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## **CHAPTER 22**

### **LOCAL AGENCY FORCE ACCOUNT CONSTRUCTION**

<b>22.1</b>	<b>OVERVIEW .....</b>	<b>2</b>
22.1.1	Basis of State Requirements .....	2
22.1.2	Basis of Federal Requirements .....	2
<b>22.2</b>	<b>PRELIMINARY COST ESTIMATING AND PROGRAMMING A PROJECT .....</b>	<b>4</b>
22.2.1	State Funded Project Requirements .....	4
22.2.2	Federal-Aid Project Requirements .....	5
22.2.3	What Is Required in A Federal-Aid Project Cost-Effectiveness Finding? ...	5
22.2.4	Cost Comparison for Federal-Aid Projects .....	6
22.2.5	Cost Reductions Not Allowed on Federal-Aid Projects .....	6
<b>22.3</b>	<b>PLANS, SPECIFICATIONS, AND ESTIMATES (PS&amp;E) REQUIREMENTS .....</b>	<b>6</b>
<b>22.4</b>	<b>MATERIALS .....</b>	<b>7</b>
22.4.1	Federal-Aid Project Requirements .....	7
<b>22.5</b>	<b>CONSTRUCTION ADMINISTRATION .....</b>	<b>8</b>
22.5.1	Changes In Work .....	8
22.5.2	Progress Billing .....	8
22.5.3	Federal-Aid Project Requirements .....	8
22.5.4	Project Close Out .....	9
<b>22.6</b>	<b>RECORDS RETENTION .....</b>	<b>9</b>
<b>22.7</b>	<b>MINIMUM MONITORING PLAN REQUIREMENTS FOR FEDERAL-AID PROJECTS .....</b>	<b>10</b>
<b>22.8</b>	<b>RESOURCES .....</b>	<b>12</b>

## 22.1 OVERVIEW

The term force account shall mean the direct performance of public construction works by a LA, a railroad, or a public utility company by use of their own labor, services, equipment, materials, and supplies furnished by them and used under the direct control of their employees.

### 22.1.1 Basis of State Requirements

Per [255.20\(1\) F.S.](#), a LA is required to competitively award public construction works that are estimated to cost more than \$300,000, or more than \$75,000 for electrical work. Further, **s. 255.20 (2) F.S.** requires: *“The threshold amount of \$300,000 for construction or \$75,000 for electrical work, as specified in subsection (1), must be adjusted by the percentage change in the Engineering News-Record’s Building Cost Index from January 1, 2009, to January 1 of the year in which the project is scheduled to begin”.*

In addition, [336.41 F.S.](#) requires when working on the county road system “construction and reconstruction of roads and bridges... be let to contract to the lowest responsible bidder by competitive bid, except for:

- Construction and maintenance in emergency situations
- Construction and reconstruction having a total cumulative annual value not to exceed 5% of its 80% portion of the constitutional gas tax or \$400,000, whichever is greater
- construction of sidewalks, curbing, accessibility ramps, or appurtenances incidental to roads and bridges if each project is estimated to have total construction costs less than \$400,000 or as adjusted by the percentage change in the Construction Const Index from January 1, 2008.

It is up to the LA to comply with the Florida Statutes and determine if a project exceeding the thresholds meets one or more of the conditions for an exemption. Florida Statutes list conditions under which an exemption is allowed. One condition for exemption to competitively award projects exists when the governing board of the LA determines it is in the public’s best interest to perform the project using its own services, employees, and equipment. The exemption requires the LA to hold a public hearing in accordance with **255.20(1)(c)(9) F.S.**

### 22.1.2 Basis of Federal Requirements

[23 CFR 635.204-205](#) states the following reasons for use of noncompetitive construction contracting and must be considered by LAs seeking to use the force account method of

delivery for Federal-aid projects:

- When the State DOTs determine it necessary due to an emergency. An emergency shall be deemed to exist when emergency repair work 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 minimize the extent of the damage, protect remaining facilities, or restore essential travel. (***FHWA Emergency Relief Program*** as described in [23 CFR 668](#) and ***Chapter 13***.)
- 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 there are 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).

