

## 8.1 General Discussion

All progress billings shall be submitted to the MDT contact by the local agency in accordance with the terms of the Local Agency Agreement (Chapter 7). Billings will not be accepted before the Local Agency Agreement is executed and authorization in writing has been received from the Montana Department of Transportation (MDT).

The execution of the Local Agency Agreement does not constitute approval of federal funds. This authorization from MDT is separate from the Local Agency Agreement.

The Local Agency Agreement, when completed, establishes a work order account, which permits billing to the project. The Work Order Accounting Plan (WOAP) and the work order ledger may be seen at MDT and can answer questions pertaining to these items.

MDT assigns a contract number on all federal aid construction projects. This number identifies the project. It should be used in addition to the federal aid project number when corresponding with MDT.

## 8.2 Billing Procedures for Local Agency Ad and Award and Agency Force Work

Once the MDT CTEP Engineer has executed the Local Agency Agreement and MDT has given the local agency written authority to proceed, the agency submits progress billings for each phase of work. Any work that is performed before the official authorization date does not qualify for federal participation. Progress billings are submitted as follows:

### *Cost Reimbursement*

Reimbursement requests can be submitted no more frequently than monthly for each project.

Reimbursement can only be requested after expenses have been incurred and work is certified as being complete in the local agency letter to MDT. The reimbursement request must:

- Detail the total amount of claims received for that period.
- Indicate the federal aid reimbursement amount expected
- Attach a copy of all supporting claims.
- Certify the work has been satisfactorily completed.
- Be delivered to the District Liaison for work occurring after MDT construction contract award concurrence has been issued. The request for PE account expenses should be directed to the MDT CTEP Engineer.
- Indicate to whom and where the warrant must be delivered. After completion of construction activities, notify the District Liaison who will perform a final project review and perform other closeout activities prior to submitting your final reimbursement request to the Helena office for processing. The reimbursement request should be mailed to the:

Montana Department of Transportation  
2701 Prospect Avenue  
P.O. Box 201001  
Helena, MT 59620-1001

For reimbursement requests occurring after construction begins the requests **must** be submitted to the assigned MDT District Liaison. Other invoices related to the project should be attached to the

construction invoice submitted to the District Liaison. The District Liaison will forward all satisfactory invoices to the Helena office for processing.

After receipt of the letter requesting reimbursement, a review by MDT CTEP Engineer will be conducted.

- The MDT CTEP Engineer will review the request and check:
  - a. The federal aid project name and number for correctness;
  - b. The appropriateness of the amount requested. The amount requested must be consistent with the approved budget and reported progress;
  - c. The eligibility of all costs and their consistency with the scope of services and project location;
  - d. The financial numbers for accuracy;
  - e. The expended to date balances for consistency with any preceding reimbursement request;
  - f. The percentage of the various budgets expended, the total amount reimbursed to date against the amount budgeted and the amount of obligated federal funds on hand;
- MDT CTEP Engineer will approve the request for payment and forward it to the Accounting Services Bureau. The Financial Management staff collects the reimbursement requests and prepares the invoice for payment.
- If the invoice processes correctly in Financial Management, a warrant is prepared and mailed within five business days.
- If the information is unsatisfactory, the local agency will be notified as to why.

### 8.3 Billing Procedures for State Ad and Award

Progress billings are submitted as follows:

The requests will be processed using standard MDT procedures.

### 8.4 Identification of Federal Aid Participating and Nonparticipating Charges

Reimbursement of costs eligible for Federal Highway Administration's (FHWA) participation are provided under Title 23 of the United States Code. The following is an overview of participating and nonparticipating charges by FHWA.

- a. Participating (Eligible for Federal Aid). The following criteria must be met for charges to be considered participating when charged directly to a federal aid project:
  - The work must be programmed with FHWA.
  - The costs must have been incurred after the date of FHWA authorization to proceed with the work.
  - The costs must be wholly for the benefit of the project being charged, e.g., labor performed directly for that project, supplies used up in the course of a project, etc.

Examples of federal aid participations follow. This list is not limiting or all-inclusive.

