



U.S. Department
of Transportation
**Federal Highway
Administration**

Florida Division

January 13, 2012

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www.fhwa.dot.gov/fldiv

In Reply Refer To:
HPO-FL

Mr. Brian Blanchard
Assistant Secretary for Engineering & Operations
Florida Department of Transportation
605 Suwannee Street
Tallahassee FL 32399

Dear Mr. Blanchard:

Subject: SEP 14 Approval for Two Phase Design-Build Process

This is in reference to the Florida Department of Transportation's (FDOT) December 12, 2011 request to use a modified two-phase design-build procurement process under Special Experimental Project (SEP)-14.

As a result of increased industry interest in allowing more than five firms to compete in the design-build procurement process, the FDOT is proposing a modified procurement process that would allow more than five firms to continue with the procurement process after the short listing stage. Specifically, FDOT will post the phase I scores for all proposers and allow each firm to decide based on their scores whether it wants to continue with Phase II of the procurement process by submitting technical and price proposals.

FHWA's regulations were developed to minimize adverse impacts on the industry by limiting the number of short listed firms in Phase I to five (23 CFR 636.207), FDOT is now proposing a SEP-14 project to evaluate the advantages or disadvantages of allowing more than five firms to compete. FDOT's proposed process deviates from the Federal Highway Administration's (FHWA) policy in two areas as follows:

- The proposal allows more than five firms to advance to Phase II of the procurement process. This is not consistent with 23 Code of Federal Regulations (CFR) 636.207 which states "Normally, three to five firms are short listed, however, the maximum number specified shall not exceed five unless you determine, for that particular solicitation, that a number greater than five is in your interest and is consistent with the purposes and objectives of two-phase design-build contracting", and
- FDOT's selection process will use both a phase I evaluation score (qualifications, experience and project approach) and phase II score (technical and cost scores) to determine the successful proposer. This is inconsistent with 23 CFR 636.303(a) which states "If you use a prequalification procedure or a two-phase selection procedure to develop a short list of qualified offer or, then pre-qualification criteria should not be

Mr. Brian Blanchard
January 13, 2012

included as proposal evaluation criteria.”

We understand the FDOT has closely coordinated the proposed process with their industry members and followed through with efforts to provide a clear and transparent process in their revised policy and procurement documents. Overall, the FDOT’s work plan and proposed schedule for evaluation are satisfactory. We request the evaluation criteria be expanded to include a before/after survey of the contracting industry to identify the positive or negative impacts on the industry.

You may consider this project approved for evaluation under SEP-14. As described in your request please submit a report to our office at the end of one year, and subsequent annual reports if you decide to continue using this process. If you have any questions, please contact Mr. Derek Fusco at (850) 553-2236.

Sincerely,



J. Chris Richter
Director, Office of Engineering & Operations



Florida Department of Transportation

RICK SCOTT
GOVERNOR

605 Suwannee Street
Tallahassee, FL 32399-0450

ANANTH PRASAD, P.E.
SECRETARY

December 12, 2011

Mr. Martin Knopp
Division Administrator
Florida Division
Federal Highway Administration
545 John Knox Road, Suite 200
Tallahassee, Florida 32303

Dear Mr. Knopp:

The Florida Department of Transportation requests FHWA approval to evaluate the use of a two phase design-build selection process for federal-aid adjusted score design build projects. Attached is a Special Experimental Project No. 14 (SEP 14) request detailing the process, application, measures, and method of reporting. Also attached is a copy of the revised Design-Build Procurement and Administration procedure, and additional documentation of the two-phase selection process (white paper).

This SEP 14 outlines the primary areas of approval:

1. Authorize Two-Phase process, which would not set a limit of five on the number of firms allowed to be shortlisted;
2. Approve the process that allows shortlist to be made of up all responsive firms who affirmatively declare their intent to move on to the second phase technical proposal.
3. Authorize an annual report summarizing all active two phase design-build projects procured during the pilot period.

We believe you will find our program to be acceptable for federal participation and request your concurrence to proceed with eligible projects. Your concurrence will allow the Department to utilize this procurement tool for all adjusted score design projects, including federal aid projects.

If you wish to discuss any of these items further, please let me know.

Sincerely,

Brian Blanchard, P.E.
Assistant Secretary for
Engineering and Operations

BB/dsc
Attachments

cc: David Hawk
Chris Richter, P.E.

