

Check out  
the video

## Project Development Required Approvals Cost Effectiveness Determinations and Public-interest findings

[www.fhwa.dot.gov/federal-aidessentials](http://www.fhwa.dot.gov/federal-aidessentials)

*Federal-aid regulations specifically allow deviation from some standard practices through a public-interest finding or a determination of cost effectiveness*



Federal-aid project development and delivery normally rely on the use of engineering judgment and best practices to make project decisions that are guided by the general concept of free and open competition. Congress has recognized that there are times when decisions have to be made using factors other than the norm.

The Federal-aid program regulations allow project-level design and construction operational decisions through two other means to justify deviating from the standard practices. They are cost-effective determinations and public-interest findings.



However, using these requires obtaining concurrence from your oversight agency as a second party to the decision. While there are other instances in the Federal-aid program regulations that allow deviations from the requirements based on a cost-effectiveness determination or finding of public interest, for the purposes of this discussion, we will only focus on the regulations that can affect project-specific

design decisions or administration of your construction project.

### What are cost-effectiveness determinations and public-interest findings?



A cost-effectiveness determination is a decision based solely on an economic analysis. You determine the lowest overall cost using project-specific data.



A public-interest finding, or PIF, is a conclusion that a situation is unique and the public interest is best served by allowing an exception to existing procurement or contracting policies. The decision should be supported by both a cost evaluation and an engineering analysis of the issues that may include environmental, life-cycle cost, safety, and operational considerations on a Federal-aid project.

Simply stated, cost-effectiveness determinations are decisions based only on cost; whereas PIFs are based on a broader spectrum of issues, including cost.

You will need to prepare a document to request concurrence by the oversight agency when it is indicated that a public-interest finding or cost-effectiveness determination is justified within the Federal-aid regulation.

### When should you use a cost-effectiveness determination or public-interest finding?



You must submit a request for a cost-effectiveness determination to use non-competitive methods of construction for a project. Negotiated contracts or use of public agency employees under force account procedures are two examples of non-competitive work procurement. Emergency work within the Federal-aid Emergency Relief Program has a regulatory exception for determining cost effectiveness. The use of publicly owned equipment by contractors requires a cost-effectiveness determination. Contractor use of public equipment is usually limited to the use of "specialty" equipment that is not generally available for lease or purchase in the open market.

There are several allowances in the Federal-aid regulations that specifically address the choice of material used to construct a project.

Patented or proprietary products that are required as a sole source in contract documents must be approved using a PIF when other suitable alternatives are available since open competition among products is the normal expectation.

Agency-furnished material or products that will be installed by a contractor using Federal-aid funds must be justified using a PIF since this limits the potential for open and free-market competition. Reasons often cited are cost effectiveness or there is a long lead time for ordering materials, such as structural beams or specialty items.

Mandatory use of local natural material sources or disposal sites for projects requires a PIF since this restricts a contractor's option of material selection and operational efficiencies. Sometimes an agency may need to determine disposal sites in advance of letting contracts for environmental commitments.

The Buy America provisions for steel or iron products include an option for justifying a waiver for the use of foreign material using a PIF. The Federal Highway Administration (FHWA) rarely grants a Buy America waiver using a PIF. FHWA Headquarters applies a higher level of scrutiny using a public comment process for these waivers, so substantial justification must be provided. Cost cannot be one of the determining factors of a PIF for Buy America waivers.

To show how this process works, let's consider this example.

A local public agency (LPA) has agreed to a stipulation in the project environmental document that requires protection of critical wildlife habitat in the project area. Building an embankment for the project requires additional local natural material, or fill dirt. Opening a new borrow site near the project area would jeopardize the wildlife habitat. However, there is an existing State-owned borrow site close to the project area. The solution: use a State-owned borrow pit near the project.

To do so, the LPA prepares a request for a public-interest finding for consideration by the State department of transportation, or State DOT, as the oversight agency. As justification, the request cites the environmental commitment and the proposed solution to require the use of the State-owned borrow site to build embankments on the project.

A report on the potential effects on the wildlife in the area is provided as support for the public-interest finding. An overlay map of the habitat and potential borrow shows alternatives to the proposed site. An analysis of the alternatives and potential costs to the project shows that developing and reclaiming new borrow sites or hauling material from other existing contractor borrow pits to the project is five times the cost of using the State-owned borrow site. The LPA concludes that it is not feasible to allow contractors to develop new borrow sites in the project area.

The State DOT agrees with the recommendation to restrict the contractors to the use of the State-owned borrow pit and concurs that it is in the best interest of the public. The response letter from the State DOT notes that this finding is only applicable for completion of this one project and does not require reevaluation. The project manager then places the letter in the permanent project records. The LPA includes a “notice to bidders” in the bidding instructions requiring that all borrow material for the project must originate from the State-owned pit.

requires explicit concurrence in the decisions by the oversight agency that approve of the deviation from normal requirements.



ECONOMIC  
Efficiency

Other  
REASONS

FHWA recognizes that there are times when economic efficiency or other reasons may lead to a decision to deviate from free and open competition on a Federal-aid project. Federal-aid regulations specifically allow such decisions to be made using a public-interest finding or a determination of cost effectiveness. The process

## Web Resources

- FHWA guidance on public-interest findings  
<http://www.fhwa.dot.gov/construction/cqit/findings.cfm>
- FHWA guidance (found in Items 17-21) on public-interest findings and other certifications  
<http://www.fhwa.dot.gov/programadmin/contracts/011106qa.cfm>
- Regulation for public-interest findings in Federal-aid construction program material and product selection  
<http://www.ecfr.gov/cgi/t/text/text-idx?c=ecfr&rgn=div5&view=text&node=23:1.0.1.7.23&idno=23#23:1.0.1.7.23.4.1.7>
- Section of core curriculum manual covering public-interest and cost-effectiveness findings. Go to Section 2, subsection C,3  
<http://www.fhwa.dot.gov/programadmin/contracts/coretoc.cfm>
- Examples of FHWA approved public-interest findings and product certifications  
<http://www.fhwa.dot.gov/construction/contracts/pnpapprovals/index.cfm>
- FHWA guidelines for evaluating public-interest findings for sign sheeting  
[http://safety.fhwa.dot.gov/roadway\\_dept/night\\_visib/policy\\_guide/memo\\_retr oguid/](http://safety.fhwa.dot.gov/roadway_dept/night_visib/policy_guide/memo_retr oguid/)

The content of this document is not a substitute for information obtained from State departments of transportation, appropriate FHWA Division Offices, and applicable laws. Scenarios have been simplified for emphasis and do not necessarily reflect the actual range of requirements applicable to the scenario or this topic. This document was created under contract number DTFH63-12-F-00025 by the Federal Highway Administration, U.S. Department of Transportation, and is offered to the public to heighten and focus awareness of Federal-aid requirements within the local public agencies community and reinforces the importance of these necessary policies, procedures, and practices.

This companion resource is the script content for the video production of the same name.