UNITED STATES GENERAL ACCOUNTING OFFICE

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CIVIL ACCOUNTING AND AUDITING DIVISION

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The Comptroller General

In the course of our audit work at the Bureau of Public Roads a question has arisen as to whether Bureau policy governing participation of Federal-aid highway funds in the cost of utility relocations necessitated by highway construction, gives proper effect to the limitations on the extent of such participation contained in section 123 of title 23, United States Code.

Section 123 of title 23, United States Code, which was derived from section 111 of the Federal-Aid Highway Act of 1956 (70 Stat. 383), as amended by section 11 of the Federal-Aid Highway Act of 1958 (72 Stat. 94), provides:

"(a) When a State shall pay for the cost of relocation of utility facilities necessitated by the construction of a project on the Federal-aid primary or secondary systems or on the Interstate System, including extensions thereof within urban areas, Federal funds may be used to reimburse the State for such cost in the same proportion as Federal funds are expended on the project. Federal funds shall not be used to reimburse the State under this section when the payment to the utility violates the law of the State or violates a legal contract between the utility and the State. Such reimbursement shall be made only after evidence satisfactory to the Secretary [of Commerce] shall have been presented to him substantiating the fact that the State has paid such cost from its own funds with respect to Federal-aid highway projects for which Federal funds are obligated subsequent to April 16, 1958, for work, including relocation of utility facilities.

"(b) The term 'utility', for the purposes of this section, shall include publicly, privately, and cooperatively owned utilities.

"(c) The term 'cost of relocation', for the purposes of this section, shall include the entire amount paid by such utility properly attributable to such relocation after deducting therefrom any increase in the value of the new facility and any salvage value derived from the old facility." (Underscoring supplied.)

The Bureau's policy and procedures implementing section 123 are contained in Policy and Procedure Memorandum (PPM) 30-4, dated December 31, 1957, as amended and modified by subsequent issuances. (See attachment)

This policy statement sets out in some detail the principles and procedures which govern the extent of Federal participation in the cost of utility relocations necessitated by the construction of Federal-aid highway projects. The cost principles in the policy statement are in substantial conformity with a recommendation that we previously made to the Bureau. (See pages 30-32 of our audit report to the Congress on the Bureau of Public Roads for fiscal years 1955 and 1956, B-125052.) Section 1.c. of the PPM, however, provides:

> "Where State law or regulation provides agreement or payment standards more liberal than those established by the provisions of this memorandum, the provisions of this memorandum shall govern. Conversely, where State law or regulation provides more restrictive agreement and payment standards, the State standards shall govern. The [Bureau] division engineer shall determine which procedures shall govern and will notify the State accordingly."

In the application of this provision, the division engineer's determination is made on a State-wide basis rather than on a project basis, the test being which agreement and payment standards can be expected to produce, in the aggregate, the lesser amount of participating utility relocation costs.

It is our view that the provision contained in section 1.c. of PPM 30-4, quoted above, does not give proper effect to the two limitations on Federal participation in utility relocation costs contained in section 123 that Federal funds shall not be used to reimburse a State for relocation costs necessitated by the construction of a project in excess of (1) those actually and legally incurred by the State, and (2) those which are properly attributable to the relocation after deducting any increase in the value of the new facility and any salvage value derived from the old facility. While the entire concept of Federal-aid reimbursements is based on the costs incurred by the State on a particular project this principle is apparently not adhered to in connection with utility relocations. Under Bureau policy, the division engineer makes a one-time determination on a State-wide basis and thereafter gives no consideration, on a project-by-project basis, to the two specific limitations on Federal participation contained in section 123.

We believe the PPM 30-4, by reason of section 1.c. thereof, in effect provides that if the amount actually and legally paid by the State on specific projects is generally less than the "cost of relocation" as defined by the statute, the Bureau will allow Federal participation in the full costs actually and legally paid by the State even though on some projects these costs may exceed the "cost of relocation" as defined by the statute. The effect of Bureau policy in this respect is illustrated in the application of the policy in the State of California, as disclosed by our review of the Federal-aid highway program in that State.

The Bureau division engineer for the State of California determined, in August 1958, that the agreement and payment provisions provided by State law and regulation were more restrictive than those provided by PPM 30-4, and accordingly advised the State that, in accordance with section 1.c. of the PPM, the State's procedures would govern the extent of Federal participation in utility relocation costs. One of the primary considerations in the division engineer's determination was the fact that California law (West's Calif. Codes Anno., Streets and Highways Code, section 705) requires that in any case where the State is required to pay the cost of a utility relocation necessitated by highway construction, and where a new facility or portion thereof is constructed to accomplish the relocation, the State shall receive a credit in an amount bearing the same proportion to the original cost of the displaced facility or portion thereof as the age of the displaced facility bears to the normal expected life thereof. The corresponding provision of Bureau policy (See attachment, reference: section 7.f. of PPM 30-4, as clarified by section 5 of Instructional Memorandum (IM) 30-3-61) requires that in instances where the replacement (new) facility will remain in useful service beyond the time when the overall (old) facility of which it is a part, would have remained in useful service or would have been replaced, a credit be given against project costs for the increase in value due to the extension of service life. The credit for extension of service life is to be in an amount which bears the same proportion to the replacement cost of the facility as the expired service life (age) of the replaced facility bears to the total estimated service life of the replaced facility.

