



**NEW MEXICO DEPARTMENT OF
TRANSPORTATION (NMDOT)**

**Procedure for Determining Indirect Cost Rate
Compliance and Contractual Eligibility for
Engineering & Design Consultants**

Effective 3/24/2020

Introduction:

State Departments of Transportation are required to provide reasonable assurance that Engineering and Design Consulting Firms are in compliance with the Federal Cost Principles on Federal-Aid Highway Program (FAHP) funds. This procedure will establish the process in which the NMDOT will determine that compliance. The NMDOT requires compliance regardless of funding source.

The NMDOT Office of Inspector General (OIG) will determine, with reasonable assurance, engineering and design consultant compliance with applicable cost principles contained in the Federal Acquisition Regulations (48 CFR part 31), specified under the United States Code (23 USC § 112(b)(2)) and defined in 23 CFR Section 172.3. This NMDOT procedure explains what is to be submitted, how it will be submitted, when it is required and provides additional resources for consultants. Eligibility for NMDOT engineering & design contracts is dependent upon the consultants' compliance with this procedure. **In all cases, consultants must receive eligibility acknowledgement from OIG prior to proposal deadlines.** This is evidenced by the inclusion of the consultant on the eligibility list posted on the NMDOT public website and/or an email acknowledgement of eligibility from the OIG. A list of eligible consultants will be updated by the fifth day of each month and posted on the NMDOT public website. Eligibility is typically approved for a one year term and the expiration date is provided by the OIG.

Submittal Package:

All engineering and design consultants that have a total of \$500,000 or more in contract amounts with the NMDOT, calculated on May 1st of each year, are required to submit the following current documents annually, which will collectively be named the submittal package:

1. Independent Auditor's Report on Statement of Direct Labor, Fringe Benefits, and General Overhead **AND** Independent Auditor's Report on Internal Controls and Compliance
2. The AASHTO Internal Control Questionnaire for Consulting Engineers (ICQ)
3. Documentation sufficient to establish the reasonableness and allowability of executive compensation (see sample National Compensation Matrix)
4. The Consultant Cost Certification document

The required forms for the Submittal Package are provide on the NMDOT public website at:

http://dot.state.nm.us/content/nmdot/en/Program_Management.html#d

Letters of approved Cognizant Rates from other state Departments of Transportation, unless disputed, will be honored in lieu of the CPA audit (item #1), if also accompanied by the items #2, 3 and 4 of the submittal package. The NMDOT Office of Inspector General will perform a risk assessment to determine eligibility to contract with the NMDOT.

Submittal method:

The required documents must be submitted electronically via email to:

NMDOT-#OIGIndirectCostRateAudit@state.nm.us

The documents should be submitted in Microsoft Excel, Microsoft Word or Adobe pdf format when possible. Please submit all indirect cost schedules in Excel format, if possible. This will greatly expedite the review process. Documents submitted in hard copy format or via fax will NOT be accepted, with the exception of the salary information, which may be provided in hard copy format.

A confirmed receipt email will be sent within two business days of receiving the submittal package.

Due Date for Consultants already approved:

To avoid a lapse in eligibility, the submittal package must be received by the NMDOT no later than the OIG approval expiration date, which is typically six months after the close of the consultant's fiscal year. *For example*, consultants with a fiscal year end of December 31 should provide the submittal package by July 1st following the fiscal year end. The expiration formula is calculated as the previous audit fiscal year end date + 548 days = expiration date. For Safe Harbor Rates, the expiration date is 365 days after final submission package is approved. Eligibility will be determined on a first in, first out process. Approval for eligibility will be communicated via email from the NMDOT Office of Inspector General and will be determined on a case-by-case basis.

Exceptions - Safe Harbor Rate:

To avoid placing an undue burden on small firms and firms without a previous cognizant agency-approved indirect cost rate, the NMDOT will give consideration for those consulting firms with less than \$500,000 in total contract amounts with the NMDOT as calculated on May 1st, of each year. The NMDOT Office of Inspector General (OIG) may approve firms as eligible to respond to NMDOT requests for proposals, at the consultant's request, with a Safe Harbor rate of 110% as their indirect cost rate. The Safe Harbor Rate Guidance is included in the Federal Register / Vol. 84, No. 120 / Friday, June 21, 2019. Approval for the Safe Harbor rate will be communicated via email from the NMDOT Office of Inspector General and will be determined on a case-by-case basis. This Safe Harbor rate will be accepted, in lieu of a CPA-audited indirect cost rate.

Consultants requesting the Safe Harbor rate will be required to submit items #2, 3 and 4 of the submittal package which are available online from the NMDOT website. The website address is provided at the end of this procedure. Upon review of an acceptable submittal package, the OIG will email eligibility status to Consultants who have requested the Safe Harbor rate and the eligibility term shall be one year. The Safe Harbor rate is intended to be a voluntary and temporary rate, to allow firms sufficient time to establish cost accounting procedures leading towards a CPA-audited rate. Beginning as of the date of this revised procedure, a Safe Harbor rate will not be available to Consultants after THREE consecutive years from the first approval of Safe Harbor eligibility with the NMDOT. Once Consultants provide a CPA-audited rate, the Safe Harbor rate will no longer be available.

This is intended to provide small and new firms an opportunity to participate in NMDOT requests for proposals and offers incentive to implement CPA-audited indirect cost rates in the future.

Options for Consultants under the \$500,000 threshold:

Consultants under the \$500,000 threshold who provide the full submittal package (items #1-4) may be eligible for the CPA-audited indirect cost rate, if approved as eligible by the OIG. Without a current CPA-audited indirect cost rate, firms may request the Safe Harbor Rate mentioned above.

Effective date of approved indirect cost rate:

The most recent indirect cost rate approved by the OIG at the time of the **PROPOSAL deadline date**, will be the rate recognized for the duration of the contract.

Subcontractors and Sub consultants:

Regarding overhead compliance for subcontractors, the NMDOT will not require subcontractors to the consultant (“sub consultants”) to comply with these procedures. If risk assessments warrant, the NMDOT may request additional information from sub consultants to provide reasonable assurance of compliance.

Expirations :

Consultants will be delisted upon expiration of eligibility. To become eligible after being delisted, the consultant will need to follow the procedures identified above, to become re-eligible.

Debarments and Suspensions:

In the event a consultant is suspended or debarred, their eligibility status will be immediately terminated.

Facilities Capital Cost of Money (FCCM)

FCCM should **not** be included in the overhead rate. FCCM is not a form of interest on borrowing. The costs of capital investment must be allocated to contracts in accordance with CAS 414 (Cost Accounting Standards). Engineering consultants are **not** required to propose FCCM in pricing and performing a contract. However, when an engineering consultant chooses to claim cost of money, the estimated FCCM must be specifically identified in the cost proposals relating to the contract under which the cost is to be claimed. In addition, the FCCM rate must be specifically identified in the CPA-audit that is required with the NMDOT submittal package. The NMDOT will consider FCCM in the negotiations process.

Additional Resources and Submittal Forms:

The NMDOT will provide a monthly list of all eligible consultants with expiration dates of eligibility on the NMDOT public website:

https://dot.state.nm.us/content/dam/nmdot/OIG/Consultant_Overhead_List.pdf

The AASHTO 2016 Audit Guide is available for purchase at:

https://bookstore.transportation.org/item_details.aspx?ID=2625 The document is a digital download, in PDF format, and is \$13 per copy.

For additional information including the required forms for the Submittal Package, please refer to the NMDOT public website at:

http://dot.state.nm.us/content/nmdot/en/Program_Management.html#d