

## Federal Highway Administration, DOT

## § 140.906

as a minimum, to the major FHWA funding categories in that State.

### Subpart I—Reimbursement for Railroad Work

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

#### § 140.900 Purpose.

The purpose of this subpart is to prescribe policies and procedures on reimbursement to the States for railroad work done on projects undertaken pursuant to the provisions of 23 CFR part 646, subpart B.

#### § 140.902 Applicability.

This subpart, and all references hereinafter made to "projects," applies to Federal-aid projects involving railroad facilities, including projects for 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.

#### § 140.904 Reimbursement basis.

(a) *General.* On projects involving the elimination of hazards of railroad-highway crossings, and on other projects 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 by the State in making changes to railroad facilities as required in connection with a Federal-aid highway project, in accordance with the provisions of this subpart.

(b) *Eligibility.* To be eligible, the costs must be:

(1) For work which is included in an approved statewide transportation improvement program.

(2) Incurred subsequent to the date of authorization by the Federal Highway Administration (FHWA),

(3) Incurred in accordance with the provisions of 23 CFR, part 646, subpart B, and

(4) Properly attributable to the project.

[40 FR 16057, Apr. 9, 1975, as amended at 53 FR 18276, May 23, 1988; 62 FR 45328, Aug. 27, 1997]

#### § 140.906 Labor costs.

(a) *General.* (1) Salaries and wages, at actual or average rates, and related expenses paid by a company to individuals, for the time they are working on the project, are reimbursable when supported by adequate records. This shall include labor costs associated with preliminary engineering, construction engineering, right-of-way, and force account construction.

(2) Salaries and expenses paid to individuals who are normally part of the overhead organization of the company may be reimbursed for the time they are working directly on the project, such as for accounting and bill preparation, when supported by adequate records and when the work performed by such individuals is essential to the project and could not have been accomplished as economically by employees outside the overhead organization.

(3) Amounts paid to engineers, architects and others for services directly related to projects may be reimbursed.

(b) *Labor surcharges.* (1) Labor surcharges include worker compensation insurance, public liability and property damage insurance, and such fringe benefits as the company has established for the benefit of its employees. The cost of labor surcharges will be reimbursed at actual cost to the company or a company may, at its option, use an additive rate or other similar technique in lieu of actual costs provided that (i) the rate is based on historical cost data of the company, (ii) such rate is representative of actual costs incurred, (iii) the rate is adjusted at least annually taking into consideration known anticipated changes and correcting for any over or under applied costs for the preceding period, and (iv) the rate is approved by the SHA and FHWA.

(2) Where the company is a self-insurer there may be reimbursement:

(i) At experience rates properly developed from actual costs, not to exceed the rates of a regular insurance

## § 140.907

## 23 CFR Ch. I (4-1-01 Edition)

company for the class of employment covered, or

(ii) At the option of the company, a fixed rate of 8 percent of direct labor costs for worker compensation and public liability and property damage insurance together.

[40 FR 16057, Apr. 9, 1975, as amended at 47 FR 33955, Aug. 5, 1982; 56 FR 56578, Nov. 6, 1991]

### § 140.907 Overhead and indirect construction costs.

(a) A State may elect to reimburse the railroad company for its overhead and indirect construction costs.

(b) The FHWA will participate in these costs provided that:

(1) The costs are distributed to all applicable work orders and other functions on an equitable and uniform basis in accordance with generally accepted accounting principles;

(2) The costs included in the distribution are limited to costs actually incurred by the railroad;

(3) The costs are eligible in accordance with the Federal Acquisition Regulation (48 CFR), part 31, Contract Cost Principles and Procedures, relating to contracts with commercial organizations;

(4) The costs are considered reasonable;

(5) Records are readily available at a single location which adequately support the costs included in the distribution, the method used for distributing the costs, and the basis for determining additive rates;

(6) The rates are adjusted at least annually taking into consideration any overrecovery or underrecovery of costs; and

(7) The railroad maintains written procedures which assure proper control and distribution of the overhead and indirect construction costs.

[53 FR 18276, May 23, 1988]

### § 140.908 Materials and supplies.

(a) *Procurement.* Materials and supplies, if available, are to be furnished from company stock, except they may be obtained from other sources near the project site when available at less cost. Where 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 and proprietary products are excluded from these requirements. The company shall not be required to change its existing standards for materials used in permanent changes to its facilities.

(b) *Costs.* (1) Materials and supplies furnished from company stock shall be billed at current stock price of such new or used material at time of issue.

(2) Materials and supplies not furnished from company stock shall be billed at actual costs to the company delivered to the point of entry on the railroad company's line nearest the source of procurement.

(3) A reasonable cost of plant inspection and testing may be included in the costs of materials and supplies where 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.

(c) *Materials recovered.* (1) Materials recovered from temporary use and accepted for reuse by the company shall be credited to the project at prices charged to the job, less a consideration for loss in service life at 10 percent for rails, angle bars, tie plates and metal turnout materials and 15 percent for all other materials. Materials recovered from the permanent facility of the company that are accepted by the company for return to stock shall be credited to the project at current stock prices of such used material.

(2) Materials recovered and not accepted for reuse by the company, if determined to have a net sale value, shall be sold by the State or railroad following an opportunity for State inspection and appropriate solicitation for bids, to the highest bidder; or if the company practices a system of periodic disposal by sale, credit to the project shall be at the going prices supported by the records of the company. Where applicable, credit for materials recovered from the permanent facility in length or quantities in excess of that being placed should be reduced to reflect any increased cost of railroad operation resulting from the adjustment.