Per [23 CFR 635 Subpart B](#) and [FHWA Order 5060.1](#) “***FHWA Policy on Agency Force Account Use***”, a LA may deliver a LAP project via force account with an approved cost effectiveness finding. The District LP Administrator must approve the cost-effectiveness finding prior to a LA 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. The term cost-effective shall mean the efficient use of labor, equipment, materials and supplies to assure the lowest overall cost.

***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. Examples provided in the directive include:

- Transportation enhancement projects that are physically located outside the right of way of a public highway (restoration of historic railroad stations, shared use paths, recreational trails, landscaping and scenic beautification, railroad mainline improvements, rail yard improvements, etc.)
- Operational improvements or service-related projects that take place within the right of way of a public highway, but the scope of the contract does not meet the definition of “construction” in ***23 USC 101*** (e.g., service patrols, route diversion and evacuation routing, 911/511 telephone systems, computer-aided dispatch

systems, highway advisory or other radio systems for communicating with vehicles, etc.).

In addition, professional service work types, as discussed in **Chapter 14**, do not require a cost-effectiveness finding.

## **22.2 PRELIMINARY COST ESTIMATING AND PROGRAMMING A PROJECT**

Both Federal and State laws and rules require total costs of a force account project to be estimated prior to undertaking the work. The Department must receive, and review estimated total costs of the project to award Federal or State grant funding and program the project in its Adopted Work Program. LAs must follow the guidance set forth in **Chapter 5**. In addition, force account projects require additional steps when undertaken with Federal and/or State funds. All Department funded projects must comply with **Section 22.2.1** and those projects that receive Federal awards must also comply with **Section 22.2.2**.

### **22.2.1 State Funded Project Requirements**

**Chapter 255.20(1)(c)(9) F.S.** and **336. 41 F.S.** set forth cost estimating requirements for State (and locally) funded force account construction projects. LAs must fully account for all costs associated with performing and completing the work including:

- Employee compensation and benefits
- Equipment cost and maintenance
- Insurance costs
- Direct costs for materials and supplies
- Factor of 20% for management, overhead, and other indirect costs.

The LA must provide a detailed itemization of each component of the estimated cost of the project and documentation explaining the methodology used to arrive at the estimate cost. This information must be available for inspection at the public meeting when the LA requires an exemption under **255.20(1)(c)(9) F.S.** to the threshold for competitive awards.

All statutorily required elements must be included in the cost estimate when the LA applies for funding to the Department and intends to deliver the project via force account. The public meeting, as applicable, may occur after the project application is approved for Department funding, but must occur prior to executing the grant agreement with the LA.

## 22.2.2 Federal-Aid Project Requirements

A cost-effectiveness finding is required for any proposal to use a non-competitive method of contracting. 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 with the Department. Railroad and utility owners do not need to be LAP certified. Because the LA will be using its own employees, there are no requirements for Davis-Bacon Wage Rates. The LA estimates (and pays) employees' normal salary or wage.

## 22.2.3 What Is Required in A Federal-Aid Project Cost-Effectiveness Finding?

- Demonstrated ability of the LA to perform the work. The LA is able to complete the work with the same level of quality as that expected on a competitively let construction contract.
- Availability of equipment.
  - The LA 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. 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.
- Ability to comply with design, construction, and material quality standards and all Federal-aid requirements.
- Ability to document compliance with quality assurance requirements. Quality assurance procedures for construction identified in [23 CFR 637, Subpart B](#) apply to all NHS projects in full.
- Schedule. The project/contract completion time is to be equal for both LA and contract work estimates in order to provide a fair comparison of prices.
- Cost comparison. See **Section 22.2.2** for additional information.
- Assurances that the project will comply with all applicable Federal-aid requirements, including applicable sections of [FHWA 1273](#) and environmental commitments as detailed in **Chapter 18**.
- Assurances that performance of the project will not hinder the State's DBE goal as discussed in **Chapter 11**. An example of a statement is: *"FDOT requires subrecipients to use its race neutral DBE goal and does not permit contract goals*

*on FHWA-assisted projects. Therefore, the [LA] is confident that its force account will have no adverse effect on FDOT's overall DBE goal achievement."*

## 22.2.4 Cost Comparison for Federal-Aid Projects

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 LA'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 LA 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 LA's cost inventory.

