

## DEPARTMENT OF TRANSPORTATION

### Executive Director

### Contracts and Market Analysis Branch

## RULES GOVERNING CONSTRUCTION BIDDING FOR CDOT PUBLIC PROJECTS

### 2 CCR 601-10

*[Editor's Notes follow the text of the rules at the end of this CCR Document.]*

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## CHAPTER 1 GENERAL PROVISIONS

### Statement of Basis and Purpose and Statutory Authority

The rules implement the provisions of the Construction Bidding for Public Projects Act (Article 92 of Title 24, C.R.S.) as they relate to the repair, construction and maintenance of highway and bridge Public Projects where the Colorado Department of Transportation ("CDOT"), is the contracting agency.

The purpose of these rules is to set forth authority for promulgation of the rules, to set forth definitions to be applied throughout the rules, and to establish certain prohibitions applicable to the rules.

Specific statutory authority to promulgate rules relating to, and necessary to implement, the provisions of, the "Construction Bidding for Public Projects Act," Section 24-92-101, et seq., C.R.S., is granted to the Executive Director of CDOT by Section 24-92-110, C.R.S., and 24-109-202, C.R.S. The statement of basis, statutory authority and purpose is hereby incorporated by reference and made a part of the rules.

In 2014, CDOT updated 2 CCR 601-10 as a result of HB13-1292, codified at Section 24-92-110, C.R.S., which made modifications to procurement requirements for government contracts, including the evaluation of a Competitive Sealed Best Value Bid ("CSBV") pursuant to Section 24-92-103.5(3), C.R.S.

In 2018, CDOT is updating 2 CCR 601-10 primarily as a result of SB 17-211, which directed CDOT to update the contract amounts for which a bidder is required to submit an audited financial statement reviewed by a certified public accountant, and also to make other non-substantive changes for clarification to the rules.

Rule updates: March 30, 2014, November 1, 2006; March 2, 1999; June 30, 1990; May 30, 1986; May 30, 1985; September 30, 1983.

### Applicability

These rules are applicable to CDOT and all Contractors that submit Bids on Public Projects. Nothing contained in the rules voids the provisions in the Invitation for Bids. Exemptions to the rules are as set forth in Section 24-92-104, C.R.S., which is incorporated herein by reference.

### 1.00 Definitions

1.01 Adequate Evidence: Information sufficient to support the reasonable belief that a particular act or omission has occurred.

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- 1.02 **Affiliates:** Persons are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or, a third person controls or, has the power to control both. Indications of control include but are not limited to: interlocking management or ownership, identity of common interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the Suspension, Debarment or Voluntary Exclusion of a Person which has the same or similar management, ownership, or principal employees as the suspended, debarred, or voluntarily excluded Person.
- 1.03 **Award:** The acceptance by CDOT of a Bid.
- 1.04 **Best Value:** The Competitive Sealed Best Value (“CSBV”) Bid determined to provide the greatest benefit to the State of Colorado based upon the factors set forth in Section 24-92-103.5 (3), C.R.S.
- 1.05 **Bid:** The offer of a Contractor, on the prescribed Bid Proposal form, to perform the Work and to furnish the labor and materials in conformance with the Invitation for Bids at the prices quoted.
- 1.06 **Bid Proposal:** The approved form on which Bids are prepared and submitted to CDOT through the electronic or written sealed bidding process as set forth in the Invitation for Bid.
- 1.07 **CDOT:** The Colorado Department of Transportation.
- 1.08 **Civil Judgment:** The disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement, stipulation, or otherwise creating a civil liability for the acts complained of in the civil action.
- 1.09 **Contract:** The written agreement between CDOT and the Contractor setting forth the obligations of the parties, including, but not limited to, the performance of the Work, the furnishing of labor and materials, and the basis of payment.
- The “Contract” includes the Invitation for Bids, Bid, Bid Proposal, Contract forms and Contract Bonds, specifications, supplemental specifications, special provisions, and general and detailed plans; also included are any Contract modification orders and agreements that are required to complete the construction of the Work in an acceptable manner, including authorized extensions thereof, all of which constitute one instrument.
- 1.10 **Contract Bonds:** The approved forms of security, executed by the Contractor and its surety or sureties, guaranteeing complete execution of the Contract and all supplemental agreements pertaining thereto and the payment of all legal obligations pertaining to the completion of the project.
- 1.11 **Contractor:** Any individual, partnership, corporation, joint venture, company, firm, association, or any other legal entity contracting with, or intending to Contract with, CDOT for performance of prescribed Work.
- 1.12 **Conviction:** A judgment of conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.
- 1.13 **Corrective Action Plan:** A written plan of action submitted by a Contractor at the request of CDOT.
- 1.14 **CSBV:** Competitive Sealed Best Value construction projects funded exclusively with state funds.
- 1.15 **Debarment:** Action taken by CDOT pursuant to these rules prohibiting a Person from directly or indirectly performing any Work for, or otherwise in any manner participating in, a Public Project, which also includes termination of any Prequalification status of the Person.

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- 1.16 Determination of Non-responsibility: A written determination by CDOT setting forth the reasons that the Low Apparent Bidder is not eligible to be Awarded the Contract on a particular project.
  - 1.17 Disadvantaged Business Enterprise (“DBE”) Certification: Verification of a firm’s compliance with the requirements of and meeting the eligibility standards set forth in Part 26 of Title 49 of the Code of Federal Regulations.
  - 1.18 Electronic Bid: A Bid transmitted electronically to CDOT that complies with the requirements set forth in the Invitation for Bids.
  - 1.19 Electronic Signature: An electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record that complies with the requirements set forth in the Invitation for Bids.
  - 1.20 Indictment: Information or other filing by a competent authority charging a criminal offense.
  - 1.21 Individual: A particular person.
  - 1.22 Ineligible: Excluded from participation in Public Projects.
  - 1.23 Invitation for Bid: All documents utilized for soliciting Bids for Work. Such documents will indicate with reasonable accuracy the quantity and location of the Work to be done or the character and quantity of the material to be furnished, the time and place of the opening of Bids and any Special Prequalification criteria for the Contractor to meet.
  - 1.24 Legal Proceeding: Any criminal proceeding or any civil judicial proceeding including appeals from such proceedings.
  - 1.25 Letter of Guarantee: A letter from a parent company that commits to the payment and performance obligations of the subsidiary.
  - 1.26 Low Apparent Bidder: The Responsive and Responsible Bid which is either the mathematically lowest Bid or the Best Value Bid.
  - 1.27 Low Tie Bids: Low Bids which are identical in total Bid amount.
  - 1.28 Low Responsive Bidder: A Contractor who has Bid in compliance with the Invitation for Bids and within the requirements of the plans and specifications for a Public Project, who has furnished Contract Bonds or their equivalent as required by law, and who has submitted the low Bid.
  - 1.29 Low Responsible Bidder: A Contractor who is determined to have the financial resources, judgment, skill, ability, capacity, and integrity to perform on a Public Project and who has submitted the low Bid.
  - 1.30 Materially Unbalanced Bid: A mathematically unbalanced Bid that CDOT determines leaves reasonable doubt that Award will result in the lowest ultimate cost to CDOT, or that Award is in the public interest.
  - 1.31 Mathematically Unbalanced Bid: A Bid containing unit Pay Items that do not reflect reasonable actual costs plus a reasonable proportionate share of the bidder’s anticipated profit, overhead costs and other indirect costs.

