



**Washington State
Department of Transportation**

Interpretive Guidance Document

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

Architectural & Engineering Firm

Indirect Cost Rate

WSDOT Internal Audit Office

May 20, 2019 Update

(Originally published February 21, 2012; the guidance in this document applies to indirect costs incurred after May 20, 2019)

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 Public Relations and Advertising Costs, 31.205-18 Bid & Proposal Costs, 31.205-34 Recruitment Costs, and 31.205-38 (b) (5) Direct Selling Costs, include requirements for certain types of expenses to be allowable as indirect costs for Architectural & Engineering (A&E) firms. For the WSDOT Audit Office to verify allowability of the different types of labor mentioned above, firms should¹ segregate the labor and expenses between the various categories². As with any other expense, the burden of proof remains with the firm to justify allowability.

We have developed our Standard WSDOT Indirect Cost Rate 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 and unallowable amounts, and the unallowable amounts should show as an adjustment to the indirect cost rate schedule.

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.

¹ The term “should” is used throughout this guidance document within the context that it is the firm’s duty to adequately support costs.

² The American Association of State Highway and Transportation Officials (AASHTO) Audit Guide, Chapter 8.13, Footnote 24 uses the term “marketing” to identify unallowable types of selling costs.

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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 public at large. Documentation should include the 5 W's – who, what, where, when, and why.

Reference 48 CFR 31.205--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. 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. Costs of plant tours and open houses may be allowable barring any promotional material and other associated items that call attention to the contractor and its activities. Additionally, although contributions and donations are unallowable per 48 CFR 31.208 labor in support of charitable organizations may be allowable.

Reference 48 CFR 31.205-1(e) also AASHTO Audit Guide, Chapters 6.3 - B.3 and 8.2- C.

Advertising (Labor & Expenses)

There are very few instances where advertising costs are allowable. Allowable advertising expense may include advertising required by contract and trade shows

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that demonstrate a significant effort to promote exports from the United States. The specific intent and function of each advertising effort should be clearly documented and referenced to support allowability.

Reference 48 CFR 31.205-1(d) and the AASHTO Audit Guide 6.3 – B.3 and Chapter 8.2 – B.

Unallowable Public Relations & Advertising (Labor & Expenses)

Unallowable public relations and advertising 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. Efforts that are broad and 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. 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, as well as all related expenses. The use of media to promote the sale of products or services is similarly unallowable. 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. Exhibit Booths/Trade Show Booths as well as all related expenses are unallowable expenses. (Related expenses would include labor, fringe benefits, travel, per diem, hotel, any handouts/brochures for the booth, etc.)

Reference 48 CFR 31.205-1 (f) and the AASHTO Audit Guide, Chapters 6.3 B – 3 and 8.2.

Employee Recruitment (Labor & Expenses)

Employee recruitment, including help-wanted advertising costs 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 48 CFR 31.205-34 and AASHTO Audit Guide, Chapter 8.2.

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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 from when the Request for Proposal goes out, and the firm puts a response together, until the time when a contract is awarded.

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 48 CFR 31.205-18, AASHTO Audit Guide Section 6.3 – A & 8.13, and the Cost Accounting Standards (CAS) 420.30 (a) (2) include criteria for recording B&P costs.

The B&P costs incurred to develop a proposal for a potential design/build contract are generally an allowable indirect cost if properly documented. The A&E firm should track these efforts separately and record any stipend received as a reduction to the indirect cost pool.

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 are associated with specific contracts and therefore may not be included in the indirect cost pool, as these are non-billable direct costs, and the labor 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](#)).

