

**Alternative Contracting Task Team Meeting Minutes**  
(Formerly Design-Build Task Force)

**Date:** April 1, 2009

**Place:** Turnpike Headquarters (Turkey Lake Plaza)  
Building 5315/Room 1093/1<sup>st</sup> Floor Auditorium

**Time:** 10:00 am until 12:30 pm

**Teleconference Bridge Line:** 850-414-4976

**Agenda items:**

**Introductions:**

*The following individuals were in attendance:*

*David Sadler FDOT, Paul Steinman FDOT, Derek Fusco FDOT, Dan Foss Jacobs, Doug Geiger RS&H CS, David Sweeney RS&H CS, Ken Leuderalbert American Consulting Engineers, Roger Martin PCL, Jennifer Vreeland FDOT, Steve Martin PBS&J, Roger Martin PCL, Dave Whaley, Jim Martin FDOT, Juanita Moore FDOT, Richard Nethercote FDOT-Turnpike, Imran Ghani FDOT-Turnpike, Frank Elmore FDOT-Turnpike, Ken Hartman HDR, Michael Schwier LPA Group, Nelson Bedenbaugh FDOT, Steven Blount Ty Lin, Imran Ghani FDOT-Turnpike, Jon Sands FDOT, Louis Reis FDOT, Tom Boyle Granite, and Scott Bear CH2M, Amy Scales FDOT, Ed Mackiewicz Ranger, Alan Silver Balfour Beatty, and Marvin Williams, FHWA*

*The following individuals teleconferenced into the meeting:*

*Keith Hinson FDOT, Steve Benak FDOT, David Amato FDOT, Rudy Powell FDOT, Tom Andres FDOT, Robert Bostian FDOT, Tim Brock FDOT, Mark Croft FDOT, Derrick Brown FDOT, Steve Blount TY Lin, Matt Price FDOT – Turnpike, Mark Minich Ajax Paving and Greg Xanders, Jacobs.*

**Old Business:**

1. **PPP Documents** – District 4 finalized the RFP document for I-595 and the contract was awarded to ACS Infrastructure Development (ACSID). District 2 is working on the Environmental and RFP documents for the First Coast Outer Beltway (FCOB) project. Central Office has finalized the RFP for the leasing of Alligator Alley with bids expected to be received in May 2009.

*The above P3 projects were discussed. The contract for the I-595 project has been executed.*

**New Business:**

1. **CM@Risk Update** - District 4 is proceeding with the repair of two bascule bridge projects. District 7 proceeding with a project for I-75 NB and SB Rest Area improvement projects in Pasco County.

*On the District 4 bascule bridge project, the 60% plans are complete, the first Guaranteed Max Price (GMP) for the long lead time items will be finalized soon and a second GMP for the remainder items on the project will be finalized in June/July 2009. Contract negotiations have taken more time than anticipated.*

*It was discussed that District 7's CM@Risk project has been awarded.*

*It was discussed that several counties have used CM@Risk contracting on roadway widening projects and suggested that perhaps the Department could pilot similar type projects.*

2. **Build Finance** – A few Districts' are looking at Build Finance projects. As a result, Central Office has created Build Finance Special Provisions, the main part of the special provision is below.

*Partial payments will be made based on monthly invoices submitted by the Contractor and accepted by the Engineer, subject to the Cash Availability Schedule. The monthly invoice period shall coincide with the Department's monthly estimate period. The invoices shall be by FPID and based on the amount of work the Contractor completes during the month (including delivery of certain materials as specified below) The cash available for partial payments will be contingent upon annual appropriation and in accordance with the Cash Availability Schedule shown below for each 11 character Financial Project Identification Number (FPID) in the Contract.*

*The Department will base the amount of such payments on the total value of the work that the Contractor has performed to the date of the invoice, based on the quantities completed and the Contract prices, less payments previously made and less any retainage withheld, limited to the cash available per the applicable Cash Availability Schedule. Any reduction in payment due to insufficient cash available shall be included on the next monthly invoice.*

