



Virginia Department of Transportation Indirect Cost Rate Submission and Review Process Effective January 1, 2019

1. Policy, Regulation and Guidance

- a) In order to ensure that consultant costs reimbursed with Federal-Aid Highway Program (FAHP) funding are allowable, VDOT must provide some assurance that indirect cost rates (overhead rates) considered for acceptance and use in VDOT contracts are developed in accordance with Federal Acquisition Regulation (FAR) cost principles. The rates are evaluated through an established risk assessment process and its approved written policies and procedures as specified in 23 CFR 172.5 (c) and in 23 CFR 172.11 (c) (2). Based on the risk assessment process, VDOT may perform an evaluation of the firm's indirect cost rate. The evaluation may consist of a limited review or a CPA work paper review, and is performed in accordance with Title 48, CFR Part 31, the AASHTO Uniform Audit & Accounting Guide (AASHTO Audit Guide) and other related laws, regulations and guidance. The focus of this policy is on the VDOT indirect cost rate submission and limited review process. The process incorporates selected references of the applicable regulations and guidelines.
- b) 48 CFR Part 31 is the primary regulation governing the acquisition of supplies and services with federal funds. It sets the criteria for determining costs allowable for reimbursement on Federal-funded agreements. FAR resources can be located at the following website:

<https://www.acquisition.gov/>

- c) The AASHTO Audit Guide is designed as a tool for state DOT auditors, A&E firms, and public accounting firms that perform audits and attestations of A&E firms' indirect cost rate. The guide provides guidance and clarification regarding FAR requirements. The guide is found at the following link:

https://bookstore.transportation.org/item_details.aspx?ID=2625

Along with most State Transportation Agencies, VDOT adopted the AASHTO Audit Guide as official policy. Accordingly, consultants and their auditors are required to comply with 48 CFR Part 31 consistent with processes, procedures, and other recommendations in the AASHTO Guide.

The AASHTO Audit Guide is referenced on the FHWA Consultant Services website.

<https://www.fhwa.dot.gov/programadmin/consultant.cfm>

VDOT's Assurance and Compliance Office (VDOT) has oversight responsibilities to ensure compliance with FAR and the AASHTO Audit Guide.

d) Below are selected subsections of the regulations for reference:

1. In accordance with 23 USC 112 (2) (B), "Any contract or subcontract awarded in accordance with subparagraph (A), whether funded in whole or in part with Federal-aid highway funds, shall be performed and audited in compliance with cost principles contained in the FAR part 31 of title 48, Code of Federal Regulations." The FAR compliant audit provides reasonable assurance that contract or sub contract costs comply with FAR Part 31 of Title 48 of the Code of Federal Regulations.
2. According to FAR 31.201-2 (d), "A contractor is responsible for accounting for costs appropriately and for maintaining records, including supporting documentation, adequate to demonstrate that costs claimed have been incurred, are allocable to the contract, and comply with applicable cost principles in this subpart and agency supplements. The contracting officer may disallow all or part of a claimed cost that is inadequately supported."
3. According to 23 CFR 172 and 23 U.S.C. 112, the state transportation agency shall accept indirect cost rates established in accordance with the Federal Acquisition Regulation for a one-year applicable accounting period by a cognizant Federal or State government agency, if such rates are not currently under dispute. The definition of a cognizant agency is provided in 23 CFR 172 and Chapter 12 of the AASHTO Audit Guide, 2016 edition.
4. According to 23 CFR 172.11 (b) (1) (vii), Cognizant approved indirect cost rates may be disputed. "***Disputed rates.*** If an indirect cost rate established by a cognizant agency in paragraph (b)(1)(ii) of this section is in dispute, the contracting agency does not have to accept the rate. A contracting agency may perform its own audit or other evaluation of the consultant's indirect cost rate for application to the specific contract, until or unless the dispute is resolved. A contracting agency may alternatively negotiate a provisional indirect cost rate for the specific contract and adjust contract costs based upon an audited final rate. Only the consultant and the parties involved in performing the indirect cost audit may dispute the established indirect cost rate. If an error is discovered in the established indirect cost rate, the rate may be disputed by any prospective contracting agency."
5. Pursuant to FAR 31.203(f), "Separate cost groupings for costs allocable to offsite locations may be necessary to permit equitable distribution of costs on the basis of the benefits accruing to the several cost objectives."

