable Benjamin L. Cardin
Ranking Member
Committee on Small Business & Entrepreneurship
U.S. Senate
Washington, DC 20510

The Honorable Nydia M. Velazquez
Chairwoman
Small Business Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Steve Chabot
Ranking Member
Small Business Committee
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Rubio, Chairwoman Velazquez, and Ranking Members Cardin and Chabot:

I am writing to seek your assistance in correcting a situation involving forgiven Paycheck Protection Program loans that could negate the critical assistance provided to engineering firms and other industries that contract with government agencies.

Thousands of engineering firms have applied for and received a PPP loan, which has been an important lifeline during this turbulent economic period. Thank you for your support for this vital program. Many of those firms are now planning to apply for loan forgiveness, consistent with the CARES Act and the implementing rules from the Small Business Administration and the Treasury Department.

However, it has come to our attention that a provision of the Federal Acquisition Regulation (FAR) for government contractors could substantially undercut the benefits of the loan program by requiring firms that qualify for forgiveness to return some portion of the loan as a credit when working for a federal agency. Such a policy appears to be contrary to congressional intent and the core purpose of the forgivable loan program. We respectfully ask for your assistance to clarify that the FAR credits clause (FAR 31.201-5) will not apply to the proceeds of PPP loans for small business government contractors who have properly qualified for loan forgiveness.

A strict reading of the FAR could require a firm contracting with the government to calculate a credit to their indirect costs (overhead) in the amount of a forgiven PPP loan. If an engineering firm has to issue a credit to their indirect cost rate for 2020 for the amount of a forgiven PPP loan, they would be billing at a much lower rate in 2021 – and potentially in subsequent years, in the case of multi-year contracts. Requiring a credit from a small business government contractor who has properly qualified for loan forgiveness essentially requires them to repay the loan through such credits. The loan is thus not forgivable, contrary to the intent of the PPP program and harming small businesses at a time when they are attempting to recover from the economic downturn.

Coupled with the IRS ruling that covered costs are not deductible, many firms could be in a worse financial position than had they not taken the loan at all. The sum of the impact of the credit and the tax on the loan forgiveness could easily exceed 100% of the amount of loan forgiveness.

In addition, firms that work for a mix of private and public sector clients would have a difficult time allocating the credit to certain costs, as they often work on a range of various projects. Accounting for a credit to government clients is almost unworkable and could end up offsetting more than the amount of the loan. For firms that work for state and local government clients, not federal agencies, tracking and assigning a PPP credit to only federally funded projects would be nearly impossible.

Failing to address this issue would undercut an essential pillar of economic relief for this critical sector. Please work to clarify through legislation or regulatory intervention that forgiven PPP loans for small business government contractors should not be subject to the FAR credits clause.

Thank you for your attention and consideration of this urgent issue.

Sincerely,

Linda Bauer Darr
President & CEO