Two-Phase Technical Proposal Adjusted Score Design Build Process November 14, 2011

This paper summarizes the new Design-Build procurement process. The Department will advertise the Two-Phase Technical Proposal Adjusted Score Design-Build project as is currently done. The Request for Proposal (RFP) will be made available at the time of the advertisement. This advertisement will require interested Design-Build (DB) firms to submit an Expanded Letter of Interest (ELOI) including the current requirements plus a Phase I Technical Proposal as described in the advertisement both of which will be evaluated by the Technical Review Committee (TRC). The requirements for the Two-Phased Technical Proposals will also be described in the RFP with a Phase I total points available of 20 and Phase II total points available of 80 on a 100 point scale. The TRC members will independently score each ELOI package and submit their scores to the Selection Committee for its approval.

After approval, the scores for each of the DB firms that submitted responsive ELOIs will be posted on the Department's website. There will be a 72 hours protest period allowed followed by a 24 hours period allowed for each of the scored DB firms to declare to the Department their intent to continue to the Phase II Technical Proposal.

After each of the DB firms have declared their intent, the Department will issue to those affirmatively declared firms an addendum to the RFP showing the shortlist of the DB firms that have declared their intent to continue to the Phase II Technical Proposal.

DB firms that have declared their intent to continue are to submit the Phase II Technical Proposal in response to the RFP. The TRC members will independently evaluate the Phase II Technical Proposals based on the evaluation criteria identified in the RFP and the scores from Phase I will be added to the scores from Phase II. The combination of Phase I and Phase II scores will be used in the adjusted score process.

No Stipends will be paid to any DB team for their proposals.

The criteria for evaluating the Phase I submittals will be (with relative scoring assigned to each primary criterion). The total score for Phase I will not exceed 20 points:

1) Past Performance Evaluations:

- Contractor grades
- Design Consultant grades
- Performance history with other states or agencies if none with the Department

2) Project Experience and Resources:

- Design-Build experience of the Contractor and Design Consultant
- Similar types of work experience
- Contractor Experience Modification Rating
- Firm organization, staffing plan, resources, location
- Environmental Record

3) Project Approach and Understanding of Critical Issues:

Outline plan for completing the work
Approach and understanding
Coordination Plan

4) Other content in the Expanded Letter of Interest

The criteria for evaluating the Phase II submittals are provided below. The total score for Phase II will not exceed 80 points:

Item

1. Maintainability
2. Value Added
3. Schedule
4. Design and Geotechnical Services Investigation
5. Maintenance of Traffic
6. Context Sensitive Design and Construction
7. Construction Methods

The combined Phase I and Phase II scores will represent the D-B firm's total technical score for the project.

**DESIGN-BUILD CONTRACTING PRACTICES
SPECIAL EXPERIMENTAL PROJECT NO. 14
ADJUSTED SCORE DESIGN-BUILD PROCUREMENT**

Introduction

The Florida Department of Transportation (FDOT) proposes to modify its procurement process for Adjusted Score Design-Build (ASDB) projects. FDOT has a mature best-value procurement model for Design-Build projects which has served the State and Agency well in expediting delivery of major infrastructure projects with millions of dollar in savings thru innovative design approaches. Current procurement processes for ASDB projects limit competition to a minimum of three shortlisted design-build firms selected on the basis of defined criteria and upon the evaluation of Letters of Interest submitted in response to department advertisements.

However, in the current state of the economy, precluding non-shortlisted from participating in Design-Build procurements represents the loss of an opportunity to compete. The Department will advertise a Two-Phase Technical Proposal Adjusted Score Design-Build project as is currently done. A Request for Proposal (RFP) will be made available at the time of the advertisement. This advertisement will require interested Design-Build (DB) firms to submit an Expanded Letter of Interest (ELOI) including the current requirements plus a Phase I Technical Proposal as described in the advertisement both of which will be evaluated by the Technical Review Committee (TRC). The requirements for the Two-Phased Technical Proposals will also be described in the RFP with a Phase I total points available of 20 and Phase II total points available of 80 on a 100 point scale. The TRC members will independently score each ELOI package and submit their scores to the Selection Committee for its approval.

After approval, the scores for each of the DB firms that submitted responsive ELOIs will be posted on the Department's website. The responsive DB firms may elect to continue to participate in phase II of the procurement process by submitting notification to the procuring agent of their intent. Notification shall be provided by the deadline established in the project advertisement. The Short-list will be made up of all responsive DB firms satisfying the election and notification requirements identified in the advertisement.