*The Cash Availability Schedule is based on the funding as originally programmed. If the bid is lower than the total amount of funds available for payment, the appropriate schedule will be modified with the last available funds being reduced.*

*Payment will be made to the Contractor by warrant mailed to the Project Specific Escrow Account using a unique vendor number sequence. Complete Form Number 700-011-16B, "Request for Project Specific Escrow Account And Unique Vendor Number Sequence" and submit it to the FDOT Comptroller at 605 Suwannee Street, MS 24, Tallahassee, Fl. 32399-0424 to set up the unique vendor number sequence. Note: The unique vendor sequence number must be established through the FDOT Comptroller, in coordination with MyFloridaMarketplace/Department of Financial Services, and the Contractor should not contact MyFloridaMarketplace/Department of Financial Services to do so. This Project Specific Escrow Account payment process shall be irrevocable unless a mutual written request to the Department (using Form Number 700-011-17B, "Request for Direct Payment to firm's Primary Vendor") is made by the Contractor, its Surety and its Lender, and thereafter approved by the Department.*

*The subject proposed special provision was discussed with the team.*

- 3. D/B drawings being stamped "Release for Construction" without any indication who stamped them?** The RFP requires that they be dated and initialed by the person who has reviewed and stamped them.

*District 5 noted that they only sign and date the Key sheet and stamp each page "Released for construction".*

- 4. ATC's : D/B Projects and I-595 –**

Any District feedback on ATC's?

*Briefly discussed the use of ATC's in District 4 and 6. Some ATC's have been accepted and others have not been accepted. It was noted that nothing from the ATC meetings is being shared among the short listed D/B firms.*

*It was noted that when developing a RFP and if the Department wants opportunity and value from the ATC process that the Department needs to provide the D/B firms enough time and opportunity in the procurement process to do so.*

## **5. Subject: DB Review times**

An issue that came up at the D5 Contractor meeting was regarding review times on Design/Build projects.

The Generic RFP states:

The DESIGN BUILD FIRM'S schedule should allow for a ten (10) working day review time for the DEPARTMENT'S review of the 90% design submittal with the exception of Category II structures. The review of Category II structures requires Central Office involvement and the schedule shall allow 15 working days for these reviews.

Contractors complain that if they choose to work Sat and/or Sunday, we need to go along with that, (which reduces our review time); the way the RFP is written, they are correct. If we need more time, we should adjust the RFP.

**Could say:**

**The DESIGN BUILD FIRM'S schedule should allow for a fifteen (15) calendar day (excluding Holidays as defined in section 1-3 of the Specifications) review time for the DEPARTMENT'S review of the 90% design submittal with the exception of Category II structures. The review of Category II structures requires Central Office involvement and the schedule shall allow twenty (20) calendar days (excluding Holidays as defined in section 1-3 of the Specifications) for these reviews.**

Frank J. O'Dea, P.E.  
District Construction Engineer  
Florida Department of Transportation - D5

*It was decided that the D/B Boilerplate RFP review times could be modified to calendar days from working days.*

## **6. PAYMENT FOR MOBILIZATION UNDER ENGINEERING SERVICES**

Payment for the Contractor's Preconstruction Services during the Design Phase can be paid as mobilization under Engineering Services. Refer to the Schedule of Values line item, mobilization (Contractor Preconstruction Services), under Engineering Services. Payment for these mobilization costs are not to exceed 3% of the original contract amount, unless supported by a certified invoice from the Prime Contractor.

This change was discussed in the past meetings, but it was decided that the new Mobilization spec that allows full payment within the first four months of the contract addressed the issue. However, this request recently resurfaced again on a D/B project and was implemented. As a result, the example Schedule of Values on the website was updated to reflect this. However, the proposed change to the new Mobilization standard specification allowing payment to begin at the Notice to Proceed rather than at the commencement of construction should resolve this issue in the future.

