

## **VTrans Local Transportation Facilities Force Account Guidance**

### **Federal Statutory Reference Authority:**

23 U.S.C. Chapter 1, Section 112,  
23 CFR Chapter 1, Sections 635.201 – 205, 635.400(D)

23 CFR § 635.203 (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.

### **Applicability:**

All Federal-aid projects administered by Local Transportation Facilities (LTF).

This Guidance is not applicable for types of projects listed below.

- 1) Utility and Railroad force account is not covered by this Guidance when work is performed by the utility or railroad workforces and the municipal/sponsors employees do not participate. Utility and railroad force account cost effective determination is covered by, 23 CFR 635.205 (b).
- 2) Projects authorized under the Emergency Relief Program (23 CFR Part 668) are not covered by this Guidance.

### **Purpose/Comment:**

The purpose of this Guidance is: (i) to update the February 14, 1997 Enhancement Program policy # 4013, (ii) to establish guidance for the use of the force account method of construction, by way of a public interest finding (i.e. cost effectiveness determination) or through an emergency declaration, and (iii) to establish a method of material acquisition, beyond the competitive bid method, than can be used on LTF municipally/sponsor managed projects.

### **Guidance Statement:**

Vermont Agency of Transportation (VTrans) LTF Program Manager is delegated authority to approve the use of force account by a municipality/sponsor on locally managed projects with estimated construction costs under \$250,000 (exclusive of

inspection and administrative costs). Force account procedures can only be authorized where:

1. it has been demonstrated by the municipality/sponsor that work to be completed by their forces is more cost effective than by a competitive bid process;
2. that municipality/sponsor has the ability to accomplish the project;

or:

3. the VTrans Secretary of Transportation, or their delegate declares that an emergency exists.

Material used on all LTF projects must meet all of the requirements and restrictions found in 23 CFR 635 subpart D.

For projects, or segments of projects with estimated construction costs equal to or greater than \$250,000, approval from Federal Highway Administration (FHWA) is required.

A proposed force account project for an amount above the specified threshold may not be divided into several force account projects for lesser amounts in order to avoid FHWA's approval.

Competitive bidding is the preferred method of awarding construction contracts. The use of the force account should not be the norm, but the exception.

#### **Procedures:**

A municipality may request the use of force account prior to the construction phase of a project. This can occur at any time during project development, and in some cases, following the completion of the project development phase (prior to construction authorization).

- 1) *Force account request during the project development phase.* A municipality may make a request for the use of force account at any time during project development. However, it is recommended that a request be made at the earliest stage possible since this decision will affect the contract documents, the project budget, project agreement, and the schedule.

At a minimum, the force account request shall include the following:

- a) Plans and specifications with sufficient detail to analyze the proposed work and its effect on the right-of-way and/or environmental resources.

- b) A force account estimate plus an estimated cost of doing the work utilizing traditional contracting methods. The estimates must be “apples-to-apples” comparisons and must clearly show the federal portion of the funding that will be used for the work. The comparison of these estimates should clearly show that the force account is cost effective unless the request is being made because the work is categorized as an emergency.

The force account estimate may be based on agreed upon prices for labor, equipment and materials, or actual costs. If the actual cost method is used, rates for labor, equipment and materials must be specified in the estimate. The presumption is that materials will be acquired competitively in accordance with 49 CFR Part 18

- i. If it is estimated that the like materials (materials which are normally purchased from one vendor or supplier) to be purchased for the project will be under \$100,000 price and rate quotations from an adequate number of qualified sources is required.
- ii. If it is estimated that the like materials to be purchased for the project will be equal to or greater than \$100,000 a sealed bid process is required.

Like and/or associated material purchases for an amount above the specified threshold may not be divided into several purchases for lesser amounts in order to avoid FHWA’s approval.

- c) If the work is categorized as an emergency an explanation of the basis for this finding shall be included. The emergency shall require a formal declaration by the VTrans Secretary of Transportation, or their delegate. (The use of the term emergency here is intended to capture those situations that might need to be expedited to reduce the extent of damage propagation or to mitigate imminent safety impacts to the public. The term emergency here is not intended to imply an emergency of the magnitude required for an FHWA Emergency Relief (ER) declaration. 23 CFR 635.203(f))

2) *Force account request following completion of the project development phase.* A municipality may request the use of force account following the completion of the project development phase, but prior to the authorization of the construction phase in cases where there is a lack of bids or the bids received are unreasonable when compared to the engineer’s estimate. At a minimum, the force account request shall include the information listed under section 1) of the Procedures of this Guidance.

Prior to authorizing the construction phase, the LTF Project Manager shall verify that all necessary certifications and clearances are complete, that funding is included the

Statewide Transportation Improvement Program (STIP), and that funding has been obligated by FHWA. All other applicable federal regulations will continue to apply to projects done by force account.

Upon completion of the force account project the VTrans LTF Project Manager will compile a report comparing actual force account expenditures to the initial force account estimate and the "by-bid estimate". Each year on or before February 1, VTrans will submit to FHWA a spreadsheet that lists each force account construction project that was approved under this Guidance and the related comparison of the actual force account expenditures to the initial force account estimate and the "by-bid estimate". If the actual force account expenditures on any project exceed the "by-bid estimate", VTrans shall provide an explanation of why the "by-bid estimate" was exceeded.

Approval date: 5/13/08

Approved by:

  
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