

## **Alternative Contracting Task Team Notes**

**Date:** November 1, 2011

**Place:** Turnpike Headquarters (Turkey Lake Plaza)  
Auditorium A

**Time:** 9:30 am – 12:00 pm

### **Agenda items:**

#### **Introductions & Opening Remarks**

*Introductions were made. Opening remarks and greetings were made by Mr. Sadler and Mr. Burleson.*

### **New Business:**

1. Comments / Feedback from May 2011 Statewide FICE Conference – (David Sadler)
  - a) *LOI and RFP and the DB processes should be alike in all districts.*
  - b) *DB is best on certain projects and these should be selected.*
  - c) *A lot is asked for deliverables at various stages of calculations and submittals. More than often seems necessary.*
  - d) *There needs to be consistency in grading. Some use 100 point system and others 1000 point system. At least two presenters favored the 1000 point system verbally.*
  - e) *The selection process requires too much of designers, it is very costly up front.*
  - f) *You don't need the same level of details on DB plans as you do on conventional.*
  - g) *The "alternative technical concept"...should the suggesting contractor be the owner of the idea, or is it OK for the scope to change to reflect the innovative idea?*
  - h) *The "schedule of values" should be done after the award, not before.*
  - i) *If it is a lump sum contract, don't get involved in too much detail prior to award.*
  - j) *Contractors don't think the designers have enough liability insurance.*
  - k) *Less unknowns = less contingencies = better bids*

- l) Suggestion was made to look at the spread of DB teams of both consultant and contractors.
- m) Past experience is part of the selection/grading process and if you are getting started, you don't have any.
- n) How much value should be placed on innovation? How many points to add?
- o) There is so much inconsistency in assigning grades. Try to remove as much subjectivity as possible.

*The comments & perspectives from the May 2011 S/W FICE Conference were reviewed and discussed. The group discussed various ways to foster consistency with the D-B program (i.e. 100 point scale on all ASDB projects, etc.). With regard to item G. it was discussed that addendums to the RFP should only be issued if an approved ATC deviates from the original RFP. With regard to item H. it was determined that a SoV should not be required pre-award (i.e. as part of the Bid Price Proposal) except for D-B Finance projects (which is a requirement of the RFP for those projects). The boilerplate RFP only requires a SoV be submitted and approved prior to invoicing. At least 2 of the 8 districts currently require a SoV to be submitted as part of the Bid Price proposal but this practice will cease. Also, the SoV format should be that of the boilerplate example as listed on the SCO website: <http://www.dot.state.fl.us/construction/DesignBuild/DBDocuments/ProjectScheduleOfValues.docx> .*

*Development of a SoV to the level of a department generated CES should not be required by department personnel or its representatives. With regard to Item J., this item was not seen as a concern for the group.*

## **2. Cost Savings Initiative Proposal – (David Sadler)**

*The group revisited allowing CSI's on D-B projects. The current expectation of the Owner is that innovation should be introduced as the technical proposal is developed. Industry views this with concern and would like to see CSI's allowed on D-B projects. The proposed CSI specification language which may be incorporated into the D-B specifications is included herein for review and comment by the ACTT group.*

3. Deductions for Design Refinements – (David Sadler)

*The group discussed various scenarios where changes to the plans post development of the technical proposal and post award have occurred resulting in “deleted work”. Industry expressed concern that this expectation undermines the intent of the D-B process and views these changes as design refinements as opposed to deviations from the technical proposal (aka book of promises). It was expressed that this issue may be alleviated if CSI’s were allowed on D-B projects. It was suggested to table this issue until such time as CSI’s were incorporated into D-B projects and re-evaluate this issue after the CSI process has had time to work.*

4. Timing of Bid Q&A (Before/After submission of Technical Proposal) – (David Sadler)

*Reviewed and discussed district practices related to the timing of pre-bid questions and answers. Of the districts polled during the meeting, 3 districts indicated they allow questions to be submitted to the website after the technical proposals are submitted, 2 districts indicated they do not allow questions to be submitted to the website after the submittal of the technical proposal, 1 district uses a “two-step” process and 1 district proposed a “two-step” process. It was determined that the timing would be consistent with the timing of questions and response for conventional projects as follows:*

