

# **INSTRUCTIONS TO PROPOSERS AND NOTICE TO BIDDERS**

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## **Request for Proposal**

### **I-70 Vail Pass Various Wall Repairs Streamlined Design-Build Project**

**PROJECT NO. NHPP 0702-379  
SA 21897**

**DEPARTMENT OF TRANSPORTATION**  
Region Three  
Eagle Residency  
714 Grand Avenue  
Eagle, CO 80613  
(970) 328-9962



**COLORADO**  
Department of Transportation

October 16, 2018

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## **FORMS**

**FORM A KEY PROJECT PERSONNEL INFORMATION (SEE REFERENCE DOCUMENTS)**

**FORM B DESIGN FIRM PREQUALIFICATION FORM (SEE REFERENCE DOCUMENTS)**

## **1.0 INTRODUCTION**

The Colorado Department of Transportation (CDOT) issues this Request for Proposals (RFP), dated November 1, 2018, to solicit competitive proposals for a Design-Build Contractor (the Contractor) to enter into a Contract (the Contract) to design and construct various wall repairs on I-70 (the Project).

This document constitutes the Instructions to Proposers (ITP) for the RFP. Proposers should not rely solely on the limited information contained in this ITP, but instead should refer to the appropriate sections of the RFP Documents for specific information and requirements.

### **1.1 RFP Documents**

The RFP package includes the following documents ("RFP Documents"):

1. Contract Documents.
  - A. Instructions to Proposers (ITP).
  - B. Technical Requirements.
  - C. Applicable Standards (As described in Technical Requirements)
  - D. Aesthetic Requirement Plans
  - E. Wall Plans
  - F. Project Survey
  - G. Region Lane Closure Policy
  - H. Right-Of-Way Plans
2. Reference Documents For Information Only: All other documents provided shall be considered as reference documents.

The Proposal submitted by the Proposer will also be a Contract Document.

### **1.2 Project Description**

The existing facilities are select retaining walls on I-70 protecting or supporting the I-70 facility. The select walls require structural repair. There are three types of walls to be repaired:

1. Bin
2. MSE
3. Post and Panel.

The Project is funded for repairs through CDOT's Wall Maintenance program.

The intent of the proposed project is to increase safety, maintain and enhance the structural integrity of the existing wall infrastructure. Maintenance of vehicular traffic on I-70 and the Vail Pass Recreation trail will be required. Region 3 Lane Closure Strategy must be followed.

**The Major Elements of the Basic Configuration are as follows:**

1. Construct various types of wall repairs:
  - A. Bin wall – B070A171042LRA
  - B. MSE Cruciform Walls
    - R070A182489LRA
    - R070A185113RRA
    - R70A185409RRA
  - C. Scalloped Post and Panel Walls
    - R070A183556LRA
    - R070A184183LRA
    - R070A186429MCA
  - D. Drainage
    - R183086.MCA

See plan details in Book 4 and accompanying Technical Requirements.

2. Construct drainage improvements as required. See plan details in Reference Documents and accompanying Technical Requirements.

### **1.3 Project Values and Goals**

The following values have been determined as critical for the successful completion of this project:

- Safety
- Quality
- Integrity
- Communication
- Teamwork
- Excellence

The following goals have been established for the Project:

- Provide retaining walls with an additional design life.
- Maintain traffic on I-70 in compliance with CDOT Region 3 Lane Closure Strategy.
- Have the project complete by October 31, 2019.
- Minimize construction impacts to the public and the environment.
- Construct project within CDOT's Forest Service Highway Easement Deed and CDOT ROW/Bureau of Land Management Highway Easement Deed at R070A171042LRA at the I-70/US 6/US 24 Interchange
- Complete the Project within the project budget.

### **1.4 Estimated Construction Cost**

The current available construction funding for this project is approximately \$2 million.

### **1.5 Additional Work**

If Additional Work is identified by CDOT during design and construction, this work will be considered a Contract Change. This work shall be performed in accordance with the Contract and as directed and will be paid for as provided under subsection 109.04.

## 1.6 Contract Documents and Reference Documents

The Contract Documents are Contract requirements. Subject to the Contractor's right to a Change Order with respect to Necessary Design Changes. The Proposer has sole responsibility for reviewing the plans as included in Book 4, they are Contract Requirements.

The Reference Documents are provided solely for Contractor's reference and are without representation or warranty by CDOT, unless specifically stated otherwise in the Contract.

## 1.7 Notice to Proceed

CDOT anticipates that it will complete the procurement process and issue the Notice to Proceed (NTP) for Design by March 1, 2019.