1. Labor—to design, survey, prepare plans, appraise right-of-way, inspect construction activities, audit agreements, etc. (refer to Section 8.42a).
2. Travel and Per Diem — of employees involved in any participating activity related to the project

(refer to Section 8.42 b).

3. Materials — incorporated into a federally approved project (refer to Section 8.43b-5).
  4. Supplies purchased and consumed entirely on a federally approved project. Supplies might include: cloth tapes, cylinder molds, drafting supplies, film including developing and printing, hubs, paint (marking spray), stakes, long distance telephone calls identified by project, royalty on materials, initial or new costs of temporary traffic control devices.
  5. Services for material testing, document reproduction, mapping, computer, and equipment usage charges. All of these will be based upon Federal guidelines, as defined under 48 CFR, Chapter 1, part 31.
  6. Office Rental – including utilities and telephone service.
- b. Nonparticipating. For specific projects, the following items are not eligible for federal aid participation:
1. Equipment Purchase and Repair— unless specifically approved by FHWA, e.g., engineering, safety, or office equipment and supplies (refer to Section 8.43b-6).
  2. Supplies purchased and consumed on a number of projects or for the general management or operation of the organizational unit or in administration signs, small tools, and used temporary traffic control devices.
  3. Labor for activities not directly related to the project nor programmed with FHWA. Labor activities pertaining to the general operation of an agency are not eligible for federal participating.
  4. Travel and Per Diem of employees performing activities classified as nonparticipating or unrelated to a specific federal aid project.

#### **.41 Participating Functions**

Classifications of work programmed with FHWA and eligible for federal aid:

- a. Preliminary Engineering. The work of locating and designing, making surveys and maps, sinking test holes, making foundation investigations, preparing plans, specifications and estimates, centerline, right-of-way plan preparation and other related preliminary work and incidental construction staking, to the extent such staking is necessary to review construction plans, and related general engineering preparatory to the letting of a contract for construction. The work may also include traffic counts, studies undertaken to determine traffic demands, holding of public hearings, preparation of right-of-way cost estimates, legal, and other costs incidental to the location and design of a highway project necessitating the acquisition of right-of-way thereon up to but not including the appraisal of individual parcels for acquisition purposes.

These engineering costs are generally incurred prior to the date of construction (need to define approver for Department) approval or the date construction plan changes are completed prior to the beginning of construction. The date of contract award is the cutoff for charging to preliminary

engineering. During the construction phase of a project when a major change takes place that requires additional design or PE effort, the appropriate job can be reopened on a case-by-case basis after approval from FHWA.

Also, any construction staking done in advance of the award should be charged to construction engineering, not PE.

- b. Acquisition of Rights-of-Way. The continuation of preparation of right-of-way plans; appraisal for parcel acquisition; review of appraisals; preparation for and trial of condemnation cases; management of properties acquired; furnishing of relocation advisory assistance; and other related labor expenses.
- Excess land (appraised value) including uneconomic remnants.
  - Improvements (appraised salvage value).
  - Right-of-way acquired after certification by the local agency that right-of-way necessary for a designated federal aid highway project has been acquired.
  - Judgments in condemnation cases not appealed when the attorney's closing report indicates a basis for appeal. The amount in excess of the review appraiser's determination of value is nonparticipating.
  - Landowners:
    - Attorneys' fees;
    - Witness fees; Expert witness fees; or
    - Similar costs to a landowner based on value of the services rendered to him which are paid by the local agency in connection with acquisition of rights-of-way, regardless of whether such costs are included in court judgments or court costs in litigated condemnation cases, e.g., statutory evaluation allowance.
- c. Construction Engineering. The work of supervising construction activities: the inspection of construction and related mechanical aspects (e.g., staking necessary to review construction plans together with those staking activities necessary for the local agency to control construction operations); testing of materials incorporated into construction, checking shop drawings and measurements for and preparations of progress and final estimates, and as-built drawings. Construction engineering costs are generally incurred only after approval of the (see above), a contract number is issued, and also incurred prior to:
- Completion date of the final contract pay estimate and its submission to the contractor;
  - The final date of charges for required material testing; or
  - Completion date of the separation of contract cost by code type, location, etc., whichever is applicable to that portion of the construction engineering phase involved.
- d. Administrative Settlement Costs-Contract Claims. FHWA will participate, up to the appropriate Federal matching share, provided that: (1) The FHWA was consulted and concurred in the proposed course of action; (2) All appropriate courses of action had been considered; and (3) The local agency pursued the case diligently and in a professional manner.
- e. Construction Costs Construction costs, other than those described in item h. are comprised of

