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## CHAPTER 24 - LOCAL AGENCY FORCE ACCOUNT PROJECTS

### 24.1 OVERVIEW

Per **23 CFR 635 Subpart B** and [FHWA Order 5060.1](#) "**FHWA Policy on Agency Force Account Use**", a local agency may deliver a LAP project via force account with an approved cost effectiveness finding. The District LAP Administrator must approve the cost effectiveness finding prior to a local agency electing to utilize this delivery method. The purpose of a cost effectiveness finding is to clearly demonstrate that the proposed deviation is more cost-effective than meeting the competitive bidding requirement. Force account project delivery deviates from the federal requirement that Federal-aid construction projects be awarded through competitive bidding.

**FHWA Order 5060.1** applies to all Federal-aid highway construction projects that are located within a highway right of way. It does not apply to Federal-aid construction projects located outside a public highway right of way or projects that, by definition in **23 USC 101(a)(4)**, are not considered to be highway construction projects. For example, recreational trails located outside of right of way of a public highway would not require a cost effectiveness finding for force account work. In addition, professional service work types do not require a cost effectiveness finding.

**Per 23 CFR 635.203**, the term force account shall mean the direct performance of highway construction work by a State transportation department, a county, a township, municipality, political subdivision, a railroad, or a public utility company by use of labor, equipment, materials, and supplies furnished by them and used under their direct control.

The term cost effective shall mean the efficient use of labor, equipment, materials and supplies to assure the lowest overall cost.

### 24.2 COST EFFECTIVENESS FINDINGS

A cost effectiveness finding is required for any proposal to use a non-competitive method of contracting. **23 CFR 635.204-205** states the following reasons for use of noncompetitive construction contracting:

- When the state transportation department determines it necessary due to an emergency. An emergency shall be deemed to exist when a major element or segment of the highway system has failed and the situation is such that competitive bidding is not possible or is impractical because immediate action is necessary to

minimize the extent of the damage, protect remaining facilities, or restore essential travel. This definition has no applicability to the ***FHWA Emergency Relief Program*** as described in ***Chapter 17*** of the ***LAP Manual***.

- When the rights or responsibilities of the community are so affected as to require a special course of action, including situations where there is a lack of competition or unreasonable bids.
- When by reason of the inherent nature of the operation, it is deemed cost effective to do minor adjustments of railroad and utility facilities (major work should be accomplished by competitive bidding).

In general, work to be performed directly by a railroad or utility does not require a cost effectiveness finding and may be performed under a joint participation agreement. Railroad and utility owners do not need to be LAP certified.

#### **24.2.1 What is required in a Cost Effectiveness Finding?**

- A. Demonstrated ability of the agency to perform the work. The agency is able to complete the work with the same level of quality as that expected on a competitively let construction contract.
- B. Availability of equipment.
  - The agency must own (or currently lease) most of the equipment needed to perform the work. The costs associated with equipment leasing should be a minor portion of the overall cost.
  - Rates on publicly owned equipment may be the agreed unit price or actual cost.
- C. Ability to comply with design, construction, and material quality standards and all Federal-aid requirements.
- D. Ability to document compliance with quality assurance requirements. Quality assurance procedures for construction identified in 23 CFR 637, Subpart B apply to all National Highway System (NHS) projects in full.
- E. Schedule. The project/contract completion time is to be equal for both agency and contract work estimates in order to provide a fair comparison of prices.

#### **24.2.2 Cost Comparison**

The cost comparison must contain sufficient information so that the total cost for the agency to perform the work versus the total cost using competitively bid prices may be assessed. The agency's cost estimate includes estimated quantities and prices for material, labor, and equipment. All work items must be included, regardless of federal participation, so that a fair comparison can be made. The estimate may be based on actual cost or unit prices.

Payment of actual costs are reimbursed for labor, materials, and equipment rates. Payment of unit prices are reimbursed for the actual number of units constructed. Unit prices must be developed and agreed upon by the local agency and the department using quantities, man-hours, pay rates, material costs, and equipment rental rates. Stockpiled material(s) must be listed at the same price on the agency's cost inventory.

The agency's total cost estimate must include an adjustment for overhead or indirect cost rates for labor, equipment, and materials. The agency's overhead or indirect cost rates must be developed in compliance with **2 CFR 200** (various parts).

### **24.2.3 Cost Reductions Not Allowed**

The agency may not reduce the force account estimate by:

- Potential savings resulting from use of less than complete plans,
- Potential savings resulting from reduced quality assurance during construction, and
- Anticipated savings from reduced construction management and documentation.

## **24.3 PLANS, SPECIFICATIONS, AND ESTIMATES (PS&E) REQUIREMENTS**

The development of a project for construction by Local Agency forces follows the same procedures as for a competitive bid contract in development of the final Plans, Specifications, and Estimates (PS&E) package. The agency must complete the Department's right of way and NEPA certification processes. The agency must also clear railroads, utilities, and obtain environmental permits for the project.

All design exceptions, utility exceptions, and design variations must be reviewed by District Specifications Office according to the processes outlined in the ***LAP Manual Preconstruction Engineering and Design, Chapter 19***.

The PS&E package must be approved by the District LAP Administrator and a ***LAP Construction Checklist (Form No. 525-010-44)*** must be fully executed to receive federal authorization for the project.

