



U.S. Department
of Transportation

Federal Highway
Administration

Memorandum

Subject: **ACTION:** California Progressive Design-Build
(I-5 Managed Lanes) under Special Experimental
Project No. 14 (SEP-14)

Date: January 17, 2024

From: Moises Marrero **MOISES MARRERO** Digitally signed by MOISES
Acting Director MARRERO
Office of Preconstruction, Construction, and Date: 2024.01.17 14:13:02 -05'00'
Pavements

In Reply Refer To:
HICP-20

To: Elissa Konove
Acting Division Administrator
Sacramento, CA

This memorandum is in reference to the December 13, 2023 email from Lismary Gavillán of your staff, which transmitted, endorsed, and recommended approval of a California Department of Transportation (Caltrans) Workplan to use the Progressive Design-Build (PDB) delivery method the under Special Experimental Project No. 14 (SEP-14). This project delivery method would be used for the planning, preconstruction, and construction phase services for the I-5 Managed Lanes Multi Modal Operational Improvements project in Orange County from Postmile 28.9 to 44.4.

Caltrans is requesting that FHWA waive the requirements of 23 CFR 636.302(a)(1), which requires the evaluation of price in the selection of a Design-Build Team (DBT) if the National Environmental Policy Act (NEPA) process has been completed (Caltrans anticipates that the approval of the Project's Final Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) would be obtained in early 2024). Under this waiver, Caltrans would select the DBT using a qualifications-based selection (QBS) process.

The workplan contains the following components:

1. The Project is anticipated to be a contract with two work packages. The first work package for roadway construction and the second work package for Tolling System Integration (TSI). The work package schedules will overlap to maximize design coordination.
2. Early Work Packages are a portion or phase of physical construction work (including but not limited to site preparation, structure demolition, hazardous material abatement/treatment/removal, early material acquisition/fabrication contracts, or any action that materially affects the objective consideration of alternatives in the NEPA review process) that is procured after NEPA is complete but before all design work for the project is complete. Caltrans may procure EWP's when construction risks have been

addressed (both agency and DBT risks) and the scope of work is defined sufficiently for the Caltrans and the DBT to reasonably determine price.

Through collaboration with the DBT and the use of EWPs, Caltrans may expedite the design and construction schedule in anticipation of the 2028 Olympics in Los Angeles.

3. To ensure efficient and effective use of federal and state funding, Caltrans will procure a separate A&E Consultant Services Contract for an Independent Cost Estimator (ICE). The ICE will provide an independent cost estimate to aid Caltrans in price negotiations with the Design-Builder to ensure the Guaranteed Maximum Price (GMP) is reasonable and fair for the Final Design and Construction Contract of the Project. The ICE will also advise Caltrans on scheduling and method of construction.

The development of the GMP and changes during construction will use an open-book process, and Caltrans and its representatives will have the right to access and copy all records, accounts, and other data used by the Design- Builder in connection with the preparation of the GMP.

4. If Caltrans is unable to enter into the Final Design and Construction Contract or the Design-Builder, ICE and Caltrans fail in the price negotiations, Caltrans will have the following options:
 - a) Amend the Preconstruction Services Contract to have the Design-Builder complete the design. Caltrans would complete construction of the project as Design-Bid-Build.
 - b) Complete the design in-house. Caltrans would complete construction of the project as Design-Bid-Build.
 - c) Re-Advertise for a new Design-Builder and complete the project using Design- Build contracting.

Other details are contained within the SEP-14 workplan.

The SEP-14 Workplan is approved.

The FHWA's approval of the SEP-14 workplan for this Project is limited to the deviations from FHWA's procurement rules at 23 CFR Part 636 as set forth in the Workplan. FHWA's approval is not intended to be and should not be interpreted as an approval, either expressly or implied, of deviations from any other title 23 USC, title 23 CFR, or other Federal requirement (including provisions contained in the recently enacted Bipartisan Infrastructure Law, enacted as the Infrastructure Investment and Jobs Act, Pub. L. 117-58 (Nov. 15, 2021)) applicable to any other aspect of the project advanced under the SEP-14 Workplan.

Thank you for the opportunity to review and comment on this SEP-14 request. Should you have any questions, please contact Brian Hogge at (202) 366-1562, or John Huyer at (720) 437-0515.