



# **ODOT Railroad Audit Circular No. 3**

## **Employee Labor Costs for Railroads**

Release Date: January 1, 2010

### **Application:**

Unless and until revised by ODOT, this Circular is effective for actual costs incurred by railroads on projects authorized by ODOT or ORDC on or after January 1, 2010.

# RAILROAD AUDIT CIRCULAR No. 3



## OHIO DEPARTMENT OF TRANSPORTATION

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**SUBJECT:** Labor Costs

**Effective Date:** January 1, 2010

**Last Updated:** June 11, 2009

### I. DEFINITIONS

As used in this Circular—

1. "Average rates" refers to a weighted arithmetic average of hourly wages paid to a particular class or title of employee. Employees pooled into one classification should essentially have the same or similar job function or duties.
2. "Straight Time" (ST) refers to hours worked at an employee's standard rate of pay.
3. "Overtime" (OT) refers to any hours worked in excess of a standard threshold for employees paid on an hourly basis, typically 40 hours per week or 8-10 hours in a given day. Generally, overtime is paid at 1.5 times the standard rate.
4. "Double Time" (DT) refers to any hours worked in excess of a threshold beyond overtime for employees paid on an hourly basis. For example, some organizations guarantee double time pay on Sundays or holidays. Generally, double time is paid at two times the standard rate.
5. "Premium" refers to payments to an employee in excess of the standard "straight time" rate. For example, an employee's straight time rate is \$10 per hour. Therefore, the overtime rate for this individual is \$15 per hour. The additional \$5 per hour paid to this individual in excess of the straight time rate is "overtime premium."
6. "Floor checks" are physical observations of work areas typically performed by auditors. The purpose of a floor check is to ensure that employees are working, performing duties relevant to their job specifications, and charging time to the appropriate project or indirect account. Floor checks are often unannounced.
7. "Fringe Benefits" are compensation paid on behalf of employees by the company in addition to salaries and wages. Examples include paid leave, insurance, pensions, social security, Medicare, unemployment taxes, workers compensation, and retirement matching.
8. "Upcharges" refer to any wages or stipends paid to an employee that are not based upon actual hours worked. For example, if any employee is guaranteed eight (8) hours of pay on a given day, and the employee actually worked five (5) hours, the 3 hours paid-but-not-worked would be considered an upcharge. Additionally, if the employee receives supplemental pay for working in adverse weather conditions, working alone, or other similar circumstances, these costs would be considered upcharges.
9. "DCAAP 7641.90" refers to Defense Contract Audit Agency Pamphlet 7641.90, Information for Contractors. Specifically, Chapter 2-302 addresses the standards set forth by the DCAA with respect

to proper timekeeping procedures and labor charging systems of prospective contractors. A broader definition of the DCAA is available in ODOT Railroad Audit Circular No. 1.

## II. ISSUE

During the course of an incurred cost audit, auditors may encounter significant labor and overhead costs. The following provides guidelines set forth in 23 CFR 140.906 pertaining to labor costs and overhead. More definitive overhead guidance is available in ODOT Railroad Audit Circular No. 1.

Per FAR 31.201-3(a), "the burden of proof shall be upon the contractor to establish that such cost is reasonable." The following also provides interpretive guidelines with respect to reasonableness as defined by ODOT.

