



**Washington State
Department of Transportation**

Interpretive Guidance Document

*Direct Selling, Public Relations,
Advertising, and Bid & Proposal*

Architectural & Engineering Firm

Indirect Costs

WSDOT Internal Audit Office

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Interpretive Guidance Document – Direct Selling, Public Relations, Advertising, and Bid & Proposal

Marketing is a general term that is often used to refer to one or more types of costs, each with different rules for allowability. A firm might include **Bid & Proposal, Direct Selling, Advertising, and Public Relations**, within the same account and/or refer to these as “marketing” costs. Each of these categories has different criteria for allowability, and this Interpretive Guidance Document will discuss each of these categories briefly below.

The Federal Acquisition Regulations (FARS) at 48 CFR 31.205-1 (f) Public Relations & Advertising, 31.205-34 Recruitment Costs, 31.205-38 (b) (5) Direct Selling Costs, & 31.205-18 Bid & Proposal, include requirements for certain types of expenses to be allowable as indirect costs for Architectural & Engineering (A&E) firms.

FHWA (through the National Highway Institute (NHI) Training) has noted that the term marketing is too general and is not really defined in FARs, and they are recommending that the term marketing not be used in indirect cost accounts.

Reference Marketing – American Association of State Highway and Transportation Officials (AASHTO) Audit Guide, Chapter 8.13, Footnote 24 see page 74.

We have modified our Standard WSDOT Indirect Cost Schedule format to show the following accounts separately for Labor and Expenses:

- Direct Selling
- Public Relations
- Advertising
- Bid & Proposal

Each of the above accounts should show the allowable & unallowable amounts, and the unallowable amounts should show as an adjustment to your indirect cost schedule. Each firm’s expenses should also be broken out on the indirect cost schedule as Direct Selling Expenses, Public Relations Expenses, Advertising Expenses, and Bid & Proposal Expenses.

Proper categorization of labor & expenses is extremely important to determine allowability. The A&E firms bear the burden of proof in regard to allowability of expenses.

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48 CFR 31.201-2 Determining allowability.

(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.

Direct Selling (Labor & Expenses)

Direct selling is characterized by *person-to-person* contact and includes such efforts as familiarizing a potential customer with the Consultant's products or services, conditions of sale, service capabilities, and similar items. It also includes negotiation, liaison between customer and Consultant personnel, technical and consulting efforts, individual demonstrations, and any other efforts having as their purpose the application or adaptation of the consultant's products or services for a particular customer's use. Generally, the costs of direct selling efforts are allowable if the Consultant has documented these expenses to show that they were related to person-to-person contact to induce a particular customer to purchase the Consultant's services. Documentation should show that the contact is person-to-person, and not to the general public at large. Documentation should include the 5 W's – who, what, where, when, and why.

*Reference 48 CFR 31.205-12 and 205-38, specifically 38 (b)(5)
AASHTO Audit Guide Chapters 6.3–B.1, and 8.24.*

Public Relations (Labor & Expenses)

The term public relations includes activities associated with customer relations and advertising. Allowable public relations costs include costs incurred for (a) responding to inquiries on company policies and activities; (b) communicating with the public, press, stockholders, creditors, and customers; and (c) conducting general liaison with news media and Government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern such as notice of contract awards, plant closings or openings, employee layoffs or rehires, and financial information.

Reference 48 CFR 31.205-1 & 205-38, also AASHTO Audit Guide, Chapters 6.3-B.3 and 8.2- C.

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Costs of activities to promote sales of products normally sold to the U.S.

Government may be allowable or unallowable, including those trade shows and all related expenses, which contain a significant effort to promote exports from the United States. To be allowable Trade shows have to include a significant effort to market to the government.

Reference 48 CFR 31.205-1(d)(2), and 48 CFR 31.205-1(f). Allowable public relations noted at 48 CFR 31.205-1(e).

Unallowable public relations costs include promoting or maintaining favorable relations with the public, and include costs of promotional material, motion pictures, videotapes, brochures, handouts, and magazines that are designed to elicit favorable attention to consultants. Costs of memberships in civic & community organizations and costs of souvenirs, models, imprinted clothing, buttons & other mementos provided to customers or the public are also unallowable.

