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# SECTION C

# CERTIFIED AGENCY

## Chapter 5

## Progress Billing (Reimbursement Costs)

The certified local agency can submit progress billings and obtain reimbursement for work completed after the following occurs:

- A local agency master certification agreement is executed.
- A supplemental project agreement is also executed between the local agency and ODOT.
- FHWA authorization of federal funding is obtained.
- 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 master certification agreement and supplemental project agreement does not constitute authorization of federal funds. FHWA authorization of federal funds is separate from the local agency agreement process.

The expenditure account (EA) is established upon FHWA's authorization of federal funds. The EA permits billing by ODOT to the project.

The local agency shall use the following identifiers in all project correspondence with ODOT:

- Agreement number
- Key number
- 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. PROGRESS PAYMENTS PROCEDURES FOR CERTIFIED AGENCIES**

### **1. Local Agency Responsibilities**

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

The local agency shall also submit all progress billings to the [Regional Local Agency Liaison](#) in accord with the terms of the local agency agreement detailed below in an excerpt of the language within the local agency (Agency) agreement with ODOT regarding progress billing requirements.

Agency shall present invoices for 100 percent of actual costs incurred by Agency on behalf of the Project directly to State's 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 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.

### **2. ODOT'S Responsibilities**

ODOT is responsible for processing and making payments to certified local agencies for 100 percent of actual and eligible costs incurred by the certified local agency on behalf of the project as outlined in the Master Certification Agreement, the applicable supplemental project agreement and [ODOT's Desk Procedures](#) regarding the Local Public Agency Certification Program Process for Reimbursement of Federal Funds.

## **C. IDENTIFYING FEDERAL-AID REIMBURSABLE AND NON-REIMBURSABLE CHARGES**

Reimbursement of costs eligible for FHWA's participation is provided under Title 23, [OMB Circular A-87](#) now referred to as 2 CFR 225 and [23 CFR 140](#). The following is an overview of federal reimbursement policies.

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 agency's 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](#).

## 1. Recouping Indirect Costs for Federally Funded Projects

In the 1980's the federal government decided that in order to effectively continue to rely on state and local agencies to administer projects with federal funds, the federal government should contribute to the costs of maintaining programs at the state and local levels.

In order for state and local governments to recoup some of the costs of maintaining departments capable of delivering federally funded projects, an agency must develop an indirect cost rate to apply towards federal jobs. The Office of Management and Budget drafted [Circular A-87, now referred to as 2 CFR 225](#) describing how to develop such a rate.

2 CFR 225 authorizes the federal government to pay state and local governments for their indirect costs associated with delivering and managing federally funded projects. Indirect costs are costs that benefit more than one project, such as administration, management, computer support departments, and central services departments. For a complete list and more detailed definition, see [2 CFR 225](#).

If a local agency is interested in pursuing 2 CFR 225 authorization to recoup some of its indirect costs, the local agency must follow the steps outlined in the circular for an indirect cost rate and if necessary, developing a cost allocation plan. The Federal Department of Health and Human Services (HHS) also developed an implementation guide titled "[\*A Guide For State, Local And Indian Tribal Governments, Cost Principles And Procedures For Developing Cost Allocation Plans And Indirect Cost Rates For Agreements With The Federal Government, Implementation Guide For Office Of Management And Budget Circular A-87,\*](#)" available at [Section C Chapter 5 Appendix B](#). Once the rate has been developed and approved by the appropriate federal agency when necessary, the local agency can apply the rate against all federal bills for projects within the specific department.

The benefit of maintaining an indirect rate is that as a local agency requesting federal funds, the indirect costs associated with managing that project are includable costs in the cost estimation. This could mean more money for the individual local agency.

However, be aware that the federal government only provides a limited amount of funding for transportation, so once the total amount is allotted; having an indirect rate won't increase the budgetary amount the local agency receives. However, applying the rate will allow for a quicker access to the funds.

If the local agency has a central services department, it is possible to include some costs to federal projects if the local agency develops an indirect cost allocation plan and then applies the indirect cost allocation plan to develop its indirect cost rate. The indirect cost allocation plan is a separate document that would have to be maintained and updated along with the indirect rate.

### a. Developing an Indirect Cost Rate

To recoup indirect costs on federal projects, the local agency is responsible for developing an indirect rate to apply towards federal projects. The rate is a calculated percentage of indirect costs that can be attributable to maintaining a department that successfully completes federal projects. It is the ratio of the indirect costs to a

direct cost base. In other words, the portion of administrative, overhead, central services resources consumed that can adequately be assigned to a particular department or agency that has federal projects.

A separate indirect rate is usually necessary for each department or agency of the governmental unit claiming indirect costs because the amount of indirect costs consumed by each department or agency will be different. Examples of this would be the administration of a small two person department could be much less than the administration and management costs of a large, 50 person unit. Costs such as system maintenance, utilities, HR services and other costs would also differ depending on the type of agency or department, the number of people in the office, and the systems needed to operate the department or agency.

