

HHC-32

UNITED STATES GOVERNMENT

DEPARTMENT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION

# Memorandum

DATE: July 27, 1977

SUBJECT: Forfeiture of Bid Guarantee

In reply refer to: HCM-06

FROM: J. W. White  
Regional Administrator  
Fort Worth, Texas

TO: Mr. John F. MacAllister  
Division Administrator  
Santa Fe, New Mexico

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Bards

This is in reply to your June 15, 1977 memorandum and in reference to our May 26, 1977 memorandum concerning the matter of forfeiture of bid guarantees. Your memorandum and the subject matter of concern has been discussed in detail with the Washington Headquarters.

The following information was provided by the Washington Headquarters:

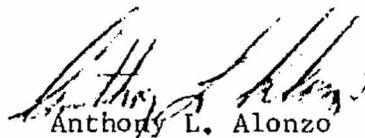
1. Paragraph 11j. of FHPM 6-4-1-6 has application only after a bid guarantee has been forfeited as previously indicated in our May 26 memorandum.
2. There is no nationwide FHWA policy that has application to the forfeiture process itself and Washington does not consider that such a policy is needed at the present time.
3. It is felt that the States, in general, have acted responsibly in the past in establishing and administering bid guarantee provisions that have served their intended purpose of assuring that; (1) a low bidder either executes a contract, or (2) forfeits his bid guarantee to offset the State's additional administrative costs of making other arrangements for the award of contract.
4. There is an agreement by the Washington Headquarters that the intended purpose of a bid guarantee cannot be served satisfactorily where a State returns a forfeited bid guarantee to a bidder without good reason. They are in accord that the treatment of such situations can best be treated on a case-by-case-basis.

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5. Emphasis should be placed on improving the State's procedures rather than by applying sanctions in individual cases as apparently advocated by the Division Office. If this, however, cannot be achieved by mutual agreement between the States and the Division Offices, the Washington Headquarters would be willing to consider inclusion of additional requirements in the FHPM to effect specific procedural improvements.

In view of the fact that there is no FHWA written policy on the forfeiture process itself, and in order that we may be responsive to some of the matters of concern to the New Mexico Division Office, we have discussed the position regarding advance commitments by responsible contractors with the Washington Headquarters. We believe that in the absence of any Federal or State Law and Regulation pertaining to the forfeiture process itself, the matter should be viewed on how the public can best be served. Reconsideration has been given by this office, and subsequently supported by the Washington Office, regarding circumstances where advance commitments are required in connection with the submission of bids. It has been generally concluded that the public will be best served if the responsible bidders are able to secure advance commitments or they should refrain from bidding or be expected to risk loss of their proposal guarantees. We propose to be guided by this philosophy should situations such as these occur in the future. Forfeiture of bid guarantees should also be considered as a liquidated damage. The action taken should be considered as wiping the slate clean and the contract awarded to the next responsible bidder.

We hope that we have provided you with the necessary information and that we have been responsive to the concerns of your office. Moreover, should you have any further questions or need to discuss future situations, please contact this office.



Anthony L. Alonzo  
Acting Director  
Office of Const. & Maint.