***New Standard Spec- January 2010:***

***101-2.2 Partial Payments:*** *When the proposal includes a separate pay item for Mobilization and the Notice to Proceed has been issued, partial payments will be made in accordance with the following:*

*For contracts of 120 contract days duration or less, partial payment will be made at 50% of the bid price per month for the first two months. For contracts in excess of 120 contract days duration, partial payment will be made at 25% of the bid price per month for the first four months. In no event shall more than 50% of the bid price be paid prior to commencing construction on the project site.*

*Total partial payments for Mobilization on any project, including when more than one project or job is included in the Contract, will be limited to 10% of the original Contract amount for that project. Any remaining amount will be paid upon completion of all work on the Contract.*

*Retainage, as specified in 9-5, will be applied to all partial payments.*

*Partial payments made on this item will in no way act to preclude or limit any of the provisions for partial payments otherwise provided for by the Contract.*

*It was discussed that this new mobilization standard spec could be adopted into the D/B Boilerplate specifications in January 2010 to resolve payment for Mobilization in the future. It was mentioned that the words "bid price" in the standard spec would need to be modified to work on a D/B project since it is a Lump Sum project working off a schedule of values.*

**7. Structural Design Calculations:**

Section VII is the only place that refers to design support documents. The way I read this section is that design calculations are not required. My concern is that structural components (primarily critical structural elements such as ship impact piers, controlling beams, piers, etc.) need to be evaluated from a technical perspective (looking for fatal flaws) not solely evaluated based on a narrative or a picture at the Technical Proposal submittal. I am not sure how you can tell if a ship impact structure is properly designed without supporting calculations...

I know you can evaluate what was provided, i.e. one proposal vs. another, but someone will ultimately question the exact submittal requirements.

Michael Neil Kenis, P.E.  
District 5 Structures Design Engineer

### **Section 7: Design Support Documents**

- Paper size: 8½" x 11"
- Maximum allowed pages: \_\_\_\_\_
- The minimum information to be included is as follows:

The minimum information to be included shall be in accordance with Section \_\_\_\_\_.

**As a result, a Note was added in the RFP making this clearer? Note to Developer of the RFP: Please clarify what structural design calculations are to be submitted (i.e. ship impact piers, controlling beams, piers, etc).**

*The above change was discussed with the team.*

### **8. District 4 – D/B Longlisting/Shortlisting Process?**

The TRC should take into consideration the following criteria as it applies to the project. Not all criteria will apply or may have little value for the particular project. The TRC should determine in advance the criteria and its importance in the evaluation of the LOIs to produce the ranked long list. The TRC is to determine the specific appropriateness of items 2 and 3, as the Florida Department of Transportation (FDOT) does not have a long history of firms using the Design-Build process. The criteria are:

1. Past Performance Grades: Contractor, Designer, and CEI (if CEI is included in contract).
2. Joint experience of the firms working together.
3. Design-Build experience of the Firms.
4. Similar type work experience.
5. The current workload of the Firms.
6. Time delays on past projects.
7. Experience of key personnel.
8. Safety record.
9. Firm organization, resources and location.
10. Environmental record.
11. Incidents of litigation/disputes history.
12. Other categories the TRC determines.

*It was noted that the D/B guidelines were developed several years ago and were created to be flexible. Perhaps the D/B guidelines need to be reviewed and updated. It was noted that item number 5 above should refer to the D/B Team's capacity and not workload.*

## **9. Economic D/B Stimulus Projects Reporting**

For economic stimulus projects please include special provisions 0070111ES, 0090503ES, and 0090801ES for the reporting of jobs created by the American Recovery and Reinvestment Act of 2009.

Also, the CEI professional services contracts will require job reporting criteria.

