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SECTION B

NON-CERTIFIED AGENCY

Chapter 4 Progress Billing (Reimbursement Costs)

The non-certified local agency can submit progress billings and obtain reimbursement for work completed after a local agency agreement is executed, a prospectus has been completed, FHWA authorization of federal funding is obtained and the local agency receives a notice to proceed letter from ODOT.

A. OVERVIEW

All progress billings shall be submitted to the [Regional Local Agency Liaison](#) by the local agency in accordance with the terms of the local agency agreement.

NOTE: Billings will only be accepted after the local agency agreement is executed, a prospectus has been completed, federal authorization is obtained and the notice to proceed letter has been issued by ODOT.

The execution of the local agency agreement does not constitute approval of federal funds. The FHWA authorization of federal funds (FMIS agreement) is separate from the local agency agreement.

ODOT establishes the expenditure account (EA) upon FHWA's authorization of federal funds. The local agency is permitted to bill ODOT for project reimbursement only after the EA is established and the notice to proceed has been communicated. ODOT will not reimburse local agency costs that are submitted prior to these two steps occurring.

ODOT assigns a contract number on all federal-aid construction projects. This number identifies the project. The local agency shall use the following identifiers in project correspondence with ODOT:

- Agreement number;
- Key number; and
- Project name.

Local agencies receive federal funds on a cost reimbursement basis at the federally authorized pro-rata share limited to the amount of federal funds authorized for the project.

B. BILLING PROCEDURES FOR NON-CERTIFIED AGENCIES

Progress payments must be based on documented measurements of work performed in order for the contractor to be fairly compensated and to ensure public funds will only be expended on completed and eligible work. For payment process details, refer to ODOT's Desk Procedures in this *LAG Manual* regarding [Local Public Agency Certification Program Process for Reimbursement of Federal Funds](#).

The local agency shall submit all progress billings to the [Regional Local Agency Liaison](#) in accord with the terms of the local agency agreement.

The following is template local agency (Agency) agreement language:

Agency shall present invoices for 100 percent of actual costs incurred by Agency on behalf of the project directly to State's Regional Local Agency Liaison for review and approval. Such invoices shall identify the project and agreement number and shall itemize and explain all expenses for which reimbursement is claimed. Billings shall be presented for periods of not less than one-month duration, based on actual expenses to date. All billings received from Agency must be approved by State's Regional Local Agency Liaison prior to payment. Agency's actual costs eligible for federal-aid or state participation shall be those allowable under the provisions of Title [23 CFR](#) Parts [1.11](#), [140](#) and [710](#). Final billings shall be submitted to State for processing within three months from the end of each funding phase as follows: 1) award date of a construction contract for preliminary engineering 2) last payment for right of way acquisition and 3) third notification for construction. Partial billing (progress payment) shall be submitted to State within three months from date that costs are incurred. Final billings submitted after the three months shall not be eligible for reimbursement.

C. NUMBER AND TIMING OF SUBMITTALS

Progress billing invoices shall be numbered sequentially and submitted not more than once per month.

If the billing is prepared properly, payment should normally be received within three weeks of submittal. If payment is not received within one month, Agency should contact the [Regional Local Agency Liaison](#).

D IDENTIFYING FEDERAL-AID REIMBURSABLE AND NONREIMBURSABLE CHARGES

Reimbursement of costs eligible for FHWA participation is provided under [Title 23 of the United States Code](#) and [OMB Circular A-87](#) now referred to as 2 CFR 225 and 23 CFR 140. The following is an overview of participating and nonparticipating charges by FHWA.

No costs may be claimed for reimbursement if incurred prior to FHWA authorization to proceed with the work. All work must be programmed with FHWA.

If the Local Agency has an approved 2 CFR 225 indirect rate plan, then ODOT will reimburse the approved rate for eligible indirect costs. Otherwise, ODOT will only reimburse direct costs.

If a local agency wants to recoup a portion of the its indirect costs, it must develop and maintain an indirect cost rate as described in [2 CFR 225 Appendix E](#). Developing an indirect cost rate may also require the development of a Cost Allocation Plan as described in [2 CFR 225 Appendix C](#). For more detailed information on recouping indirect costs on federal projects, refer to [Section C, Chapter 5 Progress Billings](#) in this *LAG Manual*.