contractor payments. The contractor payments are the full compensation for all resources (materials, equipment, labor, etc.) necessary to complete the work described in the contract plans package. Mobilization of personnel, equipment and supplies to the project site, miscellaneous work, temporary erosion control features, and traffic control are also included. The bases of payment are the unit prices and lump sum items in the Contract. Partial payment of the unit price or lump sum bid may be considered for materials furnished to the contractor and stockpiled prior to installation. Extra work beyond the work described in the contract package is authorized by a change order signed by both parties. Refer to Section 109 of the *MDT Standard Specifications* for additional information on construction costs.

- f. Construction Costs for Other Than Contractor Payments.
- Royalty expenses for material furnished by the local agency that are used by the contractor.
  - Temporary signs, traffic control labor, traffic control devices, and temporary illumination furnished by the local agency. The initial basic cost of traffic control devices purchased for use on the project is an authorized participating cost. When used items are furnished by the local agency, federal participation will not be requested.
  - Striping and pavement marking work performed by local forces.
  - Second stage fertilizing by local forces. Application of second-stage seeding and fertilizer, after other work on the project has been completed and the contractor has been released from the contract, is eligible for federal participation.
  - All costs for the fertilizer and the application by local forces are carried as below the line expense on the preliminary estimate and will be fully eligible for the appropriate matching federal funds.
  - Other Items. Items not identified herein as eligible for federal aid participation, such as construction engineering costs, material furnished by the local agency, work performed by local forces, are eligible for participation in accordance with Sections 8.42 and 8.43 below.

#### **.42 Standards for Selected Items of Costs**

The following are standards for determining the selected items of cost are allowable. In general, costs must be reasonable, necessary, and allocable to the specific project. The allowability of the selected items of cost is subject to the general policies and principles stated above.

- a. Salaries and Wages.
1. Subject to appropriate authorization requirements, federal funds may participate in the cost of salaries, wages, and related payroll expenses incurred for periods of time public employees are actively engaged, either directly or indirectly, in project-related activities.
  2. Salaries, wages, and related payroll expenses of a local agency for maintenance, general administration, supervision and other overhead are not eligible for reimbursement except as provided for in Section 8.42 e 2.
- b. Travel and Transportation.
1. Federal funds may participate in the cost of commercial transportation, privately owned automobiles, and per diem or subsistence essential to the prosecution of the project and is performed in accordance with prescribed procedures.

2. Reimbursement may be made for use of privately owned automobiles and per diem or subsistence incurred in conformance with the established reimbursement policy and mileage of the local agency.
- c. Employee Leave and Holidays.
1. A local agency may claim reimbursement for the costs of leave, e.g., annual, sick, military, jury, etc., that is earned, accounted for, and used in accordance with established procedures. The cost of such leave must be a liability of the local agency, must be equitably distributed to all activities, and the pro rata costs distributed to a federal aid project must be representative of the amount that is earned and accrued while working on the project.
  2. Compensatory leave granted by a local agency in lieu of payment of overtime to eligible employees may be claimed for reimbursement if accrued and granted under established policies on a uniform basis. Such leave costs must meet the criteria discussed in paragraph (a) of this section.
  3. Costs for other leave of a similar nature which may be peculiar to a specific local agency may also be reimbursed provided it meets the criteria set forth in paragraph (a) of this section.
- d. Social Security, Retirement, and Other Payroll Benefits.
1. Federal funds may participate in allocable costs incurred for social security, retirement, group insurance premiums, and similar items applicable to salaries and wages of public employees engaged in work in federal aid projects.
  2. The costs for such benefits must be a liability of the local agency and must meet the criteria set forth in paragraph 1 of c above.
- e. General Administration and Other Overhead Costs Are Not Allowed.
1. General administration, supervision, and other unallowable overhead costs of a local agency are those considered necessary for the management, supervision, and administrative control of a suitably equipped, staffed, and operational agency. Examples of such unallowable costs may include, but are not limited to, the following types of personnel, related payroll benefit costs, and other administrative or support services (refer to CFR 23,1.11):
    - Directors, department heads, legal, accounting, budgeting, personnel, and procurement units.
    - Related clerical, secretarial, and other support services for officials and personnel listed immediately above.
    - Management, supervision, and administrative overhead costs incurred by other units or departments of the state, local agencies, or governmental organizations.
  2. Costs incurred for services rendered by employees generally classified as administrative may, however, be considered eligible for reimbursement for:

