

July 9, 2012
Mr. Vincent P. Mammano
Division Administrator, California
U.S. Department of Transportation Federal Highway Administration, (HAD-CA)
650 Capitol Mall, Suite 4-100
Sacramento, CA 95814

Attention: Zylkia Martin-Yambo

Re: SEP-14 for the Devore Interchange Design-Build Project

Dear Ms. Martin-Yambo:

The California Department of Transportation ("Department") has commenced the procurement process for the I-15/I-215 Interchange Improvement Project (Devore) ("Project") in San Bernardino County, California. The Project is being developed using the design-build delivery method pursuant to California Public Contract Code Section 6800 et. seq.

The Department will make a best value determination to award the design-build contract for the Project. To make this determination, the Department 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") approved by the Federal Highway Administration ("FHWA"). The Department will award the design-build contract to the proposer whose proposal presents the Department 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 Department to select the proposer that offers the best value.

As permitted by the federal design-build rule, the Department is using an Alternative Technical Concept ("ATC") process which allows the Department to review and approved (or disapprove) ATCs prior to submission of the proposals. Pursuant to this process, the Department only approves ATCs if they meet certain minimum requirements and are otherwise acceptable to the Department. 23 CFR 636.209(b) permits ATCs for design-build procurements, but states, "Alternative 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 Department 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 Department's preapproval of deviations from design and other technical requirements of the RFP, has been carefully crafted ensure a fair procurement. The ATC process gives the Department the ability to factor the proposer's technical solutions into the selection process, allowing a true best value selection and gives the Department access to solutions from all proposers. It also gives the successful proposer a head start in implementing its A TCs, and avoids the 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 Department, and would likely deter proposers from utilizing the A TC process. The Department 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, the RFP place the cost and delay risks 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 Department that are necessary to implement an A TC, 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 of a time extension. Given these protections, the Department believes that a waiver of the requirement is appropriate. Thank you for your assistance. If you have any questions, please contact me at (916) 653-3348.

Sincerely,
RAYMOND S. TRITT
Design-Build Program Manager

RFP Provisions Concerning ATCs

3.7 Alternative Technical Concepts

Department has chosen to use the Alternative Technical Concepts (ATC) process set forth in this Section 3.7 to allow innovation and flexibility, to allow the design and construction to be completed together thereby minimizing conflicts and maximizing speed and efficiency, and ultimately to obtain the best value for the motoring public.

Department will only entertain ATC submittals that propose alternatives to the following Books and Sections: Book 2, Section 10 Earthwork Book 2, Section 12 Drainage Book 2, Section 13 Structures Book 2, Section 18 Maintenance of Traffic

Proposers may propose up to twelve (12) alternatives that are equal to or better in quality or effect as determined by Department in its sole discretion and that have been used elsewhere under comparable circumstances. Rejected ATCs and submitted ATCs that are deemed by Department to not qualify as an ATC are included in the maximum number of ATCs allowed.

3.7.1 Submittal of ATCs

A Proposer may include an ATC in its Proposal only if it has been received by Department by 1:00 p.m., Pacific Time, on the applicable ATC Submittal Due Date (identified in Section 2) and it has been Approved by Department (including Conditionally Approved ATCs, if all conditions are met). These submittal deadlines apply only to initial ATC submittals. Resubmittal of an ATC that has been revised in response to Department's requests for further information concerning a prior submittal shall be received by Department by 1:00 p.m., Pacific Time, within seven (7) days of Department's request. All ATC submittals and resubmittals shall be delivered to Department's Designated Contact specified in Section 3.3.

Each ATC shall be numbered sequentially, beginning with 1. Each ATC submittal shall be either e-mailed to Department's Designated Contact or hand delivered to Department at the address provided in Section 3.3. ATC submittals shall include five copies of a narrative description of the ATC and technical information, including drawings, as described below. If implementation of an ATC will require approval by a third party, Proposer will have full responsibility for, and bear the full risk of, obtaining any such approvals, except as expressly provided in the Contract.

