Pre-Award Audit/DBE/Title VI
Breakout Session #2

Wednesday, September 19, 2018
Tammy Mancinelli – Moderator
Assistant Division Administrator, Civil Rights Division, VDOT
AGENDA

• TITLE VI JEOPARDY
  ✎ Tammy Mancinelli, Assistant Division Administrator
  Civil Rights Division, VDOT
  ✎ Corina Herrera, Title VI Program Specialist,
  Civil Rights Division, VDOT

• PRE-AWARD REVIEW OF FEDERALLY FUNDED
  LOCALLY ADMINISTERED PROJECTS
  ✎ Simba Mandizvidzaza, Audit Services Manager I,
  Assurance and Compliance Office, VDOT
TITLE VI JEOPARDY

Tammy Mancinelli
Assistant Division Administrator
Civil Rights Division
VDOT

Corina Herrera
Title VI Program Specialist
Civil Rights Division
VDOT
PRE-AWARD REVIEW OF FEDERALLY FUNDED LOCALLY ADMINISTERED PROJECTS

Simba Mandizvidza
Audit Services Manager I
Assurance and Compliance Office, VDOT
AGENDA

• Purpose of Pre-Award Review
• Process Overview & Timeline
• Cost Proposal Documentation Checklist
• Common Deficiencies
• Deficiencies by Major Cost Category
• Suggestions to Improve
Purpose of a Pre-Award Review

• To assist in the Award & Administration of the proposed contract by advising on contractor’s ability to perform (financial capability and adequacy of accounting systems design), reasonableness of cost proposal, and compliance with Federal and State procurement regulations

  ▪ Non-Compliance with requirements will compromise efficiency & effectiveness of process, increase the risk of unallowable costs & may reduce federal participation

• ACO currently focuses on the cost proposal (23 CFR 172.1)
## Pre-Award Audit Threshold

<table>
<thead>
<tr>
<th>Cost Proposal Value</th>
<th>Responsibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>&gt;$200,000</td>
<td>VDOT – ACO</td>
</tr>
<tr>
<td>&lt;$200,000</td>
<td>LPA</td>
</tr>
</tbody>
</table>
Pre-Award Process Overview

• Local Participating Agency (LPA) submits Pre Award (PA) package to Project Coordinator (PC)

• PC verifies completeness & submits it to ACO

• ACO performs Pre-Award review & submits PA memo to PC. The memo communicates any deficiencies & emphasizes the contracting officer’s responsibility

• PC coordinates resolution of ACO comments & provide written notification of approval to LPA prior to contract execution
ACO Pre-Award Review Process

Review Time per manual is:
20 Business Days
General Fee Proposal Estimate Requirements

Sufficient documentation to support the basis of costs

- Certify that costs are proposed in accordance with consultant’s accounting system
- Must state that costs proposed as direct expenses are not included in overhead
- Provide scope of work and proposed schedule
- Use the standard excel templates which breakdown cost elements for each allowable compensation method
Allowable Compensation Methods

• **Fixed Billable Rate**
  - Rate schedules
  - Use Fixed Billable Rates on Labor summary

• **Cost Plus**
  - Use average hourly rates on Labor summary

• **Lump Sum**
  - Use Cost Plus Net Fee Template
The prime consultant should submit a completed fee proposal in Excel that includes cost proposals for them and all of their sub-consultants that provide a breakdown of all costs with documentation supporting the proposed costs as described below. Enter an "x" in each block at it applies to this specific procurement.

