

property and mail from a point or points in the United States, via intermediate points, to a point or points in the People's Republic of China open to scheduled international operations, and beyond. Gemini also seeks designation as the next U.S. scheduled all-cargo carrier to China and asks the Department to allocate to Gemini the twelve all-cargo frequencies that will be available on March 25, 2006.

Docket Number: OST-2004-19077-31.

Date Filed: September 22, 2004.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: N/A.

Description: Application of Continental Airlines, Inc. requesting a certificate of public convenience and necessity authorizing Continental to engage in scheduled foreign air transportation of persons, property and mail between New York/Newark and Beijing and Shanghai, an allocation of seven weekly U.S.-China frequencies in 2005 and seven additional frequencies in 2006 and authority to integrate this authority with Continental's other certificate and exemption authority and to grant such other relief as the public interest may require.

Docket Number: OST-2004-19077-32.

Date Filed: September 22, 2004.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: N/A.

Description: Application of Northwest Airlines, Inc. requesting: (1) An allocation of eight of the twelve all-cargo frequencies available to designated U.S. carriers effective March 25, 2006 under the recently amended aviation agreement between the United States and People's Republic of China (PRC); (2) a temporary, experimental certificate of public convenience and necessity authorizing Northwest to provide scheduled foreign air transportation of property and mail between a point or points in the United States, via any intermediate points, to a point or points in China open to scheduled international operations, and beyond to any points outside of China, with full traffic rights; and (3) authority to integrate Northwest's existing exemption and certificate authority with the new certificate authority sought herein.

Docket Number: OST-2004-19189-1.

Date Filed: September 22, 2004.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 13, 2004.

Description: Application of Centurion Air Cargo, Inc. requesting a certificate of

public convenience and necessity, and to the extent necessary, designations, authorizing Centurion to engage in scheduled foreign air transportation of property and mail to and from the sixty-four countries listed herein that have concluded "open skies" aviation agreements or "open skies" all-cargo scheduled service amendments with the United States.

Andrea M. Jenkins,

*Program Manager, Docket Operations,
Federal Register Liaison.*

[FR Doc. 04-22501 Filed 10-5-04; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

New Special Experimental Project (SEP-15) To Explore Alternative and Innovative Approaches to the Overall Project Development Process; Information

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: The FHWA is establishing a new Special Experimental Project (SEP-15) to encourage tests and experimentation in the entire development process for transportation projects. SEP-15 is aimed specifically at increased project management flexibility, more innovation, improved efficiency, timely project implementation, and new revenue streams. The FHWA plans to use the lessons learned from SEP-15 to develop more effective approaches to project planning, project development, finance, design, construction, maintenance, and operations.

DATES: This new experimental project is being initiated on October 6, 2004.

FOR FURTHER INFORMATION CONTACT:

Division Offices: A complete list of contact information for the FHWA Division Offices may be found at: <http://www.fhwa.dot.gov/keyfield/famc.htm>. *Headquarters:* Mr. Dwight Horne, Office of Program Administration (HIPA), (202) 366-0494 or Mr. L. Harold Aikens, Jr., Office of the Chief Counsel (HCC-30), (202) 366-0791, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.s.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a modem and

suitable communications software from the Government Printing Office Electronic Bulletin Board Service at (202) 512-1661. Internet users may reach the Office of the Federal Register's home page at <http://www.archives.gov/fedreg> and the Government Printing Office's Web page at <http://www.gpoaccess.gpo.gov/nara>.

Background

The Federal Highway Administration (FHWA) has long encouraged increased private sector participation in the project development, finance, design, construction, maintenance, and operations of highways and bridges. The private sector has expertise often not available to the public sector that can bring innovation, flexibility, and efficiencies to certain types of projects.

For some time, FHWA has conducted tests in the area of contracting practices under Special Experimental Project No. 14 (SEP-14)¹. Many of these practices have facilitated greater private sector investment. Since its inception in 1990, SEP-14 has been successful in advancing over 300 projects, and due to SEP-14, a number of contracting practices previously considered experimental have become a regular part of the highway program, such as design-build, cost-plus-time bidding, lane rental, and the use warranties.

The FHWA has also encouraged innovations in the area of transportation financing. In 1994, Executive Order 12893, Principles for Federal Infrastructure Investment, established more cost-effective infrastructure investment as a priority for all Federal agencies. This Executive Order prompted more systematic analyses of the costs and benefits of proposed infrastructure investments, efficient management of infrastructure, greater private sector investment in infrastructure, and encouragement of more effective State and local programs. In response to that Executive Order, the U.S. Department of Transportation (U.S. DOT) and the FHWA undertook a major initiative in 1994 to promote and facilitate infrastructure investment.