1. PARTICIPATING COSTS CRITERIA

The following criteria must be met for costs to be considered participating and therefore reimbursable, 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 of federal funds;
- 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.

Some examples of participating costs for federal-aid projects include, but are not limited to the following items:

a. Labor

Costs to assess project impacts, develop alternatives, design, survey, prepare plans, appraise right of way, inspect construction activities, audit agreements, etc.

b. Travel and Per Diem

Travel costs for employees involved in any participating activity related to the project.

c. Materials

Costs for qualified materials incorporated into a federally approved project.

d. Supplies

Costs for supplies that are purchased and consumed entirely on a federally approved project. Such supplies might include cylinder molds, drafting supplies, film (including costs related to developing and printing), paint (marking spray), survey supplies and long distance telephone calls identified by project.

e. Services

Material testing, document reproduction, mapping and equipment usage charges may be participating, but the costs will be based upon rates set by FHWA.

2. STANDARDS FOR SELECTED ITEMS OF COST

The following standards are used for determining the eligibility of selected items of cost. In general, costs must be reasonable, necessary and allocable to the specific project. The eligibility 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 in direct 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.

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 completion 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 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 (1) 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 (1) 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 part C above.

3. PARTICIPATING FUNCTIONS

Classifications of work programmed with FHWA and eligible for federal-aid reimbursement include the following:

a. Preliminary Engineering

Preliminary Engineering work, including the following activities, is generally eligible for federal-aid:

- Design;
- Surveying and mapping;
- Identifying environmental impacts;
- Developing environmental mitigation;
- Sinking test holes;
- Making foundation investigations;
- Preparing plans, specifications and estimates (PS&E);
- Centerline and right of way drawing preparation;
- Incidental construction staking (to the extent such staking is necessary to review construction plans);
- Other related preliminary work.

Preliminary Engineering work may also include traffic counts, studies undertaken to determine traffic demands, holding of public hearings, preparation of right of way cost estimates, legal descriptions 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 beginning of construction. The date of notice to proceed for the construction contract is the cutoff for charging to preliminary engineering.

During the construction phase of a project, when a major change takes place that requires additional preliminary engineering work, the preliminary engineering phase may be reopened on a case-by-case basis after approval from FHWA.

Also, any construction staking performed in advance of the notice to proceed should be charged to construction engineering, not preliminary engineering.

b. Acquisition of Right of Way

Activities related to the acquisition of right of way are participating functions such as the following:

- Continued 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;
- Other related labor expenses.

Other items related to right of way that are generally participating, include the following:

- Excess land (appraised value) including uneconomic remnant;
- Improvements (appraised salvage value);
- Judgments in condemnation cases that are not appealed when the attorney's closing report indicated a basis for appeal – the amount in excess of the review appraiser's determination of value is nonparticipating;
- Landowner costs:
 - Attorney fees;
 - Witness fees;
 - Expert witness fees;
 - Similar costs to a landowner based on value of the services received and are paid by the local agency in connection with acquisition of right 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

Construction Engineering is generally considered participating and might include the following activities:

- Construction contract administration;
- The inspection of construction work;

- Testing of materials incorporated into construction, checking shop drawings;
- Measurement and preparation of progress and final estimates;
- Preparing “as-built” drawings.

Construction engineering costs are generally incurred only after approval of the PS&E and after a contract number is issued.

d. Administrative Settlement Costs - Contract Claims

Services related to the review and defense of claims against a federal-aid project are participating functions.

e. Miscellaneous Functions

Costs incurred for other activities which are properly attributable to and for the benefit of, a federal-aid project, but are not assignable to any of the previously defined functions, might be considered participating functions.

f. Construction Costs for Other than Contractor Payments

The following types of construction costs are generally authorized participating costs:

- New 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. Federal participation will not be requested for used items furnished by the local agency.
- Striping and pavement marking work performed by local forces.
- Construction engineering, approved material furnished by the local agency, approved work performed by local forces, are eligible for participation in accordance with the requirements of this chapter.