**PRE-AWARD EVALUATION DOCUMENTATION CHECKLIST**

<table>
<thead>
<tr>
<th>Consultant Type:</th>
</tr>
</thead>
<tbody>
<tr>
<td>X Prime Consultant</td>
</tr>
<tr>
<td>Sub Consultant</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Contract Type:</th>
</tr>
</thead>
<tbody>
<tr>
<td>X Fixed Billable Rate</td>
</tr>
<tr>
<td>Cost Plus Net Fee</td>
</tr>
<tr>
<td>Lump Sum</td>
</tr>
</tbody>
</table>
### Direct Labor Costs:

Complete the template for the employees under each labor category. Principals, partners, executives, etc. are considered administrative, whose costs should be included in the overhead rates. If a principal, etc. chooses to perform technical services, they can bill at the comparable rate to the technical activity or function being performed.

- **X** Completed template for the type of contract.
- **X** A listing of the proposed average hourly rates per job classification including the proposed employee names and hourly pay rates used to determine the average hourly rates per classification supported by **actual payroll registers** for each employee proposed.
- **X** Payroll registers with hourly rate for each employee.
- **X** Complete labor costs for home office and/or field office as appropriate for the contract.
- **X** Labor escalation is allowed for this contract.
- **X** Signed certification sheet attesting to the accuracy of the labor rates by a senior executive.

### Indirect (Overhead) Costs:

Indirect costs must follow Federal Acquisition Regulation (FAR) requirements.

- **X** FAR Audit approval letter from VDOT, no older than 18 months, or an audit performed in accordance with the FAR by an independent CPA firm or cognizant government agency.
- **X** A signed Contractor Cost Certification form attesting to the accuracy of the indirect cost rates.
- In the absence of a FAR Audit, VDOT will use the default rate 75% for the overhead rate used in the cost proposal and based on supporting documentation submitted by the consultant.
- The FAR Audit requirement is waived for sub consultants’ whose cost proposal amount is less than $100,000.
- **X** Facility Cost of Capital rate is included.
- New FAR Audit Report documentation is included with the fee proposal for review and approval.
<table>
<thead>
<tr>
<th><strong>Net Fee:</strong></th>
<th>The net fee will be negotiated and within VDOT policy.</th>
</tr>
</thead>
<tbody>
<tr>
<td>X The prime consultant and each sub consultant should include the net fee calculation on their respective fee proposal.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Non-Salary Direct Costs:</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Direct costs proposed should be reasonable, based upon actual costs, in accordance with VDOT policies and supported by submitted documentation. Travel costs are limited to the VDOT travel lodging, per diem, and mileage rates. In-house (consultant) developed rates proposed should be supported by proper source documentation. Proposed unit prices should be based upon usual and customary rates for the respective industry.</td>
</tr>
<tr>
<td>X Completed sheet in the template by entering the non-salary direct costs.</td>
</tr>
<tr>
<td>Additional documentation included for more space (as needed).</td>
</tr>
<tr>
<td>Supporting documentation included for listed costs (as needed).</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Contingency:</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>The contingency should be negotiated and within VDOT guidelines, with written documentation to justify any contingency rate over 5%.</td>
</tr>
<tr>
<td>Contingency rate (if allowed per contract) should be included on each fee proposal (including sub consultant).</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Consultant:</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Printed Name of Consultant Project Manager</td>
</tr>
<tr>
<td>Signature</td>
</tr>
<tr>
<td>Dated: 10/20/2016</td>
</tr>
<tr>
<td>Certifies the fee proposal package is complete and e-mailed to <a href="mailto:CPO@vdot.virginia.gov">CPO@vdot.virginia.gov</a>.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>VDOT:</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Printed Name of VDOT Project Manager</td>
</tr>
<tr>
<td>Signature</td>
</tr>
<tr>
<td>Dated:</td>
</tr>
<tr>
<td>Certifies the fee proposal package is complete.</td>
</tr>
</tbody>
</table>
Common Unallowable Costs Source


