



CONSULTANT INDIRECT COST RATE REQUIREMENTS

SECTION 1 ABBREVIATIONS AND DEFINITIONS

- 1.1. AASHTO—American Association of State Highway and Transportation Officials
- 1.2. AASHTO Uniform Audit & Accounting Guide for Architectural and Engineering (A/E) Consulting—the Guide
- 1.3. ARDOT or Department—Arkansas Department of Transportation
- 1.4. CFR—Code of Federal Regulation
- 1.5. Cognizant Agency—the State Transportation Agency in which a Consultant's financial statements are prepared.
- 1.6. CPA—Certified Public Accountant
- 1.7. FAR—Federal Acquisition Regulation as defined in 48 CFR
- 1.8. FAHP—Federal-aid Highway Program
- 1.9. FHWA—Federal Highway Administration
- 1.10. GAGAS—Generally Accepted Government Auditing Standards or Yellow Book
- 1.11. ICQ—AASHTO Internal Control Questionnaire (ICQ) for Consulting Engineers
- 1.12. IDIQ—Indefinite Delivery/Indefinite Quantity or On-Call Master Agreement Contracts awarded to multiple qualified Consultants. Contracts for specific work with selected on-call Consultants are awarded as Task Orders.
- 1.13. LPA—Local Public Agency
- 1.14. MPO—Metropolitan Planning Organization
- 1.15. Rate—Indirect Cost Rate or overhead rate
- 1.16. STA—State Transportation Agency
- 1.17. QBS—Qualifications-based selection or competitive negotiation as required by 40 U.S.C. 1101–1104 and commonly referred to as the Brooks Act for procurement of A/E services.
- 1.18. 23 CFR 172—Procurement, Management, and Administration of Engineering and Design Related Services applicable to the Federal-aid Highway Program.

SECTION 2 NECESSITY AND GUIDELINES

- 2.1. This document was developed to detail ARDOT's procedures for review and approval of Consultant Indirect Cost Rate (Rate) documentation to provide reasonable assurance that Consultant costs are allowable and in compliance with Federal cost principles (FAR-compliant).
- 2.2. When the need to supplement Department staff or obtain specialized services, ARDOT acquires the assistance of a Consultant following the regulations for procurement, management, and administration of engineering and design related services in 23 CFR 172 and applicable state law. Additionally, ARDOT has oversight of LPA-administered consultant contracts for various Federal-aid programs which require a Department-approved Rate.
- 2.3. Selected Consultants are required to account for costs appropriately and to maintain records, including supporting documentation, adequately demonstrating FAR-compliance.
- 2.4. To ensure compliance, ARDOT requires Consultants to obtain a Department-approved, FAR-compliant Rate.

SECTION 3 APPLICABILITY

- 3.1. 23 U.S.C. Section 112(b)(2)(B) requires contracts funded with Federal-aid highways funds for engineering and design services to be performed in compliance with the cost principles contained in Part 31 of the FAR.
- 3.2. Engineering and design contracts awarded by QBS require the Prime Consultant to have an approved Rate in order to complete negotiation, execution, and provide notice to proceed. These include:
 - IDIQ contracts referred to as Master Agreements, typically awarded to three or more firms;
 - Task Orders issued under a Master Agreement;
 - Project Specific Agreements; and
 - Cost Plus Fixed Fee, Specific Rate of Compensation, and Lump Sum payment methods.
- 3.3. ARDOT considers the Rate in evaluating costs and fees for Lump Sum and Specific Rates of Compensation contracts regardless of its inclusion in contract language.
- 3.4. Federally funded contracts for services not defined as engineering and design related, or for services not in furtherance of a highway construction project or activity subject to the provisions of 23 U.S.C. 112(a), are not subject to the requirements.
- 3.5. State-funded projects are not subject to FAR-compliance. At its discretion, the Department may choose to apply the requirements. Arkansas Code Ann. § 19-11-802 requiring qualifications-based selection applies to both State and Federally funded projects.
- 3.6. Per [FHWA guidance](#), Subconsultants hired by a selected Prime Consultant do not fall under the requirements of 23 U.S.C. 112(b)(2)(C) (Performance and Audits) and (D) (Application of Rates). Subcontracts must, however, comply with FAR cost principles, and ARDOT may choose to require use of an approved Rate, as applicable, in Subconsultant agreements.
- 3.7. Field Rates—Rates applicable to field operations for Construction Engineering and Inspection contracts shall meet the same audit requirements as the home office corporate Rate.

