

May 14, 2010

DOT Docket Management System
U.S. Department of Transportation
Docket Operations, M-30
West Building, Ground Floor
Room W12-140
1200 New Jersey Avenue, SE
Washington, DC 20590-0001

Re: Docket No. FHWA-2010-0027, Livability Initiative under Special Experimental Project No. 14

On behalf of the 5,000 members of the American Road and Transportation Builders Association (ARTBA), I respectfully offer comments on the Federal Highway Administration's (FHWA's) notice regarding the Livability Initiative under Special Experimental Project No. 14 (SEP-14) published in the March 30 *Federal Register*.

ARTBA's membership includes public agencies and private firms and organizations that own, plan, design, supply and construct transportation projects throughout the country. Our industry generates more than \$200 billion annually in U.S. economic activity and sustains more than 2.2 million American jobs. This document represents the collective views of our 5,000 member companies and organizations.

According to FHWA, the objective of SEP-14 is "to identify, evaluate, and document innovative contracting practices that have the potential to reduce life cycle cost of projects, while at the same time, maintain product quality." In the case of the March 30 notice, however, FHWA seeks to permit states to "request SEP-14 approval for contracting practices intended to enhance livability and sustainability" as part of any project jointly funded with the United States Department of Housing and Urban Development (HUD).

Generally, ARTBA supports efforts to increase the ease of the contracting process and reduce delay for transportation projects. However, ARTBA does have concerns about allowing the SEP-14 process to be used for purposes that are not clearly within the stated mission of this program. Traditionally, the SEP-14 process has been used to enable to use of contracting techniques such as cost-plus time bidding, lane rental, design build contracting and warranty clauses in order to reduce the time associated with the contracting and project delivery processes for traditional highway projects.



Applying SEP-14 to projects geared towards “livability,” a notion which currently means vastly different things to different people, would take SEP-14 in an entirely new direction. The March 30 Notice does not set forth a definition of “livability,” but rather, provides a list of seven factors to determine whether or not a given project “improves the quality of the living and working environment of a community.” Due to the lack of specifics on the envisioned activities of the “livability” program, it is difficult to comment on the merits of this initiative. It is clear, however, that the stated “livability” goals are inconsistent with those of SEP-14. Fundamentally, this proposal attempts to achieve a policy goal through a procurement process.

Further, both FHWA and HUD resources will be involved in any qualifying project. Thus, it is conceivable housing projects, transportation projects or a combination of both could qualify for inclusion under the proposed SEP-14 livability initiative. ARTBA feels it is important to ensure federal funds designated for use on the nation’s transportation system not be diverted towards non-transportation projects. Also, any definition of “livability” must recognize that, while non-motorized transportation is a viable solution in certain areas, other communities require automobile use and roadway improvements to achieve their “livability” goals. Opening up limited transportation funds to projects developed with HUD could dilute resources from our nation’s infrastructure which is already sorely underfunded. As such, if FHWA proceeds with this initiative, we urge you to include measures assuring any revenues raised from transportation system users are being invested in transportation specific activities.

ARTBA also has significant concerns about using SEP-14 as a means of harmonizing the vastly different federal-aid highway and HUD contracting regimes. The requirements for letting contracts associated with these two types of federal funds are distinct in a number of ways, if for no other reason than their respective program purposes are equally distinct. Federal-aid highway contracting requirements are intended to ensure cost-efficient and timely delivery of high-quality highway projects. HUD funds, as FHWA notes in the March 30 Notice, are intended in part to ensure certain “employment and other economic opportunities.” Accordingly, HUD-type requirements like particular contracting and hiring preferences have not been part of the federal-aid highway program. ARTBA does not see a compelling purpose in using SEP-14 to institute such a notable policy change and undermine the time-tested open and competitive bidding process associated with federal-aid highway funding. This would be a major departure from SEP-14’s stated purpose over nearly 20 years.

These single federal-aid highway/HUD contracts may also lead to participation by contractors in highway projects who are not pre-qualified to do highway work by their state or local transportation agency. Again, this would undermine the safeguards developed by these agencies to ensure efficient and high-quality highway project delivery.

In conclusion, ARTBA looks forward to working with the FHWA and the Administration to focus on passage of a multi-year reauthorization bill where comprehensive federal transportation policy can be fully developed, as opposed to broaching specific initiatives in the context of an already established program designed to reduce contracting delays.

Sincerely,



T. Peter Ruane
President & C.E.O