<table>
<thead>
<tr>
<th>FAR Reference</th>
<th>Unallowable Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>31.205-1 +31.205-38(b)(1)</td>
<td>Advertising</td>
</tr>
<tr>
<td>31.205-1(f)(2)</td>
<td>Trade Show Expenses</td>
</tr>
<tr>
<td>31.205-1(f)(2)</td>
<td>Trade Show Labor</td>
</tr>
<tr>
<td>31.205-1(f)(5)</td>
<td>Brochures and Other Promotional Material</td>
</tr>
<tr>
<td>31.205-1(d)(2)</td>
<td>Souvenirs/Imprinted Clothing Provided to Public</td>
</tr>
<tr>
<td>31.205-1(f)(7)</td>
<td>Membership in Civic and Community Organizations</td>
</tr>
<tr>
<td>31.205-3</td>
<td>Bad Debts</td>
</tr>
<tr>
<td>31.205-3</td>
<td>Collection Costs</td>
</tr>
<tr>
<td>31.205-6(m)(2)</td>
<td>Personal Use of Company Vehicles</td>
</tr>
<tr>
<td>31.205-8 +31.205-1(e)(3)</td>
<td>Contributions or Donations</td>
</tr>
<tr>
<td>31.205-13(b)</td>
<td>Employee Gifts and Recreation</td>
</tr>
<tr>
<td>31.205-14</td>
<td>Membership in Social, Dining, +Country Clubs</td>
</tr>
<tr>
<td>31.205-14</td>
<td>Social Activities</td>
</tr>
<tr>
<td>31.205-15(a)</td>
<td>Fines, Penalties, and Violation of Laws</td>
</tr>
<tr>
<td>31.205-19(e)(2)(v)</td>
<td>Life Insurance on Key Employees</td>
</tr>
</tbody>
</table>
# Common Unallowable Costs


<table>
<thead>
<tr>
<th>FAR Reference</th>
<th>Unallowable Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>31.205-19</td>
<td>Costs to Correct Defects in Materials and Workmanship</td>
</tr>
<tr>
<td>31.205-20</td>
<td>Interest Expense</td>
</tr>
<tr>
<td>31.205-22</td>
<td>Lobbying and Political Activity Costs.</td>
</tr>
<tr>
<td>31.205-27</td>
<td>Organization/Reorganization Legal Fees</td>
</tr>
<tr>
<td>31.205-27</td>
<td>Organization/Reorganization Accounting Fees</td>
</tr>
<tr>
<td>31.205-27</td>
<td>Organization/Reorganization Incorporation Fees</td>
</tr>
<tr>
<td>31.205-27</td>
<td>Organization/Reorganization Labor</td>
</tr>
<tr>
<td>31.205-27</td>
<td>Capital Raising (Equity or Long-Term Debt) Legal Fees</td>
</tr>
<tr>
<td>31.205-27</td>
<td>Capital Raising (Equity or Long-Term Debt) Accounting Fees</td>
</tr>
<tr>
<td>31.205-27</td>
<td>Capital Raising (Equity or Long-Term Debt) Lender Fees</td>
</tr>
<tr>
<td>31.205-30(c)</td>
<td>Patent Costs</td>
</tr>
<tr>
<td>31.205-33(e)</td>
<td>Retainer Agreements (unless properly supported)</td>
</tr>
<tr>
<td>31.205-35</td>
<td>Relocation Costs (in certain circumstances)</td>
</tr>
<tr>
<td>31.205-46</td>
<td>Travel Costs in Excess of FTR Rates</td>
</tr>
<tr>
<td>31.205-49</td>
<td>Goodwill</td>
</tr>
<tr>
<td>31.205-51</td>
<td>Alcoholic Beverages</td>
</tr>
</tbody>
</table>
Common Deficiencies

• Incomplete/inadequate submittals
• Departure from approved procurement process
  ▪ Pre-Award requested after contract award/or after work has been performed without proper authority
• Math Errors
• Evidence of unallowable items in proposal
• Incorrect Excel format used for proposal
• Delayed or poor communication
• Required certifications not provided
## Summary Deficiencies Per ACO Database - Local Assistance