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- 1.32 Minor Informalities: Matters of form rather than substance that are evident from the face of the Bid, or insignificant mistakes that can be waived or corrected without prejudice to other Contractors where the effect on price, quantity, delivery, or contractual conditions is not significant.
- 1.33 Notice: A written communication sent by mail to the last known physical address of a Contractor or Person, or its identified counsel, or its agent for service of process, or any partner, officer, director, owner, or joint venture of the person. Notices sent by a mail service shall be considered to have been received by the addressee on the day acknowledged in the return receipt, or if no return receipt is required then five business days after being properly sent to the last known address.
- 1.34 Participant: Any Person, or that Person's agent, who submits a Bid for, enters into, or reasonably may be expected to enter into, a Contract for a Public Project.
- 1.35 Pay Item: A specifically described unit of work for which a price is provided in the Contract; also referred to as a Contract item.
- 1.36 Performance Capability Statement: A written statement submitted by the Contractor setting forth information required by CDOT to make its determination of Award.
- 1.37 Person: Any Individual, partnership, corporation, joint venture, company, firm, association, Contractor or other legal entity.
- 1.38 Plan Holder: Any Contractor who has joined the electronic plan holders list for a particular Public Project.
- 1.39 Preponderance of the Evidence: Proof by information that compared with the opposing proof, leads to the conclusion that the fact at issue is more probably true than not.
- 1.40 Prequalification: The process of review by CDOT of a Contractor's fiscal and workmanship qualifications to perform Work on Public Projects through which CDOT determines whether the Contractor will be permitted to submit Bids or to perform certain types of Work as provided in these rules.
- 1.41 Progressive Corrective Action: Action imposed by CDOT for a Contractor's failure to comply with Prequalification requirements or Contract requirements. Progressive corrective action may, but does not necessarily, precede Suspension or Debarment action against a Contractor.
- 1.42 Project Description: The words used in the Invitation for Bids to describe the Work to be performed.
- 1.43 Proposal Guarantee: The security furnished with a Bid, either in the form of a cashier's check, certified check or Bid bond, to guarantee that the Contractor will enter into a Contract with CDOT if their Bid is accepted.
- 1.44 Prospective Bidder: Any Contractor who is also prequalified and who has obtained a Bid proposal for a particular Public Project.
- 1.45 Public Project: The construction, alteration, repair, demolition or improvement of any road highway or bridge, and any maintenance project for the upkeep of such roads, highways, and bridges for which appropriation or expenditure of funds may be reasonably expected to exceed one hundred fifty thousand dollars in the aggregate for any fiscal year and where CDOT is the contracting agency. Where the context requires, a "Public Project" means any publicly funded construction project.

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- 1.46 Respondent: A person against whom a Debarment or Suspension action has been initiated.
- 1.47 Revocation: A process through which CDOT terminates a Contractor's Prequalification status and ability to submit Bids to CDOT on Public Projects.
- 1.48 Special Prequalification: The process of review by CDOT of a Contractor's special fiscal or workmanship qualifications, beyond those typically considered in granting Prequalification pursuant to Chapter Two of these rules, as required under an Invitation for Bids to perform Work on a particular Public Project, through which CDOT determines whether the Contractor will be permitted to submit a Bid on the project set forth in the Invitation.
- 1.49 Subcontractor: Any Individual, partnership, corporation, joint venture, company, firm, association, or any other legal entity contracting with, or intending to contract with, the Contractor or another Subcontractor for performance of Work for a Public Project.
- 1.50 Suspension: The process through which CDOT immediately excludes a Respondent from participating in Public Projects, not already under Contract, and from submitting Bids on Public Projects for a temporary period of time prior to Debarment proceedings.
- 1.51 Unduly Burdensome: For purposes of these rules, is the grounds for a justifiable waiver from compliance with Section 8-17-101(1), C.R.S., which would establish proof that compliance would substantially prevent a project from proceeding to completion. Such a waiver may include but is not limited to consideration of geographical location, schedule of need, qualified labor resources, and in cases of natural disaster or emergency, the health, safety and welfare of the population.
- 1.52 Voluntary Exclusion: A status of nonparticipation in the performance of Public Projects assumed by a person pursuant to the terms of a settlement with CDOT.
- 1.53 Work: The furnishing of all labor, material, equipment, and other incidentals necessary or convenient to the successful completion of a Public Project according to all duties and obligations imposed by the Contract except that material which is not delivered on the Public Project site is expressly excluded from this definition.

## **CHAPTER 2 PREQUALIFICATION**

### **2.01 Prequalification Application**

- 2.01.1 A Contractor who wishes to submit a Bid for a Public Project is required to file a Prequalification application with the CDOT Contracts and Market Analysis Branch Manager or designee. Any new application or renewal application may be submitted not less than seventeen calendar days prior to the opening of any Bid for projects on which the Contractor desires to submit a Bid, unless the Branch Manager or designee grants an exception in writing based on a showing of reasonable cause. A letter from the Department approving or denying an applicant's Prequalification shall be sufficient written evidence of the Department granting an exception to the requirement that an application be submitted seventeen calendar days prior to a bid opening.
- 2.01.2 A joint venture may apply for Prequalification in the name of the joint venture or each member may apply for Prequalification separately and then request application for Prequalification as a joint venture if all members are successful in previously becoming prequalified. A joint venture will be considered prequalified to the highest financial level of Prequalification of any of the individual parties to the venture. Affiliates are prohibited from submitting Bids for the same Public Project.
- 2.01.3 Any application for Special Prequalification required under an Invitation for Bids shall be submitted and will be considered in accordance with the terms, conditions, procedures and time frame specified in the Invitation for Bids.

2.01.4 CDOT may charge a reasonable fee, not to exceed the cost of processing Prequalification applications, to any Contractor requesting Prequalification.

**2.02 Application Requirements**

2.02.1 The application, along with a copy of these rules, may be obtained from the CDOT Contracts and Market Analysis Branch, Colorado Department of Transportation, at 2829 W. Howard Pl., Denver, CO 80204. The application may be supplemented by the Contractor as necessary to ensure CDOT is given all information necessary to reach a determination as to the fiscal qualification and general type of Work for which the Contractor is qualified to submit Bids. Applicants for Prequalification shall supply the following minimum information in either the Prequalification application or supplements:

- (a) The name, address, phone number, and type of organization (Individual, partnership, corporation, joint venture, LLC, etc.) of the Contractor seeking Prequalification.
- (b) The Contract size in dollars and the general type of Work for which the Contractor seeks Prequalification (such as general highway construction, earthwork, structures, paving, specialty-signing, fencing, guardrail, etc.).
- (c) Experience of the Contractor in past highway construction Work including the number of years experience in each type of Work.
- (d) Any indictment or conviction of bid or contract-related violations within the last six years, by the federal government, CDOT, any state agency or unit of local government within Colorado, or of another state, together with an explanation of the indictment or conviction.
- (e) Information on any contract that the Contractor, its officers, or partners have failed to complete while working for another company or managing a contract under their own names.
- (f) The principal officers and supervisors of the Contractor and their type and length of experience.
- (g) Ownership of the Contractor including any Affiliates and subsidiaries.
- (h) List of equipment owned by the Contractor.
- (i) A financial statement prepared in compliance with generally accepted accounting practices and standards that includes a complete report of the Contractor's financial resources and liabilities. Financial information will be considered proprietary, and confidentiality will be maintained by CDOT, as provided in the open records law, Section 24-72-201 et seq., C.R.S.:

(1) Levels of prequalification are defined below:

\$0 to \$3,000,000

\$3,000,000 to \$5,000,000

\$5,000,000 to \$20,000,000

> \$20,000,000

- (2) For those Contractors intending to submit Bids less than \$3,000,000, the statement does not need to be audited or reviewed by a CPA.
- (3) For those Contractors intending to submit Bids between \$3,000,000 and \$5,000,000, the statement shall be reviewed by a licensed CPA in accordance with review standards published by the American Institute of Certified Public Accountants.
- (4) For those Contractors intending to submit Bids exceeding \$5,000,000, the statement shall be audited by a licensed certified public accountant (CPA) in accordance with audit standards published by the American Institute of Certified Public Accountants, and accompanied by an affidavit of the CPA.
- (j) This application shall include a recently signed and dated letter from the bonding agent or bonding company indicating the single project performance bond capacity for the Contractor.
- (k) When a Contractor is a subsidiary of another firm, and the financial statement of the parent firm is used for Prequalification, a Letter of Guarantee must accompany the application.
- (l) A statement as to whether the Contractor or any company officer or Affiliate or officer thereof, has been indicted or convicted of Bid related crimes or violations within the past six years in any jurisdiction, and the current status of any such company or officer.
- (m) A statement as to whether: 1) the Contractor, 2) any director, officer, partner, joint venturer, stockholder of five percent or more of the Contractor, or 3) any Affiliate of the Contractor, is in any jurisdiction under notice of intent to debar or has been debarred or is affiliated with another person who is under notice of intent to debar or has been debarred, and the current status of any such Debarment.
- (n) A list of persons authorized to contractually bind the firm.
- (o) A W-9 Form containing an exact name and address of the entity requesting Prequalification.

### **2.03 Prequalification Procedure**

2.03.1 The following procedure shall govern approval and disapproval of Prequalification, other than instances where the Contractor is subject to Debarment, which shall be processed in accordance with the provisions of Chapter Three of the rules.

- (a) The Contractor shall submit the application and supporting information to CDOT Contracts and Market Analysis Branch. Until all inquiries of the CDOT Contracts and Market Analysis Branch Manager or designee, relative to the application have been answered, the Prequalification application will not be considered complete.
- (b) The CDOT Contracts and Market Analysis Branch Manager or designee will give approval or disapproval within seventeen calendar days of receipt of the completed Prequalification application. Prequalification disapproval will be delivered by electronic mail. In the event of a Prequalification disapproval, the CDOT Contracts and Market Analysis Branch Manager or designee shall give a written statement of reasons and identify to the Contractor the right of appeal to the CDOT Chief Engineer.

