

Agency Force Work on Federal Aid Projects Public Interest Findings

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Background

Deficiencies identified during Improper Payment and ARRA field reviews

- Public Interest Findings not on File
- Project Authorizations did not identify agency construction
- Inadequate review/authorization processes in place
- Current Practice appeared to be in violation of federal regulation

Initial response was to STOP authorization of all agency force construction

Workgroup Formed to Evaluate Alternatives

- Representation from WSDOT H&LP, Maintenance, Construction and FHWA
- Reviewed Relevant Federal Laws, Regulations and Guidance
- Reviewed RCW's for State Level Requirements and Limits
- Brainstormed Ideas
- Settled on MOU

Federal Requirements

- 23 USC 112 - Letting of contracts

<http://www.fhwa.dot.gov/legsregs/legislat.html>

(b) Bidding Requirements.

(1) In general.... construction of each project, subject to the provisions ...of this section, shall be performed by contract awarded by competitive bidding, unless the State transportation department demonstrates, to the satisfaction of the Secretary, that some other method is more cost effective or that an emergency exists. ...

- CFR 23 635.104 Method of Construction

<http://www.fhwa.dot.gov/legsregs/legislat.html>

(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 an emergency exists.

(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.....

Federal Requirements Continued;

- Contract Administration Core Curriculum
<http://www.fhwa.dot.gov/programadmin/contracts/coretoc.cfm>
- Title 23 CFR 635 Subpart B allows that "**rare**" circumstances may justify the use of force account, negotiated contract, or other unusual method of construction. The regulations clearly indicate that, in the absence of an emergency situation, circumstances are unlikely to justify the use of other methods of construction. Therefore, the consideration of any noncompetitive construction contract method requires a cost effectiveness determination as well as an evaluation that demonstrates circumstances are unusual and unlikely to recur.
- A cost effectiveness finding is required for the FHWA / STA approval of any proposal to use a noncompetitive method of contracting. Title 23 CFR 635.205 cites the following situations as possible reasons for the use of noncompetitive construction contracting:
 - when the rights or responsibilities of the community are so affected as to require a special course of action, including situations where there is a lack of competition or unreasonable bids, it may be determined to be cost effective to use force account, and
 - when by reason of the inherent nature of the operation, it is deemed cost effective to do minor adjustments of railroad and utility facilities (major work still to be accomplished by competitive bidding) by force account.
 - Under the first circumstance the use of force account may be found cost effective when properly documented. Under the second circumstance, FHWA has determined that the use of force account is always cost effective, and therefore, no additional documentation is required.

Force account: direct performance of highway construction work by a State transportation department, a county, a railroad, or a public utility company by use of labor, equipment, materials, and supplies furnished by them and used under their direct control.

Overview of MOU

- Provides Framework for Evaluating Agency Force Construction
- Outlines WSDOT Reporting Requirements
 - Six month reporting interval
- Delegates Approval Authority to WSDOT but Does Not Allow Subdelegation
- Expires December 31, 2012
- Sets the Stage for Future Programmatic Agreement

Agency Force Work Requirements

- A Public Interest Finding Documenting Cost Effectiveness
- Staff and equipment to perform the work satisfactorily and cost effectively
- Approval of the use of Agency Forces by H&LP
- Authorized Project Agreement
- Materials Documentation (Certifications and Testing Results)
- Buy America Compliance
- Final Inspection by H&LP
- All other Requirements of the LAG Manual Apply

Public Interest Findings Requirements

- Short Project Summary/Description
- Cost Estimate Comparing Agency Force to Contracted Construction
- Sources of Materials – Competitive Bid Procurement Contract (new or existing must meet Buy America Requirements)
- Schedule Implications if Appropriate
- Justification of why it is in the Best Public Interest including Public Benefit
- Determination of cost effectiveness
- Backup materials – detailed cost estimate both for agency and contract, consider all costs (contract development and administration)

Cost Estimates

Agency Forces

Engineering
Estimated Labor Hours
Identification of Equipment
Equipment utilization hours
Hourly Rates for Labor and Equipment
Include Travel Time in labor and equipment estimates
Materials – Estimate or Vender Quote
Administrative Support/Management

Contractor

Engineering including Contract Document Preparation
Contract Administrative and Inspection Costs
Quantity Based Estimate
Use Current Unit Prices
Mobilization

Public Interest Findings Do's and Don'ts

- Do;
 - Be clear about schedule issues such as “by use of agency forces these safety improvements will be completed an estimated six months sooner”
 - Be fair in estimating; use current bid results for contracted option and estimated labor hours, materials and equipments costs for agency force construction
 - Submit the PIF for review at least four weeks prior to authorization
 - Discuss reasonableness of agency construction with your Region Local Programs Engineer prior to establishing the final project budget.
- Don't;
 - Use vague language such as “long lead time”
 - Use unit prices for estimating agency construction
 - Wait until last minute to request approval
 - Use schedule as justification if project was funded years ago
 - Use lack of local contractors as justification

