



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

Memorandum

Subject: **ACTION:** FHWA Order 5060.2 FHWA
Policy on Agency Force Account Use

Date: July 9, 2025

From: Arlan Finfrock
Associate Administrator for
Administration

In Reply Refer To:
HAD-1

To: Gloria M. Shepherd
Executive Director

ACTION REQUESTED

I request that you approve the attached Federal Highway Administration (FHWA) Order 5060.2 to update and supersede the existing FHWA Order 5060.1, FHWA Policy on Agency Force Account Use.

SUMMARY

This Order clarifies FHWA policy for the approval of the use of Agency force account procedures on Title 23 projects and procedures in accordance with law and regulation. Specifically, the directive addresses the use of Agency force account procedures that include the direct performance of work by any direct recipient, typically the State department of transportation (State DOT) or subrecipient of funding under Title 23 of the Code of Federal Regulations (CFR).

BACKGROUND

Title 23 United States Code (U.S.C.) 112 requires that all Federal-aid highway construction contracts be awarded to the lowest responsive, responsible bidder unless:

- a) Some other method is shown by the State DOT to be more cost effective, or
- b) An emergency exists.

Additional direction is provided in 23 CFR 635.204 on how ‘cost-effectiveness’ of a contracting method is determined and outlines a process for such a determination. In 2012, FHWA issued Order 5060.1. Order 5060.1 to provide the Division Administrators with guidance on applicability, definitions, and assessing cost-effectiveness findings. However, since its issuance, legislation, and the recommendations of the U.S. Department of Transportation Office of the Inspector General’s audit on the use of public

agency force account resulted in a need to update and supersede Order 5060.1, resulting in the attached document. The primary change from Order 5060.1 is clarification that the Order applies to any construction project eligible for assistance under Title 23, U.S.C.

RECOMMENDATION

I recommend that you approve the attached FHWA Order 5060.2 to update and supersede the existing FHWA Order 5060.1, FHWA Policy on Agency Force Account Use.

Executive Director

APPROVED:



DATE:

COMMENTS:

Attachment

- FHWA Order 5060.2, FHWA Policy on Agency Force Account Use



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

Order

Subject:

FHWA POLICY ON AGENCY FORCE ACCOUNT USE

Classification Code

5060.2

Date

Office of Primary Interest

HICP-20

Par.

1. What is the purpose of this directive?
 2. Is this a new directive?
 3. What authorities govern this directive?
 4. What is the scope of this directive?
 5. What definitions are used in this directive?
 6. What information will the Federal Highway Administration (FHWA) need from the agency to prove that force account is more cost effective than contracting by competitive bidding?
 7. At what point does an agency's price become more cost effective in comparison with competitive prices?
 8. Do the General Material Requirements of 23 Code of Federal Regulation (CFR) 635, Subpart D, apply to force account work?
 9. Do the prevailing wage rate requirements of 23 CFR 635.117(f) apply to force account projects?
 10. Is an agency allowed to perform a portion of a Title 23 project on a force account basis and let a competitive contract for the remainder of the project?
 11. Is there a limitation for an agency to request programmatic force account approval?
 12. What are the requirements for the approval of agency force account projects assumed by the State department of transportation (State DOT)?
 13. Where can I obtain additional guidance?
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1. **What is the purpose of this directive?** This directive clarifies FHWA policy for the approval of the use of Agency force account procedures on Title 23 projects. This directive clarifies the use of agency force account procedures in accordance with law and regulation. The directive addresses the use of agency force account procedures that include the direct performance of work by any direct recipient (typically the State DOT or subrecipient of funding under Title 23 of the CFR). This Order does not address the use of contract force account procedures for work performed by construction contractors as referenced in 23 CFR 635.120(d).
 2. **Is this a new directive?** No. This Order updates and supersedes Order 5060.1.

3. **What authorities govern this directive?** Title 23 construction projects are required to be performed by contracts awarded by competitive bidding. Agency force account (use of public agency, railroad, or utility employees to perform work eligible for reimbursement for a Title 23 project) can be used only when a State DOT demonstrates to the satisfaction of the Secretary of Transportation that it is more cost effective than competitive bidding or an emergency exists. The following authorities govern this directive:
- a. Section 112 (a) of Title 23, United States Code (U.S.C.), provides: “In all cases where the construction is to be performed by the State transportation department or under its supervision, a request for submission of bids shall be made by advertisement unless some other method is approved by the Secretary. The Secretary shall require such plans and specifications and such methods of bidding as shall be effective in securing competition.”
 - b. 23 U.S.C. 112(b) states that “... construction of each project ... shall be performed by contract awarded by competitive bidding, 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. Contracts for the construction of each project shall be awarded only on the basis of the lowest responsive bid submitted by a bidder meeting established criteria of responsibility....”
 - c. 23 U.S.C. 204(a)(5) states that “Competitive bidding—
 - (A) In general.—Subject to subparagraph (B), construction of each project shall be performed by contract awarded by competitive bidding.
 - (B) Exception.—Subparagraph (A) shall not apply if the Secretary or the Secretary of the appropriate Federal land management agency affirmatively finds that, under the circumstances relating to the project, a different method is in the public interest.”
 - d. 23 CFR 635.204(a) provides that competitive bidding must be used 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.”
 - e. 23 CFR 635.204(c) states: “Except as provided in [23 CFR 635.204(b)], 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.”
 - f. 23 CFR 635.205(a) states: “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.”

