



U.S. DEPARTMENT OF
TRANSPORTATION

Federal Highway
Administration

Notice

Subject

**INDEFINITE DELIVERY/ INDEFINITE QUANTITY
CONTRACTING FOR LOW-COST FEDERAL-AID
CONSTRUCTION CONTRACTS**

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1. **What is the purpose of this Notice?** This Notice provides the Federal Highway Administration (FHWA) policy for the use of indefinite delivery/ indefinite quantity (ID/IQ) contracting for low-cost Federal-aid construction contracts. This Notice clarifies under what conditions ID/IQ contracts are allowed for Federal-aid construction.
 2. **Is this a new Notice?** Yes, this is a new Notice. Division Administrators are to refer to this Notice when processing requests to use ID/IQ for low-cost Federal-aid construction contracts.
 3. **What authorities govern this Notice?** Federal laws and regulations require that Federal-aid highway projects be awarded through a competitive bidding process. The Federal-aid highway program has various procedures that must be met before construction is authorized. A construction contract that does not meet these requirements cannot be authorized. However, FHWA has authority to experiment with innovative contract approaches that do not meet these requirements. The following authorities are relevant to this Notice:

- a. [Title 23, United States Code \(U.S.C.\) 112\(a\)](#)
- b. [23 U.S.C. 112\(b\)](#)
- c. [23 U.S.C. 502\(b\)\(2\)](#)
- d. [Title 23 Code of Federal Regulations \(CFR\) 172.9\(a\)\(3\)](#)
- e. [23 CFR 635.104](#)
- f. [23 CFR 771.113\(a\)](#)
- g. [23 CFR 771.117](#)
- h. [49 CFR 26](#)

4. **What is the scope of this Notice?** This Notice applies to low-cost contracts, defined below, for Federal-aid construction projects. This Notice does not apply to Federal-aid construction contracts that do not meet the low-cost threshold, engineering and design service contracts (23 CFR 172.9(a)(3) applies), or Federal Lands Highway contracts (48 CFR subpart 16.5 applies).
5. **What type of work may be performed under this Notice?** Subject to the limitations of this Notice, State departments of transportation (State DOT) may use ID/IQ contracting and Job Order Contracting (JOC), a form of ID/IQ contracting, to perform a variety of construction work including, but not limited to: preventive maintenance and bridge preventive maintenance (see paragraph 7e); the construction of pedestrian facilities (including ramps); intelligent transportation system (ITS) installation; pavement resurfacing; safety improvements; traffic control device installation; traffic signal installation; and clearing for construction contracts to avoid sensitive habitat.
6. **Why is this Notice necessary?** From 2007 to the present, FHWA has allowed the experimentation of ID/IQ contracts for Federal-aid construction projects through 23 U.S.C. 502(b)(2) as implemented under the Special Experimental Project Number 14 (SEP-14) authority. The FHWA has gained substantial experience through these experiments to operationalize this contract type in limited circumstances. In addition, Senate reports accompanying fiscal years 2017 and 2018 appropriations recommended that FHWA operationalize JOCs for all Federal-aid funded projects. This Notice operationalizes ID/IQ, including JOCs, for low-cost contracts for construction in the Federal-aid highway program.
7. **How are the terms in this Notice defined?**
- a. **Categorical exclusion** – Categorical exclusions are actions that meet the definition contained in 40 CFR 1508.4, and, based on past experience with similar actions, do not involve significant environmental impacts. See also 23 CFR 771.117.
 - b. **ID/IQ contract** – The term “ID/IQ contract” means a type of contract that does not specify a firm quantity of supplies or services (other than a minimum or maximum quantity) and provides for the issuance of orders for the performance of tasks or delivery of supplies or services during the period of the contract. The ID/IQ contracts are also known as “push-button contracts,” “on-call contracts,” and “task order contracts.” For the purpose of this Notice, ID/IQ contract is

specific to Federal-aid construction projects. It is a single award task or work order contract and is awarded by competitive bidding to the lowest responsive bidder.

