



Florida Department of TRANSPORTATION

Office of Inspector General
Robert E. Clift, Inspector General

A handwritten signature in blue ink, reading "Robert E. Clift".

Attestation Report No. 16I-1001
Florida East Coast Railway 2014 Labor Additive Rate

October 20, 2016

What We Did

The Florida Department of Transportation's (department) Office of Inspector General (OIG) conducted an examination of Florida East Coast Railway Company's (FEC) labor additive, material handling and supplies, and equipment rates for year-end 2014. The rates are to be used by FEC to bill costs related to the rail/highway safety program and are effective upon approval by the department Rail Office and the Federal Highway Administration (FHWA).

What We Found

We determined FEC's initial rate proposal included executive compensation in excess of the current salary cap of \$487,000 for federal reimbursement. At our request, FEC revised its proposal to remove the excess compensation from total costs.

Our examination concluded the revised 2014 labor additive surcharge rates proposed by FEC are reasonable and supported by accounting records.¹ The costs included in the rate computation are reasonable and allowable for use in billing costs to federal-aid projects. In addition, the materials handling and supplies, and equipment rates are reasonable and allowable.

FEC classifies its employees into three labor groups: Group 2 contains Maintenance of Roadway, Mechanical and Signal Employees; Group 3 contains Transportation Employees; and Group 4 contains General and Administrative Employees. The labor additive surcharge rates for each group are 60.63%, 70.87%, and 73.41%, respectively.

Consistent with the provisions of Code of Federal Regulations (C.F.R.),² FEC has elected reimbursement at a fixed rate of eight percent for workman's compensation (W/C), public liability, and property damage insurance; and five percent for material handling and supplies. FEC has elected reimbursement for company owned equipment at industry rates as published by Dataquest in the "Blue Book for Railroad Equipment."

¹ As resubmitted on August 23, 2016 by FEC.

² Title 23, Chapter I, Part 140, Subpart I., Reimbursement for Railroad Work

What We Recommend

We recommend the department Rail Office consider the information included in this report as a part of their review of FEC's proposed 2014 labor additive surcharge rates, as outlined in Title 23, Chapter I, Part 140, Subpart I., Reimbursement for Railroad Work and Title 48, Chapter 1, Part 31, Subpart 31.2, Contracts with Commercial Organizations, and communicate the results with the Federal Highway Administration (FHWA).

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BACKGROUND AND INTRODUCTION

Florida East Coast Railway Company (FEC) serves locations along the Florida east coast between Jacksonville and Miami. FEC has the only rail coastal right-of-way between Jacksonville and Miami and is the exclusive rail-service provider to the Port of Palm Beach, Port Everglades (Fort Lauderdale), and Port of Miami.

RESULTS OF REVIEW

Pursuant to Title 23, Part 646, Code of Federal Regulations (C.F.R.), Subpart B – Railroad-Highway Projects, federal-aid projects for the elimination of hazards of railroad-highway crossings are intended to establish partnerships with the railroads to address rail/highway crossing safety issues. Policies and procedures for reimbursement of work on rail/highway crossing safety projects as prescribed in 23 C.F.R. 646, Subpart B are located in 23 C.F.R. 140, Subpart I – Reimbursement for Railroad Work. Actual or average rates for labor, material handling and supplies, and equipment costs paid for work on the rail/highway safety project are reimbursable when adequately supported.

FEC submits labor additive surcharge rates to the department's Rail Office for review and approval bi-annually. Pursuant to 23 C.F.R. 140.907(6), rates are required to be adjusted at least annually, taking into consideration any over or under recovery of costs. In a letter dated January 25, 2008, the Federal Highway Administration (FHWA) granted the Office of Inspector General (OIG) "approval to establish bi-annual audit requirements and schedules for the annual rate proposals..." and "...concluded 23 C.F.R. Part 140.9 requires annual approval of railroad labor surcharges for billing to the State and Federal government, but does not require an annual audit of those rate proposals."