*The proposed economic stimulus special provisions are as follows:*

### ***LAWS TO BE OBSERVED. (REV 3-31-09) (3-09)***

*ARTICLE 7-1 (Pages 60 and 61) is expanded by the following:*

#### ***7-1.1.1 Compliance with American Recovery and Reinvestment Act of 2009:***

*This project is subject to the criteria and conditions of the American Recovery and Reinvestment Act (ARRA) of 2009. Satisfy the federal reporting requirements for the project(s), such as the monthly employment report, for both the contractor and subcontractors. Provide the required information on form(s) provided by the Department in the timeframe indicated in the instructions. Include these reporting requirements in all subcontracts.*

##### ***7-1.1.1.1 Authority of the Comptroller General:***

*Section 902 of the ARRA of 2009 provides the U.S. Comptroller General and his representatives the authority:*

*(1) to examine any records of the Contractor or any of its subcontractors, or any State or Local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and*

*(2) to interview any officer or employee of the Contractor or any of its subcontractors, or of any State or Local government agency administering the Contract, regarding such transactions.*

*Accordingly, the Comptroller General and his representatives shall have the authority and rights as provided under Section 902 of the ARRA with respect to this Contract, which is funded with funds made available under the*

ARRA. Section 902 further states that nothing in this Section shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General.

**7-1.1.1.2 Authority of the Inspector General:**

Section 1515(a) of the ARRA provides authority for any representatives of the Inspector General to examine any records or interview any employee or officers working on this Contract. The Contractor is advised that representatives of the Inspector General have the authority to examine any record and interview any employee or officer of the Contractor, its subcontractors or other firms working on this Contract. Section 1515(b) further provides that nothing in this Section shall be interpreted to limit or restrict in any way any existing authority of an Inspector General.

*PARTIAL PAYMENTS-WITHHOLDING PAYMENT.  
(REV 2-11-09) (3-09)*

*SUBARTICLE 9-5.3 (Page 99) is expanded by the following:*

**9-5.3.3 Withholding Payment for Failure to Comply with American Recovery and Reinvestment Act of 2009:** *The Department will withhold progress payments from the Contractor for failure to comply with the requirements of 7-1.1.1.*

*ACCEPTANCE AND FINAL PAYMENT - ACCEPTANCE AND FINAL PAYMENT  
DOCUMENTS.  
(REV 3-3-09) (3-09)*

*SUBARTICLE 9-8.1 (of the Supplemental Specifications) is expanded by the following:*

*(h) The Contractor has met the requirements of 7-1.1.1.*

**10. Question: Do you award Holiday time extension to the contractor on Design Build contracts when the controlling item of work is performing the design work?**

Answer: If the controlling item of work is design and a holiday time extension is requested, then the contractor is entitled to this time. The design phase is part of the Contractor's contract just as the construction phase for D/B projects and you would award this time if he were in the construction phase so you would do likewise in the design phase.

*The above was discussed with the team.*

**11. D/B Low Bid RFP and D/B Local Agency RFP for Off System Projects are on the State Construction Office website**

*The above was discussed with the team. Please refer to the following guidance for Local Agency D/B projects:*

*LAP On-System use:*

- *The Department's D-B RFP on the Construction Office website*
- *The On-System LAP Design Build Guidelines for Div. 1 on the Specification Office website*
- *The applicable workbook for Divisions II and II on the Specifications Office website and the Standard Specifications*

*LAP Off-System use:*

- *The Local Agency off-system D/B RFP Boiler Plate on the Construction Office website. Note: This is an example for the local agency, not a requirement to be used.*
- *The "Big 4" specifications for off-system on the Specifications Office website or approved equal*

**12. Open Floor – Lesson's learned?**

*Discussed that on future large P3 projects that perhaps the project could be advertised in segments with construction costs of each segment less than a billion dollars to spur more competition.*

*A concern was noted that for the economic stimulus D/B projects that there needs to be a delay time between the advertisement for the D/B project and the CEI contract to provide the consultants more time to make a business decision.*

*It was discussed that the FHWA Form 1273 is being included in the D/B contracts in the Districts on Federal-aid projects.*

**13. Date, time and place for next meeting?**

*To be determined.*

# AC TASK TEAM MEETING

## APRIL 1, 2009

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