



U.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF INSPECTOR GENERAL

**Inadequate Data and Guidance Hinder
FHWA Force Account Oversight**

FHWA

Report No. ST2019053

May 29, 2019





Inadequate Data and Guidance Hinder FHWA Force Account Oversight

Self-initiated

Federal Highway Administration | ST2019053 | May 29, 2019

What We Looked At

The Federal Highway Administration (FHWA) oversees more than \$40 billion in annual Federal aid for national highway and bridge projects. Federal law requires aid recipients to competitively award contracts for such projects unless some other method is more cost-effective or an emergency exists. One such method is force account work, which involves the noncompetitive use of State or local resources to execute highway projects. Given the inherent risk of higher costs associated with noncompetitive practices, we initiated an audit to (1) determine the scope and magnitude of force account projects funded through the Federal-aid Highway Program and (2) assess FHWA's processes for overseeing compliance with Federal force account requirements.

What We Found

FHWA officials have designated force account as a low-risk activity. As a result, FHWA does not track force account activity and thus cannot readily identify which federally funded projects used force account or the amount and type of activity that received Federal funding. In addition, the Agency provides minimal oversight, does not monitor whether States comply with force account regulations, and has gaps in its guidance. For example, while Federal regulations detail when staff can waive a cost-effectiveness determination for use of force account, the Agency's guidance does not. Consequently, States may be using force account to perform permanent repairs when there may be a more cost-effective approach. FHWA does have a risk-based stewardship and oversight framework that gives it discretion in determining the scope of its oversight, as long as it is based on objective data and information. However, without adequate policies and procedures, FHWA cannot ensure that States comply with force account requirements and expend Federal dollars in a cost-effective manner.

Our Recommendations

We made four recommendations to improve FHWA's oversight of States' compliance with Federal force account requirements. FHWA concurred with recommendations 1, 2 and 4, and partially concurred with recommendation 3—stating that it neither agrees nor disagrees with our \$22.3 million estimate of unsupported costs but will take the necessary corrective actions. We consider recommendations 1 through 4 resolved but open pending completion of the planned actions.

Contents

Memorandum	1
Results in Brief	3
Background	4
FHWA Lacks Sufficient Data To Determine the Scope and Magnitude of Force Account Activity	5
FHWA Has Not Developed Adequate Guidance or Implemented a Process for Determining Compliance With Federal Requirements	7
Conclusion	10
Recommendations	10
Agency Comments and OIG Response	11
Actions Required	11
Exhibit A. Scope and Methodology	12
Exhibit B. Organizations Visited or Contacted	14
Exhibit C. List of Acronyms	16
Exhibit D. Criteria for FHWA Force Account Cost-Effectiveness Determinations	17
Exhibit E. Major Contributors to This Report	18
Appendix. Agency Comments	19



Memorandum

Date: May 29, 2019

Subject: ACTION: Inadequate Data and Guidance Hinder FHWA Force Account Oversight | Report No. ST2019053

From: Barry J. DeWeese
Assistant Inspector General for Surface Transportation Audits 

To: Federal Highway Administrator

The Federal Highway Administration (FHWA) is responsible for stewardship of more than \$40 billion in annual Federal aid for national highway and bridge projects. Federal law¹ requires aid recipients to competitively award contracts for Federal-aid highway construction projects through evaluating qualified bids for the work, unless some other method is shown to be more cost-effective or an emergency exists. One such method is force account work, which involves the noncompetitive use of resources from a State transportation department (State DOT), county,² railroad, or public utility to execute highway projects. FHWA Division Offices are primarily responsible for overseeing the use of force account on Federal-aid projects.

Given the inherent risk of higher costs associated with noncompetitive practices, we initiated an audit of FHWA's force account oversight. Our objectives were to (1) determine the scope and magnitude of force account projects funded through the Federal-aid Highway Program³ and (2) assess FHWA's processes for overseeing compliance with Federal force account requirements.

We conducted our work from December 2016 through March 2019 in accordance with generally accepted Government auditing standards. To address our objectives, we reviewed Federal laws and regulations, as well as FHWA's policies and guidance for ensuring compliance with Federal force account requirements. We interviewed Federal-aid Highway Program officials and surveyed 11 FHWA

¹ Title 23, U.S. Code (U.S.C.), section 112.

² County refers to entities receiving funding through State DOTs, such as local public agencies.

