



THE GENERAL CONTRACTORS ASSOCIATION OF NEW YORK, INC.

Denise M. Richardson
Executive Director

May 6, 2015

Docket Management Facility
U.S. Department of Transportation
1200 New Jersey Avenue, S.E., W12-140
Washington, D.C. 20590-0001

Re: Docket No. DOT-OST-2015-0013

Dear Sir/Madam:

The General Contractors Association of New York represents 275 members that employ over 20,000 unionized craft workers who build New York's transportation infrastructure. We are writing to provide supplemental comments to our initial docket submission on March 31, 2015.

The proposed local hiring preferences raise constitutional issues

We believe that the proposed changes to permit federal dollars to support geographic based hiring preferences may not withstand constitutional challenge. Local hire programs have been subject to constitutional challenge under the Privileges and Immunities Clause of Article IV section 2 of the US Constitution, the Commerce Clause in Article 1, section 8 of the US Constitution and the Equal Protection Clause in the 14th Amendment of the US Constitution. The potential for such legal challenges was not evaluated by the Department of Justice in the Office of Legal Counsel opinion on competitive bidding requirements under the federal-aid highway program. This opinion focused on competitive bidding and not on constitutional issues.

SEP-14 is an inappropriate mechanism to support local hire regulatory changes

The original intent of Special Experimental Project No. 14 – Innovative Contracting (SEP-14) was to evaluate non-traditional contracting techniques. According to FHWA, SEP-14 "may be used to evaluate promising non-traditional contracting techniques." The objective of SEP-14 is to "evaluate project specific innovative contracting practices, undertaken by State highway agencies that have the potential to reduce the life cycle cost of projects, while at the same time, maintain product quality.

It is a gross stretch of any interpretation of SEP-14 that this provision could serve as a justification for imposing geographic hiring preferences.

Thank you for the opportunity to submit these additional comments.

Very truly yours,

Denise M. Richardson