The LA's total cost estimate must include an adjustment for overhead or indirect cost rates for labor, equipment, and materials. The LA's overhead or indirect cost rates must be developed in compliance with **2 CFR 200** (various parts) and per **Chapter 6** of the **LPM**. The 20% factor required by **255.20(1)(c)(9) F.S.** is not eligible for Federal-aid participation but would include overhead and indirect cost rates that may be eligible when broken out and developed based on established rates per **2 CFR 200**.

## 22.2.5 Cost Reductions Not Allowed on Federal-Aid Projects

The LA 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, or
- anticipated savings from reduced construction management and documentation.

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

The development of a project for construction by LA forces follows the same procedures as for a competitive bid contract in development of the final PS&E package and will be developed in accordance with the **LPM**. The LA must complete the Department's right of way and NEPA certification processes. The LA must also clear railroads, utilities, and

obtain environmental and other permits for the project. All design exceptions, utility exceptions, and design variations must be reviewed by the Department according to the processes outlined in the **Chapter 17**.

The PS&E package must be approved by the District LP Administrator.

For LAP projects, a **LAP Construction Checklist (Form No. 525-010-44)** must be fully executed to receive federal authorization for the project.

## 22.4 MATERIALS

All material must comply with FHWA's general material requirements in **23 CFR 635, Subpart D**. If LA provided materials are included in the project, the LA must submit justification for their use to the approving authority. The materials must have been produced by LA forces or acquired through competitive bidding. 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 LA provided materials may be accomplished by the time the PS&E is approved.

If a LA 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 LAs 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 LA provided material sources may be accomplished by the PS&E approval.

The LA must approve the source for each type of material before the delivery is started. The LA is allowed to accept small quantities of materials on the basis of visual inspection and the material supplier's certification. The LA's Project Engineer must reject materials that do not conform to the specifications. Projects located on the SHS must comply with State Materials Office requirements and be reported in MAC.

### 22.4.1 Federal-Aid Project Requirements

LAP projects that are Class A, B or C must comply with State Materials Office requirements and be reported in MAC. For projects on the NHS, prior FHWA approval is required for material or property purchased from a sole source.

## 22.5 CONSTRUCTION ADMINISTRATION

The Department is responsible for oversight of all grant funded LA projects. Force account work in no way alleviates the LA from inspection or quality requirements expected on public construction works that are competitively awarded. It is recommended the LA hold a project kick-off or pre-construction meeting and invite District staff. The LA administers construction, provides qualified inspection staff, and the Department performs periodic project reviews. The quality of materials and workmanship on the project must conform to the project plans and specifications. The LAs accept materials and workmanship based on the methods usually and normally used by the LA.

### 22.5.1 Changes in Work

Whenever a change in the project work is required, the LA's Project Engineer shall submit a written request to the District LP 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. Per **Chapter 21.5**, the LA will submit all changes to the District LP Administrator prior to implementing those changes.

### 22.5.2 Progress Billing

Progress billing must be based on the documented costs of the labor, equipment, and material of the work performed. The LA shall send progress billings, along with the required documentation for progress payment (outlined in **Chapter 6**), to the District LP Administrator per the terms of the grant agreement.

### 22.5.3 Federal-Aid Project Requirements

Changes on Federal-aid projects are not eligible for reimbursement unless the contract changes are approved by the District LP 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 LP Administrator,
- (2) the execution of a **Supplemental LAP Agreement**, and
- (3) a FHWA approved modification to the Federal Authorization.

Agencies with an approved indirect cost rate per **2 CFR 200** may be reimbursed for both direct and indirect costs. See **Chapter 6** for additional information.

## 22.5.4 Project Close Out

The LA will carry out the same project close out requirements provided in **Chapter 21**.

The LA's Project Engineer shall request a final inspection from the District LP Administrator within 15 days of completing construction.

### State and Federal-aid projects require the following close out documents:

- Final Invoice: submitted within 120 days of construction completion. The invoice includes a comparison of preliminary and final costs for labor, equipment, and material (overruns & underruns).
- 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. Materials certifications comply with the FDOT **Materials Manual, Volume I, Section 5.2 and Chapter 21**.

### State funded projects require:

- Engineer's Certification of Compliance: the form provided as "Exhibit C" of the **State Funded Grant Agreement (Form No. 525-010-60)** is required to certify the project was constructed per the Department approved plans and specifications.

