



IDAHO TRANSPORTATION DEPARTMENT

P.O. Box 7129
Boise ID 83707-1129

(208) 334-8000
itd.idaho.gov

January 13, 2015

Peter Hartman, Division Administrator
Federal Highway Administration
3050 Lakeharbor Ln, Suite 126
Boise, ID 83703

RE: Special Experimental Project No. 14 (SEP-14) Annual Reporting Requirement
23 CFR 636, Design-Build Alternative Technical Concepts

Dear Mr. Hartman:

Per the requirements of the SEP-14 application and subsequent approval, we are hereby submitting the Department's report regarding activity on design-build projects for the previous calendar year.

Please don't hesitate to contact me if you have any comments or questions.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Monica Crider', is written over a large, diagonal, grey 'Archived' watermark.

Monica Crider, P.E.
Contracting Services Engineer

Enclosures:

Design-Build ATC Report
Copy of SEP-14 Application and approval letters

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Idaho Transportation Department

Innovative Contracting

**Special Experimental Project No. 14 (SEP-14)
Design-Build Alternative Technical Concepts
Annual Report**

Reporting Year: 2014

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SEP-14: Design-Build ATC Annual Report

Introduction

In 2010 the Idaho Transportation Department (ITD) was given legislative authority to utilize design-build contracting methods. Idaho Code §40-904 describes three procurement approaches: 1) best-value, 2) fixed-price-best-design, and 3) lowest-price-technically-acceptable. As a commitment to FHWA, ITD submits this annual report summarizing the statistics of the design-build process that has been utilized on federal-aid projects. This report includes:

- 1) A list of all design-build projects awarded the prior year, including relevant project identification
- 2) The number of proposers on each project, both the Request for Qualifications (RFQ) and Request for Proposals (RFP) phase
- 3) Details about the Department's determination of the ATCs submitted
 - a. Number of ATCs acceptable for inclusion in the Proposal
 - b. Number of ATCs not acceptable for inclusion in the Proposal
 - c. Number of ATCs not acceptable as submitted, but may or may not be conditionally accepted
 - d. Number of ATCs not qualifying as an ATC because it appears to be within the requirements of the RFP
- 4) Summary of ATCs that were included in the Proposer's proposal
- 5) The engineer's estimate and results of the public price opening
- 6) A comprehensive list of any complaints related to the ATC process
- 7) A comprehensive list of any formal protests filed on projects utilizing the ATC process

Awarded Projects

For this reporting year, the Department awarded the following project.

Key No.	Project No.	Project Name	Proposers	
			RFQ	RFP
13393	A013(392)	SH-55, N Fork Payette Rv Bridge, McCall	6	3

Alternative Technical Concepts (ATC)

Alternative technical concepts (ATCs) are concepts that modify the requirements for design and construction of the project, or otherwise require a modification of the technical requirements of the Project. This process is intended to:

- A. Allow proposers to incorporate innovation and creativity into the Proposals;
- B. Allow the Department to consider Proposer ATCs in the selection decision;
- C. Avoid delays and potential conflicts in the design associated with the deferring of reviews of ATCs to the post-award period; and
- D. Obtain the best value for the public.

ATCs eligible for consideration shall be limited to those deviations from the requirements of the RFP 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 Department in its sole discretion, or reduces project costs or both. A proposed ATC is not acceptable if it merely seeks to reduce quantities, performance or reliability, or seeks a relaxation of the contract requirements.

The Department reserves the right to review all ATC's to determine if they are acceptable for inclusion in a proposal. A Proposer may submit an ATC for review to the Department until the last date and time specified in RFP. All ATCs must be submitted in writing, with a cover sheet identifying the Proposer and stating "Confidential ATC." Proposers shall clearly identify the submittal as a request for review of an ATC in connection with an RFP. If a Proposer does not clearly designate its submittal as an ATC, the submission will not be treated as an ATC by the Department.

