**Federal Highway Administration, DOT**

**§ 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 STD demonstrates to the satisfaction of the Division Administrator that some other method is more cost effective or that actual costs plus a reasonable proportionate share of the bidder’s anticipated profit, overhead costs, and other indirect costs.

(b) 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.

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

(d) 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.

(e) State transportation department (STD) 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 transportation department” if the context so implies.

(f) 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.
an emergency exists. The STD shall assure opportunity for free, open, and competitive bidding, including adequate publicity of the advertisements or calls for bids. The advertising or calling for bids and the award of contracts shall comply with the procedures and requirements set forth in §§635.112 and 635.114.

(b) Approval by the Division Administrator for construction by a method other than competitive bidding shall be requested by the State in accordance with subpart B of part 635 of this chapter. Before such finding is made, the STD shall determine that the organization to undertake the work is so staffed and equipped as to perform such work satisfactorily and cost effectively.

(c) In the case of a design-build project, the requirements of 23 CFR part 636 and the appropriate provisions pertaining to design-build contracting in this part will apply. However, no justification of cost effectiveness is necessary in selecting projects for the design-build delivery method.


§ 635.105 Supervising agency.

(a) The STD has responsibility for the construction of all Federal-aid projects, and is not relieved of such responsibility by authorizing performance of the work by a local public agency or other Federal agency. The STD shall be responsible for ensuring that such projects receive adequate supervision and inspection to ensure that projects are completed in conformance with approved plans and specifications.

(b) Although the STD may employ a consultant to provide construction engineering services, such as inspection or survey work on a project, the STD shall provide a full-time employed State engineer to be in responsible charge of the project.

(c) When a project is located on a street or highway over which the STD does not have legal jurisdiction, or when special conditions warrant, the STD, while not relieved of overall project responsibility, may arrange for the local public agency having jurisdiction over such street or highway to perform the work with its own forces or by contract; provided the following conditions are met and the Division Administrator approves the arrangements in advance.

(1) In the case of force account work, there is full compliance with subpart B of this part.

(2) When the work is to be performed under a contract awarded by a local public agency, all Federal requirements including those prescribed in this subpart shall be met.

(3) The local public agency is adequately staffed and suitably equipped to undertake and satisfactorily complete the work; and

(4) In those instances where a local public agency elects to use consultants for construction engineering services, the local public agency shall provide a full-time employee of the agency to be in responsible charge of the project.

§ 635.106 Use of publicly owned equipment.

(a) Publicly owned equipment should not normally compete with privately owned equipment on a project to be let to contract. There may be exceptional cases, however, in which the use of equipment of the State or local public agency for highway construction purposes may be warranted or justified. A proposal by any STD for the use of publicly owned equipment on such a project must be supported by a showing that it would clearly be cost effective to do so under the conditions peculiar to the individual project or locality.

(b) Where publicly owned equipment is to be made available in connection with construction work to be let to contract, Federal funds may participate in the cost of such work provided the following conditions are met:

(1) The proposed use of such equipment is clearly set forth in the Plans, Specifications and Estimate (PS&E) submitted to the Division Administrator for approval.

(2) The advertised specifications specify the items of publicly owned equipment available for use by the successful bidder, the rates to be charged, and the points of availability or delivery of the equipment; and

(3) The advertised specifications include a notification that the successful bidder has the option either of renting