³ Specifically, we sought to determine which FHWA projects had force account activity, as well as the amount of Federal funding associated with that work.

Division Offices.⁴ We also conducted site visits at 4 of the 11 Division Offices and the associated State DOTs where we reviewed documentation associated with force account projects.⁵

We appreciate the courtesies and cooperation of Department of Transportation representatives during this audit. If you have any questions concerning this report, please call me at 202-366-1302 or Jay Borwankar, Program Director, at (202) 493-0970.

cc: The Secretary
DOT Audit Liaison, M-1
FHWA Audit Liaison, HCFB-32

⁴ We selected States for our sample based on the number of Federal-aid construction projects and associated spending, and the level of force account oversight authority delegated to the States.

⁵ We conducted site visits and project reviews in California, Indiana, New York, and South Dakota.

Results in Brief

FHWA lacks sufficient data for determining the scope and magnitude of force account activity.

FHWA does not track force account activity on a national or State level and thus cannot readily identify which federally funded projects used force account or the amount and type of activity that received Federal funding. Federal law requires FHWA to establish an oversight program to ensure the effective and efficient use of funds.⁶ Yet Agency officials said they stopped collecting force account data around 2001 because States did not always report this activity. We surveyed 11 FHWA Division Offices to identify the scope and magnitude of force account activity in the States they oversee, and found the data they provided were unreliable. For example, some Divisions were unable to provide a universe of railroad or utility force account projects, while other Divisions reported duplicate projects or projects that were not related to Federal force account. According to FHWA officials, collecting this information is not warranted since force account work is considered a low-risk activity. However, the basis of FHWA's low-risk determination is inconsistent with the Office of Management and Budget's (OMB) Circular A-123,⁷ which describes effective risk management as systematic, structured, timely, and based on the best available information and directs Federal agencies to periodically identify new or changing risks. FHWA's longstanding assessment of low risk was based on a one-time survey that excluded railroad, utility, and emergency force account activity. Because FHWA lacks both reliable data and a process for periodically identifying new or changing risks, FHWA has lessened its ability to make an informed assessment about whether force account is truly low risk, identify emerging risks, or develop risk-mitigation procedures.

FHWA's force account guidance and processes are not adequate to oversee compliance with Federal requirements.

Federal law requires⁸ the States to conduct competitive bidding on Federal-aid projects unless a State is able to demonstrate that some other method, such as force account, is more cost-effective or if an emergency exists. While force account regulations⁹ detail when FHWA can waive a cost-effectiveness determination for use of force account, FHWA's guidance does not. For example, the regulations waive the need for a cost-effectiveness determination when force account is used on emergency repairs. However, FHWA's force account guidance

⁶ 23 U.S.C. § 106(g).

⁷ OMB, *Management's Responsibility for Enterprise Risk Management and Internal Control*, July 15, 2016.

⁸ 23 U.S.C § 112.

⁹ Title 23, Code of Federal Regulations (CFR), section 635.205.

does not clarify that cost-effectiveness determinations are required when force account work is used for permanent repairs that result from an emergency. Additionally, the force account regulations require FHWA to review the State DOT's cost-effectiveness determination before it approves force account work for each project.¹⁰ Due to FHWA's longstanding determination that force account is a low-risk activity, there are gaps in its guidance, and the Agency has not implemented a review and approval procedure to ensure that States comply with Federal force account regulations. FHWA does have a risk-based stewardship and oversight (RBSO) framework,¹¹ which gives it discretion in how it determines the scope of its oversight, as long as it is based, to the extent practicable, on objective data and information. However, the lack of adequate procedures for reviewing and approving States' cost-effectiveness determinations leaves FHWA without reasonable certainty that States are in compliance with force account requirements or that Federal dollars have been expended in the most cost-effective manner.

We are making recommendations to improve FHWA's oversight of States' compliance with Federal force account requirements.

Background

Title 23, Code of Federal Regulations (CFR), section 635.203, defines *force account* as the direct performance of highway construction work by a State DOT, local public agency (LPA), railroad, or public utility company that uses its own labor, equipment, materials, and supplies under its direct control. Under 23 CFR § 635.204(c), States must submit a request to the Division Office that describes the project and the kind of work to be performed, the estimated costs, the estimated Federal funds to be provided, and the reasons force account is more cost-effective than competitive bidding.¹²

Before approving the use of force account, Division Offices must ensure that the entity under consideration has demonstrated the ability to perform the work. Division Offices also have to review and approve State DOT cost-effectiveness determinations. However, under certain circumstances, the use of force account

¹⁰ 23 CFR § 635.204(c). Even though the State may assume FHWA responsibilities under 23 U.S.C. 106(c), FHWA is still responsible for ensuring compliance with force account requirements.