All Department responses will be limited to one of the following statements:

- A. The ATC is acceptable for inclusion in the Proposal.
- B. The ATC is not acceptable for inclusion in the Proposal.
- C. The ATC is not acceptable in its present form, but may be acceptable upon the satisfaction, in the Department's sole discretion, of certain identified conditions, modifications, or clarifications which must be met.
- D. The submittal does not qualify as an ATC but may be included in Proposer's Proposal because it appears to be within the requirements of the RFP.

Below is a summary of the ATC's that were submitted on projects for this reporting period.

Project	ATCs Submitted	ATCs Acceptable	ATCs Not Acceptable	ATCs Conditional	ATCs Not Qualifying	ATCs Included
SH-55, N Fork Payette Rv Bridge, McCall	9	1	4	3	1	1

For the winning proposal of the SH-55, N. Fork Payette River Bridge project, only one ATC was incorporated. This ATC proposed the use of metal stay-in-place (SIP) deck forms for the new bridge that would be constructed to the side of the existing bridge and slid horizontally into final position.

Formal Protests Related to the ATC Process

Proposers that are not selected for award of a contract may challenge the Department's determination in accordance with the procedures outlined in Idaho Code § 40-902(5). A challenge must be filed with the Department within seven (7) calendar days of the date the Department transmits the Technical Proposal evaluation results or the public price opening, whichever is later. For the SH-55, N. Fork Payette River Bridge project no formal protests were filed with regards to the ATC process.

Complaints Related to the ATC Process

For the SH-55, N. Fork Payette River Bridge project, the Department did not receive any complaints related to the ATC process.

Engineer's Estimate and Public Price Opening

Price proposals for the one project listed below were reviewed during the reporting period. Below are the results of the public price opening, along with the project's engineer's estimate.

Project: SH-55, N. Fork Payette River Bridge, McCall
Project No: A013(392)
Key No: 13392
Date: 03/27/2014

Engineer's Estimate: \$5,000,000.00

Value Per Day (VPD) \$7,7000.00

Firm	Tech Prop Score (S)	Contract Time (D, days)	Time Value (TV = D x VPD)	Price Proposal (PP)	Time Adjusted Price (TAP = TV + PP)	Adjusted Score (AS = TAP/S)	Rank
Braun-Jensen/Stamley Consultants	74.56	192	1,478,400.00	4,755,000.00	6,233,400.00	83,602.47	2
Ralph L. Wadsworth/H.W. Lochner	76.02	194	1,493,800.00	3,639,767.46	5,133,567.46	67,529.17	1
Slayden Constr. Group/T.Y.LIN International	83.86	259	1,994,300.00	6,400,000.00	8,394,300.00	100,098.97	3

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December 31, 2012

Peter Hartman, Division Administrator
Federal Highway Administration
3050 Lakeharbor Ln, Suite 126
Boise, ID 83703

RE: Special Experimental Project No. 14 (SEP-14) Application
23 CFR 636, Design-Build Alternative Technical Concepts

Dear Mr. Hartman:

In 2010 the Idaho Transportation Department (ITD) was given legislative authority to utilize design-build contracting methods. Idaho Code §40-904 describes three procurement approaches: 1) best-value, 2) fixed-price-best-design, and 3) lowest-price-technically-acceptable. 23 CFR 636.209 permits Alternative Technical Concepts (ATC) for design-build procurements, but states, "Alternative technical concept proposals may supplement, but not substitute for the base proposals that respond to the Request for Proposals (RFP) requirements."

ITD hereby requests that the requirement to submit separate proposals for the "base" and "alternate" technical concepts be waived for all federally-funded design-build contracts that are subject to the federal design-build rule. ITD intends to allow design-build proposers to submit ATCs, consistent with 23 CFR 636.209, for evaluation by the department during the pre-proposal period. The ATCs will be approved only if they meet certain requirements and are otherwise acceptable to ITD.

This request is intended to allow design-build proposers the flexibility to advance the base concept and investigate innovative technical solutions. The proposer would then have the ability to include pre-approved ATCs in a single technical and price proposal in response to the Request for Proposals (RFP).

