

January 11, 2013

Pamela S. Stephenson  
Division Administrator  
Federal Highway Administration  
55 Broadway, 10th Floor  
Cambridge, MA 02142-109355

**Subject:** Special Experimental Project No. 14 (SEP-14) Route 79/Interstate 195/Braga Bridge - Phase 2 Design-Build Project; Federal Aid Project No. 605223

Dear Ms. Stephenson:

The Massachusetts Department of Transportation (MassDOT) has commenced with the procurement process for the Route 79/Interstate 195 Interchange Reconstruction over Route 138/Braga Bridge - Phase 2 Project (Project). The Project is utilizing the Design-Build delivery method pursuant to subsection 14-21 of Chapter 149A of the Massachusetts General Laws as inserted by Section 27, Chapter 193 of the Acts of 2004. MassDOT is seeking federal aid for the Project, as part of the Accelerated Bridge Program, and has structured the procurement to comply with applicable federal requirements.

MassDOT plans to award the Design-Build contract based on a best value determination deriving the overall value rating pursuant to the objective formula set forth in the Request for Proposals (RFP), as the total price to MassDOT divided by the technical score. The Design-Build contract will be awarded to the Design-Build (DB) Entity whose overall value rating has the lowest price per quality score point. This approach offers DB Entities flexibility to advance beyond the approach and the technical requirements in the RFP and offers the best value to MassDOT.

MassDOT's RFP allows for DB Entities to submit confidential Alternate Technical Concepts (ATCs), consistent with 23 CFR 636.209, for review and approval (or disapproval) by MassDOT during the pre-proposal period. MassDOT has chosen the ATC process to allow the incorporation of innovation and flexibility into the Technical Proposal and the selection decisions process to avoid delays and potential conflicts in the design associated with the deferring of technical concept review to the post-award period, and ultimately to obtain the best value for the public. ATCs will be approved only if they meet or exceed certain minimum requirements and are otherwise acceptable to MassDOT. Federal Statute 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 DB Entities are competing for the same project.

Accordingly, MassDOT hereby requests that the requirement to submit separate proposals for the Base and Alternative Technical Concepts be waived for the Project, allowing each DB Entity the opportunity to submit ATCs for pre-approval and then to submit a proposal with or without approved ATCs. The ATC process, which requires preapproval by MassDOT of deviations and other technical requirements of the Design-Build contract and other contract documents, has been carefully crafted by MassDOT to avoid any potential unfairness. The confidential ATC process gives MassDOT the ability to factor the DB Entity's technical solutions into the selection process, allowing a true "best value" selection, and gives MassDOT access to solutions from all DB Entities. It also gives the successful DB Entity a head start on

implementation of its ATCs, and avoids unnecessary costs for DB Entities to advance a base design that ultimately will not be used.

Imposing a requirement for the DB Entities to submit separate proposals would impose an unnecessary burden on both the DB Entities and MassDOT, and would likely deter DB Entities from submitting ATCs. MassDOT 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, or increase the amount of time required to complete the Project. In addition, both the RFP and draft Design-Build contract place the cost and delay risk associated with any additional permits, governmental approvals and third party approvals necessitated by the ATC on the DB Entity. If the DB Entity is unable to obtain approvals or satisfy other conditions identified by MassDOT that are necessary to implement the ATC, the DB Entity is required to develop the Project in accordance with the Base Technical Concept contract and other contract documents without regard to the ATC and without any additional cost or an extension of time. Given these protections, MassDOT believes that a waiver of the requirement is appropriate.

Following is information supporting the waiver request:

- a. **Review process and requirements.** Attachment 2 is an excerpt of the ATC provisions from Volume I Instructions to Proposers (Vol. I) included in the RFP for the Project.
  - **Vol. I Section 2.4.2** sets forth MassDOT's rationale behind the use of ATCs as further opportunity to incorporate innovation and creativity into the proposals, in turn allowing MassDOT to consider DB Entities 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 refers to Volume II Technical Provisions which describes concepts that would not be eligible for consideration as ATCs.
  - **Vol. I Section 2.4.2.1, 2.4.2.2, and 2.4.2.3** sets forth the detailed submittal requirements/contents of an ATC and lays out the specific submittal and review process for ATCs, including actions that may be taken by MassDOT in response to ATCs.
  - **Vol. I Section 2.4.2.4** outlines the determinations that may be made by MassDOT on submitted ATCs. It also provides a notice to all DBE Entities that approval of an ATC constitutes pre-approval of a change from specific requirements of the contract documents that would otherwise apply.
  - **Vol. I Section 2.4.2.5** authorizes DB Entities to incorporate pre-approved ATCs into their proposals.
  - **Vol. I Section 2.4.2.6** addresses the confidential nature of ATCs. Confidentiality is a critical issue with DB Entities, who need to be reassured that their innovative thinking and concepts will not be shared with other, DB Entities.
- b. **How the ATC will be considered in the best value determination.** Each DB Entity 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 criteria, and a lowest overall value rating 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, MassDOT anticipates 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 DB Entity 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. Vol. I Sections 2.4.2.4 provide that if the DB Entity fails to obtain a required third party approval for an ATC, the DB Entity will be required to comply with the original requirements of the RFP Base Technical Concept.
- d. **Timeline for ATC approvals.** Please refer to Attachment 1, Schedule of Events.
- e. **Betterments.** As noted above, MassDOT 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 consideration and assistance. If you have any further questions or comments, please do not hesitate to contact me or Anne Gorczyca, Manager of the Design Build Program, at 857 368-9281.

Sincerely,

Frank DePaola, P .E.  
Administrator

#### Attachment 1

#### Schedule of Events

The following table provides the Proposed Schedule of Events for this Project through Notice to Proceed.

Table 1 Schedule of Events

Phase 1: Letter of Interest (LOI) and RFQ			
Event			
Advertisement of Project for Letter of Interest in:		Comm-Pass Newspapers- Central Register	6/01/12 6/02/12 6/13/12
Letters of Interest Due			7/16/12 12:00 PM
RFQ Issued to Interested Parties Submitting a LOI			7/31/12
MassDOT A&E Board and Construction Prequalification Applications Due			
RFQ Pre-Proposal Briefing (10 Park Plaza- Boston)			7/31/12 10:00 AM
Final Date to Submit Questions or Clarifications			10/12/12 1:00 PM

Statements of Qualifications Due	10/31/12	12:00 PM
Short List DB Entities Selected		
Short List DB Entities Notified	11/28/12	
<b>Phase 2: Request for Proposals</b>		
RFP Issued to Short List DB Entities	12/28/12	
Mandatory Pre-Proposal Meeting	1/24/13	9:00 AM
Pre Proposal Utility Meeting	1/24/13	10:30 AM
ATC One on One Meeting – Round 1*	1/31/13 and 2/1/13	8:00am – 4:00pm
ATC One on One Meeting – Round 2**	2/14/13	8:00am – 4:00pm
Last Day to Submit ATC for Approval	2/28/13	2:00 PM
Last Day to Submit Questions On the RFP	3/7/13	1:00 PM
Technical/Price Proposals Due (Proposal due date)	3/25/13	2:00 PM
Oral Presentations (if necessary)	4/4/13	
Public Price Opening/BVDB Date	5/1/13	2:00 PM
Escrow Bid Documents Due	5/4/13	
Anticipated BVDB Selection Date	5/3/13	
Anticipated Notice to Proceed	6/7/13	

\*10 Park Plaza, Conference Rooms 5 & 6

\*\* 10 Park Plaza, MBTA Board Room

## ATTACHMENT 2

### 2.4.2 ALTERNATIVE TECHNICAL CONCEPTS (ATCS)

Alternative Technical Concepts (ATCs) are any innovative deviation from BTC technical requirements which may either result in improved best value or a shorter Project duration which will not reduce but may increase the quality or functionality of the Facility. ATC Options may be premised on deviations from the technical RFP requirements, but must be shown to be consistent with the standards set forth in the RFP and Contract Documents. All ATC's shall comply with Environmental Approvals and permit requirements including time-of-year (TOY) restrictions. All ATCs must be approved in accordance with Section 2.4.2.

MassDOT has chosen to use the ATC process to allow the incorporation of innovation and flexibility into the Technical Proposals and the selection decision process, to avoid delays and potential conflicts in the design associated with deferring of technical concept reviews to the post-award period, and ultimately to obtain the best value for the public.

The ATC process allows DB Entities to submit for pre-approval proposed alternatives to the RFP requirements. MassDOT will not approve any ATC that entails a deviation from the requirements of the as-issued Contract Documents, unless MassDOT determines, in its sole discretion, that the proposed end product based on the deviation is equal to or better than the end product absent the deviation and does not deviate from the requirements that are already permitted by Environmental Approvals.

See Volume II - Technical Provisions, Section 4. 7. 7 for details related to where ATCs will not be allowed. DB Entities should note how their proposed ATCs will affect the remaining BTC and include all relevant interdependencies. Interdependent concepts may be combined into one ( 1) ATC and the DB Entity will need to describe/list all interdependent ATCs at the submission of the Executive Summary. Failure to either properly describe the interdependent components may result in denial of the entire ATC. Should it be determined that a component of the interdependent ATC is not allowable, the entire ATC, or a portion thereof, may be denied.

**Interdependent ATC** - A grouping of Alternative Technical Concepts composed of multiple deviations from the Base Technical Concept whose implementation is dependent on all components being approved.

An interdependency example: An ATC altering the design of the pier and/or abutment seismic retrofit. The DB entity would need to demonstrate that the redesign of the pier is interdependent upon the ability to redesign the seismic retrofit of the abutment.

Due to the number of structures in the Rte 79/1-95 Interchange/Braga Bridge Project, proposed changes to foundations may be combined into one (1) ATC and proposed changes to wall types may be combined into one ( 1) separate ATC.

**The DB Entity may propose a maximum number of three (3) ATCs.**

Contractor means and methods are not prescriptive and, therefore, do not require the submission of ATCs for approval. However, for the Rte 79/1-95 Interchange/Braga Bridge Project, traffic management, sequencing, and construction staging, are prescriptive requirements and are thereby not categorized as the Contractors' means and methods. Therefore, any proposed deviations to these requirements must be proposed as an ATC.

Neither acceptance nor rejection of an ATC by MassDOT will entitle the DB Entity to an extension of the Technical Proposal Due Date or the date the ATCs are due. Each DB Entity, by submittal of its Technical Proposal, acknowledges that the opportunity to submit ATCs was offered to all DB Entities and waives any right to object to MassDOT's determinations regarding acceptability.

#### **2.4.2.1 One-on-One Informational Meetings**

MassDOT shall conduct two (2) confidential one-on-one meetings with each DB Entity to discuss each ATC submitted. The submission of the ATC shall include an Executive Summary which fully describes the scope and impact the ATC has on the BTC. Refer to Section 2.4.2.2 for submission requirements of the Executive Summary. These confidential meetings will be held prior to submittal of the Technical/Price Proposal and the Last Date for MassDOT ATC Response.

**Meeting Dates:**

Meeting One - TBD

Meeting Two – TBD

**Meeting Schedule:**

The meeting for the DB entities will be 2 hours and 15 minutes in length.

- 1 Hour DB Presentation of submitted ATCs
- 45 Minute Break for MassDOT internal discussion
- 30 Minute Question and Answer Period

**2.4.2.1.1 MEETING ONE**

The goal of this confidential meeting is to provide MassDOT with an overview of the DB Entity's ATCs. This initial meeting will offer the DB Entity the opportunity to present up to three (3) ATCs within a maximum of two hour and fifteen minutes (2 hour and 15 minutes) time frame . DB Entities should be prepared to answer MassDOT questions which will focus solely on presented ATCs and be limited to clarification of those ATCs. No financial information shall be disclosed or discussed at these meetings .

**2.4.2.1.2 MEETING TWO**

During the second two (2) hour confidential meeting DB Entities will be given the opportunity to further refine and re-present ATCs that MassDOT determines require additional discussion after the first meeting. The presented ATCs will be limited to modifications of or additional discussion of the ATCs presented at the first meeting. This second meeting will allow DB Entities to present further developments in design of the ATC and should not solely focus on comments received by MassDOT during the first meeting. Resubmission of re-presented ATCs shall meet the requirements of section 2.4.2.2. Rejected ATCs will not be reconsidered.

**2.4.2.1.3 MEETING GUIDELINES**

MassDOT will not discuss with any DB Entity the contents of any Technical Proposal or ATCs other than its own. DB Entities shall not seek to obtain commitments from MassDOT in the meetings or otherwise seek to obtain an unfair competitive advantage over any other DB Entity. DB Entities are prohibited from discussing any ATC's with members of the MassDOT Selection Committee, MassDOT personnel or MassDOT consultants outside of the confines of the one-on-one meetings.

DB Entity team members attending the meetings should have the proper expertise to present and answer MassDOT ATC questions. Persons attending the one-on-one meetings will be required to sign an acknowledgment of the foregoing rules (see Attachment E) and identify all participants. The DB Entity shall bring the signed form to each meeting. All participants must attend in person - conference calls will not be permitted.

During each meeting DB Entities may ask questions relative to their presented ATCs and MassDOT may provide responses. Questions answered by MassDOT will solely focus on ATCs presented and the manner in which they may affect the BTC. Any general clarifying RFP questions should be submitted through MassDOT Specifications as noted in Section 1.6, of RFP Volume I.

MassDOT reserves the right to change or clarify the RFP Design Criteria or Project Requirements based on information or issues raised during the one-on-one meetings.

#### **2.4.2.1.4 ONE-ON-ONE MEETING ATTENDEES**

Meeting attendees will include the Selection Committee, MassDOT Office of the General Counsel, Federal Highway Administration, as well as any appropriate MassDOT technical experts. The MassDOT Office of the General Counsel Representative will ensure that all parties abide by the ATC process and adhere to the confidentiality agreements.

#### **2.4.2.2 INITIAL SUBMISSION OF ATCs**

DB Entities shall submit fourteen (14) copies of an Executive Summary marked confidential to the MassDOT Construction Contracts Engineer at least three (3) Business Days prior to their first one-on-one meeting. Each ATC should be separately titled and clearly described in one page or less.

DB Entities are required to bring fourteen (14) copies of their ATC Executive Summary including any supplemental information marked Confidential to each meeting. If DB Entities are presenting a PowerPoint, one (1) CD copy should be left with MassDOT. DB Entities should be prepared to present with their own equipment.

The Executive Summary should include the following information, presented in a summary fashion:

- Description of the general configuration of the ATC or other appropriate descriptive information such as schematic drawings of the configuration of the ATC and any schedule information beneficial to the review.
- Location where the ATC will be used on the Project.
- References to requirements of the RFP documents 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, or a determination that the ATC is consistent with the requirements of the RFP.
- Identification of any possible design exceptions required by the ATC.
- Potential issues with current or required Environmental Approvals.
- Discussion of potential impacts on vehicular traffic, environmental impacts (favorable or unfavorable), community impacts, safety and life-cycle Project and infrastructure costs (specifically impacts on the cost of future operation, repair, and maintenance).
- A list of other projects where the ATC has been used under comparable circumstances and the success of such usage.
- Description of added risks with implementing the ATC.
- Discuss and identify schedule benefits.

#### **2.4.2.3 INITIAL DETERMINATION BY MASS DOT**

Within three (3) business day after the first one-on-one ATC meeting, and if discussed in the second one-on-one meeting, MassDOT will make one of the following determinations with respect to each submitted ATC. DB Entities will receive the following notification from MassDOT:

- The ATC is pre-approved subject to further refinement and submission of supporting calculations
- The ATC is not approved with appropriate explanation
- The ATC requires additional discussion at the next one-on-one meeting
- Or, MassDOT requests the following information be included in your final ATC submission

#### **2.4.2.4 FINAL SUBMISSION OF ATCs**

Any DB Entity seeking final approval regarding the viability of a pre-approved ATC must submit a written request to the address identified in Section 2.1 no later than fourteen (14) days prior to the time and date specified as the Proposal Due Date in Section 1.3: Schedule of Events. Submissions received after that time or submissions with additional changes after the ATC has been pre-approved will not be accepted. Should MassDOT require clarification of final ATCs submitted, DB Entities are expected to respond within two (2) business days.

The submissions must contain sufficient information for MassDOT. to render an opinion. Fourteen (14) copies of the ATC marked confidential including a narrative submission, technical information, and drawings are required. This submission shall include all relevant material including applicable material presented during the one-one-one meetings. An electronic submittal of this information is required, e-mailed to the MassDOT Construction Contracts Engineer in addition to the hard copies. The electronic version shall be exactly the same as the hard copy version.

MassDOT will respond to the DB Entity within seven (7) Business Days with a final determination. If the DB Entity does not receive a return response from MassDOT within seven (7) Business Days of MassDOT's receipt of the ATC, the DB Entity shall presume that MassDOT has rejected the ATC.

Information to be included in final submission of ATCs:

- Description of the general configuration of the ATC or other appropriate descriptive information.
- Description shall be detailed and schematic drawings of the configuration of the ATC or other appropriate descriptive information, including if appropriate, product details (for example, specifications, construction tolerances, and special provisions), a traffic operational analysis, and any schedule information beneficial to the review.
- Location where the ATC will be used on the Project.
- References to requirements of the RFP documents 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, or a determination that the ATC is consistent with the requirements of the RFP.
- Identification of any design exceptions required by the ATC.
- The basis of the analysis justifying the use of the ATC and why the deviation (if any) from the requirements should be allowed.
- Analysis of potential issues with current or required Environmental Approvals.
- Discussion of potential impacts on vehicular traffic, environmental impacts (favorable or unfavorable), community impacts, safety and life-cycle Project and infrastructure costs (including impacts on the cost of future operation, repair, and maintenance).



- A detailed history of other projects where the ATC has been used under comparable circumstances, the success of such usage, and names and telephone numbers of project owners that can confirm such statements.
- Design calculations as necessary to support the use of the ATC.
- Description of the long-term durability of implementing the ATC.
- Description of added risks with implementing the ATC.
- Discuss and identify schedule benefits.

#### **2.4.3 FINAL DETERMINATION BY MASSDOT**

MassDOT will make one of the following determinations with respects to each properly submitted ATC:

- The ATC is approved
- The ATC is not approved with appropriate explanation

#### **2.4.4 INCORPORATION OF ATCs INTO TECHNICAL PROPOSAL AND CONTRACT**

Written approval of an ATC will constitute a change in the specific requirements of the Contract Documents associated with the approved ATC for that specific DB Entity. During design development, should the DB Entity be unable to obtain required approvals from 3rd parties for any ATC incorporated into the Contract Documents, or if the ATC otherwise proves to be infeasible, the DB Entity will be required to conform to the original BTC requirements with no additional time to complete the project regardless of when it is determined to be infeasible. MassDOT will not make any adjustments to the Contract value in the event that an ATC which was approved during the proposal phase cannot be implemented.

Each DB Entity may incorporate only approved ATCs into its Technical Proposal. Copies of MassDOT's ATC approval letters for each incorporated ATC shall be included in the Technical Proposal. Technical Proposals with or without ATCs will be evaluated against the same technical evaluation factors, and the inclusion of an ATC, including an ATC that provides technical enhancements, may or may not receive a higher technical rating.

Except for incorporating approved ATCs, the Technical Proposal may not otherwise contain exceptions to or deviations from the requirements of the RFP Documents. The RFP does not distinguish between a proposal that does not include any ATC's and proposals that include ATC's. Both types of proposals are evaluated against the same technical evaluation factors and a best value determination is made in the same manner.

Following award of the Contract, the BTC, as modified to incorporate ATCs accepted by MassDOT and other Technical Proposal concepts and commitments made by the DB Entity in the Technical Proposal will be considered the mandatory requirement to be met in constructing the Project. The Contract Documents will be conformed after award, prior to execution of the Contract, to reflect the accepted ATCs.

#### **2.4.5 ATC CONFIDENTIALITY**

Any and all ATC's properly submitted for MassDOT consideration (including those not included in the Technical Proposal) by a DB Entity and all subsequent communications regarding its ATC's will be considered confidential. If a Proposer wishes to make any announcement of disclosure to third parties concerning any ATC, it shall first notify MassDOT in writing of its intent to take such action, including details as to participants and dates, and obtain MassDOT's approval in advance. in advance.

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