This initiative was launched with the introduction of an experimental "Test and Evaluation" program, designated as TE-045, to solicit ideas from the States on a range of new financial strategies designed to stretch limited transportation dollars by creating new,

¹ SEP-14 was initiated on February 13, 1990, as a result of recommendations from a Transportation Research Board (TRB) task force formed to explore innovative contracting practices. The memorandum initiating the SEP-14 program can be found at the following URL: <http://www.fhwa.dot.gov/programadmin/contracts/021390.htm>.

more flexible ways to leverage Federal-aid highway funds. The TE-045 initiative has generated substantial benefits in terms of building more projects with fewer Federal dollars and accelerating project construction. Many of the innovations tested were subsequently approved for general use through administrative action or legislative changes made under the National Highway System Designation (NHS) Act of 1995 (Pub. L. 104-59; 109 Stat. 568; Nov. 28, 1995), and the Transportation Equity Act for the 21st Century (TEA-21) (Pub. L. 105-178; 112 Stat. 107; June 9, 1998).

More recently, an increasing number of States and private ventures have explored public-private partnerships in which the private sector partner could assume a greater role in project planning, project development, financing, construction, maintenance, and operation. Because these projects involve elements of project planning, development, environmental analysis, construction, maintenance, operation, and financing, they extend well beyond innovative contracting practices contemplated by SEP-14 and the financing tools encompassed by TE-045.

State interest in public private partnerships is expected to increase. Private sector investment can make up some of the public funding shortfall, but it will require a fair return on investment. Tolls certainly will represent a major source of funds to support private sector investment, but other potential sources of income such as development fees and tax increment financing may also be needed. These features often add to the complexity of project development.

Several States and private entities have asked for FHWA's guidance in implementing innovative arrangements and have queried how these new arrangements will be treated under Federal laws affecting highway projects. Some recent SEP-14 applications have sought to incorporate initiatives that go beyond innovative contracting, to include environmental compliance, right of way acquisition, and financing. These applications have been difficult to fit within the limits of SEP-14. Thus, rather than continue to manage these new proposals under the SEP-14 umbrella, FHWA is initiating a new Special Experimental Project No. 15 (SEP-15) pursuant to the authority granted the Secretary by Congress in 23 U.S.C. 502(b). SEP-15 will not be limited to contracting initiatives. It will encourage tests and experimentation in the entire project development process, specifically aimed at attracting private

investment, leading to increased project management flexibility, more innovation, improved efficiency, timely project implementation, and new revenue streams.

A key element of SEP-15 will be to identify impediments in current laws, regulations, and practices to the greater use of public-private partnerships and private investment in transportation improvements and to develop procedures and approaches that address these impediments. Of course, such procedures and approaches must continue to protect the public interest and any public investment in the project. Moreover, SEP-15 projects cannot be used to modify environmental and other requirements external to title 23 of the United States Code. Thus, SEP-15 will allow for innovations in project delivery while maintaining FHWA's stewardship responsibilities to protect taxpayers and the environment. The FHWA recognizes that SEP-15 proposals may include multi-modal components. The FHWA will coordinate the review of multi-modal SEP-15 proposals with the appropriate modal administration(s).

The lessons learned from SEP-15 will aid FHWA in developing more effective approaches to project planning, project development, finance, design, construction, maintenance, and operations. Our goal is to establish comprehensive policies and to seek future legislation to authorize those public-private innovations that have proved most useful under SEP-15.

SEP-15

As personal and freight transportation needs continue to increase, public resources will fall behind the demand for investment in transportation infrastructure. It is unrealistic to assume that sufficient funding to meet this demand can be realized by increasing taxes or otherwise using only public funds. Additional funds must be obtained from other sources, such as drawing from private sector financing and investment. SEP-15 will allow FHWA to test project development approaches that provide the flexibility and timely decision-making often required to attract private capital while still exercising essential FHWA stewardship responsibilities.

As a result, the FHWA is seeking to identify changes in current practices that could promote greater and more effective private sector involvement in the delivery of Federal-aid construction projects. Partnerships between private investors and public transportation agencies can bring not only greater funding to a project but also more

intellectual capital and innovation. SEP-15 is designed to provide a mechanism by which States can facilitate public-private partnerships.