Including pre-approved ATCs in the technical proposals avoids unnecessary costs for proposers to advance a base design that may ultimately not be used, eliminating unnecessary burden and expense on both the proposers and the Department, and encouraging proposers to be innovative and investigate ATCs. It also allows ITD to evaluate the proposed solutions during the evaluation process, resulting in a true best-value determination and giving the Department access to solutions from all proposers.

Enclosed is an excerpt from the department's design-build RFP template that will be the basis of all design-build procurements. Section ITP.3.3 outlines Alternative Technical Concepts including goals and eligibility, disclosures, pre-proposal requirements, department review, submission requirements, incorporation into the contract documents, and confidentiality. As drafted, the RFP requires that each proposer submits only one technical proposal and one price proposal, with no discernment of proposals that include or do not include ATCs. All technical proposals will be evaluated against the same criteria, evaluating ATCs with the criteria that it pertains to and not separately. A pre-approved ATC may or may not result in a higher technical score or result in a lower price, however the intent is that both the outcomes of higher quality and lower price will occur.

ITD will submit documentation to the Division Office annually, in January for the previous calendar year, summarizing the statistics of the design-build process and specifically ATCs. The reportable elements shall include:

- 1) A list of all design-build projects awarded the prior year, including relevant project identification
- 2) The number of proposers on each project, both the RFQ and RFP phase
- 3) Details about the department's determination of the ATCs submitted
 - a) Number of ATCs acceptable for inclusion in the Proposal
 - b) Number of ATCs not acceptable for inclusion in the Proposal
 - c) Number of ATCs not acceptable as submitted, but may or may not be conditionally accepted
 - d) Number of ATCs not qualifying as an ATC because it appears to be within the requirements of the RFP
- 4) Summary of ATCs that were included in the proposer's proposal
- 5) The engineer's estimate and results of the public price opening
- 6) A comprehensive list of any complaints related to the ATC process
- 7) A comprehensive list of any formal protests filed on projects utilizing the ATC process

The Department believes that approval of this request will enhance the effectiveness of the process described in 23 CFR 636, promote innovation and will provide the best value to the State of Idaho. Potential concerns regarding fairness and open competition have been addressed by including minimum criteria and a clearly defined process for submittal and review of ATCs in the RFP. The Department is confident that the process will not result in a reduction of scope, performance, reliability, or quality in the projects.

Please don't hesitate to contact me if you have any questions or would like to discuss this requested action, (208) 334-8772.

Sincerely,



Amy Schroeder, P.E.
Innovative Contracting Manager

Enclosure

ITP.3.3 ALTERNATIVE TECHNICAL CONCEPTS

Alternative technical concepts (ATCs) are concepts that modify the requirements for design and construction of the Project, or otherwise require a modification of the technical requirements of the Project. This process is intended to:

- A. Allow Proposers to incorporate innovation and creativity into the Proposals;
- B. Allow the Department to consider Proposer ATCs in the selection decision;
- C. Avoid delays and potential conflicts in the design associated with the deferring of reviews of ATCs to the post-award period; and/or
- D. Obtain the best-value for the public.

ITP.3.3.1 ATC Goals and Eligibility

ATCs eligible for consideration shall be limited to those deviations from the requirements of this RFP 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 Department in its sole discretion, or reduces project costs or both. A proposed ATC is not acceptable if it merely seeks to reduce quantities, performance or reliability, or seeks a relaxation of the contract requirements.

ATCs, if implemented, will require further evaluation of all Project impacts, as described in ITP.3.3.4. The Proposer shall bear the schedule and cost risk associated with all ATC impacts. If the Proposer is not able to obtain the approvals of third parties necessary to implement the ATC, the Proposer will be obligated to develop the Project in accordance with existing approvals and without additional cost or extension of time.

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 Department, the Department recommends that Proposer submit a concept for review as an ATC.

ATCs that have been pre-approved, and is included in the Proposal, shall become part of the Contract.