## 1.8 Procurement Schedule

The following dates are anticipated for Project milestones leading to the award of the Contract:

### Anticipated Procurement Schedule

|   |                        |
|---|------------------------|
| Letter of Interest                          | 10/11/2018             |
| Issue Draft RFP                             | 10/16/2018             |
| Issue RFP                                   | 11/01/2018             |
| One on One Meeting 1                        | 11/8-9/2018            |
| One on One Meeting 2                        | 11/26-27/2018          |
| Final Submittal Date of DTA'c               | 11/30/2018             |
| Final Date for Proposer to Submit Questions | 11/30/2018             |
| DTA Responses                               | 12/07/2018             |
| CDOT to Provide Question Responses          | 12/07/2018             |
| Technical and Price (Bid) Proposals Due     | 12/14/2018             |
| Proposal Evaluation                         | 12/14/2018 – 01/3/2019 |
| Bid Opening                                 | 01/04/2019             |

Unless otherwise specified, times are close of business, 5:00 PM MDT

## **2.0 PROPOSAL PROCESS**

### **2.1 Pre-Proposal Submittals**

#### **2.1.1 Design Technical Approaches (DTAs)**

The Proposer may submit its Design Technical Approaches for any repair type not shown in the Contract Documents (see Technical Requirements). No Design Technical Approach for a repair type that varies from what is historically used by CDOT will be permitted unless it has been pre-Approved by CDOT.

The Proposer may submit any other Design Technical Approaches. A Technical Approach submission must include:

1. A narrative description of the Design Technical Approach.
2. Conceptual drawings of the Design Technical Approach, if appropriate.

#### **2.1.2 CDOT's Review of Design Technical Approaches**

CDOT intends to review the Design Technical Approaches and provide verbal comments, as determined in CDOT's sole discretion, to each Proposer during the one-on-one meetings. CDOT will return written comments on or before December 7, 2018.

CDOT's comments on Design Technical Approaches will be limited to one of the following statements:

1. The Design Technical Approach appears to be generally acceptable and within the Technical Requirements; or
2. CDOT's identification of areas in which the approach appears to be inconsistent with the Technical Requirements; or
3. The DTA would be generally acceptable and within the Technical Requirements with the following changes or conditions.

### **2.1.3 Pre-Proposal Submission of Design Technical Approaches**

CDOT will conduct one-on-one meeting(s) to discuss Proposer's Design Technical Approaches. Subject to the Colorado Open Records Act, all discussions with Proposers regarding Design Technical Approaches will remain confidential.

CDOT will conduct one-on-one meetings with Proposers. Each proposer will be allowed 2 meetings.

Meeting 1: November 8<sup>th</sup> or 9<sup>th</sup>

Meeting 2: November 26<sup>th</sup> or 27<sup>th</sup>

These meetings are not mandatory. Meetings will be scheduled for up to two hours and will be scheduled on a first come first serve basis. To schedule one-on-one meetings, contact Peter Lombardi, contact information below. If additional time or meetings are required, they will be added and made available to all Proposers.

CDOT anticipates that the comments provided to each Proposer during the one-on-one meetings will be sufficient to enable the Proposer to make any necessary changes to its Design Technical Approaches. However, if the Proposer wishes additional clarification regarding necessary changes, the Proposer may provide a written request for clarification under Section 5.2. The Proposer may request that the clarification be treated as confidential.

Following the one-on-one meetings, the Proposer shall submit two copies of its desired Design Technical Approaches in a sealed container no later than 5:00 p.m. (MDT) on November 30, 2018 to:

Peter Lombardi  
c/o Pehle Colletta  
Colorado Department of Transportation  
2829 West Howard Place, 3<sup>rd</sup> Floor  
Denver, CO 80204

Phone: (970) 328-9962

The identity of the Proposer, RFP Number, and legend "Design Technical Approaches for the I-70 Vail Pass Various Wall Repairs CONFIDENTIAL – PROPRIETARY INFORMATION" shall be clearly shown on the outer cover of the container.



## 2.2 Proposals

The Proposal will consist of two parts; a Technical Proposal and completion of a Bid Proposal utilizing CDOT's electronic bid submittal. Selection will be based on the Proposer that provides CDOT with the Best Value as defined in Section 4.0. Proposals received after the date and time due will be rejected without consideration or evaluation.

### 2.2.1 Submission of Technical Proposals

The Technical Proposal, defined in Section 3.1, must arrive at the address set forth below by 9:30 a.m. (MDT) on December 14, 2018. It is the Proposer's sole responsibility to see that its Technical Proposal is received as required.

The Proposer shall submit the Technical Proposal in sealed containers, which shall contain the original Proposal and duplicate sets. The identity of the Proposer, RFP Number, and legend "Proposal for I-70 Vail Pass Various Wall Repairs Streamline Design-Build Project" shall be clearly shown on the outer cover of the container. The Proposer shall submit the sealed containers to:

Peter Lombardi  
c/o Pehle Colletta  
Colorado Department of Transportation  
2829 W. Howard Pl., Third Floor  
Denver, CO 80204

Phone: (970) 328-9962

The original documents shall include a cover letter with signature(s) of the authorized representative(s) of the Proposer's organization in BLUE ink and shall have the word "ORIGINAL" clearly marked on the outer cover and provide three additional copies. Items that are confidential or proprietary shall be marked in the same manner.

Failure to use a sealed container or to properly identify the Technical Proposal may result in an inadvertent opening of the Technical Proposal before the time and place for the opening of Technical Proposals and may result in disqualification of the Proposal. The Proposer shall be entirely responsible for any consequences, including disqualification of the Proposal, which result from such inadvertent opening if CDOT determines that the Proposer did not follow the instructions herein.

