TECHNICAL ADVISORY COMMITTEE
REGULAR MEETING AGENDA

Local Governments and Citizens Working Together

TECHNICAL ADVISORY COMMITTEE (TAC) **Yuma County – Aldrich Auditorium**
Regular Meeting **2351 West 26th Street**
Thursday, October 10, 2019, 9:00 AM **Yuma, Arizona 85364**

YMPO TAC Meeting
Thu, October 10, 2019 9:00 AM – 11:30AM PDT

YMPO TAC Webinar Link
https://global.gotomeeting.com/join/462380293

Please use this call-in #
United States: +1 877-309-2073 **Access Code: 462-380-293**

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YMPO TAC MEMBERS

Chair	VACANT
Interim-Chair	Eulogio Vera, Public Works Director City of San Luis
Member	Samuel Palacios, Public Works Director, City of Somerton
Member	Omar Heredia, Planner, Cocopah Indian Tribe
Member	Mark Hoffman, Senior Planner, ADOT
Member	Susan Cowey, CIP Administrator, City of Yuma
Member	Joseph Grant, Public Works Director, Town of Wellton
Member	Frank Sanchez, Deputy County Engineer, Yuma County
Member	Jennifer Albers, Principal Planner, City of Yuma
Member	Jeff Kramer, City Engineer, City of Yuma
Member	Joshua Scott, Public Works Director, Yuma County

YMPO TAC EX-OFFICIOS

YCIPTA	Shelly Kreger
CALTRANS	Jacob Armstrong
FHWA	Romare Truly
FTA	Amy Corathers
EPA	Jerry Wamsley

1. Call to Order and Declaration of Votes
The meeting will be called to order and the City of Yuma will declare the number, and the distribution, of their votes.

2. **Title VI of the Civil Rights ACT of 1964 ..... Discussion and Information only**
A brief message will be read out reminding members of our Title VI obligations. Reminder to sign in at the meeting entrance and fill out the survey cards from the YMPO (optional).

3. Call to the Public
This item is to provide an opportunity for comments by the public. Individuals wishing to address the committee need not request permission in advance and are limited to three (3) minutes.

4. Approval of Minutes ..... Discussion and Action
The draft minutes of August 8, 2019, September 5, 2019 Special TAC, September 12, 2019 TAC Regular and the YMPO TAC Workshop meeting are provided for information, discussion, and approval.

5. Election of Vacant TAC Officers ..... Discussion and Action
The Yuma County position opened at the last TAC meeting. This was the Chair position. Due to restructuring of the Yuma County positions opened up. At the last Regular TAC meeting Eulogio Vera, City of San Luis, Vice Chair took on the Interim Chair until a decision is made from the TAC as to who or if position should be filled for the remainder of calendar year.

6. YMPO 2018-2019 YMPO Bicycle and Pedestrian Study and Design Standards Update ..... Information, Discussion, and/or Action
Greenlight TE will provide an update for the Bike/Ped Study and Design Standards

7. YMPO Safety Plan Update ..... Information, Discussion, and/or Action
Greenlight TE will provide an update for the Safety Plan.

8. Request for Proposal Process ..... Information, Discussion, and/or Action
The YMPO staff and TAC will discuss ranking procedures for upcoming RFPs.

9. Regional Studies and Plans ..... Information, Discussion, and/or Action
YMPO will provide the status update for the upcoming studies and plans that will be released for the bidding process.

10. In-kind Match Forms ..... Information and Discussion
YMPO uses In-Kind Match for the projects, studies, and all work that YMPO does that includes some type of matching funds.

11. YMPO and ADOT ..... Information and Discussion
YMPO and ADOT staff will have the opportunity to update any other business that is or was not covered in the previous agenda items. This is a NO-ACTION agenda item.

(a) 23 CFR 635.411(a)-(e) - Construction and Maintenance - Promoting Innovation in Use of Patented and Proprietary Products
(b) 23 CFR 635.411 (f) - Culvert and Storm Sewer Materials Types
(c) Memo – Procurement and Authorization of Federal-aid operational Improvements (Non-Construction Projects)
(d) Rural Transportation Summit

12. TAC Status Reports .....Information and Discussion

Member agencies will have the opportunity to report the status of their projects (Local or Federal). A list of ongoing projects is shown in the information below.

Town of Wellton:
Coyote Wash Bridge.

Yuma County:
Bridge 7751:
Bridge 8865:

City of San Luis:
Juan Sanchez Boulevard.

City of Yuma:
1st Avenue, 16th Street to Orange.
16th Street, Avenue B to Avenue C.
3E 32nd Street to 40th Street.

City of Somerton:

ADOT:
Araby Road Roundabout (South).

Cocopah Indian Tribe:

13. Future Agenda Items .....Discussion

Members will have the opportunity to suggest future items for the TAC agenda.

A. Functional Classification.
B. Conformity Determination Update

14. Progress Reports.....Discussion

YMPO staff has provided a list of recent activities.

A. Sept 12 - TAC meeting. Paul Ward, Charles Gutierrez, De'Laurien McKenzie and Melissa Ramos attended
B. Sept 16 – ADOT/YMPO Coordination Meeting, Paul Ward attended
C. Sept 17 – PMS Study Released
D. Sept 19 - Meeting with Senator Kerr, Representatives Dunn and Osbourne. Paul Ward and Charles Gutierrez attended.
E. Sept 20 - AZSTB meeting (Maricopa). Paul Ward attended
F. Sept 20 - Initial RTAC Strategic Plan meeting. Paul Ward attended
G. Sept 21 – City of Yuma Golf Tournament, Paul Ward attended
H. Sept 24 – Saguaro Transportation/Mobility Manager, Charles Gutierrez attended
I. Sept 26 – YMPO Executive Board, Paul Ward, Crystal Figueroa, & Charles Gutierrez, attended

J. Oct 1 – ASRS Meeting, Crystal Figueroa participated
K. Oct 2 – MS2 Traffic Count, WORKS, ADOT meeting, Charles Gutierrez participated
L. Oct 6-7 – 5310 Implementation Meeting, Melissa Ramos attended
M. Oct 7 – Short-Range Transit Plan Submission are due

15. Adjournment

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TECHNICAL ADVISORY COMMITTEE
REGULAR MEETING MINUTES

Local Governments and Citizens Working Together

TECHNICAL ADVISORY COMMITTEE (TAC) **Yuma County – Aldrich Auditorium**
Regular Meeting **2351 West 26th Street**
Thursday, August 8, 2019, 9:00 AM **Yuma, Arizona 85364**

YMPO TAC MEMBERS

Chair	Maggie Castro, Planning & Zoning Director, Yuma County
Vice-Chair	Eulogio Vera, Public Works Director City of San Luis
Member	Samuel Palacios, Public Works Director, City of Somerton
Member	Mark Hoffman, Senior Planner, ADOT- Called In
Member	Susan Cowey, CIP Administrator, City of Yuma
Member	Joseph Grant, Public Works Director, Town of Wellton
Member	Frank Sanchez, Interim County Engineer, Yuma County
Member	Jennifer Albers, Principal Planner, City of Yuma

YMPO TAC MEMBERS ABSENT

Member	Omar Heredia, Planner, Cocopah Indian Tribe
Member	Jeff Kramer, City Engineer, City of Yuma

YMPO STAFF PRESENT

Executive Director	Paul Ward
Administrative Assistant	Melissa Ramos
Associate Planner	De' Laurien McKenzie

1. Call to Order and Declaration of Votes

YMPO TAC Chairwoman, Maggie Castro, called the meeting to order at 9:01 am. The City of Yuma declaration of votes: Susan Cowey 3 votes and Jennifer Albers 2 votes.

2. **Title VI of the Civil Rights ACT of 1964 ..... Discussion and Information only**

YMPO's Title VI and ADA Programs require that no person shall, on the grounds of race, color, national origin, or disability be excluded from participation in, be dined the benefits of, or be otherwise subjected to discrimination under any program or activity.

Any person, who believes his/her Title VI or ADA rights have been violated, may file a complaint. Any such complaint must be in writing and filed with the YMPO's Civil Rights Office within one hundred eighty (180) days following the date of the alleged discriminatory occurrence. For additional information about YMPO's Civil Rights program and the procedures to file a complaint contact YMPO Civil Rights Office via the information listed below.

3. Call to the Public

This item is to provide an opportunity for comments by the public. Individuals wishing to address the committee need not request permission in advance and are limited to three (3) minutes.

Gene Dalbey greeted everyone present.

4. Approval of Minutes ..... Discussion and Action

The draft minutes of the July 11, 2019 TAC meeting were presented and approved.

