

December 21, 2011

Mr. Gregory Murrill
Division Administrator
Federal Highway Administration
City Crescent Building
10 South Howard Street, Suite 2450
Baltimore, MD 21201

Attention: Mr. Sajid Aftab

Dear Mr. Murrill:

The purpose of this letter is to provide the Federal Highway Administration (FHWA) with a brief evaluation of the Maryland State Highway Administration's (SHA) experience using Alternative Technical Concepts (ATCs) in the procurement of the Interstate 95 (I-95) at Contee Road Interchange project. By letter dated August 15, 2011, the FHWA approved the SHA's request for a waiver to 23 CFR 636.209. Specifically, the SHA requested a waiver from the requirement that states "Alternate technical concept proposals may supplement, but not substitute, for base proposals that respond to the RFP requirements." The SHA's method of evaluating alternative technical concepts during the proposal review process was deemed satisfactory (with concurrence from FHWA Headquarters office) under FHWA's Special Experimental Program 14 (SEP-14), innovative contracting experimental program.

The Administration's procurement process for this Design-Build project was based on use of the "Competitive Sealed Proposals" procurement method as defined in the Code of Maryland Regulations (COMAR) 21.05.03. As a part of that process, the Administration used alternative technical concepts, as set forth in Terms and Conditions (TC) Sections 2.08.02.7 through 2.08.02.13 of the Request for Proposals (RFP), to allow innovation and flexibility to be incorporated into the Proposals.

The ATC process allowed Proposers to submit for pre-approval by the Administration their proposed alternatives to the requirements of the RFP. The Administration did not approve any ATC that entailed a deviation from the requirements of the RFP, unless the Administration determined, in its sole discretion, that the proposed end product based on the deviation was equal to or better than the end product absent the deviation. The Proposers were then permitted to incorporate any "pre-approved" ATC into their final Proposal, as they saw fit. It was not required that all approved ATCs be included in the Final Proposal.

The waiver of the FHWA's requirement to furnish a base proposal provided each proposer the opportunity to submit ATCs for pre-approval and then to submit a proposal with or without ATCs. The SHA's procurement process was carefully crafted to avoid any potential unfairness. Pre-approval of deviations from RFP requirements that otherwise would be deferred until after the contract is awarded was required as part of this process. The proposed ATC process gave the SHA the ability to factor each proposer's technical solutions into the selection process, allowing a true "Best-Value" selection and gave the SHA access to solutions from all proposers. It also gave the successful proposer a head start on implementation of its ATCs and avoided unnecessary costs and risks for proposers to advance a base design that may not be used.

The RFP contained all the Contract requirements against which an ATC was measured during the review. Any part of the Contract Documents could have been affected; however, ATCs were expected to propose alternatives to either a design requirement/performance specification or a directive element contained in the Concept Plans.

TC Sections 2.08.02.7 through 2.08.02.13 of the RFP contained all the requirements for both the submittal and the review of ATCs. Highlights of TC Sections 2.08.02.7 through 2.08.02.13 are as follows:

- To be approved, end products of ATCs must be equal to or better than the RFP concepts;
- The review must be completed by the Administration within two weeks of the receipt of an ATC;
- At the end of the review, the Proposer will be notified that their A TC was either approved, disapproved, conditionally approved, needs additional questions. answered, or does not qualify;
- Communications between the Administration and the Proposer to better understand the details of an A TC were permitted to take place in writing and/or in one-on-one meetings;
- Approved (or conditionally approved) A TCs constituted a change in the Contract requirement for only that Proposer and may be incorporated into only that Proposer's Proposal;
- ATCs were considered confidential, including the handling, safeguarding, reviewing and communications within the Administration.

By carefully maintaining the full confidentiality of the ATCs submitted, the Administration encouraged the Proposers to develop and submit ATCs. This provided opportunity for Proposers to differentiate their proposals by being creative and innovative. The Proposer's development of an ATC typically included engineering design beyond the design level provided by the Administration when the RFP was prepared. The approval of these A TCs during the proposal process provided the Proposer the ability to further develop the project design and construction schedules.

As part of the ATC submittal and review process, the Proposer was required to provide details concerning how the A TC would impact vehicular traffic, environmental impacts (favorable or unfavorable) identified on appropriate environmental documents, community impacts, and safety and life-cycle project and infrastructure costs (including impacts on the cost of repair and maintenance). The ATC process, therefore, led to approved ATCs that minimized the impact on the environment, did not reduce the overall quality of the final product, and would provide the "Best-Value" for the contract.

The I-95 at Contee Road Interchange project received a total of twenty ATCs from the three Design-Build Teams. The enclosure with this letter summarizes each ATC submitted including the proposed deviation from the Contract Documents and the Administration's determination.

The A TCs which were accepted or conditionally accepted by the Administration are listed below along with the estimated construction cost savings, estimated future construction cost savings, and estimated future maintenance cost savings as estimated by the Design-Build Team:

Overall ATC No.	Design-Build Team	Estimated Construction Cost Savings Due to ATC	Estimated Future Construction Cost Savings Due to ATC	Estimated Future Maintenance Cost Savings Due to ATC
1	American Infrastructure	\$1,200,000	\$1,100,000	\$50,000
2	American Infrastructure	\$340,000	\$315,000	\$15,000
4	Intercounty Connector Constructors, L.L.C	\$250,000	Not Provided	Not Provided
5	Intercounty Connector Constructors, L.L.C	Minimal	Not Provided	Not Provided
7	Intercounty Connector Constructors, L.L.C	\$75,000	Not Provided	Not Provided
10	Intercounty Connector Constructors, L.L.C	\$450,000 - \$500,000	Not Provided	Not Provided
12	Intercounty Connector Constructors, L.L.C	\$500,000	Not Provided	Not Provided
15	G.A. & F.C. Wagman, Inc	\$400,000	Not Provided	Not Provided
16	G.A. & F.C. Wagman, Inc	\$240,000	Not Provided	Not Provided

The usage of this ATC process allowed each Proposer to realize a construction cost savings for this project between approximately \$640,000 and \$1,790,000 in their bids and ultimately a savings to the Administration. Additionally, while cost savings were not quantified by all proposers, there will be future savings to the Administration for future construction costs when the Contee Road Bridge is widened and with maintenance savings in areas such as future bridge deck rehabilitation and painting of structural steel.

Based on the results of this procurement, the SHA believes that the ATC process utilized provided the "Best-Value" selection for this project and allowed the Administration to attain the maximum cost savings to the project while reducing future risks of delays and cost changes for both the Administration and the Selected Proposer in construction of this project.

If you have any questions or we may be of further assistance, please do not hesitate to contact Ms. Lisa B. Choplin, Chief, Innovative Contracting Division, at 410-545-8824, toll-free 1-888-228-6971 or via email lchoplin@sha.state.md.us. She will be happy to assist you.

Sincerely,
Melinda B. Peters
Administrator

Signed by
Kirk G. McClelland
Director, Office of Highway Development

Enclosure
cc: Ms. Lisa B. Choplin
Mr. Jeffrey T. Folden
Mr. John Zanetti