## **2.2.2 Evaluation of Technical Proposals**

### **2.2.2.1 Responsiveness Review**

CDOT will perform a responsiveness evaluation of the Proposals in accordance with Section 4.2.

### **2.2.2.2 Evaluation of Technical Proposal**

CDOT will evaluate the Technical Proposal in accordance with Section 4.3.

## **2.2.3 Submission of Price Proposal (Bid)**

The Price Proposal shall include all items as defined in Section 3.6 and be posted utilizing the CDOT electronic bid submittal system. The price proposal shall be submitted by 9:30 am (MDT) on December 14, 2018.

### **2.2.3.1 Evaluation of Price Proposal (Bid) and Determination of “Best Value”**

The Price Proposal will be evaluated in accordance with Section 4.7.

## **2.3 Additional Information**

CDOT may, at any time, request additional information or clarification from the Proposer or may request the Proposer to verify or certify certain aspects of its Proposal.

## **2.4 Ranking of Proposals**

The order of the Proposals will be determined based on a “Best Value” determination in accordance with Section 4.7. Upon determination of the order of the Proposals, the CDOT Project Manager will recommend to the Chief Engineer to award, or reject of all Proposals, in accordance with Section 4.7.

## **3.0 PROPOSAL REQUIREMENT**

### **3.1 Structure of the Technical Proposal**

The Technical Proposal shall contain the parts listed below and shall respond fully to all applicable requirements of the RFP. The format is provided to promote uniformity in the responses to the RFP and to facilitate the evaluation process. Text shall be in English using a standard font, a minimum of 11 points in height and single-spaced. Pages shall be 8.5-inch by 11-inch white paper, except for larger page sizes identified. Each part will include dividers for each section/subsection. Pages, sections, or parts containing confidential/proprietary information should be clearly marked.

1. Part I Project Management, Approach and Experience
2. Part II Approved Design Technical Approaches
3. Part III Design Firm Pre-Qualification Form
4. Part IV Construction Duration

### **3.2 Part I – Project Management Approach and Experience**

The total page limit for Project Management and Approach is 15 pages. The Proposer has the flexibility to provide less pages than the suggested page limits but shall not exceed the 15 total page limit. Proposals exceeding 15 pages shall be rejected as non-responsive. The Project Management, Approach and Experience shall contain the following items:

#### **3.2.1 Section One: Project Management Organization**

Provide the organization and communication structure among the Proposer and Principal Participants, its Designers, its Key Managers and the Department. This information may be submitted in an organization chart.

### 3.2.2 Section Two: Key Project Personnel Information

The following provides a brief job description and minimum requirements of the Key Personnel assigned to the Project. Any licenses or certifications that are required to meet the requirements of the RFP shall be in place by the time the Notice to Proceed is issued. Provide three references for the Contractor's Project Manager and two references for all other Key Personnel. Indicate the name, position, company, or agency and current phone number, and e-mail address for each reference. Project Key Personnel are required to have experience on projects of similar size and complexity. Provide details that will demonstrate and support the following qualifications. Proposers shall use Form A to provide the required information and will be limited to one page per individual and will be counted as part of the 15-page limit.

1. Contractor's Project Manager
  - The Contractor's Project Manager shall be responsible for overall design, construction, and contract administration for the Project. During construction, this person shall, at a minimum, visit the project site weekly. The Contractor's Project Manager's presence shall be required in design progress meetings, progress status meetings and other required meetings.
  - Shall have at least five years of recent experience managing the design and/or construction of Retaining Walls for the state highway systems.
  - Shall have the authority and duty to stop any and all work that does not meet the safety, standards, specifications, or criteria established for the project.
2. Design Manager
  - The Design Manager shall be responsible for ensuring that the overall Project design is completed, and design criteria requirements are met.
  - The Design Manager shall work under the direct supervision of the Contractor's Project Manager.
  - Shall be a registered professional engineer in the State of Colorado.
  - Shall have at least five years of recent experience in managing the design of Retaining Walls for the state highway systems.
3. Geotechnical Engineer
  - Shall be a registered professional engineer in the State of Colorado.
  - Experience in foundation and wall design.
  - Shall have at least five years of recent experience in geotechnical design engineering on similar projects.

### **3.2.3 Section Three: Project Management Approach and Experience:**

1. Project Management:
  - Describe your plan for project communication. Specifically address your approach to integrating CDOT with your project Team. Describe how your team will integrate project design with construction and how your team will address construction field changes.
  - Describe your approach to partnering; include conflict and dispute escalation and resolution process.
2. Environmental Compliance:
  - Describe your team's approach and commitment to managing, controlling and monitoring construction storm water during the life of the project.
3. Safety Program:
  - Describe your team's approach and commitment to minimize or eliminate the risk associated with Safety Critical work activities.
4. Quality Program:
  - Describe your team's approach to providing design and construction quality
5. Relevant Experience:
  - Describe your team's experience with similar projects.
  - Descriptions of similar projects completed in the past 5 years

### **3.3 Part II – Approved Design Technical Approaches**

The Proposer shall also provide its Design Technical Approaches that CDOT determined to meet or exceed the Contract requirements and CDOT's DTA Approval letters or comments.