### Federal-aid projects require:

- Final Inspection & Acceptance of a [Federal-Aid Project Form 525-010-42](#)
- LAP Record of [Final Plans and Documentation Form No. 525-010-47](#)
- Project Commitments Record, as applicable

## 22.6 RECORDS RETENTION

The LA shall keep final records for at least 5 years following acceptance of the project per the terms of the grant agreement. The LA'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 are useful, especially if care is taken to show any unusual conditions, equipment, or procedures.

## 22.7 MINIMUM MONITORING PLAN REQUIREMENTS FOR FEDERAL-AID PROJECTS

As discussed in **Chapter 5.3**, a risk assessment and project specific monitoring plan must be developed prior to the federal award. Federal award date under Department process is considered the Federal Authorization date. **Table 1** contains the minimum monitoring requirements performed by the Department on force account projects. Department grant managers may impose additional monitoring requirements for projects based on findings of noncompliance on other projects delivered by the LA in the past, or if current findings of noncompliance occur on active projects.

*Table 1: Minimum Monitoring Requirements for Federal-Aid Projects*

Monitoring Requirement	Requirement Description and Activities	Minimum Frequency Based on Risk Level
F.S. Exemption Review	The LA must determine if a project exceeding the threshold(s) meets one or more of the conditions for an exemption allowed under F.S.	For all projects exceeding the threshold(s), the LA provides a certification to the project file that the LA has met the requirements for an exemption.
F.S. Cost Estimate	The LA must provide a detailed itemization of each component of the estimated cost of the project and documentation explaining the methodology used to arrive at the estimate cost. All statutorily required elements must be included in the cost estimate when the LA applies for funding to the Department and intends to deliver the project via force account.	For all projects, the District must approve the cost estimate prior to a LA implementing this delivery method.
Cost Effectiveness Finding	LA prepares a Cost Effectiveness Finding document per <b>23 CFR 635 Subpart B</b> and <b>FHWA Order 5060.1 "FHWA Policy on Agency Force Account Use"</b> and submits to the District LP Administrator for review. The Cost Effectiveness Finding may also include the F.S. cost estimate information or the LA can provide two separate documents.	For all projects, the District LP Administrator must approve the cost-effectiveness finding prior to a LA implementing this delivery method.
Project Plans Review and PS&E Package	The LA must submit project plans to the District for review and acceptance. The LA must develop	All project plans must be reviewed by the

Monitoring Requirement	Requirement Description and Activities	Minimum Frequency Based on Risk Level
Approval	the final PS&E package for approval by the Department.	<p>Department at 60% plans. Additional plan phase reviews will be requested based on project scope, complexity, and risk. Final plans (100%) are approved as a component of the PS&amp;E package approval.</p> <p>PS&amp;E packages for all construction projects must be approved by the District LP Administrator prior to requesting Federal authorization.</p>
LAP Construction Checklist	The LA prepares and submits the LAP Construction Checklist for District approval.	For all LAP projects, a <b>LAP Construction Checklist (Form No. 525-010-44)</b> must be fully executed to receive federal authorization.
Materials Certification	LA must submit materials justification in accordance with 22.4. LA must certify all materials incorporated into the project. LA submits Project Materials Certification Letter (PMCL).	PMCLs are required for all projects. The District LP Administrator and/or the District Materials Office must approve PMCLs for all projects.
Construction Inspection	LA performs construction administration and inspections in compliance with <b>Chapter 21</b> .	District performs project reviews in accordance with <b>Chapter 21, Table 1</b> .
Modifications/ Changes in the Work	Changes in work agreed upon between the LA and the Department are documented, justified, and submitted in writing to the grant manager for approval prior to the LA implementing the change. Department contract manager verifies changes comply with Federal and State requirements and the grant agreement.	All changes in work are reviewed and approved prior to implementation by the LA. SAs or time extensions to the Department grant agreement are issued by the District LP Administrator as needed.
Project Close Out	The LA will prepare and submit a project close out package for Department review and	The District LP Administrator reviews

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Monitoring Requirement	Requirement Description and Activities	Minimum Frequency Based on Risk Level
	approval. All projects require a complete and correct close out package to process the final invoice for payment.	project close out package and routes final invoice for payment upon approval.

## 22.8 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](#)