- A highway planning unit and a research development unit, in the ratio of time spent on the participating portion of work in the unit to the total unit's working hours; and
  - Other operating units if such employees are assigned for specific identifiable periods of time to perform project-related activities in the same manner as other operating personnel.
- f. Use of Cost Accumulation Centers and Cost Distribution Methods.
1. Cost accumulation centers, i.e., cost centers, cost pools, or other acceptable cost accumulation methods, may be used to capture related types of costs for later distribution to all projects or other benefiting activities for which work was performed during the accounting period. The accounting and cost distribution procedures must be in accordance with paragraph (2) of this section for types of costs incurred under the following general criteria:
    - Salaries, wages, and related payroll benefit costs may be incurred during a payroll accounting period which affects a number of projects and, therefore, may not be easily adaptable to charging directly to individual projects due to such factors as (i) incompatibility of time increments for individual projects; (ii) an inordinate amount of time or an additional number of documents to provide separate project coding; or (iii) a documented reduction of overhead costs in the elimination of processing source and coding required, increased electronic data processing applications, and additional accounting requirements.
    - Small cost items may be incurred which affect several projects and would result in a disproportionate amount of time and number of documents for separate project accounting in relation to the amount of costs involved.
    - Items of costs may otherwise be eligible for reimbursement but, due to their nature and the small amounts involved, they are not being claimed for reimbursement, since the additional overhead costs required for separate project coding and effective internal controls are not cost beneficial relative to separate project reimbursable amounts.
    - Cost items must be directly attributable to and properly allocable to the projects to which they are distributed. They must not lose their identity, i.e., type, amount, purpose for which incurred, whether federally participating, input source, etc.
  2. The use of separate cost accumulation centers for comparably related types of costs is a prerequisite to the use of percentages, or other acceptable distribution methods, for cost distribution to benefiting projects or other activities. The accounting procedures and methods of distribution used must have prior concurrence of the FHWA be representative of average actual costs, and must assure that (1) costs are uniformly and equitably distributed to all projects and activities for which work was performed during the accounting period irrespective of source of funds, (2) provisions are established for an adequate segregation of costs and separate distribution methods for similarly related types of costs, (3) actual costs and liabilities are fully accounted for and controlled, and (4) that reviews are made periodically, and the rates or other distribution methods are adjusted at least once annually by any over or under distributed accumulated costs from the cost accumulation center for the preceding accounting period.
  3. Percentages representative of average actual costs may be used to distribute leave, social security, and other payroll benefits. Such rates are based on prior cost experience adjusted by anticipated known factors which will affect overall costs during the current year, e.g., scheduled salary increases, changes anticipated in insurance premiums, etc.

## g. Audit Expense.

AUTHORITY: 23 U.S.C. 121 and 315; 49 CFR 1.48(b).

SOURCE: 49 FR 45578, Nov. 19, 1984, unless otherwise noted. Must have a qualified staff or contract to a CPA firm.

Project related audits performed in accordance with generally accepted auditing standards (as modified by the Comptroller General of the United States) and applicable federal laws and regulations are eligible for federal participation.

The local agency may use other state, local public agency, and federal audit organizations as well as licensed or certified public accounting firms to augment its audit force.

Audits performed in accordance with the requirements of 23 CFR Part 172, audits of third party contract costs, and other audits providing assurance that a recipient has complied with FHWA regulations are all considered project related audits. Audits benefiting only nonfederal projects, those performed for local agency management use only, or those serving similar nonfederal purposes are not considered project related.