### **3.4 Part III – Design Firm Pre-Qualification**

Proposers shall use the services of Professional Engineering firms to complete project Technical Requirements. Proposers shall submit a "Design Firm Pre-Qualification Assurance Form", which is included in the Reference Documents (Form B-Design Pre-Qualification Form). This form will not count towards the 15-page limit. The Professional Engineering firm shall be pre-qualified with CDOT prior to NTP 1.

### **3.5 Part IV – Construction Duration**

The construction shall be complete by October 31, 2019. The Proposers are encouraged to plan their work to complete early and minimize the impacts to the traveling public. The proposer will be given points in the Best Value Scoring for an early completion to the work. Each proposer shall commit to the number of days ahead of the October 31, 2019 date that they will complete their construction.

### **3.6 Price Proposal (Bid)**

Proposers shall submit a price for the bid schedule.

Proposers shall submit Bid Prices for the following:

- Contract Management
- Quality Management
- Safety Management
- Public Information Management
- Mobilization
- Bonds and Insurance
- Design Services
- Pavement
- Retaining Walls – A Bid Price for each wall
- Traffic and Environmental
- Road Appurtenances
- Unit prices for:
  - Sanitary Facility – 1 Each
  - Field Office (Class 2) – 1 Each

The total Bid shall be the price to complete all Work as identified in the Technical Requirements and other contract documents.

The Project work includes all design and construction required by the Contract. This includes but is not limited to:

- Wall Structures
- Drainage Facilities
- Pavement Repair
- Construction Traffic Control
- Water Quality and Environmental Management
- Public Information
- Local Permits and /or Licenses

## **4.0 EVALUATION CRITERIA**

### **4.1 Confidentiality**

Subject to applicable law, CDOT will use reasonable efforts to maintain confidentiality during the Proposal process. The foregoing shall not preclude CDOT from using Proposer's Concepts and ideas in accordance with Section 5.9.

### **4.2 Technical Proposal Responsiveness Review and Evaluation**

The Technical Proposals will be distributed to the Evaluation Committee. They will be reviewed for:

- the Proposal's conformance to the RFP instructions regarding organization and format
- the responsiveness of the Proposer to the requirements set forth in the RFP
- minor informalities, irregularities and apparent clerical mistakes which are unrelated to the technical content of the Proposals, and compliance with the pass/fail criteria set forth in this Section 4.2.

CDOT will have the right to submit written questions to the Proposer's regarding the Proposals for the following purposes:

- Resolving any uncertainties or to obtain clarifications concerning the Proposal.
- Resolving any suspected mistakes by calling them to the attention of the Proposer.
- Providing the Proposer 3 working days to submit any revision to its Technical Proposal that may result from the questions.

Those Technical Proposals not responsive to this RFP may be excluded from further consideration and the Proposer will be so advised in writing. CDOT may also exclude from consideration any Proposer whose Technical Proposal contains a material misrepresentation.

#### **4.2.1 Pass/Fail Criteria**

The Design Technical Approaches, and Design Firm Pre-qualification will be evaluated on a “pass/fail” basis. The criteria used to determine a “pass” Score is described below. A Proposal must receive a “pass” on all “pass/fail” criteria, for the Proposal to be further evaluated. Failure to achieve a “pass” rating on a “pass/fail” factor or sub-factor may result in the Proposal being declared non-responsive and the Proposer being disqualified.

Failure to submit information in the manner, format, and detail specified may result in the Proposal receiving a “fail” rating and being declared non-responsive.

### **4.3 Evaluation of Part I – Project Management Approach and Experience**

#### **4.3.1 Section One: Project Management Organization**

- Was the Proposer’s Organization clearly described?
- Were lines of communication defined? Were areas of responsibility noted and clearly presented? Was the role of the Department adequately described or depicted? Did the project organization provide appropriately qualified personnel at functional levels of authority and responsibility to execute the management of the design and construction of the project?

#### **4.3.2 Section Two: Key Project Personnel**

- Was the proper Form used to describe the qualifications of each key person?
- Were appropriate references provided?
- Did the key person have the required experience and qualifications?



### 4.3.3 Section Three: Project Management Approach and Experience

1. Project Management
  - Was there an adequate approach of the project management plan to facilitate communication and coordination within the internal structure of the Contractor's project team, with CDOT, and project field personnel?
  - Was there an adequate approach to the management philosophy and partnering approach to resolving disagreements, conflicts and disputes with CDOT as it relates to the Project?
2. Environmental Compliance
  - Was an adequate approach presented to describe the contractor's approach to managing, controlling and monitoring water quality during construction, including the use of Best Management Practices (BMPs)?
3. Safety Program approach and commitments
  - Were the safety critical activities identified? Did the contractor adequately describe the approach and commitments for the Safety Program to eliminate or control accident risks to personnel, general public, and the environment?
4. Quality Program and commitments
  - Did the contractor adequately describe the approach and commitments to design and construction quality?
5. Relevant Experience
  - Has the contractor completed similar work in the past?
  - Were the completed projects successful?

#### 4.3.4 Scoring of Part I

Part I has a maximum point total of 45.

