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The Port of
LONG BEACH
The Green Port

February 1, 2012

Mr. Vincent P. Mammano
Division Administrator, California
U.S. Department of Transportation
Federal Highway Administration (HAD-CA)
650 Capitol Mall, Ste. 4-100
Sacramento, CA 95814

Attention: Mr. Scott McHenry

RE: SEP 14 for the Gerald Desmond Bridge Replacement Project
Project Identification No. 0700000379
Federal Project Numbers: BRLS 5108 (137); ACNH-710-1 (807)

Dear Mr. Mammano:

The California Department of Transportation and the City of Long Beach, acting by and through its Board of Harbor Commissioners, commonly known as the Port of Long Beach (collectively, the "Owner"), have commenced the procurement process for the Gerald Desmond Bridge Replacement Project ("Project") in Long Beach, California. The Project is being developed using the design-build delivery method pursuant to California Public Contract Code section 6800 et. seq. As a federal-aid project, the Owner is structuring the procurement for the Project to comply with applicable federal requirements.

The Owner will make a best value determination to award the design-build contract for the Project. To make this determination, the Owner will combine the scores that result from its evaluation of the technical proposals and the score associated with each price proposal. The evaluation criteria for the technical proposals and the formula to calculate the price proposal score are set forth in the Request for Proposals ("RFP"). The Owner will award the design-build contract to the proposer whose proposal presents the Owner with the best value based on these scores. This approach gives the proposers the flexibility to offer something more than the bare minimum required by the RFP and enables the Owner to select a proposer that truly offers the best value.

As permitted by the federal design-build rule, the Owner is currently using an Alternate Technical Concept (ATC) process which allows the Owner to review and approve (or disapprove) ATCs during the pre-proposal period. Pursuant to this process, the Owner only approves ATCs if they meet certain minimum requirements and are otherwise acceptable to the Owner. 23 CFR 636.209 permits ATCs for design-build procurements, but states, "Alternate technical concept proposals may supplement, but not substitute for base proposals that respond

to the Request For Proposal (RFP) requirements." We understand that the concern underlying this requirement is to ensure fair and open competition, and to make sure that all proposers are competing for the same project.

Accordingly, the Owner hereby requests that the requirement to submit separate proposals for the "base" and "alternate" technical concepts be waived for the Project, allowing each proposer the opportunity to submit ATCs for pre-approval and then to submit a proposal that includes or excludes the pre-approved ATCs. The process, which requires the Owner's pre-approval of deviations from design and other technical requirements of the design-build contract and other contract documents, has been carefully crafted to avoid any potential unfairness. The ATC process gives the Owner the ability to factor the proposers' technical solutions into the selection process, allowing a true "best value" selection; and gives the Owner access to solutions from all proposers. It also gives the successful proposer a head start on implementing its ATCs, and avoids unnecessary costs for proposers to advance a base design that they will ultimately not use.

Imposing a requirement for the proposers to submit separate proposals would impose an unnecessary burden on both the proposers and the Owner, and would likely deter proposers from utilizing ATCs. The Owner has addressed the underlying concern regarding fairness by including minimum criteria for ATCs in the RFP. The deviations that will be allowed will not change certain key Project features. In addition, there is a prohibition on ATCs that merely result in reducing quantities, quality, performance or reliability. In addition, both the draft Instructions to Proposers (ITP) and design-build contract place the cost and delay risk associated with any additional permits, governmental approvals and third party approvals necessitated by an ATC on the Design-Builder. If the Design-Builder is unable to obtain approvals or satisfy other conditions identified by the Owner that are necessary to implement an ATC, the Design-Builder is required to develop the Project in accordance with the design-build contract and other contract documents without regard to the ATC and without any cost relief or a time extension. Given these protections, the Owner believes that a waiver of the requirement is appropriate.

Following is information supporting the waiver request:

a. Review process and requirements. Attachment 1 is an excerpt of the ATC provisions from the ITP included in the RFP for the Project.

