

November 26, 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) Whittier Bridge Design-Build Project; Federal Aid Project No. BR-002S (421)

Dear Ms. Stephenson:

The Massachusetts Department of Transportation (MassDOT) has commenced with the procurement process for the Whittier 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 deriving the overall value rating 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 offers DB Entities flexibility to advance beyond the approach and the technical requirements 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 ATC 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. ATCs 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.

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 ATCs for pre-approval and then to submit a proposal with or without approved ATCs. The ATC process, which requires preapproval 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 ATC 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 ATCs, 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 ATCs 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 ATC, 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 ATC 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 ATCs 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 ATCs.
 - Vol. I Section 2.4.2.1, 2.4.2.2, and 2.4.2.3 sets forth the detailed submittal requirements/contents of an ATC and lays out the specific submittal and review process for A TCs, including actions that may be taken by MassDOT in response to A TCs.
 - Vol. I Section 2.4.2.4 outlines the determinations that may be made by MassDOT on submitted ATCs. It also provides a notice to all DBE Entities that approval of an ATC constitutes pre-approval of a change from specific requirements of the contract documents that would otherwise apply.
 - Vol. I Section 2.4.2.5 authorizes DB Entities to incorporate pre-approved A TCs into their proposals.
 - Vol. I Section 2.4.2.6 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.
- 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 ATCs, MassDOT anticipates that both the outcomes of higher quality and lower price will occur.

- c. What happens if A TC 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 ATCs included in its proposal) and (ii) for obtaining all third party approvals (including environmental approvals) required for ATCs. Vol. I Sections 2.4.2.4 provide that if the DB Entity fails to obtain a required third party approval for an A TC, the DB Entity will be required to comply with the original requirements of the RFP Base Technical Concept.
- d. Timeline for A TC 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

Attachment 1 Schedule of Events

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

Table 1 Schedule of Events

Phase 1: Letter of Interest (LOI) and RFQ			
Event			
Advertisement of Project for Letter of Interest in:	Comm-Pass Newspapers- Central Register	4/14/12 4/14/12 4/25/12	
Letters of Interest Due		05/24/12	12:00 PM
RFQ Issued to Interested Parties Submitting a LOI		05/25/12	
RFQ Pre-Proposal Briefing (10 Park Plaza- Boston)		06/05/12	10:00 AM
Final Date to Submit Questions or Clarifications		06/11/12	1:00 PM
MassDOT A&E Board and Construction Prequalification Applications Due		07/02/12	12:00 PM
Statements of Qualifications Due		07/13/12	12:00 PM
Short List DB Entities Due		08/14/12	
Short List DB Entities Notified		08/15/12	

Phase 2: Request for Proposals (All dates tentative)		
RFP Issued to Short List DB Entities	09/27/12	
Pre Proposal Utility Meeting (10 Park Plaza, Conf. Room #5&6)	10/10/12	10:00 AM
Mandatory Pre-Proposal Meeting (10 Park Plaza, Conf. Room #5&6)	10/10/12	11:00 AM
Deadline for Submittal of Alternative Technical Concept (ATC)	11/13/12	12:00 PM
Last Date for MassDOT ATC Response	11/20/12	
Last Day to Submit Questions On the RFP	11/23/12	1:00 PM
Technical/Price Proposals Due	01/10/13	2:00 PM
Oral Presentations (10 Park Plaza, Conference Room 5 & 6)	TBD	TBD*
Public Price Opening/BVDB Date	02/21/13	2:00 PM
Anticipated Selection Date	02/22/13	
Anticipated Notice to Proceed	14/4/2013	04/04/13

*Schedule will be provided in advance of the oral presentations.

Attachment 2

COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS DEPARTMENT OF TRANSPORTATION
HIGHWAY DIVISION
WHITTIER BRIDGE/INTERSTATE 95 IMPROVEMENT PROJECT
OVER THE MERRIMACK RIVER
REQUEST FOR PROPOSALS
VOLUME I OF III
INSTRUCTIONS TO PROPOSERS
DESIGN BUILD PROCUREMENT (ABP)

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 proposed network arch, approach spans, retained approach roadways, minor bridges, roadway, foundation design, drainage, utilities, traffic management, architectural elements, lighting, landscaping, and construction mitigation which make up the Design 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 Proposal. All Proposals must incorporate the BTC without any exceptions to or deviations from the requirements of the RFP Documents. See RFP Volume II - Technical Provisions

2.4.2 ALTERNATIVE TECHNICAL CONCEPTS (ATC'S)

Alternative Technical Concepts (ATC's) are any proposed alternative concepts to the BTC which will either result in lower cost or a shorter Project duration without reducing quality or functionality of the Facility or which will increase quality or functionality without ordinarily increasing cost. 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 ATC's must be approved in accordance with Section 2.4.2.