The objective of SEP-15 is to identify for trial evaluation and documentation public-private partnership approaches that advance the efficient delivery of transportation projects while protecting the environment and the taxpayers. SEP-15 addresses four major components of project delivery—contracting, compliance with FHWA's National Environmental Policy Act (NEPA) process and other environmental requirements, right-of-way acquisition, and project finance. Given the scope of some of the proposals that have surfaced, elements of the transportation planning process may be involved as well. In order to meet the objective of SEP-15, proposals should describe the specific Federal-aid program areas of experimentation and identify proposed performance measures to evaluate the success of the SEP-15 project.

Contracting

SEP-15 incorporates SEP-14's approach to innovative contracting practices. However, SEP-15 projects are likely to solicit conditional Federal approval earlier in the project development process than is typical for SEP-14 projects. Projects under SEP-14 usually have passed the initial concept stage. Hence, competition can occur around proposals for which cost parameters can be identified. Recently, the FHWA encountered a number of proposals that seek to involve the private sector even earlier in the process. Under these proposals, only generalized needs or policy initiatives that the project would serve have been identified.

For this reason, State applicants under SEP-15 should provide detail of the following:

(1) The procurement methods it will use over the life of the project to encourage adequate competition. Many of the proposals developed to date are an offshoot of the design-build concept. SEP-15 proposals need not be limited by these concepts. However, given the very long lead-time and the large scope that a SEP-15 project might involve, FHWA is concerned that adequate competition is maintained and that qualitative and quantitative (price) evaluation factors are considered at key stages of the project.

(2) Applicants should specify any title 23, U.S.C., and FHWA regulatory requirements that may have to be waived or modified in order to conduct a successful SEP-15 test, together with

a justification or explanation for the modification. Applicants should also describe how laws and other requirements that fall outside title 23, U.S.C., and thus cannot be waived under SEP-15, would be affected by proposed changes in standard procedure. This includes not only the environmental laws discussed in the following section, but other requirements external to title 23, U.S.C..

(3) Many of the controls imposed by title 23, U.S.C., and implementing requirements provide for oversight and control to protect the public interest. It is clear from the proposals the FHWA has seen to date that some of these controls have created real and unnecessary impediments to innovation and greater private investment. Thus, an applicant should be prepared to describe how it will ensure an appropriate level of public oversight and control, while also encouraging innovation and flexible, efficient procedures throughout the life of the project. The FHWA has no preconceived measures in mind. We are concerned about meeting quality standards, monitoring compliance with government-wide policies, contracting process requirements, and other stewardship responsibilities.

(4) The FHWA is particularly interested in proposals that can successfully accomplish the goals mentioned above. The FHWA has considerable authority under SEP-15 to test new ideas and is prepared to grant considerable flexibility if it is clear that its stewardship responsibilities can be met.

Applicants will be allowed maximum flexibility in determining their own procurement methods consistent with their State law but need to specify State requirements that cannot be waived.

Compliance with Environmental and Planning Laws

SEP-15 applicants must still fully comply with all requirements of NEPA and other State and Federal environmental and planning laws and regulations. These requirements include all metropolitan and statewide planning provisions related to local consultation, public involvement, and project selection. Successful applicants, however, may be provided flexibility in the application of FHWA's project development and NEPA implementation requirements, so long as there is verifiable compliance of the statutory requirements and regulations promulgated by agencies other than FHWA. Examples of innovation in the environmental area might include the following.

(1) The FHWA's design-build regulations (23 CFR Part 636) prohibit States from issuing a request for proposal (RFP) for a project prior to approval of the Record of Decision (ROD). This restriction would not necessarily apply under SEP-15. However, applicants will be responsible for demonstrating that any changes to the traditional timing of actions within the NEPA project development process and contracting for professional services, design and/or construction, will not influence the NEPA analysis. SEP-15 is not a blanket waiver of basic NEPA process requirements found in the Council on Environmental Quality (CEQ) Regulations (40 CFR Parts 1500-1508) or FHWA's Environmental Regulation (23 CFR Part 771). Applicants must also understand the risk of taking advantage of this flexibility. If more than preliminary design is performed for a specific alternative prior to the ROD or final NEPA document, that work may be lost if another specific alternative is chosen in the ROD. Under no circumstances may construction begin prior to completion of the NEPA process.