- ITP Section 3.1 sets forth the Owner's rationale behind the use of ATCs - further opportunity to allow for innovation, flexibility, and time and cost savings in the design, construction and maintenance of the Project. The ATC process described in the ITP helps to avoid delays and potential conflicts in the design and/or construction associated with deferring the review of ATCs to the post-award period. This ultimately helps the Owner obtain the best value for the public. Section 3.1 also sets forth the "equal to or better" standard applicable to all ATCs and lists the concepts that are otherwise not eligible for consideration.

- ITP Section 3.2 lists the detailed submittal requirements / contents of an ATC submittal (e.g., a description of the proposed ATC, a summary of how the ATC is equal or better in quality, where the ATC has been used before, maintenance impacts, etc.).

- ITP Section 3.3 includes an acknowledgement by each proposer submitting a proposal that the opportunity to submit ATCs was offered to all proposers. This section also outlines the determinations the Owner may make on ATC submissions and provides a notice that an ATC approval constitutes pre-approval of a change from specific contractual requirements that would otherwise apply.

- ITP Section 3.4 describes the process for the Owner's use of confidential ATC meetings with each proposer team to discuss each team's ATC submittals (if any). This section clarifies that the Owner will not make any determination or decision regarding ATCs at these meetings.

- ITP Sections 3.5.1 and 7.3 describe how the Owner and the best value proposer will incorporate any pre-approved ATCs included in the best value proposer's proposal into the design-build contract prior to contract execution.

- ITP Sections 3.5.2 and 3.8 describe how after the Owner and Design-Builder execute the design-build contract, the Owner will have the right to present the unsuccessful proposers' ATCs to the Design-Builder for possible incorporation into the contract by change order. These sections clarify that the Owner will only have the right to use an unsuccessful proposer's ATCs if the unsuccessful proposer accepts the Owner's payment for work product described in ITP Section 7.5.

- ITP Section 3.6 specifies that if the implementation of an Owner-approved or conditionally approved ATC requires any additional governmental approval (e.g., additional environmental or third-party approvals), or a re-evaluation of a previously secured governmental approval, the proposer shall be solely responsible for obtaining these approvals. If the Design-Builder is unable to obtain these approvals, the Design-Builder shall comply with the original RFP requirements without any cost relief or a time extension.

- ITP Section 3.8 addresses the confidential nature of ATCs. Confidentiality is a critical issue with proposers, who need to be reassured that their innovative thinking and concepts will not be shared with other proposers.

b. How the ATC will be considered in the best value determination. Each proposer submits only one proposal in response to the RFP. The evaluation process does not distinguish between a proposal that does not include any ATCs and proposals that include ATCs. Both types of proposals are evaluated against the same technical evaluation factors and the proposal prices are scored using the same formula. A proposer's use of a pre-approved ATC may or may not result in higher quality (higher technical score) for a particular technical evaluation factor and may or may not result in a lower price. However, by allowing ATCs, the Owner anticipates that the higher quality and lower price outcomes will both occur.

c. What happens if an ATC is not feasible. The contract documents included in the RFP include provisions making it clear that the Design-Builder is responsible for both (i) designing the project in conformance with all requirements of the contract documents (including pre-approved ATCs included in its proposal) and (ii) for obtaining all third party approvals (including environmental approvals) required for ATCs. ITP Section 3.6 and Section 2.5 of the design-build contract (see Attachment 2) provide that if the Design-

Builder fails to obtain a required third party approval for an ATC, including any environmental approvals, the Design-Builder will be required to comply with the original RFP requirements.

d. Timeline for ATC approvals. Please refer to Attachment 1.

e. Betterments. As noted above, the Owner wants to encourage proposers to submit pre-approved ATCs with their proposals, because those ATCs will either improve the quality of the Project or reduce project costs without reducing quality. The Owner believes that the alternative proposal submission / evaluation process described above will enable it to achieve that goal.

