

# West Virginia Division of Highways Policy: **Safe Harbor Rate**

*Issued by the Commissioner of Highways*

Policy No: DOH 1.5

Issue Date: 05/01/2020

Revised: 07/22/2022

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## 1.0 PURPOSE

The purpose of this procedure is to provide a risk-based approach in determining if a consulting engineer or engineering firm may be eligible to use the Safe Harbor Rate rather than the FAR 31 overhead calculated rate.

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## 2.0 SCOPE

This procedure applies to all West Virginia Division of Highways (WVDOH) employees that execute agreements with consultant engineers, and employees that determine eligibility for consultant engineers.

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## 3.0 DEFINITIONS

- 3.1 **AASHTO:** American Association of State Highway and Transportation Officials, the entity that provides audit guidance on review of Consultant Engineer overhead submissions.
- 3.2 **Consultant:** A licensed professional engineer or engineering firm that provides services, or proposes to provide services, to the WVDOH on a contract basis.
- 3.3 **FAR:** Federal Acquisition Regulations, the regulations to be used to procure the services of a Consultant. See [48 CFR Part 31](#).
- 3.4 **ICQ:** [Internal Control Questionnaire](#), found in Appendix B of the [AASHTO Uniform Audit and Accounting Guide \(2016 Edition\)](#), that was developed by AASHTO and is used to determine the structure and accounting capabilities of a Consultant.
- 3.5 **Safe Harbor Rate:** An overhead rate determined by each state using a risk-based method for a Consultant that does not have the accounting knowledge and/or records to calculate an overhead using FAR procedures. The Safe Harbor Rate must be used for the life of the project and cannot be changed, even if an audited rate becomes available. Use of Safe Harbor Rate is optional to the Consultant, as well as to WVDOH, and is not subject to audit.

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## 4.0 PROCEDURES

The WVDOH enters into agreements with Consultant engineering firms and individual engineers to provide a variety of services. The Consultant engineer or firm has expertise in the planning, design, and construction of both public and private infrastructures including roads, bridges, tunnels, railways and airports.

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- 4.1 The WVDOH Division or District desiring to use the services of a Consultant will determine if that Consultant has an approved current overhead rate on file with the West Virginia Department of Transportation (WVDOT) Auditing Division.
- 4.2 The Consultant will determine if each of its sub-consultants have an approved current overhead rate on file with WVDOT Auditing Division.
  - A. The Consultant or any sub-consultant must certify to the WVDOH that it does not currently have an approved overhead rate, other than an approved Safe Harbor Rate from another state, from any state or other government entity.
- 4.3 If either the Consultant or any sub-consultant does not have an approved current overhead rate on file with WVDOT Auditing Division, then the WVDOH Project Manager or Contracting Officer must provide the Consultant/sub-consultant with a copy of the [AASHTO ICQ](#), and must inform WVDOT Auditing Division that the division, district or Consultant requests that the Consultant/sub-consultant be considered for a Safe Harbor Rate.
  - A. The use of Safe Harbor Rates is specific to the WVDOH. Safe Harbor Rates used in other states are not acceptable for use by the WVDOH.
- 4.4 Each Consultant or sub-consultant must complete and certify its ICQ annually and return it via e-mail to WVDOT Auditing Division using [dotauditoverheads@wv.gov](mailto:dotauditoverheads@wv.gov).
- 4.5 WVDOT Auditing Division will use the information from the ICQ to populate its Risk Spreadsheet and determine 1) if the Consultant or sub-consultant is eligible to use the Safe Harbor Rate and 2) if eligible, the recommended rate based on the number of full-time equivalent employees in the company.
- 4.6 WVDOT Auditing Division will distribute a memorandum to all contracting divisions or districts and the specified contacts for the Consultant, regarding its determination of eligibility, and listing any approved Safe Harbor Rate to use on all new contracts executed up to 6 months following the Consultant's next fiscal year end.

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### 5.0 TERM

- 5.1 The use of an approved Safe Harbor rate is limited to three (3) consecutive years from the Fiscal Year End date used for determining the Safe Harbor rate.
- 5.2 Any consultant or sub-consultant that is permitted to use a Safe Harbor rate must obtain a FAR rate for use after the end of the third year.

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### 6.0 SMALL FIRMS WITHOUT ADEQUATE ACCOUNTING RECORDS

Should a sub-consultant lack the accounting records necessary to complete the ICQ, then WVDOT Auditing Division will request copies of invoices paid by clients other than the WVDOH or another governmental entity that include rates by labor classification. WVDOT Auditing Division will review the paid invoices and determine if there is enough information to provide a Safe Harbor rate by labor classification that can be used. WVDOT Auditing Division will distribute a memorandum to all

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contracting divisions or districts regarding its determination of eligibility and listing the approved rate to be used for an eligible sub-consultant. This method of determining eligibility for a Safe Harbor Rate is not available to the Consultant itself; it is only available to a sub-consultant. It is only available for use in contracts that do not exceed \$500,000.00 in payments to the sub-contractor, and in contracts that are executed up to 6 months following the sub-consultant's next fiscal year end.

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### 7.0 CHANGE LOG

August 4, 2020 –

- Wording added to section 4.2.
- Section 4.7 was removed and added to a newly created section, 6.0, Small Firms without Adequate Accounting Records.
- Section 4.8 was removed and placed as an emphasis under section 4.3.
- New section, 5.0, Term, added.

July 22, 2022

- Formatting changes only.

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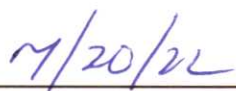
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Effective Date of Policy: 07/22/2022

Approved by:

  
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Jimmy D. Wriston, P.E.  
Secretary of  
Transportation  
Commissioner of  
Highways

  
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Date

\*The Secretary of the West Virginia Department of Transportation or the Commissioner of Highways may, pursuant to the authority vested with the Secretary and Commissioner in W. Va. Code §5F-2-2, §17-2A-1 *et seq.*, and §17-2-1 *et seq.*, waive the requirements of this policy if the circumstances, in the Secretary or Commissioner's sole discretion, warrant such action.