

Report to the Partnering Council from Finance Team January 28, 2000

A Finance Team was appointed in April 1999, to review certain financial issues between the Consulting Engineers Council of Iowa and the Iowa Department of Transportation.

The Finance Team is made up of the following people: Dave Skogerboe, IDOT; Tom Devine, IDOT; Kari Fogg, FHWA; Bob Britson, Shuck-Britson, CEC; Steve Alchin, Stanley Consultants, CEC; and Ken Bucklin, French-Reneker-Associates, Inc., CEC. Carol Culver, IDOT is the facilitator for the team.

The mission of the Finance Team is as follows:

To review the use of retainage, the method for determining fixed fee, and the costs which are allowed to be included in overhead rates, and make recommendations for improvements.

The Team has met five times and makes the following recommendations on the issues in question.

Retainage

The Team discussed the need for retainage and the purposes for which retainage is being withheld. A questionnaire was sent to each of the divisions/offices in the IDOT which utilize consultants, asking the amount of retainage which was held, for what purpose retainage is held, and whether the division/office felt that retainage was necessary. A variety of responses were received. The conclusion was that retainage serves a useful purpose in certain situations, however, it was not necessary in the majority of the consultant contracts. The Finance Team recommends a policy change to 300.12, which provides for retainage at the discretion of the contracting officer. The change would allow the contracting officer to eliminate retainage. The draft of the recommended change is as follows:

Retainage Policy

Retainage: Percentage of retainage withheld from each payment is at the discretion of the contracting officer, generally 0%. Retainage may be considered when:

- There is no prior experience with the Company.
- There are large fluctuations in previous years' overhead rates.

Fixed Fee

The questionnaire which went to the divisions/offices also addressed fixed fee. It asked, what percentage was being used, how that percentage was being determined, and whether or not it was being negotiated.

Fixed Fee for engineering services is addressed in Federal Regulation 23 CFR 172.9(d)(2). The acceptable range of fixed fee percentage is 6%-15% with 15% identified as an upper limit.

In general, the fixed fee amount has not been negotiated but was selected by the Contracting Officer. The Team found there were some inconsistencies in the percentage of fixed fee applied.

Dave Skogerboe developed a graph as a proposed means for the Contracting Officer to determine a base and upper limit for the fixed fee. The graph was based on the contract size and would allow the officer to consider other factors including complexity, degree of risk and specialized expertise when negotiating the fixed fee. The graph was discouraged by the FHWA due to concerns that it has the appearance of presetting fixed fees.

The Team also reviewed the use of a weighted criteria/rating worksheet that would consider criteria, including degree of risk, relative difficulty, size of project, period of performance, subcontracting, etc., specific to each project. The Team felt this was an acceptable approach since it would be project specific and provide criteria weighted to a specific project that would allow and promote open negotiation.

On November 18, 1999, the Team was advised by memo from the Consulting Engineers Council of Iowa that the CEC cannot be involved in developing fixed fee curves, formulas or sliding scales. This was the result of previous litigation on a national level resulting in agreements the American Consulting Engineering Council has made with the Federal Trade Commission which does not allow them to be involved with publishing or endorsing price curves.

Following the receipt of this memo, the Team reassessed our mission statement regarding fixed fee which states "To review...the method for determining fixed fee..." The Team concluded that the issue is more of consistency in determining the fixed fee. As a result and with the information from the CEC, the Team also concluded the IDOT should work to provide consistency among their Contracting Officers.

The following are our conclusions and recommendations.

Recommendations:

- Develop and adopt fixed fee criteria for use by the Contract Officer (See attachment for example)
- Train Contract Officers in the uniform application of the criteria
- Explain to the Consultant's Negotiating the fixed fee, the criteria and application

Allowable Costs and Cost Determination Policies.

CEC members believe they should be reimbursed for facilities capital cost of money, specifically on buildings owned under common ownership since rental of such units is not allowed under the CFR. Under current Iowa DOT policy we do not reimburse facilities capital cost of money as a separate component of overhead.