The following “Adjective Ratings” and “Numeric Rating” will be used for scoring Part I.

| Adjective Rating | Description   | Percent of Max. Score |
|------------------|---|-----------------------|
| Excellent (E)    | Proposal supports an extremely strong expectation of successful Project performance if ultimately selected as the Contractor. Proposal indicates significant strengths and/or a number of minor strengths and no weaknesses. Proposer provides a consistently outstanding level of quality.   | 100 - 90 %            |
| Very Good (VG)   | Proposal indicates significant strengths and/or a number of minor strengths and no significant weaknesses. Minor weaknesses are offset by strengths. There exists a small possibility that, if ultimately selected as the Contractor, the minor weaknesses could slightly affect successful Project performance adversely.                                  | 89 - 75 %             |
| Good (G)         | Proposal indicates significant strengths and/or a number of minor strengths. Minor and significant weaknesses exist that could detract from strengths. While the weaknesses could be improved, minimized, or corrected, it is possible that if ultimately selected as the Contractor, the weaknesses could adversely affect successful Project performance. | 74 - 51 %             |
| Fair (F)         | Proposal indicates weaknesses, significant and minor, which are not offset by significant strengths. No significant strengths and few minor strengths exist. It is probable that if ultimately selected as the Contractor, the weaknesses would adversely affect successful Project performance.  | 50 - 25 %             |
| Poor (P)         | Proposal indicates existence of significant weaknesses and/or minor weaknesses and no strengths. Proposal indicates a strong expectation that successful performance could not be achieved if submitter were selected as the Contractor.  | 24 - 0 %              |

#### 4.4 Evaluation of Part II- Approved Design Technical Approaches

- Were the Design Technical Approaches that were included by the Proposer the same Technical Approaches approved by CDOT?
- Were the CDOT Approval Letters included?

#### 4.5 Evaluation of Part III – Design Firm Pre-Qualification

- Did the proposer include the proper form?
- Was the Design Firm on CDOT’s pre-qualification list for Engineering services?

#### 4.6 Evaluation of Part IV – Construction Duration

The contractor shall commit to the number of days they will complete construction ahead of the October 31, 2019 requirement. For the schedule commitment, the contractor shall assume that the quantities of repair work as shown in the plans are exceeded to the limits as defined in the Book 2 Technical Requirements.

Each proposer will receive points for early completion as shown in section 4.7 up to 30.

## 4.7 Best Value Determination

Award of the Project will be based on a Best Value determination defined by the following. A Pass rating on Part II, Technical Approach and Part III, Design Firm Pre-Qualification is required. The ranking of each of the proposals shall be an assessment of the following:

Part I – Project Management, Approach and Experience (Max of 25 Points)

Part IV – Construction Duration (Max of 30 Points)

$CS = 0.30 * ECD$

Bid Price (Max of 45

Points)  $BC = 45 - 100 * (Bid$

$-LB) / LB$

Proposers total score will be based on the following formula:  $POS = TS + CS + BC$

**Where:**

POS = Proposer's Overall Score

TS = Proposer's Technical Score - Part I

CS = Schedule Component – Part IV

ECD = Early Completion Days of construction

BC = Bid Component

Bid = Proposer's Bid (as shown in the last line of Form J)

LB = Lowest Total Project Cost (of all Proposers with responsive proposals)

The proposer with the highest POS will be determined to have the Best Value Proposal and will be selected by CDOT.

In accordance with 24-109-102 CRS, protests, if any, must be submitted in writing within seven working days after contract award. Pursuant to 24-109-104 CRS, if a protest is sustained and the protesting bidder should have been awarded the contract and was not, the protestor shall be entitled to recover only the reasonable costs incurred in connection with the solicitation, including bid preparation costs. Reasonable costs shall not include attorney fees. The protestor shall not be entitled to recover any other costs.

If the completion of the work takes longer than the selected proposer's PD, liquidated damages will be deducted from payments made to the Contractor. This disincentive will equal the actual number of calendar days required to complete the work past the completion date. The daily cost will be \$4,100.

## **4.8 Authorization of Project**

The Chief Engineer will authorize award or rejection of all Proposals, as follows.

### **4.8.1 Award Without Negotiations**

The Project Manager may request award of the Contract without negotiations to the Proposer with the best value Proposal.

### **4.8.2 Negotiations**

The Project Manager may request authorization to proceed with negotiations prior to award. Such negotiations shall be limited to allocation of the Bid Price among the various work breakdown structure items desired by CDOT.

In addition, CDOT may negotiate all minor components of the Proposal that CDOT deems advisable. In such event, the Proposer may raise issues only to the extent they are interrelated with negotiated topics raised by CDOT.

### **4.8.3 Rejections of Proposals**

The CDOT Project Manager may request authorization to reject all Proposals.

## **5.0 PROCUREMENT REQUIREMENTS**

### **5.1 Receipt of RFP Documents and Other Notices**

The Proposer shall notify CDOT in writing of any changes in the addressee for any notices or Addenda to be sent to the Proposer by CDOT. Failure to notify CDOT may result in the Proposer failing to receive Addenda or other important communications from CDOT, for which CDOT shall not be responsible.

