

DelDOT Procedures for Federally Funded Indefinite Delivery/Indefinite Quantity Construction Projects

Procedures as of 12/14/2021

Under certain conditions and for certain construction projects, DelDOT utilizes Indefinite Delivery/Indefinite Quantity (abbreviated ID/IQ, and commonly referred to as “open-end”) contracts to provide greater efficiency in performing construction work for related locations or for related work orders. Open-end contracts using federal funding must follow the 23 USC 112 federal code and 23 CFR 635 federal regulations and the specific requirements in 23 CFR 635 Subpart F – Indefinite Delivery/Indefinite Quantity (ID/IQ) Contracting and any other applicable federal requirements. The following guidelines have been developed to assist in preparing those contracts.

- **Contract:**
 - Include federal boiler plate language.
 - In accordance with 108.1(A) of the Standard Specifications, the Prime Contractor must perform no less than 50% of the work on the contract. It must be noted in the contract whether this will be tracked on the overall contract or by each work order.
 - Basis of Payment for Mobilization cost must be spelled out in the contract.
 - These guidelines are intended for Design-Bid-Build procurements with Low Bid selection.
 - Best Value selection is allowable with FHWA approval after review of the contract.
 - Design-Build is allowable with FHWA approval after review of contract.
 - Must include the length of the contract - Maximum of 3 years per Delaware state code (Title 29, §6970 Open-end contract process for highway construction and reconstruction).
 - It is recommended for simplicity that ID/IQ contracts not include allowance for time extensions. If the Project Manager intends to use the contract for 3 years, then it is recommended to make the agreement a simple 3-year agreement with no extensions (as opposed to a 1-year agreement with two 1-year extensions available).
 - Bid prices will not be adjusted or negotiated for optional contract extensions as they are not eligible for Federal-aid participation without an escalation or inflation clause.
 - If some tasks are included in the plans at the time of advertisement, the allowable time for those work orders needs to be specified separately from the overall duration of the contract.
 - For work orders that are not included in the plans at the time of advertisement, the contract language needs to specify how the allowable time of those new tasks will be defined.
 - Must specify the minimum and maximum expected total value of the contract.
 - Minimum and maximum values will be for information purposes only and will not be binding.
 - Values provided are estimated based on previous history and are not a guarantee of work to the contractor.

- Liquidated Damages will be based on the work order value.
 - Disadvantaged Business Enterprise (DBE) goals, if assigned, will be set for the overall contract, not each work order.
 - Solicitation may include all, some, or none of the work order plans.
 - Advertisement and award may be done prior to NEPA approval for work orders to be assigned. Please see “Work orders” below for NEPA and funding approval guidance on any specific task.
 - If it is necessary to have multiple federal funding codes for similar work types under one contract, then a separate state capital project number must be set up for work to be completed using each funding code. Multiple capital project numbers can then be assembled into one contract for like work types.
- Work orders:
 - Original work orders included in the ID/IQ solicitation shall have NEPA approval, statements, funding approvals, and sealed plans prior to advertisement.
 - Work orders added to the agreement must have NEPA approval, statements, funding approvals, and sealed plans prior to assignment to the contractor. Funding cannot be approved for work orders until NEPA is clear for that work.
 - A checklist (Appendix A) confirming that the NEPA document, all statements, and sealed plans are completed shall be submitted by the Project Manager to Finance prior to FMIS approval request to FHWA for each work order.
 - The Project Manager’s task checklist will be kept on file at DelDOT.
 - To assist FHWA in their approval process, the below verbiage is to be included in the FMIS request for ID/IQ contracts for the following scenarios.
 - Initial Construction Authorization with No Locations
This ID/IQ project request is for code Federal Construction (C) phase approval in the amount of \$dollars for authorization to advertise/award the contract only. Project has no specific locations and/or work orders. Additional locations and/or work orders will be added under additional FMIS requests.
 - Initial Construction Authorization with Locations
This ID/IQ project request is for code Federal Construction (C) phase approval in the amount of \$dollars for authorization to advertise/award the contract for approved locations/work orders only. The funding request is based on included locations and/or work orders that have NEPA approval as documented in the Approval Checklist dated XX/XX/XXXX. Additional work orders will be added under additional FMIS requests.
 - Additional Locations (Work Orders) added to Existing Construction Authorizations
This ID/IQ project modification request is for code Federal Construction (C) phase approval in the amount of \$dollars to added locations/work orders. All additional locations and/or work orders have NEPA approval as documented in the Approval Checklist dated XX/XX/XXXX.

