



Florida Department of Transportation

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SECRETARY

April 28, 2010

This Memo Has Expired

DCE MEMORANDUM NO: 06-10

(FHWA Approved: 5-4-10)

TO: DISTRICT CONSTRUCTION ENGINEERS

FROM: David A. Sadler, P.E., Director, Office of Construction

A handwritten signature in black ink, appearing to read "David A. Sadler".

COPIES: Chris Richter, Ann Allshouse, Bob Burleson, Brian Blanchard, Kurt Lieblong,
Greg Schiess

**SUBJECT: IMPLEMENTATION OF REVISED SPECIFICATION 4-3.9.1 REVISIONS
ON EXISTING PROJECTS AND THOSE LET PRIOR TO JULY 2010**

Specification 4-3.9 Value Engineering Incentive recently underwent a number of revisions with the title changing to Cost Savings Incentive or CSI Proposal. The revised version is due to be implemented for projects let after January of 2011. The following are the substantial changes in addition to editorial changes related to the title change. A mandatory preconstruction meeting will be held after the preconstruction meeting and prior to any contract change being initiated to discuss proposals from the contractor. The purpose of this meeting is to discuss the concept prior to the development of the proposal. If agreed to by both the contractor and the department, this meeting can be eliminated. The department, at its sole discretion, may delay the start of construction at the beginning of a contract for the purpose of CSI proposal development and review. If a proposal is initiated by the contractor throughout the life of the contract, a mandatory concept meeting will be held at that time to discuss the proposal. Additionally, the department may grant, if justified, an extension of time if a CSI Proposal is initiated during construction to develop and review the proposal.

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The last substantial change deals with the development costs. Reasonable documented engineering costs incurred by the contractor to design and develop an approved proposal, not to exceed 25% of the construction cost savings will be subtracted from the savings to determine the net savings that will be equally divided between the contractor and the department. The development costs will be those consultant certified invoices billed to the contractor by its engineer. The cost associated with the development and implementation of the proposal by the contractor's employees will not be included in the development costs, but will be the contractor's responsibility. Likewise, the cost associated with the department's review (notwithstanding subarticle 4-3.9.5) will not be included in the determination of the net savings.

Procedure Topic No. 625-030-005-c "Value Engineering Change Proposal" will be revised to be in agreement with the new specification. In the mean time, the process included in the procedure is to be followed.

This memorandum serves as a blanket approval to process a \$0.00 specification change and shall be attached to the work order or supplemental agreement. Substitution of parts of the revised 4-3.9 will not be permitted.

Additionally, the department may initiate a change to a contract that results in a cost savings. In the case of a department initiated change, the savings will not be shared with the contractor, however all reasonable documented and certified contractor costs for implementing or developing and implementing the change are to be considered in negotiating the change as well as any contract time modifications.

If you have any questions, please contact Greg Schiess at 850-414-4146.

DS/sw

4-3.9 Cost Savings Incentive Proposal:

4-3.9.1 Intent and Objective:

(1) This Subarticle applies to any cost reduction proposal (hereinafter referred to as a Proposal) that the Contractor initiates and develops for the purpose of refining the Contract to increase cost effectiveness or significantly improve the quality of the end result. A mandatory Cost Savings Incentive Workshop will be held prior to Contract Time beginning for the Contractor and Department to discuss potential Proposals. This Subarticle does not, however, apply to any such proposal unless the Contractor identifies it at the time of its submission to the Department as a proposal submitted pursuant to this Subarticle.

(2) The Department will consider Proposals that would result in net savings to the Department by providing a decrease in the cost of the Contract. Proposals must result in savings without impairing essential functions and characteristics such as safety, service, life, reliability, economy of operation, ease of maintenance, aesthetics and necessary standard design features. However, nothing herein prohibits the Contractor from submitting Proposals when the required functions and characteristics can be combined, reduced or eliminated because they are nonessential or excessive. The Department will not recognize the Contractor's correction of plan errors that result in a cost reduction, as a Proposal.

(3) The Department reserves the right to reject at its discretion any Proposal submitted that proposes a change in the design of the pavement system or that would require additional right-of-way. Pending the Department's execution of a formal supplemental agreement implementing an approved Proposal, the Contractor shall remain obligated to perform the work in accordance with the terms of the existing Contract. The Department may grant time extensions to allow for the time required to develop and review a Proposal.

