

June 26, 2012

Mr. John Cater
FHWA Division Administrator
12300 W. Dakota Ave., Suite 180
Lakewood, Colorado 80228
Subject: Special Experimental Process- No. 14 (SEP-14): ATC Process

Dear Mr. Cater,

The Colorado High Performance Transportation Enterprise (HPTE) has legislative authority pursuant to C.R.S. 43-4-806 to develop and implement design-build contracting methods. The HPTE was created as a government-owned business by the FASTER legislation of 2009 (Senate Bill 108; 2009 Colo. Sess. Laws, Chap.5) and, while technically a division of the Colorado Department of Transportation (CDOT), is governed by its own Board. It is charged with the responsibility to aggressively pursue innovative means of more efficiently financing important transportation infrastructure projects that will improve the safety, capacity, and accessibility of the surface transportation system, can feasibly be commenced in a reasonable amount time, will allow more efficient movement of people, goods, and information throughout the state and will accelerate the economic recovery of the state.

Based upon the fundamentals of the federal design-build regulations, CDOT has developed a methodology for implementing alternative technical concepts (ATCs) on contracts procured under COOT's design-build programs that we believe enhance the effectiveness of the process described in 23 CFR 636. For HPTE projects that will be procured using the design build procurement method, HPTE will follow COOT's design build manual.

HPTE and CDOT propose, on a programmatic basis, to allow Proposers to submit ATCs in connection with federally funded design-build projects, consistent with 23 CFR 636.209, for review and approval (or disapproval) by HPTE/CDOT during the pre-proposal period. The ATCs will only be approved if they meet specific minimum requirements and are otherwise acceptable to HPTE/CDOT. 23 CFR 636.209 permits ATCs for design-build procurements, but states, "[a]lternative 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.

HPTE and COOT hereby request that the requirement to submit separate proposals for the base and the alternative technical concepts be waived on federally funded contracts that are subject to the federal design-build rule and that HPTE and/or COOT procures under COOT's design-build programs.

This waiver would apply to the U.S. 36 Managed Lanes I Bus Rapid Transit Phase 2 Project, which HPTE is currently procuring, as well as, to any future HPTE/CDOT design-build projects. This waiver would allow each Proposer the opportunity to submit ATCs to HPTE or CDOT for preapproval and then to submit a proposal with or without ATCs. In allowing the practice of including preapproved ATCs in proposals, HPTE/CDOT have carefully crafted and proposes to implement this procedure to avoid any unfairness. Pre-approval of deviations (from design requirements that otherwise would be deferred until after the contract is awarded) would be required as part of this process. The proposed ATC process would give HPTE/CDOT the ability to factor the Proposers' technical solutions into the selection process, allowing a true "best value" selection, and giving HPTE/CDOT access to solutions from all Proposers. It also would give the successful Proposer a head start on implementation of its ATCs, thereby avoiding unnecessary

costs and diversion of resources required for Proposers to advance a base design that will ultimately not be used.

Given COOT's (which is now also HPTE's) specific ATC process (see Attachment 1L we are concerned that compliance with the current federal requirement for the Proposers to submit separate proposals imposes an unnecessary burden on both the Proposers and HPTE/CDOT, and likely deters Proposers from submitting ATCs. CDOT has addressed the underlying concern regarding fairness by including minimum criteria for ATCs in its programmatic RFPs for design-build projects. The deviations that will be allowed will not result in a reduction of scope, performance, reliability or quality. In addition, deviations that extend the project will not be allowed. Given these protections, both HPTE and CDOT believe that a waiver of the requirement is appropriate.

The following is information supporting HPTE's and COOT's waiver request:

- a) Review process and requirements: Attachment 1 is the ATC provisions in COOT's Design Build Manual.

COOT's Design Build manual allows Proposers to submit ATCs for structures 11not historically used by CDOT/' which are identified in the RFP. If a Proposer suggests an ATC for a structure not on the list it must be approved by CDOT/HPTE. Each ATC must include a narrative and conceptual drawings. CDOT will then review and return verbal comments at one-on-one meetings with each Proposer and will be limited to either (1) the ATC is /{generally acceptable" and fits with the RFP; or, (2) the ATC is inconsistent with the RFP.

- b) How the ATC will be considered in the best value determination:

The one-on-one meetings are used to give the Proposers the opportunity to present and explain each ATC to HPTE/CDOT, in order to ensure that HPTE/CDOT fully understands such ATC; (b) to discuss the proposed deviations from the basic configurations, design criteria, construction criteria, operation and maintenance criteria or other technical requirements of the RFP; and to answer questions and address other issues related to ATCs. The Proposer then has the option to incorporate zero, one or more approved ATCs as a part of its proposal.

- c) What happens if the ATC is not feasible?

If an ATC requires Governmental Approvals, the Proposer has full responsibility for obtaining all such approvals. If any required approval is not subsequently granted with the result that the Proposer must change its approach to meet the original requirements of the Contract Documents, the Proposer will not be eligible for a Change Order that increases the Contract Price or extends the Completion Deadlines.

- d) Timeline for ATC approvals

HPTE/CDOT will provide comments at the one-on-one meetings and will provide approval of the ATCs at a date specified in the RFP.

- e) Quality Enhancements

HPTE/CDOT wish 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.

If you should have any questions or require additional information, please feel free to contact Tim Harris at (303) 757-9204 or Michael Cheroutes at (303) 757-9607.

Sincerely,

Timothy J. Harris, P.E., Chief Engineer, COOT

And

Michael Cheroutes, Director, HPTE

ATTACHMENT 1:

ATC PROVISIONS CONTAINED IN THE CDOT DESIGN BUILD MANUAL

Alternative Technical Concepts or ATC's

Proposers shall submit Technical Approaches to any Structures not historically used by CDOT. The Structures section of Book 2 will identify these structures. No Technical Approach to any Structure that varies from what is historically used by CDOT will be permitted unless it has been approved by CDOT. The Proposer may submit any other Technical Approaches.

A Technical Approach submission must include:

1. A narrative description of the Technical Approach.
2. Conceptual drawings of the Technical Approach, if the Technical Approach affects drawings.

CDOT will review all submitted ACCs and ATCs, and return verbal comments, as determined in COOT's sole discretion, to each Proposer during the one-on-one meeting. CDOT will return written comments by a date specified and listed in the RFP.

Caution must be exercised in the verbalized and written response to all ACCs and ATCs.

Comments on Alternative Configuration Concepts, ACCs, will be limited to one of the following statements:

- The ACC is Approved
- The ACC is not Approved
- Identification of any conditions, which must be met in order to Approve the ACC

Comments on Alternative Technical Concepts, ATC's, will be limited to one of the following statements:

- The Technical Approach appears to be generally acceptable and within the Contract Document requirements; or

- Identification of areas in which the approach appears to be inconsistent with the Contract Document requirements.

The Proposer may incorporate zero, one, or more Approved ACCs as part of its Proposal. If a Proposer incorporates an ACC with conditions into its Proposal, the Proposer shall be responsible to comply with the ACC conditions if Awarded the Contract. Copies of COOT's ACC Approval letters for each incorporated ACC shall be included in the Proposal. Except for incorporating Approved ACCs or ACCs with conditions at Proposer's risk, the Proposal may not otherwise contain exceptions to or deviations from the requirements of the RFP.

With Industry Review complete CDOT is ready to prepare and transmit official responses to ACCs and ATCs, and prepare the release of the Amended Final RFP and ITP.

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