

November 1, 2012

Pamela S. Stephenson
Division Administrator
Federal Highway Administration
55 Broadway, 10th Floor
Cambridge, MA 02142-109355

Subject: Special Experimental Project No. 14 (SEP-14) Longfellow Bridge Design-Build Project; Federal Aid Project No. BR-002S (386)

Dear Ms. Stephenson:

The Massachusetts Department of Transportation (MassDOT) has commenced with the procurement process for the Longfellow Bridge Rehabilitation Project (Project). The Project is utilizing the Design-Build delivery method pursuant to sub-section 14-21 of Chapter 149A of the Massachusetts General Laws as inserted by Section 27, Chapter 193 of the Acts of 2004. MassDOT is seeking federal aid for the Project, as part of the Accelerated Bridge Program, and has structured the procurement to comply with applicable federal requirements.

MassDOT plans to award the Design-Build contract based on a best value determination and derive the overall value rating as calculated pursuant to the objective formula set forth in the Request for Proposals (RFP), as the total price to MassDOT divided by the technical score. The Design-Build contract will be awarded to the Design-Build (DB) Entity whose overall value rating has the lowest price per quality score point. This approach gives the DB Entities the flexibility to advance beyond the approach and the technical requirements required in the RFP and offers the best value to MassDOT.

MassDOT's RFP allows for DB Entities to submit confidential Alternate Technical Concepts (ATCs), consistent with 23 CFR 636.209, for review and approval (or disapproval) by MassDOT during the pre-proposal period. MassDOT has chosen the A TC process to allow the incorporation of innovation and flexibility into the Technical Proposal and the selection decisions process to avoid delays and potential conflicts in the design associated with the deferring of technical concept review to the post-award period, and ultimately to obtain the best value for the public. A TCs will be approved only if they meet or exceed certain minimum requirements and are otherwise acceptable to MassDOT. Federal Statute 23 CFR 636.209 permits ATCs for Design-Build procurements, but states, "Alternate 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 DB Entities are competing for the same project. Leading the Nation in Transportation Excellence

Accordingly, MassDOT hereby requests that the requirement to submit separate proposals for the Base and Alternative Technical Concepts be waived for the Project, allowing each DB Entity the opportunity to submit A TCs for pre-approval and then to submit a proposal with or without approved ATCs. The A TC process, which requires pre-approval by MassDOT of deviations and other technical requirements of the design-build contract and other contract documents, has been carefully crafted by MassDOT to avoid any potential unfairness. The confidential A TC process gives MassDOT the ability to factor the DB Entity's technical solutions into the selection process, allowing a true "best value" selection, and gives MassDOT access to solutions from all DB Entities. It also gives the successful DB Entity a head start on

implementation of its A TCs, and avoids unnecessary costs for DB Entities to advance a base design that ultimately will not be used.

Imposing a requirement for the DB Entities to submit separate proposals would impose an unnecessary burden on both the DB Entities and MassDOT, and would likely deter DB Entities from submitting ATCs. MassDOT has addressed the underlying concern regarding fairness by including minimum criteria for A TCs in the RFP. The deviations that will be allowed will not change the character of the Project, or increase the amount of time required to complete the Project. In addition, both the RFP and draft design-build contract place the cost and delay risk associated with any additional permits, governmental approvals and third party approvals necessitated by the ATC on the DB Entity. If the DB Entity is unable to obtain approvals or satisfy other conditions identified by MassDOT that are necessary to implement the A TC, the DB Entity is required to develop the Project in accordance with the Base Technical Concept contract and other contract documents without regard to the A TC and without any additional cost or an extension of time. Given these protections, MassDOT believes that a waiver of the requirement is appropriate. Following is information supporting the waiver request:

a. **Review process and requirements.** Attachment 2 is an excerpt of the ATC provisions from Volume I Instructions to Proposers (Vol. I) included in the RFP for the Project.