¹¹ RBSO refers to FHWA's data-driven, risk-based approach for prioritizing the Agency's limited resources for overseeing a large and increasingly complex Federal-aid highway program. RBSO allows FHWA to identify and oversee programs and projects that present the greatest risk.

¹² 23 CFR § 635.203(e) defines cost-effective as the efficient use of labor, equipment, materials, and supplies to assure the lowest overall cost. FHWA Order 5060.1 identifies criteria to be included in the determination of force account cost-effectiveness. See exhibit D for the full set of criteria.

does not require a cost-effectiveness determination. For example, when an emergency occurs, an entity can take immediate action to minimize damage to infrastructure, protect remaining facilities, or restore essential travel. Similarly, due to the nature of their operations, it is deemed to be inherently cost-effective for railroads or utilities to make adjustments¹³ to an existing facility for minor work.

FHWA Division Offices are primarily responsible for overseeing the use of force account on Federal-aid projects. However, when appropriate, oversight authority may be assumed by a State DOT.

FHWA Lacks Sufficient Data To Determine the Scope and Magnitude of Force Account Activity

Federal law requires FHWA to establish an oversight program to ensure the effective and efficient use of funds and make State DOTs responsible for ensuring that subrecipients of Federal funds, such as LPAs, have sufficient controls to properly manage those funds. Additionally, the Government Accountability Office's (GAO) *Standards for Internal Control in the Federal Government*¹⁴ states that a Federal entity should identify the information it needs to assess whether it is achieving its objectives and addressing the risks associated with its activities.

OMB Circular No. A-123, which provides guidance to improve the accountability and effectiveness of Federal programs, requires agency management to identify, assess, respond to, and report on risk. According to Circular No. A-123, effective risk management is systematic, structured, timely, and based on the best available information. In addition, agencies should establish processes to review existing risks or identify new ones.

However, FHWA cannot provide data on force account activity. According to Agency officials, due to the lack of force account reporting by States, the Agency stopped collecting such data around 2001.

¹³ Minor work performed by railroads includes the installation of grade crossing warning devices, crossing surfaces, and minor track and signal work. Similarly, minor work performed by utilities includes installations of new facilities to provide power, minor lighting, telephone, water and similar services to a rest area, weigh-station, or movable bridge.

¹⁴ GAO, *Standards for Internal Control in the Federal Government* (GAO-14-704G, September 2014).

We surveyed 11 FHWA Division Offices, and visited 4 of them, to determine the scope and magnitude of force account work in the States they oversee.¹⁵ We requested that each Division Office provide us with a list of projects that used force account, the type and amount of force account activity for its State over a 3-year period (between fiscal years [FY] 2014 and 2016), and its methodology for collecting the data. Each Division Office responded; however, the data provided were unreliable for determining the scope and magnitude of force account. For example:

- Two Divisions listed duplicate Federal projects. One identified 908 railroad and utility force account projects, but only 647 were unique. The other identified 409 force account projects, of which 390 were unique.
- Two of the four Divisions we visited provided force account projects that were outside the scope of our review or did not contain federally funded force account activity. Of the 647 unique projects at one Division discussed above, 414 were outside the scope of our request because they either were not federally funded or were not within our 3-year timeframe. The other Division identified 79 emergency force account projects, but 23 of them did not contain force account activity.
- Six Divisions submitted data that did not provide a universe of railroad and utility force account activity. FHWA officials told us that the data were not available electronically and would be too burdensome to develop.
- An official in one State we visited identified an additional six emergency projects that the Division Office had not reported to us.
- One Division Office gave us inaccurate Federal funding values. We looked at 12 projects at the Division and found 7 projects were incorrect. For example, one project reportedly contained \$2.9 million in force account activity; however, our analysis found that the actual amount was \$4 million.