1. Federal funds may be used to reimburse a local agency for the following types of project related audit costs:
  - Salaries, wages, and related costs paid to public employees in accordance with Section 8.42 a;
  - Payments by the local agency to any federal, state, or local public agency audit organization; and
  - Payments by the local agency to licensed or certified public accounting firms.
2. Audit costs incurred by a local agency shall be equitably distributed to all benefiting parties. The portion of these costs allocated to the Federal Aid Highway Program which are not directly related to a specific project or projects shall be equitably distributed, as a minimum, to the major FHWA funding categories in that state.

## h. Administrative Settlement Cost Contract Claims.

AUTHORITY: 23 U.S.C. 121, 315; 49 CFR 1.48(b), 23 CFR 635.124 (d) (1)(2)(3) and (e) (1)(2)(3); and OMB Circular A-102, Attachment G, Standard 2 (h) and (i).

SOURCE: 44 FR 59233, Oct. 15, 1979, unless otherwise noted.

Administrative settlement costs are costs related to the defense and settlement of contract claims including, but not limited to, salaries of a contracting officer or their authorized representative, attorneys, and/or members of state boards of arbitration, appeals boards, or similar tribunals. These costs are allocable to the findings and determinations of contract claims, but they do not include administrative or overhead costs.

1. Federal funds may participate in administrative settlement costs which are:

- Incurred after notice of claim;
  - Properly supported;
  - Directly allocable to a specific federal aid or federal project;
  - For employment of special counsel for review and defense of contract claims, when  
Recommended by the State Attorney General or local agency legal counsel,  
and Approved in advance by the FHWA Division Administrator, with advice of FHWA  
Regional Counsel; and
  - For travel and transportation expenses, if in accord with established policy and practices.
2. Federal funds will not participate: (1) If it has been determined that local agency employees, officers, or agents acted with gross negligence, or participated in intentional acts or omissions, fraud, or other acts not consistent with usual State practices in project design, plan preparation, contract administration, or other activities which gave rise to the claim; (2) In such cost items as consequential or punitive damages, anticipated profit, or any award or payment of attorney's fees paid by a State to an opposing party in litigation; and (3) In tort, inverse condemnation, or other claims erroneously styled as claims "under a contract".

#### **.43 Utility Relocations, Adjustments, and Reimbursement.**

a. Eligibility.

1. When requested by the local agency federal funds may participate, at the pro rata share applicable, in an amount actually paid by a local agency for the costs of utility relocations. Federal participation is subject to the provisions of §645.103(d) of 23 CFR and may be made under one or more of the following conditions when:
  - The local agency certifies that the utility has the right of occupancy in its existing location because it holds the fee, an easement, or other real property interest, the damaging or taking of which is compensable in eminent domain;
  - The utility occupies privately or publicly owned land, including public road or street right-of-way, and the local agency certifies that the payment is made pursuant to a law authorizing such payment in conformance with the provisions of 23 U.S.C.123; and/or
  - The utility occupies publicly owned land, including public road and Street right-of-way, and is owned by a public agency or political subdivision of the state, and is not required by law or agreement to move at its own expense, and the local agency certifies that it has the legal authority or obligation to make such payments.
2. When the local agency has the authority to participate in project costs, federal funds may not participate in payments made by a political subdivision for relocation of utility facilities when state law prohibits the local agency from making payment for relocation of utility facilities.
3. When the local agency does not have the authority to participate in project costs, federal funds may participate in payments made by a political subdivision for relocation of utility facilities. Such payment may be made when the local agency certifies that the payment is based upon the provisions of this part and does not violate the terms of a use and occupancy agreement, or legal contract, between the utility and the local agency.
4. Federal funds are not eligible to participate in any costs for which the utility contributes or repays