Thank you, again, for your assistance. If you have any further questions or comments, please do not hesitate to contact Doug Thiessen at (562) 283-7065 or Brandon Davis at (213) 612-7800

Sincerely,

Douglas A. Thiessen, P.E.,
Managing Director, Engineering Bureau

Attachments: ITP Provisions Concerning ATCS
Design Build Contract Provisions

cc: Abdi Saghafi, Project Manager District 7, California Department of Transportation
Rick Morrow, Engineering Services IQA Manager, California Department of Transportation
Eric C. Shen, Director, Transportation Planning, Port of Long Beach
Douglas J. Sereno, Director, Program Management, Port of Long Beach
Suzanne Plezia, Deputy Chief, Construction Management, Port of Long Beach
Dominic Holzhaus, Principal Deputy City Attorney, City of Long Beach
Jim Ruddell, GDB Program Office Director
Brandon Davis, Nossaman
Patrick Harder, Nossaman

ATTACHMENT 1: ITP PROVISIONS CONCERNING ATCS

3. ALTERNATIVE TECHNICAL CONCEPTS

3.1 Overview and Purpose

For this procurement, the Owner will use an Alternative Technical Concept ("ATC") process to allow for innovation, flexibility, and time and cost savings on the design, construction and maintenance of the Project. The Owner encourages each Proposer to submit ATCs equal or better in quality or effect to existing requirements in the Contract Documents (as determined by the Owner in its sole discretion) that have been used successfully under comparable circumstances or that contemplate new and innovative technical concepts that have not been used elsewhere.

The Owner, however, will not accept any ATCs that in the Owner's sole discretion would merely result in reduced quantities, quality, performance or reliability. Furthermore, the Owner will not accept ATCs that propose to change any of the following required Project components:

(1) The cross section of the cable-stayed bridge and its approaches shall include (i) 3 traffic lanes in each direction; (ii) inside and outside shoulders in each direction; and (iii) a Class 1 bikeway.

(2) The cable-stayed bridge shall have a vertical clearance (air draft) of 205 feet from the mean lower low water line ("MLLW"), a total length of approximately 2,000 feet, with a center span of at least 1,000 feet (between tower centerlines) opening across the Port's Back Channel, and approximately 500-foot back spans between the towers and the approach structures at each end of the bridge.

(3) The west and east approach structures shall each be approximately 3,000 feet in length.

If a Proposer is unsure whether a concept complies with the requirements in the Contract Documents, or whether a concept qualifies as an ATC, the Proposer should raise these issues to the Owner during the ATC meetings described in Section 3.4. The Owner reserves the right to reject without further review any proposed ATC that in the Owner's sole judgment does not comply with the requirements set forth in this Section 3.

3.2 ATC Submittals

Each Proposer may submit one or more ATCs to the Owner beginning on the date specified in Section 1.5. The Owner will not accept any ATC after 1:00 p.m. (Pacific Time) on the date specified as the last day to submit ATCs in Section 1.5. This deadline, however, applies only to initial ATC submittals and not to any re-submittal or submittal of additional information that the Proposers furnish at the Owner's request.

Deliver one electronic and five hardcopies of each ATC submittal to the Owner Representative at the address specified in Section 2.4.1. Each ATC submittal shall be in writing, and shall include a cover sheet clearly stating: the name of the submitting Proposer team; the full name of the Project; the ATC number; and the words "Confidential ATC Request Information." ATC submittals shall contain each of the following items:

(1) ATC number. A sequential ATC number that identifies the Proposer and the ATC number (submit multipart or multi-option ATCs as separate ATCs, each with a unique ATC number).

(2) Deviations from the Contract Documents. An explanation of the ATC's deviations from the Contract Documents, a complete description of all specific changes requested to the Contract Documents, and a request for the Owner's approval of those changes.

(3) Description. A narrative description of the ATC and conceptual drawings or other descriptive information, as appropriate.

(4) Location. Locations where, and an explanation of how, the ATC would be used on the Project.

(5) Quality. Summary of how the ATC is equal or better in quality or effect to existing requirements in the Contract Documents.