*Questions posted to this site before 5:00 P.M. (EST) on the seventh calendar day prior to the bid opening, or tenth calendar day prior to the December bid opening, will be responded to by the Department. For questions posted after these times, an answer cannot be assured. For all questions posted before the deadline, the Department will provide and post responses at the same website before 8:00 A.M. (EST) on the second calendar day prior to bid opening.*

*This will be a change to the July 2012 Division I specifications for D-B projects.*

5. Design-Build Procurement Procedure – (David Sadler)

*The group discussed a proposal to revise current procurement processes for D-B projects such that all qualified firms submitting a responsive LOI would be “long-listed”. Under this process, the department would continue to “short-list” using current processes & LOI evaluation criteria. Under the revised process, “remaining long-listed” firms would be allowed 96 hours from the posting of the short-list to notify the department of their election to*

*continue in the procurement process for the project. “Remaining long-listed” firms electing to continue in the procurement would not be eligible for a stipend payment. The ACTT group suggested that any changes to the procurement process be vetted through the ACTT group prior to implementation and that results be monitored prior to “long-term” implementation. Concerns with this process expressed during the meeting were: timing of the 96 hour election period, quality of technical proposals submitted by “remaining long-listed” firms, etc. A proposal to consider some of the 12 to 13 long-list & short-list criteria as part of the technical proposal evaluation criteria was discussed but was determined not to be favorable since those criteria have previously been evaluated as part of the procurement process.*

**6. Design-Build Task Force – (David Sadler)**

*An update on the efforts underway by the D-B Task Force was provided to the group. The task force is currently reviewing the boilerplate RFP for the purpose of streamlining the technical proposal requirements, identifying and eliminating “prescriptive” requirements of the RFP and refining the evaluation criteria. This group consists of members from FDOT (design & construction), FTBA and FICE. Additional updates on the efforts of this group will be provided at future meetings. A concern was raised that if the modified procurement process discussed in item 5 above is implemented that the efforts of this group may be counterintuitive to the D-B process.*

**7. Alternative Contracting Steering Committee – (David Sadler)**

*A proposal was discussed to create a Alternative Contracting Steering Committee which would ultimately decide those issues to be addressed by the ACTT. The steering committee would be made up of 3 representatives from FDOT, FTBA and FICE respectively. Joe Gomez (FICE), Bob Burleson (FTBA) and David Sadler (FDOT) will nominate 3 steering committee members from their respective organizations for consideration.*

**8. Right of Way on Design-Build projects – (Alan Autry)**

*Discussed RFP language to be used when a D-B firm proposes the use of RoW for a project not identified (or allowed) by the RFP and/or concept plans developed by the department. Current statutes require that in these scenarios, FDOT would be responsible for acquisition of this additional*

*RoW. The additional RoW language which may be incorporated into the RFP is included herein for informational purposes.*

**9. Length & Content of Technical Proposals to achieve maximum value for Department & Industry (Jennifer Vreeland/John Tyler)**

- a) *What information does Department need to evaluate the Proposal?*
- b) *What information currently required by Department provides most, least or no value as it relates to the evaluation of the Proposal?*
- c) *What concerns does Industry have regarding cost associated with developing the Proposal (where is the most money spent)?*
- d) *Are there any "Lessons Learned" or "District practices" which should be considered for statewide implementation?*
- e) *How can Q&A process be enhanced to create a more beneficial exchange of information?*

*The items shown above were reviewed and discussed. With regard to A., this issue is being addressed by the D-B Task Force discussed in 6 above. With regard to B., it was mentioned that on simple (i.e. Low Bid D-B projects) plan sheets could be replaced with less cumbersome and complex drawings or sketches as part of the technical proposal. Industry expressed concerns over the "prescriptive" requirements of the RFP which limit innovations. It was suggested to allow "roll plots" and DVD's as opposed to hard copies of the plans and technical proposals. With regard to E., districts were encouraged to provide a list of questions to D-B firms at least 24 hours in advance of the Q&A meetings,*

