Memorandum

U.S. Department of Transportation
Federal Highway Administration

Washington, D.C. 20590

Subject: Price Adjustment of Existing Contracts

Date: November 30, 1990

From: Executive Director

Reply to Attn. of: HNG-22

To: Regional Federal Highway Administrators
Federal Lands Highway Program Administrator

This memorandum is a follow up to Mr. Anthony Kane's August 21 memorandum which provided guidance relative to possible oil shortages and price uncertainties caused by the Middle East situation. At that time, you were advised that for existing Federal-aid construction contracts without price adjustment clauses no price adjustments should be approved pending our further evaluation of market conditions and project impacts.

Since August, the price of crude oil has increased, on a non-uniform basis, from $20 per barrel on August 2 reaching a high of approximately $40 per barrel in mid-October and is now selling at about $33 per barrel. This increase has affected petroleum based products including asphaltic cement and fuel, however, the percentage of increased cost has not been consistent by product, supplier, nor by geographic region of the country.

During this period we have been evaluating the impacts on Federal-aid projects from the monetary and material availability aspects. Two surveys have been conducted, one by the National Asphalt Paving Association (NAPA) and one by the Federal Highway Administration (FHWA) Headquarters. Results of the NAPA survey indicated that asphalt suppliers were honoring their commitments to contractors for projects underway. The FHWA survey, conducted approximately 1 month later, provided the same information on both asphalt and fuel products. Our survey also indicated that increases in the cost of asphalt and fuel products were being encountered. However, the magnitude of increase was variable and difficult to assess. Neither of the surveys nor subsequent discussions with State officials or industry representatives indicated a national shortage of either asphalt or fuel products. One response to our survey indicated a limited shortage of asphalt by one supplier.

Based on our evaluation of current information available, we have determined it appropriate to maintain our position that Federal-aid funds not participate in price adjustments of contracts which have been awarded without a price adjustment clause. Considerations in arriving at this decision include a lack of information showing either significant supply shortages or cost impacts, the potential difficulty of assuring the accuracy of increased costs incurred by contractors, the significant number of States (22), which have elected to not include a price adjustment clause in their newly awarded contracts and the relatively few States which have indicated support for a modification of existing contracts.

For your information, a copy of our survey results are attached. Also, due to the ongoing controversy in the Middle East, we continue to support the inclusion of price adjustment clauses, where applicable, in future construction projects.

E. Dean Carlson

Attachment