SEP 14 Application

Colorado Alternative Procurement Process
Best Value Selection of P3 Co-Developer

BACKGROUND

On July 15, 2011, PARSONS submitted an Unsolicited Proposal (USP) to the Colorado Department of Transportation (CDOT). The USP proposed a plan to complete key mobility improvements in the I-70 Mountain Corridor through a Public Private Partnership (P3) managed lane concession. PARSONS advised that toll revenues would be sufficient to design, build, operate and maintain the managed lane facility, thus requiring no federal or state funding.

Through a co-development arrangement, PARSONS proposed to share in the costs and risks for the development phases that are necessary prior to deciding to secure a P3 concession agreement that would finance, design/build, operate and maintain the I-70 improvements. PARSONS' proposal offered CDOT its services and deferred a substantial portion of project development costs. PARSONS anticipated the opportunity to recover all deferred development costs and a reasonable return on its (and CDOT's) investment through an upfront payment as part of the future concession agreement.

CDOT is treating PARSONS' USP as an unsolicited proposal for a public-private initiative under part 12 of article 1, Title 43, Colorado Revised Statutes, and is soliciting comparable proposals as provided in that statute.

CDOT released a Request for Statements of Interest (RFSOI) on March 16, 2012, seeking qualified firms interested in submitting a comparable I-70 development proposal. After evaluating SOI responses, CDOT has shortlisted four firms termed "Qualified Parties" (PARSONS, CH2M Hill, HNTB, HDR) issued a draft RFP on May 31, 2012 and will issue an RFP to these firms on XXX 2012 to secure a co-development partner.

Under 23 U.S.C. 112, which applies the Brooks Act for the procurement of engineering and design related services funded with Federal-aid highway program (FAHP) funds, a consultant's cost is not considered until selected as the best-qualified proposer based on demonstrated competence and qualifications; negotiations are then initiated to establish a fair price for secured services. As an important component of the selection of the overall best-qualified proposer, CDOT would like to include deferred or "at risk" payment, or other innovative cost and risk sharing arrangements in the evaluation of proposals for engineering and design related services for the I-70 Mountain Corridor Project. CDOT's proposed Best Value Selection of P3 Co-Developer advances CDOT needs and preserves several aspects of the Brooks Act, while allowing experimentation of other elements under a SEP-14 Alternative Contracting approach for the procurement of engineering and design related services under title 23, United States Code, which includes reserving the right to retain the selected Co-Developer to provide subsequent program and construction management services.

CDOT recognizes the importance of maintaining objectivity and independence throughout each phase of this project. CDOT will provide direction and oversight over all NEPA analysis and documentation in compliance with 40 CFR 1506.5. CDOT will ensure objectivity by carefully insuring that their in-house experts, or consultant advisers retained by or on behalf of the State, have directed and reviewed all NEPA document preparation.

In addition, consistent with its Stewardship and Oversight Agreement with CDOT, the FHWA CO Division Office will independently evaluate the NEPA document prior to its approval and adoption. The CO Division takes an unbiased, objective, hard look at all facets of CDOT's NEPA document preparation, including purpose and need, alternatives; including the no-action alternative, impacts, and mitigation. The CO Division does not have a preconceived notion regarding the best solution to the identified problems and independently considers the proposal with regard to reasonable alternatives, impact reduction, costs, level of service provided, and meeting the intended purpose and need for the project. Colorado Division oversight will be exercised consistent with 40 CFR 1506.5.

PURPOSE

CDOT has established the following primary goals for the I-70 Project.

- Expeditiously deliver a long-term, multi-modal solution to the congestion and mobility issues on the I-70 Mountain Corridor

- Partner successfully with the private sector to provide an innovative delivery solution with minimal need for financial support from state and federal sources.

- Maximize risk sharing and cost sharing with the private sector in the development, construction, operation and maintenance of the Project.

