

§ 645.115

23 CFR Ch. I (4-1-02 Edition)

defined and the cost can be accurately estimated, the FHWA may approve an agreement between the TD and the utility company for a lump-sum payment without later confirmation by audit of actual costs.

(g) Except as otherwise provided by § 645.113(h), authorization by the FHWA to the STD to proceed with the physical relocation of a utility's facilities may be given after:

(1) The utility relocation work, or the right-of-way, or physical construction phase of the highway construction work is included in an approved Statewide transportation improvement program,

(2) The appropriate environmental evaluation and public hearing procedures required by 23 CFR part 771, Environmental Impact and Related Procedures, have been satisfied.

(3) The FHWA has reviewed and approved the plans, estimates, and proposed or executed agreements for the utility work and is furnished a schedule for accomplishing the work.

(h) The FHWA may authorize the physical relocation of utility facilities before the requirements of § 645.113(g)(2) are satisfied when the relocation or adjustment of utility facilities meets the requirements of § 645.107(i) of this regulation.

(i) Whenever the FHWA has authorized right-of-way acquisition under the hardship and protective buying provisions of 23 CFR 710.503, the FHWA may authorize the physical relocation of utility facilities located in whole or in part on such right-of-way.

(j) When all efforts by the TD and utility fail to bring about written agreement of their separate responsibilities under the provisions of this regulation, the STD shall submit its proposal and a full report of the circumstances to the FHWA. Conditional authorizations for the relocation work to proceed may be given by the FHWA to the STD with the understanding that Federal funds will not be paid for work done by the utility until the STD proposal has been approved by the FHWA.

(k) The FHWA will consider for approval any special procedure under State law, or appropriate administrative or judicial order, or under blanket

master agreements with the utilities, that will fully accomplish all of the foregoing objectives and accelerate the advancement of the construction and completion of projects.

[50 FR 20345, May 15, 1985, as amended at 60 FR 34850, July 5, 1995; 64 FR 71289, Dec. 21, 1999; 65 FR 70311, Nov. 22, 2000]

§ 645.115 Construction.

(a) Part 635, subpart B, of this title, Force Account Construction (justification required for force account work), states that it is cost-effective for certain utility adjustments to be performed by a utility with its own forces and equipment, provided the utility is qualified to perform the work in a satisfactory manner. This cost-effectiveness finding covers minor work on the utility's existing facilities routinely performed by the utility with its own forces. When the utility is not adequately staffed and equipped to perform such work with its own forces and equipment at a time convenient to and in coordination with the associated highway construction, such work may be done by:

(1) A contract awarded by the TD or utility to the lowest qualified bidder based on appropriate solicitation,

(2) Inclusion as part of the TD's highway construction contract let by the TD as agreed to by the utility,

(3) An existing continuing contract, provided the costs are reasonable, or

(4) A contract for low-cost incidental work, such as tree trimming and the like, awarded by the TD or utility without competitive bidding, provided the costs are reasonable.

(b) When it has been determined under part 635, subpart B, that the force account method is not the most cost-effective means for accomplishing the utility adjustment, such work is to be done under competitive bid contracts as described in § 645.115(a) (1) and (2) or under an existing continuing contract provided it can be demonstrated this is the most cost-effective method.

(c) Costs for labor, materials, equipment, and other services furnished by the utility shall be billed by the utility directly to the TD. The special provisions of contracts let by the utility or the TD shall be explicit in this respect.

The costs of force account work performed for the utility by the TD and of contract work performed for the utility under a contract let by the TD shall be reported separately from the costs of other force account and contract items on the highway project.

§ 645.117 Cost development and reimbursement.

(a) *Developing and recording costs.* (1) All utility relocation costs shall be recorded by means of work orders in accordance with an approved work order system except when another method of developing and recording costs, such as lump-sum agreement, has been approved by the TD and the FHWA. Except for work done under contracts, the individual and total costs properly reported and recorded in the utility's accounts in accordance with the approved method for developing such costs, or the lump-sum agreement, shall constitute the maximum amount on which Federal participation may be based.

(2) Each utility shall keep its work order system or other approved accounting procedure in such a manner as to show the nature of each addition to or retirement from a facility, the total costs thereof, and the source or sources of cost. Separate work orders may be issued for additions and retirements. Retirements, however, may be included with the construction work order provided that all items relating to retirements shall be kept separately from those relating to construction.

(3) The STD may develop, or work in concert with utility companies to develop, other acceptable costing methods, such as unit costs, to estimate and reimburse utility relocation expenditures. Such other methods shall be founded in generally accepted industry practices and be reasonably supported by recent actual expenditures. Unit costs should be developed periodically and supported annually by a maintained data base of relocation expenses. Development of any alternate costing method should consider the factors listed in paragraphs (b) through (g) of this section. Streamlining of the cost development and reimbursement procedures is encouraged so long as adequate accountability for Federal expenditures is maintained. Concurrence by

the FHWA is required for any costing method used other than actual cost.

(b) *Direct labor costs.* (1) Salaries and wages, at actual or average rates, and related expenses paid by the utility to individuals for the time worked on the project are reimbursable when supported by adequate records. This includes labor associated with preliminary engineering, construction engineering, right-of-way, and force account construction.

(2) Salaries and expenses paid to individuals who are normally part of the overhead organization of the utility may be reimbursed for the time worked directly on the project when supported by adequate records and when the work performed by such individuals is essential to the project and could not have been accomplished as economically by employees outside the overhead organization.

(3) Amounts paid to engineers, architects and others for services directly related to projects may be reimbursed.

(c) *Labor surcharges.* (1) Labor surcharges include worker compensation insurance, public liability and property damage insurance, and such fringe benefits as the utility has established for the benefit of its employees. The cost of labor surcharges will be reimbursed at actual cost to the utility, or, at the option of the utility, average rates which are representative of actual costs may be used in lieu of actual costs if approved by the STD and the FHWA. These average rates should be adjusted at least once annually to take into account known anticipated changes and correction for any over or under applied costs for the preceding period.

(2) When the utility is a self-insurer, there may be reimbursement at experience rates properly developed from actual costs. The rates cannot exceed the rates of a regular insurance company for the class of employment covered.

(d) *Overhead and indirect construction costs.* (1) Overhead and indirect construction costs not charged directly to work order or construction accounts may be allocated to the relocation provided the allocation is made on an equitable basis. All costs included in the allocation shall be eligible for Federal reimbursement, reasonable, actually