- (c) The Contractor may appeal a Prequalification disapproval to the CDOT Chief Engineer. Any such appeal by the Contractor must be written and must be received by the Chief Engineer within sixty calendar days of the date the Contractor received the Prequalification disapproval. If no appeal is received as provided herein, the Prequalification disapproval will become final.
- (d) A hearing shall be commenced within sixty calendar days of receipt of an appeal in accordance with the State Administrative Procedure Act (APA), Section 24-4-105, C.R.S. At the hearing the Contractor shall present any information it feels warrants Prequalification subject to any evidentiary ruling made concerning relevancy and admissibility. A Contractor must establish its Prequalification by a Preponderance of the Evidence.

## **2.04 Criteria for Granting and Determining Prequalification**

2.04.1 CDOT may prequalify a Contractor to Bid on a particular Public Project or on an annual basis to Bid on Public Projects of a particular size, or kind, or both, based on an evaluation of the following criteria:

- (a) Whether the Contractor owns equipment available to accomplish the type of Work on which it intends to Bid;
- (b) Whether the Contractor has trained personnel available to perform the type of Work on which it intends to Bid;
- (c) Whether the Contractor has an organization and technical staff with the size, training, experience and capability to accomplish the type of Work on which it intends to Bid;
- (d) Whether the Contractor has the financial capability to perform the type and size of Work on which it intends to Bid. A Contractor's financial statements demonstrating ratios in the following ranges will be presumptively considered adequate;
  - (1) Total Current Assets to Total Current Liabilities of greater than 1.0;
  - (2) Cash and Accounts Receivable to Total Current Liabilities of greater than 1.0;
  - (3) Net Fixed Assets to Net Worth of less than 2.3; and
  - (4) Total Liabilities to Net Worth of less than 4.0.

If a Contractor does not meet these ratios, the CDOT Contracts and Market Analysis Branch Manager or designee may consider other factors concerning the financial capability of the Contractor, including but not limited to irrevocable lines of credit, and parent company guarantees; officer loans to the Contractor, or recently signed and dated letter from a bond company in which the Contractor's single project Bid capacity is stated. Such letter from a bonding company cannot be more than two months old upon receipt by CDOT.

- (e) Whether the Contractor has demonstrated experience in the type of Work on which it intends to Bid;
- (f) Whether the Contractor has demonstrated performance on past CDOT contracts including, but not limited to, compliance with all contract terms and specifications, satisfactory quality of workmanship, and consistent on-time performance.

- (g) Whether the Contractor is in any jurisdiction under notice of debarment, or debarred, or subject to Debarment under Chapter Three of the rules;
- (h) Whether the Contractor has made false or deceptive statements in the application for Prequalification or any other information submitted to CDOT that includes but is not limited to claims or contractual requirements; and
- (i) Whether the Contractor meets any of the criteria for Revocation of Prequalification under Section 2.07;
- (j) Prospective Contractors or Subcontractors may be required to be Prequalified to perform certain types of construction. Such Prequalification will be determined by a panel of subject matter experts and must be renewed yearly;
- (k) In the case of a Special Prequalification for a particular project, any additional criteria which CDOT Contracts and Market Analysis Branch Manager, or their delegee, deems necessary considering the particular project.

## **2.05 Effect of Prequalification**

- 2.05.1 Prequalification constitutes the ability of a Contractor's eligibility to submit Bids to the level of Prequalification approved pursuant to rule 2.02(i). The responsibility of a Low Apparent Bidder on a specific project will be independently evaluated prior to Award in accordance with Section 4.16 of the rules.

## **2.06 Continuing Prequalification Requirements**

- 2.06.1 A Contractor intending to submit Bids shall, in accordance with Sections 2.01 through 2.04, prequalify at least once a year or as requested by CDOT Contracts and Market Analysis Branch Manager or delegee. Prequalification status may also be reviewed by CDOT at any time, when requested by the Contractor or at CDOT's discretion.
- 2.06.2 Contractors must notify CDOT immediately of any significant decrease in their fiscal or workmanship qualifications, or of any action taken in any jurisdiction against the Contractor or an Affiliate of the Contractor precluding its ability to Bid on, perform Work for, or otherwise in any manner participate in projects.

## **2.07 Summary Reduction, Suspension, and Revocation of Prequalification**

- 2.07.1 In addition to termination of Prequalification as part of any Suspension or Debarment action under Chapter Three of the rules, CDOT may reduce, summarily suspend, or revoke Prequalification pursuant to this chapter if the CDOT Contracts and Market Analysis Branch Manager determines that:
- (a) The Contractor or Affiliate of the Contractor is declared in default on any contract;
  - (b) The Contractor or Affiliate of the Contractor has made false or deceptive statements on its application for Prequalification, in any documents connected with a Bid including its Performance Capability Statement, in any other information submitted to CDOT, or in the course of any hearing associated with Prequalification;
  - (c) The Contractor has failed to report any significant decreases in capabilities or limitations on Bidding or performing Work in accordance with Section 2.06.2;

- (d) The Contractor or an Affiliate of the Contractor commits any action or inaction which evidences a lack of integrity in business-related matters; or
- (e) The Contractor no longer meets the criteria contained in Section 2.04
- (f) Reduction, Suspension, and/or Revocation of Prequalification shall in no way affect the obligation of a Respondent to CDOT to complete Work already under contract. CDOT reserves the right to declare a Respondent in default on any existing contracts for cause as provided in the contract.

## **2.08 Summary Reduction of Prequalification Levels and Reinstatement**

2.08.1 The following procedures shall govern any reduction and reinstatement of Prequalification levels.

2.08.2 Reduction of Prequalification Level may occur if:

- (a) If there is cause for Progressive Corrective Action as determined by the Contracts and Market Analysis Branch Manager;
- (b) If a Contractor is found non-responsible;
- (c) If a Contractor is found non-responsive;
- (d) If the Contractor has demonstrated unsatisfactory performance on past or current CDOT contracts including, but not limited to, compliance with all contract terms and specifications, satisfactory quality of workmanship, and consistent on-time performance;

2.08.3 Reduction of Prequalification Level:

- (a) A Contractor's Prequalification can be summarily reduced one level as defined in Section 2.02.1(i) up to one year as determined by CDOT.
- (b) Additional reductions of one level in Prequalification level can follow the first reduction if the Contractor has additional occurrences of events under Section 2.08.2 within two years from the initial infraction, as determined by CDOT.
- (c) Suspension and Debarment proceedings may be pursued by CDOT, per Chapter Three of these rules, if the Contractor fails to remedy any reason for Prequalification reduction as determined by the Contracts and Market Analysis Branch Manager.
- (d) Anyone may contact CDOT concerning the existence of a cause for Prequalification reduction. If the CDOT Contracts and Market Analysis Branch Manager becomes aware of information warranting Prequalification level reduction, as set forth in Section 2.08.3(a), reduction in Prequalification level may be initiated by sending a Notice of intent to lower a Contractor's Prequalification level. A Notice of intent to reduce Prequalification level shall be sent to the Respondent by certified mail, return receipt requested. The Notice shall include a written statement of reasons for and the effect of the Prequalification level reduction and inform the Respondent of the right of appeal to the CDOT Chief Engineer. Any such appeal must be in writing and must be received by the CDOT Chief Engineer within sixty calendar days of the date the Notice was sent to the Contractor by certified mail, return receipt. If no appeal is received as provided herein, the Respondent shall have its Prequalification level reduced in accordance with the Notice.

- (e) When an appeal is received a hearing shall be commenced within sixty calendar days. The hearing shall be conducted and the decision issued in accordance with the State Administrative Procedure Act (APA), Section 24-4-105, C.R.S. At the hearing the Contractor shall present information in support of its position subject to any evidentiary rulings made concerning relevancy and admissibility. At the hearing the cause for reduction of Prequalification must be established by CDOT by a Preponderance of the Evidence.

#### 2.08.4 Reinstatement of Prequalification Level

A Contractor may apply for reinstatement once every quarter providing that it meets the Prequalification criteria and has removed the cause for Prequalification level reduction(s) as determined by the Contracts and Market Analysis Branch Manager.