ITP.3.3.2 ATC Disclosures

If implementation of an ATC will require approval by a third party (e.g., a governmental authority), Proposer shall take full responsibility for, and bear the full risk of, obtaining any such approvals after award of the Contract and submission of data; provided, however, that the Department shall retain its role as liaison with any governmental authorities, as more particularly described in the RFP and contract documents and as may be applicable. If any required third-party approval is not subsequently granted with the result that Proposer must comply with the requirements of the original RFP, Proposer will not be entitled to a change order for additional compensation or time under the Contract, as applicable.

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

ITP.3.3.3 Incorporation of ATCs into the Contract

Following award of the Contract, any ATC that was pre-approved by the Department and incorporated in the Proposal by the successful Proposer shall be included in the Contract documents, as applicable. If the Department responds to any ATC by stating that it would be acceptable if certain conditions were met, those conditions will become part of the Contract documents, as applicable. The Contract documents will be conformed after award, but prior to execution of the Contract, to reflect the ATC, including any

Department conditions thereto. Notwithstanding anything to the contrary herein, if Proposer does not comply with one or more Department conditions of pre-approval of an ATC or Proposer fails to obtain a required third-party approval of an ATC, the Proposer shall comply with the original requirements of the RFP without additional cost or extension of time as set forth in the Contract, as applicable.

ITP.3.3.4 Pre-Proposal Submission of ATC's

Proposer may submit an ATC for review to the Department until the last date and time specified in Table ITP-1 (Proposal and Contract Award Schedule). All ATCs must be submitted in writing, with a cover sheet identifying the Proposer and stating "<Project Name> - Confidential ATC." Proposer shall clearly identify the submittal as a request for review of an ATC under this RFP; if Proposer does not clearly designate its submittal as an ATC, the submission will not be treated as an ATC by the Department.

An ATC submittal shall include six (6) hard copies (one (1) original and five (5) copies) of a narrative description of the ATC and technical information, including drawings, as described below.

Each ATC submission shall include:

- A. A sequential ATC number identifying the Proposer and the ATC number. Submit multipart or multi-option ATCs as separate individual ATCs with unique sequential numbers.
- B. References to requirements of the RFP 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.
- C. A description and conceptual drawings of the configuration of the ATC or other appropriate descriptive information including locations and an explanation of how the ATC will be used on the Project.
- D. The analysis justifying use of the ATC and why the deviation, if any, from the requirements of the RFP should be allowed.
- E. A review of and statement regarding the compliance with applicable standards and manuals.
- F. A preliminary analysis of potential impacts on vehicular traffic (both during and after construction), right-of-way, geotechnical, utilities, environmental permitting, local community, safety, and life-cycle project and infrastructure costs, including impacts on the cost of repair, maintenance, and operation.
- G. A description of added or reduced risk to the Department or third parties associated with implementing the ATC.
- H. An estimate of any added or reduced Department, Proposer, or third-party cost associated with implementation of the ATC.
- I. Any change in the anticipated life of the item(s) comprising the ATC.
- J. Any change in routine maintenance requirements associated with the ATC, including ease of maintenance.
- K. A description of other projects on which the ATC has been used, the degree of success or failure of such usage, and the names and contact information (including telephone numbers and e-mail addresses) of project owner representatives who can confirm such statements.
- L. An analysis of how the ATC is equal or better in quality and performance than the requirements of the contract documents, as applicable.

ITP.3.3.5 Department Review of ATCs

The Department may request additional information regarding a proposed ATC at any time. The Department intends to respond to each Proposer regarding its ATC within seven (7) calendar days of the ATC due date in Table ITP-1 (Proposal and Contract Award Schedule), provided that the Department has received all required and requested information regarding such ATC. The Department reserves the right to further review to determine if the ATC may not be acceptable for inclusion in the Proposal.