Jennifer Albers motioned

Joe Grant seconded

Motion carried unanimously

5. YMPO 2018-2019 YMPO Bicycle and Pedestrian Study and Design Standards Update..... Information, Discussion, and/or Action

Greenlight Traffic Engineering will provide an update for the Bike/Ped Study and Design Standards

6. YMPO Safety Plan Update..... Information, Discussion, and/or Action

Mike Blankenship mentioned that ADOT was meeting today (August 8, 2019) to rank the HSIP Applications. Mike Blankenship mentioned that he will email spreadsheets of the signalized and unsignalized intersections for the TAC to review for comments and revisions.

7. YMPO Traffic Count Study Update..... Information, Discussion, and/or Action

Brent Crowther and Chris Joannes with Kimley-Horn called into the TAC meeting. Kimley-Horn supplied final hard copies for review and asked for suggestions be sent to Paul Ward. If there are any suggestions those suggestions will be included into the electronic version of the final Traffic Count Study. Kimley-Horn staff will be working with YMPO staff on GIS training, to ensure that the plan will be updated in the future.

8. YMPO STBG Loan..... Information, Discussion, and/or Action

Paul Ward informed the TAC that $4,337.62 of STBG funds was loaned to ADOT. This amount was loaned to ADOT for repayment in FY 20.

9. Pavement Management Study ..... Information and Discussion

The Pavement Management Study has been suspended. The YMPO staff and TAC will discuss the changes required to re-release the study for the process to determine the suitable consultant for the study to continue. Paul Ward explained the process that YMPO goes through the for finding a *Preferred* firm is of the Request for Qualification/Proposal combination. We discovered that there was a mistake in that process for using Federal Funds. This decision will follow through with other studies and plans from here forward. There has always been a sealed bid and that dollar amount will be then opened by the director. The director will negotiate. The RFQ process should only be used for projects that directly lead to construction; henceforth, the need to change the way YMPO does the

RFP/RFQ Process. YMPO will now with the TAC and Board recommendations use the 2 CFR standard that basically says that PRICING will be included in the ranking process and only with an exception be made for the process that is directly leading to construction. This will be DESIGN then to CONSTRUCTION.
Ranking from now on must have the criteria that has pricing included. If the TAC gives guidance to move forward or to revisit this issue at the next TAC meeting. We can suspend for a couple weeks or a month so the TAC can respond in proper.
Jennifer Albers stated a comment to Paul Ward that does not YMPO have to include this in the language of the RFP. Paul acknowledged with a YES.
Frank Sanchez states that the process for qualifications or a QBS-Quality Based Selection, with design or studies that Cost is not an issue and cost should not even discussed until we have selected the best qualified firm or consultant. That is when we start the negotiate for price. Are we kind of going away with the cost of the proposal being a criteria and not being a high criteria but is this is something that we want to go and start to tell consultants this will be based on their costs. Is there an opportunity to evaluate this further? Paul states that we are not officially on a time crunch. This will only be for studies for federal funds. There used to be procurement process all over and the feds have brought this to refine it under 2 CFR. Do the expenditures accrued directly leading to design, design concept report, or construct ion then it is the RFQ everything else is RFP and cost has to be a criteria. This does not mean the weighting has to be high.

10. <u>Regional Studies and Plans</u>.....Information, Discussion, and/or Action
Paul Ward provided an update on the upcoming studies and plans that will be released for the bidding process. Traffic Count Network Study- close to wrapping up. Safety Plan Update- 85% completed. Bike & Ped Study- 85% completed. Short Range Transit Plan- The YMPO staff will send the TAC the RFP for comments, the YCIPTA Board will rank the RFPs and the YMPO Executive Board will approve the RFPs. ITS- nearly ready for review.

11. <u>Census 2020</u> .....Information and Discussion
YMPO staff will present information for the upcoming 2020 U.S. Census Data gathering and responsibilities of the YMPO.

12. <u>In-kind Match Forms</u> .....Information and Discussion
The In-Kind Match process will remain the same stated Paul Ward. calculating thanked the TAC for their efforts in YMPO uses In-Kind Match for the projects, studies, and all work that YMPO does that includes some type of matching funds.

13. <u>YMPO and ADOT</u>.....Information and Discussion
YMPO- August 12, 2019 ADOT/YMPO monthly coordination meeting, Paul Ward and Charles Gutierrez will attend.
ADOT- Mark Hoffman shared that the Off-System Bridge awards were announced. Yuma County's Senility Canal was selected with design and construction in FY 20.

14. <u>TAC Status Reports</u>.....Information and Discussion
Member agencies had the opportunity to report the status of their projects (Local or Federal). A list of ongoing projects is shown in the information below.

Town of Wellton:
Coyote Wash Bridge- Preconstruction meeting was on July 25, 2019 and construction will begin September 2019.

Yuma County:
Bridge 7751: Wellton/Mohawk – 37E & County 6th Street- Contractor will begin Construction, after the Swallow nesting season.
Bridge 8865: Mohawk Canal Bridge – 46E & County 1 ½ Street- Contractor will begin construction next week, starting with this bridge first.
Bridge 7639 will be added to next month's agenda as requested.

City of San Luis:
Juan Sanchez Boulevard- The environmental clearance predicted to be completed in a month.

City of Yuma:
North Frontage Road Paving, Avenue 9E to Avenue 10E- Design beginning Fall 2019.
Avenue 10E Paving, North Frontage Road to 28th Street- Design beginning Fall 2019.
2nd Avenue Reconstruction, 13th Street to 8th Street- Design beginning Fall 2019.
14th Street Reconstruction, 1st Avenue to 4th Avenue- Design beginning Fall 2019.
Avenue 5E Sewer & Water Extension, 40th Street to 37th Street- Design beginning Fall 2019.
Yuma Commerce Center Sewer Extension, Avenue 7E to 30th Street- Design beginning Fall 2019.
16th Street Widening, Maple to 3rd Avenue- Not currently planned for construction due to funding availability.
East Main Canal Trail Connection at 32nd Street- Can be removed from list.

16th Street, Avenue B to Avenue C- Pavement and communications infrastructure. Negotiating job order. Anticipate Council award in late September or early October 2019 with construction starting shortly after and lasting four months.
3E 32nd Street to 40th Street- 90% design underway. Project reconstructs existing pavement may add turn lanes. Anticipate construction in Fall 2020.
Arizona Avenue, 32nd Street to Palo Verde Street- Design underway. Project reconstructs existing pavement. Anticipate construction in Fall 2020.
Catalina Drive and Palo Verde Street- 4th Avenue/32nd Street to Arizona Avenue- Pavement replacement, intersection and storm drain improvements at Catalina and Palo Verde. Design approaching 60% submittal. Anticipate bidding in late 2019 for construction on Spring 2020.
Castle Dome Road/Giss Parkway/8th Street Intersection- Interim one-lane roundabout. Design underway. JOC providing preconstruction services. Anticipate GMP award in late 2019 for construction in Spring 2020.
Avenue 3E, 32nd Street to 40th Street- Design nearing completion. Will construct via JOC using Ultra-Thin Bonded Wearing Course. Anticipate GMP award in late September, NTP in October with two-month duration.
Main Street Raised Crosswalk- Installs a platform crosswalk across Main Street between 3rd Street and Giss Parkway. Also includes a spot drainage improvement at 3rd Street. Design underway. Anticipate construction via JOC in late 2019.

1st Avenue, 16th Street to Orange- Roadway reconstruction, water, and sewer improvements and communications infrastructure. Work in 16th Street complete. Paving 16th to 13th early August, then moving north. Completion in December 2019.
Harvard Street, Kennedy Lane to Cul-de-sac- CDBG funded sewer installation and roadway reconstruction. Project awarded to DPE. NTP in August 2019, construction completion in November 2019.
34th Street, Avenue 6E to Avenue 61/4E- Improvements on Avenue 6E and on 34th Street for the new VA assisted living facility. Design complete. Construction (administered by VA) started in July 2019. Schedule not know.
10th Avenue Waterline Replacement, 4th Street to 1st Street- Negotiating job order with Yuma Valley Contractors. Council award in September, NTP early October, two months duration.
14th Street Waterline Replacement, Avenue A to 4th Avenue- Negotiating job order with Yuma Valley Contractors. Council award September, NTP early October, 3 months duration.

City of Somerton:
Water extension project along County 16th Street.
Pathway project along County 15th Street.
Design project replacing pavement and water line.