SECTION 4 REQUIREMENTS

- 4.1. Consultants are required to submit documentation of compliance with Federal cost principles annually for the fiscal year in which financial statements are prepared, hereafter referred to as the Submittal. Approval is generally applicable for one-year and will not be modified until the following fiscal year Submittal is received, reviewed, and approved by ARDOT.
- 4.2. Except as detailed in Section 7--Special Considerations, currently selected and prospective Consultants shall provide:
 - 4.2.1. **Completed ICQ**
 - 4.2.2. **FAR-compliant Audit** conducted by an independent CPA or Cognizant Agency following the most recent edition of the Guide along with the accompanying financial report (Schedule) detailing:
 - direct labor;
 - indirect cost by account description in the general ledger;
 - adjustments for unallowable costs with reference to applicable sections of FAR;
 - net allowable indirect costs;
 - total allowable costs;
 - proposed Rate calculated by dividing total allowable costs by direct labor, and;
 - 4.2.3. **Certification of Final Indirect Costs** signed by an executive of the consulting firm attesting that all costs included in the final Rate as presented are allowable in accordance with the cost principles of FAR, the Cost Principles for "For Profit Organizations," and do not contain any costs which are expressly unallowable under FAR.
 - 4.2.4. Consultants not based in Arkansas must provide **notification of approval of the Rate by their cognizant agency**, if available. Failure to provide this documentation may result in delay of review and approval of the Rate by ARDOT. ARDOT must be notified if the firm's cognizant agency will not review the Rate. Approval notification from another STA may be allowed to meet this requirement.
- 4.3. ARDOT will review the ratio of direct-to-indirect labor, allowability of costs, and reasonableness of the proposed Rate. Additional information including the trial balance and example timesheets may be requested as a result of the initial review.
- 4.4. ARDOT may request additional documentation of information included in the Audit.

SECTION 5 RISK-BASED OVERSIGHT PROCESS

- 5.1. In accordance with 23 CFR Part 172.11(c)(2)(i)(A- K), the Department employs a risk analysis in evaluating and approving Rates to assure reasonable compliance with Federal cost principles on Potential risk areas in the ICQ are assessed based on:
 - 5.1.1. number of employees and annual revenue;

- 5.1.2. changes in organizational structure or ownership;
- 5.1.3. adequacy of accounting system, records, and written policies;
- 5.1.4. revenue generated from government funded contracts;
- 5.1.5. number of States in which the firm operates; and
- 5.1.6. Audit history.

5.2. Based on ARDOT's contracting experience with the Consultant and the Department' anticipated needs, risk associated with Consultant Submittals is also evaluated on:

- 5.2.1. quality and length of contracting relationship;
- 5.2.2. professional reputation and reliability in providing contracted services;
- 5.2.3. number of contracts awarded and total payments;
- 5.2.4. Audit concerns in previous fiscal years, if any;
- 5.2.5. the independent CPA's reputation, timeliness, and quality of work, if applicable;
- 5.2.6. critical or specialized services provided; and
- 5.2.7. ARDOT's role as the Cognizant Agency.

SECTION 6 COGNIZANT AGENCY REVIEW

- 6.1. Rates with cognizant review are audited using standards to test compliance, reducing the risk to other contracting agencies in allowing use of the Rate.
- 6.2. Per 23 CFR 172.11(b)(1), ARDOT accepts Consultant Rates if the cognizant agency:
 - 6.2.1. performed an audit and established a rate in accordance with GAGAS, or;
 - 6.2.2. conducted a review of an audit report and related workpapers prepared by a CPA and issued a letter of concurrence, and
 - 6.2.3. the approval notification states *cognizant agency review* has been performed, and
 - 6.2.4. the Rate is not disputed.
- 6.3. A Rate approval that does not specifically detail performance of a cognizant review does not meet the requirements of this section and will receive additional evaluation by ARDOT prior to acceptance.

SECTION 7 SPECIAL CONSIDERATIONS

- 7.1. Self-Certified Rate
 - 7.1.1. ARDOT acknowledges the financial commitment involved in engaging a CPA able to perform a FAR-compliant audit. Small firms and those new to or seeking participation in federally funded projects incur risk by doing so, as award of contracts is not guaranteed, and participation may fluctuate from year to year. ARDOT's self-certification policy is intended to encourage participation by highly qualified Consultants:
 - 7.1.2. When risk is determined to be low, a Consultant may qualify for approval of a Rate that has not been audited by an independent CPA including those:
 - unduly affected by the Audit expense, and
 - able to clearly demonstrate FAR compliance.

- 7.1.3. ARDOT may provide advanced notification that Self-Certification of a Consultant's Rate will be allowed *for the following fiscal year* upon review of all current Submittal documents listed in Section 4, including a CPA Audit, when historic, current, and continued FAR-compliance is adequately demonstrated. If applicable, written notification of approval of the Rate will include notification that a CPA Audit will not be required in the following fiscal year Submittal.
- 7.1.4. Upon review of a Consultant Submittal, ARDOT may approve use of a Self-Certified Rate to:
- out-of-state firms new to working with ARDOT whose cognizant agency approval of the Rate did not require a CPA audit; or
 - firms providing the information detailed in Section 4, a FAR-compliant Audit performed *within the last three (3) fiscal years*, and clearly demonstrated current and continued FAR-compliance.
- 7.1.5. When compliance is not sufficiently demonstrated, or risk is elevated due to expanding participation or other factors, a CPA Audit will be required in order for the consideration to be given in award of future contracts.
- 7.1.6. Firms expressly permitted to self-certify in a given fiscal year will be notified if review determines a CPA Audit will be required in the following fiscal year Submittal. Every effort will be made to provide this notification of this requirement in a timely manner, allowing the Consultant the ability to engage a CPA without disruption to ARDOT's Rate review and approval process.

