



U.S. Department  
of Transportation

Federal Highway  
Administration

# Memorandum

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Subject: **ACTION:** Waiver of the FHWA Prohibition on Contractual Hiring Provision under Special Experimental Project No. 14 (SEP-14) Alder Avenue Reconstruction Project, City of Sultan, Washington Date: February 11, 2014

From: /s/ Gerald Yakowenko Acting Director, Office of Program Administration In Reply Refer To: HIPA-30

To: Dan Mathis  
Division Administrator  
Olympia, WA

This is in reference to Ms. Sharon Love's email that transmitted a revised workplan from the Washington State Department of Transportation (WSDOT) for a waiver of the competitive bidding requirements of 23 CFR 635.117 for the Alder Avenue Reconstruction Project in the City of Sultan, Washington.

WSDOT wishes to use multiple funding sources for this project including Federal funding from both the U.S. Department of Housing and Urban Development (HUD) and FHWA. The use of HUD Section 3 funding 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, WSDOT expressed their 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.

Thank you and your staff for addressing our comments on the draft workplan, with special thanks to Ms. Love for clarifying HUD funding questions that allowed this SEP-14 project to proceed. We have three final comments:

1. As per HUD requirements, all contracting documentation must include the Section 3 clause, verbatim, found at 24 CFR § 135.38.
2. WSDOT will prepare a final report upon completion of the contract and final acceptance of the project. The final report will include a discussion of the project issues that arose from the mixture of FHWA and HUD funds, the resolution of these issues, as well as

recommendations for improvement on future projects.

We will add the above paragraph to the SEP-14 workplan under the section titled "Competition."

3. As HUD is a different Federal agency with different procedures and requirements, we recommend that your office, WSDOT, and the City of Sultan coordinate with the local HUD office regarding Section 3, including the following:
  - Applicability
  - Recipient Responsibilities
  - Section 3 Preference
  - Economic Opportunities/Numerical Goals
  - Recordkeeping and Reporting., and
  - Contract Requirements for Contractors and Subcontractors

Subject to the above, we consider WSDOT's workplan to be acceptable and in compliance with the workplan requirements of the June 25, 2010 Notice. Please ensure that WSDOT provides you with both the bid analysis report and the final report 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 myself (202-366-1562) or John Huyer (651-291-6111).