ADOT:
Coyote Wash Multi-Use Pathway- project consists of extending a multi-use pathway across the Coyote Wash in Wellton. The project was awarded to DBA Construction, Inc. and the partnering is scheduled for Thursday, July 25th.
Wellton Mohawk Canal Bridge Rehab- project consists of rehabilitation of the existing bridges. Project was awarded to DBA Construction Inc. Contractor will start work in the beginning of August 2019.
I-8, MP 46 SW of Dateland Pavement Preservation- project consists of milling and paving mainline and crossroads on I-8 for 20 miles. Project bid opened and Fisher Sand & Gravel was the lowest bidder. The project will go to the Transportation Board in August 2019.
US 95 & SR 85 S Chip Seal Projects- Chip sealing on US 95 MP 29.34-34 & SR 85 South MP 16-32.5. The project was awarded to Cactus Transport, Inc. Final striping is complete.

US 95 @ Ave 8E Intersection- Consists of constructing a traffic signal at the intersection of US 95 & Ave 8E. The project was awarded to Stormwater Plans LLC. dba SWP Contracting & Paving. Contractor is prepping subgrade, placing aggregate base, placing AC, and setting up electrical equipment.
I-8, MP 0.1 – 31 Various Bridges Deck Rehab– Bridge deck rehabilitation project. Final design has begun, and survey work is taking place. 30% plans submitted for review and comments sent back.
I-8, Avenue 36E to MP 46 Pave. Preservation- Project consists of pavement rehabilitation from milepost 37 to 46 on I-8. Design will kick-off meeting was held. The 60% comment resolution meeting scheduled for 7/30/19. 95% plans are expected to be submitted in November for review. Construction is programmed for 4th quarter FY 20'.
US 95, Ave 9E to Fortuna Wash Bridge- Project consists of widening US 95 to a 5-lane section. Phase I was split into two projects. Fortuna Wash Bridge project has been

completed. Additional funding has been programmed for the remaining portion of this project (Ave 9E to Fortuna Intersection) with $3 M in FY20 and $25M in FY 21.
US 95, MP 42-Cibola Lake Road- The design concept report for the project has been finalized.
US 95, MP 44-54 Pavement Preservation Project- Pre-scoping document is complete.
US 95, MP 98-104 Corridor Study- The study will look at widening the roadway to a five-lane section (2 lanes in each direction with 1 continuous left turn lane) with drainage improvements. The design kick-off meeting was held 11/6/12. Project assessment has been finalized.
Juan Sanchez Boulevard Corridor Study- The study will look at widening Juan Sanchez Boulevard to a four-lane facility with concrete median separation. Design will look at drainage and evaluate intersections. Design Kick-off meeting was held 11/14/12. Draft 30% plans have been submitted for review and comments sent back. Environmental is moving forward expected to be complete by August 2019. Once complete, geotechnical work can begin, and the 30% plans can be finalized.
US 95 & Dome Valley Road Intersection Improvement – project funding approved. JPA section is working on incorporating Yuma County comments into the draft and re-submitting for the team's concurrence before finalizing. The JPA is going before the Yuma County Board of Supervisors on July 22nd for approval.
Ave E, SR 195 to Co. 18th Street Corridor Study- This is a Local Government project. The study will look at continuing Ave E from SR 195 intersection through to County 18th Street. Final Design Concept Report has been sent out. Working to get the environmental clearance finalized.

Cocopah Indian Tribe:
Guardrail work on County 14th St Bridge and West Main Canal- YCPW will be doing the repairs in August 2019.
East Main Canal Bridge repair on Salt Cedar St, East Reservation- CEMEX is doing the work in August 2019.
HWY 95 road work for new convenience store, estimated start date November 2019.

15. Future Agenda Items .....Discussion
Members will have the opportunity to suggest future items for the TAC agenda.
A. Functional Classification.
B. Conformity Determination Update

16. Progress Reports.....Discussion
YMPO staff has provided a list of recent activities.

A. July 1 – Fiscal Year 2020 begins.
B. July 3 – YMPO Earned Media meeting – Bike/Ped/Safety PP, Paul Ward, Charles Gutierrez, and De'Laurien McKenzie participated.
C. July 8 – ADOT/YMPO Coordination meeting, Paul Ward, Charles Gutierrez, Deputy Mayor Gary Knight attended.
D. July 9 – Interagency Consultation (IAC) Air Quality meeting, Paul Ward and Charles Gutierrez participated
E. July 10 – ADOT/YMPO Planning meeting, Charles Gutierrez attended.

F. July 10 – Possible New YMPO Building meeting, Paul Ward and Charles Gutierrez attended.
G. July 11 – Technical Advisory Committee (TAC) meeting, Paul Ward, Charles Gutierrez, De'Laurien McKenzie, and Melissa Ramos attended.
H. July 15-17 – NTI Training (Transportation Planning Process, Sacramento), YMPO staff attended.
I. July 19 – State Transportation Board Meeting, Deputy Mayor Knight attended.
J. July 25 – YMPO Executive Board meeting, YMPO staff attended.

17. Adjournment

Chairwomen Maggie Castro adjourned the TAC Meeting at 10:14 am.

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Minutes Prepared By:	Minutes Submitted by:	Minutes approved by:
Melissa Ramos, YMPO Administrative Assistant	Paul Ward, YMPO Executive Director	Maggie Castro, YMPO TAC Chairwoman

TECHNICAL ADVISORY COMMITTEE
SPECIAL WORKSHOP MINUTES

Local Governments and Citizens Working Together

TECHNICAL ADVISORY COMMITTEE (TAC) **Yuma County – Aldrich Auditorium**
Special Workshop **2351 West 26th Street**
Thursday, September 5, 2019, 1:00 PM **Yuma, Arizona 85364**

YMPO TAC MEMBERS

Chair	
Vice-Chair	Eulogio Vera, Public Works Director City of San Luis
Member	Samuel Palacios, Public Works Director, City of Somerton
Member	Mark Hoffman, Senior Planner, ADOT
Member	Joseph Grant, Public Works Director, Town of Wellton
Member	Frank Sanchez, Deputy County Engineer, Yuma County
Member	Jeff Kramer, City Engineer, City of Yuma
Member	Joshua Scott, Public Works Director, Yuma County

YMPO TAC MEMBERS ABSENT

Member	Omar Heredia, Planner, Cocopah Indian Tribe
Member	Susan Cowey, CIP Administrator, City of Yuma
Member	Jennifer Albers, Principal Planner, City of Yuma

YMPO STAFF

Executive Director	Paul D. Ward
Senior Planning Manager	Charles Gutierrez

1. Call to Order and Declaration of Votes

The meeting was called to order by Eulogio Vera and Charles Gutierrez stated to TAC Workshop, that there is no actions on any agenda item so we do not need the declaration of votes.

2. **Title VI of the Civil Rights ACT of 1964 .....Information only**

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3. <u>Request for Proposal Process</u>.....Discussion Only

Paul Ward opened the dialogue with the issue with the Request for Qualifications or Proposals and most here are using the qualification process. The YMPO as far as this issue is concerned that we at YMPO have used the combination of a qualification/proposal and YMPO was made aware that changes to 2 CFR have been made. Effectively that unless the study is leading to direct construction as in the case of the Design Phase leads to construction the Study Phase is simply a study.

According to 2 CFR § 200.318 in particular item d

Per the attached 2 CFR §200.320, methods of procurement to be followed are:

§ 200.320 Methods of procurement to be followed.

The non-Federal entity must use one of the following methods of procurement.

(d) Procurement by competitive proposals.

(5) The Non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated, and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation.

The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

Paul states that AE services would be for example Preliminary, DCR, Designs, that lead to Construction would stand the same method as we do so for federalized dollars. The method to be used for the MPO would be the cost including in the criteria. YMPO is required to at the minimum to include price but and being that this is fairly new we need to include the price in the criteria process. Sealed proposals were in the past but now the dollar amount will be a relatively small percentage.

The tac was presented by Paul the spreadsheet that shows the weighting and scoring.

#	**Old Version**	Weight
1	Study Understanding and Approach	20
2	Qualifications and Experience of the Proposed Team	25
3	Quality of the Proposal	25
4	Consultant/Firm's Qualification	20
5	DBE	10

#	**New Version**	Weight
1	Study Understanding and Approach	25
2	Qualifications and Experience of the Proposed Team	45
3	Quality of the Proposal	20
4	Stated Cost of Proposal	5
5	DBE	5

If this is the stated proposal of weight are, we going to change the scoring or leave it. Joshua Scott said that there is no reason why we should have to recreate the wheel and Paul says that he can take this on and bring it back to the TAC at a different time to go over and adopt numbers. Frank Sanchez said the change of the cost to 5 is the preferred. If the TAC would consider adding an additional line that the County uses. It is the Project approach. Jeff Kramer mentioned that the Approach is under 1 category. We can bring this all back to the TAC I n the real near TAC meetings. Paul says that maybe an options, or other language to add as another line item.

