Alternative Contracting Task Team Meeting Minutes

August 31, 2009

Old Business

ARRA Requirements

Reporting - Team members were reminded of the ARRA reporting requirements. All firms must have a Dun and Bradstreet (DUNS) number. This is a unique nine digit identification number issued by Dun and Bradstreet. It is not the same as a firm's tax ID number. If you have not obtained a number and you want to work on any ARRA project, you will need to apply for this number ASAP. It takes a minimum of 30 days to receive a DUNS number.

DBE Participation – Team members are reminded that the statewide DBE participation goal of 8.1% applies to all ARRA funded projects. Everyone is encouraged to do their part in helping FDOT meet this 8.1% goal. Industry representatives requested that FDOT and FHWA reconsider the use of trucking as being a way to increase DBE participation on federal aid projects.

New Business

Stipends

Law Change – On May 27, 2009 Governor Crist signed House Bill 1021 into law. The law amended s.337.11, F.S. giving FDOT the authority to award monetary stipends to unsuccessful bidders for Design Build construction and maintenance contracts for proposal development costs. The verbiage change is contained on pages 24 and 25 of the bill. The link is shown below. http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=_h1021er.xml&DocumentType=Bill&BillNumber=1021&Session=2009 The industry would like stipends to be used on all projects.

Agreement - FDOT has made a policy decision that when denoted in the RFP the Department will return to awarding stipends to the shortlisted Design Build teams whose technical proposal were not selected. Stipends will not be included on all projects.

The Districts will insert the stipend language into the RFP's and initiate the agreement contract when stipends are intended to be included. As a result, form 700-011-14, the Design Build Stipend Agreement, was created to reflect this policy change (see attached).

RFP Boiler Plate Changes

Mark Ups – The State Construction Office (SCO) has made some changes to how the boilerplate RFP documents should be submitted for review. Team members are reminded to always start with the most recent version as shown on the State Construction web page. This will ensure that the most current version is being used. A boilerplate version number is now footnoted in the lower left hand corner of each page. When making deletions to the boilerplate, use the strike through feature and when making additions change the font color and underline the text added. This will make the changes stand out for the reviewer and will reduce the time necessary to conduct the review. These changes are effective immediately.

When updates are made to the boilerplate, the State Construction Office will highlight the change for six months. At the end of the six month period, the highlighting will be removed. This will allow the team members to see how the documents have been changed from previous versions.

Make Up of the Technical Review Team

Local Agency Participation – With the influx of ARRA funding there has been an increase in the number of Design/Build RFP's being submitted for work being conducted on the local system. As a result the SCO has received a number of inquires asking if the local agency can participate on the Technical Review Committee (TRC). The attached link provides the full text outlining the requirements for local participation on the TRC. https://www.flrules.org/Gateway/View_notice.asp?id=7066176 In summary, if a local agency wants to participate, the "Department personnel must constitute the majority unless otherwise approved by the appropriate Director. No employee of a firm pursuing a project under consideration will serve on the Technical Review Committee."

Responsive/Nonresponsive Proposals

Definitions

Non-Responsive refers to any LOI that does not meet the criteria identified in the short-listing process or any proposal that does not comply with the criteria defined in the Request for Proposal.

Responsive refers to a LOI that complies with the criteria identified in the short-listing process or a proposal that contains all the information and level of detail requested in the RFP and complies with the design and construction criteria defined in the RFP.

An extensive conversation resulted on this topic. The bullet points shown below are the common themes that were discussed:

- The RFP should clearly outline what requirements are not negotiable and what issues can be considered for innovation.

