

*Local Project Administration Manual & Resource Guide*

# **Force Account Work**



**MaineDOT**

*Integrity - Competence - Service*

*2018 Edition*

# Force Account Work

Most of the time, construction work on federally funded projects is done by contractors hired through competitive bidding. Occasionally, however, a larger municipality or other agency may consider it advantageous to build a project with its own personnel using a “force account” process. If so, the municipality or agency managing a project must justify why using force-account labor would serve the public interest. A written request, which should be submitted to the MaineDOT project manager for a particular project, must include:

- A description of the nature of the work;
- A detailed description of how the work is to be done;
- A cost breakdown for materials, equipment, labor and overhead;
- An explanation of why doing the work by force account would be more cost-effective than competitive bidding.



MaineDOT may review force-account requests in consultation with the Federal Highway Administration. Generally, a municipality or other local agency must demonstrate that its personnel can perform the work to the standard to which a private contractor would be held. The agency also must show, among other things, that:

- Its employees can perform the work in the range of **15 percent less** than the official cost estimate for competitive bidding – based on estimated quantities and prices for materials, labor and equipment;
- Agency personnel have successfully completed other projects of similar size and scope;
- The agency has the personnel and equipment to do the work to the same standard of quality that is required for a competitively bid contract;
- The agency can meet labor-compliance requirements and other federal mandates in Form FHWA-1273, “Required Contract Provisions for Federal-aid Construction Projects”; and
- Authorizing an agency to perform work by force account will not hinder MaineDOT’s ability to achieve its overall Disadvantaged Business Enterprise (DBE) performance goal.

## State Projects

Requests to use “in-kind” work on projects with no federal money must have the approval of the manager of MaineDOT’s Multimodal Program. In making a request, a city, town or other agency must explain why it wants to forego competitive bidding and must document the following:

- Estimated number of hours of work, with labor rates; and
- Estimated quantities and prices for materials to be used on a project.

## Federal Guidance – Force Account Labor

The term “Force Account” means the direct performance of highway and highway-related construction work by a public agency (State, local, or Tribal), a railroad, or a public utility company by use of labor, equipment, materials, and supplies furnished by the agency and used under their direct control [23 CFR part 635.203(c)].

In general, Federal-aid highway construction projects must be awarded on the basis of the lowest responsive, responsible bidder [23 U.S.C. 112] unless the state transportation agency can demonstrate to the satisfaction of the Federal Highway Administration (FHWA) that some other method is more cost-effective or that an emergency exists. In this case, “cost effective” is defined as the efficient use of labor, equipment, materials and supplies to assure the lowest overall cost [23 CFR part 635.203(e)].

In accordance with the stewardship/oversight agreement between MaineDOT and the Maine Division of the FHWA, MaineDOT has established a self-certifying process to meet the requirements for a finding of cost effectiveness as described in 23 CFR part 635.204(c). Construction work proposed by a public agency on a Federal-aid project meeting these requirements is considered to be cost effective.

The purpose of this document is to provide an overview for using the **Force Account Construction Method – Finding in the Public Interest Form (hereafter “the Form.”)** The MaineDOT Project Manager is responsible for preparing and submitting the form and attaching all required supporting documentation. The corresponding MaineDOT Program Manager (or in MaineDOT M&O Regions, the Region Manager) must provide review/approval sign-off. All Force Account requests shall be maintained at a central secure repository site, available for review, including by FHWA.

When the force account construction method is used, it must be justified by a cost effectiveness determination that shows a significant savings over estimated contract prices. The requestor shall document this savings by providing Force Account costs on the attached **‘Force Account Estimate Worksheet’** that must be submitted with the Form. This should be compared with the detailed cost estimate of work by the competitive bid method of construction. The estimates for both shall be all inclusive so a fair and equal comparison can be made.

The public agency estimate for the force account construction method must include all costs associated with the work and not just the work that will be billed to the project. These costs include non-reimbursable costs that are inherent to the work including labor, overhead, equipment, materials, and supplies. MaineDOT will provide a standard overhead figure to be used with these estimates – it currently is 110%. *Municipalities and other local public agencies either shall provide their audited overhead reports or use the standard overhead figure of 110% of labor costs.*

- If the public agency has no set rates for its equipment, it may use current Blue Book rental rates.
- The public agency obtains all required clearances and permits as applicable.
- Project activity should only proceed when:
  - a. All documentation justifying the force account construction method is complete.
  - b. Plans are complete and approved by the project manager.
  - c. Obligation authority and funding are cleared by the project manager.

- Project expenditures should follow established MaineDOT guidelines

The Force Account method of construction may be used in the following circumstances: A) Emergency Repair Work; B) Railroad or Utility Work; C) When there is Lack of Bids or Unreasonable Bids; or D) Work by a Public Agency. The eligibility and documentation requirements for the latter types of projects are indicated in the YES sections of Part D of the attached form.

**A) Emergency Repair Work**

Necessary to protect public health and safety, or a major element or segment of a highway or roadway has failed, and competitive bidding is impossible or impractical. Competitive bidding may be precluded because immediate action is necessary to minimize the extent of the damage, to protect remaining facilities, or to restore essential travel as provided in 23CFR 635.204(b).

**B) Railroad or Utility Work**

The inherent nature of the operation makes it cost effective to perform minor adjustments of railroad and utility facilities (as determined by the railroad or utility) by the force account construction method, while the majority of work is performed by competitive bid. See 23CFR 635.205(b).

