

# Frequently Asked Questions – ODOT Railroad Audit Circulars

## General

**Q: The Railroad Audit Circulars are in effect for projects *authorized* on or after January 1, 2010. What constitutes authorization?**

A: For projects ordered by the Public Utilities Commission of Ohio (PUCO), this means the *PUCO Order date*. For other ODOT and ORDC projects, this means the date of written authorization to proceed with construction. Projects authorized before January 1, 2010 are not subject to the Circulars; however, please note that Federal and State regulations apply to all projects, regardless of authorization date. The railroad is also bound by the terms of applicable Master and Projects agreements.

**Q: Do the Circulars deviate from Federal regulations?**

A: The Circulars do not deviate from explicit Federal guidelines; however, in areas in which the Federal guidelines are silent, ODOT has developed policies conforming to one or more of the following:

- Generally Accepted Government Auditing Standards (GAGAS),
- Rulings by the Federal Highway Administration (FHWA),
- Standards used in conducting audits by other State DOTs, or
- Standards used in other ODOT programs.

## Circular No. 1 – Definitions, Audit Authority, and Guidance for Computing Overhead Rates

**Q: ODOT has elected not to reimburse the railroads for “overhead and indirect construction costs.” Therefore, what indirect costs are eligible?**

A: In accordance with 48 CFR 140.906(b), allowable indirect costs include fringe benefits and public liability/property damage insurance. Fringe benefits generally include:

- Payroll taxes, such as FICA, FUTA, SUTA, Workers’ Compensation, and Medicare (where applicable);
- Leave pay, such as holiday, vacation, personal, and sick leave;
- Railroad Retirement and Unemployment Insurance;
- Small Tools (not a fringe benefit *per se*, but a reimbursable overhead component at ODOT);
- Training and Safety; and
- Other company-paid benefits afforded by union-negotiated agreement or established company policy.

Indirect costs incurred by the railroad for administrative purposes, such as management salaries, occupancy costs, utilities, taxes, advertising, indirect travel, indirect vehicle and equipment costs, depreciation and amortization, computer costs, and other costs incurred in the general operation of the railroad, are considered “overhead and indirect construction costs.” These costs are not eligible for reimbursement.

**Q: Are overhead (burden) rates effective for the life of a project?**

A: No. The railroad and its subconsultants are required to use the overhead rates approved and in effect at the time labor costs are incurred. Therefore, if the railroad’s (or its subs’) rates change, making these adjustments to rates on invoices is required. For example, if ODOT accepts overhead rates for a railroad, the new rates should be implemented within a reasonable time frame. The railroad should not use old rates for the duration of the project/contract.

**Circular No. 2 – Meals, Lodging and Transportation**

**Q: Section IV requires that per diem expenses in excess of \$75 be supported by a receipt. Why is this necessary if the payment is a per diem?**

A: This requirement is codified in the Federal Travel Regulation, §301-11.25. The purpose of this policy is to ensure that reimbursement is necessary for the cost(s) claimed. For example, assume that an individual in travel status lodges with family while on a business trip. Although the employee is eligible for lodging reimbursement, the employee did not incur lodging costs. Therefore, claiming a lodging per diem on a trip in which the employee did not incur lodging costs would not be a prudent use of taxpayer dollars.

**Q: Are taxes included in the lodging portion of the per diem rate?**

A: No. A railroad may include these expenses above the cost of lodging.

**Circular No. 3 – Employee Labor Costs**

**Q: On what types of labor costs is ODOT placing additional scrutiny?**

A: In review of projects, ODOT has observed labor costs incurred by railroads and their subcontractors displaying the following characteristics –

- Substantial overtime hours,
- Days worked strictly on overtime,
- Inconsistent distribution of overtime hours,
- Charging of all overtime to ODOT/ORDC projects when multiple projects are worked, or
- Large fluctuations in use of overtime.

Projects demonstrating these characteristics may be subject to additional review.

#### **Circular No. 4 – Subcontracted Costs**

**Q: Can ODOT address the cost recovery process in situations in which the subcontractor does not receive timely payment from the railroad?**

A: No. ODOT does not have contractual or legal authority to dictate reimbursement between two entities external to ODOT.