**10. ATC and Question/Answer Meetings – (Alan Autry)**

*Raised awareness of the July 2011 statute changes which allow ATC & Q&A meetings to be exempt from public meeting. This change is now listed in the D-B procurement procedure, guidelines and RFP's.*

**11. Performance Evaluations on D-B projects – (Alan Autry)**

*Advised the group of the departments procedure for evaluating the areas of Quality and Constructability once D-B projects are Final Accepted. These evaluations will be performed for all Major Work Classes identified in the project advertisement. Evaluation forms have been created specifically for D-B projects and will be sent to SCO and the information will be made available for proposal evaluators to use when evaluating LOI's on future D-B projects.*

## 12. Boilerplate RFP Updates since last ACTT meeting – (Alan Autry)

a) *Written Clarification Letter (Section III; subsection E)*

*Requirements for D-B firm to submit a written clarification letter within 1 week of the Q&A session*

b) *Drilled Shaft Foundations for Miscellaneous Structures (Section V; subsection B and Section VI; subsection B)*

*Added Design and Construction criteria to the boilerplate RFP addressing Geotechnical Services and foundation requirements for these types of structures*

c) *Contract Duration (Section V; subsection I)*

*Schedule submitted with Technical Proposal required to identify if work activity durations are based on calendar days or working days (Follow-up from 3/31/2011 ACTT meeting)*

d) *Utility Coordination (Section VI; subsection C)*

*Boilerplate RFP includes a table to be completed by the department listing UA/O's identified by the department which may be impacted by the project and identifies the UA/O's reimbursement eligibility*

e) *Proposal Requirements*

*Instructions added to the boilerplate RFP documents and D/B guidelines which tell RFP developers to ensure that the Proposal Requirements align with the Evaluation and Design/Construction Criteria for the project*

f) *Financial Qualifications and Project Financial Plan (Section III; subsection L)*

*Added language developed by Office of Comptroller applicable to D-B Finance Projects*

g) *DBE Availability Goal (Section IV; subsection A)*

*From 8.18% to 8.6%*

h) *Use of Department owned RoW (Section V, subsection W)*

*Added language which requires department approval prior to D-B firm use of department owned RoW. Use of department owned RoW is limited to the D-B project(s) governed by the RFP*

i) *Special Events (Section VI; subsection L)*

*Added language to comply with Roadway Design Bulletin 11-10*

*Raised awareness of the recent changes to the boilerplate RFP listed above. The latest version of the boilerplate documents were posted to the SCO website on 11/01/2011.*

### 13. Open Floor

- A “Progressive D-B” contracting approach being developed by Turnpike was discussed. This may be a future “pilot” project.
- Discussion of the minimum number of “short-listed” firms (i.e. 3 as a minimum). More firms may be “short-listed” if there is no “clear” separation between no. 3 and no. 4 or between no. 4 and no. 5 and so on.
- It was suggested to adjust the schedule for the March 27, 2012 Liaison Meeting as it may conflict with the Spring 2012 meeting of the ACTT.
- FICE will be conducting a D-B Conference following the 2012 Construction Conference in Orlando.

14. Date, time and place for next meeting? *March or April 2012. Invitation to be sent once meeting schedule is finalized.*

## **Item 2: Proposed CSI Specification Language for Review and Comment**

### **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 for the purpose of refining the Contract to increase cost effectiveness or significantly improve the quality of the end result. 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.

(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) 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) For potential Proposals, 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. 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 within pay items.

(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.

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, 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 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, 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.