4. **Scope of Work for Future Studies.....Discussion Only**
Charles Gutierrez briefly talks about the future studies and that we appreciate the work that has been completed and we know your schedules are busy but we need to make sure that we are keeping track of all In-Kind match sheets and that of your staff.

5. Adjournment

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YMPO INFORMATION SUMMARY for Agenda Item #5
Election of Vacant TAC Officers

DATE: October 3, 2019

SUBJECT: Election of Vacant TAC Officers

SUMMARY:
In September, Yuma County restructured their members based off of the YMPO Bylaws. The positions are Yuma County Engineer and the Public Works Director. Maggie Castro, Planning & Zoning Director, at the County was replaced with Joshua Scott, Public Works Director. The issue is that Ms. Castro was the official Chair of the TAC as voted by the TAC in January 2019 TAC Meeting. Eulogio Vera, San Luis Public Works Director, took over as the YMPO Interim-Chair until the TAC had the chance to either decide to elect a new person (member and Associated jurisdiction).

It was made clear that although the County Public Works Director has been a part of the TAC in previous employment with the City of Yuma, Josh Scott made the comment that he would like to get re-acquainted with the TAC and procedures before he is elected as a officer for the TAC.

SUGGESTED OPTIONS:

- Do Nothing
- Install the Vice-Chair as the Chair and do nothing for Vice Chair
- Install the Vice-Chair as the Chair and elect a Vice Chair
- Keep the Vice-Chair as the Interim for duration of Calendar Year and in January install position of Vice-Chair to Chair and elect new Vice-Chair

PUBLIC INPUT:
There have been no public comments on this process to date.

TECHNICAL & POLICY IMPLICATIONS:
TECHNICAL: N/A currently

ACTION NEEDED:
This item is on the agenda for information, discussion, and action

PRIOR BOARD/COMMITEE ACTIONS: N/A

CONTACT PERSON:

Charles A. Gutierrez, Senior Planning/Mobility Manager, 928-783-8911

YMPO INFORMATION SUMMARY for Agenda Item #8
Request for Proposal Process

DATE: October 3, 2019

SUBJECT: Request for Proposal Process

SUMMARY:

According to 2 CFR § 200.318
§ 200.320 Methods of procurement to be followed.
The non-Federal entity must use one of the following methods of procurement.
(d) Procurement by competitive proposals.
(5) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation.
The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

Giving that YMPO has to include pricing and we are looking at all ranking criteria and scoring, YMPO staff is looking for guidance of the point structure of the processes. YMPO will present options for the scoring and ranking.

PUBLIC INPUT:
There have been no public comments on this process, to date.

TECHNICAL & POLICY IMPLICATIONS:
TECHNICAL: The YMPO TAC and YMPO will have to come to acceptance of 2CFR 200.320 or the process could be halted or suspended by the Federal and state?
The process could be that all Consultant Request for Proposals and/or RFQ all be the same requirement for Plans and Studies for the MPO be an RFP with a Qualification component imbedded in the RFP.

ACTION NEEDED:
To Discuss and/or take action on scoring and ranking process.

PRIOR BOARD/COMMITEE ACTIONS:
N/A

CONTACT PERSON:
Charles A. Gutierrez, Senior Planning/Mobility Manager, 928-783-8911

YMPO INFORMATION SUMMARY for Agenda Item #9
Regional Studies and Plans

DATE: October 3, 2019

SUBJECT: Regional Studies and Plans

SUMMARY:
The YMPO has asked the TAC to review and comment on Scopes of Work for the Intelligent Transportation System (ITS), Rail, Heavy Freight, and Corridor Alignment Study (RHFCAS).

YMPO will present comments brought forth to the YMPO for all studies. If a member has questions or final comments for the associated studies. The idea is to complete this phase so the YMPO staff can compile all data for the RFP Process and get these studies on to the streets for the RFP Process.

YMPO has received comments and updated where necessary. YMPO is ready to begin the RFP Process for Intelligent Transportation System (ITS) based on comments that have been previously been submitted by the Yuma County and City of Yuma Public Works departments. The Rail study at this time is awaiting comments from the City of Yuma.

YMPO will illicit questions and comments from the TAC to confirm that each study/plan will be released to the public for procurement of a consultant to complete each project.

This process will also determine whether the study or plan is directly leading to Design/Construction.

PUBLIC INPUT:
There have been no public comments on this process to date.

TECHNICAL & POLICY IMPLICATIONS:
TECHNICAL: Upon successful agreement in the process and Scope of Work for each project, the YMPO will release the RFP to the public for the procurement process or it will be postponed until agreement can happen.

ACTION NEEDED:
This item is on the agenda for information, discussion, and/or Action

PRIOR BOARD/COMMITEE ACTIONS:
N/A

CONTACT PERSON:

Charles A. Gutierrez, Senior Planning/Mobility Manager, 928-783-8911

approve exemptions from these position limits pursuant to rules that are consistent with § 150.5 of this chapter, or to rules that are consistent with rules of a national securities exchange or association regarding exemptions to securities option position limits or exercise limits.

Issued in Washington, DC, on September 17, 2019, by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix to Position Limits and Position Accountability for Security Futures Products—Commission Voting Summary

On this matter, Chairman Tarbert and Commissioners Quintenz, Behnam, Stump, and Berkovitz voted in the affirmative. No Commissioner voted in the negative.

[FR Doc. 2019–20476 Filed 9–26–19; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 635

[FHWA Docket No. FHWA–2018–0036]

RIN 2125–AF84

Construction and Maintenance—Promoting Innovation in Use of Patented and Proprietary Products

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FHWA is revising its regulations to provide greater flexibility for States to use proprietary or patented materials in Federal-aid highway projects. This final rule rescinds the requirements limiting the use of Federal funds in paying for patented or proprietary materials, specifications, or processes specified in project plans and specifications, thus encouraging innovation in transportation technology and methods.

DATES: This final rule is effective October 28, 2019.

FOR FURTHER INFORMATION CONTACT: Mr. John Huyer, Office of Preconstruction, Construction, and Pavements, (720) 437–0515, or Mr. William Winne, Office of the Chief Counsel, (202) 366–1397, Federal Highway Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

This document, the notice of proposed rulemaking (NPRM), supporting materials, and all comments received may be viewed online through the Federal eRulemaking portal at *http://www.regulations.gov.* An electronic copy of this document may also be downloaded from the Office of the Federal Register's home page at: *http://www.archives.gov/federal-register* and the Government Publishing Office's web page at: *http://www.gpo.gov/fdsys.*

Executive Summary

The FHWA is revising its regulations at 23 CFR 635.411 to provide greater flexibility for States to use patented or proprietary materials in Federal-aid highway projects. Based on a century-old Federal requirement, the outdated requirements in 23 CFR 635.411(a)–(e) are being rescinded to encourage innovation in the development of highway transportation technology and methods. As a result, State Departments of Transportation (State DOTs) will no longer be required to provide certifications, make public interest findings, or develop research or experimental work plans to use patented or proprietary products in Federal-aid projects. Federal funds participation will no longer be restricted when State DOTs specify a trade name for approval in Federal-aid contracts. In addition, Federal-aid participation will no longer be restricted when a State DOT specifies patented or proprietary materials in design-build Request-for-Proposal documents.

Background

The FHWA published an NPRM titled ''Construction and Maintenance—Promoting Innovation in Use of Patented and Proprietary Products'' at 83 FR 56758 on November 14, 2018. The NPRM offered two alternative deregulatory options relating to the use of patented and proprietary products. The use of these products has been limited by regulation for over a century (since 1916), and FHWA undertook this rulemaking in an effort to increase innovation and reduce regulatory burdens. The first option (Option 1) proposed removing the requirements of 23 CFR 635.411(a)–(e) and replacing them with a general certification requirement ensuring competition in the selection of materials and products. Alternatively, the second option (Option 2) proposed to rescind the patented and proprietary materials requirements of 23 CFR 635.411(a)–(e) and change the title of section 635.411 to ''Culvert and Storm Sewer Materials Types.'' Under its new title, the former paragraph (f) of section 635.411 would be retained to fulfill the mandate of section 1525 of the Moving Ahead for Progress in the 21st Century Act (MAP–21) (Pub. L. 112–141, 126 Stat. 405, July 6, 2012) for States to retain autonomy for the selection of storm sewer material types.