MassDOT has chosen to use the ATC process to allow innovation and flexibility to be incorporated into the Proposals and considered in making the selection decision, and 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 Proposers 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 is permitted by Environmental Approvals.

Any ATC that has been pre-approved may be included in the Proposal, subject to the conditions set forth herein.

The ATC process may be used to allow a Proposer to submit technical concepts for review by MassDOT to determine if those technical concepts are consistent with the requirements of the RFP documents.

The ATC submittal shall clearly stipulate this reason for review.

See Volume II-Technical Provisions, Section 4.9.9 for details related to where ATC's will not be allowed.

Contractor means and methods are not prescriptive and, therefore, do not require the submission of ATC's for approval.

2.4.2.1 Submission of Alternative Technical Concepts (ATC's)

ATC's submitted in a proposal without MassDOT written pre-approval will not be reviewed. All ATC's must be pre-approved by MassDOT in writing in order to be incorporated into the proposal. Any Proposer seeking approval regarding the viability of a potential ATC must submit a written request with sufficient information to render such opinion to MassDOT at the address identified in Section 3.2 no later than the time and date specified in Section 1.3: Schedule of Events. Submissions received after that time shall not be accepted. Fourteen copies of the ATC including a narrative submissions, technical information, and drawings are required. An electronic submittal of this information is also required to the MassDOT Contact Person in addition to the hard copies. The electronic version shall be exactly the same as the hard copy version. MassDOT will respond to the Proposer within seven (7) Business Days. In addition, one hard copy of the submittal with all identification of who the Proposer is redacted shall also be submitted.

- Any ATC submitted with the Proposal must include the information requested in Section 2.4.2.2.

- No more than three (3) ATC's may be submitted per DB Entity. Interdependent components may be combined into one (1) ATC.

MassDOT will review each ATC submitted. If an ATC is summarily approved or not approved, MassDOT's comments will inform the Proposer that either its ATC appears to be acceptable, or that MassDOT has declined to accept the ATC.

MassDOT will return its approval or non-approval no later than seven (7) Business Days after receipt of that ATC. If the Proposer does not receive a return response from MassDOT within seven (7) Business Days of MassDOT's receipt of the ATC, the Proposer shall presume that MassDOT has rejected the ATC.

2.4.2.2 Information to be Included in ATCs

- Description of the general configuration of the ATC or other appropriate descriptive information.
- 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, schedule 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. (Citing violation of RFP Criteria including reference to RFP Section)

2.4.2.3 Review of Alternative Technical Concepts (ATC's)

MassDOT's review of the ATC may result in requests for additional information from the DB Entity. If requested, the Proposer shall submit the requested additional information within two (2) business days. MassDOT's response to the DB Entity will be limited to:

- The ATC is acceptable

- The ATC is not acceptable

MassDOT acceptance of an ATC shall not mean that any option incorporating the ATC will be accepted as the final best value proposal. MassDOT's rejection of an ATC will not entitle the Proposer to an extension of the Proposal Due Date or the date the ATC's are due.

2.4.2.4 Determination by MassDOT

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

- The ATC is approved
- The ATC is not approved

Approval of an ATC will constitute a change in the specific requirements of the Contract Documents associated with the approved ATC and for that specific Proposer. Should the DB Entity be unable to obtain required approvals 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. Each DB Entity, by submittal of its Proposal, acknowledges that the opportunity to submit ATC's was offered to all Proposers, and waives any right to object to MassDOT's determinations regarding acceptability of ATC's. 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.

2.4.2.5 Incorporation into Proposal

Proposer may incorporate zero, one, or more pre-approved ATC's into its Proposal. Copies of MassDOT's ATC approval letters for each incorporated ATC shall be included in the Proposal. Proposals with or without ATC's 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 ATC's, the 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 ATC's accepted by MassDOT and other Proposal concepts and commitments made by the Proposer in the Proposal) will be considered a binding requirement to be met in constructing the Facility.

2.4.2.6 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 Mass DOT's approval in advance.