



Intra-Departmental Correspondence – Office of the Secretary

---

Date: 12/29/2020  
TO: New Mexico Tribal and Local Public Agencies  
From: Rick Padilla, Executive Director for Highway Operations *[Signature]* 12/29/20  
Subject: 23 CFR 635.113 Bid Opening and Bid Tabulations

\*\*\*\*\*

Hello all, I hope this correspondence finds you well and in good spirits. Although 2020 has proven to be somewhat of a challenging year, projects have continued to progress, bringing much needed infrastructure improvements to our state.

Recently, an issue was brought to our attention. A Tribal/Local Public Agency (T/LPA) did not realize that their home rule procurement procedures did not meet the Code of Federal Regulations (CFR) requirements. The entity negotiated work and prices following the bid opening and prior to awarding of the contract. All negotiations during this time are prohibited as per 23 CFR 635.113, Bid Opening and Bid Tabulations. This information can be found on page 116 of the 2019 Tribal/Local Public Agency Handbook (Handbook), which was covered in the trainings that were provided to the T/LPAs in 2019.

For the T/LPA project to continue with federal funds, the entity was required to submit supporting documentation, sufficient to a 23 CFR 1.9 waiver, then approved by Federal Highway Administration (FHWA). The project is being constructed as it was let.

As stipulation to this waiver, FHWA has requested that the New Mexico Department of Transportation (NMDOT) ensure all T/LPA's are aware of, and up-to-date, regarding federal requirements, as they relate to 23 CFR 635.113. When receiving federal funds, regardless of home rule procurement ordinances, compliance with federal rules and regulations must be adhered to.

Please be reminded that the 'Handbook,' as well as previous trainings, can be found on the NMDOT external website under Business and Tribal/Local Public Agency. Should you have any questions, or require further clarification and/or additional guidance, please do not hesitate to contact your NMDOT Regional Coordinator. Have a safe and Happy New Year.