



March 3, 2021

Christopher Millington, PE  
Federal Highway Administration  
Leo W. O'Brien Federal Building  
11A Clinton Avenue, Suite 719  
Albany, NY 12207

Re: Alternative Contracting SEP-14 Request

Dear Mr. Millington:

NYS DOT seeks FHWA concurrence to use Federal-funding for "Best Value" selection of design-bid-build construction contracts through the Federal "Alternative Contracting" SEP-14 program. The recent reauthorization of the New York State Infrastructure Investment Act allows NYS DOT to continue to use alternative project delivery/procurement methods until December 31, 2022. Enclosed, to support our request are the following documents:

- Work Plan for SEP-14 Alternative Contracting - Utilizing Best Value Selection for Capital Construction Contracts (March 2021).
- Infrastructure Investment Act as amended by the 2019-2020 reauthorization (see Part M & Part DD).

The Department seeks your approval for alternative contracting utilizing Best Value selection. Should you have any questions regarding this request or any of the attachments, please contact Carlos Rivera at 518-457-9837.

Sincerely

*/Signed By/*

Nicolas A Choubah, P.E.  
Acting Chief Engineer

cc: C. Rivera, PMO, e-mail only  
J. Moryl, PMO, e-mail only  
M. Bromirski, Contract Management, e-mail only  
R. Davies, FHWA, e-mail only  
D. Wood, FHWA, e-mail only

# **WORK PLAN FOR SPECIAL EXPERIMENTAL PROJECT NO. 14 (SEP-14) ALTERNATE CONTRACTING - UTILIZING BEST VALUE SELECTION FOR CAPITAL CONSTRUCTION CONTRACTS MARCH 2021**

## **INTRODUCTION**

The New York State Department of Transportation (NYSDOT) submits this work plan for review and approval as a Best Value Alternate bidding procedure under the provisions of Special Experimental Project No. 14 (SEP-14) for use of alternative (innovative) bidding practices.

New York State had enacted Chapter 56 of the Laws of 2011, known as the Infrastructure Investment Act of 2011. This Act authorized a variety of innovative contracting methods including best value, design-build, lump sum, guaranteed maximum price and prequalification. That Act has been reauthorized in 2015, 2017 and 2019. The 2019 reauthorization is in effect in New York State until the end of March 2021. In 2020, the Infrastructure Investment Act was reauthorized to extend the expiration date to December 31, 2022. The latest reauthorization allows for the same Alternative Delivery Methods as did the original Infrastructure Act of 2011. A copy of the latest legislated Infrastructure Investment Act is attached to this work plan.

The proposed best value bidding procedure is an innovative process which will be used by NYSDOT in our capital construction program. As described further in the work plan, this bidding procedure should result in more efficient construction in terms of both overall costs and schedules.

Historically NYSDOT has used the design-bid-build method, with projects being awarded to the lowest responsible bidder. The increasing demand on available highway funds has prompted the State to actively pursue methods to optimize quality, cost, and efficiency. Projects will be selected consistent with the intent of this.

## **THE PROCESS - BACKGROUND**

NYSDOT is requesting approval to solicit full and open competitive bids (bid price and best value submittal via an Invitation for Bids - IFB). The traditional construction plans, proposal, bid items and quantities make up one part of the IFB. A description of the technical evaluation factors, their relative weights, the weighting of price vs. technical evaluation factors and the instructions to the bidders make up the other part of the IFB. The bidders' approach to the project (technical qualifications) are not publicly opened or read. Bid prices and technical qualifications are reviewed and scored separately, and then the scores are combined in accordance with the Best Value Scoring Criteria and the Best Value Bidder is recommended for award.

NYSDOT uses the IFB process without the additional quality-based submission for its routine projects. NYSDOT plans to solicit full and open competition using an IFB as the procurement method with the addition of Best Value Selection Scoring Criteria on select projects. Over the past six years, NYSDOT has only used this IFB process on fourteen projects. The IFB may include as applicable to the specific project several components (criteria) in which respondents to the solicitation must include within their submittals such as: price, qualifications, schedule, and construction approach as examples. The IFB also includes language, via a Special Note in the Contract Proposal, which informs the bidders as to the order of importance of each of the specified criteria. In essence, all of the critical aspects of the project are evaluated to determine what bidder is truly the overall best value to be awarded the project. Price is still a major factor; however, a bidder that has the lowest overall price may not be awarded the project if their submittal does not adequately address all of the critical aspects of the project as described in the IFB.

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**PROCESS ADVANTAGES/DISADVANTAGES**

We plan to continue to explore the advantages and disadvantages of awarding using a best value contract.

**Advantages**

***Reduces risk to NYSDOT:***

Since NYSDOT is selecting a contractor based on their complete and written understanding of all of the critical aspects of the project (price, quality, schedule, experience, capability, and understanding of project), rather than just price alone, NYSDOT has increased its potential for selecting and awarding to the best contractor available. By selecting a contractor through this process, NYSDOT anticipates an increased chance for success, and reduced overall risk for an unsuccessful project.

***IFB process is flexible:***

By using a two component (price and quality-based criteria) Invitation for Bid (IFB) process, it gives the flexibility to evaluate all bidders that meet the minimum quality-based ranking points after submittal evaluations. (The normal approved method of using sealed bids does not allow for consideration of quality criteria.) This is important when dealing with projects that are on a tight budget and/or schedule. Secondly, this process allows NYSDOT to express to the contractor community in a competitive environment, the most important or critical aspects of the project, and have the contractor community inform NYSDOT in the form of submittals how they plan to resolve these issues and the related cost.