FHWA officials told us they consider force account activity to be low risk, which does not warrant collecting the data. FHWA officials based this conclusion on a 2010 survey that assessed whether the Division Offices needed written guidance to administer force account activity. This one-time estimate of force account activity did not provide reliable data and did not include railroad, utility, and emergency activity. It also did not comply with OMB's requirement that Federal agencies identify emerging or changing risks. The lack of current and reliable

¹⁵ We gave each Division Office a 2-week timeframe to comply with our data request, which we designed to show whether force account data were readily available. While several Division Offices were granted extensions, FHWA officials said that they could have provided more reliable data if they had additional time. A complete list of the FHWA Division Offices in our sample can be found in exhibit B.

data hinders FHWA from determining whether force account remains low risk, identifying emerging risks, and developing mitigation procedures. FHWA officials did tell us that they assessed force account activity during the Agency's 2014–2016 Compliance Assessment Program (CAP)¹⁶ reviews. However, the CAP reviews conducted in 2014 and 2015 did not mention force account, and in 2016 the Agency limited its force account testing to contract force account,¹⁷ which differs from the type of force account reviewed in our audit.

In addition, more timely and complete data were available. One State's data—submitted in response to our survey—showed an increased use of force account activity for programmatic work such as preventative maintenance.¹⁸ Several State DOTs told us they could collect force account data, if required to do so. For example, one State we visited was able to identify nonemergency force account activity by looking at a standard form that is included in every project file.

FHWA's lack of reliable data prevents a risk-based approach to oversight. Furthermore, FHWA cannot confirm that force account activity is low risk, identify the potential risks associated with this activity, and develop procedures to mitigate those risks.

FHWA Has Not Developed Adequate Guidance or Implemented a Process for Determining Compliance With Federal Requirements

Federal law requires contracts for Federal-aid highway construction projects to be awarded on a competitive basis, unless some other method, such as force account, is shown to be more cost-effective or an emergency exists. Federal regulations outline certain circumstances when a cost-effectiveness determination is not required. However, FHWA's guidance does not sufficiently clarify when a cost-effectiveness determination for force account work can be waived.

¹⁶ The purpose of the Compliance Assessment Program (CAP) is to provide reasonable assurance that Federal-aid highway projects comply with key Federal requirements. CAP assesses a statistically valid sample of projects to inform FHWA, with an acceptable level of certainty, about the degree of compliance.

¹⁷ A distinct type of force account activity involving government employees overseeing private sector workers.

¹⁸ One State obligated approximately \$96 million in Federal funds for force account work over a 3-year period, specifically for preventive maintenance, such as striping and asphalt pavement repair. We noticed substantial increases in the State's use of Federal funds for such work. In FY 2014, there was one project with about \$3 million obligated; in FY 2015, four projects with \$29.5 million in obligations; and in FY 2016, nine projects with \$63 million in obligations.

The Federal force account regulation considers adjustments railroads and utilities make to complete *minor work* as inherently cost-effective. The regulation identifies the installation of grade-crossing warning devices and crossing surfaces as examples of *minor work that railroads perform*, and the installation of facilities to provide power, lighting, telephone service, and water to rest areas as *minor work that utilities perform*. Yet FHWA's guidance does not define minor work, a fact acknowledged by Agency officials. As a result, State DOTs and LPAs could classify all railroad and utility adjustments as minor work that does not need a cost-effectiveness determination. For example, a State awarded \$7.1 million in force account work for water-main relocations to a water utility company, although FHWA did not document how it determined the work was minor.

Additionally, FHWA's force account regulation waives the cost-effectiveness determination when force account work is used for emergency repairs. The Agency's Emergency Relief Manual¹⁹ identifies two types of repairs, emergency and permanent. However, FHWA's force account guidance does not adequately explain that the waiver does not include all work that can result from an emergency, such as permanent repairs. As a result, States may use force account to perform permanent repairs without determining its cost-effectiveness (see the table on the following page). For example, we reviewed 20 emergency force account projects and found 7 with \$5.5 million in Federal funds that were entirely or partially permanent repairs, but lacked the required cost-effectiveness determinations.

Finally, Federal force account regulations require FHWA to review and approve the State DOT's cost-effectiveness determination before it approves each force account project. While FHWA has established criteria for approving State DOT cost-effectiveness determinations (see exhibit D), it has not developed or implemented the related reviews or detailed approval procedures. For example, FHWA officials were unaware of State processes and were unable to provide evidence that States had ensured their grantees met the required qualifications.

