

§ 635.118

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highway, the terminus is the first interchange outside the reservation.

(f) The advertisement or call for bids on any contract for the construction of a project located on the Federal-aid system either shall include the minimum wage rates determined by the Secretary of Labor to be prevailing on the same type of work on similar construction in the immediate locality or shall provide that such rates are set out in the bidding documents and shall further specify that such rates are a part of the contract covering the project.

§ 635.118 Payroll and weekly statements.

For all projects, copies of payrolls and statements of wages paid, filed with the State as set forth in the required contract provisions for the project, are to be retained by the STD for the time period pursuant to 49 CFR part 18 for review as needed by the Federal Highway Administration, the Department of Labor, the General Accounting Office, or other agencies.

§ 635.119 False statements.

The following notice shall be posted on each Federal-aid highway project in one or more places where it is readily available to and viewable by all personnel concerned with the project:

**NOTICE TO ALL PERSONNEL ENGAGED ON
FEDERAL-AID HIGHWAY PROJECTS**

United States Code, title 18, section 1020, reads as follows:

Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the costs thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction of any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever, knowingly makes any false statement, false representation, false report, or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related

project approved by the Secretary of Transportation; or

Whoever, knowingly makes any false statement or false representation as to a material fact in any statement, certificate, or report submitted pursuant to the provisions of the Federal-aid Road Act approved July 11, 1916 (39 Stat. 355), as amended and supplemented,

Shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

§ 635.120 Changes and extra work.

(a) Following authorization to proceed with a project, all major changes in the plans and contract provisions and all major extra work shall have formal approval by the Division Administrator in advance of their effective dates. However, when emergency or unusual conditions justify, the Division Administrator may give tentative advance approval orally to such changes or extra work and ratify such approval with formal approval as soon thereafter as practicable.

(b) For non-major changes and non-major extra work, formal approval is necessary but such approval may be given retroactively at the discretion of the Division Administrator. The STD should establish and document with the Division Administrator's concurrence specific parameters as to what constitutes a non-major change and non-major extra work.

(c) Changes in contract time, as related to contract changes or extra work, should be submitted at the same time as the respective work change for approval by the Division Administrator.

(d) In establishing the method of payment for contract changes or extra work orders, force account procedures shall only be used when strictly necessary, such as when agreement cannot be reached with the contractor on the price of a new work item, or when the extent of work is unknown or is of such character that a price cannot be determined to a reasonable degree of accuracy. The reason or reasons for using force account procedures shall be documented.

(e) The STD shall perform and adequately document a cost analysis of each negotiated contract change or negotiated extra work order. The method and degree of the cost analysis shall be

subject to the approval of the Division Administrator.

(f) Proposed changes and extra work involved in nonparticipating operations that may affect the design or participating construction features of a project, shall be subject to review and concurrence by the Division Administrator.

§ 635.121 Contract time and contract time extensions.

(a) The STD should have adequate written procedures for the determination of contract time. These procedures should be submitted for approval to the Division Administrator within 6 months of the effective date of this Final Rule.

(b) Contract time extensions granted by a STD shall be subject to the concurrence of the Division Administrator and will be considered in determining the amount of Federal participation. Contract time extensions submitted for approval to the Division Administrator, shall be fully justified and adequately documented.

§ 635.122 Participation in progress payments.

(a) Federal funds will participate in the costs to the STD of construction accomplished as the work progresses, based on a request for reimbursement submitted by State transportation departments. When the contract provisions provide for payment for stockpiled materials, the amount of the reimbursement request upon which participation is based may include the appropriate value of approved specification materials delivered by the contractor at the project site or at another designated location in the vicinity of such construction, provided that:

(1) The material conforms with the requirements of the plans and specifications.

(2) The material is supported by a paid invoice or a receipt for delivery of materials. If supported by a receipt of delivery of materials, the contractor must furnish the paid invoice within a reasonable time after receiving payment from the STD; and

(3) The quantity of a stockpiled material eligible for Federal participation in any case shall not exceed the total

estimated quantity required to complete the project. The value of the stockpiled material shall not exceed the appropriate portion of the value of the contract item or items in which such materials are to be incorporated.

(b) The materials may be stockpiled by the contractor at a location not in the vicinity of the project, if the STD determines that because of required fabrication at an off-site location, it is not feasible or practicable to stockpile the materials in the vicinity of the project.

(c) In the case of a design-build project, the STD must define its procedures for making progress payments on lump sum contracts in the Request for Proposal document.

[56 FR 37004, Aug. 2, 1991, as amended at 67 FR 75925, Dec. 10, 2002]

§ 635.123 Determination and documentation of pay quantities.

(a) The STD shall have procedures in effect which will provide adequate assurance that the quantities of completed work are determined accurately and on a uniform basis throughout the State. All such determinations and all related source documents upon which payment is based shall be made a matter of record.

(b) Initial source documents pertaining to the determination of pay quantities are among those records and documents which must be retained pursuant to 49 CFR part 18.

§ 635.124 Participation in contract claim awards and settlements.

(a) The eligibility for and extent of Federal-aid participation up to the Federal statutory share in a contract claim award made by a State to a Federal-aid contractor on the basis of an arbitration or mediation proceeding, administrative board determination, court judgment, negotiated settlement, or other contract claim settlement shall be determined on a case-by-case basis. Federal funds will participate to the extent that any contract adjustments made are supported, and have a basis in terms of the contract and applicable State law, as fairly construed. Further, the basis for the adjustment and contractor compensation shall be