- the local agency except for utilities owned by the political subdivision on projects which qualify under the provisions of (3) of this part in which case the costs of the utility are considered to be costs of the local agency.
5. The MDT may deny federal fund participation in any payments made by a local agency for the relocation of utility facilities when such payments do not constitute a suitable basis for federal fund participation under the provisions of Title 23, U.S.C.
  6. The rights of any public agency or political subdivision of a state under contract, franchise, or other instrument or agreement with the utility pertaining to the utility's use and occupancy of publicly owned land, including public road and street right-of-way, shall be considered the rights of the local agency in the absence of state law to the contrary.
  7. In lieu of the individual certifications required by a-1, the local agency may file a statement with the MDT setting forth the conditions under which the local agency will make payments for the relocation of utility facilities. The MDT may approve federal fund participation in utility relocations proposed by the local agency under the conditions of the statement when the MDT has made an affirmative finding that such statement and conditions form a suitable basis for federal fund participation under the provisions of 23 U.S.C. 123.
  8. Federal funds may not participate in the cost of relocations of utility facilities made solely for the benefit or convenience of a utility, its contractor, or a highway contractor.
  9. When the advance installation of new utility facilities crossing or otherwise occupying the proposed right-of-way of a planned highway project is underway, or scheduled to be underway, prior to the time such right-of-way is purchased by or under control of the local agency, arrangements should be made for such facilities to be installed in a manner that will meet the requirements of the planned highway project. Federal funds are eligible to participate in the additional cost incurred by the utility that are attributable to, and in accommodation of, the highway project provided such costs are incurred subsequent to MDT authorization of the work. Subject to the other provisions of this regulation, federal participation may be approved under the foregoing circumstances when it is demonstrated that the action taken is necessary to protect the public interest and the adjustment of the facility is necessary by reason of the actual construction of the highway project.
  10. Federal funds are eligible to participate in the costs of preliminary engineering and allied services for utilities, the acquisition of replacement right-of-way for utilities, and the physical construction work associated with utility relocations. Such costs must be incurred by or on behalf of a utility after the date the work is included in an approved program and after the MDT has authorized the local agency to proceed in accordance with 23 CFR 630, Subpart A, Federal Aid Programs Approval and Project Authorization.
- b. Cost Development and Reimbursement.
1. Developing and recording costs. All utility relocation costs shall be recorded by means of work orders in accordance with an approved work order system except when another method of developing and recording costs, such as lump-sum agreement, has been approved by the local agency and the MDT. MDT has developed an alternative procedure for reimbursement for Utility

Relocation in accordance with CFR 23 part 645.119 Unit Cost method of reimbursement. Except for work done under contracts, the individual and total costs properly reported and recorded in the utility's accounts in accordance with the approved method for developing such costs, or the lump-sum agreement, shall constitute the maximum amount on which federal participation may be based.

Each utility shall keep its work order system or other approved accounting procedure in such a manner as to show the nature of each addition to or retirement from a facility, the total costs thereof, and the source or sources of cost. Separate work orders may be issued for additions and retirements. Retirements, however, may be included with the construction work order provided that all items relating to retirements shall be kept separately from those relating to construction.

2. Direct labor costs. See Section 8.42 a.
3. Labor surcharges. See Section 8.42 a.
4. The local agency may develop, or work in concert with utility companies to develop other acceptable costing methods, such as unit costs, to estimate and reimburse utility relocation expenditures. Such other methods shall be founded on generally accepted industry practices and be reasonably supported by recent actual expenditures. Unit costs should be developed periodically and supported annually by a maintained database of relocation expenses. Development of any alternate costing method should consider the factors listed in paragraphs (b) through (g) of this section. Streamlining of the cost development and reimbursement procedures is encouraged so long as adequate accountability for Federal expenditures is maintained. Concurrence by the MDT is required for any costing method used other than actual cost.
5. Material and supply costs. Materials and supplies, if available, are to be furnished from company stock except that they may be obtained from other sources near the project site when available at a lower cost. When not available from company stock, they may be purchased either under competitive bids or existing continuing contracts under which the lowest available prices are developed. Minor quantities of materials and supplies and proprietary products routinely used in the utility's operation and essential for the maintenance of system compatibility may be excluded from these requirements. The utility shall not be required to change its existing standards for materials used in permanent changes to its facilities. Costs shall be determined as follows:
  - Materials and supplies furnished from company stock shall be billed at the current stock prices for such new or used materials at the time of issue.
  - Materials and supplies not furnished from company stock shall be billed at actual costs to the utility delivered to the project site.
  - A reasonable cost for plant inspection and testing may be included in the costs of materials and supplies when such expense has been incurred. The computation of actual costs of materials and supplies shall include the deduction of all offered discounts, rebates, and allowances.
  - The cost of rehabilitating rather than replacing existing utility facilities to meet the requirements of a project is reimbursable, provided the rehabilitation costs do not exceed replacement costs.