### 2.09 Summary Suspension and Revocation Procedures

2.09.1 The following procedures shall govern any summary Suspension or Revocation of Prequalification, other than termination of Prequalification as part of any Debarment action that shall be processed in accordance with the provisions of Chapter Three of the rules:

- (a) Anyone may contact CDOT concerning information warranting Revocation of Prequalification of a Contractor as set forth in the criteria of Sections 2.04 and 2.08. If the CDOT Contracts and Market Analysis Branch Manager become aware of information warranting Revocation of Prequalification of a Contractor; Revocation of Prequalification may be initiated by sending a Notice of intent to revoke Prequalification or of summary Suspension of Prequalification or of both. Notice shall be sent to the Contractor by certified mail return receipt requested. The Notice shall include a written statement of reasons for Revocation of Prequalification and advise the Contractor of the right of appeal to the CDOT Chief Engineer.
- (b) If the CDOT Contracts and Market Analysis Branch Manager has reasonable grounds to believe that the public health, welfare, or safety imperatively requires summary Suspension of Prequalification, the CDOT Contracts and Market Analysis Branch Manager may summarily suspend a Contractor's Prequalification in writing for a temporary period of time prior to completion of the procedures in subsections (c) and (d) of this section.
- (c) The Contractor may appeal a Notice of intent to summarily suspend Prequalification or revoke Prequalification. Any such appeal by the Contractor must be written and must be received by the CDOT Chief Engineer within sixty calendar days of the date the Contractor received the Notice. If no appeal is received as provided herein, the Contractor's Prequalification shall be revoked in accordance with the Notice.
- (d) When a timely appeal is received, a hearing shall be commenced within sixty calendar days. The hearing shall be conducted and the decision issued in accordance with the State Administrative Procedure Act (APA), Section 24-4-105, C.R.S. At the hearing the Contractor shall present information in support of its position subject to any evidentiary rulings made concerning relevancy and admissibility. At the hearing the cause for Revocation of Prequalification must be established by CDOT by a Preponderance of the Evidence.

## **2.10 Length of Disapproval or Revocation of Prequalification and Reinstatement**

- 2.10.1 In the event of disapproval of Prequalification or Revocation of Prequalification, the disapproval or Revocation will remain in place until the Contractor submits new information which is determined by the CDOT Contracts and Market Analysis Branch Manager, or their delegee, to satisfactorily dispose of the grounds for disapproval or Revocation.
- 2.10.2 Any termination of Prequalification as part of any Debarment action under Chapter Three of the rules shall remain in effect for the duration of the term of Debarment and until such time as the Contractor reapplies for Prequalification in accordance with the provisions of this chapter.

## **CHAPTER 3 CORRECTIVE ACTION, SUSPENSION AND DEBARMENT**

### **3.01 Causes for Progressive Corrective Action**

3.01.1 Progressive Corrective Action may be imposed by CDOT when:

- (a) The Contractor or Affiliate of the Contractor is declared in default on any contract;
- (b) The Contractor or Affiliate of the Contractor has made false or deceptive statements on its application for Prequalification, in any documents connected with a Bid including its Performance Capability Statement, in any other information submitted to CDOT, or in the course of any hearing associated with Prequalification, or in the performance of any Public Projects;
- (c) The Contractor has failed to report any significant decreases in capabilities in Bidding or performing Work;
- (d) The Contractor or an Affiliate of the Contractor commits any action or inaction which evidences a lack of integrity in contract-related matters;
- (e) The Contractor no longer meets the Prequalification criteria; or
- (f) The Contractor has failed to demonstrate satisfactory performance on past public contracts including, but not limited to, compliance with all contract terms and specifications, satisfactory quality of workmanship, and consistent on-time performance.

### **3.02 Causes for Suspension**

When the CDOT Contracts and Market Analysis Branch Manager has reasonable grounds to believe that the public health, safety, and welfare imperatively requires such action, the CDOT Contracts and Market Analysis Branch Manager may immediately suspend a Respondent prior to Debarment proceedings from performing Work, or otherwise participating in Public Projects not already under contract and from submitting Bids on Public Projects upon Adequate Evidence that a cause for Debarment under Section 3.03 may exist. Indictment shall constitute Adequate Evidence for purposes of Suspension actions.

### **3.03 Causes for Debarment**

Debarment may be imposed by CDOT for:

3.03.1 Conviction of or Civil Judgment for:

- (a) Fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Public Project;

- (b) Bribery, embezzlement, false claims, false statements, falsification or destruction of records, forgery, obstruction of justice, receiving stolen property, or theft;
- (c) Unlawful price fixing between competitors, allocation of customers between competitors, Bid rigging or any other violation of federal or state antitrust laws that relates to the submission of Bid; or
- (d) Commission of any other offense indicating a lack of business integrity or honesty.

3.03.2 A serious violation of the terms of a contract on a Public Project, such as:

- (a) A willful or material failure to perform in accordance with the terms of a contract on a Public Project;
- (b) A history of substantial noncompliance with the terms of contracts on Public Projects; or
- (c) A willful and material violation of a statutory or regulatory provision or requirement applicable to a contract on a Public Project.

3.03.3 Any of the following causes:

- (a) Debarment or equivalent exclusionary action by any public agency for causes substantially the same as provided for in this Section 3.03;
- (b) Knowingly employing or doing business with a debarred, suspended or otherwise Ineligible Person, in connection with a Public Project;
- (c) Conduct indicating a lack of business integrity or honesty in Bidding or performing Public Projects;
- (d) Submission of false or deceptive information or statements in connection with Prequalification, Bidding or performance of a Public Project;
- (e) Failure to pay a substantial debt (including disallowed costs and overpayments) owed to any federal or state agency or instrumentality, but not including amounts owed under the Internal Revenue Code, provided the debt is uncontested by the debtor or, if contested, that the debtor's legal and administrative remedies have been exhausted;
- (f) Violation of a material provision of a Voluntary Exclusion or of any settlement of a Debarment or Suspension action; or
- (g) Any other cause so serious in nature that the CDOT Contracts and Market Analysis Branch Manager has reasonable grounds to believe that the public health, welfare, or safety imperatively requires Debarment.

### **3.04 Procedures for Suspension and Debarment**

3.04.1 Anyone may contact CDOT concerning the existence of a cause for Debarment. If the CDOT Contracts and Market Analysis Branch Manager becomes aware of information warranting Debarment, as set forth in Section 3.03, Suspension or Debarment or both may be initiated by sending a Notice of intent to suspend or debar. A Notice of intent to suspend or debar, or both, shall be sent to the Respondent by certified mail, return receipt requested. The Notice shall include a written statement of reasons for and the effect of the Suspension or proposed Debarment and inform the Respondent of the right of appeal to the CDOT Chief Engineer.

3.04.2 The Respondent may appeal the Notice of intent to suspend or debar, or both. Any such appeal must be written and must be received by the CDOT Chief Engineer within sixty calendar days of the date the Respondent received the Notice. If no appeal is received as provided herein, the Respondent shall be suspended and/or debarred in accordance with the Notice.

3.04.3 A hearing shall be commenced within sixty calendar days of receipt of an appeal. The hearing shall be conducted and the decision issued in accordance with the State Administrative Procedure Act (APA) Section 24-4-105, C.R.S. At the hearing the Respondent shall present any information it feels is sufficient to prevent Debarment, subject to any evidentiary rulings made concerning relevancy and admissibility. At the hearing, the cause for Debarment must be established by CDOT by a Preponderance of the Evidence. When the proposed Debarment is based upon a Conviction or Civil Judgment, the standard of Preponderance of the Evidence shall be deemed to have been met.

### **3.05 Settlement and Voluntary Exclusion**

3.05.1 A Respondent and the CDOT Chief Engineer may enter into a settlement of a Debarment action. Respondents who accept Voluntary Exclusions are ineligible to participate in Public Projects in accordance with the terms of their settlements.

### **3.06 Length of Suspension**

Voluntary Exclusions shall be for a temporary period pending the completion of investigation and any ensuing Debarment or other Legal Proceeding.

### **3.07 Length of Debarment**

3.07.1 Debarment may be for a term of up to three years. Credit may be given for any periods of Suspension. The following criteria may be considered in making any decision as to length of debarment:

- (a) Degree of culpability;
- (b) Seriousness of the offense or conduct;
- (c) Restitution of damages to CDOT;
- (d) Cooperation in the investigation of other Bid or performance violations;
- (e) Disassociation with those involved in Bid or performance violations;
- (f) Whether a lengthy Debarment is required for the protection of CDOT.

3.07.2 If the Respondent submits no appeal, the Debarment shall automatically be for three years.

### **3.08 Scope of Debarment and Suspension**

3.08.1 Suspension or Debarment of a Person constitutes Suspension or Debarment of all their divisions and other organizational elements from Work on all Public Projects unless the Suspension or Debarment decision is limited by its terms to one or more specifically identified Individuals, organizational elements, or to specific types of Public Projects. The Suspension or Debarment may include any Affiliate of the Participant that is (1) specifically named, and (2) given Notice of the proposed Debarment and an opportunity to respond.

