

Memorandum

Subject: **ACTION:** Colorado - Local Labor Hiring
Preference under Special Experimental Project
No. 14 (SEP-14) - Revised

Date: February 1, 2016

From: /s/ Thomas D. Everett
Director, Office of Program Administration
Washington, DC

In Reply Refer To:
HIPA-30

To: John M. Cater
Division Administrator
Lakewood, CO

We have received the Colorado Department of Transportation's (CDOT's) December 7, 2015 letter responding to our October 27, 2015 conditional approval of its SEP-14 workplan for the Central 70 project on I-70 from Brighton Boulevard to Chambers Road, which was submitted to our office on December 7 by Chris Horn of your staff. The COOT letter responded to the following FHWA comments:

1. We would ask that CDOT provide an estimate of the actual use of local residents on a few completed Federal-aid projects of similar size and scope (if such projects / information are available). Perhaps CDOT's workforce needs assessment will provide such information, but it would be good to know what is typically achieved without preferences.
2. Under workplan Section E4, CDOT needs to describe and quantify how the proposed contracting requirement would lead to increases in the effectiveness and efficiency of Federal funding funds. It would be helpful for the application to address how the requirement will enhance the purpose of the federally funded project. It should describe how the requirement will facilitate community support for the project and how it will enhance overall workforce development for this projects and future projects.

Please convey our thanks to CDOT for its response to our October 27 letter. As the CDOT response of December 7 did satisfactorily address the conditions of approval, we hereby remove the conditional approval and issue a full approval in its place. As you are aware, some details in this SEP-14 workplan remain to be finalized, including:

- Components of the Local Labor Hiring Program (LLHP) Special Provision, including:
 - What are the local labor hiring percentage goals to be established?
 - What contractual provisions will be necessary to ensure compliance?
 - Will the Environmental Justice Area depicted in the SEP-14 workplan provide an adequate pool of workers?
- To what extent will CDOT use the LLHP requirements as an evaluation and award criteria in the procurement process?
- What administrative controls will CDOT use to implement the LLHP provisions during the performance of the design-build contract?

As CDOT shares the finalized details with your office, we would appreciate a copy for our records. CDOT should provide FHWA with a copy of the final LLHP contract provisions that will be used in the Request for Proposals for this project once they are complete.

If CDOT chooses to use contract incentives under this contract, they should be aware that those incentive costs associated with the approval are eligible for participation as surface transportation workforce development and training costs, authorized by [23 U.S.C. 504\(e\)](#), which provides for the use of Federal-aid formula funds for Surface Transportation Workforce Development , Training and Education.

Section 192 of the FY 2016 Appropriations Act

Lastly, President Obama signed the FY 2016 Appropriations Act on December 18, 2015. Section 192 of Title I, Division L of the Consolidated Appropriations Act, 2016 (the Department of Transportation Appropriations Act, 2016), contains Congressional direction to the Department of Transportation requiring that a grant recipient must certify that three conditions have been satisfied on each federally assisted project before it can allow the use of contract provisions that specify a "geographic, economic, or any other hiring preference." My January 8, 2016 email to all Division Administrators regarding 'the FY 2016 Appropriations Act' and Local Labor Hiring Preference Provisions at <http://www.fhwa.dot.gov/construction/contracts/160108.cfm> provided implementing guidance to address the provisions of Section 192. Because FHWA did not authorize construction for this project before December 18, 2015, CDOT is expected to provide certifications in accordance with that guidance before requesting FHWA's construction authorization.

If you have any questions, please contact the following: Gerald Yakowenko at Gerald.Yakowenko@dot.gov or (202)366-1562, or John Huyer John.Huyer@dot.gov or (651)291-6111.