- Work orders shall be assigned using the bid item prices and estimated quantities. Items of work not included in the original bid must be negotiated. Duration and schedule for each work order to be set by the Department.
 - If multiple contractors were chosen for the contract, each work order shall be awarded to the lowest responsible bidder using initial unit bid prices.
 - If the lowest responsible bidder declines the work or cannot meet the Department's schedule, the next lowest responsible bidder shall be consulted until the work is awarded.
 - The Department will not consider any contractor in liquidated damages on this or other DelDOT contracts to be a responsible bidder.
 - Per 17 Del. C., §152 of the Delaware Code, all disputes over the award of work orders will be decided by the Secretary of Transportation who is the final arbiter.
- Procurement Procedures: All items listed in 23 CFR 635.606(c) and any other items not specifically included above will be handled in accordance with DelDOT standard procedures and the FHWA Stewardship Agreement.

APPENDIX A

PLANS, SPECIFICATIONS, AND ESTIMATE CHECKLIST

ID/IQ WORK ORDER PS&E CHECKLIST

<u>CONTRACT #:</u>	
<u>CONTRACT NAME:</u>	
<u>PROJECT MANAGER:</u>	
<u>COST ESTIMATE:</u>	\$

NOTES:

<u>COMPLETE</u>	<u>DATE</u>	<u>ACTIVITY</u>	<u>NOTES</u>
		TRAFFIC STATEMENT	
		UTILITY STATEMENT	
		RIGHT-OF-WAY STATEMENT	
		ENVIRONMENTAL STATEMENT	
		RAILROAD STATEMENT	
		FINAL SIGNED PLANS	
		STORMWATER SIGN-OFF	
		ITEM/QUANTITY/PRICE LIST	
		FINAL SPECIFICATIONS	

APPENDIX B

SAMPLE LANGUAGE FOR DELDOT ID/IQ CONTRACTS

Note: Sample Language provided is not an exhaustive list of all notes needed for an ID/IQ contract. The notes provided are examples of notes to address the requirements in these guidelines for federal contracts. An entire list of notes to address all types of ID/IQ contracts is not practical in this document.

DRAFT SAMPLE LANGUAGE FOR DELDOT ID/IQ CONTRACTS

THE FOLLOWING NOTES WILL BE LISTED WITHIN THE CONTRACT'S "GENERAL DESCRIPTION" SECTION.

If no locations are specified in the contract.

The specific work sites are not listed herein but will be scheduled by issuance of work orders from the Engineer. The work orders will indicate the work to be performed at each site.

If there are initial locations specified in the contract

Specific locations for initial work orders are listed herein. Additional locations may be added by issuance of work orders from the Engineer. The work orders will indicate the work to be performed at each site and the duration of each work order.

If multiple contractors will be selected.

Multiple contractors may be selected from this solicitation. Contract awards will be based on low bid.

Minimum and Maximum Values

The minimum expected value of each contract is \$[PROVIDE] and the maximum value of each contract is \$[PROVIDE]. Minimum and maximum values are for informational purposes only and are not to be considered binding or a guarantee of work to the contractor.

Duration of contract (with no extensions)

The duration of this open-end contract shall be for a period of three (3) years from the date of execution of the contract.

DBE Goals

A [ENTER]% Disadvantaged Business Enterprise (DBE) goal has been established for the sum total of all federally-funded tasks associated with this contract. DBE percentages are tracked for the overall contract, not each work order.

Subcontracting

In accordance with 108.1(A) of the Standard Specifications, the Prime Contractor must perform 50% of the work on the contract. This will be tracked on [SELECT: the overall contract OR each work order].

Environmental permits and NEPA for work orders

The work will be scheduled by issuance of work orders to the Contractor from the Department. Each work order will represent an independent construction location. Work orders will be issued upon design completion and receipt of necessary statements & permits for the individual sites. It is anticipated that each individual work order will obtain the necessary plan approvals prior to issuance. Field personnel representing the Department are not authorized to revoke, alter, or waive any requirements of the plans, specifications or permit conditions.