At one Division, we reviewed five nonemergency force account projects for work totaling \$1.8 million and found the supporting documentation did not include cost-effectiveness determinations. Two of these projects were the result of flawed guidance. FHWA's guidance excludes Federal-aid construction projects that are not located within a public highway's right-of-way from Federal force account requirements. Examples include historic railroad stations and recreational trails, and the guidance allows a State DOT or LPA to use State-approved procurement procedures for their construction. One of the States in our sample identified two recreational trail projects involving nearly \$600,000 in Federal force account

¹⁹ FHWA Office of Infrastructure and Office of Program Administration, *Emergency Relief Manual (Federal-Aid Highways)*, May 31, 2013.

funds. While the State does not require a cost-effectiveness analysis, Federal regulations require one to be performed. As a result, these projects did not comply with Federal requirements. According to FHWA officials, the Agency’s approach is supported by a policy memo.²⁰ However, the documentation FHWA provided lacks sufficient justification to explain why Federal requirements were not applied to these projects.

Another Division awarded six projects for a total of \$15.0 million in Federal force account funds without requiring the State DOT to submit adequately developed cost-effectiveness determinations. Specifically, the cost comparisons for all six projects lacked sufficient information about estimated quantities or prices for materials, labor, and equipment. The State DOT also was unable to provide evidentiary support that it analyzed those submissions before approving the projects for funding. Two of the other States we visited could not provide any evidence that they had conducted cost-effectiveness determinations.

The table below identifies projects that did not include adequately documented cost effectiveness determinations. As a result, it is unclear whether force account was the most cost-effective approach for executing these projects.

Table. Unsupported Costs in Force Account-Funded Projects Reviewed by OIG

Type of Force Account	Number of OIG-Reviewed Projects Without Proper Documentation	Cost-Effectiveness Determination Performed	Amount of Unsupported Costs
Emergency	7	No	\$5.5 million
Nonemergency	5	No	\$1.8 million
	6	Partial (inadequate)	\$15.0 million
Total			\$22.3 million

Source: OIG analysis

Overall, we found that because FHWA officials have designated force account activity as low risk, the Agency provides minimal oversight and does not monitor whether States comply with force account regulations. The longstanding low-risk designation has also led to gaps in the Agency’s guidance. FHWA’s RBSO framework gives the Agency discretion in determining the scope of its oversight, as long as it is based, to the extent practicable, on objective data and

²⁰ FHWA, *Procurement of Federal-aid Construction Projects* memorandum, June 26, 2008.

information. However, without adequate policies and procedures, FHWA cannot ensure that States comply with force account requirements and expend Federal dollars in a cost-effective manner.

Conclusion

Each year, FHWA allocates billions of dollars to State, local, and other agencies to construct or repair the Nation's highways and bridges. The Federal program is based on competitive contracting to ensure Federal dollars are used wisely. In instances where competitive bidding is not used, such as with force account, other controls are needed to ensure Federal dollars are protected. However, as illustrated by the projects we identified, FHWA's lack of sufficient data, guidance, and processes to mitigate risks and monitor the use of force account creates uncertainty that Federal funds supporting this activity have been expended in the most cost-effective manner.

Recommendations

To improve FHWA's oversight of force account activity, we recommend that the Federal Highway Administrator:

1. Develop and implement a process for periodically assessing force account risk. Based on the risk assessment, develop and implement procedures for overseeing compliance with Federal force account regulations.
2. Revise force account guidance for the States to clarify when cost-effectiveness determinations are required.
3. Develop an action plan to collect and review the cost-effectiveness determinations for the 18 projects related to the \$22.3 million in unsupported costs. Recover funds associated with projects where force account was not the most cost-effective approach for executing that project.
4. Develop and implement a process for determining when force account can be used for work performed outside the Federal highway right-of-way without complying with Federal requirements.

Agency Comments and OIG Response

We provided FHWA with our draft report on March 20, 2019, and on May 6, 2019, received its formal response, which is included in its entirety as an appendix to this report. FHWA concurred with recommendations 1, 2 and 4 as written, partially concurred with recommendation 3, and provided completion dates for all recommendations.

For recommendation 3, FHWA stated that it neither agrees nor disagrees with our \$22.3 million estimate of unsupported costs but plans to take the necessary corrective actions to close the recommendation.

Actions Required

We consider recommendations 1 through 4 resolved but open pending completion of the planned actions.