Sharing risk and cost with a Co-Developer, through deferred or at-risk payments, or other cost/risk sharing strategies, offers the following significant benefits:

- Willingness to share costs/risks is a strong indicator to CDOT of the confidence the Co-Developer has in the proposed plan. The Co-Developer will recoup deferred or at-risk costs only if the Project goes to P3 Project financial close (through a success fee, or through other mechanisms offered by the winning firm).
- Proposer is incentivized to minimize expenditures and get to decision points expeditiously and efficiently because deferred costs are not recouped if viability is questioned and an “off-ramp” (decision not to proceed) is taken or a P3 Concession is not obtained.

- The CDOT Transportation Commission is reluctant to invest additional transportation funds in this corridor unless a beneficial partnership can be forged with the private sector, a partner willing to share in costs and risks.

The purpose of this Alternative Contracting approach is to permit CDOT to consider cost/risk sharing as an important component in the selection of the best-qualified proposer. CDOT reserves the right to retain the selected Co-Developer to provide subsequent program and construction management services.

SCOPE

Under this SEP 14 proposal, CDOT will evaluate Requests for Proposal (RFP) in two parts.

Part 1 – TECHNICAL PROPOSAL

In Part 1, CDOT will conduct an evaluation to identify the "best qualified" proposers. The evaluation will generally follow CDOT qualifications based selection process outlined in CDOT's Professional Consultant Contracting Manual: A Guide to CDOT's Policies, Procedures, Rules, Regulations and Guidelines, for Professional Service Contracts with Architects, Industrial Hygienists, Engineers, Landscape Architects, and Land Surveyors. These procedures were reviewed and approved by the FHWA CO Division Office in accordance with 23 CFR 172.9(a).

In Part 1, CDOT will evaluate key staff qualifications, proposed technical plan, project and risk management approach, and proposed project financial plan (how revenue will match Project costs). . This part shall not include any cost/risk sharing strategies which are to be discussed by proposers in Part 2 only. CDOT will evaluate and rank each proposal and the three "Best Qualified" will be considered further in Part 2. The fourth ranked firm will be eliminated from further consideration.

Part 2 – COST AND RISK SHARING PROPOSAL

Part 2 will describe and evaluate the alternative cost and risk-sharing proposal for Co-Developer services. This second part will also require identification and evaluation of an order of magnitude of the overall cost of Co-Developer services by project phase (Feasibility, NEPA/preliminary design, procurement of a P3 concessionaire). See Exhibit 1. CDOT will open and evaluate Part 2 only for the three "Best Qualified" firms identified in Part 1. Part 2 will not be opened from the eliminated proposer.

Retaining the selected Co-Developer for any future management services will be based on the consultant's prequalification, workload capacity, and other legal requirements at the time those services would be required. The scope and pricing of any future services would be negotiated at the time CDOT chooses to use the consultant to provide these services.

After reviewing Part 1 and Part 2 scoring, CDOT at its sole discretion, will determine the "Overall Best Value" firm based on a determination that firm has provided the Overall Best Value by demonstrating its technical qualifications, its understanding and intent to meet project goals and its demonstrated willingness to substantially share project costs/risks (in Part 2).

The 6-member selection panel will include CDOT executives from various disciplines and expertise. This panel will have access to internal and external resources (T&R, financial, etc.). The individual authorized to make the final decision on the selection is a member of the selection team.

CDOT's Overall Best Value determination could be based on a number of factors including, but not limited to, those presented in the following scenarios:

A clear choice will be presented if a Qualified Party gets a substantially higher score for both Part 1 and Part 2. Part 2 scores could guide the Overall Best Value determination if the Part 1 scores for the three "Best Qualified" are very close (or vice versa). In less clear situations, CDOT will make its Overall Best Value determination based upon consideration of the trade offs between Part 1 and Part 2. If a trade off assessment is needed, CDOT will consider Part 1 and Part 2 to be approximately equal in priority in reaching an Overall Best Value determination.

CDOT will document its decision-making rationale in a memorandum to the files for this procurement. This memorandum will be available at the debriefing for review by successful and unsuccessful proposers.