4. What is the scope of this directive?

- a. This directive applies to all Title 23 construction projects meeting the definition of “construction” in 23 U.S.C. 101(a)(4). Except as noted under 4b, FHWA’s construction contracting requirements apply to any construction project eligible for assistance under Title 23.¹
- b. This directive does not apply to the contract change or extra work order force account method of construction described in 23 CFR 635.120(d).
- c. This directive does not apply to non-construction Title 23 projects or projects with specific statutory authority, including:
 - (1) Operational improvement projects – [FHWA’s September 25, 2019, memo titled: Procurement and Authorization of Federal-Aid Operational Improvements \(Non-Construction Projects\)](#) provides guidance for operational improvement projects.
 - (2) Recreational Trail Program projects – For projects carried out under 23 U.S.C.133(h)(5), States may use their own procurement procedures (2 CFR 200.317) and subrecipients of States shall follow such policies and procedures allowed by the State (2 CFR 1201.317).
 - (3) Railroad or utility facility adjustment – Railroad and utility adjustment work carried out by the relevant railroad or utility using its own forces is cost-effective. See also 23 CFR 635.205(b).
- d. This directive does not directly apply to direct recipients that are not State DOTs. See the April 12, 2024, procurement memo for additional details. However, while not directly applicable to such recipients, this guidance may be relied upon should any such recipient request FHWA to approve the use of force account under 2 CFR 200.320(c)(4), including any such work for railroad or utility relocation.

5. What definitions are used in this directive?

- a. **Force Account.** For purposes of this directive, the term “force account” shall have the same meaning as defined in 23 CFR 635.203(c). For clarity, the term “Agency force account” refers to the direct performance of work by any direct recipient (typically the State DOT) or subrecipient of Title 23 funding. The term “contract force account” refers to the method of paying a contractor based on the cost of labor, equipment, and materials furnished, with consideration for overhead and profit.
- b. **Some Other Method.** For purposes of this directive, the term “some other method” shall have the same meaning as defined in 23 CFR 635.203(b).

¹ Section 1103 of the Moving Ahead for Progress in the 21st Century Act (MAP-21) (Pub. L. No. 112-141) revised the definition of “construction” in 23 U.S.C. 101(a) to include the phrase “or any project eligible for assistance under this title”.

- c. **Cost Effective.** For purposes of this directive, the term “cost effective” shall have the same meaning as defined in 23 CFR 635.203(e) and clarified in this directive.
 - d. **Emergency.** For the purpose of this part, the term “emergency” shall have the same meaning as defined in 23 CFR 635.203(f).
6. **What information must FHWA assess to ensure that force account is more cost effective than contracting by competitive bidding?** Under 23 CFR 635.204(c), States must submit a request to FHWA 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 reasons that force account is more cost effective than competitive bidding. In evaluating the project description, the kind of work to be performed, estimated costs, and reasons agency force account is more cost effective than performing the work through competitive bidding, FHWA must ensure that it has the following information from the agency:
- a. **Demonstrated ability of the agency to perform the work.** Per 23 CFR 635.105, FHWA must be able to determine that the agency has the experience, resources, and demonstrated ability to complete the work with the same level of quality as that expected on a competitively let construction contract.

(1) Availability of equipment.

- (a) Per 23 CFR 635.106(e), the agency must own (or currently lease) most of the equipment that is needed to perform the work. If the agency must acquire or lease substantially more equipment than required for its normal operation, it would be difficult to justify an affirmative finding of cost-effectiveness. While no contractor, subcontractor, or agency owns all of the equipment that it may need, the costs associated with leasing equipment on a force account project should be a relatively minor portion of the overall cost. FHWA and the State may elect to limit the percentage of equipment leasing costs for differing types of work.
- (b) In agency force account work, the rates on publicly owned equipment eligible for Federal participation may be the agreed unit price or actual cost. For agreed unit prices, the equipment need not be itemized on the estimate. If the project is to be performed on the basis of actual cost, the estimate should include a schedule of rates, exclusive of profit, to be charged for the use of publicly owned equipment. [2 CFR 200.436-439; 23 CFR 635.106(e)].

