



Indiana Finance Authority
One North Capitol, Suite 900
Indianapolis, IN 46204

October 5, 2012

Ms. Karen Bobo
Assistant Division Administrator
Indiana Division
Federal Highway Administration
575 N. Pennsylvania St., Room 254
Indianapolis, IN 46204

Attention: Mr. Bren I. George-Nwabugwu

RE: 23CFR636 Waiver Request for the East End Crossing of the Ohio River Bridges Project

Dear Mr. George-Nwabugwu:

The Indiana Finance Authority ("IFA"), in conjunction with the Indiana Department of Transportation ("INDOT"), is advancing the procurement process for the East End Crossing portion of the Ohio River Bridges Project between Clark County Indiana and Jefferson County Kentucky. The Project is being procured through a Public-Private Partnership pursuant to Indiana Code 8-15.5. IFA anticipates selection of a preferred Proposer before the end of 2012. IFA is seeking federal aid for the Project and is structuring the procurement to comply with applicable federal requirements.

IFA will make a best value determination in order to determine the preferred Proposer for the contract. To make this determination, IFA will combine the scores from evaluation of the technical and financial proposals submitted by each Proposer. The evaluation criteria for the technical and financial proposals are set forth in the Request for Proposals ("RFP") approved by the Federal Highway Administration ("FHWA"). IFA will award the contract to the Proposer whose submittal presents IFA with the best value based on these weighted scores. This approach gives the Proposers the flexibility to advance beyond the bare minimum approach and RFP technical and offers the best value to the IFA.

As permitted by the federal design-build rule, IFA is using an Alternative Technical Concept ("ATC") process which allows IFA to review and approve (or disapprove) ATCs prior to submission of the proposals. Pursuant to this process, IFA only approves ATCs if they meet certain minimum requirements and are otherwise acceptable to IFA. 23 CFR 636.209(b) 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 ensure that all proposers are competing for the same project.

Accordingly, IFA 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 with or without ATCs. The process which

requires IFA's preapproval of deviations from design and other technical requirements of the RFP, has been carefully drafted by IFA to ensure a fair procurement. The ATC process gives IFA the ability to factor the proposers' technical solutions into the selection process, allowing a true "best value" selection and gives IFA access to solutions from all proposers. It also allows the successful proposer an early start in implementing its ATCs, and avoids the unnecessary costs for proposers to advance a base design that ultimately will not be used.

Imposing a requirement for the proposers to submit separate "base" and "alternate" proposals will impose an unnecessary burden on both the proposers and IFA, and will likely deter proposers from utilizing the ATC process. IFA has addressed the underlying concern regarding fairness by including minimum criteria for ATCs in the RFP. The deviations from the RFP that will be allowed will not change certain key project features and will be required to provide an equal or better solution than that presented in the reference design included in the RFP. In addition, the RFP prohibits proposed ATCs that merely result in reduction of quantities, quality, performance or reliability. The RFP and contract also place the cost and delay risks associated with any additional permits, governmental approvals or third party approvals necessitated by an ATC on the selected Developer. If the Developer is unable to obtain approvals or satisfy other conditions identified by IFA that are necessary to implement an ATC, the Developer is required to develop the Project in accordance with the technical provisions in the contract and other contract documents without regard to the ATC and without any cost relief or time extension. Given these protections, IFA respectfully requests a waiver of the referenced requirement in 23 CFR 636.209(b).

For your ease of review, a copy of the portions of the RFP relevant to the ATC process is enclosed with this request. A summary of the relevant sections of the RFP follows.

A. ATC Review Process and Requirements

- ITP Section 3.1 sets forth IFA's rationale behind the use of ATCs – further opportunity to incorporate innovation and creativity into the proposals, in turn allowing IFA to consider proposer ATCs in making the selection decision, to avoid delays and potential conflicts in the design and/or construction associated with deferring of reviews of ATCs to the post-award period, and ultimately, to obtain the best value for the public. This section also cites the ATC approval criteria of "equal to or better" and describes concepts that would not be eligible for consideration as ATCs.
- ITP Section 3.2 sets forth the detailed submittal requirements/contents of an ATC.
- ITP Section 3.3 outlines the determinations that may be made by IFA on submitted ATCs. It also provides a notice to all proposers that approval of an ATC constitutes pre-approval of a change from specific requirements of the contract documents that would otherwise apply.
- ITP Section 3.3 also includes an acknowledgement by each proposer submitting a proposal that the opportunity to submit ATCs was offered to all proposers.
- ITP Section 3.5 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.

- ITP Section 4.2 authorizes proposers to incorporate pre-approved ATCs into their proposals.

B. How the ATC Will Be Considered in the Best Value Determination

Each proposer submits only one proposal in response to the RFP. The RFP 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 a highest score determination is made in the same manner. A pre-approved ATC may or may not result in higher quality (technical rating) in a particular evaluation factor and may or may not result in a lower price. However, in allowing ATCs, IFA anticipates that both the outcomes of higher quality and lower price will occur.

C. What Happens if an ATC is not Feasible

The contract documents included in the RFP include provisions making it clear that the Developer is responsible for both (i) designing the project in conformance with all requirements of the contract documents (including ATCs included in its proposal) and (ii) for obtaining all third party approvals (including environmental approvals) required for ATCs. ITP Sections 3.1 and 3.2.2 provide that if the Developer fails to obtain a required environmental or other third party approval for an ATC, the Developer will be required to comply with the original requirements of the RFP.

D. Timeline for ATC Approvals.

Please refer to the attached ITP.

E. Betterments.

As noted above, IFA wishes to encourage ATCs that will improve project quality as well as ATCs that reduce project costs or schedule without reducing quality. The evaluation process described above allows flexibility for the evaluators to consider quality enhancements.

Thank you for your assistance. If you have any questions or concerns, please feel free to contact me at (317) 233-4337.

Sincerely,


Kendra York
Public Finance Director
Indiana Finance Authority

Cc: Jim Stark, INDOT
Ron Heustis, INDOT

(enclosure)