A Notice to Proceed for a specific work order will not be issued until the administration section receives any required clearance or permits from the DelDOT Environmental Stewardship Office. NEPA clearance is required for each work order. The Department will obtain any necessary NEPA clearances. Any special conditions may be part of an assigned work order, such as environmental clearance for stockpile area.

Work within waters/wetlands shall not begin on locations requiring environmental permits until all applicable permits have been obtained by DelDOT. Confirm permit status with DelDOT prior to commencement of applicable work.

If multiple contractors are to be selected

Work orders will be awarded to the lowest responsible bidder using unit bid prices. Work items without bid prices shall be submitted per work order as requested. If the lowest responsible bidder declines the work or cannot meet the Department's schedule, the next lowest responsible bidder shall be consulted until the work is awarded. The Department will not consider any contractor in liquidated damages on this or other DelDOT contracts to be a responsible bidder. Any disputes over the award of work orders will be decided by the Secretary of Transportation who is the final arbiter.

Process for determining schedules for work orders

The Contractor will be advised of work to be performed or deleted via a work order. The work order will outline the work locations, planned items, quantities of work, and will indicate the allowable time to perform work. Once time (Calendar Days) has been assigned to a work order and issued, the Contractor has 2 business days, not including the day of issuance, to dispute the time quantity and provide additional backup documentation for why the time quantity is not sufficient. A detailed breakdown of labor/materials/equipment along with the Contractor's time estimate will be required; this information must be received by the Department by the end of the 2nd business day or the Department will consider the Contractor in agreement with the time estimate. The Engineer will evaluate any request for modification to the time estimate and at his sole

discretion determine if additional time is granted. Disputing a time quantity does not constitute a delay in commencement of a work order as described below.

Construction Engineering

Any and all construction engineering shall be incidental to the contract.

Liquidated Damages

Failure to start assigned work orders in the allowed time constitutes "Failure to Pursue the Work" and subjects the Contractor to Liquidated damages as outlined in Section 108.8 of the Standard Specifications. If work on a specific work order is not completed within the allotted time, Liquidated Damages will be assessed in accordance with Subsection 108.9 and based on the total value of that work order.

Section 104.2B.4 of Standard Specs

Delete Section 104.2.B.4 of the DeIDOT Standard Specifications, and replace with the following:

The Department reserves the right to, at any time prior to completion of the contract, issue plan revisions, make adjustments in Contract item quantities, or make such alterations considered necessary to satisfactorily complete the Contract.

The Department reserves the right to increase or decrease the quantities of Pay Items specified in the Contract. Such additions or deletions shall not be cause for an increase or decrease in Contract unit bid prices. The "Change" threshold of plus or minus 25%, as described in Subsection 104.2.B.4 of the DeIDOT Standard Specifications dated August 2020 shall not apply to this Contract. Quantity increases or decreases of plus or minus 25% or greater shall not be justification for adjustments to unit prices.

The plan revisions and quantity adjustments described above do not invalidate the Contract or release the Contract surety. Payment for these changes shall exclude any amount for loss of anticipated profits alleged to result from the change.

When payment for the Contract work cannot be agreed upon by the Contractor and the Department prior to starting such work ordered, the Department may direct the Contractor to perform the work under Force Account provisions of Subsection 109.4. The Contractor will proceed immediately with the work so ordered and such direction shall neither invalidate the Contract, nor release the surety.

THE FOLLOWING NOTES MAY BE CONSIDERED:

Options for paying 763000 (Initial expense) – Not an all-inclusive list

Item 763000 (Initial Expense) shall only be paid once and shall not be paid again or increased if the value of the Contract exceeds the award amount.

OR

Item 763000 (Initial Expense) will be paid monthly as a percentage of the work completed based on the bid amount.

OR

Item 763000 (Initial Expense) will be paid shall be paid monthly starting from the date of notice to proceed (NTP). It shall not be paid in full until the contract time has been exhausted. It shall not be paid in full, nor is the contractor owed additional compensation, if the contract reaches or exceeds the award amount before contract time is exhausted.

OR

Initial Expense (Mobilization/Demobilization) shall be bid as an EACH item and will be paid for each work order under item 7635XX.

OR OTHER.