

**§ 635.115**

forfeited guarantees in accordance with its normal practices.

(j) A copy of the executed contract between the STD and the construction contractor should be furnished to the Division Administrator as soon as practicable after execution.

(k) In the case of a design-build project, the following requirements apply: Design-build contracts shall be awarded in accordance with the Request for Proposals document. See 23 CFR Part 636, Design-build Contracting, for details.

[56 FR 37004, Aug. 2, 1991, as amended at 67 FR 75925, Dec. 10, 2002]

**§ 635.115 Agreement estimate.**

(a) Following the award of contract, an agreement estimate based on the contract unit prices and estimated quantities shall be prepared by the STD and submitted to the Division Administrator as soon as practicable for use in the preparation of the project agreement. The agreement estimate shall also include the actual or best estimated costs of any other items to be included in the project agreement.

(b) An agreement estimate shall be submitted by the STD for each force account project (see 23 CFR part 635, subpart B) when the plans and specifications are submitted to the Division Administrator for approval. It shall normally be based on the estimated quantities and the unit prices agreed upon in advance between the STD and the Division Administrator, whether the work is to be done by the STD or by a local public agency. Such agreed unit prices shall constitute a commitment as the basis for Federal participation in the cost of the project. The unit prices shall be based upon the estimated actual cost of performing the work but shall in no case exceed unit prices currently being obtained by competitive bidding on comparable highway construction work in the same general locality. In special cases involving unusual circumstances, the estimate may be based upon the estimated costs for labor, materials, equipment rentals, and supervision to complete the work rather than upon agreed unit prices. This paragraph shall not be applicable to agreement estimates for

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railroad and utility force account work.

**§ 635.116 Subcontracting and contractor responsibilities.**

(a) Contracts for projects shall specify the minimum percentage of work that a contractor must perform with its own organization. This percentage shall be not less than 30 percent of the total original contract price excluding any identified specialty items. Specialty items may be performed by subcontract and the amount of any such specialty items so performed may be deducted from the total original contract before computing the amount of work required to be performed by the contractor's own organization. The contract amount upon which the above requirement is computed includes the cost of materials and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

(b) The STD shall not permit any of the contract work to be performed under a subcontract, unless such arrangement has been authorized by the STD in writing. Prior to authorizing a subcontract, the STD shall assure that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. The Division Administrator may permit the STD to satisfy the subcontract assurance requirements by concurrence in a STD process which requires the contractor to certify that each subcontract arrangement will be in the form of a written agreement containing all the requirements and pertinent provisions of the prime contract. Prior to the Division Administrator's concurrence, the STD must demonstrate that it has an acceptable plan for monitoring such certifications.

(c) To assure that all work (including subcontract work) is performed in accordance with the contract requirements, the contractor shall be required to furnish:

(1) A competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations