

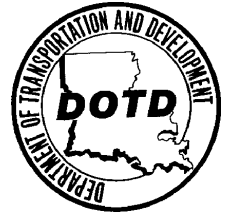


BOBBY JINDAL
GOVERNOR

**STATE OF LOUISIANA
DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT**

P.O. Box 94245
Baton Rouge, Louisiana 70804-9245

www.dotd.la.gov
225-379-1734



WILLIAM D. ANKNER, Ph.D.
SECRETARY

October 26, 2009

Mr. Charles Bolinger
Division Administrator
Federal Highway Administration
5304 Flanders Drive, Suite A
Baton Rouge, LA 70808

RE: SEP 14 for the Interstate-10 Widening Design-Build Project
Siegen Lane Interchange to Highland Road Interchange
Interstate 10, East Baton Rouge Parish
State Project No. 450-10-0159
Federal Aid Project No. ARR-1709(503)

Dear Mr. Bolinger:

The Louisiana Department of Transportation and Development (LA DOTD) has issued a Scope of Services Package (RFP) for a potential design-build contract per Louisiana Revised Statutes 48:250.2 through 48:250.4 for the Interstate-10 (I-10) Widening Design-Build (DB) Project. The LA DOTD plans to award the Contract based on a best value determination using a lowest adjusted score approach, with the adjusted score determined by dividing the price plus time value by the technical score. This approach gives the contractor's team the flexibility to advance beyond the bare minimum approach and offers the best plan for the money and provides the best value to the State of Louisiana.

The LA DOTD RFP allows proposers to submit Alternate Technical Concepts (ATCs), consistent with 23 CFR 636.209, for review and approval (or disapproval) by the LA DOTD during the pre-proposal period. The ATCs will be approved only if they meet certain minimum requirements and are otherwise acceptable to the LA DOTD. 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 LA DOTD hereby requests that the requirement to submit separate proposals for the "base" and "alternate" technical concepts be waived for the I-10 Widening DB 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 involves preapproval of deviations from design requirements by LA DOTD, has been carefully crafted by the LA DOTD to avoid any potential unfairness. The ATC process gives the LA DOTD the ability to factor the proposers' technical solutions into the selection process, allowing a true "best value" selection; and gives the LA DOTD access to solutions from all proposers. It also gives the successful proposer a head start on implementation of its ATCs, and avoids unnecessary costs for proposers to advance a base design that ultimately will not be used.

Imposing a requirement for the proposers to submit separate proposals would impose an unnecessary burden on both the proposers and the LA DOTD, and would likely deter proposers from submitting ATCs. The LA DOTD 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 the character of the

Project nor require any additional environmental approvals. The LA DOTD therefore 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 Instructions to Proposers (ITP) included in the RFP for the I-10 Widening DB contract.
 - ITP Section 4.3.1 sets forth the LA DOTD's rationale behind the use of ATCs - further opportunity to incorporate innovation and creativity into the proposals, in turn allowing the LA DOTD to consider proposer ATCs in making the selection decision, to avoid delays and potential conflicts in the design associated with deferring of reviews of ATCs to the post-award period, and, ultimately, to obtain the best value for the public. It also clearly cites the approval criteria of "equal to or better" and describes concepts that would not be eligible for consideration as ATCs, including those that are premised upon or would require further environmental evaluation.
 - ITP Section 4.3.2 sets forth the detailed submittal requirements/contents of an ATC.
 - ITP Sections 4.3.2 and 4.3.3 lay out the specific submittal and review process for ATCs, including actions that may be taken by the LA DOTD.
 - ITP Section 4.3.3 outlines the determinations that may be made by the LA DOTD 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 4.3.3 also includes an acknowledgement by each proposer submitting a proposal that the opportunity to submit ATCs was offered to all proposers.
 - ITP Section 4.3.5 concerning confidentiality and ITP Section 2.5 concerning the non-public procurement process (set forth in Attachment 2) describe the confidentiality of ATCs, which is vital to the success 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 (set forth in Attachment 2) concerning one-on-one meetings, further reinforces the confidentiality of the ATC process.
 - ITP Section 4.3.4 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. 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 lowest adjusted 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, it is the intent in allowing ATCs so that both the outcomes of higher quality and lower price will occur.
- c. What happens if ATC is not feasible. The contract documents included in the RFP include provisions making it clear that the Design-Builder is responsible for designing the project in conformance with all contract requirements (including ATCs included in its proposal) and is also responsible for obtaining all third party approvals required for ATCs. ITP Section 4.3.4 clearly states that if the Design-Builder fails to obtain a required third party approval for an ATC, the Design-Builder will be required to comply with the original requirements of the RFP.
- d. Timeline for ATC approvals. Please refer to ITP Section 4.3.3 in Attachment 1.
- e. Betterments. As noted above, the LA DOTD wishes to encourage ATCs that will improve project quality as well as ATCs that reduce project costs without reducing quality. The evaluation process described above allows flexibility for the evaluators to consider quality enhancements.
- f. Changes in Project Basic Configuration. The LA DOTD will not approve any ATCs that include material changes in Basic Project Configuration. Following award of the contract, no material

Thank you, again, for your assistance. If you have any further questions or comments, please do not hesitate to contact Steven Cumbaa. The LA DOTD will be pleased to assist you. Of course, you should never hesitate to contact me directly.

Sincerely,

William D. Ankner, Ph.D
Secretary

Attachments

cc: Cheryl Duvieilh

Steve Cumbaa

Attachment 1: ITP Provision Concerning ATCs

4.3 ALTERNATIVE TECHNICAL CONCEPT SUBMITTALS

4.3.1 Alternative Technical Concepts

Sections 4.3.1 through 4.3.5 set forth a process for pre-Proposal review of ATCs conflicting with the requirements for design and construction of the Project, or otherwise requiring a modification of the Contract Documents. This process is intended to allow Proposers to incorporate innovation and creativity into the Proposals, in turn allowing the LA DOTD to consider Proposer ATCs in making the selection decision, to avoid delays and potential conflicts in the design associated with deferring of reviews of ATCs to the post-award period, and, ultimately, to obtain the best value for the public.

ATCs eligible for consideration hereunder shall be limited to those deviations from the requirements of the as-issued Contract Documents that result in performance and quality of the end product that is equal to or better than the performance and quality of the end product absent the deviation, as determined by the LA DOTD in its sole discretion. A concept is not eligible for consideration as an ATC if, in the LA DOTD's sole judgment, it is premised upon or would require (a) a reduction in Project scope; performance or reliability; (b) the addition of a separate project to the Contract (such as expansion of the scope of the Project to include additional roadways); (c) an increase in the amount of time required for Final Acceptance; or (d) further environmental evaluation of the Project.

Any ATC that has been pre-approved may be included in the Proposal, subject to the conditions set forth herein.

If a Proposer is unsure whether a concept is consistent with the requirements of the RFP or if that concept would be considered an ATC by the LA DOTD, the LA DOTD recommends that Proposer submit such concept for review as an ATC.

4.3.2 Pre-Proposal Submission of ATCs

A Proposer may submit ATCs for review to the LA DOTD at the address specified in Section 1.7.2, until the applicable last date and time for submittal of ATCs identified in Section 1.7.1 [October 14, 2009]. All ATCs shall be submitted in writing, with a cover sheet identifying Proposer and stating "I-10 Widening DB Project– Confidential ATCs." Proposer shall clearly identify the submittal as a request for review of an ATC under this ITP. If Proposer does not clearly designate its submittal as an ATC, the submission will not be treated as an ATC by the LA DOTD. ATC submittals shall include five copies of a narrative description of the ATC and technical information, including drawings, as described below.

