



U.S. Department
of Transportation

Federal Highway
Administration

Memorandum

Subject: **ACTION:** Waiver of the FHWA Prohibition on Contractual Hiring Provision (Congress Street, New Orleans) Under Special Experimental Project No. 14 (SEP-14)

Date: March 14, 2013

From: /s/ David A. Nicol
Director, Office of Program Administration

In Reply Refer To:
HIPA-30

To: Charles W. Bolinger
Division Administrator
Baton Rouge, LA

This is in reference to Mr. Mark Stinson's January 31 e-mail forwarding a revised workplan from the Louisiana Department of Transportation and Development (LaDOTD) for a waiver of the competitive bidding requirements of 23 CFR 635.117 for the reconstruction of Congress Street in New Orleans.

The LaDOTD wishes to use funding from FHWA and HUD for this project. The use of HUD Section 3 funds includes a requirement to use local hiring preferences in construction contracts. This requirement is in conflict with FHWA's requirements for construction contracting in 23 CFR 635.117, which prohibits the use of contract provisions that serve as geographic restrictions in the selection of the contractor's labor sources.

On June 25, 2010 the FHWA issued a final notice in the Federal Register announcing the availability of a pilot program under SEP-14 to evaluate the application of HUD requirements on Federal-aid highway projects that may otherwise conflict with Federal-aid highway program requirements. In submitting the workplan, the LADOTD expressed the desire to combine funding sources for an integrated project that is procured and bid under a single contract while complying with FHWA's contracting requirements and the training, employment, and contracting requirements of HUD's Section 3 program.

We have two final comments regarding the revised workplan:

1. As mentioned to Mr. Stinson, we made slight revisions in LaDOTD's January 31 workplan submission (attached) to highlight the experimental feature of this workplan and to address comments provided by HUD Headquarters. This version will be posted on the FHWA SEP-14 Web site.
2. Please inform the LaDOTD that grantees of HUD funded assistance covered by Section 3 (i.e., Community Development Block Grant funds used for infrastructure improvements) should submit form HUD 60002- Section 3 Summary Report, to

record accomplishments towards meeting the Section 3 employment and contracting goals. Further, all contracting documentation must include the Section 3 clause, verbatim, found at 24 CFR § 135.38.

Subject to the above, we consider the LaDOTD's workplan to be acceptable and in compliance with the workplan requirements of the Federal Register notice of June 25, 2010. Please ensure that LaDOTD provides you with the reports as specified in its workplan.

Thank you for the opportunity to review and comment on this SEP-14 request. Should you have any questions, please contact Gerald Yakowenko at (202) 366-1562.

Attachment



Memorandum

Subject: **ACTION:** SEP-14 Approval for a Livability Project
Congress Street, New Orleans, LA

Date: February 26, 2013

From: /s/ David A. Nicol for John R. Baxter
Associate Administrator for Infrastructure

In Reply Refer To:
HIPA-30

To: Victor M. Mendez
Administrator

On June 25, 2010, after soliciting public comments, the FHWA issued a final notice in the *Federal Register* (copy attached) announcing a livability initiative under Special Experimental Project No. 14 (SEP-14). Under the SEP-14 initiative, State departments of transportation may apply to the FHWA to implement geographic preferences on Federal-aid highway projects that are to be funded jointly with the Department of Housing and Urban Development (HUD) on a case-by-case basis.

On December 4, 2012, the Louisiana Department of Transportation and Development (LaDOTD) submitted a workplan to our Division Office applying to use this SEP-14 initiative for a project on Congress Street in New Orleans. The project is a design-bid-build project involving the use of emergency relief funds for reconstruction of a portion of Congress Street, with HUD Community Development Block Grant funds allowing for a betterment. Under this experiment, the LaDOTD requests that FHWA allow the use of geographic hiring preferences required by HUD's Section 3 program so that FHWA and HUD funds may be used jointly for this project.

The purpose of the overall SEP-14 initiative for livability is to determine the impacts on competition while harmonizing the conflicting FHWA and HUD requirements regarding the use of geographic hiring preferences. The Congress Street project meets the purpose of the initiative, and the revised LaDOTD workplan addresses all of the factors established in the *Federal Register* notice.

The LaDOTD has committed to providing FHWA with an evaluation report regarding the impacts on competition. The FHWA will use the results of this report, as well as reports on the evaluation of any additional projects that may be advanced under this initiative, to determine whether an official change in policy regarding the use of geographic preferences for such projects may be desirable.

Accordingly, the Office of Infrastructure recommends that you approve this application. Following your approval we will release the attached memorandum to Division