The NPRM solicited comments regarding this deregulatory initiative. The FHWA received 107 comments to the docket, including comments from 16 State DOTs, 14 associations, 22 manufacturers or suppliers, 4 construction companies, and numerous individuals. The FHWA considered all comments received before the close of business on the comment closing date, and the comments are available for examination in the docket (FHWA–2018–0036) at *http://www.regulations.gov.* The FHWA also considered comments received after the comment closing date and filed in the docket prior to this final rule.

Discussion of Comments

After consideration of the comments, FHWA selected Option 2 for the reasons summarized below. Option 2 reduces the regulatory burden on the States, fosters innovation in highway transportation technology, and provides greater flexibility for State DOTs in making materials and product selections in planning Federal-aid highway projects.

Reducing Regulatory Burdens

Commenters argued Option 2 (rescinding the patented and proprietary materials requirements) better serves the purpose of decreasing unnecessary regulatory burdens on the States. These commenters argue Option 2 eliminates unnecessary regulatory and administrative burdens imposed by the existing regulations. Commenters who support Option 2 further argued that if an objective of the NPRM is to reduce regulatory and administrative burdens imposed on the States by the existing regulation, those burdens should not be replaced by new ones as proposed under Option 1 (replacing existing regulations with a general certification requirement). For example, the American Association of State Highway and Transportation Officials (AASHTO) commented that about half of its member State DOTs consider the paperwork required under the current regulation to be difficult and lengthy. Several State DOTs reported difficulty in: (1) Proving to FHWA Division Offices the availability or non-availability of competitive products; (2) providing the benefit of using one

product over another; and (3) performing a reasonable cost analysis.

Commenters also reported that at least some State DOTs are reluctant to request Public Interest Findings (PIF) or develop experimental product work plans (hereinafter: Proprietary product approval process) to use patented and proprietary materials in Federal-aid projects because they see it as time consuming, cumbersome, and believe it increases overhead costs. One State DOT commented that the proprietary product approval process causes delays by adding layers of approval between the State DOTs and FHWA. The same State DOT further commented it is difficult to determine the availability of equally suitable products under the existing regulation.

Commenters expressed concerns that the existing regulation imposes undue administrative burdens on the States relating to documenting and justifying the use of patented and proprietary products under the current proprietary product approval process. Rescinding the current regulation, FHWA believes, is consistent with reducing the time—consuming and cumbersome process that commenters believe increases overhead costs.

The FHWA agrees Option 2 best reduces unnecessary regulatory and administrative burdens on the States. State DOTs are responsible for the effective and efficient use of Federal-aid funds, subject to the requirements of Federal law. The FHWA believes, absent the existing regulation governing patented and proprietary products, State DOTs may implement material selection procedures that ensure fair and open competition while allowing for, and encouraging, innovation. The statutory requirements of 23 U.S.C. 112 for competition and competitive bidding continue to apply to federally assisted projects.

In addition, this proposal could generate cost savings resulting from reduced administrative burden associated with the efforts by the States and FHWA related to the existing methods for approving patented and proprietary materials. These cost savings, measured in 2018 dollars, are expected to be $313,848 per year.

After reviewing the comments received, FHWA is persuaded that rescinding the existing regulation would achieve the goal of reducing an unnecessary regulatory or administrative burden on the States, where such regulations or burdens are outdated or no longer serve an important public purpose. The FHWA is further persuaded that rescinding the existing regulation's requirement to identify equally suitable alternatives may reduce project planning delays.

Fostering Innovation

Commenters who supported Option 2 also cited four primary reasons related to promoting innovation: (1) Option 2 would eliminate the existing regulation, which is a barrier to innovation; (2) Option 2 would best foster and accelerate innovation in the future; (3) Option 2 encourages innovation that may improve transportation systems relating to: (a) Safety; (b) quality, resilience, performance, durability, and service life of transportation facilities; (c) efficiency and cost-effectiveness of repairs, treatment, maintenance, preservation, rehabilitation, reconstruction, or replacement of highway facilities; (d) minimizing congestion; and (e) implementing autonomous vehicle (AV) technology; and (4) Option 2 would best fulfill the Federal Government's important role in supporting research and development leading to improvements in highway transportation technology.

Some commenters argued that the existing regulation is a barrier to innovation in highway technology. For example, one State DOT commented that the current regulation has created an industry perception that certain innovative products are excluded from federally funded highway projects. Commenters supporting Option 2 generally argued that FHWA should promote, encourage, and accelerate innovation and the improvements that may follow.

One commenter argued that fostering a competitive market for these products may lead to lower prices on old products as new ones become available. Another commenter argued that innovative products can lower the overall project cost or future maintenance costs. For example, by increasing the useful life of transportation facilities, the commenter argues, innovative products may both reduce the cost of maintenance and increase safety.

The AASHTO commented that a regulatory change would provide greater flexibility in approving connected and AV components that are certain to incorporate more proprietary and patented components than traditional highway products. One commenter suggested Option 2 may encourage development of AV technology, and suggested the proprietary product approval process under the existing regulation is not suitable for accelerated development of AV technology.

The FHWA agrees Option 2 best provides State DOTs greater flexibility to use innovative technologies in highway transportation. The Agency is persuaded by comments that rescinding the regulation may accelerate innovation in planning Federal-aid projects by removing a requirement that may have been a ''barrier'' to innovation in highway transportation technology. Moreover, FHWA believes that the specification of innovative, higher-performing products will encourage others in the industry to develop and market products with comparable performance. This will ultimately result in a lower cost for the higher performing product due to the greater availability in the market.

Providing Flexibility for the States Relating to Materials Selection

Commenters who supported Option 2 also cited two primary reasons related to its ability to provide flexibility for States. First, commenters argued that the existing regulation limits their flexibility on materials selection. Next, commenters also argued that, considering the uncertainty regarding how Option 1 would be administered by FHWA, it could also limit the flexibility of State DOTs.

Multiple commenters argued the existing regulation lacks flexibility. Multiple commenters observed that the existing regulation is too restrictive, complicated, unclear, time-consuming, and not consistently implemented by State DOTs and FHWA. For example, certain State members of AASHTO that support Option 2 commented about difficulties they encountered under the current regulation. Some of these State DOTs cited difficulties in completing the paperwork for use of patented or proprietary products to the satisfaction of the relevant FHWA Division Office. Those States also cited related difficulties in successfully obtaining Federal participation after the paperwork was submitted.

The AASHTO commented that some of its member State DOTs have experienced variability in dealing with FHWA Division Offices. Certain State DOTs believe that division offices interpret the existing regulation inconsistently among States. The AASHTO maintains that, while some division offices provide more leeway, others do not recognize the State's prerogative to certify patented and proprietary products and, in some instances, have discouraged them from doing so. Some commenters also argued that some State DOTs are reluctant to use the proprietary product approval process because they perceive it as too cumbersome and time consuming.

Commenters also argued that Option 2 would provide the most flexibility to the States. Multiple State DOTs commented that Option 1 may not adequately unburden States from current regulatory restrictions in this area—and thus may not increase flexibility, or at least not in a way comparable to Option 2. Several State DOTs, including Oregon, Washington, Idaho, Montana, North Dakota, South Dakota, and Wyoming, expressed support for Option 2 as providing the most flexibility. One commenter argued that Option 2 would provide State DOTs with the most flexibility to determine which products are the best fit for their own unique transportation needs.

The FHWA agrees Option 2 best provides flexibility to State DOTs in selecting materials for use in Federal-aid highway projects. A common theme among the comments indicated that the level of effort necessary to comply with the existing regulation is time consuming, cumbersome, and imposes undue administrative ''paperwork'' burdens on the States.

The added flexibility provided to States by this rescission may also provide State DOTs an advantage by potentially obtaining highway materials or products at a lower price. Specifying a patented article in the solicitation materials would not, by itself, limit competition.

The FHWA believes State DOTs utilize new product evaluation processes and approved product lists that provide fair and transparent procedures for the evaluation, selection, and use of materials, including patented and proprietary products.

The FHWA is persuaded that rescinding the existing regulation provides needed flexibility to the States to manage Federal financial assistance under 23 U.S.C. 145.

Comments Relating to Option 1

Under Option 1 of the NPRM, the existing regulatory requirements of 23 CFR 635.411(a)–(e) were proposed for removal. The FHWA proposed replacing them with general certification requirements in new paragraphs 23 CFR 635.411(a) and 23 CFR 630.112(c)(6) to ensure competition in the selection of materials and products. This change would have required a State DOT to: (1) Implement procedures and specifications that provide for fair, open, and transparent competition awarded only by contract to the lowest responsive bid submitted by a responsible bidder pursuant to 23 U.S.C. 112; and (2) certify adherence to those procedures and specifications.