Exhibit Booths/Trade Show Booths are an unallowable expense per 48 CFR 31.205- (f)(2), as well as all related expenses. (Related expenses would include labor, fringe benefits, travel, per diem, hotel, any handouts/brochures for the booth, etc.)

Reference AASHTO Audit Guide, Chapter 8.2 – C.

Efforts that are general in nature are unallowable, and may include time spent searching for work, developing promotional materials, and attending functions & activities to enhance the company image. The company website typically has items that are considered image-enhancing, including photos of projects. General promotional items & labor are identified in 48 CFR 31.205-1 (f) and include trade show expenses & labor.

Reference AASHTO Audit Guide, Chapter 6.3-B.3.

Advertising (Labor & Expenses)

Costs of promotional material, brochures, handouts, magazines, or other media designed to call favorable attention to the company and its activities are unallowable. FAR 31.205-38 prohibits claiming these costs as selling expenses since FAR 31.205-1 specifically identifies these costs as unallowable advertising or public relations costs.

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Employee recruitment, including help-wanted advertising costs in accordance with FAR 31.205-34 may be an allowable or unallowable expense. Related help-wanted advertising is *allowable* for recruiting direct as well as indirect labor. However, such costs are considered *unallowable* when no specific vacancies are to be filled or if the advertising done is out of proportion to the number or importance of the positions to be filled.

Reference AASHTO Audit Guide, Chapter 8.2-A.

Unallowable advertising costs include the use of media to promote the sale of products or services. Such costs include but are not limited to conventions, exhibits, free goods, samples, magazines, newspapers, trade papers, direct mail, window displays, outdoor advertising, radio, and television. The firm's website, Facebook, and Twitter might also include unallowable advertising costs.

Reference AASHTO Audit Guide, Chapter 8.2.

Bid & Proposal (Labor & Expenses)

Bid and proposal (B&P) costs are the costs incurred in preparing, submitting, and supporting bids and proposals (whether solicited or unsolicited) on potential government or non-government contracts. The term does not include the costs of effort sponsored by a grant or cooperative agreement, or required in the performance of a contract. Bid & Proposal covers the period of time from when the Request for Proposal goes out, and the firm puts a response together, until the time when a contract is awarded.

The FARS at 48 CFR 31.205-18, AASHTO Audit Guide Section 8.13, and the Cost Accounting Standards (CAS) 420.30 (a) (2) include criteria for recording B&P costs.

B&P costs are allowable to the extent that they are accounted for in the same manner as project costs. Further, labor costs associated with B&P activities should be clearly identified and must be segregated from other indirect labor activities as noted in Chapter 8.13 of the AASHTO Audit Guide. B&P costs that do not meet the criteria in FARS are not allowable.

Reference AASHTO Audit Guide Chapter 6.2, 6.3-A, and 8.13.

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Pre-Contract Costs

Pre-contract costs are incurred once a firm has been awarded a contract through a bid & proposal effort, but before the Notice to Proceed work on the contract has been issued. Please refer to 48 CFR 31.205-32 and Chapter 8.14 of the AASHTO Audit Guide for Pre-contract costs. Pre-contract costs may not be included in the indirect cost pool, as these are non-billable direct labor and must be included in your direct labor base.

48 CFR 31.205-32:

Pre-contract costs means costs incurred before the effective date of the contract directly pursuant to the negotiation and in anticipation of the contract award when such incurrence is necessary to comply with the proposed contract delivery schedule. These costs are allowable to the extent that they would have been allowable if incurred after the date of the contract (see [31.109](#)).

Pre-contract costs are associated with specific contracts and therefore may not be included in the indirect cost pool. Pre-contract costs that meet the requirements of FAR 31.205-32 may be charged directly to projects; however, an advance agreement may be required (see FAR 31.109 (h)(4)). Pre-contract labor must remain as a direct cost regardless of whether it is billable to a client.