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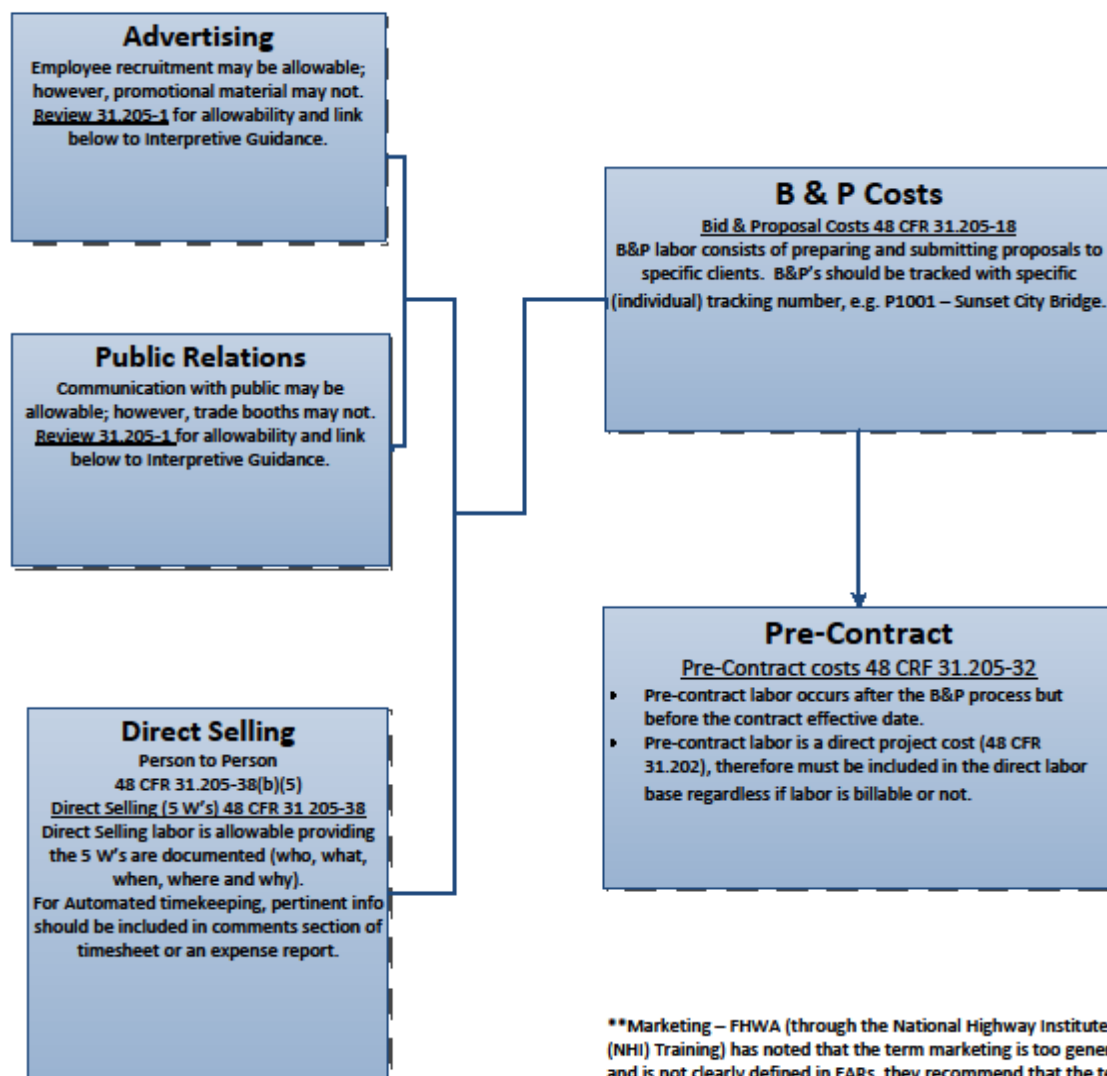
The attached Labor Flowchart visually summarizes the aforementioned phases of selling labor and the progression from direct selling to contract expenses. You can see as the labor cycle progresses, different regulations take effect, requiring separate accounts in the ledger and indirect cost rate schedule.

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Labor Flowchart

Direct Selling , Public Relations, Advertising, Bid & Proposal



****Marketing – FHWA (through the National Highway Institute (NHI) Training) has noted that the term marketing is too general and is not clearly defined in FARS, they recommend that the term "marketing" not be used in indirect cost accounts or to track labor.**
[WSDOT interpretive Guidance – Selling Labor Reference – American Association of State Highway and Transportation Officials \(AASHTO\) Audit Guide, Chapter 8.13, Footnote 24.](#)