(2) Under current law, a successful applicant may allow a contractor to conduct environmental analysis and prepare NEPA documents. However, the State Department of Transportation (State DOT) in cooperation with FHWA must provide direction and oversight during the NEPA process and development of NEPA documents. In all cases, the State DOT in cooperation with FHWA will be responsible for demonstrating that NEPA documents are objective by carefully reviewing the document with in-house experts or consultant advisors hired by the State DOT. For SEP-15 projects, FHWA will maintain its role as the lead Federal agency and will independently review and evaluate the NEPA documents prior to taking an approval action.

(3) Proposals that are very large in scope or slated to be built over a long time period might benefit from a tiered environmental process. While such tiering has always been allowed, transportation agencies have not made extensive use of tiered environmental analyses.

(4) The scope and nature of some of the proposals present particular challenges for public involvement and interagency coordination and consultation. Applicants are encouraged to identify innovative ways to include the public and other agencies in various phases of planning and project development.

Improved coordination with resource agencies is a key element of the

environmental streamlining provisions of TEA-21. These provisions also have been enhanced by Executive Order 13274, Environmental Stewardship and Transportation Infrastructure Project Reviews.² Proposals that take advantage of these provisions in a creative manner could be particularly useful.

Right-of-Way Acquisition

Early acquisition of right-of-way, in spite of some risk, is a particularly useful tool to preserve transportation corridors from conflicting land uses. Also, early acquisition could influence land uses adjoining the potential corridor in a manner that is consistent with the ultimate transportation project and may even be appropriate to preserve the possibility of identified joint development initiatives. Thus, FHWA anticipates that timely land acquisition, or other land use control methods, could well be a part of a SEP-15 proposal.

Existing law provides project sponsors with an array of options to acquire right-of-way using both Federal and non-Federal funds. SEP-15 adds to that flexibility. For example, FHWA regulations currently discourage the award of a construction contract prior to acquisition of all necessary rights-of-way (ROW) (23 CFR 635.309). Environmentally neutral proposals that assure that landowners and tenants are receiving fair compensation, relocation assistance, and benefits guaranteed by the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 (42 U.S.C. 4601 *et seq.*) could be eligible for modification of the ROW certification requirements, similar to the ROW phasing procedures under current design-build regulations.

Project Finance

Project financing for SEP-15 projects will likely come from a mix of Federal, State, local, and/or private funds. Building on the TE-045 initiative, SEP-15 will focus on financing innovations specifically associated with public-private partnerships. Existing Federal law already has a number of provisions that encompass a considerable range of financial arrangements.

The Transportation Infrastructure Finance and Innovative Act (TIFIA) program, (<http://tifa.fhwa.dot.gov/>), which facilitates a range of financing approaches, will continue to be a key element in FHWA's efforts to encourage

²E.O. 13274, Environmental Stewardship and Transportation Infrastructure Project Reviews, issued on September 18, 2002, emphasizes the importance of expedited transportation project delivery while being good stewards of the environment.

the formation of public-private partnerships. This program is designed specifically to encourage greater leveraging of public transportation funds and attract private investment to transportation projects by providing credit assistance in the form of direct loans, loan guarantees, and standby lines of credit.

Little use has been made of the loan authority provided by 23 U.S.C. 129(a)(7). The FHWA welcomes proposals to use this "129(a)(7)" authority, which allows highway apportionments to be used for low cost loans to projects with dedicated revenue sources, as part of a three-way financing partnership between the State, the private venture partner, and the FHWA. By coupling "129(a)(7) authority" with TIFIA, tax-exempt bond financing, and Federal-aid grant funding as an integrated financing package, FHWA believes that this kind of partnership will serve as a catalyst for moving public-private partnerships quickly from concept to construction. When the State makes a 129(a)(7) loan to an eligible public or private entity, the State receives reimbursement from FHWA and is repaid the loan amount plus applicable interest by the borrower, which the State may then use for any eligible title 23 U.S.C. purpose; thus, assisting the State to establish a revolving loan fund for future projects.

The FHWA will devote the internal resources necessary to evaluate the financing package, offer alternative financing solutions, and establish financial feasibility in order to move the project from concept to commitment of Federal funds (where applicable) and construction.

