

APPENDIX I

EXAMPLE OF GUIDELINES FOR ALTERNATIVE TECHNICAL CONCEPTS

INTRODUCTION

These guidelines establish the Department policy regarding the use of Alternative Technical Concepts (ATC) on Design-Build (D-B) projects.

WHAT ARE ALTERNATIVE TECHNICAL CONCEPTS?

An ATC is a confidential request by a Short-List Proposer to modify a contract requirement in the Request for Proposals (RFP), specifically for that Short-List Proposer, prior to the Proposal due date. ATC's are evaluated for approval or denial by the Department within the deadline set forth in the Instructions to Proposers (ITP), which is usually set to occur several weeks before the Proposal due date, so that Proposers have sufficient time to incorporate an approved ATC in the Technical Proposal and cost in the Price Proposal. The Short-List Proposer may only incorporate an ATC that is unconditionally approved by the Department into the Proposal. Except as noted herein, any contract requirement can generally be subject to consideration for an ATC, but there may be certain elements of the Design-Build Agreement (DBA) or technical provisions that the Department will choose to exclude from ATC development.

In order to be unconditionally approved, an ATC must be deemed by the Department to provide the Project an "equal or better" component, condition, or an overall improved Project. Concepts that simply delete Project Scope, lower performance requirements, lower standards, or reduce contract requirements are not, in general, acceptable as an ATC. Submittals that identify errors and omissions in the DBA will not be considered as an ATC but will likely lead to an addendum to the RFP. Although an ATC process is NOT mandatory for a D-B Procurement Process, the Department generally allows the ATC process for all D-B contracts in order to promote innovation, find the best solutions, and to maintain flexibility in the Procurement Process.

ONE-ON-ONE MEETINGS

One-on-One Meetings between the Department and each Short-List Proposer may be held to discuss the feasibility of a single or multiple ATC's. To the extent provided by law, all discussions at these meetings must remain strictly confidential, and all Department personnel and/or consultants should be required to sign a Confidentiality Agreement prior to participating in any of the meetings. A representative from the Department HQ Construction Office should be invited to all One-on-One Meetings.

At the One-on-One Meetings, it is appropriate for the Department to give the Short-List Proposer an indication of whether or not the Department would seriously consider the ATC, with the understanding that the official Department determination cannot be provided until the ATC is formally submitted. However, it is not appropriate for the Department to indicate, in any manner, that a particular ATC would favorably or unfavorably affect the Technical Score of the respective Proposal.

SUBMITTAL

In order to allow sufficient time for Department review, a proposed ATC must be submitted no later than the due date specified in the ITP. This deadline should apply to both initial submissions and revised submissions in response to Department comments on previous submissions. Each ATC submittal package should address the elements required by the RFP. Each of the elements are intended to facilitate one of the following purposes:

- Allow the Department to understand “what” is being proposed;
- Allow the Department to understand specifically what impacts the ATC imposes on the DBA;
- Establish an understanding from the Short-List Proposer on the change in risk exposure associated with the requested change;
- Allow the Department to determine whether or not the ATC will provide the Project an "equal or better" condition, component and/or an improvement on an overall basis to what the Project would have provided without the proposed ATC.

At no time during the ATC submittal and review process should the Short-List Proposer disclose any pricing information related to the ATC, including but not limited to, estimated increases or decreases to the Price Proposal, if any. The Short-List Proposer should not share or disclose any portion of an ATC to third parties (such as other governmental agencies that may have an interest in the ATC) without first gaining the permission of the Department, thereby allowing the Department an opportunity to terminate a potentially controversial ATC.

REVIEW

Any incomplete ATC submittal package should be returned by the Department without review or comment. The Department may, in its sole discretion, request additional information regarding a proposed ATC or the Department may, in its sole discretion, deny any ATC.

An ATC that would require excessive time or cost for the Department to review, evaluate, or investigate should not be considered.

To the extent permitted by law, all discussions with a Short-List Proposer regarding an ATC and information contained in an ATC submittal must remain confidential. Due to the confidential nature of an ATC, and the need to respond in a timely manner, the Department should minimize the number of personnel involved in the ATC review process; however, if technical issues and questions arise that are outside the review group's expertise, additional resources should be engaged at the discretion of the Project Director (PD).

The Department should refrain at all times during the ATC submittal review process from indicating in any manner to a Short-List Proposer that a particular ATC would favorably or unfavorably affect the respective Proposal Technical Score (TS). Conveying such information would only short circuit the Proposal evaluation process and could interject a perception of

Department bias into the Procurement Process. When measured in terms of the competitive process, any such revelation could provide an advantage to a single Short-List Proposer to the detriment of the remaining Short-List Proposers. The Short-List Proposer should be advised that if approved, the ATC will be evaluated in accordance with the ITP.

Design deviations, as defined by the Department, are not categorically prohibited from consideration in an ATC. Any ATC should be, in total, "equal to or better" than what was originally required in the DBA. In addition, Design Deviations that are approved for inclusion into an ATC, to the extent provided by law, should not be disclosed to other Short-List Proposers until such time as the DBA is executed and the Department takes full ownership and control of the unsuccessful Proposal(s) which includes the Design Deviation. Any question that may arise regarding conducting an "apples to apples" comparison of Proposals is resolved by requiring any ATC to meet the "equal or better" standard.

DEPARTMENT RESPONSE

The Department will respond to each Short-List Proposer within the timeframe stipulated in the ITP. The Project Director (PD) should obtain approval from the Technical Committee or the Deputy Director/Chief Engineer, and FHWA concurrence as appropriate on federal oversight contracts, prior to providing a final response to a Short-List Proposer concerning an ATC. The format for the response should include the ATC number, brief description, and should be limited to one of the designated responses provided in the ITP.

INCORPORATING AN ATC INTO THE D-B PROPOSAL

A Short-List Proposer has the option to include any or all approved ATC's in the respective Proposal and the Price Proposal should reflect the incorporated ATC. If the Department returns an ATC stating that certain conditions must be met prior to granting approval, the submitted Proposal must satisfy the stated conditions to obtain the Department approval. Except for an approved ATC, the Proposal should not otherwise contain exceptions to or variations from the requirements of the RFP. The Department should not advise a Short-List Proposer on whether or not to include an ATC in the Proposal.

EVALUATING AN ATC IN THE PROPOSAL

Objectivity and fairness are the paramount standards of a successful Procurement Process. One element some agencies utilize in the Procurement Process to avoid potential conflicts and ensure the objectivity of the evaluation process, has been to avoid including employees, or any consultants that participate in Proposer One-on-One Meetings, in the Project Evaluation Team (PET) to evaluate the ATCs and Proposals. The goal of this element is to avoid any evaluator having a particular personal interest in one variation of design over a design presented in a Proposal.

Once an approved ATC is included in a Proposal, it is the responsibility of the PET to determine how the ATC fits within the Evaluation Scoring Criteria (ESC) presented in the RFP.

DEPARTMENT USE OF ATC CONCEPTS

The ITP should include a clause notifying any Proposer that by submitting a Proposal, any unsuccessful Short-List Proposer will be required to acknowledge that upon payment of the designated Project Stipend, any ATC incorporated into their respective Proposal, as well as any ATC that was approved by the Department during the Proposal stage but not included in the respective Proposal, shall become the property of the Department without any restriction on its use by the Department. Should the Department wish to include the concepts of an ATC from an unsuccessful Short-List Proposer into the Project, then the Department would be required to enter negotiation with the selected Short-List Proposer to reach an agreeable change order to the DBA to incorporate such work.