



U.S. Department  
of Transportation

Federal Highway  
Administration

# Memorandum

Subject: **ACTION:** Vermont Progressive Design-Build  
(I-91 at Lyndon) under Special Experimental  
Project No. 14 (SEP-14)

Date: April 3, 2024

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

**MOISES  
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Date: 2024.04.03 22:15:16 -0 '00'

In Reply Refer To:  
HICP-20

To: Randy Warden  
Division Administrator  
Montpelier, VT

This memorandum is in reference to a March 19 email from your office, which transmitted, endorsed, and recommended approval of a Vermont Agency of Transportation (VTrans) Workplan, dated March 11, to use the Progressive Design-Build (PDB) delivery method under Special Experimental Project No. 14 (SEP-14). This project delivery method would be used for the replacement of two deep culverts passing beneath Interstate 91 in the town of Lyndon.

VTrans 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) once the National Environmental Policy Act (NEPA) process has been completed (per VTrans, the environmental document was approved on July 3, 2023). Under this waiver, VTrans would select the DBT using a qualifications-based selection (QBS) process.

The workplan contains the following components:

1. Procurement of the PDB contract is based on a best value selection process using Requests for Proposals. The VTrans procurement process will include an evaluation by a Technical Evaluation Committee (TEC) to short-list no less than three and no more than five proposers. The TEC will then interview the short-listed teams and thereafter identify the best qualified proposer based on the Committee's evaluation of the Proposals and interviews.
2. Early Work Packages (EWPs) are a portion or phase of physical construction work that is procured after NEPA is complete but before all design work for the project is complete. VTrans may procure EWPs when construction risks have been addressed (both agency and DBT risks) and the scope of work is defined sufficiently for the VTrans and the DBT to reasonably determine price.

VTrans will allow for and identify EWP opportunities to accelerate project completion and will use EWPs if determined prudent. VTrans and the DBT shall ensure that the work included in each EWP is sufficiently independent so that the off-ramp option is not precluded.

3. To ensure efficient and effective use of federal and state funding, VTrans will contract with an Independent Cost Estimator. This representative of VTrans will collaborate with the DBT and provide independent quantity takeoffs, prepare independent cost and schedule estimates, hold cost reconciliation meetings, provide constructability plan reviews, and assist VTrans in managing project risks. The development of all Guaranteed Maximum Prices (GMPs) and changes during construction will be on an open-book basis, and VTrans and its representatives will have the right to access and copy all records, accounts, and other data used by the DBT in connection with the preparation of any GMP.
4. If VTrans is unable or unwilling to enter into a Phase 2 contract with the DBT for the project, then the VTrans may take one or more of the following actions:
  - a) Direct the DBT to value engineer or re-examine the scope the project and make modifications to the proposal to satisfy VTrans concerns.
  - b) Enter into negotiations with the DBT to remove portions of the project scope.
  - c) Amend Phase 1 contract to have DBT complete project design or issue a new contract to the designer to complete the project.
  - d) Procure a contractor to construct the project as Design-Bid-Build.
  - e) Re-advertise for a new DBT.

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.