(6) Other projects. Indicate whether or not the ATC has been used on another project. If the ATC has been used on another project, provide a narrative description of the projects on which the ATC was used, the ATC's degree of success or failure on those projects, and the names and contact information (including current telephone numbers and e-mail addresses) of project-owner representatives who can confirm these statements.

(7) Maintenance impacts. Any change in routine maintenance requirements associated with the ATC, including ease of maintenance and cost of maintenance.

(8) Other potential impacts. Preliminary analysis of the ATC's potential impacts on vehicular traffic (both during and after construction), environmental permitting, local community, safety (including all required design exceptions), and life-cycle costs (including the impacts on the cost of repair, maintenance and operation).

(9) Right-of-way requirements. List of additional right-of-way requirements, if any, and a description of when additional right-of-way would be required to implement the ATC.

(10) Anticipated life. Changes, if any, in the anticipated life of the item (or items) that comprises the ATC.

(11) Risk. Description of added risk to the Owner or third parties associated in connection with the ATC's implementation.

(12) Additional costs. Rough order of magnitude ("ROM") estimate of any additional Owner, Proposer or third-party costs associated with the ATC's implementation.

(13) Cost savings. Analysis of the ROM cost savings, if any.

(14) Time savings. Analysis of the ROM time savings, if any.

3.3 ATC Review and Approval

The Owner will review ATC submittals and respond with one of the following determinations:

(1) the ATC is approved;

(2) the ATC is not approved;

(3) the ATC is conditionally approved (i.e., the ATC is not approved in its present form, but is approved subject to satisfaction, in the Owner's sole judgment, of certain Owner-specified conditions);

(4) The submittal does not qualify as an ATC but may be included in the Proposal because it appears to be within the requirements of the RFP; or

(5) The submittal does not qualify as an ATC and may not be included in the Proposal.

Each Proposer may incorporate in its discretion any Owner-approved or conditionally approved ATCs. The Owner's approval or conditional approval of an ATC constitutes an Owner-authorized change to requirements in the Contract Documents directly impacted by the approved or conditionally approved ATC. Any such change in these requirements will apply only to the Proposer that submitted the approved or conditionally approved ATC. Failure to satisfy any condition that the Owner imposes on a conditionally approved ATC means that the Proposer who submitted the conditionally-approved ATC must comply with the requirements in the Contract Documents as if the ATC had not been approved.

Prior to making a determination with respect to any ATC, the Owner anticipates holding one or more ATC meetings with the Proposer (*see* Section 3.4), or requesting additional information regarding the proposed ATC. The Owner will make every attempt to respond to every ATC submittal.

By submitting a Proposal, Proposer acknowledges that it received the opportunity to submit ATCs and, therefore, waives any right to object to the Owner's determination regarding any ATC. The Owner's rejection of any ATC shall not entitle the Proposer that submitted the ATC to an extension of the Proposal Due Date; however, the foregoing shall not limit the Owner's right to modify the Proposal Due Date or any other date in connection with this procurement.

3.4 ATC Meetings

The Owner anticipates holding a series of confidential ATC meetings with individual Proposers to discuss their ATC submittals (if any), and to answer questions or address related issues. The Owner will schedule ATC meetings during the time period specified in Section 1.5 for the Project's ATC process.

The Proposers will have full discretion in determining the members of their respective teams who will attend ATC meetings. Third-party stakeholders may, in the Owner's sole discretion, participate in ATC meetings.

The Owner will not make any determination or decision regarding ATCs at these meetings.

3.5 Incorporation of ATCS into the Contract

3.5.1 ATCs Included in the Best Value Proposal

Following the selection of the Best Value Proposal and prior to the execution of the Contract, any Owner-approved or conditionally approved ATC contained in the Best Value Proposal shall be incorporated into the Contract Documents. For any conditionally approved ATC, the Contract Documents shall include any conditions in connection with that ATC that remain unsatisfied at the time of Contract execution.