The assignment of indirect costs can be determined using a number of different accounting methods laid out in the circular, including:

1. The simplified rate- used when a department or agency has only one major function or where all its major functions benefit from the indirect costs at approximately the same degree. This rate is good to use for agencies where the level of federal awards is relatively small.
2. Multiple allocation base methods – when a governmental department or agency has several major functions which benefit from its indirect costs in varying degrees. In order to appropriately assign indirect costs, a method of pooling costs in individual buckets should be used.
3. Special indirect cost rate – when a department or agency’s units within the whole use indirect costs at very different levels and using methods 1 or 2 would not adequately take into account the cost usages appropriately.
4. Restricted rate – used when a federal award which restricts the reimbursement of certain indirect costs.

For additional information regarding how to develop and apply the appropriate methods, see 2 CFR 225 Appendix E.

#### **b. Developing an Indirect Cost Allocation Plan**

A local agency could develop an indirect cost allocation plan if the agency’s has a central services department and wants a portion of those central services costs to be distributed to federal projects. The results of allocations assigned under this plan will aid in the agency’s or departments complete development of the indirect cost rate as discussed in section A above.

For more detailed information on developing and maintaining a cost allocation plan, refer to [2 CFR 225 Appendix C](#) and the A-87 Brochure titled “*A Guide For State, Local And Indian Tribal Governments, Cost Principles And Procedures For Developing Cost Allocation Plans And Indirect Cost Rates For Agreements With The Federal Government, Implementation Guide For Office Of Management And Budget Circular A-87,*” available at Section C Chapter 5 Appendix B of the *Lag Manual*.

#### **c. Audit Requirements**

The indirect cost plan is subject to audit during the local agency’s program review. Though most agencies are not required submit the agency’s indirect cost plan and if applicable, the indirect cost allocation plan, all plans must be maintained and updated annually and if so requested by any federal agency, the local agency must produce the plans and all documentation for review and approval. It is required that all supporting documentation used in compiling and maintaining the plan or plan be retained at the local agency to ensure compliance with federal regulations.

## 2. Definitions

In order to communicate effectively regarding billing and costs, it is important to clarify the various definitions of costs used throughout this chapter as well as 23 CFR 225 and other reimbursement statutes.

### a. Total cost of federal awards

Total cost is comprised of allowable direct costs plus the allocable portion of allowable indirect costs, less applicable credits – 2 CFR 225 appendix A Section (D)(1).

### b. Actual costs

Actual costs are costs that agency actually expends funds on. Examples of actual costs include:

- Engineering services 23 CFR 1.11.
- ROW for purposes of highway projects 23 CFR 1.23.
- Administrative Settlement Costs 23 CFR 140.505.
- Bond payments for interstate projects 23 CFR 140.602.
- Project Related Audit expenses 23 CFR 140.801.
- Railroad project costs 23 CFR 900.
- Real estate costs and ROW for STIP projects 23 CFR 710.203.

### c. Direct costs

Direct costs are those costs that can be identified and attributed specifically with a particular project only and can be items that don't actually expend funds, such as depreciation -- 23 CFR 225 Appendix A section (D)(E). Examples of direct costs include:

- Compensation of employees for time spent on federally funded project.
- Costs of materials consumed, acquired or expended specifically for the purpose of a federally funded project.
- Equipment and other approved capital expenditures.
- Travel expense needed to carry out federal award.

### d. Indirect costs

Indirect costs are those costs incurred for a common or joint purpose benefiting more than one project and not readily assignable to the project specifically benefited without effort disproportionate to the results achieved -- 23 CFR 225 Appendix A section (D)(F). Examples of indirect costs allowable under 23 CFR 225 include:

- State/local-wide central services costs.
- General administration.
- Accounting and personnel services.
- Depreciation or use allowances on buildings and equipment.
- Costs of operating and maintaining facilities 23 CFR 225 Appendix E section A(4).

### e. Eligible costs

Eligible costs are those costs include all the possible costs that the federal government will reimburse.

### f. Ineligible costs

Ineligible costs are costs that the federal government will not reimburse for. Some examples of these types of costs include:

- Lobbying costs
- Bad debts
- Contributions and donations
- Fines and penalties for failing to comply with law

This is not an exhaustive list, please refer to 23 CFR 225, (list other restricting statutes) for a complete list.

**g. Allowable costs**

Those costs:

- Necessary and reasonable for proper and efficient performance and administration of federal awards.
- Allocable to federal awards under 23 CFR 225 (includes direct and indirect costs).
- Authorized or not prohibited under state or local laws or regulations.
- Conform to any limitations or exclusions set forth in 23 CFR 225, federal law, terms and conditions of agreement or other governing regulation as to types and amounts of cost items.
- Consistent with policies, regulations, and procedures that apply uniformly to both federal awards and other activities of the governmental unit.
- Accorded consistent treatment with other federal awards.
- Determined in accordance with generally accepted accounting principles.
- Not to be included as a cost or used to meet cost sharing or matching requirements of any other federal award.
- That are the net of all applicable credits.
- Adequately documented. 23 CFR 225 Appendix A(C).