3.08.2 For purposes of determining the scope of Suspension or Debarment, conduct may be imputed as follows:

(a) Conduct imputed to a Participant.

The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other Individual associated with a Participant may be imputed to the Participant when the conduct occurred in connection with the Individual's performance of duties for or on behalf of the Participant, or with the Participant's knowledge, approval, or acquiescence. The Participant's acceptance of the benefits derived from the conduct shall be presumptive evidence of such knowledge, approval, or acquiescence.

(b) Conduct imputed to Individuals associated with the Participant.

The fraudulent, criminal, or other seriously improper conduct of a Participant maybe imputed to any officer, director, shareholder, partner, employee, or other Individual associated with the Participant who participated in, knew of, or had reason to know of the Participant's conduct.

(c) Conduct of one Participant imputed to other Participants in a joint venture.

The fraudulent, criminal, or other seriously improper conduct of one Participant in a joint venture or similar arrangement may be imputed to other Participants if the conduct occurred for or on behalf of the joint venture or similar arrangement or with the knowledge, approval, or acquiescence of the Participants. Acceptance of the benefits derived from the conduct shall be presumptive evidence of such knowledge, approval or acquiescence.

## **CHAPTER 4 COMPETITIVE SEALED BIDDING**

### **4.01 Invitation for Bids**

4.01.1 An Invitation for Bids shall be issued for each Public Project. Public advertisement of the Invitation for Bids shall be given at least fourteen calendar days prior to the date set for the opening of Bids. The advertisement and approved plans and specifications for federally funded projects shall be available to Bidders a minimum of three weeks prior to opening of Bids except that shorter periods may be approved by the FHWA administrator, or their delegate, in special cases when justified. Invitations for Bids for projects which are both exclusively state-funded and advertised as a CSBV Bid shall be advertised for a period of no less than five weeks.

4.01.2 Public advertisement of the Invitation for Bids may include but not limited to state internet or web-based services. Such advertisement shall include, as a minimum, the following information:

- (a) Project number.
- (b) Project Description.
- (c) Project location.
- (d) Time, date, place and manner of Bid opening.
- (e) Time in which Work must be completed.
- (f) Approximate quantities of principal items.

- (g) Time and place where plans and specifications may be procured.
- (h) Place where Bids will be received.
- (i) Method by which Bids may be submitted.
- (j) Other information considered by CDOT to be significant with respect to such public advertisement.

#### **4.02 Revisions to Invitation for Bids**

- 4.02.1 When a revision to the Invitation for Bids or to the plans or specifications is made after the date such Invitation for Bids and plans and specifications are made available to the public, CDOT shall post a revision letter on the CDOT Business Center web portal at <https://www.codot.gov/business/bidding> in sufficient time to be accessed, at least one day prior to the date set for Bid opening.
- 4.02.2 In the event there is not sufficient time to notify Prospective Bidders of such revision, one of the following procedures shall be followed:
  - (a) The Invitation for Bids shall be canceled and reissued at a later date; or
  - (b) The date for opening of Bids shall be deferred so that the revision may be made and the new date of opening shall be available to the public.

#### **4.03 Cancellation of Invitation for Bids**

- 4.03.1 An Invitation for Bids may be canceled or deferred when it is in the best interests of CDOT. The reasons for any cancellation, deferment or rejection shall be made part of the Contract file. When an Invitation for Bids is canceled or deferred, provided there is sufficient time, the cancellation or deferment shall be published on the CDOT website at <https://www.codot.gov/business/bidding> at least seven calendar days prior to Bid opening and an electronic update of such cancellation or deferment shall be provided to each Plan Holder, in sufficient time to be received at least one day prior to the original date set for Bid opening. When there is not sufficient time available to provide the aforementioned published update and electronic update, an attempt shall be made to notify each Prospective Bidder by phone of the cancellation or deferment.
- 4.03.2 If for any reason CDOT is unable to receive Electronic Bids via the Bid submitting software within a two hour time frame prior to the scheduled opening, all Bids will be deferred to a later opening. CDOT shall confirm that the Bid submitting software was inoperable.
- 4.03.3 CDOT shall not be held liable if the cancellation or deferment is not received by any Plan Holder prior to the original date set for Bid opening.

#### **4.04 Bid Proposal**

For each Public Project CDOT shall prepare complete plans and specifications describing, in detail, the Work to be done, and listing the estimated quantities of Work to be used as the basis for competitive sealed Bidding. Each prequalified Contractor requesting a Bid Proposal shall be given a Bid Proposal, including a schedule of the estimated quantities of Work to be done with space for insertion of unit prices and extensions. CDOT shall maintain a record of each Plan Holder together with its electronic and physical address.

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**4.05 Preparation of Bid**

- 4.05.1 The Contractor shall submit its Bid according to the provisions of the Invitation for Bids and the Bid Proposal. It shall specify a unit price in dollars and cents in figures for each Pay Item for which a quantity is given. It shall also show the mathematical products of the respective unit prices and the estimated quantities in the column provided for that purpose, together with the total amount of the Bid obtained by adding such mathematical products. When the Bid contains an alternative Pay Item, which has been authorized by CDOT, the choice of that item by the Contractor shall be indicated in accordance with the specifications for that particular item. No further choices will be permitted.
- 4.05.2 The Contractor shall also submit the affidavit relative to collusion and the Bid Proposal Guarantee within the Bid Proposal. The Contractor's Bid and affidavit relative to collusion must be signed in ink or by Electronic Signature by an Individual with legal authority to bind the Contractor. Such an Individual includes the owner of a sole proprietorship, one or more partner members of a partnership, one or more authorized members or officers of each firm representing a joint venture, the president or the vice-president of a corporation, or an authorized agent of the Contractor. Anyone signing as agent for a Contractor must file with CDOT written evidence of such authority.
- 4.05.3 In addition to the requirements set forth in Rule 4.05.2 above, for Competitive Bid Best Value Projects, the Contractor shall also submit a completed Colorado Bidder Preference Form. Should a Contractor seek a waiver from Section 8-17-101(1), C.R.S., this Form must include evidence of insufficient Colorado labor to perform the work, and that compliance would be Unduly Burdensome.
- 4.05.4 If the basis of the Award of responsive proposals is Best-Value, then each Bid shall be submitted by the Contractor in two separate components: a sealed technical Bid and a sealed price Bid.
- 4.05.5 Contractors are prohibited from submitting a cost-plus-a-percentage-of-cost Bid Proposal as CDOT may not award a cost-plus-a-percentage-of-cost Contracts.

**4.06 Delivery of Bids**

- 4.06.1 All Bids shall be submitted in the electronic or written manner specified in the Invitation for Bids and prior to the time specified therein.
- (a) Written Bids. Each Bid shall be submitted separately in a sealed envelope to CDOT by the method indicated in the Invitation for Bids. Bids submitted in a manner that results in CDOT receiving an incomplete Bid, a Bid without original signature(s), or a Bid not in the approved form, including submission by telephone, will not be accepted or considered but will be rejected.
- (b) Electronic Bids. Contractors submitting Electronic Bids are not required to deliver a sealed written Bid to CDOT. Electronic Bids submitted after the time for opening of Bids will not be accepted. CDOT will not be responsible for failures in submission of Electronic Bids for any reason.

#### **4.07 Withdrawal of Bids Prior to Bid Opening**

##### **4.07.1 Written Bids**

Prior to Bid opening, a Contractor may withdraw or revise a Bid after it has been deposited with CDOT. Withdrawal of Bids may be made either in writing or in person; however, any Bid withdrawn for the purpose of revision must be redeposited before the time set forth for opening of Bids in the Invitation for Bids. A Bid may not be withdrawn after the commencement of opening of Bids for the project, except as provided in Section 4.14.

When a Bid is withdrawn, the Individual requesting to withdraw the Bid shall provide proper identification. The withdrawal and the identity of the Person withdrawing the Bid shall be documented in writing by CDOT. Withdrawn Bids will not be opened.

##### **4.07.2 Electronic Bids**

Prior to Bid opening, a Contractor may withdraw or revise an Electronic Bid after it has been submitted to CDOT. Withdrawal of Electronic Bids may be made through the Bid submitting software; however, any Bid withdrawn for the purpose of revision must be re-submitted before the time set forth for opening of Bids in the Invitation for Bids. A Bid may not be withdrawn after the commencement of opening of Bids for the project, except as provided in Section 4.14, or if options available within the Electronic Bid software are elected to be exercised by the Bidder.