<table>
<thead>
<tr>
<th>#</th>
<th>Description</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Auditor(S) did not have access to Sharepoint</td>
<td>2</td>
</tr>
<tr>
<td>2</td>
<td><em>Signed Consultant Cost Certification form was not submitted and/or incorrect</em></td>
<td>20</td>
</tr>
<tr>
<td>3</td>
<td>VDOT project Manager did not sign PA Checklists</td>
<td>13</td>
</tr>
<tr>
<td>4</td>
<td>Excel templates provided without passwords</td>
<td>11</td>
</tr>
<tr>
<td>5</td>
<td><em>Payroll registers not provided/incorrect</em></td>
<td>24</td>
</tr>
<tr>
<td>6</td>
<td><em>Missing FAR approval letter</em></td>
<td>21</td>
</tr>
<tr>
<td>7</td>
<td>Request Far review with Pre-Award</td>
<td>6</td>
</tr>
<tr>
<td>8</td>
<td>PA documents not in one easy to find site</td>
<td>4</td>
</tr>
<tr>
<td>9</td>
<td><em>Pre Award template incorrectly completed</em></td>
<td>27</td>
</tr>
<tr>
<td>10</td>
<td><em>Insufficient Non-salary direct expense documentation</em></td>
<td>25</td>
</tr>
<tr>
<td>11</td>
<td>CEI &quot;Capped Rates&quot; not used correctly</td>
<td>3</td>
</tr>
<tr>
<td>12</td>
<td>Other</td>
<td>27</td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td><strong>183</strong></td>
</tr>
</tbody>
</table>
Contractor Cost Certification (CCC) Form

Requirements

- VDOT requires a signed CCC form for overhead rates per FHWA policy order 4470.1. Form should:
  - Certify audited rates
  - Reflect the correct Period Covered
  - Be signed by an executive or officer

Common Issues

- Form is not provided
- Form does not have the correct rates, Period Covered, and/or was not signed by an executive or officer
Cost Proposal Checklist

Requirement

- The consultant and VDOT PC are required to sign the fee proposal checklist to confirm that the proposal documents are complete

Common Issue

- The proposal checklist is not signed by the PC and or consultant
Wage Certification Form

Requirement
- A responsible company official must certify that the employees’ respective wage rates are the actual rates at the time of proposal

Common Issue
- The Wage Certification form is not provided and or signed
Direct Labor

Requirements

- Average hourly rates – Labor Category schedules
- Man-hours by personnel classification – labor summary
- Actual pay registers for each employee proposed
- Note the restriction on Principals, Partners & Executives
- CEI hourly rate limits per deputy Chief Engineer’s memo

Common Issues

- Hourly rates not supported by pay register
- Overtime incorrectly calculated
- Proposed man-hours not provided
- CEI hourly rate limits exceeded
Overhead Rate

Requirements

- VDOT FAR Acceptance (Approval) required
  
  http://www.virginiadot.org/business/indirect_cost_rate_audit_home_page.asp

- Rate must be no older than 12 months

- Provisional rates -110% Home; 75% Field allowed for the first year

- Signed CCC form required to obtain Provisional Acceptance/approval

Common Issues

- Overhead rate older than 12 months

- Overhead rate incorrect or not the currently approved rate

- Use of combined rate when Home & Field rates are available

- Proposed rate based on weighted subsidiary company rates
Facilities Cost of Capital (FCOC)

Requirements

• An imputed cost of fixed assets used in contract
• Derived as part of the FAR audit but shown as a separate line item on overhead schedule
• Not included in the fee base to determine net fee

Common Issues

• Combined with Overhead Rate
• Incorrectly computed
Non-Salary Direct Costs

Requirements

- Direct costs are NOT included in overhead
- Vehicle/Equipment leases/rentals-Rental/Master lease agreement & Lease schedules/quotes
- Travel expense rates per VDOT travel policy
- Require Standard fee schedule & Attestation letter for unit priced items
- Items > $5K < $50K need 4 quotes from DMBE certified firms
- IT proposals reviewed by VDOT Information Technology Division
- POV & Lease mileage rates per VDOT approval memos
- Caps on cell phones ($45 per month) and CADD equipment
- No administrative mark up allowed
Escalation Rate

