

ACEC Missouri

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Director Patrick McKenna
Missouri Department of Transportation
105 W. Capitol Avenue
Jefferson City, MO 65102

December 16, 2020

Dear Director McKenna,

We are grateful for your continued leadership in Missouri and on transportation infrastructure issues. The COVID-19 pandemic has presented Missouri with a number of economic challenges we appreciate your dedication to Missouri and the many industries that are involved in building and supporting our state's infrastructure.

The Paycheck Protection Program (PPP) within the CARES Act has had a profound impact on nearly every small business in America. While this program has generally been met with hope and optimism from those that have received the loans, there is significant concern within the Engineering community about some serious unintended consequences. This concern revolves around two key issues; the deductibility of the underlying expenses for income tax purposes and the treatment and impacts on a consultant's overhead rate.

Under current guidance from the IRS in Notice 2020-32 (and recently re-affirmed by Revenue Ruling 2020-27), the expenses that are paid by the forgiven funds are not deductible for tax purposes. This in essence makes the forgiven loan taxable income to the firm. While there is still benefit to the forgiven loan, it is much less than what was originally intended within the Act. This is not only a problem for Engineering firms, but for every small business who received a PPP loan.

The overhead rate implications are specific to government contractors but have the potential for a much more profound impact on these small businesses. FAR 31.201-5 states that "the applicable portion of an income, rebate, allowance or other credit relating to allowable costs and received by the contractor shall be credited to the Government either as a cost reduction or by cash refund." Unfortunately, there is no authoritative guidance on the practical application of this section for non-Federal agencies. Instead, many within the industry are inserting opinion and personal bias to the situation to try and stipulate that ALL of the forgiven funds should be credited to a firm's overhead no matter what those funds were actually spent on (direct labor, indirect labor, rent, utilities, and interest).

Below is a summary of the financial impact that these two issues can create for government contractors using actual information and expenses from a small DBE engineering firm with approximately \$2.5M in revenues who received a \$333,000 loan and does approximately 60% of their work with the DOT:

Current projected OH rate without PPP credit**157.46%**

	ALL forgiven funds credited to OH	Forgiven funds are allocated between cost categories
Adjusted Overhead Rate	119.61% (-37.85%)	139.93% (-17.53%)
PPP Loan amount	\$ 333,000.00	\$ 333,000.00
Additional Taxes to be paid	\$ (100,000.00)	\$ (100,000.00)
Revenue decrease	\$ (568,000.00)	\$ (263,000.00)
Net cost to the small business	\$ (335,000.00)	\$ (30,000.00)

As you can see, there is a very real possibility that by accepting a PPP loan, using the funds on allowable expenses as defined by the Act, and applying for forgiveness, many small engineering firms could be worse off than if they never applied for the loan.

This situation calls for outside the box thinking and the ability to come to a reasonable resolution to this complex issue. Director McKenna, it is our hope that as you work with other members of AASHTO, you would be willing to include this issue as you collaborate on COVID-19 transportation issues with member states. It is our recommendation that the DOTs in the 10 MAASTO states view these funds received by the Federal Government as outside of the intentions of FAR 31.201-5 for State contracting and overhead calculation purposes to not adversely impact Missouri's engineering industry.

Thank you for your consideration.

Morgan Mundell
President & CEO, ACEC Missouri