2. Annual Submissions by A&E Firms (Also referred to as consultants, contractors or firms)

- a) Indirect cost rates shall be updated on an annual basis in accordance with the consultant's annual accounting period and in compliance with the Federal cost principles. A&E consultants must submit documentation annually to VDOT for review and acceptance. The specific list of items required is contained on the VDOT ACO website at the following link:

http://www.virginiadot.org/business/indirect_cost_rate_audit_home_page.asp

- b) The VDOT ACO website should be used together with this policy document, the AASHTO Audit Guide, and the Manual for the Procurement & Management of Professional Services ("Manual"). The Manual can be accessed at the following link:

[Microsoft Word - ProfSvcs-Procurement Manual PSPO-FINAL071522 \(virginiadot.org\)](#)

- c) The complete indirect cost rate audit package shall be submitted to the VDOT ACO mailbox (ACO@VDOT.Virginia.gov) within 6 months after the close of the firm's financial fiscal year. If for example, a contractor has a fiscal year ending December 31, the indirect cost rate submission should be made prior to June 30. The VDOT ACO mailbox will accept messages up to 25 MB in size. If a submittal exceeds that size, the consultant should contact VDOT ACO Management to determine an alternative method to submit the indirect cost rate audit package. The consultant should not copy or "cc" any other VDOT email addresses as this could cause duplication of effort. The VDOT ACO mailbox will send an auto reply to the consultant that their submittal has been received.
- d) Consultants should refer to the VDOT ACO website regarding the documents that are required to be submitted in the consultant's annual indirect cost rate package. The document requirements include a **signed** Contractor Cost Certification "CCC" as required by the Federal Highway Administration (FHWA) Directive Order 4470.1A. Failure to provide complete information as identified on the VDOT ACO website, or submitting only a portion of the information requested, may result in the audit or review being delayed. VDOT ACO will provide confirmation to the consultant via email whether a complete [All items on the checklist were submitted] indirect cost rate package has been submitted, within 10 working days after submittal. If items are missing from the package, VDOT ACO will communicate in that email the list of items missing.
- e) If a consultant expects a delay in the submission of indirect cost rates beyond the six-month deadline, the consultant should notify VDOT of the delay through the VDOT ACO mailbox. It is the responsibility of the consultant to comply with the submission requirements.

3. VDOT Review and Acceptance of Indirect Cost Rates:

- a) The review process will not begin until VDOT has received through the VDOT ACO mailbox, a complete submission of all the documents identified on the VDOT ACO website.
- b) During the review, VDOT may request the consultant to provide additional information to assist in completing a timely review. Significant delays in providing information will be shared with the ACO Director.
- c) If a consultant submits a single company-wide rate, VDOT will accept it as a home rate. The AASHTO Audit Guide states, “In cases where an engineering consultant does not have an established field rate, the consultant may propose or negotiate a field rate for a specific project, if required by a State DOT or other customer.” The firm could provide the indirect cost rate schedule and worksheets in a format and content provided by VDOT, to support the rate. VDOT could use these to negotiate a field rate at the time of contract negotiation. In the absence of a basis for a negotiated field rate, the consultant and VDOT may agree to use 75% as the field rate on that contract.
- d) A new or small consulting firm that does not have a relevant contract cost history to use or has not had a recent indirect cost rate audit may be eligible for an unaudited indirect cost rate of 110% for home office and/or a field rate of 75%. The VDOT ACO Manager will review for acceptance, via email, any request to continue use of the unaudited rates by one firm for multiple years.
- e) Upon completion of a review of an indirect cost rate submission, VDOT will electronically issue a FAR Acceptance Letter reflecting Home and Field rates only, “subject to audit”, no later than 60 calendar days from receipt of the complete indirect cost rate package. The FAR Acceptance Letter is copied to certain VDOT procurement officials for appropriate action. VDOT reserves the right to re-evaluate indirect cost rates upon receipt of information, which suggests that previously reviewed rates, may have been in error.

Upon the completion of a CPA Work paper review on indirect cost rates where VDOT is the Cognizant Agency, a Cognizant Review Letter is issued. There could also be situations where VDOT will perform a CPA work paper review as a non-cognizant agency. Both Cognizant and Non-cognizant CPA work paper reviews may take longer than 60 calendar days to complete. In such cases, the expectation is that work paper reviews will be completed within 90 calendar days from receipt of a complete submittal.

- f) If the firm voluntarily requests in writing, lower indirect cost rates, VDOT will, at its discretion, accept the lower rates for use in Virginia. Acceptance of these lower rates cannot be a condition of contract award by VDOT.
- g) VDOT allows Facilities Cost of Capital (FCOC) for a Consultant’s investment in fixed assets used in allowable business activities. The FCOC must be presented as a separate rate. If the FCOC is included in the overhead rate, VDOT will separate the overhead rate from the FCOC rate.