Exhibit A. Scope and Methodology

We conducted this performance audit between December 2016 and March 2019 in accordance with generally accepted Government auditing standards as prescribed by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Our objectives were to (1) determine the scope and magnitude of force account projects funded through the Federal-aid Highway Program and (2) assess FHWA's processes for overseeing compliance with Federal force account requirements.

To address our objectives, we reviewed relevant legislation and regulations, met with Federal-aid Highway Program officials, and surveyed 11 of 52 FHWA Division Offices. We conducted site visits at 4 of the 11 Division Offices and the associated State DOTs. Additionally, we met with State Highway Department officials via the American Association of State Highway and Transportation Officials (AASHTO).

To determine the scope and magnitude of force account activity we surveyed each of the 11 Division Offices for a list of federally funded construction projects employing force account, along with associated financial and programmatic data for each project. These Division Offices were selected based on FY 2014 through FY 2016 data obtained from FHWA's Fiscal Management Information System (FMIS). As force account data were not available in FMIS, we obtained such data as the number of construction projects and Federal funds obligated. We sorted the associated States into four strata based on delegations of authority for approvals of force account cost-effectiveness determinations and local force account agreements, which were obtained from stewardship and oversight agreements. We selected three States from each stratum to survey, based on the number of federally funded construction projects; one stratum only had two States. We evaluated the responses to our survey to determine the scope and magnitude of force account activity.

To assess FHWA's guidance and oversight process for compliance with Federal force account requirements, we selected one FHWA Division from each stratum for a site visit, randomly sampled projects from the data provided by each Division, and tested each sampled project for compliance with Federal force account requirements.

Using GAO's *Standards for Internal Control in the Federal Government* and the fundamental concepts it describes, we assessed the adequacy of FHWA's internal controls at the Headquarters and the Division Offices we visited. We focused in

particular on FHWA's processes for overseeing compliance with Federal force account requirements and ensuring that force account activity is effectively and efficiently performed, monitored, and managed. We accomplished this effort using the results of FHWA internally conducted surveys and reviews; interviewing Headquarters, Division Office, and State DOT management and staff; and conducting detailed tests of project-level activity. We also evaluated FHWA guidance and memoranda to determine whether they communicate the U.S. Code and related regulations in a manner that encourages the Agency and its funding recipients to adhere to Federal laws and requirements.

Exhibit B. Organizations Visited or Contacted

Federal Highway Administration

Office of the Chief Counsel, Washington, DC
Office of the Chief Financial Officer, Washington, DC
Office of Infrastructure, Washington, DC
Alabama Division Office, Montgomery, AL
California Division Office, Sacramento, CA
Indiana Division Office, Indianapolis, IN
Iowa Division Office, Ames, IA
Michigan Division Office, Lansing, MI
Missouri Division Office, Jefferson City, MO
New Mexico Division Office, Santa Fe, NM
New York Division Office, Albany, NY
Oklahoma Division Office, Oklahoma City, OK
South Dakota Division Office, Pierre, SD
Texas Division Office, Austin, TX

State Departments of Transportation

California Department of Transportation, Sacramento, CA
Indiana Department of Transportation, Indianapolis, IN
New York State Department of Transportation, Albany, NY
South Dakota Department of Transportation, Pierre, SD
Texas Department of Transportation, Austin, TX
Wisconsin Department of Transportation, Madison, WI

Other Organizations

American Association of State Highway and Transportation Officials (AASHTO)

Exhibit C. List of Acronyms

AASHTO	American Association of State Highway and Transportation Officials
CAP	Compliance Assessment Program
CFR	Code of Federal Regulations
DOT	Department of Transportation
FHWA	Federal Highway Administration
FMIS	Fiscal Management Information System
FY	fiscal year
GAO	Government Accountability Office
LPA	local public agency
OIG	Office of Inspector General
OMB	Office of Management and Budget
RBSO	Risk-based stewardship and oversight framework
U.S.C.	U.S. Code

Exhibit D. Criteria for FHWA Force Account Cost-Effectiveness Determinations

Criteria Description
Force account request to the Division Office identifies the project.
Project purpose and objective are documented.
Request documents scope, type of work, and method.
Request includes a cost estimate.
Request documents the estimated Federal funds to be provided.
Request documents why force account is more cost-effective than competitive bidding.
Justification provided for use of force account is valid.
Cost-effectiveness determination documents applicant's ability, experience, and resources to do the work.
Cost-effectiveness determination documents the ability to meet design, construction and materials quality standards.
Cost-effectiveness determination documents that force account project completion time is equal to contract work estimates.
Cost comparison sufficiently describes estimated quantities and prices for materials, labor, and equipment.
Approving official documents the review and approval process.