## III. ALLOWABILITY

- A. **Labor Costs.** Salaries, wages, and related expenses paid by the railroad to employees for time working directly on ODOT and ORDC projects are reimbursable at actual or average rates, provided that costs are supported by adequate records. This includes direct labor costs associated with preliminary engineering, construction engineering, right-of-way, and force account construction. Salaries and expenses paid to employees normally employed in the overhead of the railroad are reimbursable for time worked directly on the project, if such work could not be adequately completed by individuals who work outside the overhead of the railroad.
- B. **Adequate Labor Records.** During the course of an incurred cost audit, auditors will test labor charges associated with the project(s) being audited. The guidelines set forth in DCAAP 7641.90, Chapter 2-302, *Labor Charging System*, provide an outline of adequate timekeeping methods applicable to railroad work. Key elements of this pamphlet include timekeeping preparation, timekeeping policies, floor checks, and penalties for mischarging labor.
- C. **Labor Additives.** Labor surcharges are reimbursable for workers compensation insurance, public liability and property damage insurance, and such fringe benefits as the company has established for the benefit of its employees. These surcharges must be reimbursed at actual cost or an additive rate, provided that the additive rate is:
  - Based on the historical cost data of the company;
  - Representative of actual costs incurred;
  - Adjusted at least annually, taking in consideration over- or under- applied costs for the preceding period; and
  - Approved by ODOT or the railroad's home state Department of Transportation and the FHWA.

**Reasonable Labor Costs.** 23 CFR 140.906(a) states: "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." Due to the materiality of labor costs billed to ODOT and the ORDC due to overtime, double time, and upcharges, this issue is being addressed with greater scrutiny. The overarching principle of reasonableness with respect to labor costs is defined by ODOT as, "the minimum labor cost reasonably necessary to achieve project completion." Additionally, 23 CFR 646.216(f)(2)(i) states, "Reimbursement will not be made for any increased costs due to changes in plans for the convenience of the contractor." Reasonableness is therefore not determined by compliance with union negotiated labor agreements, continuing contracts, or contracts awarded to the lowest bidder. The following issues will be addressed in accordance with this interpretation.

- Costs of upcharges charged directly to projects.
- Overtime or double time that is not essential to project completion or pre-approved.
- Overtime, double time, or other wage premiums incurred as a result of poor time or project management. For example, overtime or double time costs incurred solely at the discretion of the railroad that results in early project completion, timely project completion when the project was started late, working weekends or uncharacteristically lengthy shifts when unnecessary.
- An imbalance in the number of overtime or double time hours charged to State contracts relative to those of work performed for the railroad.
- Improper assignment or allocation of overtime or double time costs when working on multiple projects during the same pay period.
- Employee compensation in excess of that being paid for similar non-Government work under comparable circumstances, per FAR 31.205-6(b)(1) and DCAA CAM 6-409.
- Any costs incurred based on an elective choice by the railroad that results in additional, unnecessary costs billed to ODOT or the ORDC.

**Upcharges.** Time charged but not worked directly on the project, regardless of whether it is permissible by union agreement, continuing contract, or lowest bidder, is not reimbursable as a direct cost, unless required by project agreement. Because unworked labor cannot be traced directly to a specific project, these wages must be classified as indirect labor. When conditions exist on the project which require the railroad to pay upcharges to an employee directly related to work performed, these costs may be reimbursed provided the railroad can substantiate that conditions exist on the project to warrant the payment. Overhead may be applied to these upcharges provided that the method used to compute the overhead rate is consistent with the method used to apply the rate. For example, assume that ABC Railroad calculates its overhead using direct labor cost as its cost allocation base (denominator). In this instance, ABC Railroad may not apply overhead to upcharges, as they are not included in the cost base.

#### IV. REFERENCES

- FAR 31.201-3 (Determining Reasonableness)
- FAR 31.201-6(c)(5) (Accounting for Unallowable Costs)
- FAR 31.205-6(b)(1) (Compensation for Personal Services)
- 23 CFR 140.906 (Railroad Reimbursement - Labor Costs)
- DCAAP 7641.90, Chapter 2-302 (Information for Contractors - Labor Charging System)
- DCAA CAM 6-409 (Evaluation of Overtime, Extra-Pay Shifts, and Multi-Shift Work)
- 23 CFR 646.216(f)(2)(i) (Railroads: General Procedures - Construction)
- ODOT Railroad Audit Circular No. 1 (Definitions, Audit Authority, and General Guidance Regarding the Computation of Overhead Rates)