

February 26, 2020

Adam Jones, Executive Director
Keith Overstreet, 2019-2020 Chairman of the Board
ACEC of South Carolina
Post Office Box 11937
Columbia, South Carolina 29211

RE: Fixed Fee Calculation for Negotiation

Dear Mr. Jones and Mr. Overstreet,

The South Carolina Department of Transportation (SCDOT) is in receipt of your letter and position statement regarding the fixed fee calculation for negotiation. As you know, we have been in discussion within the partnership agreement processes (subcommittee, partnering committee as well as at the ACEC Engineering Conference) regarding fixed fee contract language and calculation of initial fixed fee using an average overhead rate.

The Professional Services Contracting Office (PSCO) is responsible for developing policies and procedures to fulfill the South Carolina Department of Transportation (SCDOT) mission to provide a safe, efficient and sustainable transportation system through dedicated teamwork and responsible leadership supporting economic development, environmental sensitivity and improved quality of life.

Our responsibilities are to assist in regards to the procurement, management and administration of engineering and design related services in conformity with applicable federal and state laws, federal regulations, and SCDOT policies and procedures. The PSCO ensures the appropriate procurement process is followed, fosters effective competition, protects the rights of outside funding sources, and maintains uniformity within SCDOT and to the consultant.

SCDOT values the partnership established in the 1998 agreement and appreciates the processes in place for our entities to exchange dialogue regarding developing practices, policies and procedures that are in the best interest of engineering firms, the public, and SCDOT.

We have reviewed and considered your concerns regarding fixed fee in the position statement. Many of the points described, as well as the examples provided, are inaccurate and do not represent SCDOT's process for negotiating and executing professional services contracts. For example, the proposed process does not limit total contract cost, job classification, direct labor hours, direct labor rates or overhead in any way. SCDOT has never negotiated to a total contract value. The fixed fee portion is not a percentage of cost, it is a fixed fee for the project. In the proposed process with the level of effort being equal, the fixed fee will be equal. The total contract price may be



different because negotiations occur regarding job classifications and hours and applying each firm's unique direct labor rates and overhead.

See below for explanation of our typical negotiation and differences between our actual process and the process described in your letter:

TYPICAL SCDOT NEGOTIATION TODAY											
ACEC EXAMPLE FROM LETTER						SCDOT ACTUAL					
FIRM A	200% Overhead					FIRM A	200% Overhead				
FIRM B	150% Overhead					FIRM B	150% Overhead				
	Firm OH		Fixed	Using Firm OH	Total		Firm OH		Fixed	Using Firm OH	Total
	Labor	on Labor	Fee %	Fixed Fee	Contract		Labor	on Labor	Fee %	Fixed Fee	Contract
FIRM A	\$250,000	\$500,000	10%	\$75,000	\$825,000	FIRM A	\$300,000	\$600,000	10%	\$90,000	\$990,000
FIRM B	\$300,000	\$450,000	10%	\$75,000	\$825,000	FIRM B	\$300,000	\$450,000	10%	\$75,000	\$825,000
Delta	-\$50,000			\$0		Delta	\$0			\$15,000	

As you can see the total contract, fixed fee and overhead are all different for each firm, and the State of South Carolina is paying more fixed fee for a firm with a higher overhead with the same level of effort.

The example below uses the above scenario and implements the proposed use of average overhead rate for fixed fee calculation:

PROPOSED SCDOT NEGOTIATION WITH FIXED FEE COMPUTED USING AVERAGE OH RATE											
ACEC EXAMPLE FROM LETTER						SCDOT ACTUAL					
FIRM A	200% Overhead					FIRM A	200% Overhead				
FIRM B	150% Overhead					FIRM B	150% Overhead				
ASSUMED AVG OH	150% Overhead					ASSUMED AVG OH	150% Overhead				
	Firm OH		Fixed	Using AVG OH	Total		Firm OH		Fixed	Using AVG OH	Total
	Labor	on Labor	Fee %	Fixed Fee	Contract		Labor	on Labor	Fee %	Fixed Fee	Contract
FIRM A	\$253,846	\$507,692	10%	\$63,462	\$825,000	FIRM A	\$300,000	\$600,000	10%	\$75,000	\$975,000
FIRM B	\$300,000	\$450,000	10%	\$75,000	\$825,000	FIRM B	\$300,000	\$450,000	10%	\$75,000	\$825,000
Delta	-\$46,154			-\$11,538		Delta	\$0			\$0	

In this example, the level effort remains the same, overhead costs are different because firms are diverse, and the total contract cost is not the same but the fixed fee is identical for the same level of effort.

In a cost plus fixed agreement, the fixed fee should not vary due to costs. The agreement includes all costs (except fixed fee) based on the engineering consultants' actual allowable costs. The fixed fee is a specific predetermined amount as identified in the agreement. Federal regulations do not prescribe a method for calculation of fixed fee. States have used labor only, labor and actual overhead, labor and average overhead, labor and a capped overhead, and others. The regulations prescribe that states shall consider scope, complexity, contract duration, risk, subcontracting, size and type of contract to determine fixed fee. In SCDOT's process, these items are used; however,



by using a firm's actual overhead rate, the State of South Carolina is paying higher fixed fees for firms with higher overhead rates for projects with equal scope, complexity, duration, etc. In the proposed calculation, fees will be equal for projects with equivalent scope, complexity, duration, etc.

The new process complies with 23 CFR 172, will produce fixed fees consistent for same work, and will generate fair, competitive and reasonable compensation to engineering consultants, SCDOT and the taxpayers of South Carolina.

It is not in the public interest for SCDOT to pay increased fixed fees for the same work just because a firm has a higher overhead rate. This incentivizes firms with higher overhead rates. Finally, using the average overhead rate as a starting point for negotiations does not hinder but supports fair and honest negotiations in good faith between SCDOT and engineering consultants and is prudent for the State of South Carolina.

After addressing your concerns in multiple venues and deliberations among SCDOT and FHWA leadership, it is determined that the updated contract language and fixed fee calculation will be implemented and effective immediately for all new Requests for Proposals (RFPs) for professional services.

Sincerely,



J. Darrin Player
Chief Procurement Officer