CDOT will begin negotiations with the Overall Best Value firm. However, if agreement cannot be reached, negotiations will cease with that firm and CDOT may begin negotiations with the next highest ranked Best Value firm on its list. CDOT will not at any time reopen negotiations with any firm that they have ceased negotiations.

The approach under this Alternative Procurement Process preserves two components of the Brooks Act: Firms will be short-listed initially based solely on competence/qualifications (Part 1); and in the final stage of the procurement process, negotiations will occur only with the top ranked firm. The variation, and the opportunity for experimentation under SEP-14, occurs where cost and risk sharing (Part 2) are used to select the best value proposal from among the Best-Qualified firms short-listed based on competence and qualifications. Under the traditional Brooks Act requirements, negotiation for a fair and reasonable price may only be initiated with the firm selected as most highly qualified based on demonstrated competence/ qualifications. Under this approach, all "Best Qualified" firms short-listed based on competence/qualifications could be considered under the cost/risk sharing phase (Part 2) of the process.

FHWA's design-build regulations provide for a stipend, but the acceptance of the stipend is optional. Under the Alternative Procurement Process, which is not a design-build procurement, CDOT will make acceptance of the stipend mandatory. In consideration for paying the stipend, and upon the payment of the stipend, all unsuccessful Proposals will become the property of CDOT and CDOT may use any ideas or information contained in the Proposals (both Part 1 and Part 2), including materials designated as proprietary and confidential, in connection with any agreement awarded for the Project, or in connection with a subsequent procurement, without any obligation to pay any additional compensation to the unsuccessful short-listed Qualified Party.

Consistent with CDOT/HPTE policy, but contrary to Federal law and regulations, in the event that following the RFP an award is made for the Project to a Qualified Party other than PARSONS, CDOT will require that the successful Qualified Party pay the CDOT/HPTE an amount sufficient to reimburse PARSONS for actual costs incurred to consider and evaluate the USP. Federal funds will not be used for any part of this reimbursement.

In its agreement with the Co-Developer, CDOT will reserve the right, in its sole discretion, to exercise an option to continue the services of the Co-Developer in a program management oversight and/or construction management role during the P3 design, construction, and commissioning phases of the Project. If CDOT elects to exercise this option, the Co-Developer must meet applicable prequalification and other legal requirements. The scope and pricing of such services will be negotiated at the time CDOT exercises this option.

SCHEDULE

The RFP schedule is as follows:

Activity	Time Frame/Date
Issue RFP	July 6, 2012
Final date for receipt of RFP Qualified Parties' questions/clarifications	July 20, 2012
CDOT answers/issue addendum (if any)	July 27, 2012
Proposal Due Date	August 15, 2012
Presentation and Oral Interviews	August 30-31, 2012
Notice to selected Qualified Party	September 17, 2012
Contract Award	November 2012

EVALUATION AND REPORTING

This alternative contracting approach will be evaluated in the following manner:

This alternative selection method is to incorporate a price component into part 2 of the selection process which deviates from qualifications based selection process which is required in Federal law (23 USC 112(b)(2)(A) and 40 USC 1101-1104) and regulations (as specified in 23 CFR 172.5(a)(1) and 40 CFR 18.36). This selection method will be evaluated as described below:

For Part 1 – TECHNICAL PROPOSAL, the RFP will contain an adjectival evaluation range designed to establish a percentage of the maximum score for each evaluation criterion used to score the submitted proposals. This is CDOT's normal qualifications based selection process and will not be evaluated.

For Part 2 – COST AND RISK SHARING PROPOSAL, A qualitative scoring approach will be established for the evaluation of Part 2 of each Best-Qualified firm as described in the RFP. The following section describes individually how this selection method deviates from Federal laws and regulations and how each specific exemption will be evaluated and reported.

1. Exemption: Incorporating and evaluating a cost/risk sharing analysis approach to select the over-all Best Qualified firm is contrary to 23 CFR 172.5(a)(1) and 23 USC 112 (2) (A) in that price cannot be considered in a selection.

