

Third-Party Agreements

Mn/DOT Design-Build Program

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BACKGROUND

On design-build projects, numerous issues that involve third parties arise during and after construction. The RFP will require the Contractor to be responsible for all applicable Governmental Approvals. Mn/DOT Standard Specification No. 1701 also requires Contractors to observe and comply with all applicable laws, ordinances, regulations, orders, and decrees. One approach that Mn/DOT could take is to let the Contractor determine all applicable requirements and coordinate with all third parties.

However, negotiating agreements that address these issues is an extremely time consuming process. An important lesson learned on the Colorado Department of Transportation (CDOT) and Regional Transportation District (RTD) Transportation Expansion ("T-REX") project is that it is important to reach as many agreements as possible with third parties prior to issuance of the RFP. CDOT and RTD have been negotiating a cost sharing agreement with the City and County of Denver for three years. In addition, although Denver participated in preparation of the RFP, Denver changed its permitting requirements, permitting fees, and applicable standards and requirements after the RFP was issued. If CDOT and RTD had entered into an agreement with Denver prior to issuance of the RFP, these problems could have been avoided.

By reaching agreements with third parties, Mn/DOT can avoid issues such as changes in local government requirements, application of conflicting environmental standards, and the local government's permitting process and role in the project design, construction, and inspection. Mn/DOT's efforts in negotiating agreements with third parties prior to issuance of the RFP will be extremely important and useful.

DISCUSSION

The more certainty Mn/DOT can provide to proposers during the RFP phase of a design-build project, the less likely costly, and often unnecessary, contingencies will be included in the proposers' bids. It is in Mn/DOT's best interest to attempt to define for the proposers as many third-party requirements as possible up front. The approach recommended by the GEC for defining third-party requirements for the Contractor is to separate the issues that will impact the Contractor from the issues that will not impact the Contractor and enter into separate agreements for each. The agreements that address issues impacting the Contractor, including the MUAs (see White Paper No. MN-25 regarding Utility Relocations), will be incorporated into the RFP, with a requirement that the Contractor must comply with all of the Mn/DOT agreements unless Mn/DOT expressly provides that it retains specific responsibilities. The agreements that do not impact the Contractor should not be incorporated into the RFP, and Mn/DOT has the flexibility to modify them with the third-party agency if required.

RECOMMENDATION

The Strategic Advisory Team (SAT) recommends that Mn/DOT attempt to reach as many agreements with third parties as possible prior to issuance of the RFP. The SAT also recommends that Mn/DOT separate the issues that will impact the Contractor from the issues that will not impact the Contractor in its agreements. The RFP would only incorporate the agreements that address issues that impact the Contractor.