#### **4.08 Receiving Bids**

Bids will be received only from Contractors that are prequalified at the time of Bid opening in accordance with the provisions of Chapter Two of the rules, and not currently debarred or suspended under Chapter Three of the rules.

#### **4.09 Recording of Bids**

(a) Electronic Bids. Electronic Bid software will record Electronic Bids with an electronic time stamp when submitted for each project.

#### **4.10 Opening of Bids**

Bids shall be opened at the date, time, place and in the manner specified in the Invitation for Bids. Such opening shall be performed by an authorized employee of CDOT in the presence of at least one witness. Bids submitted in writing will be read first. Contractors, their authorized agents, and other interested parties are invited to be present.

- (a) Bids to be Awarded on the Low Apparent Bidder standard shall be read publicly unless all Bids are to be rejected including as provided in Section 43-1-113(16), C.R.S.
- (b) Bids to be Awarded on the CSBV standard shall have the technical Bid opened, evaluated and scored first based on the quality criteria contained in the Invitation for Bid. During this evaluation process, the price Bid shall remain sealed and all technical proposals shall remain confidential. After the evaluation of the technical Bid, an authorized agent of CDOT shall open and review the associated sealed price Bid in the presence of at least one witness.

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**4.11 Rejection of Individual Bids**

4.11.1 An individual Bid shall be rejected and shall not be read if the Bid is not accompanied by an affidavit relative to collusion as provided in Section 4.05.2 and a Bid Proposal Guarantee of the character and in an amount not less than the amount indicated in the Invitation for Bids. Individual Bids may also be rejected for any of the following reasons:

- (a) If the Bid is on a form other than that prescribed by CDOT, if the form is altered or any part thereof is detached, or if the form does not contain written or Electronic Signatures;
- (b) If the Contractor submitting the Bid is affiliated with another Contractor that has submitted a Bid on the same Public Project;

4.11.2 CDOT reserves the right to reject any or all Bids, to waive technicalities or to advertise for new Bids, if such action is judged to be in the best interests of CDOT.

**4.12 Consideration of Bids**

4.12.1 After the Bids are opened, the Bids will be reviewed to determine if the Low Apparent Bidder's total Bid is no more than 10% over the Department's project budget. All Bids will be compared on the basis of the summation of the mathematical products of the estimated quantities shown in the Bid schedule and the unit Bid prices and any adjustments indicated by the specifications or, pursuant to Section 4.13 in the case of exclusively state funded projects that are advertised as CSBV projects. The results of such comparisons will be made available to the public no later than the date of Award of the contract.

- (a) In the event of a discrepancy between unit Bid price and the mathematical products of the unit Bid price and the estimated quantities in the Bid schedule, the unit Bid price shall govern.
- (b) In the event of Low Tie Bids, a drawing shall be conducted to determine the Low Apparent Bidder. The result for the drawing shall be certified on the Bid tabulation.
- (c) In the event the Low Apparent Bidder is more than 10% over the Department's project budget, the Bid amount shall not be published on the date of the Bid opening. The Low Apparent Bidder shall be disclosed on CDOT's website at <https://www.codot.gov/business/bidding>, but the bid shall only be disclosed upon verification by the Department that funds are available to award the project.

**4.13 CSBV Bid Evaluation Factors**

4.13.1 CSBV Bid projects shall be Awarded to the Contractor whose offer is technically acceptable to CDOT and offers the CSBV to the State as determined by the total overall score from the evaluation criteria specified below:

- (a) CDOT shall use a technical rating scale as follows:

Technical Rating Scale		
Numeric Rating	Adjective	Description
1	Unacceptable	Fails to meet minimum requirements; major deficiencies which are not correctable.
2	Poor	Fails to meet requirements, significant deficiencies that may be correctable.
3	Acceptable	Meets requirements; only minor deficiencies which can be clarified.
4	Good	Meets requirements and exceeds some requirements; no deficiencies.
5	Excellent	Exceeds most, if not all requirements; no deficiencies.

For example, if a factor has a point evaluation of 0 to 20 points, and (using the appropriate Rating Scale in Section 4.13.1 CDOT evaluates as "good" the part of the Bid Proposal applicable to the factor, the score for the factor is 16 (4/5 of 20).

- (b) CDOT shall analyze CSBV Bids based on staffing, management, quality management, design, price criteria and other factors detailed in the Invitation to Bid and shall calculate a total score from a technical rating of these factors.
- (c) The price evaluation shall be objective. The Contractor with the lowest price shall receive the maximum price points. All other Bid Proposals shall receive a proportionately lower total score.
- (d) The following formula shall be used to determine each Contractor's evaluated score:

Total Score Scale for CSBV	
Design	To be specified in the bid advertisement
Staffing/Management/Quality Management	To be specified in the bid advertisement.
Price	To be specified in the bid advertisement.
Evaluated Price Score	100

- (e) The Contractor with the highest total score shall be notified they are the Low Apparent Bidder within a reasonably prompt time of the Bid opening.

**4.14 Mistakes in Bids**

4.14.1 Mistakes Discovered Before Opening

A Contractor may correct any mistakes discovered before Bid opening by withdrawing and correcting the Bid as provided in Section 4.07.

4.14.2 Mistakes Discovered After Opening and Before Award

- (a) When it appears to CDOT from a review of the Bid that a mistake has been made, the Contractor will be requested to confirm the Bid. Situations in which confirmation will be requested include obvious, apparent errors on the face of the Bid or a Bid unreasonably lower than the other Bids submitted. If the Contractor alleges mistake, the Bid may be corrected or withdrawn if conditions set forth in this subsection are met.

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- (b) If the mistake is attributable to an error in judgment, then the Bid may not be corrected or withdrawn.
  - (c) If the mistake is inadvertently made and not attributable to an error in judgment, then Bid correction or withdrawal may be permitted at the discretion of CDOT subject to the conditions provided in this subsection, but only to the extent it is not contrary to the interest of CDOT, or to the treatment of others, or to the integrity of the competitive Bidding process.
  - (d) A Contractor may correct inadvertent mistakes discovered after Bid opening but before Award, or may withdraw a Bid after Bid opening but before Award, only as provided in the following three situations:
    - (1) Minor Informalities. CDOT may waive Minor Informalities or require the Contractor to correct them depending on which is in the best interest of CDOT. Minor Informalities in the written or Electronic Bid include, but are not limited to, the failure of the Contractor to:
      - (a) Sign all forms included in the Bid Proposal, except the affidavit relative to collusion, signature of which may not be waived.
      - (b) Acknowledge receipt of a revision to the Invitation for Bids, but only if:
        - 1. It is clear from the Bid that the Contractor received the revision and intended to be bound by its terms: or
        - 2. The revision involved had a negligible effect on price, quantity, quality, or delivery.
    - (2) Mistakes Where Intended Correct Bid is Evident

If the mistake and the intended correct Bid are clearly evident on the face of the Bid, the submitted Bid shall be corrected to the intended correct Bid and may not be withdrawn so long as the Bid both corrected and intended is the lowest received. Examples of mistakes that are evident on the face of the Bid are typographical errors, errors in extending unit prices, transposition errors and arithmetical errors.
    - (3) Mistakes Where Intended Correct Bid Is Not Evident

A Low Apparent Bidder may be permitted to withdraw a Bid if:

      - (a) A mistake is clearly evident on the face of the Bid, and the intended correct Bid is not similarly evident: or
      - (b) The Contractor submits proof of evidentiary value which clearly and convincingly demonstrates that a material mistake of a clerical, mathematical, or similar non-judgmental nature was inadvertent and not intentional, that it was made in good faith, and that CDOT has not relied to its detriment on the mistaken Bid.

**4.14.3 Mistakes Discovered After Award**

Mistakes shall not be corrected after Award of the Contract except where CDOT Chief Engineer or designee makes a written determination that it would be unconscionable not to allow the mistake to be corrected.

**4.14.4 Determination Required**

When a Bid is corrected or withdrawn or when correction or withdrawal is denied, the CDOT Chief Engineer or designee shall prepare a written determination showing that the relief was granted or denied in accordance with the rules.

**4.15 Performance Capability Statement**

Prior to Award of the Contract, the Low Apparent Bidder shall submit a Performance Capability Statement in the form prescribed for use by CDOT, which shall include identification of any partnership or joint venture for the project and certification that the Low Apparent Bidder's fiscal and workmanship qualifications have not significantly decreased from that reported in the Prequalification application.