**h. Unallowable costs**

Unallowable costs are those costs that can not be billed to a federal job even with an approved Cost Allocation Plan and/or an Indirect Cost Rate Proposal unless a specific agreement expressly authorizes them.

**i. Allocable costs**

Allocable costs are those costs allocable to a particular project assignable to the project in accordance with relative benefits received.

**j. Participating Costs**

Participating costs are those costs that the federal government has agreed to, or does pay on a specific project. All participating costs are eligible costs, but depending on the agreement and the results of the project management, not all eligible costs are participating.

**k. Nonparticipating costs**

Those costs that are eligible costs under the federal government payment scheme in general, but are not being reimbursed under the terms of a specific agreement, or result in not being paid by federal government due to actions by state or local agencies. Some ways in which eligible costs become non-participatory include:

- If the federal funds are limited, some eligible costs will be coded as non-participatory as a means of narrowing the items that the federal money will reimburse for.
- If an agency that is managing any part of the project makes mistakes, like failing to comply with engineering standards or by contract terms, items that were eligible and participating become nonparticipating by the nature of the noncompliance.

- If an agency responsible for the project begins work on the project prior to authorization, costs that were incurred before the authorization become non-participatory.

### **3. 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, 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.

#### **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.
  - 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.
  - 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 \(a\) of part 3](#) above.

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

## 4. Eligible Costs

Classifications of work programmed with FHWA and eligible for federal-aid 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 plan 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 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, PS&E approval, or the date construction plan changes are completed prior to the beginning of construction, are also included. 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 preliminary engineering efforts, the appropriate job may be reopened on a case-by-case basis after approval from FHWA.

Also, any construction staking performed in advance of the award 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, including the following:

- 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 that are not appealed when the attorney's closing report indicated a basis for appeal, but 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 supervision.
- 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 PS&E and after a contract number is issued. Construction engineering costs are also incurred prior to the following dates:

- The completion date of the final contract pay estimate and its submission to the contractor.
- The final date of charges for required material testing.
- The 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. Highway Planning**

Highway planning includes the orderly and continuing assembly and analysis of information about highways, such as the history of highway development and their extent, dimensions and conditions, use, economic and social effects, costs and future needs. For planning activities to be participating and therefore funded with [Surface Transportation Program \(STP\)](#) funds, they must be part of ODOT's Unified Planning Work Program (or the [Metropolitan Planning Organization's \(MPO's\)](#) annual work program for planning within an MPO boundary. Normally these are not standalone projects.

**e. Research and Development**

Research and development involves the search for more complete knowledge of the characteristics of the highway system and translating research results into practice. For research and development activities to be participating and therefore funded with [STP](#) funds, they must be part of ODOT's Unified Planning Work Program (or the [MPO's](#) annual work program for planning within an MPO boundary. Normally these are not standalone projects.

**f. Administrative Settlement Costs - Contract Claims**

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

**g. Miscellaneous Functions**

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

**h. Construction Costs for Other than Contractor Payments**

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

- 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. Federal participation will not be requested for used items furnished by the local agency).
- Striping and pavement marking work performed by local forces.

Other items not specifically identified in this list such as construction engineering costs, material furnished by the local agency, work performed by local forces, are eligible for participation in accordance with the requirements of this chapter.

## **6. Participating Cost Criteria**

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.

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.

## **7. Allowable Costs Criteria**

There is a list of 43 items that could be included as allowable costs within the 2 CFR 225. 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 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: cloth tape, cylinder molds, drafting supplies, film (including costs related to developing and printing), hubs, paint (marking spray), stakes, long distance telephone calls identified by project, royalty on materials and initial or new costs of temporary traffic control devices.

### **e. Services**

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

## **8. Unallowable and/or Ineligible Costs**

Unallowable costs include those costs identified in 2 CFR 225, such as the following items.

### **a. Bad Debts**

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

### **b. Contingencies**

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

### **c. Contributions and Donations**

Donations to a project are unallowable.

### **d. Entertainment**

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

### **e. Fines and Penalties**

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

### **f. 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.

**g. 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.

**h. 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.

**i. 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.

## **D. 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 Program, in the Certified Section of this *LAG Manual*.

## **E. 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](#). 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 any 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.
- 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 website provides clear, detailed descriptions of the CFRs and is very helpful on this subject. If you would like to gain access, [please click here](#) or visit this website.

Further details regarding railroad work is available in [Chapter 13, Utility and Railroad Program](#), in the Certified Section of this *LAG Manual*.