- c. **Job Order Contract** – The term “Job Order Contract” or “JOC” in this Notice means a type of ID/IQ contract that utilizes a construction task catalogue with pre-priced work item descriptions. Contractors bid “adjustment factors” and the contract is awarded by competitive bidding to the lowest responsive bidder determined by their mark-up rate.
- d. **Low-cost contract** – A low-cost contract is a short-term (1 to 2 year) base contract that is awarded to the lowest responsive bidder where the total value of task or work orders may not exceed \$2,000,000 per year on average over the contract term. With FHWA approval, the base contract may be extended.
- e. **Preventive maintenance** – Preventive maintenance is as described in FHWA Memorandum “[Guidance on Highway Preservation And Maintenance](#)” dated February 25, 2016. Also, refer to the [FHWA Bridge Preservation Guide \(Spring 2018\)](#).

8. **What are the responsibilities of FHWA Division Administrators?**

The FHWA Division Administrators (Division Administrators) may concur with the use of ID/IQ contracts for low-cost contracts under the following conditions (acceptable format to be determined by the Division Administrator in consultation with the State DOT):

a. **Assurances:**

In evaluating State DOT requests for concurrence for the use of ID/IQ for low-cost contracts, the Division Administrators must ensure that they have the following information documented as agreed to in paragraph 8(b)(1):

- (1) Assurances from the State DOT that the total value of task or work orders will not exceed \$2,000,000 per year (averaged over the contract term).
- (2) Assurances from the State DOT that the actions covered by the contract will be for construction projects qualifying for National Environmental Policy Act (NEPA) categorical exclusions listed under 23 CFR 771.117.
- (3) Assurances from the State DOT that the work will comply with all applicable Title 23 requirements during construction, such as the applicable sections of [Form FHWA-1273 \(Required Contract Provisions for Federal-aid Construction Projects\)](#), job site poster requirements, environmental commitments, etc.

- (4) Assurances from the State DOT that the award of the contract and the performance of the project will comply with applicable Disadvantaged Business Enterprise (DBE) provisions of 49 CFR part 26.

b. Timing of FHWA approvals:

- (1) The Division Administrators have the authority to review and concur in ID/IQ proposals for advertisement and award to satisfy 23 CFR 635.112(a) and 635.309, as applicable. No project agreement in the Fiscal Management Information System (FMIS) is established at this time except as provided in 8(b)(4) and 8(b)(5) below. The Division Administrator should determine how individual work orders will be approved under the ID/IQ contract and submitted in FMIS for authorization to proceed with work under 23 CFR 630.106 in project agreements. The process for review and concurrence of proposals for advertisement, work orders, and project authorization in FMIS should be documented in a programmatic agreement between the Division Administrator and the State DOT and may be incorporated into the stewardship and oversight agreement.
- (2) Environmental review is not required prior to the award of the ID/IQ contract, but completion of environmental review is required prior to the authorization to proceed on individual tasks. The ID/IQ or JOC contractor must not prepare the NEPA document or have any decisionmaking responsibility with respect to the NEPA document.
- (3) Before the project agreement in FMIS is established, ensure that the work is included in the State Transportation Improvement Plan.
- (4) For preventive maintenance ID/IQ or JOC projects, the initial project agreement and obligation of funds for the total project may be based on an estimate of costs for all anticipated task or work orders during the contract period (e.g. countywide striping of Federal-aid highways in calendar year 2020). The project agreement must be modified to address location-specific information when required, such as bridge information. It is not necessary to provide location information for relatively minor work at dispersed locations, such as for countywide pavement markings placement.
- (5) For ID/IQ and JOC projects other than preventive maintenance, a project agreement and obligation of funds may be based on the estimated costs for known locations only. Additional locations added by future task or work orders may be added by modifications to the project agreement before the work is started. Work or task orders may also be authorized under separate project agreements referencing the ID/IQ or JOC approval.
- (6) The Division Administrator and the State DOT should agree on a procedure for tracking and documenting compliance with all applicable