FEC classifies its employees into three labor groups: Group 2 contains Maintenance of Roadway, Mechanical and Signal Employees; Group 3 contains Transportation Employees; and Group 4 contains General and Administrative Employees. The audited labor additive surcharge rates³ for groups 2, 3, and 4 are 60.63%, 70.87% and 73.41%, respectively (Attachment 1).

We reviewed accounting records and supporting documentation to determine whether bonuses paid to executive leadership were allowable. We found the sum of total wages and bonuses for executive management exceeded the established threshold referenced in 48 C.F.R. 31(205-6)(p).⁴ As a result of this examination, FEC reduced the amount of executive compensation in Group 4 Bonuses to reflect the established threshold of \$487,000. On August 23, 2016, FEC resubmitted the 2014 labor additive surcharge rates reflecting this adjustment for departmental consideration.

³ As resubmitted on August 23, 2016 by FEC.

⁴ Pursuant to 48 C.F.R. 31(205-6)(p) Compensation for Personal Services the Office of Federal Procurement Policy establishes the benchmark executive compensation amount.

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Under the provisions of 23 C.F.R. 140.906(b)(2)(ii), labor additive surcharge rates for workman's compensation (W/C), public liability and property damage insurance may be reimbursed at actual costs or at a fixed rate of eight percent. FEC has elected reimbursement at a fixed rate of eight percent.

In accordance with 23 C.F.R. 140.908(e), companies may elect to be reimbursed at actual and direct costs of handling materials and supplies or may choose to bill at a fixed rate of five percent. FEC has elected reimbursement at a fixed rate of five percent for materials handling and supplies.

Additionally, 23 C.F.R. 140.910(a) allows for the reimbursement of equipment operation costs, repairs and depreciation at average costs, actual costs, or industry rates. FEC has elected reimbursement for company owned equipment at industry rates as published by Dataquest in the "Blue Book for Railroad Equipment."

We recommend the department Rail Office consider the information included in this report as a part of their review of FEC's proposed⁵ 2014 labor additive surcharge rates, as outlined in 23 C.F.R. 140, Subpart I and 48 C.F.R. 31, Subpart 31.2, and communicate the results with the Federal Highway Administration (FHWA).

⁵ As resubmitted on August 23, 2016 by FEC.

USE OF EXAMINATION

This examination does not replace the need for the department to review direct costs incurred by FEC for rail projects to determine if costs are allowable, allocable, and reasonable as outlined in 23 C.F.R. 140, Subpart I and 48 C.F.R. 31, Subpart 31.2, Contracts with Commercial Organizations. Each district's rail office is responsible for evaluating the accuracy of FEC's invoices through independent inspection of records, including evaluation of prices charged for direct labor, materials handling and supplies, and equipment usage, and for ensuring approved labor additive surcharge rates are properly charged.

APPENDIX A – Purpose, Scope, and Methodology

The **purpose** of this engagement was to determine whether FEC's fiscal year 2014 labor additive, materials handling and supplies, and equipment rates were developed based on costs which were reasonable, allowable, and adequately supported.

The **scope** of this audit consisted of the proposed 2014 labor additive surcharge rates submitted by FEC, and associated records and supporting documentation.

The **methodology** included:

- reviewing 23 C.F.R. 646, Subpart B;
- reviewing 23 C.F.R. 140, Subpart I;
- reviewing 48 C.F.R. 31, Subpart 31.2; and
- examining FEC's accounting records and indirect rate package to determine if costs were reasonable and allowable and charged in accordance with applicable federal regulations.

APPENDIX B – Independent Accountant’s Report

We have examined Florida East Coast (FEC) Railway billings for the period January 2014 through December 2014. FEC management is responsible for the billings, preparation, and presentation of overhead cost rates. Our responsibility is to express an opinion based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants, and standards applicable to Attestation Engagements contained in *Government Auditing Standards* issued by the Comptroller General of the United States. Accordingly, this engagement included examining, on a test basis, evidence supporting FEC billings and performing other procedures we considered necessary in the circumstances. We believe our examination provides a reasonable basis for our opinion.