- Vol. I Section 2.4.2 sets forth MassDOT's rationale behind the use of A TCs as further opportunity to incorporate innovation and creativity into the proposals, in turn allowing MassDOT to consider DB Entities ATCs in making the selection decision, to avoid delays and potential conflicts in the design and/or construction associated with deferring of reviews of ATCs to the post-award period, and, ultimately, to obtain the best value for the public. This section also cites the ATC approval criteria of "equal to or better" and refers to Volume II Technical Provisions which describes concepts that would not be eligible for consideration as A TCs.
- Vol. I Section 2.4.2.1 sets forth the detailed submittal requirements/contents of an ATC, including a requirement that DB Entities attend confidential meetings with MassDOT for consideration prior to making a formal A TC submission.
- Vol. I Sections 2.4.2.2, 2.4.2.3, and 2.4.2.4 lay out the specific submittal and review process for ATCs, including actions that may be taken by MassDOT in response to A TCs.
- Vol. I Section 2.4.3 outlines the determinations that may be made by MassDOT on submitted A TCs. It also provides a notice to all DB Entities that approval of an A TC constitutes pre-approval of a change from specific requirements of the contract documents that would otherwise apply.
- Vol. I Section 2.4.4 authorizes DB Entities to incorporate pre-approved A TCs into their proposals.
- Vol. I Section 2.4.5 addresses the confidential nature of A TCs. Confidentiality is a critical issue with DB Entities, who need to be reassured that their innovative thinking and concepts will not be shared with other DB Entities. Vol. I Section 2.4.2 (set forth in Attachment 2) concerning one-on-one meetings, further reinforces the confidentiality of the A TC process.

b. **How the ATC will be considered in the best value determination.** Each DB Entity submits only one proposal in response to the RFP. The RFP does not distinguish between a proposal that does not include any A TCs and proposals that include A TCs. Both types of proposals are evaluated against the same technical evaluation criteria, and a lowest overall value rating determination is made in the same manner. A pre-approved ATC may or may not result in higher quality (technical rating) in a particular

evaluation factor and may or may not result in a lower price. However, in allowing A TCs, MassDOT anticipates that both the outcomes of higher quality and lower price will occur.

c. **What happens if ATC is not feasible.** The contract documents included in the RFP include provisions making it clear that the DB Entity is responsible for both (i) designing the project in conformance with all requirements of the contract documents (including A TCs included in its proposal) and (ii) for obtaining all third party approvals (including environmental approvals) required for ATCs. Vol. I Sections 2.4.4 provide that if the DB Entity fails to obtain a required third party approval for an ATC, the DB Entity will be required to comply with the original requirements of the RFP Base Technical Concept.

d. **Timeline for ATC approvals.** Please refer to Attachment 1, Schedule of Events.

e. **Betterments.** As noted above, MassDOT wishes to encourage A TCs that will improve project quality as well as ATCs that reduce project costs or schedule without reducing quality. The evaluation process described above allows flexibility for the evaluators to consider quality enhancements.

Thank you for your consideration and assistance. If you have any further questions or comments, please do not hesitate to contact me or Anne Gorczyca, Manager of the Design Build Program, at 857-368-9281.

Sincerely,
Frank DePaola, P .E.

Administrator

Attachments: 1-Schedule of Events
2-MassDOT ATC RFP Language
cc: Thomas F. Broderick, P.E., Chief Engineer
Michael A. McGrath, P .E. Deputy Chief Engineer/Construction
Anne Gorczyca, Design Build Manager

Attachment 1

**COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS DEPARTMENT OF TRANSPORTATION
HIGHWAY DIVISION
LONGFELLOW BRIDGE REHABILITATION PHASE II
DESIGN-BUILD PROCUREMENT (ABP)**

**REQUEST FOR PROPOSALS
VOLUME I OF III**

INSTRUCTIONS TO PROPOSERS

2.4 TECHNICAL CONCEPT PROPOSAL(S)

2.4.1 BASE TECHNICAL CONCEPT (BTC) PROPOSAL

The "Base Technical Concept" or "BTC" includes the design concepts for the rehabilitation of the historic bridge, approach structures, proposed replacement pedestrian bridge, roadway, foundation design, transit track design, transit traction power design, transit signal design, transit communication design, transit traffic management, drainage, utilities, traffic management, architectural elements, lighting, landscaping, sequencing and staging which make up the Design requirements referenced in the RFP and Contract Documents. Calculations generated by the DB Entity in the development of the BTC shall be submitted as an appendix to the Technical Proposal. All Technical Proposals must incorporate the BTC without any exceptions to or deviations from the requirements of the RFP Documents, except as provided in Section 2.4.2.

See Volume II- Technical Provisions for further details.

2.4.2 ALTERNATIVE TECHNICAL CONCEPTS (ATCS)

Alternative Technical Concepts (ATCs) are any innovative deviation from BTC technical requirements which may either result in improved best value or a shorter Project duration which will not reduce but may increase the quality or functionality of the Facility. ATC Options may be premised on deviations from the technical RFP requirements, but must be shown to be consistent with the standards set forth in the RFP and Contract Documents. All ATC's shall comply with Environmental Approvals and permit requirements including time-of-year (TOY) restrictions. All ATCs must be approved in accordance with Section 2.4.2.