4. NONPARTICIPATING COSTS CRITERIA

For specific projects, the following items are not eligible for federal-aid participation:

a. Equipment Purchase and Repair

Equipment purchases are nonparticipating unless specifically approved by FHWA, e.g., engineering, safety or office equipment and supplies.

b. Supplies

Supplies purchased and consumed on a number of projects or for the general management or operation of the organizational unit are nonparticipating. For example, costs for supplies used in general maintenance or in administration such as signs, small tools and used temporary traffic control devices are nonparticipating.

c. Office Rental

Office costs including utilities and telephone service, unless FHWA specifically approves such costs; for example, a project office set up solely for a specific project.

d. Indirect Labor

Labor activities pertaining to the general operation of an entity or local agency and activities not directly related to the project nor programmed with FHWA are all nonparticipating.

e. Travel and Per Diem

Any travel costs for employees unrelated to a specific federal-aid project are nonparticipating.

E. UTILITY RELOCATIONS, ADJUSTMENTS AND REIMBURSEMENT

Federal participation for utility relocations is subject to the provisions of [23 CFR 645, Subpart A](#). For additional information regarding utility relocation see [Chapter 13, Utility and Railroad Programs in the Non-Certified Section](#) of this *LAG Manual*.

There are four eligibility criteria that are presented in 23 CFR 645, Subpart A. Federal Funds may aid in relocation costs necessitated by highway construction if either one of the four criteria are met:

- The utility has a property interest in its present location;
- The State has some legal or legislative authority to pay for relocation costs;
- The Utility is municipally owned and occupies public right of way; or
- The utility relocation involves implementing safety corrective measures to reduce roadside hazards of utility facilities to highway users.

Another website that provides a more detailed description of utility relocation reimbursement is operated by the FHWA. This [Right of Way and Utility guidance website](#) provides clear, detailed descriptions of the CFRs and is very helpful on this subject.

F. REIMBURSEMENT FOR RAILROAD WORK

Costs must be incurred per [23 CFR 646, Subpart B](#) and will be reimbursed in accordance with [23 CFR 140, Subpart I](#). Further details regarding railroad work is available in [Chapter 13, Utility and Railroad Programs in the Non-Certified Section of this LAG Manual](#).

G. OTHER ALLOWABLE COSTS SUBJECT TO FHWA'S APPROVAL

Although some expenditure categories are not mentioned specifically in [23 CFR 140, Subpart I, Reimbursement](#) as eligible for federal participation, local agencies wishing to seek federal participation may request approval from the FHWA prior to billing. The expenditures that relate to the federal-aid project should be well identified through proper documentation.

H. OTHER UNALLOWABLE COSTS

Other unallowable costs include those costs identified in [OMB Circular A-87](#), renamed 2 CFR 225, such as:

1. Bad Debts

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

2. Contingencies

Contributions to a contingency reserve or any similar provisions for unforeseen events are unallowable.

3. Contributions and Donations

Donations to a project are unallowable as a cost and the local agency cannot be reimbursed for donations. Note, donations may be allowed on projects; local agencies should contact the [Regional Local Agency Liaison](#) for required pre-approval.

4. Entertainment

Costs of amusements, social activities and incidental costs relating thereto, such as meals, beverages, lodgings, rentals, transportation and gratuities, are unallowable.

5. Fines and Penalties

Costs resulting from violations of or failure to comply with federal, state and local laws and regulations are unallowable.

6. Governor's Expenses

The salaries and expense of the state office of the governor or the chief executive of a political subdivision are considered a cost of general state or local government and are unallowable.

7. 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, such as loans through Oregon Transportation Infrastructure Bank (OTIB) or the Oregon Economic and Community Development Agency.

8. 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.

9. Under-recovery of Costs under Grant Agreements

Any excess of cost over the federal contribution under one grant agreement is unallowable under other grant agreements.

I. FEDERAL-AID REIMBURSEMENT PROCESS

For specific forms and processes used for reimbursement purposes, contact the [Regional Local Agency Liaison](#).