***Best Value:***

The evaluation process allows NYSDOT to evaluate all of the critical aspects of the project rather than just price. Price will still be a major factor, but this process allows NYSDOT to consider other critical aspects of the project. As an example, Schedule will often be critical. Bidders will be required to submit detailed schedules for review. A firm that submits a schedule that is lacking sufficient detail, most likely will not score as high as a firm that submits a schedule that contains complete detail proving they are intimately familiar and completely understand the critical elements of the project. The contractor who best demonstrates their complete understanding of project, has a fair price, and is qualified through their submission, most likely will be selected through this highly competitive process as the Best Value. Contractors can put their best effort forward not having to worry about foregoing quality for a low price. NYSDOT benefits by awarding the contract to a contractor that has proven capabilities and a fair price.

**Disadvantages**

***Preparation and submission cost:***

The submission preparation process by the contractor's is more time consuming and costly. Some firms are not inclined to put forth the effort for such projects. There is some risk in receiving fewer competitors.

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***Increased Evaluation and Award Process:***

The submission evaluation process takes approximately two weeks. The extra time is required to be able to evaluate and select the best value contractor. However, these days will be more than made up in improved day to day project administration.

**SCOPE**

The purpose of this work plan is to provide a format to evaluate the use of Federal aid for capital construction contracts awarded via a Best Value selection process. With approval of this work plan, NYSDOT will use Federal aid for Best Value capital construction contracts under the Federal "alternative contracting" SEP-I4 program.

**Current Method**

The vast majority of NYSDOT's capital construction contracts are selected through a low bid process and awarded to the lowest responsible bidder. NYSDOT has also utilized A + B bidding on a variety of construction contracts.

**Opportunities for Improvement**

NYSDOT believes that the use of Best Value selection methods for traditional design-bid-build construction contracts has the potential for significant benefits in terms of shorter timeframes to complete work, improved work quality, and safety.

NCHRP Report 561 "Best-Value Procurement Methods for Highway Construction Contracts" states that several governmental organizations including the Army Corps of Engineers have used the best value method to award construction contracts. The General Services Administration Public Building Services procures 100% of its new buildings and renovations through best value procurement. Several State DOTs have also used Best Value for construction contracting.

NYSDOT anticipates that approximately three to five construction contracts per calendar year would be selected and awarded via the Best Value method. These would be jobs of various sizes and work types, and in different Regions. For each contract, Main Office staff would work with the Regions to determine the qualification-based selection factors to be used, their respective weights, and their weight in relation to the bid price. The most likely qualification-based selection factors would be experience and past performance, construction approach, key personnel, safety record, schedule, and ability to meet DBE goals.

A selection committee of NYSDOT experts will evaluate and score the qualification-based selection factors. This committee would be strictly separated from and have no knowledge of the bid prices, which will be verified and reviewed by NYSDOT in the usual manner. Subsequent to the qualification-based evaluation and scoring, oral presentations from all bidders may be held (if applicable). When both qualifications, oral presentations (if held), and cost reviews are completed, NYSDOT's Office of Contract Management will summarize and prepare a memo recommending the Best Value proposal to the Chief Engineer.

As candidate projects are identified and developed, NYSDOT will forward their project specific special notes and rationale for selection to FHWA for review and comment.

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**SCHEDULE**

NYSDOT is requesting approval to use this alternative contracting on selected projects for an approximate two-year evaluation period; for projects advertised for bids between April 1, 2021 to December 31, 2022.

**MEASURES**

During the period between advertisement and completion of construction for contracts selected through Best Value, NYSDOT will evaluate the effectiveness of the Best Value selections. Interviews may be conducted with staff involved with the letting and execution of Best Value contracts, along with contractors, to determine how the best value selected contracts compared to the traditional contracts selected by the traditional low bid method.

By using the "Best Value" method for capital projects, NYSDOT expects to be able to measure, as a minimum, three primary objectives; (1) cost savings, (2) time, and (3) improved quality as follows:

**Cost Savings:**

The cost savings that are anticipated to be realized on best value projects are in the areas of lower number of change orders, with resultant improved efficiencies. Since the evaluation criteria may also include the evaluation of such items as; qualifications, project understanding and approach, schedule, quality control and traffic plans, through this process we anticipate hiring a quality contractor that has proven they completely understand the project. Therefore, NYSDOT anticipates receiving quality work and a better understanding of the project which may lead to less change orders.

**Quality:**

As stated above, using the "Best Value" approach, NYSDOT may evaluate each firm's past performance, experience, and capabilities in a competitive process. With all things being equal, a firm that is able to put the best team together should result in improved quality at a lower than average cost. The cost savings anticipated are less change orders, increased project efficiency (repetitive work should be rare), and a project that is completed either on time or earlier than expected.

**Time:**

This should be the easiest of all to measure. NYSDOT anticipates shorter project durations, by asking for and evaluating project schedules as part of the best value process. As an example, most projects that are awarded using sealed bidding give the timeframe the contractors are to complete the work. In our proposed best value process, NYSDOT provides the bidders with the contract completion date. NYSDOT evaluates and scores higher the bidder that submits a schedule which results in shorter completion dates and can demonstrate that their schedule is realistic through experience and construction project approach.

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**REPORTING**

**Project Reports –**

For each project, we will prepare two reports of this alternate contracting proposal. An interim report (approximately one page) will be prepared shortly after contract award and will address the Best Value selection process and results. A final report will be prepared within six months after completion of the project work and will address the entire project and all evaluation measures for the Best Value selection process.

**Yearly Report –**

NYSDOT will prepare a yearly report to capture the status of the Best Value selection process. These reports shall be provided each July.

**Final Best Value Program Report –**

Upon completion of the last project to be constructed under the authority granted by FHWA, NYSDOT will prepare a final report (no later than six months after last project completion) summarizing the SEP-14 Best Value findings associated with the individual projects.