7.2. Safe Harbor Rate

- 7.2.1. Because of the cost and financial expertise needed to demonstrate compliance with FAR accounting requirements, some otherwise qualified consulting firms are unable to compete for FAHP funded contracts. In 2019, FHWA provided guidance to contracting agencies for implementing a Safe Harbor Rate and determining eligibility requirements as a component of risk-based oversight of costs allowable under FAR. This guidance provided the framework for ARDOT's Safe Harbor Rate policy, which reduces initial financial and accounting burdens and encourages new, small, and DBE (Disadvantaged Business Enterprise) firms to seek participation in federally funded Consultant contracts while developing a FAR-compliant Rate.
- 7.2.2. **ARDOT's Safe Harbor Rate is 110%** and its use is voluntary for both the Department and the requesting firm. Firms may request use of the Safe Harbor Rate if they meet at least one (1) of the following eligibility criteria:
- Fewer than 25 employees,
 - Certified DBE,
 - New firm without cost history to develop a FAR-compliant Rate; or
 - No accounting structure in place to develop a FAR-compliant Rate.

- 7.2.3. The Safe Harbor Rate is not intended for use by firms with a Rate that has been approved by ARDOT or their cognizant agency within the last (3) three years, nor for field-based contracts.
- 7.2.4. The Safe Harbor Rate is intended for use for no more than three (3) consecutive years during which the Consultant actively pursues a path to compliance.
- 7.2.5. **Upon the close of the first fiscal year** in which a firm participates in a federally funded contract using the Safe Harbor Rate, submission of written policy on bonuses, overtime, paid time off, personal use of vehicles, and a plan for a path to FAR-compliance is required. Additionally, the firm may be required to complete training in FAR Compliance. Failure to meet these requirements may result in disallowance of further use of the Safe Harbor Rate.
- 7.2.6. **Upon the close of the second fiscal year** of participation in federally funded contracts using the Safe Harbor Rate, the firm shall complete required training and submit:
- updated policies from year one, if applicable;
 - Chart of Accounts;
 - Sample Timesheet;
 - Sample Mileage Log;
 - Financial Documents (Income Statement and General Ledger or Trial Balance); and
 - Tax Return.
- 7.2.7. **Upon the close of the third fiscal year** of participation in federally funded contracts using the Safe Harbor Rate, the firm shall complete required training and submit updated Policies, Chart of accounts, Timesheet, and Mileage Logs from year two, as applicable, and
- Financial documents (Income Statement and General Ledger or Trial Balance);
 - Tax Return;
 - Detailed overhead rate schedule including FAR references to define unallowable costs;
 - Related Party Rent worksheet and related party's tax return, if applicable;
 - National Compensation Matrix worksheet or equivalent;
 - Certificate of Final Indirect Cost; and
 - ICQ.
- 7.2.8. A Consultant may elect to engage an independent CPA to perform a FAR-compliant audit at any time while operating under ARDOT's Safe Harbor Rate in order to obtain approval of a more advantageous audited Rate. If an Audit is submitted, the requirements in Section 4 shall apply.

SECTION 8 SUBMISSION, REVIEW, AND RESPONSE PROCESS

- 8.1. ARDOT requests receipt of indirect cost rate Submittals **by the first day of the sixth month after the close of the fiscal year** for which the report is issued. If special circumstances delay meeting this requirement, notification can be provided to the Consultant Contracts Division. Failure to meet this requirement may disqualify the Consultant from award of contracts.
- 8.2. **E-mail communication is preferred.** Submittals and other correspondence should be directed to:
- Consultant Contracts Division**
consultatcontracts@ARDOT.gov
or
Arkansas Department of Transportation
ATTN: Consultant Contracts Division
P.O. Box 2261, Little Rock, AR 72203-2261
- 8.3. The Consultant will be notified:
- when the Submittal is received along with a request for additional documentation, if required;
 - when ARDOT is in receipt of all documents required in the Submittal and that the Rate is being reviewed and under consideration; and
 - if review of the Submittal determines that additional information is required, whether from the Consultant or their independent CPA.
- 8.4. Upon conclusion of the review, the Consultant will be issued a written determination of approval or disallowance of the Rate by the Assistant Chief Engineer—Planning.
- 8.5. Requests for additional information regarding ARDOT's review and determination can be addressed to the Consultant Contracts Division.

Should the Consultant disagree with the determination, the Consultant may submit an appeal addressed to the Chief Engineer—Preconstruction, via consultatcontracts@ardot.gov.