In our opinion, FEC overhead cost rate billings present, in all material respects, allowable amounts due for the period January 2014 through December 2014, in conformity with the terms of the contract.

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APPENDIX C – Florida East Coast Railway Response

On September 15, 2016, Heather Braddock, FEC Manager of Accounts Payable and Payroll, submitted the following response to our audit.



Florida East Coast Railway Company
MANAGER A/P & PAYROLL – Heather Braddock
7411 FULLERTON ST, SUITE 300
JACKSONVILLE, FL 32256
904-538-6151

Mr. Kristofer B. Sullivan
Office of Inspector General
Florida Department of Transportation
605 Suwannee St., MS 44
Tallahassee, FL 32399-0450

Dear Mr. Sullivan,

I have reviewed the draft of the audit report and agree with the results. Please proceed with finalizing the 2014 rates.

If you have any questions, please feel free to contact me.

Sincerely,

Heather Braddock
Manager, Payroll & Accounts Payable
Florida East Coast Railway
Ph: 904-538-6151
Heather.Braddock@fecrwy.com

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APPENDIX D – Department Rail Office Response

On October 13, 2016, Rickey Fitzgerald, Manager of Freight and Multimodal Operations, submitted the following response to our audit.

From: Fitzgerald, Rickey
Sent: Thursday, October 13, 2016 9:38 AM
To: Clark, Ashley <Ashley.Clark@dot.state.fl.us>
Cc: Shepherd, Nancy <Nancy.Shepherd@dot.state.fl.us>; Lee, Robert E <Robert.Lee@dot.state.fl.us>; Goins, Andre <Andre.Goins@dot.state.fl.us>; Allbritton, Scott <Scott.Allbritton@dot.state.fl.us>
Subject: RE: OIG Assignment 16I-1001, Florida East Coast Railway (FEC), Management Response Request

Ashley,

In response to the final report on Florida East Coast Railway (FEC) 2014 Rate Submission,
We concur with the finding(s) and recommendation(s).

Respectfully,

Rickey Fitzgerald

Success = Teamwork + Efficiency

Manager, Freight & Multimodal Operations (Rail Office)
Florida Department of Transportation
605 Suwannee Street, MS 25, Tallahassee, Florida 32399-0450
(w) 850.414.4702 rickey.fitzgerald@dot.state.fl.us

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DISTRIBUTION AND PROJECT TEAM

Action Official Distribution:

Rickey Fitzgerald, Rail and Motor Carrier Manager

Statutory Distribution:

Jim Boxold, Secretary, Department of Transportation
Melinda Miguel, Chief Inspector General, Executive Office of the Governor
Sherrill Norman, Auditor General, State of Florida

Information Distribution:

Mike Dew, Chief of Staff and Legislative Programs
Brian Blanchard, P.E., Assistant Secretary of Engineering and Operations
Rachel Cone, Assistant Secretary of Finance and Administration
Robin Naitove, Comptroller
Tom Byron, P.E., Assistant Secretary of Intermodal Systems Development
Gerard O'Rourke, State Freight and Logistics Administrator
Billy Hattaway, P.E., District One Secretary
Greg Evans, P.E., District Two Secretary
Tommy Barfield, P.E., District Three Secretary
Gerry O'Reilly, P.E., District Four Secretary
Noranne Downs, P.E., District Five Secretary
Jim Wolfe, P.E., District Six Secretary
Paul Steinman, P.E., District Seven Secretary
Diane Gutierrez-Scaccetti, Executive Director, Turnpike Enterprise
Matt Ubben, Executive Director, Florida Transportation Commission
James Christian, Division Administrator, Federal Highway Administration Florida Division
Ken Harvey, Director, Office of Finance and Administration
Doug Roberts, Finance Manager
Heather Braddock, Manager of Payroll and Accounts Payable, FEC