After any Owner-approved or conditionally approved ATC has been incorporated into the Contract Documents, and the parties have executed the Contract, the ATC shall not be changed without the Port's prior written approval. Notwithstanding anything to the contrary contained herein, If Design-Builder does not comply with one or more of the conditions associated with a conditionally approved ATC (including obtaining any necessary third-party approvals), the Contract Documents (as revised to reflect the inclusion of the ATC) shall specify that Design-Builder shall comply with the original RFP requirements without any additional cost or extension of time.

3.5.2 ATCs Submitted by Unsuccessful Proposers

Following Contract execution, the Owner may in its sole discretion present to the Design-Builder, for possible incorporation into the Contract Documents, the ATCs of unsuccessful Proposers who received payment for work product as described in Section 7.5. These ATCs may be incorporated into the Contract Documents in accordance with the Change Order process described in Book 1, Section 12, and subject to good-faith negotiations between the Port and Design-Builder.

3.6 Additional Governmental Approvals, Real Property Acquisition, Utility Work

As described in Book 1, Section 2.5.1, if the implementation of an Owner-approved or conditionally approved ATC requires any additional governmental approval (e.g., additional environmental or third-party approvals), or a re-evaluation of a previously secured governmental approval, the Proposer shall be solely responsible for obtaining the relevant approval. The Owner, however, will provide reasonable cooperation in obtaining such approvals.

If any relevant governmental approval is not granted, then the Proposer must change its Project approach to meet the original (i.e., pre-ATC) requirements in the Contract Documents. The Proposer shall not be eligible for a Change Order to increase the Contract Price or extend the completion date for failure to secure any such governmental approval.

If the implementation of an Owner-approved or conditionally approved ATC requires additional real property or utility work, the Proposer shall pay for the real property (and any related costs including any necessary environmental approvals) and responsibility for utility work shall be allocated in accordance with the Contract Documents, unless otherwise provided in the approval. The Proposer shall not be eligible for a Change Order to acquire the real property or perform the utility work.

3.7 Correction of Errors, Ambiguities or Mistakes

If the Owner determines, based on a proposed ATC or otherwise, that the RFP contains an error, ambiguity, or mistake, the Owner reserves the right to modify the RFP to correct said error, ambiguity, or mistake, regardless of any impact on a proposed ATC.

3.8 ATC Confidentiality and Use by Best Value Proposer

Subject to the provisions of the CPRA, the ATCs and related communications of the Best Value Proposer will remain confidential unless and until the Owner awards the Contract, and the ATCs and related communications of the unsuccessful Proposers will remain confidential unless and until the unsuccessful Proposers receive from the Owner payment for work product in accordance with Section 7.5.

By receiving payment for work product, in accordance with the policy described in Section 7.5, each unsuccessful Proposer agrees that the Owner may disclose to the Design-Builder the work product (including information related to an ATC) of that unsuccessful Proposer for possible incorporation into the Contract. Any unsuccessful Proposer, however, may decline payment for work product, in which case that Proposer's ATCs and related communications would remain confidential, except as otherwise required under the CPRA or applicable law. Once submitted to the Owner, however, ATCs will not be returned to their respective Proposers.

ATTACHMENT 2: DESIGN-BUILD CONTRACT PROVISIONS

2.5 Alternative Technical Concepts

2.5.1 Third-Party Alternative Technical Concept Approvals

Design-Builder shall be solely responsible to obtain any approvals from Persons other than Port required to implement Approved Alternative Technical Concepts (ATC) incorporated in the Contract Documents. These Persons may disapprove such approvals for any reason (or for no stated reason). Design-Builder agrees that if Design-Builder fails to obtain any such approval, Design-Builder shall comply with the corresponding baseline requirements (unmodified by the ATC) without any increase in the Contract Price or extension of the Completion Deadlines.

2.5.2 Additional Real Property or Utility Work

Notwithstanding anything herein to the contrary, if implementation of an ATC will require additional real property or Utility Work, Design-Builder shall have full responsibility for paying for any such real property and any other related costs, including costs to obtain any necessary Governmental Approvals (including New Environmental Approvals, as described in Section 6.3.2.2) or for performing and paying for any related Utility Work, without the right to a Change Order.