Materials recovered from temporary use and accepted for reuse by the utility shall be credited to the project at prices charged to the job, less a 10 percent consideration for loss in service life. Materials recovered from the permanent facility of the utility that are accepted by the utility for return to stock shall be credited to the project at the current stock prices of such used materials. Materials recovered and not accepted for reuse by the utility, if determined to have a net sale value, shall be sold to the highest bidder by the local agency or utility following an opportunity for local agency inspection and appropriate solicitation for bids. If the utility practices a system of periodic disposal by sale, credit to the project shall be at the going prices supported by records of the utility.

Federal participation may be approved for the total costs of removal when such removal is required by the highway construction or the existing facilities cannot be abandoned in place for aesthetic or safety reasons. When the utility facilities can be abandoned in place but the utility or highway contractor elects to remove and recover the materials, federal funds shall not participate in removal costs which exceed the value of the materials removed.

The actual and direct costs of handling and loading materials and supplies at company stores or material yards, and of unloading and handling recovered materials accepted by the utility at its stores or material yards are reimbursable. In lieu of actual costs, average rates representative of actual costs may be used if approved by the local agency and the MDT. These average rates should be adjusted at least once annually to take into account known anticipated changes and correction for any over or under applied costs for the preceding period. At the option of the utility, 5 percent of the amounts billed for the materials and supplies issued from company stores and material yards, or the value of recovered materials will be reimbursed in lieu of actual or average costs for handling.

6. Equipment costs. The average or actual costs of operation, minor maintenance, and depreciation of utility-owned equipment may be reimbursed. Reimbursement for utility-owned vehicles may be made at average or actual costs. When utility-owned equipment is not available, reimbursement will be limited to the amount of rental paid (1) to the lowest qualified bidder, (2) under existing continuing contracts at reasonable costs, or (3) as an exception by negotiation when paragraph (1) and (2) of this section are impractical due to project location or schedule.
7. Transportation costs. The utility's cost, consistent with its overall policy, of necessary employee transportation and subsistence directly attributable to the project is reimbursable.

Reasonable costs for the movement of materials, supplies, and equipment to the project and necessary return to storage including the associated cost of loading and unloading equipment is reimbursable.

8. Credits. Credit to the highway project will be required for the cost of any betterments to the facility being replaced or adjusted, and for the salvage value of the materials removed.
9. Credit to the highway project will be required for the accrued depreciation of a utility facility being replaced, such as a building, pumping station, filtration plant, power plant, substation, or any other similar operational unit. Such accrued depreciation is that amount based on the ratio between the period of actual length of service and total life expectancy applied to the original cost.

Credit for accrued depreciation shall not be required for a segment of the utility's service, distribution, or transmission lines.

10. Billings. After the FHWA approves the executed local agency/utility agreement, the utility may be reimbursed through the local agency by progress billings for costs incurred. Cost for materials stockpiled at the project site or specifically purchased and delivered to the utility for use on the project may also be reimbursed on progress billings following approval of the executed local agency/utility agreement. MDT has developed an alternative procedure for reimbursement for Utility Relocation in accordance with CFR 23 part 645.119 Unit Cost method of reimbursement.

The utility shall provide one final and complete billing of all costs incurred, or of the agreed-to lump-sum, within one year following completion of the utility relocation work, otherwise previous payments to the utility may be considered final, except as agreed to between the local agency and the utility. Billings received from utilities more than one year following completion of the utility relocation work may be paid if the local agency so desires, and Federal-aid highway funds may participate in these payments. The final billing to the MDT shall include a certification by the local agency that the work is complete, acceptable, and in accordance with the terms of the agreement.

All utility cost records and accounts relating to the project are subject to audit by representatives of the state and federal government for a period of three years from the date final payment has been received by the utility.

#### **.44 Reimbursement for Railroad Work.**

AUTHORITY: 23 U.S.C. 315; 49 CFR 1.48, unless otherwise noted.

SOURCE: 40 FR 16057, April 9, 1975, unless otherwise noted.