Project Team:

Engagement was conducted by Javaughn Matthews, Auditor
Under the supervision of:
Ashley Clark, Senior Auditor Supervisor
Nancy Shepherd, Intermodal Audit Manager
Kristofer B. Sullivan, Director of Audit
Approved by: Robert E. Clift, Inspector General

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STATEMENT OF ACCORDANCE

The department's mission is to provide a safe transportation system that ensures the mobility of people and goods, enhances economic prosperity, and preserves the quality of our environment and communities.

The Office of Inspector General's mission is to promote integrity, accountability, and process improvement in the Department of Transportation by providing objective, fact-based assessments to the DOT team.

This work product was prepared pursuant to section 20.055, Florida Statutes, in accordance with the Association of Inspectors General *Principles and Standards for Offices of Inspector General*, the American institute of Certified Public Accountants, and Government Auditing Standards issued by the Comptroller General of the United States.

Please address inquiries regarding this report to the department's Office of Inspector General at (850) 410-5800.

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ATTACHMENT 1 – 2014 LABOR ADDITIVE SURCHARGE RATES

Group II – Maintenance of Roadway, Equipment and Signal Employees

Holiday and Vacation	9.69%
Sick	0.08%
Other Paid Absences	2.19%
Bonuses	2.12%
Payroll Taxes	20.36%
Health and Welfare	18.19%
Workman's Compensation (W/C), Public Liability & Property Damage Insurance	8.00%
Total	60.63%

Group III – Transportation Employees

Holiday and Vacation	10.63%
Sick	0.11%
Other Paid Absences	10.76%
Bonuses	3.19%
Payroll Taxes	22.26%
Health and Welfare	15.92%
W/C, Public Liability & Property Damage Insurance	8.00%
Total	70.87%

Group IV – General and Administrative Employees

Holiday and Vacation	7.65%
Sick	1.17%
Other Paid Absences	1.75%
Bonuses	16.74%
Payroll Taxes	22.72%
Health and Welfare	15.38%
W/C, Public Liability & Property Damage Insurance	8.00%
Total	73.41%

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ATTACHMENT 2 – COMPARISON OF 2012 AND 2014 AUDITED RATES

Group II - Maintenance of Roadway, Equipment and Signal Employees	2012 Audited	2014 Audited	Change
Holiday & Vacation	11.54%	9.69%	-1.85%
Sick	0.00%	0.08%	0.08%
Other Paid Absences	1.90%	2.19%	0.29%
Bonuses	4.75%	2.12%	-2.63%
Payroll Taxes	22.40%	20.36%	-2.04%
Health and Welfare	18.80%	18.19%	-0.61%
W/C, Public Liability & Property Damage Insurance	8.00%	8.00%	0.00%
Total	67.39%	60.63%	-6.76%
Group III – Transportation Employees			
Holiday & Vacation	12.69%	10.63%	-2.06%
Sick	0.03%	0.11%	0.08%
Other Paid Absences	5.70%	10.76%	5.06%
Bonuses	4.59%	3.19%	-1.40%
Payroll Taxes	23.31%	22.26%	-1.05%
Health and Welfare	15.82%	15.92%	0.10%
W/C, Public Liability & Property Damage Insurance	8.00%	8.00%	0.00%
Total	70.14%	70.87%	0.73%
Group IV – General and Administrative Employees			
Holiday & Vacation	8.72%	7.65%	-1.07%
Sick	0.99%	1.17%	0.18%
Other Paid Absences	1.53%	1.75%	0.22%
Bonuses	21.81%	16.74%	-5.07%
Payroll Taxes	25.21%	22.72%	-2.49%
Health and Welfare	14.05%	15.38%	1.33%
W/C, Public Liability & Property Damage Insurance	8.00%	8.00%	0.00%
Total	80.31%	73.41%	-6.90%