



U.S. Department
of Transportation
**Federal Highway
Administration**

Memorandum

Subject: **ACTION**: Maryland Progressive Design-Build Project Delivery under Special Experimental Project No. 14 (SEP-14)

Date: May 29, 2024

From: Moises Marrero **MOISES MARRERO**
Acting Director, Office of Preconstruction,
Construction, and Pavements

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MARRERO
Date: 2024.05.29 09:52:02 -04'00'

In Reply Refer To:
HICP-20

To: Valeriya Remezova
Division Administrator
Baltimore, MD

This memorandum is in reference to a May 28 email sent by Jitesh Parikh of your office, which transmitted and requested approval of a Maryland Transportation Authority (MDTA) workplan for the use of Progressive Design-Build (PDB) project delivery method under Special Experimental Project No. 14 (SEP-14). The MDTA proposes to use the PDB method for the Francis Scott Key (FSK) Bridge Replacement, I-695/MD 695 over the Patapsco River/Baltimore Harbor. The workplan was submitted by the Maryland State Highway Administration (SHA) on behalf of MDTA.

Under [23 CFR 636.302\(a\)\(1\)](#), evaluation of price is required in the selection of a design-build team (DBT) if the contract is awarded after the NEPA process is complete. The finding of a Categorical Exclusion is anticipated to be concluded prior to contract award to the design-builder later this summer. The MDTA is requesting FHWA approval under SEP-14 to deviate from 23 CFR 636.302(a)(1) and allow the selection of the DBT using a qualifications-based selection process where total contract price will not be known at the time of contract award.

The MDTA intends to expeditiously replace the collapsed FSK bridge, which was struck and destroyed by a cargo ship in March 2024. Given the tremendous urgency to restore traffic along this critical corridor, MDTA has determined the PDB method provides the greatest benefit, best management of risk, and increases the likelihood of a successful outcome in anticipation of traffic opening on the new bridge by late 2028.

The MDTA will solicit and select the successful DBT per the Code of Maryland Regulations (COMAR) 21.05.11 and Title 23, Code of Federal Regulations (CFR) Part 636. Work in the PDB process will advance in two phases: Phase 1 – Project Development services and Phase 2 – Project Delivery services, for which a Guaranteed Maximum Price (GMP) will be negotiated.

The MDTA will incorporate the following elements into the RFP:

- Early Work Packages. The preconstruction services contract will include a specification allowing MDTA to procure an early work package if construction risks have been

addressed and the scope of work is defined sufficiently for MDTA and the DBT to reasonably determine a price.

- Off Ramp. The preconstruction services contract will include a contract termination specification allowing MDTA to initiate a new procurement process for completing the work if the Authority and DBT cannot agree on a reasonable price and schedule.
- Independent Cost Estimator (ICE): MDTA will utilize an ICE to provide independent estimating to aid MDTA in price negotiations with the contractor and ensure the agreed price and schedule is reasonable and aligned with the market.

The MDTA has committed to providing periodic reports to FHWA regarding the effectiveness of using the PDB method on this project. These and other details are contained within the SEP-14 Workplan.

This SEP-14 Workplan for this project 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 the NEPA-related provisions of 23 CFR 636.109, or provisions of 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. FHWA's approval of the proposed SEP-14 workplan does not constitute project authorization or obligation of Federal funds.

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 Jim DeSanto at (614) 357-8515.