

Federal Highway Administration, DOT

§ 635.204

U.S.C. 112(b) for a State transportation department to request approval that highway construction work be performed by some method other than contract awarded by competitive bidding.

[48 FR 22912, May 23, 1983]

§ 635.202 Application.

This subpart applies to all Federal-aid and other highway construction projects financed in whole or in part with Federal funds and to be constructed by a State transportation department or a subdivision thereof in pursuant of agreements between any other State transportation department and the Federal Highway Administration (FHWA). This subpart does not apply to projects constructed under a Certification Acceptance Plan in those States where the Secretary has discharged his/her responsibility pursuant to 23 U.S.C. 117, except where employees of a political subdivision of a State are working on a project outside such political subdivision.

[48 FR 22912, May 23, 1983]

§ 635.203 Definitions.

The following definitions shall apply for the purpose of this subpart:

(a) A *State transportation department* is that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term *State* should be considered equivalent to *State transportation department* if the context so implies.

(b) Except as provided for as emergency repair work in § 668.105(i) and in § 635.204(b), the term *some other method* of construction as used in 23 U.S.C. 112(b) shall mean the *force account* method of construction as defined herein. In the unlikely event that circumstances are considered to justify a negotiated contract or another unusual method of construction, the policies and procedures prescribed herein for force account work will apply.

(c) The term *force account* shall mean the direct performance of highway construction work by a State transportation department, a county, a railroad, or a public utility company by use of labor, equipment, materials, and

supplies furnished by them and used under their direct control.

(d) The term *county* shall mean any county, township, municipality or other political subdivision that may be empowered to cooperate with the State transportation department in highway matters.

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

(f) For the purpose of this part, an *emergency* shall be deemed to exist when emergency repair work as provided for in § 668.105(i) is necessary or 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:

- (1) Minimize the extent of the damage,
- (2) Protect remaining facilities, or
- (3) Restore essential travel.

This definition of *emergency* has no applicability to the Emergency Relief Program of 23 CFR part 668.

[39 FR 35158, Sept. 30, 1974, as amended at 48 FR 22912, May 23, 1983; 52 FR 45172, Nov. 25, 1987]

§ 635.204 Determination of more cost effective method or an emergency.

(a) Congress has expressly provided that the contract method based on competitive bidding shall be used by a State transportation department or county for performance of highway work financed with the aid of Federal funds unless the State transportation department demonstrates, to the satisfaction of the Secretary, that some other method is more cost effective or that an emergency exists.

(b) When a State transportation department determines it necessary due to an emergency to undertake a federally financed highway construction project by force account or negotiated contract method, it shall submit a request to the Division Administrator identifying and describing the project, the kinds of work to be performed, the method to be used, the estimated costs, the estimated Federal Funds to be provided, and the reason or reasons that an emergency exists.

§ 635.205

(c) Except as provided in paragraph (b) of this section, when a State transportation department desires that highway construction work financed with the aid of Federal funds, other than the kinds of work designated under § 635.205(b), be undertaken by force account, it shall submit a request to the Division Administrator identifying and describing the project and the kind of work to be performed, the estimated costs, the estimated Federal funds to be provided, and the reason or reasons that force account for such project is considered cost effective.

(d) The Division Administrator shall notify the State transportation department in writing of his/her determination.

[52 FR 45172, Nov. 25, 1987]

§ 635.205 Finding of cost effectiveness.

(a) It may be found cost effective for a State transportation department or county to undertake a federally financed highway construction project by force account when a situation exists in which the rights or responsibilities of the community at large are so affected as to require some special course of action, including situations where there is a lack of bids or the bids received are unreasonable.

(b) Pursuant to authority in 23 U.S.C. 112(b), it is hereby determined that by reason of the inherent nature of the operations involved, it is cost effective to perform by force account the adjustment of railroad or utility facilities and similar types of facilities owned or operated by a public agency, a railroad, or a utility company provided that the organization is qualified to perform the work in a satisfactory manner. The installation of new facilities shall be undertaken by competitive bidding except as provided in § 635.204(c). Adjustment of railroad facilities shall include minor work on the railroad's operating facilities routinely performed by the railroad with its own forces such as the installation of grade crossing warning devices, crossing surfaces, and minor track and signal work. Adjustment of utility facilities shall include minor work on the utility's existing facilities routinely performed by the utility with its own forces and includes minor installations of new facilities to provide

23 CFR Ch. I (4-1-03 Edition)

power, minor lighting, telephone, water and similar utility service to a rest area, weigh-station, movable bridge, or other highway appurtenance, provided such installation cannot feasibly be done as incidental to a major installation project such as an extensive highway lighting system.

[52 FR 45173, Nov. 25, 1987]

Subpart C—Physical Construction Authorization

SOURCE: 40 FR 17251, Apr. 18, 1975, unless otherwise noted.

§ 635.301 Purpose.

To prescribe the policies and procedures under which a State transportation department may be authorized to advance a Federal-aid highway project to the physical construction stage.

§ 635.303 Applicability.

The provisions of this subpart are applicable to all Federal-aid highway construction projects except projects constructed under an approved Certification Acceptance Plan.

§ 635.305 Physical construction.

For purposes of this subpart the physical construction of a project is considered to consist of the actual construction of the highway itself with its appurtenant facilities. It includes any removal, adjustment or demolition of buildings or major obstructions, and utility or railroad work that is a part of the contract for the physical construction.

§ 635.307 Coordination.

(a) The right-of-way clearance, utility, and railroad work are to be so coordinated with the physical construction that no unnecessary delay or cost for the physical construction will occur.

(b) All right-of-way clearance, utility, and railroad work performed separately from the contract for the physical construction of the project are to be accomplished in accordance with provisions of the following:

- (1) 23 CFR part 140, subpart I;
- (2) 23 CFR part 646, subpart B;