- a. Applicability. This subpart, and all references hereinafter made to "urban projects," applies to federal aid projects which include as a component the elimination of hazards of railroad highway crossings, and other projects which use railroad properties or which involve adjustments required by highway construction to either railroad facilities or facilities that are jointly owned or used by railroad and utility companies.
- b. Reimbursement Basis.
  1. General. On urban highway projects involving the elimination of hazards of railroad highway crossings where a railroad company is not obligated to move or to change its facilities at its own expense, reimbursement will be made for the costs incurred in making changes to railroad facilities, required in connection with a federal aid highway project, as hereinafter provided.
  2. Eligibility. To be eligible, the costs must be:
    - For work which is included in an approved program;
    - Incurred subsequent to the date of authorization by the FHWA;
    - Incurred in accordance with the provisions of 23 CFR, Part 646, Subpart B; and
    - Properly attributable to the project.
- c. Labor costs. (See Section 8.42.)

- d. Materials and Supplies. (See Section 8.43 b 5.)
- e. Equipment. (See Section 8.43 b 6.)
- f. Transportation. (See Section 8.43 b 7.)
- g. Credits for Improvements.
  - 1. Credit shall be made to the project for additions or improvements which provide higher quality or increased service capability of the operating facility, and which are provided solely for the benefit of the company.
  - 2. Where buildings and other depreciable company structures integral to operation of rail traffic must be replaced, credit shall be made to the project as set forth in 23 CFR646.216(c)(2).
  - 3. No credit is required for additions or improvements which are:
    - Necessitated by the requirements of the highway project.
    - Replacement which, although not identical, are of equivalent standard.
    - Replacements of devices or materials no longer regularly manufactured and the next highest grade or size is used.
    - Required by governmental and appropriate regulatory commission requirements.
  - 4. Protection. The cost of essential protective services which, in the opinion of a railroad company, are required to ensure safety to railroad operations during certain periods of the construction of a project, is reimbursable provided an item for such services is incorporated in the railroad agreement or in a work order issued by the local agency and approved by FHWA.
- h. Maintenance and Extended Construction. The cost of maintenance and extended construction is reimbursable to the extent provided for in 23 CFR 646.216(0(4), and where included in the State Railroad Agreement or otherwise approved by the state and FHWA.
- i. Lump Sum Payments. Where approved by FHWA, pursuant to 23 CFR 646.216(d)(3), reimbursement may be made as a lump sum payment, in lieu of actual costs.
- j. Billings. (See Section 8.43 b 10.)

#### **.45 Other Costs Allowable Subject to FHWA's Approval.**

*Costs are allowable in accordance with CFR 23.*

Although some category of expenditures are not mentioned specifically in Part 140, "Reimbursement," of 23 CFR as eligible for federal participation, should the local agency wish to seek federal participation it is allowed to request approval from the FHWA prior to billing. The expenditures that relate to the federal aid project should be well identified through proper documentation.

#### **.46 Other Unallowable Costs**

- Bad debts. Any losses arising from uncollectible accounts and other claims and related costs are not allowable.

- Contingencies. Contributions to a contingency reserve or any similar provisions for unforeseen events are unallowable.
- Contributions and Donations. Unallowable.
- Entertainment. Costs of amusements, social activities, and incidental costs relating thereto, such as meals, beverages, lodgings, rentals, transportation, and gratuities, are unallowable.
- Fines and Penalties. Costs resulting from violations of or failure to comply with federal, state, and local laws and regulations are unallowable.
- Governor's Expenses. The salaries and expense of the office of the governor of a state or the chief executive of a political subdivision are considered a cost of general state or local government and are unallowable,
- Interest and Other Financial Costs. Interest on borrowings (however represented), bond discounts, cost of financing and refinancing operations, and legal and professional fees paid in connection therewith, are unallowable except when authorized by federal legislation.
- Legislative Expenses. Salaries and other expenses of the state legislature or similar local governmental bodies, such as county supervisors, city councils, school boards, etc., whether incurred for purposes of legislation or executive direction, are unallowable.
- Underrecovery of Costs Under Grant Agreements. Any excess of cost over the federal contribution under one grant agreement is unallowable under other grant agreements.