



November 22, 2022

Christopher Millington, PE  
Federal Highway Administration  
Leo W. O'Brien Federal Building  
11A Clinton Avenue, Suite 719  
Albany, NY 12207

Re: Alternative Contracting SEP-14 Request

Dear Mr. Millington:

NYSDOT seeks FHWA concurrence to continue to use Federal-funding for "Best Value" selection of design-bid-build construction contracts through the Federal "Alternative Contracting" SEP-14 program. NYSDOT's current approval from FHWA expires on December 31, 2022.

The recent reauthorization of the New York State Infrastructure Investment Act (a/k/a Design-Build Law) allows NYSDOT to continue to use alternative project delivery/procurement methods until December 31, 2027. To support our request, enclosed are the following documents:

- Work Plan for SEP-14 Alternative Contracting - Utilizing Best Value Selection for Capital Construction Contracts (November 2022).
- Overview of the New York State Infrastructure Investment Act.

The Department seeks your approval for alternative contracting utilizing Best Value selection. Should you have any questions regarding this request or any of the attachments, please contact Carlos Rivera at 518-457-9837 or James Boni at 518-457-8546.

Sincerely

/Signed/

Nicolas A. Choubah, P.E.  
Chief Engineer

cc: J. Moryl, PMO, e-mail only  
C. Rivera, PMO, e-mail only  
J. Boni, PMO, e-mail only  
M. Bromirski, Contract Management, e-mail only  
R. Davies, FHWA, e-mail only  
D. Wood, FHWA, e-mail only

***Work Plan for Special Experimental Project No. 14 (SEP-14)***  
***Alternate Contracting - Utilizing Best Value Selection for Capital Construction Contracts***  
***November 2022***

***Introduction***

The New York State Department of Transportation (NYSDOT) submits this Best Value Alternative Contracting Work Plan for review and approval under the provisions of Special Experimental Project No. 14 (SEP-14).

New York State had enacted Chapter 56 of the Laws of 2011, known as the Infrastructure Investment Act of 2011. This Act authorized a variety of innovative contracting methods including best value, design-build, lump sum, guaranteed maximum price and prequalification. That Act has been reauthorized in 2015, 2017, 2019, 2020, and 2022. The 2020 reauthorization of the Infrastructure Investment Act extended the expiration date to December 31, 2022, while the 2022 reauthorization of the Infrastructure Investment Act extended the expiration date to December 31, 2027. The latest reauthorization allows for the same Alternative Delivery Methods as did the original Infrastructure Act of 2011. An overview of the New York State Infrastructure Investment Act is attached to this work plan.

The proposed Best Value selection process is an innovative process which will be used by NYSDOT for our capital construction program. As described further in the work plan, this selection process should result in more efficient construction in terms of both overall costs and schedules.

Traditionally, NYSDOT has used the design-bid-build project delivery method, with projects being awarded to the lowest responsible bidder. The increasing demand on available highway funds has prompted the State to actively pursue methods to optimize quality, cost, and efficiency. Projects will be selected for Best Value procurement consistent with these goals.

***The Process - Background***

NYSDOT is requesting approval to solicit full and open competitive bids (bid price and best value submittal via an Invitation for Bids - IFB). Traditional contract documents (construction plans, proposal, bid items and quantities) make up one part of the IFB. A description of the technical evaluation factors, their relative weights, the weighting of price vs. technical evaluation factors and the instructions to the bidders make up the other part of the IFB. The bidders' approach to the project (technical qualifications) are not publicly opened or read. Bid prices and technical qualifications are reviewed and scored separately, and then the scores are combined in accordance with the Best Value Scoring Criteria and the Best Value Bidder is recommended for award.

NYSDOT uses the IFB process without the additional quality-based submission for its routine projects. NYSDOT plans to solicit full and open competition using an IFB as the procurement method with the addition of Best Value Selection Scoring Criteria on select projects. Over the past ten (10) years, NYSDOT has used this IFB process on thirty-five (35) projects. The IFB may include - as applicable to the specific project - several components (criteria) in which respondents to the solicitation must include within their submittals such as: price, qualifications, schedule, and construction approach (as examples). The IFB also includes language, via a Special Note in the Contract Proposal, which informs the bidders as to the order of importance of each of the specified criteria. All the critical aspects of the project are evaluated to determine what bidder provides the

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overall best value to be awarded the project. Price is still a major factor; however, a bidder that has the lowest overall price may not be awarded the project if their submittal is inferior to a competitor's submittal (as described in the IFB).

***Process Advantages/Disadvantages***

We plan to continue to explore the advantages and disadvantages of awarding using a best value contract.

***Advantages***

Reduces risk to NYSDOT:

Since NYSDOT is selecting a contractor based on their comprehensive (and documented) understanding of all the critical aspects of the project (such as price, quality, schedule, experience, capability, and understanding of project), rather than just price alone, NYSDOT has increased its potential for selecting and awarding to the best contractor available. By selecting a contractor through this process, NYSDOT anticipates a higher level of success, and reduced overall risk for an unsuccessful project.

Flexible IFB process:

By using a two component (price and quality-based criteria) Invitation for Bid (IFB) process, the flexibility to evaluate all bidders that meet the minimum quality-based ranking points after submittal evaluations is provided. (The normal approved method of using sealed bids does not allow for consideration of quality criteria.) This is important when dealing with projects that are on a tight budget and/or schedule. Secondly, this process allows NYSDOT to express the most important/critical aspects of the project to the contracting community in a competitive environment, and have the contracting community inform NYSDOT (in the form of submittals) how they plan to resolve these issues and the related cost.