Commenters who supported Option 1, including some State DOT members of AASHTO, argued that one of its benefits is that FHWA would create regulations establishing a general framework for the State processes and would provide for greater consistency across the country as compared to Option 2. Those commenters expressed a preference for consistency that would promote competition and provide more transparency regarding Federal-aid decisionmaking compared to Option 2. The commenters expressed the belief that manufacturers might better understand the protocols for the use of patented and proprietary materials under a national framework. One State DOT compared the patented and proprietary rules to the design exception process. It argued that process is well defined and it could be used as a model if FHWA adopts Option 1.

Another commenter argued the existing regulation is misunderstood with respect to competition requirements. The commenter believes that arguments that the existing regulation stifles innovation and patented and proprietary products cannot be used in Federal-aid projects are incorrect. The commenter further stated that patented and proprietary materials can be used in Federal-aid projects based on a proper justification, those justifications provide a critical oversight function, and they guard against the imposition of sole-source specifications that restrict competition. The same commenter further argued the existing regulation provides a safeguard that when data is obtained through independent experimentation of new transportation technology, better and more objective evidence about its effectiveness is available as compared to a vendor's sales or promotional material.

Commenters opposing Option 1 suggested, among other things: (1) Existing requirements discourage State DOTs from using patented and proprietary products to improve highway transportation technology, and this may continue under new requirements established by Option 1; (2) State DOTs are confused by the current requirements for certifications to obtain approval for the use of patented and proprietary products and similar confusion may continue under the as-yet-undefined certification process for Option 1; (3) the existing process for certification is unduly complicated and time consuming, and there is no indication Option 1 would resolve this; and (4) the term ''fair, open, and transparent competition'' lacks clarity and would require new regulation to define the term. Commenters also expressed the belief that the existing regulations are outdated, unclear, and not applied uniformly.

Comments about Option 1 lacking clarity with respect to the definition of the term ''fair, open, and transparent competition'' were not considered by FHWA as they were speculative in nature. However, after considering comments submitted to the docket, FHWA agrees Option 1 is not the appropriate regulatory alternative to finalize as part of this rulemaking. The FHWA notes that rescinding the existing regulations without replacing them with a new certification process better reduces regulatory burdens on the States, fosters greater innovation in highway transportation technology, affords greater flexibility to the States for materials selection in Federal-aid highway projects, and is consistent with the statutory authority provided under 23 U.S.C. 106(c). In addition, rescinding the existing regulation affords deference to the States to determine which projects are subject to Federal financial assistance pursuant to 23 U.S.C. 145.

Competition

Commenters who supported either Option 1 or the existing regulation cited two primary reasons why they believed that Option 2 constitutes a harm to competition. First, commenters argued that under Option 2 suppliers of patented products may control prices. Next, commenters also argued that the bidding process may be manipulated under Option 2 by limiting access to certain proprietary products or offering inconsistent pricing.

Similarly, some commenters who supported either Option 1 or the existing regulation also argued that Option 2 would eliminate nationwide consistency on requirements for competition. Some commenters argued that Option 1 would provide adequate nationwide consistency while others preferred the existing regulation and argued that it should be maintained. Some commenters argued that a uniform standard under Option 1 would also benefit product manufacturers that operate in multiple States.

In contrast to commenters raising concerns about competition, many commenters supporting Option 2 argued that it is improper to speculate about competition problems in advance of the regulatory change. There is no basis, they argued, for FHWA to simply presume that Option 2 would create a problem. These commenters either argued that no problem was likely to arise or suggested that FHWA should first remove the existing regulation and

then monitor whether any problem arises that should be addressed.

Commenters supporting Option 2 also pointed to the standards found in the Office of Management and Budget's (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. These commenters argued that reliance on OMB's regulations would adequately ensure that a State's specification of a patented or proprietary product complies with the competition mandate in 23 U.S.C. 112.

The FHWA acknowledges the commenters who argued that, under Option 2, suppliers of patented products may control prices, but these concerns are speculative. Some commenters attempted to compare the Federal-aid highway program to the prescription drug industry in this regard, but these markets are inherently different. The FHWA believes that States, as responsible stewards of the limited amount of Federal funding apportioned to them, have an incentive not to waste limited resources on proprietary products that would have costs exceeding demonstrated benefits. It is important to note that this final rule does not require States to use proprietary products, and FHWA believes that States would not choose to do so unless there are benefits that exceed the costs associated with the use of such products. States, as rational market actors, are best situated to make this determination on a case-by-case basis as they consider whether a proprietary product would fit a specific programmatic need.

In response to comments regarding competition, many States already have procedures established under State law or regulation relating to competition for federally assisted contracts, and the use of patented and proprietary materials in Federal-aid projects. Nevertheless, ensuring competition and requiring awards to the lowest responsive bidder in the Federal-aid highway program remain statutory duties of the Secretary and the statutory requirements of 23 U.S.C. 112 continue to apply to Federal-aid assisted State contracts. As long as the contract specifications are clear in terms of what materials the State DOT requires, it remains the responsibility of any prospective bidder to find materials that are responsive to the applicable contract specification. Concerns relating to potential prosecution of anticompetitive legal actions is speculative and outside the scope of FHWA's authority.

Additional Comments

Some commenters supported retaining the existing regulation and expressed support for the current process for using patented and proprietary materials in Federal-aid projects. Those commenters included five State DOTs, one industry association, and three manufacturers. The commenters expressed the belief that the regulation should not be changed and existing procedures allow State DOTs to justify the use of innovative, patented, or proprietary products. They went on to express the belief the existing regulation works well and strikes an appropriate balance between ensuring competition while allowing the use of patented and proprietary products based on a documented proprietary product approval.

As noted above, FHWA believes that cost savings would result if the requirements at 23 CFR 635.411(a) through (e) are rescinded by this rulemaking. In addition, State DOTs remain responsible for the effective and efficient use of Federal-aid funds, and continue to be subject to the statutory requirements of 23 U.S.C. 112 for competition and competitive bidding.

RULEMAKING ANALYSES AND NOTICES

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), Executive Order 13771 (Reducing Regulations and Controlling Regulatory Costs), and DOT Policies and Procedures for Rulemaking

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order (E.O.) 12866, and within the meaning of the U.S. Department of Transportation's regulatory policies and procedures. This action complies with E.O.s 12866, 13563, and 13771 to improve regulation. The FHWA anticipates that the economic impact of this rulemaking would be minimal. The FHWA anticipates that the rule would not adversely affect, in a material way, any sector of the economy. In addition, these changes would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

Although FHWA has determined that this action would not be a significant regulatory action, this action is considered an E.O. 13771 deregulatory action. This action could generate cost savings that are applicable to offsetting the costs associated with other regulatory actions as required by E.O. 13771. These cost savings, measured in 2018 dollars, are expected to be $313,848 per year.

The cost savings resulting from this action result from reduced administrative burden associated with the efforts by the States and FHWA related to the existing methods for approving patented and proprietary materials.

Currently, there are three methods available to approve specific patented and proprietary products for use on Federal-aid highway construction projects: [1]

1. Certification: A certification is the written and signed statement of an appropriate contracting agency official certifying that a particular patented or proprietary product is either:

a. Necessary for synchronization with existing facilities; or

b. A unique product for which there is no equally suitable alternative.

2. Experimental Products: If a contracting agency requests to use a proprietary product for research or for a distinctive type of construction on a relatively short section of road for experimental purposes, it must submit an experimental product work plan for review and approval. The work plan should provide for the evaluation of the proprietary product, and where appropriate, a comparison with current technology.

3. Public Interest Finding: A PIF is an approval by the FHWA Division Administrator, based on a request from a contracting agency that it is in the public interest to allow the contracting agency to require the use of a specific material or product even though other equally acceptable materials or products are available.

To estimate the cost savings from removing the need for the above categories of approvals, FHWA estimated the number of new approvals that would be generated in the future in the above categories if the rule does not change as a baseline scenario and compared it to the scenario in the final rule. The estimated number of new approvals per year is multiplied by the estimated number of hours required to process the documentation for that specific type of approval (including conducting analysis and documenting methods and results) by the appropriate labor cost (wage rate multiplied by a factor to account for employer provided benefits). Currently, the work related to

[1] *https://www.fhwa.dot.gov/programadmin/contracts/011106qa.cfm#_Hlk307505978.*

approvals is conducted by both FHWA and State agencies because, in some cases, FHWA has delegated authority to States via stewardship and oversight agreements for such issues. In addition to the time required to process the approvals, time is also required by FHWA to review the resulting documentation. Finally, both of those activities require a minimal time allowance for management of the process.

