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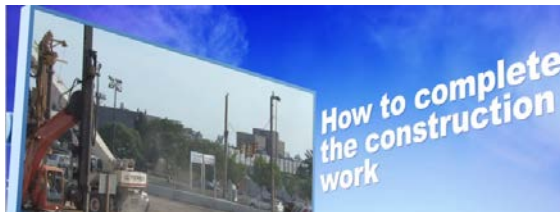
## Project Development Required Approvals Selecting the Method of Construction: Contract or Force Account

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

*Any construction contracting method other than “competitive low bid” must be approved by the oversight agency*



At some point prior to the physical construction of a Federal-aid highway project, a decision is needed regarding how to complete the construction work in the most efficient and cost-effective way.



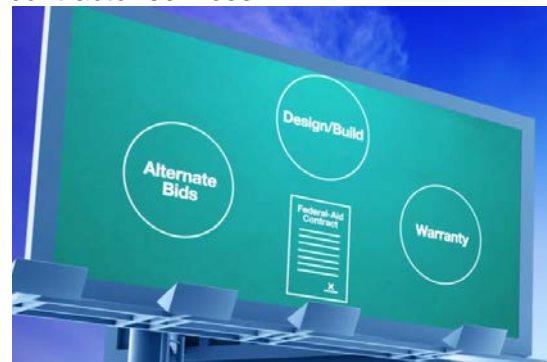
Federal law requires that Federal-aid contracts be awarded using a competitive contracting method with allowances for other options only in special circumstances. Since Federal-aid projects can be constructed with a limited variety of contracting methods, making this decision early during project design will ensure your project doesn't encounter unnecessary delays.

Since the beginning of the Federal-aid highway program competitive low bid awards have been the required method of engaging contractor services. One of the most basic tenets of Federal-aid contracting is that construction contracts are to be awarded using fair and open competition to a responsible contractor who submits the lowest responsive bid.



A responsible contractor is one who has the capability, both financially and physically, to undertake and complete the contract. A responsive bid is one that meets all the requirements of the advertisement that invited contractors to bid.

Since the early 1990s, other innovative competitive contracting methods, such as design-build, alternate bid, and warranty contracts have also been used to secure contractor services.



The Federal Highway Administration (FHWA) has evaluated many alternative contracting methods and now considers these three to be acceptable for Federal-aid highway projects.

All methods of construction other than competitive low bid contract awards must have project-specific approval by the State department of transportation (State DOTs) or FHWA as the oversight agency prior to use in a Federal-aid project. Design-build contracts, however, do not require cost-effectiveness justification. Normally, with the exception of design-build, evaluation of such a request will consider a cost-effectiveness finding and any special circumstances noted by the local public agency. Since the approval procedures vary from State to State, you are encouraged to refer to the stewardship and oversight agreement between the State DOT and FHWA for clarifications.

Competitive bidding is the preferred method used to award Federal-aid contracts. However, there are occurrences when construction can be completed using methods other than competitive contracting and the project remains eligible for Federal-aid reimbursement. In certain situations the competitive bidding requirement for Federal-aid contracts can be waived by the oversight agency.

Two alternative methods to the bidding requirement are negotiated contracts and agency force account.



Negotiated contracts are an option that should be considered only in very rare circumstances, such as during the time of a natural disaster. Getting work started immediately to save lives or to protect the infrastructure from impending damage may be reasons to negotiate with a contractor to perform work without having a competitively awarded contract in place.

Under certain circumstances, projects can be completed using agency force account procedures. This means that the construction work is performed using the labor, equipment, materials, and supplies that are under your control, without the use of a private contractor. Possible reasons to consider this method of construction are when there is a lack of competition within a bidding process or unacceptable bids have been received. This method also might be used when it is more cost-effective to do the work using agency personnel and for emergency situations.

If you choose to use agency force account procedures, submit documentation to the oversight agency that supports your agency's ability to satisfactorily complete the proposed construction work. The purpose of the documentation is to show:

- Evidence of satisfactory completion of similar work
- The personnel or other resources are available to do the work
- The personnel can achieve the acceptable quality that is normally expected within the Federal-aid Highway Program
- The work can be completed within a reasonable time frame
- The cost effectiveness of using agency forces

All agency force account work is still expected to meet the standards of quality and workmanship of normal contracting methods. Remember, get the approval of

the oversight agency prior to performing construction work using agency personnel.



Emergency repair work can often be completed by using either of these non-competitive methods. The waiver of competitive bidding would only cover the short-term temporary work for the immediate event. Contracts for permanent repairs must be considered and awarded through a competitive process. Check with your State DOT for the detailed procedures related to emergency project administration and the FHWA Emergency Relief Program.

During the design phase of your project, select either a competitive or non-competitive method of construction that best suits your Federal-aid project.



Get concurrence from your oversight agency on the selected method of construction. Your choice of the method of construction will affect the plans, construction specifications, and cost estimate package that must be approved prior to advancing to construction. The method of construction you choose will also determine whether the project's construction costs are eligible for Federal-aid funding.

Federal-aid projects may be constructed with a limited variety of competitive or non-competitive methods. Any method of construction other than low bid competitive bidding must be approved by the oversight agency. Your State DOT provides guidance and is responsible for the oversight of your agency's program. If you need assistance, the State DOT can assist you with selecting an appropriate method of construction for your project.

### Additional Resources

- Regulations highlighting use of agency force account requiring approval prior to authorization of construction  
<http://www.ecfr.gov/cgi/t/text/text-idx?c=ecfr&sid=1acd433207cb4a4218ef66a86d024b5a&rgn=div5&view=text&node=23:1.0.1.7.23&idno=23#23:1.0.1.7.23.1.1.4>
- Clarification for when agency force account is permitted under law and regulation  
<http://www.fhwa.dot.gov/legsregs/directives/orders/50601.htm>
- Text of law requiring contract awards to the lowest responsible bidder  
<http://us-code.vlex.com/vid/sec-letting-contracts-19205136>
- Guidance on use of non-traditional construction contracting methods in emergency situations  
<http://staffnet.fhwa.dot.gov/PGC/results.cfm?id=2368>
- FHWA contract administration core curriculum Item #A3 discussing method of construction rule  
<http://www.fhwa.dot.gov/programadmin/contracts/core03.cfm>

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 DTFH63-11-D-00066 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.