**4.16 Determination of Non-responsibility**

4.16.1 Prior to Award of the Contract, CDOT shall review the Low Apparent Bidder's past performance, Performance Capability Statement, and Bid to determine responsibility. Reasons for Determination of Non-responsibility may include but are not limited to:

- (a) The Low Apparent Bidder has submitted a Bid on a general type of project for which the Contractor and Subcontractors cannot establish a demonstrated performance capability at the time of Prequalification; or
- (b) The Low Apparent Bidder has failed or is failing to perform on any construction Contract subsequent to the Prequalification action; or
- (c) The fiscal or workmanship capability of the Low Apparent Bidder has significantly decreased from that set forth in its Prequalification application and supplements; or
- (d) The review of the Bid by CDOT identifies any concern relative to the performance capability of the Low Apparent Bidder; or
- (e) If the Contractor submitting the Bid has been sent a Notice of intent to revoke Prequalification under Chapter Two of the rules; or
- (f) If the Contractor submitting the Bid has been sent a Notice of intent to find the Contractor in default on a CDOT Contract; or
- (g) If the Contractor submitting the Bid has been sent a Notice of intent to debar or of Suspension under Chapter Three of the rules; or
- (h) If CDOT determines that the Contractor's good faith efforts to comply with DBE requirements were unsatisfactory; or
- (i) If CDOT determines that the Contractor's requested waiver of Section 8-17-101, C.R.S., is insufficient to make a determination whether a waiver is warranted.

4.16.2 If in the estimation of CDOT the Low Apparent Bidder's submission is not responsible, the Low Apparent Bidder shall be afforded an opportunity to promptly supply information on the issue.

4.16.3 If the Low Apparent Bidder fails to promptly provide the information requested or if the information provided does not resolve the issue, CDOT may issue a Determination of Non-responsibility and pursue Award of the Contract to the next lowest responsible Bidder.

4.16.4 Any such Determination of Non-responsibility may, in itself, have an effect on the Low Apparent Bidder's eligibility to submit Bids or be Awarded Contracts on other projects.

#### **4.17 Determination of Non-responsiveness**

4.17.1 Prior to Award of the Contract CDOT shall review the Low Apparent Bidder's Bid submittals to ensure that they conform to the terms and conditions as specified in the Bid documents and that they are free of irregularities. Reasons for Determination of Non-responsiveness may include but are not limited to:

- (a) If there are unauthorized additions, conditional or alternate Bids, or irregularities of any kind which may tend to make the Bid incomplete, indefinite, or ambiguous as to its meaning.
- (b) If the Bid does not contain a (positive and non-zero) unit price for each Pay Item listed except in the case of authorized alternative Pay Items, the mathematical products of the respective unit prices and the estimated quantities, and the total amount of the Bid obtained by adding such mathematical products.
- (c) If the Low Apparent Bidder has submitted a Bid that is determined by CDOT to be a Materially Unbalanced Bid.

4.17.2 In the event that individual unit prices in a particular Bid are deemed by CDOT to be Mathematically Unbalanced Bids, the Contractor will be allowed to furnish any records or explanations which indicate how the prices for those items were established before a determination is made by CDOT that the Bid is a Materially Unbalanced Bid.

4.17.3 If in the estimation of CDOT the Low Apparent Bidder's submission is not responsive, the Low Apparent Bidder shall be afforded an opportunity to promptly supply information on the issue.

4.17.4 If the Low Apparent Bidder fails to promptly provide the information requested or if the information provided does not resolve the issue, CDOT may issue a determination of non-responsiveness and pursue Award of the Contract to the next lowest responsive Bidder.

4.17.5 Any such determination of non-responsiveness may, in itself, have an effect on the Low Apparent Bidder's eligibility to submit Bids or be Awarded Contracts on other projects.

#### **4.18 Award of Contract**

4.18.1 If the Contract is Awarded, the Award will be made within thirty calendar days after the opening of Bids to the Low Responsible and Responsive Bidder. The Low Responsible and Responsive Bidder must comply with all the requirements and criteria prescribed in the Invitation or Bids, in the rules, and otherwise as provided by law. CDOT will notify the Low Responsible and Responsive Bidder by letter, mailed to the address shown on its Bid, that its Bid has been accepted and that it has been Awarded the Contract.

4.18.2 After the time of Award, all Bids, Bid documents and project documents shall be open or closed to public inspection, as provided in the open records law, Section 24-72-201 et seq., C.R.S.

#### **4.19 Cancellation of Award**

CDOT reserves the right to cancel the Award of any Contract at any time before the execution of the Contract by all parties without any liability against CDOT.

#### **4.20 Return of Bid Proposal Guarantee**

As indicated in the Invitation for Bids, each Bid must be accompanied by a Bid Proposal Guarantee. All Bid Proposal Guarantees consisting of certified checks or cashier checks will be treated as follows:

- (a) For Contractors submitting the second and third lowest Bids, the Bid Proposal Guarantee will be held until the Contract is signed by the Low Apparent Bidder, at which time the Bid Proposal Guarantees of the second and third low Bidders will be returned. The Bid Proposal Guarantee will not be returned to the Low Apparent Bidder until satisfactory Contract Bonds have been furnished and the Contract has been signed by the Low Apparent Bidder.
- (b) For all other Contractor's submitting Bids, the Bid Proposal Guarantee will be returned promptly after the opening and verification of Bids.
- (c) For Contractor's Bids rejected by CDOT, the Bid Proposal Guarantee will be returned promptly after formal notification of the rejection.
- (d) For Contractor's Bids withdrawn under Section 4.14.1, the Bid Proposal Guarantee will be returned promptly after withdrawal of the Bid.

#### **4.21 Requirement of Contract Bonds**

At the time of the execution of the Contract, the Low Responsible and Responsive Bidder shall furnish two surety Bonds, consisting of a payment bond and a performance bond. Each bond shall be in the penal sum of the Bid and those force account items designated for bonding equal to the next highest integral one hundred dollars. Said Bonds shall be in the forms provided by CDOT.

#### **4.22 Execution and Approval of Contract**

The Contract must be executed on behalf of the Low Responsible and Responsive Bidder by an Individual with legal authority to bind the Low Responsible and Responsive Bidder. Such an Individual includes the owner of a sole proprietorship, one or more partner members of a partnership, one or more authorized members or officers of each firm representing a joint venture, the president or vice-president of a corporation, or an authorized agent of the Contractor. Anyone signing as agent for the Low Responsible and Responsive Bidder must file with CDOT written evidence of such authority. The Contract shall be returned, together with the Contract Bonds, within fifteen calendar days after the date of Award unless otherwise specified by CDOT. If the Contract is not executed by CDOT within thirty calendar days from date of Award, the Low Responsible and Responsive Bidder shall have the right to withdraw its Bid without penalty, provided the Contractor returned the executed Contract and bond within fifteen calendar days from the date of the Award. No Contract shall be considered effective until it has been fully executed by all of the parties thereto.

#### **4.23 Failure to Execute Contract**

Failure of the Low Responsible and Responsive Bidder to so execute the Contract and file acceptable Contract Bonds within fifteen calendar days or other duration specified by CDOT after the date of Award shall be just cause for the cancellation of the Award and the forfeiture of the Bid Proposal Guarantee which shall become the property of CDOT. CDOT may elect to waive forfeiture of the Bid Proposal Guarantee only if CDOT determines that the Low Responsible and Responsive has made a good faith effort, which was an honest, nonjudgmental error, not the result of intentional conduct, gross negligence or willful neglect, and that no damages were sustained by CDOT as a result of the failure by the Low Responsible and Responsive Bidder to execute the Contract and file acceptable Contract Bonds within the time prescribed. Award may then be made, in accordance with the provisions of Section 4.18 to the next lowest responsible and responsive Bidder, or the project may be re-advertised.

#### **4.24 Notice to Proceed**

After the Contract has been fully executed, the Contractor shall be given a written Notice to proceed which will instruct it when Work may be commenced and when the Contract time will commence.

#### **4.25 Protests**

4.25.1 Protests will be handled as follows:

4.25.1.1 Any actual or Prospective Bidder, offeror or Contractor who is aggrieved in connection with the solicitation or Award of a Contract may protest to the CDOT Chief Engineer or a designee. The protest shall be submitted in writing within seven working days after such aggrieved Person knows or should have known of the facts giving rise thereto.

4.25.1.2 The CDOT Chief Engineer or designee shall have the authority to settle and resolve a protest of an aggrieved Bidder, offeror, or Contractor, actual or prospective, concerning the solicitation or Award of a Contract. A written decision regarding the protest shall be rendered within seven working days after the protest is filed. The decision shall be based on and limited to a review of those issues raised by the aggrieved Bidder, offeror, or Contractor and shall set forth each factor taken into account in reaching the decision. The decision shall constitute the final agency action of CDOT regarding the protest.