Federal requirements, including: NEPA requirements, contracting requirements, FMIS documentation requirements, etc.

c. Contract extensions (option years)

The Division Administrators may allow contract extensions. The maximum length of the contract term (base contract plus extensions) must not exceed 5 years. The period of performance for task or work orders should not extend beyond the period of performance of the base contract or its extensions.

d. Contract clauses specific for ID/IQ contracts:

- (1) The FHWA may decline to participate if it finds that the State's procurement process is unduly affecting competition; if it finds that the State DOT has inadequate internal controls; or if there is evidence of fraud, waste, or abuse from either the State DOT or the contractor(s).
- (2) The following 23 CFR 635 requirements do not apply to Federal-aid ID/IQ projects; however, a State DOT may use similar requirements consistent with State policy:
 - (a) The provisions of 23 CFR 635.109 do not apply to Federal-aid ID/IQ projects. State DOTs are encouraged to use "suspensions of work ordered by the engineer" clauses, and may consider "differing site condition" clauses and "significant changes in the character of work" clauses, as appropriate.
 - (b) The self-performance requirements of 23 CFR 635.116(a) do not apply. State DOTs may use appropriate State self-performance requirements.

e. Specific requirements for JOCs:

The determination of the lowest responsive bidder may be based on "adjustment factors" for work item descriptions.

f. Internal controls

- (1) The Division Administrator may not concur in the use of ID/IQ contracts if the State DOT does not demonstrate appropriate controls to ensure that the work is being charged correctly towards eligible Federal-aid programs.
- (2) At any time, and after providing written notice to the State DOT, the Division Administrator has the authority to decline to participate in ID/IQ contract costs and the use of an ID/IQ contract if it is determined that there is mismanagement of funds or inappropriate use of the contract vehicle. Claims arising out of a termination for these reasons are not eligible for Federal-aid.

g. SEP-14 specific project approval required for certain projects:

- (1) ID/IQ contracts that involve best value awards, multiple award contracts, exceed the low-cost threshold, or are not otherwise within the limitations of this Notice require SEP-14 approval. The FHWA Division Office should work with State DOTs on these requests. The FHWA Division Office would coordinate with the Office of Infrastructure for evaluation of the State DOT request for approval.
- (2) The Division Administrators will process these requests under the SEP-14 process, including project-specific work plan and evaluation expectations.

h. More restrictive State procedures

Where a State DOT has more restrictive State policies and procedures governing ID/IQ or JOC contracts for transportation projects, then those more restrictive policies and procedures will apply. Examples include restrictions on the processing of extensions, required findings or determinations before extensions are granted, particular procedures for modifications, and limitations on the scope of projects that could be contracted out using this mechanism.

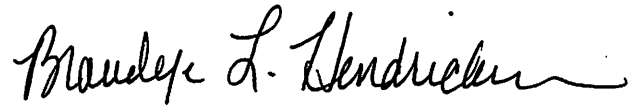
9. What are the reporting requirements?

The FHWA is using its SEP-14 authority to evaluate implementation of ID/IQ contracting at a national level. The FHWA Division Offices will capture the following implementation information to inform whether the approach should be revised and what best practices should be incorporated into its procedures. The following information should be provided in an annual evaluation report, or as requested, to the Office of Preconstruction, Construction, and Pavements (HICP) for all low-cost ID/IQ or JOC projects:

- a. Information on the effectiveness of the approval process for individual task or work orders.
- b. Information on the impact of this contracting method on competition, costs, and project delivery.
- c. Information on the impact of this contracting method on the participation of small businesses and DBEs.

10. **Where can I obtain additional information?**

For additional guidance, contact FHWA's Office of Infrastructure, HICP or the Office of Chief Counsel, Program Legal Services Division.

A handwritten signature in black ink, reading "Brandye L. Hendrickson". The signature is written in a cursive style with a long, sweeping underline.

Brandye L. Hendrickson
Deputy Administrator