**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.

### **Item 8: ROW Language D-B Guidelines Section 8.1**

Following is an example of information which may be included in the RFP to address additional right of way acquisition based on the Design-Build Firms innovative approach to the project, where the Department will be responsible for the acquisition of said right of way:

*It is the Department's intent that all Project construction activities be conducted utilizing the existing horizontal alignment within the existing right-of-way. The Design-Build Firm may submit a Technical Proposal that requires the acquisition of additional right-of-way. Any Technical Proposal that requires the acquisition of additional right-of-way will not extend the contract duration as set forth in the existing Request for Proposal under any circumstances. The Department will have sole authority to determine whether the acquisition of additional right-of-way on the Project is in the Department's best interest, and the Department reserves the right to reject the acquisition of additional right-of-way.*

*If a Design-Build Firm intends to submit a Technical Proposal that requires the acquisition of additional right-of-way, the Design-Build Firm shall discuss such a proposal with the Department as part of the Question & Answer process or as part of the Alternative Technical Concept process, as applicable. If a Design-Build Firm submits a Technical Proposal that requires the acquisition of additional right-of-way and the Design-Build Firm fails to discuss such a proposal with the Department as part of the Question & Answer process or as part of the Alternative Technical Concept process, then the Department will not consider such aspects of the Proposal during the Evaluation process. If the Design-Build Firm's Technical Proposal requires additional right-of-way, the additional right-of-way will be required to be directly acquired by the Department. The Design-Build Firm shall submit, along with the Technical Proposal, certified sketches and legal descriptions including area in square feet of any proposed additional right of way parcels. On State funded projects, the additional right-of-way will be acquired by the Department in accordance with all applicable state laws. On Federally funded projects, the additional right-of-way will be acquired by the Department in accordance with all applicable federal laws, specifically including but not limited to the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs (42 USC Chapter 61) and its implementing regulations. All costs concerning the acquisition of additional right-of-way will be borne solely by the Design-Build Firm. The Department will have sole discretion with respect to the entire acquisition process of the additional right-of-way.*

*If the Design-Build Firm's Technical Proposal requires additional right-of-way, the acquisition of any such right-of-way shall be at no cost to the Department, and all costs associated with securing and making ready for use such right-of-way for the Project shall be borne solely by the Design-Build Firm as a part of the Design-Build Firm's Lump Sum Price Bid. The Department will not advance any funds for any such right-of-way acquisition and the Design-Build Firm shall bear all risk of delays in the acquisition of the additional property, regardless of cause or source.*

*The Department will provide to the successful Design-Build Firm an estimate of all costs related to the acquisition and use of the additional right of way for the project. At the*

*time the Design-Build Firm returns the executed contract to the Department, the Design-Build Firm will provide the Department funds equal to the amount of the Department's estimate along with a Letter of Credit approved by the Department in an amount equal to 100% of the Department's estimate. If additional funds beyond the Department's estimate are anticipated, the Design-Build Firm shall be solely responsible for all such costs and provide the same to the Department upon ten (10) days written notice from the Department. The Letter of Credit is for the purpose of securing the obligations of the Design-Build Firm with respect to the acquisition and use of additional right of way. The Letter of Credit will be released upon the Department's determination that all costs related to the acquisition of and making ready for use of the additional right of way have been satisfied. Any remaining funds provided will be returned to the Design-Build Firm.*

*Any additional right-of-way must be acquired prior to the commencement of any construction on the Project. The Design-Build Firm waives any and all rights or claims for information, compensation, or reimbursement of expenses with respect to the Design-Build Firm's payment to the Department for costs associated with the acquisition of the additional right-of-way. The additional right-of-way cannot be used for any construction activity or other purpose until the Department has issued an applicable parcel clear letter or a Right-of-Way Certification for Construction.*

*If the Department's attempt to acquire the additional right-of-way is unsuccessful, then the Design-Build Firm shall provide a design of the Project within existing right-of-way and be required to complete the Project solely for the Lump Sum Price Bid, with no further monetary or time adjustments arising therefrom. Under no circumstances will the Department be liable for any increase in either time or money impacts the Design-Build Firm suffers due to the Design-Build Firm's proposed acquisition of additional right-of-way, whether or not the acquisition is successful.*