- (2) Use of minor agreements.** While use of force account procedures generally anticipates that the agency or entity will perform all work with its own forces, in some instances, it may be appropriate for the agency or entity to enter into agreements for specific minor services associated with the scope of work (e.g., guardrail installation). Such instances should be documented and pre-approved as

part of the initial cost-effectiveness determination. Any work done by contract forces would be subject to prevailing wage rate requirements as appropriate.

- (3) **Ability to comply with design, construction and material, and quality standards.** The agency must have the ability to comply with the appropriate design, construction, and material quality standards. [23 CFR 635.105; 23 CFR 635.205(b); 23 CFR 635 Subpart D].
 - (4) **Ability to document compliance with quality assurance requirements.** For projects on National Highway System (NHS) routes, the agency must be able to obtain and document the same level of quality that is required for competitively let contracts under 23 CFR 637.
 - (5) **Schedule.** The completion time should be equal for both agency and contract work estimates in order to provide a fair comparison of prices.
- b. **Cost comparison.** Per 23 CFR 635.115, FHWA must obtain sufficient cost information so that a cost-effectiveness determination can be made by comparing the total estimated cost for the agency to perform the work versus the total cost using competitively bid prices. See the **Appendix** for a sample cost-effectiveness submittal.
- (1) The agency's cost estimate should be prepared on a force account basis including estimated quantities and prices for material, labor, and equipment. The estimate should be based on one of two methods:
 - a. Unit prices. Payment will be based on agreed unit prices and the actual number of units constructed. Agreed unit prices must be developed using quantities, man-hours, pay rates, material costs, and equipment rental rates. [2 CFR 200 Subpart E].
 - b. Actual cost. Per 23 CFR 635.115(b), in special cases involving unusual circumstances, payment will be based on the actual cost of labor, materials, and equipment rates. Estimated hours and rates should be included, and final reimbursement may be based on an audit of actual costs. [2 CFR 200 Subpart E].
 - (2) When an agency proposes to use previously purchased and stockpiled material, the value of the material should be the same as the price listed on the agency's cost inventory. Any materials purchased specifically to carry out the work will be valued based on the invoice. All material must comply with FHWA's general material requirements in 23 CFR Part 635, Subpart D.
 - (3) The agency should include all work items in the agency cost estimate (regardless of Federal participation) so that a fair comparison can be made with the estimate of contract work.

- (4) The agency's total cost estimate should include an adjustment for the agency's overhead or indirect cost rates for labor, equipment, and materials. The agency's overhead or indirect cost rates must be developed in compliance with the requirements for indirect cost proposals for States, local governments and Indian Tribes in 2 CFR Part 200, Appendix VII. More information about allocating indirect costs to Federal-aid Highway Program and Federal Lands Access Program projects may be found in the [Allocating Indirect Costs to Projects memorandum issued September 4, 2015](#).
- (5) The total agency cost estimate should not be reduced by:
- (a) Potential savings resulting from use of less than complete plans,
 - (b) Potential savings from reduced quality assurance during construction, and
 - (c) Anticipated savings from reduced construction management and documentation.
- c. **Assurances that the project will comply with all Title 23 requirements.** The agency must assure that it will comply with all applicable Title 23 requirements during construction.
7. **At what point does an agency's price become more cost effective in comparison with competitive prices?** There is no specific percentage or margin that defines a cost-effective determination. However, when comparing the estimate of the agency's prices with competitive prices, it is reasonable to expect that the agency's prices would produce a savings considering the normal price fluctuations in a competitive market.
8. **Do the Quality Assurance Procedures for Construction provisions of 23 CFR 637, Subpart B, apply to force account work?** The provisions of Part 637 apply to all projects on the NHS. Non-NHS Title 23 projects may use the quality assurance procedures of the contracting agency as allowed by the FHWA Division Office and State DOT Stewardship and Oversight Agreement.
9. **Do the prevailing wage rate requirements of 23 CFR 635.117(f) apply to force account projects?**
- a. Davis-Bacon prevailing wage rate requirements apply to mechanics and laborers employed by contractors and subcontractors on the site of the work. Davis-Bacon prevailing requirements apply to Title 23 projects located within the right-of-way of a Federal-aid highway pursuant to 23 U.S.C. 113, or when otherwise required by law to be treated as projects on a Federal-aid highway.
 - b. As it relates to agency force account work:
 - (1) Prevailing wage rate requirements do not apply to State, local, or municipal government employees of the owner-agency. Public agencies are not considered

"contractors" or "subcontractors" within the meaning of the Davis-Bacon Act. (See the [U.S. Department of Labor's \(DOL\) Field Operations Handbook, Section FOH 15b06\(a\)](#).) Any work that is "subcontracted" to private firms, is subject to the application of prevailing wage requirements.