MassDOT has chosen to use the ATC process to allow the incorporation of innovation and flexibility into the Technical Proposals and the selection decision process, to avoid delays and potential conflicts in the design associated with deferring of technical concept reviews to the post-award period, and ultimately to obtain the best value for the public.

The ATC process allows DB Entities to submit for pre-approval proposed alternatives to the RFP requirements. MassDOT will not approve any ATC that entails a deviation from the requirements of the as-issued Contract Documents, unless MassDOT determines, in its sole discretion, that the proposed end product based on the deviation is equal to or better than the end product absent the deviation and does not deviate from the requirements that are already permitted by Environmental Approvals.

See Volume II- Technical Provisions, Section 4.11.3 for details related to where ATCs will not be allowed. DB Entities should note how their proposed ATCs will affect the remaining BTC and include all relevant interdependencies. Contractor means and methods are not prescriptive and, therefore, do not require the submission of ATCs for approval. However, for the Longfellow Project, traffic management, transit management, sequencing, construction staging, and construction loading on the existing structure, are prescriptive requirements and are thereby not categorized as the Contractors' means and methods. Therefore, any proposed deviations to these requirements must be proposed as an ATC.

The DBE Entity may propose a maximum number of three (3) ATCs.

Neither acceptance nor rejection of an ATC by MassDOT will entitle the DB Entity to an extension of the Technical Proposal Due Date or the date the ATCs are due. Each DB Entity, by submittal of its Technical Proposal, acknowledges that the opportunity to submit ATCs was offered to all DB Entities and waives any right to object to MassDOT's determinations regarding acceptability of ATCs.

2.4.2.1 ONE-ON-ONE INFORMATIONAL MEETINGS

MassDOT shall conduct two {2} confidential one-on-one meetings with each DB Entity to discuss each ATC submitted. The submission of the ATC shall include an Executive Summary which fully describes the scope and impact the ATC has on the BTC. Refer to Section 2.4.2.2 for submission requirements. Each one-on-one meeting will occur on the same day with each of the DB Entities. These confidential meetings will be held prior to submittal of the Technical/Cost Proposal and the Last Date for MassDOT ATC Response.

Meeting Dates:

Meeting One- August 1, 2012

Meeting Two- August 15, 2012

2.4.2.1.1 MEETING ONE

The goal of this confidential meeting is to provide MassDOT with an overview of the DB Entity's ATCs. This initial meeting will offer the DB Entity the opportunity to present up to three {3} ATCs within a maximum of two {2} hour time frame. DB Entities should be prepared to answer MassDOT questions which will focus solely on presented ATCs and be limited to clarification of those ATCs. Alternative concept components which are interdependent may be combined into one (1) ATC. No financial information shall be disclosed or discussed at these meetings.

2.4.2.1.2 MEETING TWO

During the second two (2) hour confidential meeting DB Entities will be given the opportunity to further refine and re-present ATCs that MassDOT determines require additional discussion after the first meeting. The presented ATCs will be limited to modifications of or additional discussion of the ATCs presented at the first meeting. Resubmission of re-presented ATCs shall meet the requirements of section 2.4.2.2. Rejected ATCs will not be reconsidered.

2.4.2.1.3 MEETING GUIDELINES

MassDOT will not discuss with any DB Entity the contents of any Technical Proposal or ATCs other than its own. DB Entities shall not seek to obtain commitments from MassDOT in the meetings or otherwise seek to obtain an unfair competitive advantage over any other DB Entity. DB Entities are prohibited from discussing any ATC's with members of the MassDOT Selection Committee, MassDOT personnel or Mass DOT consultants outside of the confines of the one-on-one meetings.

DB Entity team members attending the meetings should have the proper expertise to present and answer MassDOT ATC questions. Persons attending the one-on-one meetings will be required to sign an acknowledgment of the foregoing rules and identify all participants. All participants must attend in person- conference calls will not be permitted.

During each meeting DB Entities may ask clarifying questions and MassDOT may provide responses. DB Entities should note that any comments provided by MassDOT during one-on-one meetings shall not be interpreted as final until receiving the written response seven (7) business days after the presentation.

MassDOT reserves the right to change or clarify the RFP Design Criteria or Project Requirements based on information or issues raised during the one-on-one meetings.

2.4.2.1.4 ONE-ON-ONE MEETING ATTENDEES

Meeting attendees will include the Selection Committee, MassDOT Office of the General Counsel, Federal Highway, as well as any appropriate MassDOT technical experts. The MassDOT Office of the General Counsel Representative will ensure that all parties abide by the ATC process and adhere to the confidentiality agreements.

2.4.2.2 INITIAL SUBMISSION OF ATCs

DB Entities shall submit an Executive Summary to the MassDOT Construction Contracts Engineer at least three (3) Business Days prior to their each one-on-one meeting. This summary should briefly include an agenda for the meeting as well as details about each ATC to be presented. Each ATC should be described in one page or less.

DB Entities are required to bring fourteen (14) copies of their ATC Executive Summary marked Confidential to each meeting. The Executive Summary should include the following information, presented in a summary fashion:

- Description of the general configuration of the ATC or other appropriate descriptive information such as schematic drawings of the configuration of the ATC and any schedule information beneficial to the review.
- Location where the ATC will be used on the Project.
- Description shall be detailed and schematic drawings of the configuration of the ATC or other appropriate descriptive information, including if appropriate, product details (for example, specifications, construction tolerances, and special provisions), a traffic operational analysis, and any schedule information beneficial to the review.
- Location where the ATC will be used on the Project.
- References to requirements of the RFP documents which 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, or a determination that the ATC is consistent with the requirements of the RFP.
- Identification of any design exceptions required by the ATC.
- The basis of the analysis justifying the use of the ATC and why the deviation (if any) from the requirements should be allowed.
- Analysis of potential issues with current or required Environmental Approvals.
- Discussion of potential impacts on vehicular traffic, environmental impacts (favorable or unfavorable), community impacts, safety and life-cycle Project and infrastructure costs (including impacts on the cost of future operation, repair, and maintenance).
- A detailed history of other projects where the ATC has been used under comparable circumstances, the success of such usage, and names and telephone numbers of project owners that can confirm such statements.
- Design calculations as necessary to support the use of the ATC.
- Description of the long-term durability of implementing the ATC.
- Description of added risks with implementing the ATC.

- Discuss and identify schedule benefits.

2.4.3 FINAL DETERMINATION BY MASSDOT

MassDOT will make one of the following determinations with respects to each properly submitted ATC:

- The ATC is approved
- The ATC is not approved

2.4.4 INCORPORATION OF ATCs INTO TECHNICAL PROPOSAL AND CONTRACT

Written approval of an ATC will constitute a change in the specific requirements of the Contract Documents associated with the approved ATC for that specific DB Entity. During design development, should the DB Entity be unable to obtain required approvals from 3'd parties for any ATC incorporated into the Contract Documents, or if the ATC otherwise proves to be infeasible, the DB Entity will be required to conform to the original BTC requirements with no additional time to complete the project regardless of when it is determined to be infeasible. MassDOT will not make any adjustments to the Contract value in the event that an ATC which was approved during the proposal phase cannot be implemented.

Each DB Entity may incorporate only approved ATCs into its Technical Proposal. Copies of MassDOT's ATC approval letters for each incorporated ATC shall be included in the Technical Proposal.

Technical Proposals with or without ATCs will be evaluated against the same technical evaluation factors, and the inclusion of an ATC, including an ATC that provides technical enhancements, may or may not receive a higher technical rating.

Except for incorporating approved ATCs, the Technical Proposal may not otherwise contain exceptions to or deviations from the requirements of the RFP Documents.

The RFP does not distinguish between a proposal that does not include any ATC's and proposals that include ATC's. Both types of proposals are evaluated against the same technical evaluation factors and a best value determination is made in the same manner.

Following award of the Contract, the BTC, as modified to incorporate ATCs accepted by MassDOT and other Technical Proposal concepts and commitments made by the DB Entity in the Technical Proposal will be considered the mandatory requirement to be met in constructing the Facility. The Contract Documents will be conformed after award, prior to execution of the Contract, to reflect the accepted ATCs.

2.4.5 ATC CONFIDENTIALITY

ATC's properly submitted by a Proposer and all subsequent communications regarding its ATC's will be considered confidential. If a Proposer wishes to make any announcement of disclosure to third parties concerning any ATC, it shall first notify MassDOT in writing of its intent to take such action, including details as to participants and dates, and obtain MassDOT's approval in advance.

1.3 SCHEDULE OF EVENTS

The following table provides the Proposed Schedule of Events for this Project through Notice to Proceed.

Table 1: Schedule of Events - See original MassDOT submission.

Archived