Pre-Proposal ATC submissions shall include:

- (a) a sequential ATC number identifying Proposer and the ATC number (multi-part or multi-option ATCs shall be submitted as separate individual ATCs with unique sequential numbers);
- (b) a description and conceptual drawings of the configuration of the ATC or other appropriate descriptive information if appropriate;
- (c) the locations where, and an explanation of how, the ATC will be used on the Project;

- (d) any changes in roadway requirements, including traffic maintenance, associated with the ATC;
- (e) any changes in the anticipated life of the item(s) comprising the ATC;
- (f) any reduction in the time period necessary to design and construct the Project resulting from implementing the ATC, including, as appropriate, a description of method and commitments;
- (g) references to requirements of the RFP which are inconsistent with the proposed ATC, an explanation of the nature of the deviations from said requirements, and a request for approval of such deviations;
- (h) the analysis justifying use of the ATC and why the deviation, if any, from the requirements of the RFP should be allowed;
- (i) a preliminary analysis and quantitative discussion of potential impacts on vehicular traffic (both during and after construction), environmental permitting, community impact, safety, and life-cycle Project and infrastructure costs, including impacts on the cost of repair, maintenance and operation;
- (j) a description of other projects where the ATC has been used, the degree of success or failure of such usage and names and contact information including phone numbers and e-mail addresses for project owner representatives that can confirm such statements;
- (k) a description of added risks to the LA DOTD or third parties associated with implementing the ATC;
- (l) an estimate of any additional LA DOTD, Design-Build and third-party costs associated with implementation of the ATC;
- (m) an estimate of the adjustment to the lump sum Price Proposal should the ATC be approved and implemented; and
- (n) an analysis of how the ATC is equal or better in quality and performance than the requirements of the Contract Documents.

Proposer shall not make any public announcement or disclosure to third parties concerning any ATC until after pre-approval (including conditional pre-approval) has been obtained. Following pre-approval (including conditional pre-approval), if a Proposer wishes to make any such announcement or disclosure, it must first notify the LA DOTD in writing of its intent to take such action, including details as to date and participants, and obtain the LA DOTD's prior written consent, in its sole discretion, to do so.

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

4.3.3 The LA DOTD Review of Pre-Proposal Submission of ATCs

The LA DOTD may request additional information regarding proposed ATCs at any time and will, in each case, return responses to each Proposer regarding its ATC on or before the applicable last date set forth in Section 1.7.1 [October 30, 2009], provided that the LA DOTD has received all required and requested information regarding such ATC.

The LA DOTD will make a preliminary determination on whether to approve an ATC for submission. However, Proposer will be responsible for ensuring that the final submittal complies with the requirements of the RFP. After submission of final ATCs, the LA DOTD will make a final determination on whether to approve; conditionally approve, provided certain conditions are met; or reject an ATC.

Approval of an ATC will constitute a change in the specific requirements of the Contract Documents associated with the approved ATC for that specific Proposer. Each Proposer, by submittal of its Proposal, acknowledges that the opportunity to submit ATCs was offered to all Proposers, and waives any right to object to the LA DOTD's determinations regarding acceptability of ATCs.

The LA DOTD's rejection of a pre-Proposal submission of an ATC will not entitle Proposer to an extension of the Proposal due date or the date that the ATCs are due; provided, however, that the foregoing shall not limit the LA DOTD's absolute and sole right to modify the Proposal due date or any other date in connection with this procurement.

The LA DOTD anticipates that its comments provided to a Proposer will be sufficient to enable Proposer to make any necessary changes to its ATCs. However, if a Proposer wishes additional clarifications regarding necessary changes, Proposer may provide a written request for clarifications under Section 2.2.1.

4.3.4 Incorporation of ATCs in the Contract Documents

Following award of the Contract, the ATCs that were pre-approved by the LA DOTD and incorporated in the Proposal by the successful Proposer shall be included in the Contract Documents. If the LA DOTD responded to any ATC by stating that it would be acceptable if certain conditions were met, those conditions will become part of the Contract Documents. Notwithstanding anything to the contrary herein, if Design-Builder does not comply with one or more LA DOTD conditions of pre-approval for an ATC or Design-Builder fails to obtain a required third party approval for an ATC, Design-Builder will be required to comply with the original requirements of the RFP without additional cost or extension of time as set forth in the Contract.

4.3.5 Confidentiality

The ATCs and all communications regarding ATCs submitted by the Proposer and all subsequent communications regarding that ATC will be considered confidential in accordance with Section 2.5.