- (2) Per [DOL's Field Operations Handbook, Section FOH 15e04](#), Federal prevailing wage rate requirements do not apply to Federal youth programs where a Federal statute establishes specific compensation to be given participants. On the other hand, State and local youth conservation corps employees and employees of other private organizations (non-profits) are subject to prevailing wage rate requirements.

10. Is an agency allowed to perform a portion of a Title 23 project on a force account basis and let a competitive contract for the remainder of the project? Yes, however, the same principles apply to force account approvals when the agency is performing a portion of the project – there must be a finding of cost-effectiveness for that portion of the project in accordance with 23 CFR 635.104(b). FHWA must have the following assurances from the agency:

- a. The agency's work must be shown to be more cost effective than competitive bidding (23 CFR 635.204), and
- b. There must be some assurance that the agency's work will be an integral part of a functional project when completed (23 U.S.C. 101(a)(3) and definition of "project" at 23 CFR 1.2(b)). For example, a proposal for a State DOT to perform the final pavement markings on a roadway rehabilitation project would, by the nature of the pavement marking work, logically provide this assurance. On the other hand, a proposal for a local public agency (LPA) to perform utility adjustments on a roadway reconstruction project, by itself, does not provide an assurance that the force account work will result in a functional project.
- c. Where an agency elects to use FHWA funding for material acquisition costs only, and State or local funding is used for the installation or construction of the project, the cost-effectiveness analysis should be based on a comparison of all costs (i.e., material, labor, equipment, and overhead costs) (23 CFR 635.115).

11. Is there a limitation for an agency to request programmatic force account approval?

Yes. The approval should be limited to a specific time period, not to exceed 2 years. Consideration should be given to specific force account ceilings for projects or programs (e.g., capping the total annual value of specific preventive maintenance activities).

12. What are the requirements for the approval of agency force account projects assumed by the State DOT?

- a. The Stewardship and Oversight Agreement between FHWA Division Office and the State DOT must address the assumption of this approval. Per 23 U.S.C. 106(c), the State DOTs shall assume this responsibility for all non-NHS projects and may, if appropriate,

assume this responsibility for projects that are on the NHS, including projects on the Interstate System.

- b. The State DOT is responsible for the review of cost-effectiveness of all LPA requests. However, for any Federal Land Access Program project to be carried out by a subrecipient under the direct administration of Federal Lands, Federal Lands is the approval authority.
 - c. In all situations where this approval is assumed, the State DOT will be responsible for reviewing cost-effectiveness determinations in accordance with the above procedures and ensuring that the project records adequately address any emergency or finding of cost-effectiveness.
 - d. FHWA should perform a periodic programmatic review of the State DOT's administration of the agency force account program commensurate with its level of use by the State DOT and subrecipients.
13. **Where can I obtain additional information?** For additional information, contact FHWA's Office of Infrastructure [Construction Team Leader](#).



Gloria M. Shepherd
Executive Director

Appendix – Sample Cost-Effectiveness Determination

Description of Work

Smith County proposes to install pavement markings as the final work item for the overlay of 0.9 miles of Smithfield Road. Contract forces will provide for the milling and resurfacing of the project by milling and providing a two-inch overlay throughout the project limits.

Supporting Information

- Smith County has the necessary experience and ability to perform the work. The county has been installing pavement markings on its roadway system for the past 10 years.
- The county will use its own equipment and does not need to rent equipment.
- The county will provide 100 percent of the labor and equipment for this work.
- The material will come from existing county stockpiles and supplies at a price currently listed in the county's inventory.
- All work will comply with Manual on Uniform Control Devices, 23 CFR 637 and State DOT requirements.
- Oversight, inspection, and materials acceptance will follow State LPA standards.
- The use of Smith County forces will result in an estimated savings of approximately \$2,700 when considering all contract and agency costs.

Cost-Effectiveness Analysis

Estimate of Contract Prices	Costs (\$)
Mobilization	\$1,000.00
Pavement Markings (11,000 lf @ \$0.50/lf)	\$5,500.00
Traffic Control Supervisor	\$1,000.00
Contract Total	\$7,500.00
Smith County Construction Engineering and Inspection at 10%	\$750.00
Total Project Estimate by Contract Forces	\$8,250.00
Estimate of Smith County Prices	
Labor	\$675.00
Equipment	\$573.50
Material	\$2,125.30
Subtotal (labor, materials, equipment)	\$3,373.80
Construction Engineering and Inspection at 10%	\$337.38
Subtotal Smith County (labor, materials, equipment, CEI)	\$3,711.18
Indirect Costs (Overhead at 50%)	\$1,855.59
Smith County total estimated cost	\$5,566.77
Difference in estimated costs	\$1,933.23
Percentage difference	26%