### **5.2 Examination and Interpretation of RFP Documents**

The RFP Documents including all Reference and Contract Documents will be posted on CDOT's web site at [Project Website - I-70 Vail Pass Various Wall Repairs](#).

The Proposer shall be solely responsible for examining, with appropriate care, the RFP Documents, including any Addenda issued, and for informing itself, with respect to any and all conditions which may in any way affect the amount or nature of the Proposal or the performance of the Work in the event of award. Failure of the Proposer to so examine and inform itself shall be its sole risk and CDOT will provide no relief for error or omission.

The Proposer shall be responsible for: (i) at its election, submitting comments on the Form of Contract, and (ii) requesting clarification or interpretation of any material discrepancy, deficiency, ambiguity, error or omission contained therein, or of any provision which the Proposer otherwise fails to understand. Any such comments or requests shall be submitted in writing to:

Peter Lombardi  
c/o Pehle Colletta  
Colorado Department of Transportation  
2829 W. Howard Pl.,  
Denver, CO 80204

Phone: (970) 328-9962

Written comments or requests on the RFP must arrive no later than **September 5, 2014**.

If CDOT determines, in its sole discretion, that such comments, clarification, or interpretation requires a change to the RFP Documents, CDOT will prepare and issue Addenda. CDOT will not be bound by, and the Proposer shall not rely on, any oral communication regarding the RFP Documents. If the Proposer has meetings or discussions with other agencies or entities during the procurement phase, the Proposer shall be responsible for verifying any information received from such meetings or discussions with CDOT.

### **5.3 Addenda**

CDOT reserves the right to revise the RFP Documents. Such revisions, if any, will be announced by addenda to the RFP Documents ("Addenda"). CDOT will also identify questions received from Proposers and answers given by CDOT ("Questions and Answers"). If any Addendum includes changes that significantly impact this RFP, as determined in CDOT's sole discretion, CDOT may set a new Proposal Due Date. The announcement of such new date, if any, will be included in the Addendum. Any addenda will be placed on the CDOT Innovative Contracting website: [Project Website - I-70 Vail Pass Various Wall Repairs](#)

## **5.4 Proposal Bond**

The proposal guaranty shall be a certified check, cashier's check or bid bond in the amount of 5 percent of the Proposer's Bid Amount. If the Proposer is awarded the Contract, but fails to execute and deliver the Contract to CDOT, together with all documents required therein and herein within 8 working days following the Proposer's receipt of the execution form of the Contract, or if the Proposer is selected for negotiations and fails to negotiate in good faith, then the funds represented by its Proposal Bond shall be released to CDOT and become and remain the property of CDOT.

Within 5 working days after delivery to CDOT of the Contract executed by the Proposer selected by CDOT, together with all other specified items, or within 5 working days after this RFP has been canceled, CDOT will return each Proposal Bond, except those which have been forfeited, to the respective Proposer.

## **5.5 Improper Conduct**

If the Proposer, or anyone representing or acting on behalf of or at the direction of the Proposer, offers or gives any advantage, gratuity, bonus, discount, bribe, or loan of any sort to CDOT, including agents or anyone representing CDOT at any time in connection with this RFP or the Contract, CDOT will immediately disqualify the Proposer and claim the Proposal Bond.

## **5.6 Withdrawal of Proposal After Proposal Due Date**

No Proposer may withdraw its Proposal after the Proposal Due Date, without written consent from CDOT.

It is also understood and agreed that if the Proposer withdraws its Proposal after the Proposal Due Date without the written consent of CDOT, the Proposer shall forfeit its Proposal Bond and shall not be eligible to receive the Stipend discussed in Section 5.8.

## **5.7 Responsive Proposal**

The Proposer shall provide responses to all information requested in this RFP on its Proposal. Failure to provide the requested information may result in CDOT's determination, at its sole discretion, that a Proposal is non-responsive and should be rejected. A Proposal will be considered non-responsive if it seeks to qualify or change any of the terms and conditions of the Contract; to limit or modify the bonds, insurance or warranties required; or if the Proposal Bond is not provided.

## **5.8 Stipend**

CDOT has determined that it is appropriate to award a stipend (the "Stipend") to the unsuccessful responsive Proposers that provide a fully responsive, but unsuccessful Proposal that is deemed acceptable by CDOT. CDOT has allocated a total Stipend amount of \$80,000 that will be apportioned equally to the four highest ranked fully responsive but unsuccessful Proposers. The Stipend shall be provided to such Proposers within 90 days after award of the Contract. Notwithstanding the foregoing, if the second highest ranked Proposer becomes the selected Contractor as a result of the failure of the higher ranked Proposer to comply with the award conditions, such Proposer shall no longer be entitled to the Stipend. In that case, the fifth ranked proposer will be provided the Stipend.

In consideration for its agreement to pay the Stipend, CDOT shall be entitled to use any and all concepts, ideas, and information contained in the Proposals including, without limitation, any DTAs in connection with any Contract awarded for the Project, or in connection with a subsequent procurement for the Project or any other project, without any obligation to pay any additional compensation to the unsuccessful Proposers.

In no event shall any Proposer that is selected for award, but fails to satisfy the award conditions, be entitled to receive a Stipend.