Attachment 2: Additional ITP Provisions

2.5 NON-PUBLIC PROCESS

The LA DOTD will maintain a process to ensure confidentiality for the duration of this procurement. In accordance with Louisiana Revised Statutes Section 48:255.1, the LA DOTD may require each Proposer to furnish sufficient information that will indicate the financial and other capacities of the Proposer to perform the proposed Work. This information will be subject to audit and must be submitted by the Proposer in a format clearly marked "confidential," and the information contained therein will be treated as confidential and will be exempted from the provisions of Louisiana Revised Statutes Sections 44:1 through 37.

Further, if the Proposer submits information in its Proposal that it wishes to protect from disclosure, the Proposer must do the following:

- A) Clearly mark all proprietary or trade secret information as such in its Proposal at the time the Proposal is submitted and include a cover sheet stating "DOCUMENT CONTAINS CONFIDENTIAL PROPRIETARY OR TRADE SECRET INFORMATION" and identifying each section and page which has been so marked;
- B) Include a statement with its Proposal justifying the Proposer's determination that certain records are proprietary or trade secret information for each record so defined;
- C) Submit one copy of the Proposal that has all the proprietary or trade secret information deleted from the Proposal and label such copy of the Proposal "Public Copy"; and
- D) Upon notice from the LA DOTD that a request for release of information has been received, the Proposer shall immediately defend any action seeking release of the records it believes to be proprietary or trade secret information and indemnify, defend, and hold harmless the LA DOTD and the State of Louisiana and its agents and employees from any judgments awarded against the LA DOTD and its agents and employees in favor of the party requesting the records, including any and all costs connected with that defense. This indemnification survives the LA DOTD's cancellation or termination of this procurement or award and subsequent execution of a Contract. In submitting a Proposal, the Proposer agrees that this indemnification and duty to defend survives as long as the confidential business information is in possession of the State.

Proposers and the LA DOTD agree that any records pertaining to this procurement will remain confidential until Contract execution, unless such records are proprietary or trade secret information. Should the LA DOTD receive a request for the release of information, not already protected, prior to Contract execution, the Proposer, whose information is requested, will defend and hold harmless the LA DOTD as set forth in Section 2.6(D).

4.2 ONE-ON-ONE MEETINGS

The LA DOTD may hold one-on-one meetings with individual Proposers at any time prior to the Proposal due date specified in Section 1.7.1. If one-on-one meetings are offered to one or more Proposers on the Short-List, they will be offered to all Proposers on the Short-List.

If the LA DOTD determines that one-on-one meetings are in the best interest of this procurement, an invitation to a one-on-one meeting will be sent to each Proposer on the Short-List identifying the specifics of the time, date, and location; attendees; and whether or not attendance at the joint informational meeting is mandatory.

Any information and documents necessary for the preparation of Proposals that are disclosed by the LA DOTD during the course of a one-on-one meeting will be made available to all Proposers as soon as practicable, provided that the LA DOTD will not disclose such information if doing so would reveal a Proposer's confidential business strategy. All Proposers and the LA DOTD agree that any other communications exchanged during the course of a one-on-one meeting will remain confidential until Contract execution, unless records are exchanged that are proprietary or trade secret information. Should the LA DOTD receive a request for the release of information, not already protected, prior to Contract execution, the Proposer, whose information is requested, will defend and hold harmless the LA DOTD as set forth in Section 2.6(D).

Attachment 3: Contract Provisions

5.0 BASIC PROJECT CONFIGURATION

The Basic Project Configuration shall consist of the following:

- A) The horizontal and vertical alignments;
- B) Number of interchanges;
- C) Number of bridges;
- D) Number of lanes;
- E) The general location of the limits of the Project;
- F) The minimum vertical and horizontal clearances; and
- G) The Right-of-Way limits.

5.1 STANDARD FOR DETERMINING MATERIALITY OF CHANGE IN BASIC PROJECT CONFIGURATION

The following are the standards for determining materiality of Basic Project Configuration changes:

- (1) Any change to the Project that affects the Project ROW limits or the minimum vertical and/or horizontal clearances;
- (2) A change in the termini of the Project (either or both) by more than one hundred (100) feet longitudinally;
- (3) Any change in the Project Right-of-Way limits depicted; and/or
- (4) Any change in Section 5.1(A) through (C) requiring a change in the permits secured from the United States (US) Army Corps of Engineers (COE) and the Louisiana Department of Natural Resources (DNR).