## **24.4 MATERIALS**

If agency provided materials are included in the project, the Local Agency must submit justification for their use to the approving authority. The materials must have been

produced by Local Agency forces or acquired through competitive bidding. Material or property purchased from a sole source may be used in construction only with prior FHWA approval on a project on the National Highway System. The justification must be adequate to show approving authority that the action is in the best interests of the public. Test reports shall be included with the justification showing that these materials meet the specifications of the project. Approval of agency-provided material may be accomplished by the time the PS&E is approved.

If a Local Agency plans to produce a material such as borrow or aggregate, the sources should be capable of producing the type and quantity required. It is imperative that a materials laboratory tests the material to ensure compliance with specifications. Those agencies without laboratory facilities may submit samples to the Department well in advance of the construction start date to allow time for processing. The necessary advance notification and coordination between the agencies and the Department must be accomplished in order to not severely impact the existing laboratory workload at the Department's facility. Approval of agency-provided material sources may be accomplished by the PS&E approval.

The Local Agency must approve the source for each type of material before the delivery is started. The Local Agency's Project Engineer must reject materials that do not conform to the specifications.

Projects located on the SHS and NHS must comply with State Materials Office requirements and be reported in Materials Acceptance and Certification System (MAC).

## **24.5 DAVIS-BACON**

Because the Local Agency will be using its own employees, there are no requirements for Davis-Bacon Wage Rates. The local agency pays employees their normal salary or wage and invoices the department for the employee's hourly rate.

## **24.6 CONSTRUCTION ADMINISTRATION**

The Department is responsible for properly spending Federal-aid funds on Local Agency projects. In this role, the Department will consult and work with Local Agencies as needed. It will also perform systematic project management reviews in coordination with FHWA to ensure that proper procedures are followed. Force account work in no way alleviates the local agency from inspection or quality requirements of a Federal-aid project. It is recommended the agency hold a project kick-off or pre-construction meeting and invite FDOT staff. Utilities, railroad and environmental permits coordination as indicated on the **LAP Construction Checklist Form No. 525-010-44** are required for all

LAP projects, including force account.

The quality of materials and workmanship on the project must conform to the project plans and specifications. The Local Agencies will accept materials and workmanship based on the methods usually and normally used by the Local Agency. The Local Agency will be allowed to accept small quantities of materials on the basis of visual inspection and the material supplier's certification.

#### **24.6.1 Change Orders**

Whenever a change in the project work is required, the Local Agency's Project Engineer shall submit a written request to the District LAP Administrator explaining the change and cost. Changes that alter the beginning/end, character, or scope of an approved project, may require additional approvals from the District and FHWA. Per **23.6.6**, the local agency will submit all changes to the District LAP Administrator prior to making any changes. Federal-aid reimbursement is not eligible for contract changes and extra work that have not been approved by the District LAP Administrator.

When costs or time increase beyond that authorized in the LAP Agreement and the approved Federal Authorization, federal participation for this increase is subject to: (1) the availability of Federal funds verified by the District LAP Administrator, (2) the execution of a Supplement LAP Agreement and (3) a FHWA approved modification to the Federal Authorization.

#### **24.6.2 Progress Billing**

Progress billing must be based on the documented costs of the labor, equipment, and material of the work performed. The Local Agency shall send progress billings, along with the required documentation for progress payment (outlined in **Chapter 10**), to the District LAP Administrator per the terms of the LAP Agreement.

Agencies with an approved indirect cost rate per 2 CFR 200 may be reimbursed for both direct and indirect costs.

#### **24.6.3 Project Close Out**

The Local Agency will carry out the same project close out requirements indicated in **Chapter 23**.

- A. Final Inspection Form 525-010-42: The Local Agency's Project Engineer shall request a Final inspection and Acceptance from the District LAP

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Administrator within 15 days of completing construction

- B. Final Invoice: submitted within 120 days of construction completion. The invoice should include a comparison of preliminary and final costs for labor, equipment, and material (overruns & underruns).
- C. Materials Certification The purpose of the material certification is to assure that the quality of all materials incorporated into the project conforms to the plans and specifications. This ensures a service life equal to the design life.
- D. LAP Record of Final Plans and Documentation Form No. 525-010-47

## 24.7 RECORDS RETENTION

The Local Agency's Project Engineer must document the work performed on the project. Documentation includes field books, inspector's record of field tests, materials samples and tests, project engineer's and inspector's diaries, all invoices, weigh bills, truck measurements, quantity tickets, receiving reports, field office ledgers, mass diagrams, cross-sections, computer listings, work profiles, time suspensions, etc., when they are a basis of payment for the work performed or the material supplied. Photographs before, during, and after construction could be useful, especially if care is taken to show any unusual conditions, equipment, or procedures.

The Local Agency shall keep final records for at least 5 years following acceptance of the project per the terms of the LAP Agreement.

## 24.8 RESOURCES

[Form No. 525-010-44 LAP Checklist for Construction Contracts](#)

[Form No. 525-010-42 LAP Final Inspection and Acceptance of Federal-Aid Project](#)

[Form No. 525-010-47 LAP Record of Final Plans and Documentation](#)

[Form No. 575-095-05 LAP Right of Way Certification](#)