Source: FHWA

Exhibit E. Major Contributors to This Report

JAYDEEP BORWANKAR

STEPHEN GRUNER

STUART WEIBEL

BRIAN LONGIN

ALLIE CLEAVER

TOM DENOMME

FRITZ SWARTZBAUGH

ANNE-MARIE JOSEPH

JANE LUSAKA

PETRA SWARTZLANDER

MAKESI ORMOND

PROGRAM DIRECTOR

PROJECT MANAGER

SENIOR AUDITOR

SENIOR ANALYST

MANAGEMENT ANALYST

PROJECT CONSULTANT

ASSOCIATE COUNSEL

ENGINEERING SERVICES MANAGER

WRITER-EDITOR

SENIOR STATISTICIAN

STATISTICIAN

Appendix. Agency Comments



Memorandum

Subject: **INFORMATION:** FHWA Response to
the Office of Inspector General (OIG)
Draft Report on Force Account

Date: May 6, 2019

From: Brandye L. Hendrickson
Deputy Administrator

A handwritten signature in blue ink that reads "Brandye L. Hendrickson".

In Reply Refer To:
HCFB-30

To: Barry J. DeWeese
Assistant Inspector General
for Surface Transportation Audits

As the stewards of the Federal-aid Highway Program (FAHP), the Federal Highway Administration (FHWA) safeguards over \$40 billion in Federal funding annually. To that end, we are committed to ensuring that effective internal controls are in place for all FAHP funded projects, including those funded through force account. The FHWA adheres to a risk-based approach to oversight, and has assessed and rated force account as a low risk to the Agency. Accordingly, the controls in place are commensurate with that level of risk. Further, FHWA is committed to a transparent and cost-effective bidding process. The vast majority of FAHP projects are awarded by the States through competitive bids, as the States are the contracting agencies for Federal-aid highway projects. However, there are circumstances and times of emergency when it is more cost-effective and/or necessary to fund projects through non-competitive force account contracts.

The OIG's interpretation of FHWA's regulation relating to force account requirements for railroad and utility work is inconsistent with the plain language of the regulation and FHWA's long-standing implementation of force account requirements. FHWA's application of these requirements is based upon the history of the Federal-aid Highway Act of 1954, and policies that culminated in the promulgation of the force account regulation. Under 23 CFR 635.205(b), and in contrast to installation of new railroad or utility facilities requiring competitive bidding, railroad and utility adjustment work is inherently cost effective due to the nature of railroad and utility operations, and does not require that a railroad or utility impacted by highway construction contract out adjustment work to its facilities.

Based on our review of the draft report, the FHWA concurs with recommendation one to develop and implement a process for periodically assessing force account risk and to develop and implement procedures for overseeing compliance with Federal force account regulations. We plan to implement the recommendation by April 1, 2020.

We concur with recommendation two to revise force account guidance to clarify when cost effectiveness determinations are required. We plan to prepare draft guidance by April 1, 2020.

The FHWA partially concurs with recommendation three to develop an action plan to collect and review the cost-effectiveness determinations for the 18 projects related to the \$22.3 million in unsupported costs consistent with existing requirements. At this time, we can neither agree nor disagree with OIG's estimate of unsupported costs. We plan to complete these actions by April 1, 2020.

The FHWA concurs with recommendation four to develop and implement a process for determining when force account can be used for work performed outside the Federal highway right-of-way without complying with Federal requirements, as written. We plan to complete these actions by April 1, 2020.

We appreciate the opportunity to review the OIG draft report. Please contact Derrell E. Turner, Acting Associate Administrator of Office of Infrastructure, at 202-366-0370 with any questions.

U.S. DOT IG Fraud & Safety Hotline

hotline@oig.dot.gov | (800) 424-9071

<https://www.oig.dot.gov/hotline>

Our Mission

OIG conducts audits and investigations on behalf of the American public to improve the performance and integrity of DOT's programs to ensure a safe, efficient, and effective national transportation system.

OFFICE OF INSPECTOR GENERAL
U.S. Department of Transportation
1200 New Jersey Ave SE
Washington, DC 20590



www.oig.dot.gov