Requirements

• VDOT allows escalation of direct salaries for multi-year contract
• Limited Services Term Contracts – a separate rate for each year
• Not to exceed 3% per year or the rate established by the CPO Division (3% for FY19), whichever is less
• Half of the annual escalation rate for first year

Common Issues

• Incorrect escalation proposed
• Escalation exceed current VDOT cap of 3%
Contingency on CPNF Contracts

Requirements

- VDOT permission required for use
- Usually 5% on fee base
  - Direct Labor plus overhead
  - Non Salary Direct Costs
- Not allowed on Lump Sum contract
- Prime cannot get contingency on sub-consultant services

Common Issue

- Contingency applied to Lump sum or Fixed billable rate contracts
Sub-Consultants Issues

• Administrative add-ons (Mark-ups) on sub-consultants NOT allowed

• Subcontractor NOT allowed to sub contract per General Terms of VDOT MOA
Negotiated Net Fee

Requirements

• Net fee covers profit etc.
• Net fee of 8% - 12% of direct labor plus overhead only as a test for prudence, otherwise net fee negotiated and fixed
• Overhead not to exceed 156% when calculating net fee
• Cost plus % of the cost contracts prohibited
• Written justification for net fee > 10%

Common Issues

• Overhead > 156% used to determine net fee
• Net fee outside the VDOT range of 8% - 12%
Suggestions to Improve

• Complete documentation submittals aid in timely review
• Deliberate communication
• Improved
  ▪ EXCEL Templates
  ▪ Risk assessment

Collaboration To Improve Knowledge Of:
  ▪ Federal & State Procurement requirements
  ▪ VDOT Procurement process
  ▪ ACO Pre-Award review requirements
  ▪ Contractor cost proposal-completeness & consistency
  ▪ Stakeholder responsibilities
Resources

• Public Law 92-582 (Brooks Act) and 40 USC Chap 11
  Section 904 (a) – the requirement for fair & reasonable compensation

• 23 CFR Part 172
  [link](http://www.ecfr.gov/cgi-bin/text_idx?rgn=div5&node=23:1.0.1.2.3)

  ▪ Requirements for procurement of engineering and design related services under 23 U.S.C. 112 & as supplemented by Uniform Administrative Requirements, Cost Principles (48 CFR Part 31) and Audit Requirements for Federal awards Rule (2 CFR 200).

  ▪ Qualifications-based selection
Resources

• **48 CFR 31**


   This part contains cost principles and procedures for—
   
   - The pricing of contracts, subcontracts, and modifications to contracts and subcontracts whenever cost analysis is performed (see 15.404-1(c)); and
   - The determination, negotiation, or allowance of costs when required by a contract clause.

• **FHWA’s Engineering & Design Services website**

   [https://www fhwa dot gov/programadmin/consultant cfm](https://www fhwa dot gov/programadmin/consultant cfm)

   - Provides the statutory and regulatory framework, Federal Highway Administration (FHWA) policies, and supporting guidance and resources.
Resources

• VDOT Manual for Procurement and Management of Professional Services
  https://insidevdot.cov.virginia.gov/div/CPO/5ZAC7/SitePages/Home.aspx

• VDOT Locally Administered Projects (LAP) Manual
  
  Section 11.2.8 Consultant Negotiations & Pre-Award Audit
Resources

• Virginia Public Procurement Act (VA Code Title 2.2-4302)

• The AASHTO Audit & Accounting Guide
  Focus is on auditing and reporting on indirect costs and resultant overhead rates.
QUESTIONS?

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VDOT Assurance & Compliance Office
Simba.Mandizvidza@vdot.virginia.gov