

## § 635.101

- 635.105 Supervising agency.
- 635.106 Use of publicly owned equipment.
- 635.107 Small and disadvantaged business participation.
- 635.108 Health and safety.
- 635.109 Standardized changed condition clauses.
- 635.110 Licensing and qualification of contractors.
- 635.111 Tied bids.
- 635.112 Advertising for bids.
- 635.113 Bid opening and bid tabulations.
- 635.114 Award of contract and concurrence in award.
- 635.115 Agreement estimate.
- 635.116 Subcontracting and contractor responsibilities.
- 635.117 Labor and employment.
- 635.118 Payroll and weekly statements.
- 635.119 False statements.
- 635.120 Changes and extra work.
- 635.121 Contract time and contract time extensions.
- 635.122 Participation in progress payments.
- 635.123 Determination and documentation of pay quantities.
- 635.124 Participation in contract claim awards and settlements.
- 635.125 Termination of contract.
- 635.126 Record of materials, supplies, and labor.
- 635.127 Agreement provisions regarding overruns in contract time.

### Subpart B—Force Account Construction

- 635.201 Purpose.
- 635.202 Application.
- 635.203 Definitions.
- 635.204 Determination of more cost effective method or an emergency.
- 635.205 Finding of cost effectiveness.

### Subpart C—Physical Construction Authorization

- 635.301 Purpose.
- 635.303 Applicability.
- 635.305 Physical construction.
- 635.307 Coordination.
- 635.309 Authorization.

### Subpart D—General Material Requirements

- 635.401 Purpose.
- 635.403 Definitions.
- 635.405 Applicability.
- 635.407 Use of materials made available by a public agency.
- 635.409 Restrictions upon materials.
- 635.410 Buy America requirements.
- 635.411 Material or product selection.
- 635.413 Warranty clauses.
- 635.417 Convict produced materials.

APPENDIX A TO SUBPART D—SUMMARY OF ACCEPTABLE CRITERIA FOR SPECIFYING TYPES OF CULVERT PIPES

## 23 CFR Ch. I (4–1–01 Edition)

### Subpart E—Interstate Maintenance Guidelines

- 635.501 Purpose.
- 635.503 Policy.
- 635.505 Maintenance guidelines.
- 635.507 Implementation.
- 635.509 Deficient or unsatisfactory maintenance.

AUTHORITY: 23 U.S.C. 101(note), 109, 112, 113, 114, 116, 119, 128, and 315; 31 U.S.C. 6505; 42 U.S.C. 3334, 4601 *et seq.*; sec. 1041(a), Pub. L. 102-240, 105 Stat. 1914; 23 CFR 1.32; 49 CFR 1.48(b).

### Subpart A—Contract Procedures

SOURCE: 56 FR 37004, Aug. 2, 1991, unless otherwise noted.

#### § 635.101 Purpose.

To prescribe policies, requirements, and procedures relating to Federal-aid highway projects, from the time of authorization to proceed to the construction stage, to the time of final acceptance by the Federal Highway Administration (FHWA).

#### § 635.102 Definitions.

As used in this subpart:

*Administrator* means the Federal Highway Administrator.

*Calendar day* means each day shown on the calendar but, if another definition is set forth in the State contract specifications, that definition will apply.

*Certification acceptance* means the alternative procedure which may be used for administering certain highway projects involving Federal funds pursuant to 23 U.S.C. 117.

*Contract time* means the number of workdays or calendar days specified in a contract for completion of the contract work. The term includes authorized time extensions.

*Division Administrator* means the chief FHWA official assigned to conduct business in a particular State. A State is as defined in 23 U.S.C. 101.

*Force account* means a basis of payment for the direct performance of highway construction work with payment based on the actual cost of labor, equipment, and materials furnished and consideration for overhead and profit.

*Formal approval* means approval in writing or the electronic transmission of such approval.

*Incentive/disincentive for early completion* as used in this subpart, describes a contract provision which compensates the contractor a certain amount of money for each day identified critical work is completed ahead of schedule and assesses a deduction for each day the contractor overruns the incentive/disincentive time. Its use is primarily intended for those critical projects where traffic inconvenience and delays are to be held to a minimum. The amounts are based upon estimates of such items as traffic safety, traffic maintenance, and road user delay costs.

*Liquidated damages* means the daily amount set forth in the contract to be deducted from the contract price to cover additional costs incurred by a State highway agency because of the contractor's failure to complete the contract work within the number of calendar days or workdays specified. The term may also mean the total of all daily amounts deducted under the terms of a particular contract.

*Local public agency* means any city, county, township, municipality, or other political subdivision that may be empowered to cooperate with the State highway agency in highway matters.

*Major change or major extra work* means a change which will significantly affect the cost of the project to the Federal Government or alter the termini, character or scope of the work.

*Materially unbalanced bid* means a bid which generates a reasonable doubt that award to the bidder submitting a mathematically unbalanced bid will result in the lowest ultimate cost to the Federal Government.

*Mathematically unbalanced bid* means a bid containing lump sum or unit bid items which do not reflect reasonable actual costs plus a reasonable proportionate share of the bidder's anticipated profit, overhead costs, and other indirect costs.

*Public agency* means any organization with administrative or functional responsibilities which are directly or indirectly affiliated with a governmental

body of any nation, State, or local jurisdiction.

*Publicly owned equipment* means equipment previously purchased or otherwise acquired by the public agency involved primarily for use in its own operations.

*Specialty items* means work items identified in the contract which are not normally associated with highway construction and require highly specialized knowledge, abilities or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract; in general, these items are to be limited to minor components of the overall contract.

*State highway agency (SHA)* means 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 highway agency" if the context so implies.

*Workday* means a calendar day during which construction operations could proceed for a major part of a shift, normally excluding Saturdays, Sundays, and State-recognized legal holidays.

[62 FR 6873, Feb. 14, 1997]

### § 635.103 Applicability.

The policies, requirements, and procedures prescribed in this subpart shall apply to all Federal-aid highway projects except for those title 23 requirements specifically discharged in an approved certification acceptance plan, in accordance with 23 U.S.C. 117.

[56 FR 37004, Aug. 2, 1991, as amended at 62 FR 6873, Feb. 14, 1997]

### § 635.104 Method of construction.

(a) Actual construction work shall be performed by contract awarded by competitive bidding; unless, as provided in §635.104(b), the SHA demonstrates to the satisfaction of the Division Administrator that some other method is more cost effective or that an emergency exists. The SHA shall assure opportunity for free, open, and competitive bidding, including adequate publicity of the advertisements or calls for bids. The advertising or