

Safe Harbor Overhead Rate Guidelines

Description

Consulting firms providing services under a contract funded by federal funds are required by regulation, as specified in 49 CFR 18.22 (b), to account for and bill costs in accordance with the Federal Cost Principles of 48 CFR 31. In addition, federal law and regulation for the Federal-Aid Highway Program (FAHP) require contracting agencies to accept overhead cost rates developed in accordance with the Federal Cost Principles for the consulting firm's applicable one-year accounting period, and apply those rates for the purposes of contract estimation, negotiation, administration, reporting, and contract payment, as specified in 23 U.S.C. 112 (b)(2) and 23 CFR 172.7. As such, consulting firms providing engineering and design related services to a State DOT under a contract funded by Federal funds are required to develop overhead cost rates in accordance with the Federal Cost Principles on an annual basis. Similarly, State Department of Transportation's must provide reasonable assurance that consulting firm costs claimed under Federally funded contracts, including both direct and indirect costs, are allowable in accordance with the Federal Cost Principles.

Developing overhead rates annually can place a significant burden on some consulting firms and may create a barrier for otherwise eligible and qualified firms to compete for contracts. For example, small firms, including many Disadvantaged Business Enterprise firms, may lack the financial capability to develop an overhead rate, or lack the resources to hire a Certified Public Accountant to conduct an audit to provide assurance that the development of an overhead cost rate is compliant with federal requirements. Additionally, new or start-up firms may not have the contract related cost history to use as a base for developing an overhead rate. Other consulting firms, although established, may not have previous experience with federally funded contracts for which an indirect cost rate would have been developed in compliance with the Federal Cost Principles.

To remove the potential barriers identified above, the Federal Highway Administration (FHWA) has issued a final guidance for the implementation of the Safe harbor indirect cost rate, allowing the establishment of a agency-developed indirect cost rate for use by firms that find establishing a FAR compliant indirect cost rate to be a barrier in their ability to compete for contracts. This "safe harbor" rate has been approved for voluntary use by eligible consultants for both work as a prime consultant and as a subconsultant. The Michigan Department of Transportation (MDOT) established safe harbor rate, of 110% is significantly lower than the industry average rate, and is optional for those firms not having a FAR compliant overhead rate for the reasons stated above.

Safe Harbor Eligibility

Effective June 21, 2019, all eligible consulting firms can choose to use the safe harbor rate of 110% for new contracts issued by MDOT. The use of the safe harbor rate is voluntary for all eligible firms on contracts executed after the established effective date, June 21, 2019.

Consulting firms must satisfy one of the criteria below prior to choosing to utilize the safe harbor overhead rate.

- Consulting firms that do not have an overhead cost rate accepted by a cognizant agency or State Department of Transportation. Those firms that have an audited, or otherwise accepted overhead rate, developed in accordance with the Federal Cost Principles are not permitted to use the safe harbor rate.

OR

- Consulting firms that do not have a relevant contract cost history to use as a base for development of an overhead cost rate.

OR

- Consulting firms that lack previous experience with Federally-funded contracts for which an overhead cost rate would have been developed in compliance with Federal Cost Principles and accepted for use by a cognizant agency.

Requirements

- All consulting firms using the safe harbor rate are required to have, and provide to MDOT, a project/cost accounting system adequate to perform all of the following¹:
 - 1) Segregate indirect costs and direct costs
 - 2) Segregate allowable and unallowable costs
 - 3) A job cost system which is general ledger driven
 - 4) A project cost estimation system that agrees with the job cost system
- Consulting firms that use the safe harbor rate and do not have established salaries or wage rates for employees or classes of employees, fixed hourly labor rates will need to be established for the direct labor portion of the contracted services. The agreed upon fixed hourly rates shall be reasonable as set forth in the Federal Cost Principles, considering the nature of the services to be provided.
- Consulting firms electing to use the safe harbor rate for a contract are required to submit to MDOT, the Prequalification Questionnaire for Safe Harbor Rates, Form #1242- Consultant Prequalification Application, and applicable portions of Part A of the MDOT Consultant Prequalification Application Instructions.
- If, during the life of a contract, the consulting firm establishes a cognizant indirect cost rate, that cognizant rate must be used for contracting purposes immediately upon establishment. However, any existing contracts utilizing the Safe Harbor rate, must be invoiced at the Safe Harbor rate for its entirety.

The following other direct costs are not considered to be included within the safe harbor rate and may generally be charged as direct contract costs when warranted and allowable in accordance with the Federal Cost Principles:

- 1) Travel costs in accordance with the State of Michigan Standardized Travel Regulations (airfare, rental care, mileage, lodging, per diem, etc.)
- 2) External printing and reproduction costs

¹ Accounting system requirements are not applicable for projects which will be paid for utilizing lump sum/milestone payments

- 3) Mailing and shipping costs
- 4) Equipment rental fees
- 5) Subconsultant costs
- 6) Other direct costs as appropriate to the contracted services