- The industry is proposing that the Design Build process includes a one on one meeting with Department staff that is confidential and not subject to the Sunshine Law or Public Records Act in an effort to protect trade secrets. The concepts presented would be evaluated for responsiveness and would only become public under the following conditions:
    - After the technical proposals are scored and one of the shortlisted D/B firms are selected
    - If the information presented results in a change to the RFP that the other shortlisted firms need to be made aware of
- Currently the process used to address questions and answers before the technical proposal is submitted is individual questions are sent to the District and they respond in writing making all short listed firms aware of both the question and answer.
- Industry members stated that the Design/build one on one process could be modeled after the P3 question and answer session that is not subject to the Sunshine Law. It was stated that at these meetings Department staff met with the industry members and they would discuss Alternative Technical Concepts (ATC). Any drawings and documentation that the industry members used to display their ATC would be taken with them at the end of the meeting. Department staff was not allowed to render a decision at the meeting on the concepts presented. All decisions were supplied to the industry members after the Department staff met internally after the ATC meeting and discussed the concepts.
- Concerns were raised about D/B projects that included large amounts of utility relocations included in them. Industry representatives felt that this was unfair to hold contractors responsible for ensuring relocation and in some cases costs when they have no control over the third party utility companies. Department staff was reminded that utility and right of way conflicts are listed as reasons why a proposed project may not be the best candidate for D/B.
- The Department committed to discussing the option of including within the Design/Build process a one on one meeting between the industry and Department representatives that could be kept confidential. This concept would need to be discussed with the Department's General Counsel's Office to ensure that any process implemented would be in compliance with the Sunshine Law and the Public Records Act.

Outcome of the Follow-up Meeting within FDOT – If the Department wants to implement an Alternative Technical Concept (ATC) style meeting with staff and the D/B industry representatives, statue 337.11 would need to be revised to alter the requirements of the Sunshine Law and the Public Records Act. As a result of these meetings the ATC boilerplate has been modified to reflect this change. The document can be accessed using the link shown:
http://www.dot.state.fl.us/construction/DesignBuild/DBDocuments/DBDocsMain.shtm

Short Listing Process – A concern was raised by industry members that the Department staff was biased in how they short listed firms. A request was made to have the Department implement a process to ensure work was distributed more equitably. The example given was one firm that had an

asphalt plant within the limits of a design build project was not short listed. It was explained that the short listing of D/B firms, the locating of physical assets is not a factor that is weighed. Letters of Interest are reviewed based on the ability and technical competence of the firms for the type of project that is being built. The Department will not be adjusting the D/B process in the suggested manner.

Open Forum

- The Department was asked what other types of Alternative Contracting Methods are being used.
    - CM @ Risk – In the coming months there should be a couple of projects that will be advertised using this alternative contracting method
    - Performance Contracting/Highways for Life – the Department is working with the industry to develop this contracting process. This is still in its early stages with additional meetings being scheduled this fall. If agreements can be reached the first projects would not be piloted until the 2010 calendar year.

Alternative Contracting Meeting Attendance

August 31, 2009

Name	Company	E-mail Address
David Sadler	FDOT-State Construction	david.sadler@dot.state.fl.us
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Larry Low	HDR	larry.low@hdrinc.com
Doug Geiger	R S & H CS	doug.geiger@rsandh.com
Doug Cox	Jacobs	doug.h.cox@jacobs.com
Dan Foss	Jacobs	dan.foss@jacobs.com
Steve Martin	PBS&J	swmartin@pbsj.com
Alan Silver	Balfour Beatty	asilver@balfourbeattyus.com
Adrian Share	WSA	ashare@wilbersmith.com
Scott Bear	CH2M Hill	sbear@ch2m.com
Steve Noppinger	URS	steve.noppinger@urscorp.com
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Joe Raucci	Southland Construction, Inc.	jcraucci@southlandconstruction.com
Tim Daniels	Balfour Beatty/Infrastructure	tdaniels@bbinfrastructureinc.com
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Andy Clark	Leware Construction	aclark@lewarecc.com
Andy Jones	Ranger Construction Industries	ajones@rangerconstruction.com
John Skidmore	APAC-Southeast	jhskidmore@apac.com
Brian Sparks	Archer Western Contractors	bsparks@walshgroup.com

Tad Nelson	Travelers	tsnelson@travelers.com
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Sid Florey	Hubbard Construction	sidney.florey@hubbard.com
Dan Mathews	Gator Grading and Paving	mathewsd@gatorgap.com

The following locations were represented by video conference:

Central Office, District One, District Three, District Four, and District Six