

December 28, 2022

Re: ESTABLISHING A SAFE HARBOR RATE FOR CONSULTANTS

To Whom It May Concern:

The purpose of this letter is to advise the consultant community on the Maryland Department of Transportation State Highway Administration's (MDOT SHA) determination to develop a Safe Harbor Overhead Rate program and illustrate guidelines pertaining to its use.

Consultant firms providing engineering and design related services to MDOT SHA under a contract reimbursed with Federal-Aid Highway Program (FAHP) funds are required to account for, and bill, costs in accordance with the Federal cost principles found in Title 48 Code of Federal Regulations (CFR) part 31. In accordance with those regulations, consultant firms are required to develop overhead rates in accordance with the Federal cost principles on an annual basis. In addition, MDOT SHA must provide reasonable assurance to Federal Highway Administration (FHWA) that consultant firm costs claimed under federally funded contracts, including indirect costs, are allowable in accordance with the Federal cost principles.

Developing overhead rates annually can place a significant burden on some consultant firms and may create a barrier for otherwise qualified firms to compete for federally funded contracts. For example, small firms, including many Disadvantaged Business Enterprise (DBE) firms, may lack the financial capability to either develop an overhead rate or lack the resources to hire a Certified Public Accountant (CPA) to develop it for them. Additionally, new or start-up firms may not have the contract related cost history to use as a base for developing an overhead rate.

To remove the potential barriers identified above, FHWA issued a notice in the Federal Register on June 21, 2019. The notice provided guidance for contracting agencies such as MDOT SHA desiring to implement their own Safe Harbor Overhead Rate. MDOT SHA has elected to establish a Safe Harbor Overhead Rate of 120% for those firms not having an audited overhead rate for the reasons stated above. The Safe Harbor Overhead Rate is voluntary and firms that do not want to participate and do not have an approved rate may still enter into contracts in accordance with 23 CFR 172.11(b)(1)(iii).

#### SAFE HARBOR ELIGIBILITY

Effective January 1, 2023, all eligible consultant firms can choose to use the Safe Harbor Overhead Rate of 120% for new contracts issued by MDOT SHA. Consultant firms must satisfy one of the criteria below to be eligible to use the Safe Harbor Overhead Rate.

- Consultant firms who lack the financial capability to either develop an overhead rate or lack the resources to hire a CPA to develop it for them, **or**
- Consultant firms who do not have relevant contract cost history to use as a base for developing its own overhead rate

In addition to satisfying one of the criteria above, consultant firms must also satisfy both below criteria:

- Consultant firms cannot have a previously approved overhead rate by a cognizant agency or with MDOT SHA. Firms that have an audited, or otherwise approved overhead rate, developed in accordance with the Federal cost principles are not eligible to use the Safe Harbor Overhead Rate, **and**
- All consultant firms are required to have a project/cost accounting system adequate to accumulate and track direct labor and other direct costs by contract, segregating indirect costs, and removing unallowable costs. These basic accounting system functions are essential for accurate billing of costs under federal cost-reimbursement contracts.

#### ADDITIONAL INFORMATION

- The Safe Harbor Overhead Rate will apply on a contract-by-contract basis and will be fixed for the duration of the contract.
- No retroactive adjustments to indirect costs will be allowed for past contracts utilizing the Safe Harbor Overhead Rate.

#### REQUEST FOR APPROVAL OF SAFE HARBOR OVERHEAD RATE

1. Consultant is to submit a letter with the price proposal requesting approval of the Safe Harbor Overhead rate of 120%. In the letter, the consultant must list the criteria for which they meet the eligibility requirements. In addition, the letter must be certified by the consultant's financial officer.
2. Complete and submit the Internal Control Questionnaire in Appendix B of the AASHTO Uniform and Accounting Guide.
3. Complete and submit MDOT SHA Consultant Organization Information Form.

For any questions you may have regarding this process, please contact the Office of Procurement and Contract Management (OPCM) Deputy Director via email at [OPCM@mdot.maryland.gov](mailto:OPCM@mdot.maryland.gov).

Sincerely,



Alex Webb, MBA  
Deputy Director, OPCM, MDOT SHA

cc: Ms. Jada Wright, Director, OPCM, MDOT SHA