## **5.9 Ownership of Proposals**

All documents submitted by the Proposer in response to this RFP shall become the property of CDOT and shall not be returned to the Proposer. The concepts and ideas in the information contained in the Proposal, including any proprietary, trade secret, or confidential information (exclusive of any patented concepts or trademarks), submitted by the Proposer shall also become the property of CDOT if: (i) submitted by the successful Proposer, upon award and execution of the Contract; and (ii) submitted by an unsuccessful Proposer, upon payment of the Stipend.

## **5.10 Colorado Open Records Act**

The Contractor acknowledges and agrees that all records, documents, drawings, plans, specifications, and other materials, including the EPDs, in the Contractor's or CDOT's possession directly related to the Project, including materials submitted to CDOT by the Contractor, are subject to the provisions of the Colorado Open Records Act (C.R.S. 24-72-201, et seq.). CDOT will not advise the Contractor as to the nature or content of documents entitled to protection. The Contractor shall be solely responsible for all determinations made by it under such Act and for clearly and prominently marking each and every page or sheet of its materials with trade secret, privileged information, or confidential commercial, financial, geological, or geophysical data as it determines to be appropriate. The Contractor is advised to contact legal counsel concerning such act and its application to the Contractor.

CDOT will follow CDOT Policy Directive 508.2 in determining disclosure of Proposal Documents requested pursuant to the Colorado Open Records Act, or other applicable laws, for the disclosure of any Proposal Documents materials. For any and all records, documents, drawings, plans, specifications, and other materials created after the execution of the Contract, if the materials submitted by the Contractor to CDOT are clearly and prominently labeled trade secret, privileged information, or confidential commercial, financial, geological, or geophysical data by the Contractor, CDOT will endeavor to advise the Contractor of any request for the disclosure of such materials prior to making any such disclosure. Under no circumstances, however, will CDOT be responsible or liable to the Contractor or any other Person for the disclosure of any such labeled materials, including Proposal Documents, whether the disclosure is required by law, by court order or occurs through inadvertence, mistake or negligence on the part of CDOT, except for any disclosure of trade secrets or proprietary information in violation of the confidentiality described in Section 4.1.

In the event of litigation concerning the disclosure of any material submitted by the submitting party, CDOT's sole involvement will be as a stakeholder retaining the material until otherwise ordered by a court and the submitting party shall be responsible for otherwise prosecuting or defending any action concerning the materials at its sole expense and risk.



## **5.11 Changes in Proposer's Organization**

If there are any new Major Participants or Key Personnel or other changes (including deletions) in the Proposer's organization from those shown in the Technical Proposal, the Proposer shall obtain written approval of the change from CDOT. Such requests must be accompanied with the information specified for such entity in the ITP. CDOT is under no obligation to approve any such changes and may do so in its sole discretion.

## **5.12 Protests**

### **5.12.1 Protests Regarding Request for Proposal Documents**

Any Proposer that is aggrieved in connection with the RFP may protest the terms of the RFP Documents prior to the time for submission of Proposals on the grounds that: (i) a material provision in the RFP Documents is ambiguous; (ii) any aspect of the procurement process described herein is contrary to legal requirements applicable to this procurement; or (iii) the RFP Documents exceed, in whole or in part, the authority of CDOT. Protests regarding the RFP Documents shall be filed only after the Proposer has informally discussed the nature and basis of the protest with the Project Director in an effort to remove the grounds for protest. Written protests regarding the RFP Documents shall completely and succinctly state the grounds for protest and shall include, as a minimum, the following:

1. The name and address of the protester.
2. Appropriate identification of the procurement by RFP number.
3. A statement of the reasons for the protest.
4. All available exhibits, evidence, or documents substantiating the protest.

Protests regarding the RFP Documents shall be filed by hand delivery to the Project Director, at Colorado Department of Transportation Region 3, 714 Grand Avenue, Eagle, CO 81631 within 7 working days after the protester knows or should have known of the facts giving rise to the basis for the protest. The Proposer is responsible for obtaining proof of delivery.

No hearing will be held on the protest, but the CDOT Chief Engineer or his/her designee will decide it on the basis of the written submissions. Any additional information regarding the protest shall be submitted within the time period requested in order to expedite resolution of the protest. If any party fails to comply expeditiously with any request for information by the CDOT Chief Engineer or his/her designee, the protest may be resolved without such information.

The CDOT Chief Engineer or his/her designee will issue a written decision regarding the protest within 7 working days after the protest is filed. The decision will be based on and limited to a review of the issues raised by the aggrieved Proposer(s) and will set forth each factor taken into account in reaching the decision. The CDOT Chief Engineer's decision is final and protestor has no right to appeal. No stay of procurement will become effective.

If necessary, to correct any error, omission, or ambiguity identified by the protest, CDOT will make appropriate revisions to the RFP Documents by issuing Addenda. The failure of a Proposer to raise a ground for a protest regarding the RFP Documents shall preclude consideration of that ground in any protest of a selection unless such ground was not and could not have been known to the Proposer in time to protest prior to the final date for such protests. CDOT may extend the Proposal Due Date, if necessary, to include any such protest issues.