The intent of the Bureau policy provision was to give effect to the statutory provision contained in section 123(c) of title 23 requiring that in determining the "cost of relocation" which will be eligible for Federal participation, the amount of any increase in value of the facility due to the relocation must be deducted from the total relocation costs incurred by the utility. It was the Bureau's view that only in cases where the useful life of the facility is extended as a result of the relocation would there be any increase in value by reason of the replacement of the old facility components with new components. The policy statement clearly establishes that where such an extension of useful service life occurs, the proper measure of the resulting increase in value which must be given consideration to comply with section 123(c) of title 23, is to be made by reference to the replacement cost of the facility, rather than to the historical or original cost of the facility.

The Bureau division engineer, in making the determination required by section 1.c. of PPM 30-4, concluded that since the credit prescribed by State law, although calculated by reference to original cost, was required in every instance where the relocation involved the construction of a new facility or portion thereof, whereas the credit (based on replacement cost) prescribed by the Bureau was applicable only where such replacement extended the useful life of the facility, the standard provided by State law would generally result in the lesser participating costs.

One highway project involving the extensive relocation of sewer facilities noted during our California review, illustrates the effect of the division engineer's determination under section 1.c. of PPM 30-4 on the extent of Federal participation in utility relocation costs where there is an increase ir value due to extension of useful service life. In connection with California Interstate highway project I-008-1(5)0. approximately one and one-half miles of sewer pipe were replaced with new construction. Because State payment standards were to govern the extent of Federal participation in the relocation costs, a formal determination was never made as to whether the service life of the facility was extended. However, it can be assumed, in view of the magnitude of the relocation project and the fact that the utility involved considered portions of the old facility 99 percent depreciated, that an extension of useful service life did in fact occur. On this project, the credit determined under State standards, calculated by reference to the original cost of the old facility, amounted to $14,617. The credit which would have been applied to participating project costs under Bureau standards, representing the increase in value of the facility by reason of extension of its useful service life calculated by reference to the replacement cost of the facility, would have amounted to approximately $47,970. Use of the Bureau standard in this instance would therefore have reduced the participating project costs by about $33,000, with a saving to the Federal Government of its share of this amount or about $30,000.

We believe that the above-described application of Bureau policy in the State of California clearly demonstrates that in those States where, under section 1.c. of PPM 30-4, the determination is made that agreement and payment standards provided by State law and regulation will take precedence over the standards established by the Bureau for the purpose of determining the extent of Federal participation in utility relocation costs, there is no assurance that the statutory provision limiting Federal participation to the "cost of relocation" -- as that term is defined in section 123(c) of title 23 as interpreted and refined by Bureau policy and procedures -- will be given effect on a specific highway project involving the relocation of utility facilities. In view of the fact that the cost actually and legally paid by the State is in and of itself a statutory limitation on the extent of Federal participation, it appears that if the limitation "cost of relocation" is to be given any application in those States in which the payment standards provided by law or regulation generally do not allow the State to pay the full "cost of relocation," the Bureau is required to give consideration to both limitations on an individual project basis. Advice is therefore requested as to whether the Bureau's policy and procedures implementing section 123 of title 23 United States Code, with particular reference to section 1.c. of PPM 30-4, give proper effect to the statutory limitations on the extent of Federal participation in the cost of utility relocations.

Oye V. Stovall

Oye V. Stovall
Deputy Director

Attachment

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Indorsement

Director, Civil Accounting and Auditing Division

Returned. Section 123 speaks of utility relocation costs on a project basis and clearly sets forth the criteria for reimbursing costs related to individual utility relocations. The statute contains two limitations pertinent to the question raised: Reimbursement for utility relocation costs cannot be made where payment of such costs violated State law or a legal contract between the utility and the State, and reimbursement cannot be made with respect to any State payments covering an increase in value of the new facility. By lumping all utility relocations in the State under one determination rather than making separate determinations for each relocation, the practice adopted in California recognizes only the first stated limitation in that Federal reimbursement of State payments is limited only by State law without concern as to whether a portion of the increase in value of the new facility has been deducted to arrive at "cost of relocation" as defined in the statute and Bureau of Public Roads implementation thereof. In short, the definition of "cost of relocation" has been, in part, read out of section 123 so far as concerns utility relocations in California. We find no basis for such an interpretation.

Accordingly, while we agree with the provisions of paragraph 1.c of FPR 30-4, December 31, 1957, any application thereof other than on an individual relocation basis is not authorized.

FRANK H. WEITZEL

Assistant Comptroller General
of the United States

Attachment