



US Department
of Transportation

**Federal Highway
Administration**

Memorandum

Subject INFORMATION: Procurement of
Transportation Enhancement Projects

Date November 12, 1996

From Associate Administrator for
Program Development

Reply to HNG-22
Attn of

To Regional Administrators

In response to several inquiries from the field, we have decided to authorize the State highway agencies (SHA's) to procure transportation enhancement projects, not located within the highway right-of-way, under the procedures of the "Common Rule." This decision is consistent with 49 CFR 18.36(j) and our treatment of other nontraditional programs funded with Federal-aid funds, such as the Recreational Trails Program.

The Federal Highway Administration (FHWA) was one of the 23 Federal Agencies that adopted the "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" (also known as the Common Rule - 49 CFR 18). The FHWA adopted the Common Rule on March 11, 1988. The Office of Management and Budget approved certain exceptions to the Common Rule based on existing legislation specific to each agency that adopted the rule.

One of the FHWA's exceptions to the Common Rule provides for competitive bidding on highway construction projects. Specifically, 49 CFR 18.36(j) states:

"23 U.S.C. 112(a) directs the Secretary to require the recipients of highway construction grants to use bidding methods that are "effective in securing competition." Detailed construction contracting procedures are contained in 23 CFR part 635, subpart A."

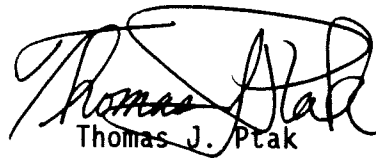
This exception to the Common Rule was developed prior to the passage of the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 and implementation of the transportation enhancement program established in the ISTEA. Since that time, SHA's and local public agencies have developed numerous enhancement projects that are transportation related, but may not always be located within the highway right-of-way. Some of these projects are relatively low cost (e.g., restoration of historic railroad stations, hiking/bicycle paths, landscaping and scenic beautification).

It is often not cost-effective to use the competitive bidding procedures in 23 CFR 635A to procure such services for low cost projects. The Common Rule offers more flexibility to the States with regard to the method of

procurement for such low cost projects. Therefore, transportation enhancement projects not located within the highway right-of-way may be procured under State procedures.

Highway related projects must still meet the linkage criteria noted in our July 28, 1994, memorandum concerning the applicability of Davis-Bacon to Transportation Enhancement Projects (copy attached). A project would be highway related if it is "linked" to a Federal-aid highway based on proximity or impact (i.e., without the Federal-aid highway the project would not exist). For transportation enhancement projects that are within the highway right-of-way, a contracting agency will continue to follow the procedures in 23 CFR 635A.

We intend to address these and other FHWA Common Rule exceptions in a future rulemaking.



Thomas J. Ptak

Attachment