4.25.1.3 Entitlement to costs: When a protest is sustained by the CDOT Chief Engineer or designee or upon administrative or judicial review and the protesting Bidder or offeror should have been Awarded the Contract under the solicitation but was not, the protestor shall be entitled to the reasonable costs incurred in connection with the solicitation, including Bid preparation costs. No other costs or fees shall be permitted or Awarded, and reasonable costs and fees shall not include attorney's fees.

#### **4.26 Declaratory Order**

4.26.1 CDOT may entertain, at its sound discretion, petitions for declaratory orders pursuant to § 24-4-105(11), C.R.S.

### **CHAPTER 5 CONSTRUCTION OF PROJECT BY CDOT WITH ITS OWN FORCES**

#### **5.01 Selection of Projects**

5.01.1 Any project that is constructed by CDOT with its own forces shall meet one or more of the following criteria:

- (a) Projects for which the expenditure of funds is reasonably expected to be less than one hundred fifty thousand dollars in the aggregate for the fiscal year,
- (b) Projects that cannot be defined as to start or stop time,
- (c) Projects that cannot be defined as to geographical limits,
- (d) Projects that cannot be defined as measurable units of Work, or
- (e) Projects on which the nature of the Work is such that delays in progressing with the Work would endanger the public health, welfare or safety.

## **5.02 Approval of Projects**

Any project proposed to be constructed by CDOT with its own forces estimated to cost in excess of one hundred fifty thousand dollars in the aggregate in any fiscal year shall be subject to written approval by CDOT Chief Engineer. If the CDOT Chief Engineer approves, then compliance with Chapter Six in these rules is necessary.

## **5.03 Cost Estimates**

For all projects reasonably expected to cost more than fifty thousand dollars but less than one hundred fifty thousand dollars in the aggregate in any fiscal year, CDOT shall prepare a cost estimate for approval by the Transportation Commission. The cost estimate shall be a summation of the following factors:

- (a) Labor: The estimated time of personnel expected to be working on the project multiplied by their respective rates of pay including the current CDOT payroll load factor percentage;
- (b) Materials: The estimated cost of materials purchased or produced by acceptable procurement methods;
- (c) Supplies: The estimated cost of incidental supplies necessary to sustain the project;
- (d) Supervision: The estimated time of supervisory personnel expected to be responsible for the project multiplied by their respective rates of pay including the current CDOT payroll load factor percentage;
- (e) Engineering: The estimated time of engineering personnel necessary to properly engineer the project multiplied by their respective rates of pay including the current CDOT payroll load factor percentage;
- (f) Equipment Rental: The estimated cost of equipment rental. Rates for use and replacement are to be obtained from either CDOT Staff Maintenance Branch or Accounting Branch. Rates shall be calculated pursuant to generally accepted accounting principles; and
- (g) Indirect Cost Allocation: A predetermined percentage of administrative costs not directly attributable to the project. The percentage will be established October 1st of each year by the Accounting Branch, based on the prior year's expenditures. Indirect costs recalculated by applying the current percentage to the subtotal of items (a), (d) and (e) above.

#### **5.04 Retention of Cost Estimate**

The prepared cost estimate for the proposed project shall be maintained by the responsible officer by the CDOT regional office for a period of six years.

### **CHAPTER 6 COMPETITIVE SEALED BIDDING BY CDOT**

#### **6.01 Applicability**

This chapter shall govern the process by which CDOT prepares Bid Proposals and submits such estimates into competitive sealed Bidding of non-federal aid projects estimated to cost more than one hundred fifty thousand dollars in the aggregate in any fiscal year.

#### **6.02 Preparation of Bid Proposals**

Bid Proposals shall be prepared by the CDOT Engineering Estimates and Market Analysis Unit and shall contain the components listed in Section 5.03(a), (b), (c), (d), (e), and (f) except that indirect administrative costs as defined in Section 5.03(g) shall not include those costs that are necessary to administer a Contractor's Work but not Work performed by CDOT: such as: the cost of processing a Contractor's monthly estimates, the cost of processing a Contractor's retainage. The Bid Proposal shall be prepared in accordance with Section 4.05 of the rules and will be approved by CDOT Chief Engineer. However, a Bid bond will not be required and CDOT will be considered as a prequalified Contractor. The Bid Proposal shall be based upon the assurance that Work performed by CDOT will be subject to the same standards that govern the Contractor's Work.

#### **6.03 Submission of Bid Proposals**

The CDOT Bid Proposal shall be submitted in accordance with the provisions of Section 4.06 of the rules.

#### **6.04 Confidentiality of Bid Proposals**

The Bid Proposal prepared by CDOT shall be confidential with only the CDOT Engineering Estimates and Market Analysis Unit and CDOT Chief Engineer having access to it, during advertisement, until the time Bids are opened.

#### **6.05 Opening and Comparison of Bids**

Bids and the CDOT Bid Proposal shall be opened in accordance with the provisions of Section 4.10 of these rules and compared in accordance with the provisions of Sections 4.12 and 4.14 of the rules.

#### **6.06 Award of Contract**

6.06.1 Award of the Contract shall be made in accordance with the provisions of Section 4.18 of the rules when a CDOT Bid Proposal is not the lowest when compared to other Bids.

6.06.2 When a CDOT Bid Proposal is the lowest when compared to other Bids, CDOT may perform the Work on the Public Project with its own forces provided CDOT can meet the same time requirements as imposed on other Contractors.

#### **6.07 Withdrawal of the CDOT Bid Proposals**

At any time within thirty calendar days of the date of Bid opening, CDOT may withdraw its Bid Proposal and Award a Contract in accordance with the provisions of Section 4.18 of the rules, to the Low Responsible Bidder.

**6.08 Retention of Bid Proposals**

In the event that CDOT undertakes to perform the Work on a project with its own forces, the Bid Proposal shall be maintained by the responsible officer by the CDOT regional office for a period of six years.

**CHAPTER 7 SUPPLEMENTAL DISCLOSURES AND RECORD RETENTION FOR CDOT'S PUBLIC PROJECTS THAT ARE NON-FEDERALLY FUNDED**

- 7.01 In the event that there is insufficient Colorado labor to perform the work of the project, and if compliance with Section 8-17-101, et seq. C.R.S., would be Unduly Burdensome, causing the prevention of project completion, CDOT shall post a notice of such justifiable waiver pursuant to Section 8-17-101, C.R.S., on the CDOT website.
- 7.02 CDOT shall maintain a Contract file for a period of six years for all projects Awarded on a CSBV basis. Those CSBV Bid files shall contain the basis upon which the Award determination was made.
- 7.03 For all projects not funded in any part with federal moneys, CDOT shall post on the CDOT website a listing of such projects including the rationale used to determine whether advertisement and award will be either by Low Bidder or CSBV standard.
- 7.04 CDOT shall post on the CDOT website any report received by CDOT from Contractors who either:
- (a) Report that they anticipate their Work or any Subcontractor's Work will be performed outside of the United States or Colorado; or
  - (b) Report that they have learned, after the Award of the Contract, the Work under the Contract will be performed outside of the United States or Colorado.
- 7.05 CDOT shall summarize reports posted pursuant to Section 7.04 of the rules in an annual report to the Colorado General Assembly by January 1 each year.

**CHAPTER 8 INCORPORATION BY REFERENCE**

- 8.01 The Rules are intended to be consistent with and not be a replacement for the federal requirements set forth Part 26 of Title 49 of the Code of Federal Regulations in effect as of March 2018, which are hereby incorporated into these Rules by reference, and do not include any later amendments.
- 8.02 All referenced laws and regulations shall be available for copying for a reasonable charge or for public inspection during regular business hours from the Office of Policy and Government Relations, Colorado Department of Transportation, 2829 W. Howard Pl., Denver, Colorado 80204.
- 8.03 Copies of the referenced Code of Federal Regulations may be obtained from the following address:

U.S. Government Publishing Office  
732 North Capitol Street, N.W.  
Washington, DC 20401  
(202) 512-1800

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**Editor's Notes**

**History**

Entire rule emer. rule eff. 12/11/2013.

Entire rule eff. 03/30/2014.

Chapter 1, rules 1.06, 1.09, 1.14-1.53, 2.01.1, 2.02.1, 2.03.1, 2.04.1(g), 2.05.1, 2.06.1, 2.08.1(c), 2.08.3, 3.03.1(c), 3.07.1, 3.08.1, 4.01.1, 4.01.2, 4.02, 4.03, 4.04, 4.05.1, 4.06, 4.09, 4.12, 4.13.1(e), 4.14.2, 4.16, 4.20(d), 4.22, 4.24, 4.25, 4.26, 7.04, Chapter 8 eff. 09/30/2018.