(4) For potential Proposals not discussed at the Cost Savings Incentive Workshop, a mandatory concept meeting will be held for the Contractor and Department to discuss the potential Proposal prior to development of the Proposal.

4-3.9.2 Subcontractors: The Department encourages the Contractor to include the provisions of this Subarticle in Contracts with subcontractors and to encourage submission of Proposals from subcontractors. However, it is not mandatory to submit Proposals to the Department or to accept or transmit subcontractor proposed Proposals to the Department.

4-3.9.3 Data Requirements: As a minimum, submit the following information with each Proposal:

(1) a description of the difference between the existing Contract requirement, including any time extension request, and the proposed change, and the comparative advantages and disadvantages.

(2) separate detailed cost estimates for both the existing Contract requirement and the proposed change. Break down the cost estimates by pay item numbers indicating quantity increases or decreases and deleted pay items. Identify additional proposed work not covered by pay items within the Contract, by using pay item numbers on the Master Pay Item list. In preparing the estimates, include overhead, profit, and bond within pay items in the Contract. Separate pay item(s) for the cost of overhead, profit, and bond will not be allowed.

(3) an itemization of the changes, deletions or additions to plan details, plan sheets, design standards and Specifications that are required to implement the Proposal if the Department adopts it. Provide preliminary plan drawings sufficient to describe the proposed changes.

(4) engineering or other analysis in sufficient detail to identify and describe specific features of the Contract that must be changed if the Department accepts the Proposal with a proposal as to how these changes can be accomplished and an assessment of their effect on other project elements. The Department may require that engineering analyses be performed by a prequalified consultant in the applicable class of work. Support all design changes that result from the Proposal with prints of drawings and computations signed and sealed by the Contractor's Engineer of Record. Written documentation or drawings will be provided clearly delineating the responsibility of the Contractor's Engineer of Record.

(5) the date by which the Department must approve the Proposal to obtain the total estimated cost reduction during the remainder of the Contract, noting any effect on the Contract completion time or delivery schedule.

(6) a revised project schedule that would be followed upon approval of the Proposal. This schedule would include submittal dates and review time for the Department and Peer reviews.

4-3.9.4 Processing Procedures: Submit two copies of each Proposal to the Engineer or his duly authorized representative. The Department will process Proposals expeditiously; however, the Department is not liable for any delay in acting upon a Proposal submitted pursuant to this Subarticle. The Contractor may withdraw, in whole or in part, a Proposal not accepted by the Department within the period specified in the Proposal. The Department is not liable for any Proposal development cost in the case where the Department rejects or the Contractor withdraws a Proposal.

The Engineer is the sole judge of the acceptability of a Proposal and of the estimated net savings in construction costs from the adoption of all or any part of such proposal. In determining the estimated net savings, the Department reserves the right to disregard the Contract bid prices if, in the judgment of the Engineer, such prices do not represent a fair measure of the value of work to be performed or to be deleted.

Prior to approval, the Engineer may modify a Proposal, with the concurrence of the Contractor, to make it acceptable. If any modification increases or decreases the net savings resulting from the Proposal, the Department will determine the Contractor's fair share upon the basis of the Proposal as modified and upon the final quantities. The Department will compute the net savings by subtracting the revised total cost of all bid items affected by the Proposal from the total cost of the same bid items as represented in the original Contract.

Prior to approval of the Proposal that initiates the supplemental agreement, provide acceptable Contract-quality plan sheets revised to show all details consistent with the Proposal design.

4-3.9.5 Computations for Change in Contract Cost of Performance: If the Proposal is adopted, the Contractor's share of the net savings as defined hereinafter represents full compensation to the Contractor for the Proposal.

The Department will not include its costs to process and implement a Proposal in the estimate. However, the Department reserves the right, where it deems such action appropriate, to require the Contractor to pay the Department's cost of investigating and implementing a Proposal as a condition of considering such proposal. When the Department imposes such a condition, the Contractor shall accept this condition in writing, authorizing the Department to deduct amounts payable to the Department from any monies due or that may become due to the Contractor under the Contract.