Under the final rule, the costs associated with approvals for patented and proprietary materials may not be completely removed. This is because twelve States are believed (according to information from FHWA Division offices) to have their own laws or policies that are similar to existing FHWA requirements. Absent other information, this analysis assumes those State laws or policies would remain in place even after an FHWA rule change. For those States, this analysis assumes that the total number of hours associated with processing and managing approvals would remain unchanged but that the work would be conducted solely by State agency staff (rather than a mix of State and FHWA staff as is assumed in the baseline calculations) and that time spent on FHWA review would no longer be needed.

In addition to the cost savings that have been quantified here, there may be additional positive impacts from the rulemaking related to supporting the adoption of patented and proprietary products. Although FHWA has undertaken various efforts to grant States the flexibility to use such products, to the extent that the current rules and guidance discourage their use, the final rule removes those barriers. Since patented and proprietary products are/may be more expensive than non-proprietary alternatives, this could lead to States paying more for proprietary and patented products if certain products are specified in Federal-aid contracts. However, ARTBA, in its petition for repeal, states that such products could ''save lives, minimize congestion, and otherwise improve the quality of our Nation's highways.'' [2] Thus, there may be benefits associated with greater adoption of existing products. An increase in the willingness to adopt patented and proprietary products may have secondary impacts and spur additional innovation if product developers perceive there to be a larger market for new products. Those potential benefits from additional innovation have not been quantified in this analysis.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601- 612), FHWA has evaluated the effects of this action on small entities and has determined that the action is not anticipated to have a significant economic impact on a substantial number of small entities. The amendment addresses obligation of Federal funds to States for Federal-aid highway projects. As such, it affects only States and States are not included in the definition of small entity set forth in 5 U.S.C. 601. Therefore, the Regulatory Flexibility Act does not apply, and FHWA certifies that the action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48, March 22, 1995) as it will not result in the expenditure by State, local, Tribal governments, in the aggregate, or by the private sector, of $155 million or more in any 1 year (2 U.S.C. 1532 *et seq.*). In addition, the definition of ''Federal mandate'' in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or Tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. The Federal-aid highway program permits this type of flexibility.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in E.O. 13132 dated August 4, 1999, and FHWA has determined that this action would not have a substantial direct effect or sufficient federalism implications on the States. The FHWA has also determined that this action would not preempt any State law or regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et. seq.*), Federal agencies must obtain approval from OMB for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that the rule does not contain collection of information requirements for the purposes of the PRA.

National Environmental Policy Act

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and has determined that this action would not have any effect on the quality of the environment and meets the criteria for the categorical exclusion at 23 CFR 771.117(c)(20).

Executive Order 12630 (Taking of Private Property)

The FHWA has analyzed this rule under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. The FHWA does not anticipate that this action would affect a taking of private property or otherwise have taking implications under E.O. 12630.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA certifies that this action would not cause an environmental risk to health or safety that might disproportionately affect children.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under E.O. 13175, dated November 6, 2000, and believes that the action would not have substantial direct effects on one or more Indian Tribes; would not impose substantial direct compliance costs on Indian Tribal governments; and would not preempt Tribal laws. The rulemaking addresses obligations of Federal funds to States for Federal-aid highway projects and would not impose

[2] ARTBA, ''Petition for Rulemaking to Repeal the Proprietary and Patented Products Rule 23 CFR 635.411'', March 27, 2018.

any direct compliance requirements on Indian Tribal governments. Therefore, a Tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

We have analyzed this action under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The FHWA has determined that this is not a significant energy action under that order since it is not a significant regulatory action under E.O. 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in the spring and fall of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

23 CFR Part 630

Grant programs, transportation, highways and roads.

23 CFR Part 635

Construction materials, Design-build, Grant programs, transportation, highways and roads.

Issued on September 23, 2019.

Nicole R. Nason,

Administrator, Federal Highway Administration.

In consideration of the foregoing, FHWA amends 23 CFR part 635 as follows:

PART 635—CONSTRUCTION AND MAINTENANCE

■ 1. The authority citation for part 635 continues to read as follows:

Authority: Sections 1525 and 1303 of Pub. L. 112–141, Sec. 1503 of Pub. L. 109–59, 119 Stat. 1144; 23 U.S.C. 101 (note), 109, 112, 113, 114, 116, 119, 128, and 315; 31 U.S.C. 6505; 42 U.S.C. 3334, 4601 *et seq.;* Sec. 1041(a), Pub. L. 102–240, 105 Stat. 1914; 23 CFR 1.32; 49 CFR 1.85(a)(1).

■ 2. Revise § 635.411 to read as follows:

§ 635.411 Culvert and Storm Sewer Material Types.

State Departments of Transportation (State DOTs) shall have the autonomy to determine culvert and storm sewer material types to be included in the construction of a project on a Federal-aid highway.

[FR Doc. 2019–20933 Filed 9–26–19; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2019–0508]

RIN 1625–AA08

Special Local Regulation; Battle of the Bridges, Intracoastal Waterway; Venice, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation for certain waters of the Intracoastal Waterway. This action is necessary to provide for the safety of life on these navigable waters in Venice, FL, during the Battle of the Bridges event. This rulemaking would prohibit persons and vessels from being in the race area unless authorized by the Captain of the Port St. Petersburg (COTP) or a designated representative.

DATES: This rule is effective from 7:30 a.m. until 4 p.m. on September 28, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2019–0508 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Marine Science Technician First Class Michael Shackleford, U.S. Coast Guard; telephone 813–228–2191, email *Michael.D.Shackleford@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code
ICW Intracoastal Waterway

II. Background Information and Regulatory History

On February 2, 2019, the Sarasota Scullers Youth Rowing Program notified the Coast Guard that it would be conducting the Battle of the Bridges sculler race from 6 a.m. to 6 p.m. on September 28, 2019. The race will take place on portions of the Intracoastal Waterway (ICW) in Venice, FL. In response, on August 2, 2019, the Coast Guard published a notice of proposed rulemaking (NPRM) titled, ''Special Local Regulation; Battle of the Bridges, Intracoastal Waterway; Venice, FL'' (84 FR 37808). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this fireworks display. During the comment period that ended September 3, 2019, we received eighty-five comments.

III. Legal Authority and Need for the Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port St. Petersburg (COTP) has determined that potential hazards associated with the rowing event on September 28, 2019 will be a safety concern for anyone within the special local regulation area. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with the rowing event.

IV. Discussion of Comments and Changes to the Rule

A. Discussion of Comments

The Coast Guard received eighty-five submissions from private citizens in response to the proposed rule. Forty-two commenters endorsed the Coast Guard's proposal. Forty-three commenters were opposed to the proposed rule for various reasons, discussed below.

Twenty-two comments expressed concerns about the monetary loss of several businesses and their employees that fall within the boundaries of this temporary special local regulation. The commenters stated businesses would lose customers due to the 12 hours the ICW would be closed as proposed in the regulatory text.

Twenty comments expressed concerns about not having access to the ICW during this event. The commenters stated that the ICW, and the public boat ramps along the ICW, would be closed for the duration of the event and the proposed regulatory text would not

U.S. Department of Transportation
Federal Highway Administration

Memorandum

Subject: **INFORMATION: Procurement and Authorization of Federal-Aid Operational Improvements (Non-Construction Projects)**

Date: SEP 25 2019

From: Martin C. Knopp
Associate Administrator of Operations

In Reply Refer To:
HOP-1

To: Directors of Field Services
Chief Technical Services Officer
Division Administrators

The purpose of this memorandum is to clarify Federal-aid procedures for procurement of operational improvements using Federal-aid Highway Program funds. This memorandum expands upon the reference to procurement of operational improvements included in the general memorandum on Procurement of Federal-aid Construction Projects, provided at: https://www.fhwa.dot.gov/construction/080625.cfm. This memorandum does not represent a change in policy. Based on recent questions from some Division Offices and State departments of transportation we felt the need to restate and highlight that many Intelligent Transportation Systems (ITS) and operations projects are not considered construction under 23 U.S.C. 112.[1]

Federal-aid statutes, regulations, and policies generally address traditional highway construction projects. The procurement of Federal-aid construction projects is outlined in 23 U.S.C. 112 and construction contracts must follow the regulatory requirements of 23 CFR part 635 (or in the case of design-build, 23 CFR part 636). Procurement of non-construction operational improvements follow State-approved procedures under the Uniform Requirements for Federal Awards. If an eligible ITS project activity is determined to be non-construction, then pursuant to 2 CFR 200.317, and 2 CFR 1201.317 for subrecipients, State procurement procedures are followed in procuring eligible ITS and operational activities. Some ITS and operations projects may be determined to be construction. If this is the case, those projects must be procured pursuant to the requirements in 23 U.S.C. 112 and 23 CFR parts 635 or 636.