The Department's responses will be limited to one of the following statements:

- A. The ATC is acceptable for inclusion in the Proposal.
- B. The ATC is not acceptable for inclusion in the Proposal.
- C. The ATC is not acceptable in its present form, but may be acceptable upon the satisfaction, in the Department's sole discretion, of certain identified conditions which must be met or clarifications or modifications that must be made.
- D. The submittal does not qualify as an ATC but may be included in Proposer's Proposal because it appears to be within the requirements of the RFP.

The Proposer will be responsible for ensuring that the Proposal submittal complies with the requirements of the RFP. Approval of an ATC will constitute a change in the specific requirements of the contract documents, as applicable, associated with the approved ATC for the 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 Department's determinations regarding acceptability of ATCs.

The Department's rejection of an ATC will not entitle Proposer to an extension of the proposal due date or the date that the ATCs are due; however, the foregoing shall not limit the Department's absolute and sole right to modify the proposal due date or any other date in connection with this procurement.

The Department anticipates that its comments provided to a Proposer will be sufficient to enable the Proposer to make any necessary changes to an ATC. However, if a Proposer wishes additional clarifications regarding necessary changes, the Proposer may provide a written request for clarifications under ITP.2.4 (Proposer Questions). Comments will not be provided to the Proposer for ATCs that are not accepted by the Department.

ITP.3.3.6 ATC Confidentiality

To the full extent protected from disclosure by Idaho Code § 9-340D and Idaho Code § 40-904(24)(g), ATCs and all communications regarding ATCs will remain confidential until Contract award. By submitting a Proposal, and accepting the stipend, the Proposer agrees, if it is not selected and the ATC was used in the Proposal, to the disclosure of the ATC to the successful Proposer.

If the stipend is issued to an unsuccessful Proposer, any ATC used in the Proposal from the unsuccessful proposer may, at the Department's sole discretion, be used in connection with the Contract awarded for the Project and presented to the Design-Build Firm as a change order, or in connection with a subsequent procurement, without any additional compensation to the unsuccessful Proposer.



U.S. Department
of Transportation

**Federal Highway
Administration**

Memorandum

Subject: **ACTION:** Alternative Technical Concept (ATC)
Programmatic Waiver under Special Experimental
Projects No. 14 (SEP-14)

Date: January 30, 2013

From: David A. Nicol 
Director, Office of Program Administration

Reply to
Attn. of: HIPA-30

To: Peter J. Hartman III
Division Administrator
Boise, ID

This is in reference to Mr. Kyle Holman's December 31, 2012 email that forwarded a request from the Idaho Transportation Department (ITD) for a programmatic waiver of the requirements of 23 CFR 636.209(b) for all Federal-aid design-build project in Idaho.

The ITD is requesting a waiver of the above regulatory requirement that requires design-build proposers to submit separate proposals for the "base proposal" and "alternate technical concept proposals." The ITD states that their procurement process will provide for a fair and transparent review process by allowing each proposer to submit ATCs for pre-approval and then submit proposals either with or without the pre-approved ATCs. This approval process gives ITD the ability to factor innovative technical solutions in their determination of the best value selection.

In their December 31, 2012 workplan, ITD proposes to evaluate and annually report the following information relating to this waiver:

1. A list of all design-build projects awarded the prior year, including relevant project identification,
2. The number of proposers on each project, both the RFQ and RFP phase,
3. Details about the department's determination of the ATCs submitted
 - a. Number of ATCs acceptable for inclusion in the Proposal
 - b. Number of ATCs not acceptable for inclusion in the Proposal
 - c. Number of ATCs not acceptable as submitted, but may or may not be conditionally accepted
 - d. Number of ATCs not qualifying as an ATC because it appears to be within the requirements of the RFP,
4. Summary of ATCs that were included in the proposer's proposal,
5. The engineer's estimate and results of the public price opening,
6. A comprehensive list of any complaints related to the ATC process, and
7. A comprehensive list of any formal protests filed on projects utilizing the ATC process.

This waiver is approved under our SEP-14 innovative contracting experimental program. Thank you for the opportunity to review and comment on this SEP-14 request. Should you have any questions, please contact Gerald Yakowenko at (202) 366-1562.

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