



UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

CIVIL DIVISION

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Mr. August Schofer
Regional Federal Highway Administrator
Room 1633, Federal Building
31 Hopkins Plaza
Baltimore, Maryland 21201

Dear Mr. Schofer:

We are currently reviewing, in several States, selected aspects of several Federal Highway Administration (FHWA) projects to provide emergency communication systems to assist motorists on the Interstate System. As you know, we have recently completed a review of the motorist-aid system on the Maryland portion of the Capital Beltway (Interstate route I-495). While we anticipate that the results of the review of the Capital Beltway system will be included in an overall report, we noted certain matters which we believe require your attention at this time. *ID*

Our review showed that liquidated damages that have accrued to the State have not been considered in determining the amount eligible for Federal participation, and that there are indications that the basis used for Federal participation contains certain other costs which may not be eligible for Federal participation. We believe, therefore, that FHWA should reassess the extent of Federal participation in the cost of constructing the system.

The results of our review of the system were discussed with you and representatives of FHWA's Washington, Regional, and Division Offices and representatives of the Maryland State Roads Commission (SRC) at a recent meeting in Baltimore, Maryland.

On November 25, 1966, the SRC, with FHWA's concurrence, awarded a contract for the installation of the system at a contract price of about \$388,000. The contract specified that the work was to be completed to the satisfaction of the SRC within 150 calendar days of the notification

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to proceed. The contractor was authorized to proceed with construction on or before December 25, 1966. On September 25, 1967, the SRC accepted as satisfactory all work prior to September 12, 1967, with only minor exceptions. Although the contract was not fully completed, it was placed in "shutdown" status as of September 12, 1967. At that time, 64 of the 324 callboxes that were initially planned for installation as a part of the system had not been installed. The SRC advised FHWA on May 19, 1969, that the 64 callboxes would not be installed and that the contract should be closed out when the balance of the material had been received from the contractor.

FHWA's policy, as to assessment of liquidated damages, is expressed in Policy and Procedure Memorandum (PPM) 21-7, dated July 22, 1966. It states that the contract construction amount eligible for Federal participation shall be reduced, through liquidated damages, by a specified rate per day for each day overrun in contract time. This reduction is assessed against the contractor to cover the additional cost incurred by the State because of the failure to complete the contract within the specified time. The State, in executing the project agreement, agreed to assess liquidated damages in accordance with PPM 21-7.

We noted that contrary to contract provisions that called for completion of the work specified in the contract within 150 calendar days, the work was not completed by the contractor and accepted by SRC until 262 calendar days had elapsed. The contract provided that the completion date could be extended up to 90 days by the SRC for causes over which the contractor had no control and which caused a delay in completion of the work. We noted that the contractor had requested an extension of time; however, we found no evidence that an extension had been granted. In fact, the SRC specifically rejected that portion of the contractor's request for an extension related to inclement weather, because the weather was not considered to be unusually severe.

FHWA's participation in the cost of constructing Interstate highway projects is generally limited to 90 percent of the cost of construction. SRC's standard specifications provide for a per diem assessment of \$65 for liquidated damages on a contract in the range of \$200,000 to \$400,000, as was this contract. Therefore, it appears that the cost to be considered eligible for Federal participation should be reduced by \$7,280 (112 days from May 23, 1967, to September 12, 1967, at \$65 a day), thus reducing the Federal share by \$6,552, or 90 percent of \$7,280.

With regard to the materials furnished under the contract--the costs of which appear to have been included in the amount on which Federal participation was based--64 of the callboxes delivered by the contractor

were not installed. We noted that some of these callboxes were used for replacement and repairs of callboxes originally included in the system. In our opinion, the use of the callboxes in such a manner is clearly a maintenance function and the cost of these callboxes should not be considered eligible for Federal participation. Also, there are indications that SRC may not have received some of the materials specified by the contract.

Because of the matter of liquidated damages and the problems involving the receipt and use of materials under this contract--principally the 64 callboxes not installed--we recommend that the agreements and contracts involved be carefully reviewed to precisely determine the total amount of construction costs which are eligible for Federal participation in accordance with FHWA policies. We believe that this review should be the basis for future FHWA actions, regarding either adjustments to the amount of Federal participation or, if warranted, recovery of Federal funds from the SRC.

We would appreciate being advised of any action taken with regard to the matters discussed in this report.

We appreciate the cooperation and courtesies extended to us by both FHWA and SRC personnel during our review. Copies of this letter are being sent to the Assistant Secretary for Administration and the Federal Highway Administrator, Department of Transportation.

Sincerely yours,

James D. Martin
for
Bernard Sacks
Assistant Director