- h) VDOT verifies the FCOC rate(s) provided in the audit report. If the audit report includes an audited FCOC rate for the home office and none for the field office, VDOT does not attempt to compute a field office FCOC.
- i) VDOT will include the accepted audited FCOC rate(s) in the FAR Acceptance email to the A&E firm. If the indirect cost audit report includes only one FCOC rate, VDOT will accept that rate as applicable to the home office. If the Consultant computes home office and field office indirect cost rates, to allocate project costs appropriately, it may be necessary for the firm to compute separate FCOC rates based on the assets and direct labor used in the home office and field office, respectively.
- j) Some state DOTs require a direct expense rate, but that rate is not applicable to VDOT. When an audited direct expense rate is included in the audit report, VDOT will not review or accept this rate. The VDOT policy is to pay the firms' allowable non-salary direct costs and not according to a direct expense rate.
- k) VDOT will only review indirect cost rates that have been audited by an independent Certified Public Accountant (CPA), an agency of the federal government, another state transportation agency or similar independent audit organization. Section 2.5C of the AASHTO Audit Guide outlines the factors to consider when selecting a CPA as overhead auditor.
- l) Except as outlined in 3.d), Indirect Cost Rate audits are required for all professional service firms. VDOT does not accept unaudited overhead rates and will not compute overhead rates (e.g. home, field, project, etc.) for consultants.
- m) When VDOT is made aware of a pending contract, it will make all reasonable efforts to review the overhead submittal for required documentation and issue a FAR Acceptance letter before the contract is executed.
- n) VDOT will determine the appropriate type of FAR acceptance communication to issue. The wording of the FAR Acceptance Letter depends on, among other things, whether a FAR submission includes a Cognizant Review letter, the audit report highlights significant deficiencies in internal control over financial reporting and compliance or whether additional disallowances are identified by the review.
- o) All unallowable costs identified during the VDOT audit or review must be removed from the indirect cost rate schedule, regardless of amount. Accordingly, any type of materiality level or testing threshold established by the auditor for use in determining large-dollar items may not be used as a minimum tolerance level, or "floor" to all expressly unallowable cost to remain in the indirect cost pool. The AASHTO Audit Guide provides a listing of common unallowable costs in Table 8-1 of Chapter 8.
- p) If the results of the VDOT limited review determine that there was an error in the indirect cost rates, unallowable items were included in the overhead, etc.; VDOT will consult with the firm and may adjust the rates accepted for use in Virginia. For non-Virginia domiciled firms, VDOT will also copy the FAR Acceptance Letter to the cognizant State Department

of Transportation (DOT). VDOT may at its discretion request the firm to contact its CPA and obtain a revised Indirect Cost Rate audit report.

In accordance with its risk assessment, VDOT may perform a cursory review of an indirect cost rate submission when a cognizant review has been performed by another federal or state government agency, and if necessary consult with them.

- q) If the VDOT review results in adjusted indirect cost rates, VDOT will, as advised by FHWA, determine how far back the issues existed and reevaluate such rates accordingly. VDOT will also consider the issues in future indirect cost rate audits as part of the risk-based process.
- r) If VDOT and the consultant do not agree on the amount or nature of a disallowance, the VDOT ACO Director will contact the firm to resolve the issues. If the issues are not resolved, the VDOT ACO Director will make a formal decision after consultation with FHWA and others, as necessary. If the consultant does not agree with the VDOT ACO Director's formal decision, the consultant can appeal to the Commissioner, whose decision is final for VDOT. The dispute resolution process is depicted at **Exhibit 1**.

4 Applicability

- a) Unless the VDOT Procurement office establishes the rates for a contract period, the consultant is expected to apply current VDOT accepted rates for contracting and billing, per 23 CFR 172.11(b) (i) (v).
- b) FAR 48 CFR 52.216-7 (d)(5) states that, "Within 120 days (or longer period if approved in writing by the Contracting Officer) after settlement of the final annual indirect cost rates for all years of a physically complete contract, the firm shall submit a completion invoice or voucher to reflect the settled amounts and rates. The completion invoice or voucher shall include settled subcontract amounts and rates. The prime contractor is responsible for settling subcontractor amounts and rates included in the completion invoice or voucher and providing status of subcontractor audits to the contracting officer upon request."
- c) FAR 48 CFR 52.216-7 (d)(2)(v) requires the Contractor to update the billings on all contracts to reflect the final settled rates and to update the schedule of cumulative direct and indirect costs claimed and billed within 60 days after settlement of final indirect cost rates.
- d) VDOT will apply the regulation and guidance outlined in this policy document to determine cost reimbursement for consultants' projects involving both Federal and State funds.

**VDOT RESOLUTION PROCESS
FOR ANNUAL FAR RATES APPROVAL
DECEMBER 7, 2018**