**Q: ODOT has limited fixed fees for subcontractors at 10%. What is the basis for this limitation?**

A: Per 23 CFR 140.216(f), construction performed under a continuing contract must be at reasonable cost. Because the Federal regulations provide no requirement that cost be a factor in the selection of vendors for continuing contracts, no explicit competition exists in the marketplace when selecting these vendors. Therefore, individual cost elements within the continuing contract must be examined by auditors to determine if the costs are a prudent use of taxpayer dollars. In light of this, ODOT examined the fees (profit) paid to other types of vendors working directly for ODOT under “cost-plus” contracts. Our analysis showed that the closest-fitting model was that used by ODOT’s Consultant Services. Under this model, fee structures are pre-determined largely based upon the firm’s expertise and the level of complexity of the project. For example, a bridge inspection may garner a 8% net fee; whereas a major bridge design may earn a consultant a 12% fee. Therefore, based upon the fee structure used by Consultant Services, a maximum fee of 10% was determined to be reasonable, based upon the complexity of sign and signal projects.

**Q: How will ODOT’s 10% maximum fee policy affect existing continuing contracts?**

A: For continuing contracts which were executed prior to January 1, 2010, ODOT will not enforce the 10% maximum fee. However, any contracts executed *or renewed* on or after January 1, 2010 will be subject to the 10% maximum fee. If the railroad elects to enter into an agreement after January 1, 2010 in which the fee exceeds 10%, any amounts above 10% are ineligible for reimbursement. However, any costs claimed on existing continuing contracts are still subject to reasonableness, and audits will be performed to the terms of the contract.

**Q: ODOT requires that ODOT-prequalified consultants contracted with railroads use overhead rates approved by ODOT. Are these rates publicly available?**

A: No. ODOT does not publish the rates of consultants. However, ODOT will confirm approved rates provided by the consultant to the railroad upon request, if the consultant is under contract with the railroad.

**Q: Construction services of a “minor dollar amount” do not require bids or a continuing contract. What constitutes a “minor dollar amount?”**

A: \$5,000 per vendor per project.

**Q: When soliciting bids for construction, our railroad did not receive 3 responsive bids. What are my options?**

A: The railroad must solicit bids a second time. ODOT recommends soliciting bids from a larger number of qualified contractors.

**Circular No. 5 – Final Invoicing Procedures for Railroads**

**Q: ODOT is requiring an “audit packet” for all projects with claimed costs in excess of \$200,000. Does this mean that all projects in excess of this threshold will be audited?**

A: No. All projects exceeding the threshold will be reviewed to some extent; however, this does not infer that all of those projects will be audited. Conversely, this does not mean that projects under \$200,000 will not be audited. The \$200,000 amount was selected because it represents a material project. This amount may change in the future based upon fluctuating project costs and ODOT’s resources.

**Q: If a project has multiple funding sources, does the \$200,000 audit packet threshold apply to total project costs, or the amount billed to ODOT/ORDC?**

A: The \$200,000 threshold applies to the amount billed to ODOT/ORDC.

**Q: ODOT is requesting that copies of continuing contracts with vendors be submitted with the final invoice, if not already on file. This is a burdensome request. Is there an acceptable alternative?**

A: ODOT auditors are required to verify that cost invoiced are actually incurred, reasonable, and in compliance with the contract(s) and applicable laws and regulations. Review of continuing contracts is paramount in making these determinations. It is recommended that the railroad supply ODOT/ORDC with copies of contracts prior to award. If a contract is supplied subsequent to award, the railroad may be burdened with costs charged by the subcontractor that are not reimbursable by ODOT/ORDC.

**Q: Our expense reports are submitted electronically, thus do not include original signatures. Will these be accepted?**

A: Electronic approvals of expense reports by the supervisor are sufficient. However, be advised that actual cost reimbursements should be supported by source documents to substantiate the costs claimed by the employee. Generally, from an audit perspective, if expense reports are not signed by the employee and a supervisor, this represents an internal control weakness.