**C) Lack of Bids/Unreasonable bids or Work by a Public Agency**

1. It can be demonstrated that it is cost-effective to do the work by the Force Account method and the scope of work is within the approved Force Account criteria, or that there is a lack of bids or the bids received are unreasonable. The Force Account value must be in the range of 15% less than estimated competitive bid method of construction. *If the cost savings is less than 10%, concurrence must be obtained from the appropriate MaineDOT Bureau Director and the FHWA.*
2. It is cost-effective to perform work that is incidental to the main purpose of the project by the Force Account construction method. The majority of work is still accomplished by competitive bidding.
3. Appropriate documentation shall be provided to substantiate the reason for work done by MaineDOT or municipal forces.
4. Force Account activity shall not be considered for routine maintenance work.

<b>MAINE DEPARTMENT OF TRANSPORTATION FORCE ACCOUNT METHOD – FINDING IN THE PUBLIC INTEREST</b>		<b>WIN :</b>  <b>Cost:</b>		
<b>Today's Date:</b>		<b>Planned Project Begin</b>		
<b>Location:</b>				
<p>The term “force account construction method” refers to construction work a public agency performs on federally funded projects using its own forces. Specifically, it means the direct performance of highway construction work by the Department, local entity, county, railroad, public utility company, or other agency by use of labor, equipment, materials, and supplies furnished by the agency and used under its contract terms (23 CFR part 635.203(c)).</p>				
<b>Scope of Work:</b>				
<p>I <input type="checkbox"/> do / <input type="checkbox"/> do not recommend that _____ be allowed to construct the work by the force account construction method. The <u>work</u> <input type="checkbox"/> does / <input type="checkbox"/> does not meet one of the following conditions justifying performance of the work by the force account construction method.</p> <p>Check type of work below that applies (one only):</p>				
<input type="checkbox"/> <b>A. Emergency Repair Work</b>		<b>Y</b>	<b>N</b>	<b>Documentation</b>
1. Work meets definition in 23 CFR 668.103		<input type="checkbox"/>	<input type="checkbox"/>	
2. Materials meet requirements or waiver issued		<input type="checkbox"/>	<input type="checkbox"/>	
3. Attach backup documentation		<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/> <b>B. Railroad or Utility Work</b>				
1. Work Scope meets Definition of “Adjustment” per Subpart B		<input type="checkbox"/>	<input type="checkbox"/>	
2. Organization is qualified to perform work		<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/> <b>C. Lack of Bids or Unreasonable Bids</b>				
1. Is there lack of bids or unreasonable bids?		<input type="checkbox"/>	<input type="checkbox"/>	
2. Is Force Account method more cost effective than bidding, as defined in 23 CFR 635.203(e)?		<input type="checkbox"/>	<input type="checkbox"/>	

<input type="checkbox"/> <b>D. Work by Public Agency (Municipal Forces)</b>	<b>Y</b>	<b>N</b>	<b>Documentation</b>
1. Does scope meet definition of “construction” (23 USC, 101)?	<input type="checkbox"/>	<input type="checkbox"/>	
2. Is the project located within the highway right of way?	<input type="checkbox"/>	<input type="checkbox"/>	
3. Does agency have cost estimates for materials, labor and equipment, including overhead rates and indirect costs?	<input type="checkbox"/>	<input type="checkbox"/>	
4. Does agency have experience, resources and ability to perform the work to same quality as private contractor?	<input type="checkbox"/>	<input type="checkbox"/>	
5. Does agency have ability to comply with appropriate design, construction, and materials quality standards?	<input type="checkbox"/>	<input type="checkbox"/>	
6. Does agency own (or currently lease) most equipment needed to perform the work?	<input type="checkbox"/>	<input type="checkbox"/>	
7. Were Force Account and competitive bid cost estimates based on the same project completion timeline?	<input type="checkbox"/>	<input type="checkbox"/>	
8. Has it been determined that proposed work cannot be competitively bid with other Federal-aid projects?	<input type="checkbox"/>	<input type="checkbox"/>	
9. Has it been determined that no materials will be purchased sole-source in excess of \$5,000?	<input type="checkbox"/>	<input type="checkbox"/>	
10. Are there assurances that force-account work will not hinder the State’s ability to meet its DBE utilization goal?	<input type="checkbox"/>	<input type="checkbox"/>	
11. Are there assurances that the organization will comply with FHWA-1273?	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/> <b>E. Additional Project Information</b>			
1. Public Agency paying part of cost?	<input type="checkbox"/>	<input type="checkbox"/>	
2. Agreement provided if work done by other( non-state forces)	<input type="checkbox"/>	<input type="checkbox"/>	
3. Is any portion of work being subcontracted?	<input type="checkbox"/>	<input type="checkbox"/>	
4. Will agency perform all labor besides specialty work? (paving)	<input type="checkbox"/>	<input type="checkbox"/>	
5. Is more than 50% of the work sub-contracted?	<input type="checkbox"/>	<input type="checkbox"/>	
6. Is this a full FHWA oversight project?	<input type="checkbox"/>	<input type="checkbox"/>	
I hereby certify that _____ provided all the necessary documentation relating to Items A through E above in support of the request to administer and/or perform the work on the above referenced project by the force account construction method.			
<b>NOTE:</b>			
Documentation that shall further support Items A through E should be retained as part of the project files.			
Approvals:			
MaineDOT Program Manager:			
FHWA Division Administrator:			