4-3.9.6 Conditions of Acceptance for Major Design Modifications of

Category 2 Bridges: A Proposal that proposes major design modifications of a category 2 bridge, as determined by the Engineer, shall have the following conditions of acceptance:

All bridge plans relating to the Proposal shall undergo an independent peer review conducted by a single independent engineering firm referred to for the purposes of this article as the Independent Review Engineer who is not the originator of the Proposal design, and is pre-qualified by the Department in accordance with Rule 14-75, Florida Administrative Code. The independent peer review is intended to be a comprehensive, thorough verification of the original work, giving assurance that the design is in compliance with all Department requirements. The Independent Review Engineer's comments, along with the resolution of each comment, shall be submitted to the Department. The Independent Review Engineer shall sign and seal the submittal cover letter stating that all comments have been adequately addressed and the design is in compliance with the Department requirements. If there are any unresolved comments the Independent Review Engineer shall specifically list all unresolved issues in the signed and sealed cover letter.

The Contractor shall designate a primary engineer responsible for the Proposal design and as such will be designated as the Contractor's Engineer of Record for the Proposal design. The Department reserves the right to require the Contractor's Engineer of Record to assume responsibility for design of the entire structure.

New designs and independent peer reviews shall be in compliance with all applicable Department, FHWA and AASHTO criteria requirements including bridge load ratings.

4-3.9.7 Sharing Arrangements: If the Department approves a Proposal, the Contractor shall receive 50% of the net reduction in the cost of performance of the Contract as determined by the final negotiated agreement between the Contractor and the Department. The net reduction will be determined by subtracted from the savings of the construction costs the reasonable documented engineering costs incurred by the contractor to design and develop a Proposal. Engineering costs will be based on the consultant's certified invoice and may include the costs of the Independent Review Engineer in Subarticle 4-3.9.6. The total engineering costs to be subtracted from the savings to determine the net reduction will be limited to 25% of the construction savings and shall not include any markup by the Contractor nor the costs for engineering services performed by the Contractor.

4-3.9.8 Notice of Intellectual Property Interests and Department's Future Rights to a Proposal:

4-3.9.8.1 Notice of Intellectual Property Interests: The Contractor's Proposal submittal shall identify with specificity any and all forms of intellectual property rights that either the Contractor or any officer, shareholder, employee, consultant, or affiliate, of the Contractor, or any other entity who contributed in any measure to the substance of the Contractor's Proposal development, have or may have that are in whole or in part implicated in the Proposal. Such required intellectual property rights notice includes, but is not limited to, disclosure of any: issued patents, copyrights, or licenses; pending patent, copyright or license applications; and any intellectual property rights that though not yet issued, applied for or intended to be pursued, could nevertheless otherwise be subsequently the subject of patent, copyright or license protection by the Contractor or others in the future. This notice requirement

does not extend to intellectual property rights as to stand-alone or integral components of the Proposal that are already on the Department's QPL or design standard indexes, or are otherwise generally known in the industry as being subject to patent or copyright protection.

4-3.9.8.2 Department's Future Rights to a Proposal: Notwithstanding 7-3 nor any other provision of the Standard Specifications, upon acceptance of a Proposal, the Contractor hereby grants to the Department and its contractors (such grant being expressly limited solely to any and all existing or future Department construction projects and any other Department projects that are partially or wholly funded by or for the Department) a royalty-free and perpetual license under all forms of intellectual property rights to manufacture, to use, to design, to construct, to disclose, to reproduce, to prepare and fully utilize derivative works, to distribute, display and publish, in whole or in part, and to permit others to do any of the above, and to otherwise in any manner and for any purpose whatsoever do anything reasonably necessary to fully utilize any and all aspects of such Proposal on any and all existing and future construction projects and any other Department projects.

Contractor shall hold harmless, indemnify and defend the Department and its contractors and others in privity therewith from and against any and all claims, liabilities, other obligations or losses, and reasonable expenses related thereto (including reasonable attorneys' fees), which are incurred or are suffered by any breach of the foregoing grants, and regardless of whether such intellectual property rights were or were not disclosed by the Contractor pursuant to 4-3.9.8.1, unless the Department has by express written exception in the Proposal acceptance process specifically released the Contractor from such obligation to hold harmless, indemnify and defend as to one or more disclosed intellectual property rights.