   Objective: Determine if incorporating the cost/risk sharing proposals assisted CDOT is selecting the best firm.

   Measures:
   - CDOT received viable cost/risk sharing proposals from; all firms, two firms, one firm, or no firms
   - CDOT was able to document in the memo to the project file that incorporating the cost/risk sharing scores enabled them to clearly differentiate between the firm's proposals and make a true Best Value Selection.

   The analysis used to make the decision will be measured by documenting the range of scores for Part 2 and evaluating and reporting on the effectiveness of incorporating the cost/risk sharing proposals into the selection process using the following data and methodology:

   - The cost/risk sharing proposals reduced CDOT's financial participation substantially, reasonably, minimally, not at all
   - The cost/risk sharing proposals reduced necessary resources from CDOT

- Proposers order of magnitude of costs to provide services are in line with CDOT historic cost data for like phases
- The cost/risk sharing proposals helped CDOT determine the proposers ability to meet project goals

2. Exemption: Using a Best Value approach (combining technical proposals and cost/risk sharing proposals) to select the over-all Best Qualified firm is contrary to 23 CFR 172.5(a)(1) 23 USC 112 (2) (A) in that price cannot be considered in a selection

   Objective: Determine if using a Best Value approach assisted CDOT in selecting the over-all Best Qualified firm.

   Measures:
   - CDOT received viable cost/risk sharing proposals from; all firms, two firms, one firm, or no firms
   - CDOT was able to combine part 1 and part 2 scores by incorporate the trade-off assessment methodology and make a determination as to the over-all best qualified firm.
   - CDOT was able to document in the memo to the project file that combining the cost/risk sharing scores with part 1 scores enabled them to clearly differentiate between the firm's proposals and make a true Best Value Selection.
   - Part 1 and Part 2 were kept separate in all proposals, 2 proposals, 1 proposal, or all firms were disqualified as a result of incorporating cost/risk sharing in Part 1.

These measures in numbers 1 and 2 above will be analyzed and a determination made as to the effectiveness of incorporating a price component and a Best Value selection method. The Best Value selection method will be found successful if the cost/risk sharing part 2 proposals helped determine a clear winning firm. This will be documented in the memorandum to file mentioned in the RFP, the initial SEP-14 report as well the first annual SEP-14 report to the Division.

3. Exemption: The ability to retain the option to continue the services of the Co-developer in a program management oversight and/or construction management role during the P3 design, construction, and commissioning phases of the Project is contrary to 23 CFR 172.5(a)1 in that future competition would not be used to select a firm to provide these services.

   Objective: Determine if including the option for future services assisted CDOT in making the selection of the over-all best qualified firm.

   Measures:

- CDOT received viable proposals for program management services that enabled them to make a distinction between the firms' proposals and ultimately select the over-all best qualified firm.

The analysis used to make the decision will be measured by documenting the effectiveness of including potential future work into the selection process using the following data and methodology. This is both an initial selection measure and long term measure if services are required in the future. The initial selection will be discussed and measured here, the future services measures are described below:

- The firms proposed arrangement, both current and future
- Analyze if the proposals planning/scoping level estimate is in line with CDOT's current standard cost data
- The proposal for future services was/was not used in the selection decision
- The proposal included enough information to determine the proposer has an understanding of the work required in all phases

These measures will be analyzed and a determination made as to the effectiveness of how the proposals assisted CDOT in making the selection based on program management services. If the majority of the criteria is met by 66% of the proposers this will be considered a successful part of the process. This will be documented in the initial SEP-14 report as well the first annual SEP-14 report to the Division.

4. Exemption: Paying a mandatory stipend in order for CDOT to own and pass on ideas from unsuccessful proposers to the successful firm is contrary to 23 CFR 636.113(b) such that stipends are to be optional.

   Objective: Determine if the requirement of a mandatory stipend limited the number of firms submitting proposals or generated complaints from those firms submitting proposals.

