



U.S. Department  
of Transportation

Federal Highway  
Administration

# Memorandum

Subject: **ACTION:** Kentucky Programmatic Request for  
the Use of Alternate Technical Concepts on  
Design-Bid-Build Projects under Special  
Experimental Project No. 14 (SEP-14)

Date: March 7, 2017

From: /S/ Peter J Stephanos  
Director, Office of Program Administration

In Reply Refer To:  
HIPA-30

To: Thomas L. Nelson Jr., P.E.  
Division Administrator  
Frankfort, KY

This memorandum is in reference to emails sent on February 7 and 21, 2017 by Dana Robbins of your staff which provided the following documents:

1. A February 6, 2017, cover letter from your office transmitting the Kentucky Transportation Cabinet's Programmatic Request for the use of Alternate Technical Concepts (ATCs) on Design-Bid-Build (D-B-B) projects under Special Experimental Project No. 14 (SEP-14);
2. A request (undated) from the KYTC to use ATCs on D-B-B contracts;
3. The (undated) KYTC Alternate Technical Concept Work Plan (on D-B-B contracts), which was replaced by an updated version dated February 16, 2017;
4. The (undated) KYTC Guidelines and Procedures for Alternative Technical Concept Process – Template, which was replaced by an updated version transmitted to our office on February 21; and
5. Proposed responses to comments by John Huyer of our office dated February 16, 2017 - This document contains our office's comments with KYTC's response to each comment.

The KYTC requests programmatic approval under SEP-14 to use ATCs on federal-aid D-B-B projects that both agencies deem appropriate for a two year evaluation period. It is anticipated 2-4 projects during the two year period will be pursued

Major aspects of the ATC Workplan include:

- The Kentucky Transportation Cabinet (KYTC) will follow traditional D-B-B procurement, award and execution procedures per the current edition of KYTC's Standard Specifications for Road and Bridge Construction.
- Prior to advertisement of the contract, project plans will be made available and all potential bidders interested in submitting an ATC will be invited to a mandatory informational meeting where KYTC will explain how the ATC process works and

- define the project's overall scope. Bidders not participating in the ATC process are not required to attend the informational meeting. This will normally be 6 months in advance of the official 21 day (minimum) advertisement period but may be reduced or extended depending on the complexity of the project.
- Consultants that assisted in development of the project plans and/or contract documents will not be permitted to participate with contractors on ATC(s).
  - After the ATC informational meeting and ahead of the project advertisement, prequalified bidders that participated in the informational meeting may request confidential meetings with the Technical Review Committee (TRC) to discuss potential ATCs at a concept level. The TRC will seek further development of the ATC by the contractor if the concept is deemed to add value and meets or exceeds the intent of the Project Plans. Seeking further development is not approval of the ATC.
  - After receiving additional details on an ATC, the TRC will review and inform the contractor, confidentially, if the ATC is approved or rejected for bidding purposes.
  - ATC(s) that impact additional right of way or the environment may be considered. On those rare occasions of approval, KYTC would take responsibility for updating the environmental document and purchasing the right of way that are needed for the ATC.
  - For approved ATCs, the contractor may bid the alternate line item "ATC" to replace applicable bid item(s) in the project plans. This may be all bid items, depending on the complexity of the ATC. With the ATC alternate bid, the contractor will be required to submit a "Schedule of Values" to support the total cost of that alternate bid item that can be used for progress payments and materials testing of the ATC. Depending on the applicable items being replaced in the project plans, the contractor may become the engineer of record. KYTC will advise the contractor upon approval of the ATC on whether they will become the engineer of record.
  - Contractors that have approved ATC(s) but are unsuccessful in the bid process may be eligible for a stipend. KYTC will pay up to 0.1% of the contract value or up to 1% of the difference in the project estimate and the approved ATC depending on the complexity of the project. The purpose of the stipend is for KYTC to: a) provide an incentive for innovation, b) provide partial reimbursement of industry proposal development costs and c) obtain rights to the ATC for the project.
  - For contractors not participating in the ATC process or choosing not to bid an approved ATC, they will be required to bid the project plans.
  - KYTC will evaluate the efficiency and effectiveness of this pilot program in accordance with the evaluation reporting identified in the approved workplan.

The KYTC's request for the programmatic use of ATCs on D-B-B projects under SEP-14 is approved for a period of two years from the date of this approval memorandum. The Division Office has the authority to limit or stop this experimental program, should issues arise related to unfair competition or non-compliance with FHWA's environmental review requirements.

Thank you for the opportunity to review and comment on this SEP-14 request. If you have any questions, please contact Gerald Yakowenko at (202) 366-1562 or John Huyer at (651) 291-6111.