Joint Development Agreements

In addition to the transportation project itself, significant benefit and revenue potential may be realized from joint use of the transportation facility. Thus, the ROW may be used both for transportation purposes and other uses that are compatible with the transportation use, such as airspace development. Even joint use of the airspace of Interstate and other limited access highways is favored, so long as the transportation purpose is not impaired. States are encouraged to enter into joint development agreements with private parties by current Federal law, 23 U.S.C. 156. Under this provision, if FHWA participates in the cost of acquiring real property needed for a proposed project, there are specific requirements that apply to the sale or lease of the real property acquired with Federal funds (such as air rights). These requirements may include such things

as ensuring that the amount realized by sale or lease represents the fair market value of the interest at issue. The net realized must be dedicated to transportation purposes. Waivers of the requirement to charge the fair market value are available in limited circumstances.

Application Process

A State DOT should submit SEP-15 proposals to the appropriate FHWA Division Office. Proposals may include localities and private transportation ventures as project sponsors. SEP-15 applications should provide a brief description of the project, including the innovative techniques proposed and the expected value of those techniques.

Upon the completion of major milestones, the public-private sponsors will be responsible for submitting an independently prepared report that summarizes lessons learned from the SEP-15 process. These reports shall include the experiment undertaken, the lessons learned, evaluate the success of the process and its impact on the project, and recommend statutory and regulatory changes with an explanation of how the changes will improve the delivery of the Federal-aid highway program.

Conclusion

The Secretary has identified public-private partnerships as being an important element of the Department's ability to reduce congestion and maintain the highway system. To this end, SEP-15 is designed to encourage a broad range of innovations in project planning, project development, finance, design, construction, maintenance, and operations. This notice outlines some areas in which States may experiment and innovate in order to help provide some framework for experimentation. Project proponents applying under SEP-15, however, are encouraged to propose innovations in all areas of title 23, U.S.C.

(Authority: 23 U.S.C. 315 and 502).

Issued on: September 23, 2004.

Mary E. Peters,

Federal Highway Administrator.

[FR Doc. 04-21975 Filed 10-5-04; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF THE TREASURY

Senior Executive Service Departmental Performance Review Board

AGENCY: Treasury Department.

ACTION: Notice of members of the Departmental Performance Review Board (PRB).

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the Departmental PRB. The purpose of this PRB is to review and make recommendations concerning proposed performance appraisals, ratings, bonuses and other appropriate personnel actions for incumbents of SES positions for which the Secretary or Deputy Secretary is the appointing authority. These positions include SES bureau heads, deputy bureau heads and certain other positions. The Board will perform PRB functions for other key bureau positions if requested.

Composition of Departmental PRB:

The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half the members shall consist of career appointees. The names and titles of the PRB members are as follows:

Wayne A. Abernathy, Assistant Secretary (Financial Institutions); Rebecca A. Contreras, Deputy Assistant Secretary (Human Resources) and Chief Human Capital Officer; Jesus H. Delgado-Jenkins, Deputy Assistant Secretary (Management and Budget); John M. Duncan, Assistant Secretary (Legislative Affairs); James H. Fall III, Deputy Assistant Secretary (Technical Assistance Policy); Reese H. Fuller, Advanced Counterfeit Deterrence Program Director (Domestic Finance); Geraldine A. Gerardi, Director for Business Taxation; Donald V. Hammond, Fiscal Assistant Secretary; Ira L. Hobbs, Chief Information Officer; Gregory F. Jenner, Deputy Assistant Secretary (Tax Policy); Jeffrey F. Kupfer, Deputy Chief of Staff; Robert Nichols, Assistant Secretary (Public Affairs); Patricia J. Pointer, Deputy for Human Resources; Randal K. Quarles, Assistant Secretary (International Affairs); Brian C. Roseboro, Under Secretary (Domestic Finance); Mary Beth Shaw, Executive for DC Pensions Policy and Oversight; Christopher A. Smith, Chief of Staff; Juan C. Zarate, Assistant Secretary (Terrorist Financing); Marla A. Freedman, Assistant Inspector General for Audit, Office; William H. Pugh, Deputy Assistant Inspector General for Audit (Financial Management); Dennis S. Schindel, Deputy Inspector General; Arthur J. Libertucci, Administrator, Tax and Trade Bureau; John J. Manfreda, Deputy Administrator, Tax and Trade Bureau; Marcia H. Coates, Senior Advisor, United States Mint; Henrietta H. Fore, Director, United States Mint; Jerry W. Horton, Chief Information Officer, United States Mint; David A. Lebryk, Deputy Director, United States Mint; Nancy Coto Fleetwood, Assistant Commissioner, Information Resources, Financial Management Service; Richard L. Gregg, Commissioner, Financial Management Service; Scott Johnson, Assistant Commissioner, Management (Chief Financial Officer), Financial Management