Best Value:

The evaluation process allows NYSDOT to evaluate all the critical aspects of the project rather than just price. Price will still be a major factor, but this process allows NYSDOT to consider other critical aspects of the project. As an example, schedule will often be a critical aspect, so this process allows NYSDOT to require the contractor to submit detailed schedules for review. A firm that submits a schedule that is lacking sufficient detail will most likely not score as high as a firm that submits a schedule that contains complete detail proving they are completely familiar with the project, the required timeframes, and thoroughly understands the critical elements of the project. The contractor who best demonstrates their complete understanding of project, has a fair price, and is qualified through their submission, will most likely be selected through this highly competitive process as the Best Value. Contractors can put their best effort forward not having to worry about foregoing quality for a low price. NYSDOT and FHWA benefit by awarding the contract to a contractor that has proven capabilities and a fair price.

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***Disadvantages***

Preparation and submission cost:

The submission preparation process by the contractors is more time consuming and costly. Some firms are not inclined to put forth the effort for such projects so there is some risk in receiving fewer competitors. However, firms that are serious about the project will put forth the effort to submit a comprehensive proposal which will benefit NYSDOT in the long run.

Increased Evaluation and Award Process:

The evaluation of the proposals typically takes three weeks, but this extra time is required to be able to evaluate and select the Best Value contractor. This evaluation leads to a slightly later award (when compared to traditional design-bid-build). However, this slight delay will be more than made up for in improved day to day project administration, quality of work, and overall project schedule.

***Scope***

The purpose of this work plan is to provide a format to evaluate the use of Federal aid for capital construction contracts awarded via a Best Value selection process. With approval of this work plan, NYSDOT will use Federal aid for Best Value capital construction contracts under the Federal "alternative contracting" SEP-I4 program.

Traditional Procurement Method

The vast majority of NYSDOT's capital construction contracts are selected through a low bid process and awarded to the lowest responsible bidder. NYSDOT has also utilized A + B bidding on a variety of construction contracts.

Proposed Use of Best Value Procurements

NYSDOT believes that the use of Best Value selection methods for certain traditional design-bid-build construction contracts has the potential for significant benefits in terms of shorter timeframes to complete work, improved work quality, and safety.

NYSDOT anticipates that approximately three (3) to five (5) construction contracts per calendar year would be selected and awarded via the Best Value procurement method. These would be jobs of various sizes and work types, and in different Regions. For each contract, Main Office staff would work with the Regions to determine the qualification-based selection factors to be used, their respective weights, and their weight in relation to the bid price. The most likely qualification-based selection factors would be experience and past performance, construction approach, key personnel, safety record, schedule, and ability to meet DBE goals.

As candidate projects are identified and developed, NYSDOT will forward their project specific special notes and rationale for selection to FHWA for review and comment.

A selection committee of NYSDOT experts will evaluate and score the qualification-based selection factors. This committee would be strictly separated from and have no knowledge of the bid prices, which will be verified and reviewed by NYSDOT in the usual manner. Oral presentations from all bidders may also be held (if deemed appropriate). When qualifications, oral presentations (if held), and cost reviews are completed, NYSDOT's Office of Contract

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Management will summarize and prepare a memo recommending the Best Value proposal to the Chief Engineer.

***Schedule***

NYSDOT is requesting approval to use this alternative contracting on selected projects for a five-year evaluation period; for projects advertised for bids between January 1, 2023 and December 31, 2027.

***Measures***

During the period between advertisement and completion of construction for contracts selected through Best Value, NYSDOT will evaluate the effectiveness of the Best Value selections. Interviews may be conducted with staff involved with the procurement and execution of Best Value contracts, along with contractors, to determine how the best value selected contracts compared to the traditional contracts selected by the traditional low bid method.

By using the "Best Value" method for capital projects, NYSDOT expects to be able to measure, as a minimum, three primary objectives; (1) cost savings, (2) time savings, and (3) improved quality as follows:

Cost Savings:

The cost savings anticipated on Best Value projects include a lower projected number of change orders, with resultant improved efficiencies. Since the evaluation criteria may also include the evaluation of such items as; qualifications, project understanding and approach, schedule, quality control, and traffic plans, we anticipate being able to hire a quality contractor that has proven they completely understand and can deliver the project. Therefore, NYSDOT anticipates a better understanding of the project, which will lead to quality work and hopefully fewer change orders.

Time Savings:

Time savings should be the easiest objective to measure. NYSDOT anticipates shorter project durations by asking for and evaluating project schedules as part of the Best Value process. As an example, projects awarded using sealed bidding dictate the project's completion date. In the proposed Best Value process, NYSDOT provides the bidders with the latest allowed contract completion date, but the evaluators will provide more points to a contractor's schedule that results in an earlier completion date. Therefore, the Best Value approach will encourage time savings.

Quality

As stated above, when using the Best Value approach NYSDOT may evaluate each firm's past performance, experience, and capabilities in a competitive process. With all things being equal, a firm that puts the best team together should result in improved quality at a lower-than-average cost. The cost savings anticipated are less change orders, increased project efficiency (repetitive work should be rare), and a project that is completed either on time or earlier than expected.

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***Reporting***

For each Best Value project, NYSDOT will prepare two reports, an interim and a final report. The one page interim report will be prepared shortly after contract award and will address the Best Value selection process and results. The final report will be prepared within six months after completion of the project work and will address the entire project and all evaluation measures for the Best Value selection process.

Each July, NYSDOT will prepare an annual report to summarize the status of NYSDOT's Best Value selection process. The interim and final reports will be included in the annual report.

If NYSDOT terminates the use of Best Value and/or FHWA no longer grants authority to use the Best Value procurement method, NYSDOT will prepare a final report upon completion of construction of its final Best Value project. This report will be completed no later than six months after the final Best Value project is completed and will summarize NYSDOT's SEP-14 Best Value findings.