After each of the DB firms have declared their intent, the Department will issue to those affirmatively declared firms the final version of the RFP which will include an attachment showing the shortlist of the DB firms that have declared their intent to continue to the Phase II Technical Proposal.

DB firms that have declared their intent to continue are to submit the Phase II Technical Proposal in response to the RFP. The TRC members will independently evaluate the Phase II Technical Proposals based on the evaluation criteria identified in the RFP and the scores from Phase I will

be added to the scores from Phase II. The combination of Phase I and Phase II scores will be used in the adjusted score process.

No Stipends will be paid to any DB team for their proposals.

The criteria for evaluating the Phase I submittals will be (with relative scoring assigned to each primary criterion). The total score for Phase I will not exceed 20 points:

1) Past Performance Evaluations:

- Contractor grades
- Design Consultant grades
- Performance history with other states or agencies if none with the Department

2) Project Experience and Resources:

- Design-Build experience of the Contractor and Design Consultant
- Similar types of work experience
- Contractor Experience Modification Rating
- Firm organization, staffing plan, resources, location
- Environmental Record

3) Project Approach and Understanding of Critical Issues:

- Outline plan for completing the work
- Approach and understanding
- Coordination Plan

4) Other content in the Expanded Letter of Interest

The criteria for evaluating the Phase II submittals are provided below. The total score for Phase II will not exceed 80 points:

Item

1. Maintainability
2. Value Added
3. Schedule
4. Design and Geotechnical Services Investigation
5. Maintenance of Traffic
6. Context Sensitive Design and Construction
7. Construction Methods

The combined Phase I and Phase II scores will represent the D-B firm's total technical score for the project.

Background

Design-build combines into a single contract the design, construction, and in certain cases, construction engineering and inspection and acceptance requirements for a project, all in accordance with standard FDOT criteria, specifications and contract administration practices. These projects allow the contractor to participate in the design in an effort to reduce costs and expedite construction. The Department is authorized to use the design-build process on buildings, major bridges, limited access facilities, and rail corridor projects (*Design-Build Major, Section 337.11(7), F.S.* The Department's authority is further expanded to include all project types as a part of the "innovative" practices package (*Design-Build Minor, Section 337.025, F.S.*). The Department is required to comply with the annual contracting monetary cap set by the statute for innovative projects let under *Section, 337.025, F.S.* Under ASDB contracting the award is based on the lowest adjusted score, which is determined by dividing the price proposal, and in some cases a Proposed Contract Time and Time Value Cost factor, by the Technical Proposal score.

Deviations from CFR

The proposed process differs from FWHA regulations as contained in 23 CFR 635 in 2 areas. The areas that differ are as follows.

1. The proposed process would allow more than 5 to be shortlisted to proceed to phase II. 23 CFR 636.207 states that the "maximum number of short listed firms shall not exceed 5....." During the FHWA rule making process, industry recommend a limit on the number of short listed firms and FHWA agreed to use the 3-5 firms limit that is contained in 23 CFR 636.207.
2. The proposed process uses both a phase I (generally qualifications, experience score and project approach) and phase II (technical and cost score) to select the successful firm. 23 CFR 636.303 states "(a) If you use a prequalification procedure or a two-phase selection procedure to develop a short list of qualified offerors, then pre-qualification criteria should not be included as proposal evaluation criteria." Thus, use of the scoring of phase I is in conflict with this section.

Measures

The performance of this modified procurement method will be measured by:

- Number of ELOI's submitted
- ELOI (Phase I) Scores
- Number of D-B firms affirmatively electing to continue to Phase II of the ASDB procurement
- Technical Proposal (Phase II) Scores of affirmatively elected D-B firms submitting a responsive technical proposal
- Price proposals of affirmatively elected D-B firms submitting a responsive bid price proposal

Reporting

The above information will be monitored for a period of one calendar year from the date of FHWA's approval. A report will be developed which discusses industry reaction and response to the modified procurement process and will include any identifiable impacts on the technical scores and bids received. A final report will be submitted to FHWA for review should FDOT elect to continue the modified procurement based on the results of the performance measures identified herein.

References

Included herein is FDOT's procedure related to Design-Build contracting.