Before facilities capital cost of money became a recognizable allowable cost, per the Federal Acquisition Regulations, it was negotiated as a component of the fixed fee. As stated in the current Iowa DOT Cost Determination Policy, if a consultant elects to claim facilities capital cost of money in a proposed cost estimate the contracting officer would have to exclude any portion of the fixed fee that related to facilities capital cost of money. To promote uniformity in contract negotiations, the Iowa DOT currently recognizes the allowability of facilities capital cost of money only as a component of the negotiated fixed fee. This Policy was concurred with by the Federal Highway Administration

As another part of the mission statement, the team was to review the method for determining fixed fee and make recommendations for improvements. The team is recommending that fixed fee be negotiated based on criteria identified in 23 CFR 172.9(d)(1). The criteria to be considered by the contract officer is the size, complexity, duration, and degree of risk involved in the work. The establishment of the fixed fee is to be project specific. The team did not consider facilities capital cost of money as one of the recommended criteria to be used when negotiating the fixed fee. The contracting officers will need to consider this change when negotiating fixed fee.

Recommendations:

- Recommend that the Iowa DOT Cost Determination Policy be revised to allow facilities capital cost of money as a specific overhead item.
- Facilities capital cost of money should be included as part of the recommended training for fixed fee.

Bonuses

The group discussed bonuses and have no recommendations for changes to make to the existing policy.

Example Fixed Fee Criteria Worksheet

Negotiation of Fixed Fee - The Contract Officer should consider the following items and weighted percentages when negotiating fixed fee (Items and weighted percentages may vary from project to project).

Degree of Risk (Rating = 25)	
Weight	
0.03	very little (unit price)
0.05	
0.08	look at nature of work
0.10	location of work
0.12	amount of direct labor
0.13	
0.15	great (lump sum)

Consultant's Investment (Rate = 5)	
Weight	
0.03	Below Average
0.05	Look at
0.08	Mobilization
0.10	Average
0.12	Progress Payments
0.13	
0.15	Above Average

Relative Difficulty (Rate = 20)	
Weight	
0.03	very simple
0.05	
0.08	look at nature of work
0.10	location of work
0.12	time schedule
0.13	
0.15	extremely complex

Assistance by Government (Rate = 5)	
Weight	
0.03	Above Average
0.05	Look at
0.08	Government-owned
0.10	Average
0.12	Property
0.13	Equipment/Facility
0.15	Other Assistance
	Below Average

Size of Job (Rate = 15)	
Weight	
0.03	\$10,000,000
0.05	\$ 5,000,000 - \$10,000,000
0.08	\$ 1,000,000 - \$ 5,000,000
0.10	\$500,000 - \$1,000,000
0.12	\$250,000 - \$500,000
0.13	\$100,000 - \$250,000
0.15	Less than \$100,000

Subcontracting (Rate = 15)	
Weight	
0.03	80% subcontracted
0.05	70% subcontracted
0.08	50% subcontracted
0.10	25% subcontracted
0.12	10% subcontracted
0.13	5% subcontracted
0.15	0% subcontracted

Period of Performance (Rate = 15)	
Weight	
0.03	30 days or less
0.04	3 - 6 months
0.08	9 months
0.10	12 months
0.12	15 months to 18
0.13	18 - 24 months
0.15	24 months +

The purpose of this guide is to provide a uniform and consistent manner for rewarding risk, motivating efficient and quality performance, and stimulating capital investment. The Weighted Guidelines Method should be used for any negotiated contract that requires cost analysis.

Example calculation:

- Weights selected in bold above as determined by Contracting Officer.
- $(0.08 \times 25) + (0.13 \times 20) + (0.12 \times 15) + (0.12 \times 15) + (0.10 \times 5) + (0.10 \times 5) + (0.12 \times 15) = 11.0\%$
- This worksheet would then be the basis for negotiations w/the Consultant.