

### Appendix B – List of Frequent Non-Federal Participating Items

- Work outside the highway right-of-way without permits, etc.
- Work outside the limits of the project (unless necessary to implement project; traffic control, etc.) Work performed outside the NEPA limits of the project may jeopardize federal funding for the project.
- Adjustment of private facilities (signs, fences, lawn sprinklers, etc., unless covered as a part of a right-of-way agreement or permit.)
- Storm and sanitary sewer work and other drainage or utility work that is not a result or purpose of the road or bridge work. Example: replacing sewer leads that are not a result of the construction activity proposed, closed drainage systems and/or water retention ponds not supported by the environmental process
- Specifying use of proprietary items, unless:
  - Suitable numbers of other proprietary items or generic items are allowed.
  - The Department or agency certifies proprietary item is essential for synchronization with existing highway facilities or that no equally suitable alternate exists.
  - Proprietary item is used for experimental purposes.
  - FHWA finds it is in the public interest to use a proprietary item.
- Excessively expensive treatments that do not appear to be in the public interest. This could include expediting the project for a questionable purpose, or proposing the use of very extravagant roadway treatments or street side decorative appurtenances.
- Non-conforming work such as substandard details, designs determined undesirable or discontinued because of poor performance. Example: 3' sidewalk, A588 guardrail
- Payment for items that are the responsibility of others. Such as relocation of utilities located within the right-of-way, relocation of public facilities outside their corporate limits, accident damage that is the responsibility of others (driver, owner, insurance company, etc.)
- Payment for work done by an unapproved subcontractor.
- Work performed by State or Local Agency Forces or other “non-competitively bid” situation unless covered by a written “Public Interest Finding”.
- Payment for betterments that are not currently part of the project. Example: payment for excess sizing of sanitary sewer adjustment for future development. The additional cost over replacement-in-kind should be borne by the owner of the facility being adjusted.
- Completed work that is not in “substantial compliance” with the plans and specifications. “Substantial” is determined by the FHWA or the person delegated authority to act on behalf of the FHWA.

- Materials which do not meet specifications. If the engineer determines the material will serve the intended purpose, it may remain in place at a reduced price. Minor deviations may be accepted at full price.
- Work done for convenience of the contractor.
- Payment for items that should typically be considered maintenance work by the owner agency. Examples: trash removal, tree removal, and mowing roadsides.
- Spare parts turned over to the maintaining agency and not incorporated into the construction.
- Material or equipment called for in the plans but not used in the construction.
- Fishing Piers
- Premium costs due to design or CEI errors or omissions.
- Construction changes for items that were set up as alternate bid items.
- Additional contract time for utility or right of way delays beyond what was identified in the contract documents.
- Costs to attain greater vertical or horizontal bridge clearance than deemed necessary to fulfill the intent of the original project documents.
- Maintenance of Traffic items for Federal-aid non-participating time extensions.
- Work resulting from insufficient subsoil investigation.
- Claim Settlement Costs paid solely to avoid the risk associated with failing to settle the claim.
- Added costs due to arbitrary one foot or less backwater criteria in construction or reconstruction of interstate Highway Bridges.
- Repairs to roadway damage resulting from a motor vehicle accident.
- Rework or paying for same item twice