## **5.12.2 Protests Regarding Responsiveness, Best Value Evaluation, or Award**

Protests regarding CDOT's approval of changes in Proposer's organization or decisions regarding responsiveness, best value evaluation rankings or award of the Contract must be filed by hand delivery to Peter Lombardi at Colorado Department of Transportation Region 3, 714 Grand Avenue, Eagle, CO 81631 within 7 working days after CDOT releases notice of its decision of a change in a Proposer's organization or decision regarding responsiveness, rankings, or award, as applicable. The protestant shall concurrently file a Notice of Protest with the other Proposers whose addresses may be obtained from the Project Director. The Notice of Protest shall state the grounds of the protest.

The procedures applicable to such protests are set forth in the Design-Build regulations, 2 CCR 601-15, § 22, and in C.R.S. §§ 24-109-101 through 24-109-404. The procedures provide, among other things, that the CDOT Chief Engineer or his designee is authorized to settle and resolve any protest within 7 working days after the protest is filed. The decision shall inform the protesters of their right to appeal administratively or judicially in accordance with C.R.S. §§ 24-109-201-206. The decision is subject to appeal de novo to the Executive Director of CDOT, his designee, or to the District Court for the City and County of Denver.

Other Proposers may file a statement in support of or in opposition to the protest within 7 working days of the filing of the detailed statement of protest. Evidentiary statements, if any, shall be submitted under penalty of perjury. The protestant shall have the burden of proving its protest.

If the CDOT Chief Engineer or his designee concludes that the entity filing the protest has established a basis for protest, CDOT may withdraw or revise its decisions, rankings, or award, or take any other appropriate actions, including issuing a new RFP.

If a Notice of Protest is filed, CDOT may proceed with BAFOs or negotiations but will not award the Contract until the protest is withdrawn or decided, unless CDOT determines that the public interest requires CDOT to proceed with the award prior to a decision on the protest, or that the protest is so wholly lacking in merit that the protestant is unlikely to succeed in the protest. Such a determination shall be in writing and shall state the facts upon which it is based. If the protest is denied, the entity filing the protest shall be liable for CDOT's costs reasonably incurred in defending against the protest, including consultant fees, and any unavoidable damages sustained by CDOT as a consequence of the protest. If the protest is granted, CDOT will be liable for payment of the protestant's reasonable costs, as defined in 2 CCR 601-15, § 22, No. 3. Except as provided in the previous sentence, CDOT will not be liable for damages to the entity filing the protest or to any participant in the protest, on any basis, express or implied.

## **5.13 Ex Parte Communications**

During the RFP process, commencing as of the date of this RFP and continuing until award of the Contract or cancellation of this RFP, no employee, member, or agent of any Proposer shall have any ex parte communications regarding this RFP with any member of CDOT, Federal Highways Administration, their staff, their advisors, or any of their contractors or consultants involved with the procurement, except for communications expressly permitted by this RFP, which exception includes discussions or negotiations between CDOT and the Proposers. Any Proposer engaging in such prohibited communications shall be disqualified at the sole discretion of CDOT. The foregoing shall not preclude any Proposer from participating in public meetings including the Transportation Commission of Colorado.

## 5.14 Project Rights and Disclaimers

Notwithstanding anything to the contrary contained in this RFP or the Contract, CDOT reserves the right, in its sole discretion, to:

1. Investigate the qualifications of any Proposer.
2. Require confirmation of information furnished by a Proposer.
3. Require additional evidence of qualifications to perform the Work.
4. Reject any or all of the Proposals.
5. Issue a new request for proposals.
6. Cancel, modify or withdraw the entire RFP, or any part hereof.
7. Issue Addenda, supplements and modifications to this RFP.
8. Modify this RFP process.
9. Appoint evaluation committees to review Proposals and seek the assistance of outside technical experts and consultants in Proposal evaluation.
10. Hold meetings and conduct discussions and correspondence with the Proposers to seek an improved understanding and evaluation of the responses to this RFP.
11. Seek or obtain data from any source that has the potential to improve the understanding and evaluation of the responses to this RFP.
12. Waive or permit corrections to data submitted with any response to this RFP.
13. Waive or permit submittal of addenda and supplements to data previously provided with any responses to this RFP.
14. Approve or disapprove changes in the Proposer team or Proposal
15. Require correction of or waive deficiencies, informalities and minor irregularities in Proposals; or seek clarifications or modifications to a Proposal.
16. Add or delete Work.
17. Disqualify any Proposer that changes its submittal without CDOT approval.
18. Suspend and/or terminate negotiations at any time, elect not to commence negotiations with any responding Proposer and engage in negotiations with other than the highest ranked Proposer.
19. Hold the Proposals and Proposal Bonds under consideration for a maximum of 180 days after the Proposal Due Date until the final award is made.

This RFP does not commit CDOT to enter into the Contract or any other contract. CDOT assumes no obligations, responsibilities, or liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to and/or responding to this RFP. Except for payment of the Stipend to certain Proposers as provided in Section 5.8, all of such costs shall be borne solely by each Proposer. In no event shall CDOT be bound by, or liable for, any obligations with respect to the Project until such time (if at all) as a Contract, in form and substance satisfactory to CDOT, has been executed and authorized by CDOT and, then, only to the extent set forth therein.