ATC Submittal shall include:

- A. Description. A detailed description and schematic drawings of the configuration of the ATC or other appropriate descriptive information (including, if appropriate, product details [i.e., specifications, construction tolerances, special provisions] and a traffic operational analysis);
- B. Usage. Where and how the ATC would be used on the Project;
- C. Deviations. References to requirements of the RFP documents that 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;
- D. Analysis. An analysis justifying use of the ATC and why the deviations from the requirements of the RFP documents should be allowed; "Caltrans improves mobility across California"
- E. Impacts. Discussion of potential impacts on vehicular traffic, environmental impacts identified on appropriate environmental documents, community impact, safety and life-cycle Project impacts, and infrastructure costs (including impacts on the cost of repair and maintenance);
- F. History. A detailed description of other projects where the ATC has been used, the success of such usage, and names and telephone numbers of project owners that can confirm such statements;
- G. Risks. A description of added risks to Department and other Persons associated with implementing the ATC (e.g. maintenance, impacts to other design elements, etc.);
- H. Costs. Estimated price and cost impacts.

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

3.7.2 Review of ATCs

Department may request additional information regarding a proposed ATC at any time. Department will make every attempt to respond to the ATC in a timely manner. However, Department reserves the right not to respond to any ATC. Department and the Proposer can discuss ATCs at one-on-one meetings. Department's ATC response times and/or the one-on-one meetings will not be grounds for a protest.

Department will review each ATC and will respond to Proposer with one of the following determinations:

- A. The ATC is Approved.
- B. The ATC is not Approved.

- C. The ATC is not Approved in its present form, but may be Approved upon satisfaction, in Department's sole judgment, of certain identified conditions that shall be met or certain clarifications or modifications that shall be made (Conditionally Approved).
- D. The submittal does not qualify as an ATC but may be included in the Proposal without an ATC (i.e., the concept complies with the baseline RFP requirements).
- E. The submittal does not qualify as an ATC and may not be included in the Proposal.

3.7.3 Incorporation of ATCs into Contract

Proposer may incorporate zero, one, or more Approved ATCs as part of its Proposal (including Conditionally Approved ATCs, if all conditions are met).

Department reserves the right to utilize all ATC concepts included in an unsuccessful Proposer's Proposal if the Proposer accepts the Stipend. See Appendix H for information pertaining to trade secret and rights to use ideas.

Following identification of the Preferred Proposer, the ATCs that were Approved by Department and incorporated in the Proposal by the Preferred Proposer shall be incorporated into the Contract Documents. If Department has Conditionally Approved any ATC by responding that the ATC was acceptable subject to certain conditions being met, those conditions will become part of the Contract Documents. The Contract Documents will be conformed after identification of the Preferred Proposer, but prior to execution of the Contract, to reflect the ATCs, including any Department conditions thereto. Notwithstanding anything to the contrary herein, if Design-Builder does not comply with one or more "Caltrans improves mobility across California" Department conditions of Approval for acceptance of an ATC, including obtaining any necessary third party approvals, Design-Builder shall comply with the original requirements of the RFP without additional cost or extension of time as set forth in the Contract.

Prior to execution of the Contract, ATCs from unsuccessful Proposers may, in Department's sole discretion, be presented to the Preferred Proposer for possible incorporation in the Contract during finalization of the terms of the Contract pursuant to Section 6.3. In addition, following award, ATCs from unsuccessful Proposers may, in Department's sole discretion, be presented to the Preferred Proposer as a Department-Directed Change in accordance with the Contract.

Approval or Conditional Approval of an ATC by Department on this Project does not guarantee usage of the ATC concept on any other Department projects.

If the Proposer submits an ATC based on a proprietary product, they are solely responsible for meeting the requirements referenced in 23 CFR 635.411.

The Proposal Price should reflect any incorporated ATCs. Except for incorporating Approved ATCs, the Proposal may not otherwise contain exceptions to or deviations from the requirements of the RFP.

3.7.4 Confidentiality of ATCs

Subject to the provisions of the Public Records Act, all ATCs and all communications regarding ATCs will remain confidential until award or cancellation of the procurement, except that, upon identification of the Preferred Proposer, ATCs will be subject to disclosure to the Preferred Proposer. Upon award or

cancellation, such confidentiality rights shall be of no further force and effect except as otherwise allowed under the Public Records Act and applicable Law. By submitting a Proposal containing an Approved ATC, Proposer agrees, if it is not selected, to the disclosure of its work product to the Preferred Proposer.

Archived