

**§ 635.405**

**23 CFR Ch. I (4–1–11 Edition)**

(b) *Material* means any tangible substance incorporated into a Federal-aid highway project;

(c) *PS&E* means plans, specifications, and estimates;

(d) *Special provisions* means additions and revisions to the standard and supplemental specifications applicable to an individual project;

(e) *Standard specifications* means a compilation in book form of specifications approved for general application and repetitive use;

(f) *State* has the meaning set forth in 23 U.S.C. 101;

(g) *State transportation department* means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction;

(h) *Supplemental specifications* means approved additions and revisions to the standard specifications.

**§ 635.405 Applicability.**

The requirements and procedures prescribed in this subpart apply to all contracts relating to Federal-aid highway projects.

[69 FR 7119, Feb. 13, 2004]

**§ 635.407 Use of materials made available by a public agency.**

(a) Contracts for highway projects shall require the contractor to furnish all materials to be incorporated in the work and shall permit the contractor to select the sources from which the materials are to be obtained. Exception to this requirement may be made when there is a definite finding by the State transportation department and concurred in by the FHWA Division Administrator, that it is in the public interest to require the contractor to use material furnished by the State transportation department or from sources designated by the State transportation department. In cases such as this, the FHWA does not expect mutual sharing of costs unless the State transportation department receives a related credit from another agency or political subdivision of the State. Where such a credit does accrue to the State transportation department, it shall be applied to the Federal-aid project involved. The designation of a mandatory material source may be permitted

based on environmental considerations, provided the environment would be substantially enhanced without excessive cost. Otherwise, if a State transportation department proposal to designate a material source for mandatory use would result in higher project costs, Federal-aid funds shall not participate in the increase even if the designation would conserve other public funds.

(b) The provisions of paragraph (a) of this section will not preclude the designation in the plans and specifications of sources of local natural materials, such as borrow aggregates, that have been investigated by the State transportation department and found to contain materials meeting specification requirements. The use of materials from such designated sources shall not be mandatory unless there is a finding of public interest as stated in paragraph (a) of this section.

(c) Federal funds may participate in the cost of specifications materials made available by a public agency when they have been actually incorporated in accepted items of work, or in the cost of such materials meeting the criteria and stockpiled at the locations specified in § 635.114 of this chapter.

(d) To be eligible for Federal participation in its cost, any material, other than local natural materials, to be purchased by the State transportation department and furnished to the contractor for mandatory use in the project, must have been acquired on the basis of competitive bidding, except when there is a finding of public interest justifying the use of another method of acquisition. The location and unit price at which such material will be available to the contractor must be stated in the special provisions for the benefit of all prospective bidders. The unit cost eligible for Federal participation will be limited to the unit cost of such material to the State transportation department.

(e) When the State transportation department or another public agency owns or has control over the source of a local natural material the unit price at which such material will be made available to the contractor must be