



U.S. Department
of Transportation
**Federal Highway
Administration**

Memorandum

Washington, D.C. 20590

Subject: Bid Rigging Settlement Credit to Federal-Aid
Projects (Your December 19 Memorandum)

Date January 7, 1985

From: Executive Director

Reply to
Attn of. HNG-12

To: Mr. Morris C. Reinhardt
Regional Federal Highway Administrator
Lakewood, Colorado
HRA-08

This is to reaffirm the position stated in our memorandum of September 3, 1982. Refunds or rebates are considered a reduction in the cost of construction. The Federal-aid accounts must be promptly adjusted and appropriately credited to reflect the Federal pro-rata share of such refunds. Therefore, establishing an escrow account for settlement from bid rigging cases as proposed by the Colorado Department of Highways is not satisfactory.

The ruling by the Sixth Circuit Court of Appeals affirms our position regarding recovery of bid rigging settlements. The Office of Chief Counsel has advised that there is no reason to delay further in determining the Federal share of the recoveries and promptly crediting the affected project accounts. The State and division are in the best position to determine the amounts of the appropriate credits and we would expect no further delays in crediting the proper project accounts.

The only issue remaining in the Tennessee case is determining the amount the State may retain as an incentive for obtaining recoveries. In our view, the States' interest in preserving Federal-aid highway funding for its intended use and deterring collusion is sufficient incentive for them to pursue recoveries in bid rigging cases. Of course, as stated in our September 1982 memorandum, administrative expenses incurred legitimately in pursuing restitution may be deducted from the amount recovered before compiling the Federal share.

By copy of this memorandum, we are informing all regions of our position on this issue.


R. D. Morgan

cc:
Regions 1-7, 9 and 10