[1] 23 U.S.C. 112 applies only where "construction" is to be performed. Other Federal requirements, such as the National Environmental Policy Act and Disadvantaged Business Enterprise Program, apply regardless of whether construction is involved.

This guidance is based upon a review of the term "construction" as defined in 23 U.S.C. 101(a)(4), which includes projects that "directly facilitate and control traffic flow."[2]

However, Congress also separately defined "Operational improvement" in 23 U.S.C. 101(a)(18). The term "operational improvement":

> (A) means (i) capital improvement for installation of traffic surveillance and control equipment, computerized signal systems, motorist information systems, integrated traffic control systems, incident management programs, and transportation demand management facilities, strategies, and programs, and (ii) such other capital improvements to public roads as the Secretary may designate by regulation; and
> (B) does not include resurfacing, restoring, or rehabilitating improvements, construction of additional lanes, interchanges, and grade separations, and construction of a new facility on a new location.

Each operational improvement project is unique and may involve work ranging from little or no field installation activity to significant field installation activity. The section below provides examples of the types of ITS and operations projects that may be considered either construction or an operational improvement. The examples are illustrative only and do not encompass all the varieties of operations procurements that may be considered. Early involvement from the Division Office is critical to identifying and documenting the appropriate project type designation (construction or operational improvement) and corresponding project funding authorization decisions.

ITS / Operations Projects Typically Considered Construction

- Installation of overhead dynamic message signs, CCTV cameras, or radio towers on new poles, gantries, or structural foundations
- Installation of new or expanded underground infrastructure such as trenching and cable installation
- Operations center building construction
- Areawide traffic signal or ramp meter installation
- Non-construction activities when procured through an ITS/Construction contract

[2] The definition of "construction" also includes the phrase "any project eligible for assistance under [title 23, United States Code]." However, in light of the context in which this phrase is used, as well as the separate definition of "operational improvement", we interpret the phrase to exclude those activities specified as "operational improvements" in the definition and in this memorandum. "Construction" includes those activities that involve the alteration of the ROW that are in the nature of the activities that are specifically excluded under 23 U.S.C. 101(a)(18). Note that some minor and incidental physical alterations may be involved with the operational improvement. Such alternations do not necessarily convert the operational improvement project into a construction project. Rather, the nature of the activity being undertaken must be of the type of activities that are excluded from the definition of operational improvement.

ITS / Operations Projects Typically Considered Operational Improvements (Non-Construction)

Planning and Research

- Regional ITS Architecture development and maintenance
- Regional Operational Concepts
- Traffic incident management planning
- Standards testing and specification development
- Public outreach and communication

Project Development

- Project-level Concept of Operation, project architecture, systems engineering, system requirements definition
- Development of Requests for Proposals
- Evaluation of technology, networking, system architecture alternatives

Software Development / System Integration

- Traffic Management Center (TMC) central software design, development, installation
- Modifying central system software to communicate with new field equipment
- Acceptance testing and configuration management
- TMC operations and TMC software maintenance and support

Operations / Maintenance

- Operating costs for traffic monitoring, management, control systems (e.g., rent, communications, labor, utilities)
- Freeway service patrol operations
- Preventative maintenance of operational equipment
- Signal timing

Capital Improvements for Equipment Installation

- Installation of smaller equipment on existing poles and foundations (e.g. CCTV, Vehicle-to-Infrastructure (V2I) radios, controller cabinets, traffic signal heads, etc.)
- Motorists information technology (e.g. smaller shoulder-mounted dynamic message signs, highway advisory radios, variable speed limit signs, etc.)
- Installation/pulling of cables through existing conduit
- Saw-cutting/installation of in-pavement inductance loop wire at limited locations

As seen above, some examples appear in both construction and operational improvement categories representing discretionary judgment in ITS procurements to ensure system synchronization and reduce overall deployment risks. Some projects may be scoped as "systems deployments" that involve a combination of field (civil) infrastructure and ITS technology, communications, and systems integration work. Road weather information systems, tolling systems, and connected vehicle field infrastructure (e.g. roadside equipment) may be examples of these types of hybrid deployments. In these cases, the Division Office may take into consideration the relative proportion of the field vs. non-field costs (including project scope and level of effort) to determine the overall classification. Alternatively, the State department of transportation may consider breaking the project into distinct procurements with the construction elements procured via traditional competitively bid contracts, design-build or other approved contracting methods, and the non-construction elements procured per 2 CFR parts 200 and 1201.

The procurement of engineering and design related services using Federal-aid Highway Program funds that lead directly to a construction project must follow a qualifications-based selection procedure in compliance with the Brooks Act and 23 CFR part 172. When procuring engineering or design related services using Federal-aid Highway Program funds that do not directly lead to a construction project, State departments of transportation follow the same policies and procedures the State uses for procurement with its non-Federal funds.

Federal-aid Authorizations for Non-Construction ITS and Operations Projects

Since non-construction operational improvements often do not involve engineering services, right-of-way, or (by definition) construction phases,
Division Offices often categorize these projects as "Other" or "State Planning and Research" in the Fiscal Management Information System.

In the absence of a package containing plans, specifications, and an estimate (typical for a traditional construction project), FHWA Division Offices should have enough information about the project to approve Federal funding obligation. Although the specific information expected could vary based on the

Division's Risk Based Stewardship and Oversight processes, some examples of project information that might be expected to be provided for non-construction funding authorization include: project limits and scope, system users and stakeholders, management approach, relationship to the regional ITS
architecture and related projects, systems engineering analyses to satisfy 23 CFR 940.11 (including necessary procedures and resources for systems operations and management), project costs, funding sources, project completion date, and project risks and risk mitigation measures.

With regard to Federal-aid funding *eligibility* for Transportation Systems Management and Operations, the latest information and guidance is provided at:
https://ops.fhwa.dot.gov/travelinfo/resources/ops_guide.htm. Although not explicitly

detailed in the funding eligibility information, it is worth noting that vehicle-to-infrastructure (V2I) deployments are eligible for the major apportioned formula funds including National Highway Performance Program, Surface Transportation Block Grant Program, Highway Safety Improvement Program, and Congestion Mitigation and Air Quality Improvement Program funds.

If you have any comments or questions on these topics, please contact Jim Hunt, jim.hunt@dot.gov 202-680-2679.

Q5. Regarding Section 1525 of MAP-21 – State Autonomy for Culvert Pipe Selection, will FHWA maintain Q&A's K1 -K5 on its web site?

A5. Yes. As Q&As K1– K5 reflect guidance issued in accordance with Section 1525 of MAP-21, these Q&As will be maintained on the FHWA web site. K4 will be revised to eliminate the reference to the proprietary product requirements

Q6. What product selection policies will be used by contracting agencies?

A6. Consistent with this final rule:

- Under 2 CFR 200.317(a), State DOTs will follow their own procurement procedures.
- Under 2 CFR 1201.317, local public agencies will follow State DOT-approved procedures for procurement.

As per Q&A 3 above, FHWA approval is no longer required.

Q7. How will patented or proprietary product issues on active construction projects be addressed?

A7. Projects will be administered under the requirements in effect at the time of contract award.

Q8. Will FHWA maintain the existing patented and proprietary product information on the FHWA web page at https://www.fhwa.dot.gov/construction/cqit/propriet.cfm ?

A8. Yes, FHWA will archive the existing patented and proprietary product materials on the FHWA website.

Q9. For active and prior projects subject to 23 CFR 635.411, how long should States keep their proprietary product justifications and other paperwork for Certifications, Experimental Products, and PIFs?

A9. Under 2 CFR 200.333, project records must be retained for at least three years after the payment of the final voucher (or, in the case of warranty projects, three years from the end of the warranty period). However, in the document "Suggestions for the Detection and Prevention of Construction Contract Bid Rigging", the Interdepartmental Bid Rigging Investigations coordinating Committee of the USDOT/USDOJ suggests a minimum retention period of 5 years, which is the statutory period of limitations for prosecution under Federal antitrust laws.

Q10: Can States require (or provide an administrative preference for) in-State or local products?

A10: No. Nothing in this rulemaking repeals the FHWA prohibition on in-State preference for materials selection, pursuant to 23 CFR 635.409(a).