PUBLIC INTEREST FINDING – AGENCY FORCE

Project Background Information	
Project Name:	County Wide Sign Upgrades
Federal Aid Project Number:	
State/Local Project Number:	
NEPA Category (CE,EA, EIS):	CE
NEPA Clearance Date:	6/22/2010
Region or Agency:	
Pertinent RCW – If Other, please indicate enabling RCW or other justification	
RCW 36.77.065	<input checked="" type="checkbox"/> Please list:
RCW 47.20.030	<input type="checkbox"/>
RCW 35.22.620	<input type="checkbox"/>
Other	<input type="checkbox"/>
Cost Effectiveness Determination – Provide information showing why it is more cost effective to use Agency Forces (Use another sheet and attach if you need more room)	
Goal Statement:	
The primary goal of this project is to improve signing where accident histories have identified problem areas. In addition, this project will assist in upgrading a portion of Stehekin County road signs to meet the new retro-reflectivity requirements required by 2015. This project does not provide sufficient funding to improve all locations or replace all signs on the arterial system in Stehekin County but it will address some key locations.	
Description of work:	
The project involves identifying the need for replacement or new installations of various caution/warning signs on approximately 300 miles of Stehekin County Roads currently functionally classified as major collectors.	
Accident histories will be used to identify locations where current signing may not be providing adequate warning by being too small, unclear or not in the correct location. Additionally, these new and/or replacement signs will meet the new retro-reflectivity requirements of the MUTCD.	
Agency Forces or Contract:	
<u>Project Funding:</u>	
Funding is limited to \$200,000 through the High Risk Rural Roads Program (HRRRP)	
<u>Project Estimate:</u>	
<i>Engineer's Estimate for Agency Force work:</i>	
Labor	\$ 60,135
Equipment	\$ 18,990
Materials	\$119,775
Total	\$198,900
Materials, consisting of approximately 3,165 signs and 450 posts, will be acquired through existing county contracts and will amount to 60.2% of the project cost.	
Grant administration for Agency Force work approximately \$2,000.	

Engineer's Estimate to Contract work:

Development of Bid Package includes field crew identifying each sign to be replaced or new installation; contract plans and specifications;

		\$ 7,500
Mobilization	at L.S.	\$ 10,000
Removing Miscellaneous Traffic Item	at L.S.	\$ 3,000
Permanent Signs per square foot	approx. 28,485 s.f. at \$10.00*	\$ 284,850
Spill Prevention Control and Countermeasures Plan	at L.S.	\$ 1,000
Traffic Control Supervisor	at L.S.	\$ 3,000
	Contract Total	\$301,850
Contract Administration including field inspection		\$ 10,000
	Project Total	\$319,350

*Unit cost based on State Bid data on Construction Class A Signs per square foot at \$12 per s.f. reduced for larger quantity but as primary bid item may be low. Bid quantity was calculated using 9 s.f. average on 3,165 signs.

Scheduling Issues:

Contracting the work would include preliminary data collection (6 weeks) that would be required for a bid package as well as the time required to assemble the package (4 weeks), WSDOT review (2-3 weeks), advertising (3 weeks), awarding (1 week), contract execution (up to 4 weeks) plus contract time of 160 days (32 weeks) using a two man crew shorter contract times would add to administration costs for field inspection, contract closeout (up to 3 months).

Use of Agency Forces would only require the most rudimentary set of plans and specifications allowing for materials to be ordered and work to begin as soon as materials began arriving. The replacement signs and new installations would be in place up to 4 months before a contractor would be able to place them with minimal administrative costs.

Cost Issues:

The use of agency forces minimizes costs associated with contract document development and grant and contract administration, accomplishing more safety improvements for the funds granted.

If the work were to be contracted, either the County would need to include alternates by specific roads in order to reduce the contract price to fit within the funding or reduce the number of signs originally bid and change order more in as the project progresses, thereby reducing the overall impact and effectiveness of the proposed project.

