



Florida Department of Transportation

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SECRETARY

September 25, 2023

DCE MEMORANDUM NO. 23-03

(FHWA Approved: 9/20/2023)

TO: DISTRICT CONSTRUCTION ENGINEERS

FROM: Tim Lattner, P.E., Director, Office of Construction DocuSigned by:
Tim Lattner
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COPIES: Will Watts, Dan Hurtado, Ananth Prasad (FTBA), Larry Ritchie, Stefanie Maxwell, Chad Thompson, Jose Ortiz (FHWA)

SUBJECT: DESIGN-BUILD DIVISION I BOILERPLATE – REVISED SUBARTICLE 4-3.9 COST SAVINGS INITIATIVE PROPOSAL

The Department has revised **Subarticle 4-3.9 Cost Savings Initiative Proposals** of the Design-Build Division I Boilerplate. The revised language changes the timing of when the Contractor can initiate a cost reduction proposal, eliminates the need for a mandatory cost savings initiative workshop to be held, and clarifies that changes in costs due to quantity variances of items of work in the process of developing a Released for Construction set of plans in accordance with the submitted technical and price proposals are not included as part of a CSI.

The revised language is being implemented in the Fiscal Year 2023-2024 Design-Build Division I Boilerplate and is included in the attachment below.

This memorandum serves as a blanket approval to process a \$0.00 contract change to incorporate the above referenced revisions and should be attached to the Work Order or Supplemental Agreement. This is required for all projects advertised on or after July 1, 2023.

Should you have any questions, please contact Larry Ritchie at 850-414-4168.

TL/lr
Attachment

DESIGN-BUILD SPECIFICATIONS.

(REV 6-~~620~~-23) (FY 2023-24)

SUBARTICLE 4-3.9 is deleted and the following substituted:

4-3.9 Cost Savings Initiative 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, following ~~the submission of technical and price proposals, the execution of the contract but that was not included in the technical and price proposals,~~ for the purpose of refining the Contract to increase cost effectiveness or significantly improve the quality of the end result. ~~A mandatory Cost Savings Initiative Workshop for the Contractor and Department to discuss potential Proposals will be held within 30 calendar days following the issuance of the Notice to Proceed. This mandatory workshop can only be eliminated if agreed to in writing by both the Contractor and Department.~~

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. Deletions of work, approved by the Engineer which are not directly associated with or integral to a Proposal will be handled as full credits to the Department for the work deleted.

3. The Department shall have 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. The Department reserves the right to reject at its discretion any Proposal submitted which is based on or related to a previously rejected Alternative Technical Concept proposal submitted during the procurement process.

5. Prior to the development of a potential Proposal, a mandatory concept meeting will be held for the Contractor and Department to discuss the potential Proposal. This mandatory meeting can only be eliminated if agreed to in writing by both the Contractor and Department.

6. Changes in costs due to quantity variances of items of work in the process of developing a Released for Construction Set of Plans in accordance with the Original Technical and Price proposal are not included in such proposals.

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. Identify additional proposed work not covered by using pay item numbers in the Basis of Estimates Manual. In preparing the estimates, include overhead, profit, and bond costs within pay items.

3. An itemization of the changes, deletions or additions to Plan details, Plan sheets, Standard Plans and Specifications that are required to implement the Proposal if the Department adopts it. Submit 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 Analysis be performed by a prequalified consultant in the applicable class of work. Support all design changes that result from the Proposal with drawings and computations ~~signed and sealed by the Engineer of Record.~~ signed and sealed by the Engineer of Record. Written documentation or drawings will be submitted clearly delineating the responsibility of the 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 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.

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. The Department will compute the net savings by subtracting the revised total cost affected by the Proposal from the total cost represented in the original Contract.

Prior to approval of the Proposal that initiates the supplemental agreement, submit 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 pre-qualified by the Department in accordance with Rule 14-75 and who is not the originator of the Proposal design 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 Contractors Engineer of Record for the Proposal design.

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 for sharing the savings in reimbursable costs for utility relocation, the Contractor shall receive a share of the savings. The savings will be the new difference between the estimated relocation cost shown in the RFP and the actual billed reimbursable amount for each utility. The savings will be determined for each utility individually and not the net of any decrease and increase in relocation costs combined for all utilities. The Contractor will receive 50% of the first \$250,000 in savings and 20% of the amount of the savings in excess of \$250,000.

For all other Proposals, 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 subtracting 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 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 or the costs for engineering services performed by the Contractor. Engineering costs shall only be considered for Proposals initiated after Plans have been stamped "Released for Construction" by the Department as described in the RFP~~ the Department approves the Contractor's Proposal.

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 Approved Product List (APL) or Standard Plans, 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.