   Measures:
   - Number of protests by unsuccessful firms
   - Number of firms deciding to not submit a proposal due to the mandatory stipend.

These measures will be analyzed by documenting the number of protests and number of firms refusing to submit a proposal. The use of the mandatory stipend will be found successful if none of the firms decided to not propose and if CDOT doesn't receive any protests from the unsuccessful firms.

5. Exemption: The requirement that CDOT will require the successful Qualified Party pay the HPTE/CDOT an amount sufficient to reimburse PARSONS for actual costs incurred to consider and evaluate the USP Reimbursement to

Parsons' is contrary to 23 CFR 172.5(a)(1) 23 USC 112 (2) (A) by potentially limiting competition and in that price cannot be considered in a selection.

Objective: Determine if the requirement of the successful proposer, if not Parsons', to reimburse Parsons limits the number of proposals submitted.

Measures:

- Number of proposers who question this requirement during the proposal period.
- Number or proposers who decide to not submit a proposal because of this requirement
- Did the selected Qualified Party refuse to reimburse CDOT

These measures will be analyzed by documenting the number of questions received, the number of firms refusing to submit a proposal, and if the selected firm refuses to reimburse CDOT. The inclusion of this requirement will be determined to be successful if none of the firms withdraw or question this requirement.

Analyzing, determining the effectiveness of each measure, and reporting on the objectives indicated above will be made by CDOT within 2 months after a contract has been awarded to the Co-Developer unless otherwise noted.

In addition to evaluating the deviations from Federal law and regulations using the alternative selection method, another objective is to maintain industry support for consultant selection at CDOT. Thus, the outcome of this alternative procurement method will be evaluated following the selection of a Co-Developer in the following manner.

This will be measured by collecting data and information from the proposers, and industry in general including soliciting input from ACEC and ARTBA, and analyzing and reporting on the results using the following measures:

- Number of consultant firms responding to inquiries in support, neutral to, or opposed to this selection method.
- Number of issues reported by requiring the mandatory stipend, both by the proposers, and industry in general.

This data will enable CDOT to analyze the general support from industry and predict if future use of these methods would be acceptable.

<u>Long Term Analysis and Reporting – this will be completed and submitted to the Colorado division office by the CDOT project manager at the time the service is rendered or the triggering event occurs.</u>

- Off-ramps were necessitated and implemented by CDOT
- Was CDOT able to exercise the option to contract with the Co-Developer for future management services
- Did the Co-Developer maintain objectivity throughout the NEPA process due to their vested interest in the project advancing
- Was a conflict of interest discovered in any phase of the project?
- At the actual time of service, the proposers cost to provide services are in line with CDOT's independent cost estimate for each phase

PART 2 – COST AND RISK SHARING PROPOSAL

A qualitative scoring approach will be established for the evaluation of Cost/Risk Component of each Best-Qualified firm.

In their Part 2 submission, Proposers would be asked to describe, in detail, the cost/risk sharing approach being offered, and to provide an order-of-magnitude cost to provide the services required by major phase (Feasibility, NEPA/preliminary design, procurement of a P-3 concessionaire).

The evaluation team will establish an overall subjective score in one of the following categories:

Adjective	Description	Score Range
Excellent	Cost/risk sharing greatly minimizes the CDOT resources needed to advance the Project. A strong financial motivation for success is established and substantial costs are at risk if off ramps are used or the project is not deemed viable. Cost/risk sharing of services reflects high confidence in approach and efficient use of resources.	90-100
Very Good	Cost/risk sharing minimizes the CDOT resources needed to advance the Project. A reasonable financial motivation for success is established and reasonable costs are at risk if project is not deemed viable. Cost/risk sharing of services reflects confidence in approach and good use of resources.	80-90
Good	Cost/risk sharing marginally reduces the CDOT resources needed to advance the Project. A minimal financial motivation for success is established and minimal costs are at risk if project is not deemed viable. Cost/risk sharing of services reflects adequate confidence in approach and use of resources.	70-80