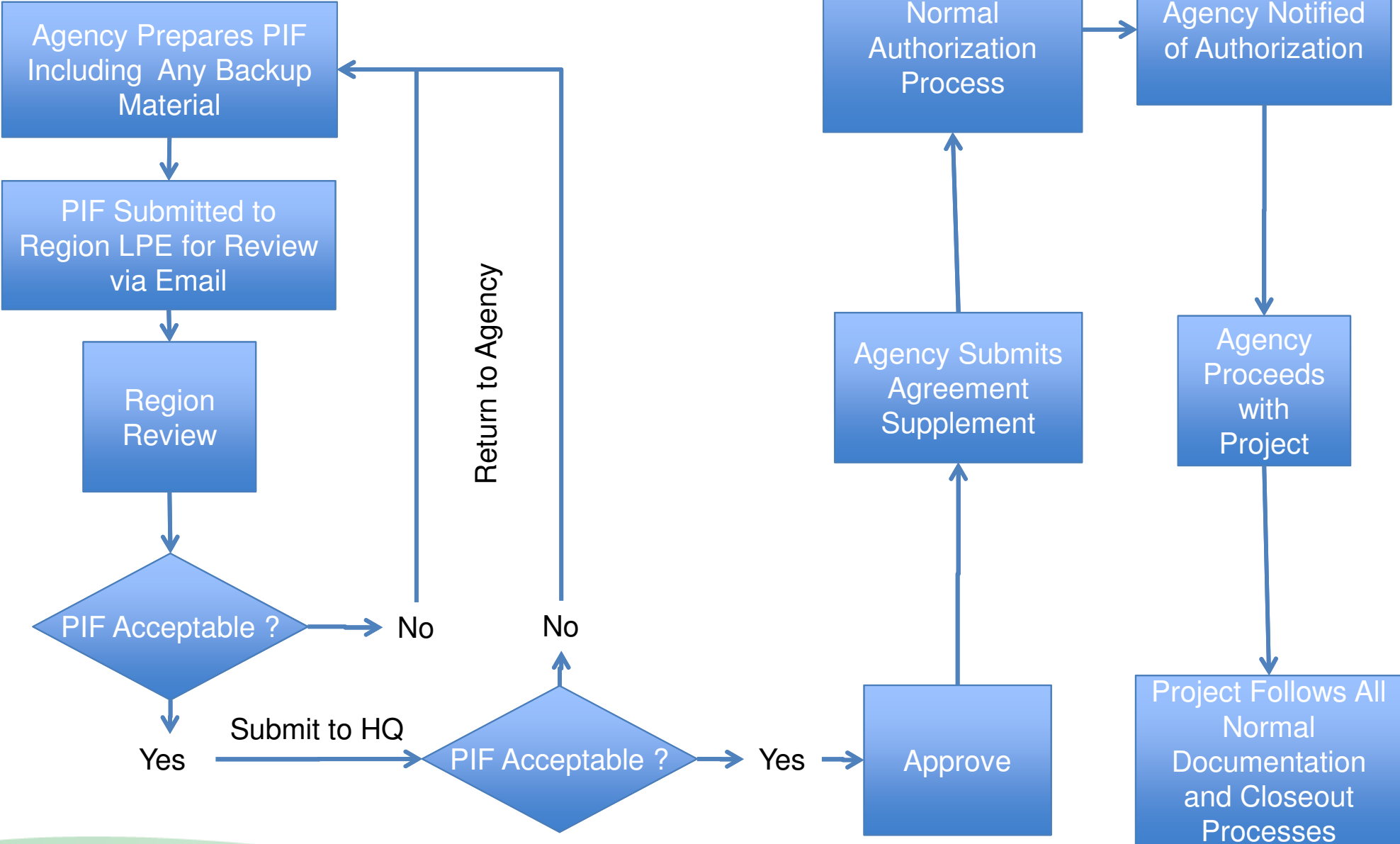
Conclusions:

More safety improvements for the same grant; 60% plus of the project cost will be for materials; substantially less administration for Agency Forces versus Contracting; safety improvements will be on the ground quicker and finally the cost/benefit is substantially higher with Agency Forces (cost per sign \$63.48) doing the work than having a contractor (cost per sign \$100.90) perform the same work.

For the reasons listed above Stehekin County feels that the proposed project can be accomplished in a more efficient and cost effective manner by Agency Forces than by contracting out.

Approvals

Approval Process



Implementation Q & A

When will these requirements be implemented?

We started implementation as an interim step in the spring by requiring H&LP approval of PIF's.

When will the new form be available?

Once the MOU is signed we will finalize the form and make available within two weeks.

When will the LAG Manual be updated?

We will update the LAG Manual Chapter 61 within 30 days of the MOU signing, this may mean that an interim update to the LAG is published.

When will the MOU be signed?

We expect the MOU to be through the review process and signed during October.

What projects are exempt from these requirements?

The only exemptions are Temporary Repairs and Incidental Permanent Repairs for Federally Declared Emergencies.

What projects does this apply too?

These requirements apply to all new authorizations including Permanent Repairs for Declared Emergencies

Conclusion

The Public Interest Finding

- Must demonstrate value to the public
- Provides documentation to support decisions
- Must be approved Prior to starting any work (reminder no construction activities such advertisement for bids or ordering of materials can occur prior to project authorization)