



I. BACKGROUND.

Staff from the Ohio Department of Transportation (ODOT) worked collaboratively with partners in the architectural and engineering (A/E) consultant industry, other state DOTs, and the Federal Highway Administration (FHWA) to determine how and when A/E firms will be required to provide credit to contracts/projects when Paycheck Protection Program (PPP) loans are forgiven by the Small Business Administration and effectively become grants to A/E firms that receive such loans. Such treatment is required through operation of Federal Acquisition Regulation (FAR) 31.201-5 (codified at 48 CFR § 31.201-5), which provides, in part, that “[t]he applicable portion of any income, rebate, allowance, or other credit relating to any allowable cost and received by, or accruing to, the contractor shall be credited to the Government either as a cost reduction or by cash refund.”

On December 29, 2020, ODOT sent the Ohio Division of the Federal Highway Administration a list of questions in connection with PPP loan forgiveness. FHWA headquarters staff have communicated their views on the issues through presentations and discussions with various state DOT auditors, including ODOT staff, and the FHWA issued Memorandum HCFB-30 on March 24, 2021 to provide further guidance and clarification. Accordingly, we have reached the following conclusions and recommended practices regarding the application of credits for PPP Loan forgiveness to ODOT A/E contracts.

II. USE OF INDIRECT COST RATES ON ODOT CONTRACTS.

Indirect cost rates computed in accordance with the cost principles of FAR Part 31 for the A/E firm’s most recently-completed fiscal year are used for billings and proposals within the effective period. In this context, “effective period” means the date upon which ODOT approves an indirect cost rate through the date of approval in the subsequent year. For example, an indirect cost rate computed based on actual costs incurred from January 1 through December 31, 2020, and approved by ODOT on March 15, 2021 (the effective date), are applied to billings on actual-cost-plus-fixed-fee contracts and estimates on new contracts during the effective period. ODOT treats these rates as final contract rates.

III. ADJUSTMENT REQUIRED FOR PPP LOANS FORGIVEN BY THE SMALL BUSINESS ADMINISTRATION.

We recommend the following procedures for the adjustments/credits required by FAR 31.201-5:

- Forgiven PPP loan proceeds should be credited to the indirect cost rate to provide an equitable allocation of the credit across different contracts and customer types. However, the credited rate only will affect FAR-based contracts.
- Credit for PPP loan forgiveness will be made through a reduction to the A/E firm’s indirect cost rate for the year in which PPP funds were used/expended.
- Per FHWA guidance, ODOT will not accept direct credits to projects if PPP funds were initially expended for direct costs on ODOT contracts. PPP funds initially applied to ODOT contracts must be reallocated as indirect costs and credited to the indirect cost rate.



- PPP funds expended to pay for direct costs on non-FAR based contracts, such as commercial contracts/projects, may be excluded from the credit to the indirect cost rate. To support this allocation, the consultant must have adequate documentation to identify the specific non-FAR based contract costs that were included on their PPP forgiveness application. (For example, direct costs excluded from the credit should be supported by job-cost and labor-distribution reports showing the direct costs that were excluded, including the project number, contract description, and the customer for each contract charged with such costs.)
- The indirect cost rates credited for PPP loan forgiveness will be used to estimate costs and establish pricing and contract maximums on new contracts, but for multi-year contracts, the post-PPP rate (adjusted rate) will be used for the first year of the estimate only. For the portion of the estimate that extends beyond year 1, pre-PPP (unadjusted) indirect cost rates will be used.
- The indirect cost rate credit for PPP loan forgiveness will be used for estimates on all contract types that use the indirect cost rate as a basis for determining total contract cost (total fee). Accordingly, this applies to estimates on lump-sum, rate-of-pay, and actual-cost-plus-fixed-fee contracts.

IV. EXAMPLES.

The following examples provide a brief illustration of post-PPP rates on cost estimates and billings:

- **Example 1: Cost Estimates/Contract Maximums.** Firm A received PPP loan forgiveness in 2020. Firm A's indirect cost rate is 175% before any adjustment for loan forgiveness. By contrast, its post-PPP adjusted indirect cost rate is 150%. Assuming that Firm A is negotiating a three-year contract with ODOT, the rates would be applied as follows, for purposes of determining the contract maximum:

	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
Indirect cost rates used to determine maximum contract value (the not-to-exceed amount)	150%	175%	175%

- **Example 2: Billings on Actual-Cost Contracts.** In terms of billing on the three-year contract, the company would use 150% for year 1, then update its overhead rates in the subsequent years. Once ODOT approves the updated rates, Firm A would use those rates on billings in the subsequent years and potentially could bill amounts up to the contract maximum (not to exceed limit). E.g., If the Company's approved rates for years 2 and 3 are 166% and 180%, respectively, then the billing rates, as applied to an actual-cost-plus-fixed-fee contract, are as follows:

	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
Indirect cost rate billed	150%	166%	180%

Note: For the sake of brevity, the above examples depict an A/E firm with a unitary/corporate rate structure. For firms with separate indirect cost rates for Home Office and Field Offices, the same basic procedures regarding cost estimates and billings would apply; that is, the post-PPP rates would be used in year 1 for billings and cost estimations only.



V. CONCLUSION.

The recommended procedures presented in this Audit Bulletin are consistent with applicable laws and regulations, as well as guidance we received through discussions with, and published guidance from, staff of the FHWA. ODOT will apply the procedures herein for all audits and reviews, including cognizant reviews, for A/E cost submittals received in 2021 and thereafter.

Additionally, as a disclosure requirement, all companies will be required to complete a Paycheck Protection Program Certification Form, as published on the ODOT External Audits webpage:

[https://www.dot.state.oh.us/Divisions/Finance/Auditing/Templates%20and%20Tools/Paycheck%20Protection%20Program%20\(PPP\)%20Certification.pdf](https://www.dot.state.oh.us/Divisions/Finance/Auditing/Templates%20and%20Tools/Paycheck%20Protection%20Program%20(PPP)%20Certification.pdf)

VI. ODOT EXTERNAL AUDIT CONTACT.

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