



COLORADO

Department of Transportation

Office of the Chief Engineer

Construction Services Branch
2829 W. Howard Place
Denver, CO 80204-2305

MEMORANDUM

TO: STEVE HARELSON, CHIEF ENGINEER
FROM: MARKOS ATAMO, CONSTRUCTION SERVICES BRANCH MANAGER ^{MA}
CC: PEHLE COLLETTA, PROFESSIONAL SERVICES CONTRACT MANAGER
DATE: DECEMBER 18, 2020
SUBJECT: JUSTIFICATION FOR NPS DISPUTE AND CLAIMS CONSULTANT SERVICES

BACKGROUND:

Consultant services are needed to assist the Regions and Construction Area Engineers with dispute and claim resolution review processes on construction contracts. Starting at the Project Engineer level through escalation to the Chief Engineer, the consultants would provide assistance with schedule review, dispute and claim evaluation, contract administration and general engineering, and provide training as directed. A draft scope of work is attached. Two consultant contracts, each at \$400,000 are recommended for upcoming needs.

JUSTIFICATION:

Due to time and workload constraints, CDOT personnel often do not have the capacity needed when working through disputes and claims on a construction project. In addition, the consultant's expertise and objectivity often help provide a fresh perspective which results in resolving the disputes and claims which saves CDOT time and money.

_____ I concur with this request
Stephen Harelson, Chief Engineer





NEW SELECTION CHECKLIST

The following information is needed to prepare the Memo to the Chief to Request Ad for Consultant Services. Chief approval is required for all consultant contract advertisements. Please attach additional pages if necessary.

Note: All panel members have to take the panel training class prior to participating

Project Specific (PS) OR Non-Project Specific (NPS)	NPS
How Many Contracts?	2
Master Task Order or Funds Encumbering Contract?	Master Task Order
Anticipated Value (Per Contract)	\$400,000/contract
Consultant Prequal Disciplines	Professional engineer
DBE Goal (Set by Region's Civil Rights Manager)	0(based on prior contracts)
Panel Members (3-5 Panelists, Including one PE III or an alternate senior panelist approved by ECU Manager)	Markos Atamo, Laura Zamora, Mark Straub, alternate Kevin Ryburn
Interview? (Yes, No, Or Optional)* *Optional interview is standard unless approved by ECU	No
Weeks To Advertise (2-4)	Either
Account Information to Charge Ad: Cost Center/WBS Account (if applicable), GL Account, Fund, Functional Area	Cost Ctr: SC921-010 GL 4192000011 (P) Function 1720
SOI Format/Scoring - 5 page, 9 page, Custom	5 page
SOW Attached	Yes
ICE Attached (Note: Not required for NPS)	N/A
Appointing Authority Concurrence	Yes

I Markos Atamo [name] the Program Engineer, certify that 1) this contract request has the appropriate budget, 2) CDOT does not have the internal resources to perform the work internally and 3) this service request will meet the needs of CDOT.

Signature:  Date: _____

Markos Atamo (Jan 4, 2021 17:44 MST)

EXHIBIT A

NPS Dispute and Claim Consultant Scope of Work

TO BE COMPLETED BY A CDOT PROJECT ENGINEER, RESIDENT ENGINEER
OR AREA ENGINEER

Scope Date: _____
Region: _____
Project No: _____
Location: _____
Sub Account: _____

The Contract Administrator for this Contract will be:

Markos Atamo
Construction Services Branch Manager
CDOT Headquarters
2829 West Howard Place
Denver, CO 80204
Phone: 303-757-9592

Active Day-to-Day administration of Task Orders will be delegated by the Contract Administrator to:

Region/Area Engineer _____
Location _____
Phone _____

General Requirements:

Definitions

Engineer - The CDOT Engineer

Consultant - Any personnel provided under this agreement to perform services as outlined in Design Consultant and Construction Management Consultant below.

Contractor - The organization under contract by the CDOT to construct the facility

Department - CDOT

Design Consultant - Any personnel hired by CDOT to design work for CDOT.

Construction Management Consultant - Any personnel hired by CDOT to manage the construction project for CDOT.

Work Duration

The time period for the work described in this scope of work covers the period from _____ to _____ (not to exceed term of contract).

Authorization to Proceed

Work shall not commence until the Contract Administrator transmits the Notice to Proceed to the Consultant. The work shall be completed in the time specified.

Routine Billing & Reporting

The Consultant shall provide the following on a regular basis:

- Monthly billing reports in formats suitable to the Contract Administrator for all contract activities performed by the Consultant’s personnel authorized to perform work on this project.
- Periodic reports and billings as requested.

Status of Contract

The Consultant shall monitor the fiscal status of the contract, and advise the CDOT Contract Administrator of any potential need for supplementing their contract. Failure to monitor contract status and provide timely notification may result in discontinuation of the Consultant’s services.

Prequalification

The Consultant shall include a Colorado Registered Professional Engineer and at least one individual shall have a minimum of 20 years of transportation experience, which includes at least five years of experience in construction related dispute resolution. Of the 20 years, 10 years must be at the equivalent of a CDOT Project Engineer level or CDOT Resident Engineer level experience, and 10 years must be at the equivalent of CDOT management level experience. The Consultant will also need a comprehensive knowledge of CDOT manuals, guidelines, policies and procedures. The Contract Administrator will approve all Consultant personnel. Requests for changes in Consultant personnel must be submitted in writing by the Consultant and approved in writing by the Contract Administrator.

Labor, Materials, Vehicles & Equipment

The Consultant shall furnish all consultant personnel with all necessary equipment and supplies to perform their work, including scheduling software.

Personnel qualifications and staffing levels shall be subject to the approval of the Contract Administrator. The Consultant shall assign personnel for the duration of the Contract unless otherwise approved by the Contract Administrator.

General Work Description

The Consultant shall work closely with region staff and the Construction Services Branch Area Engineers. Work locations may be at CDOT Headquarter and in the regions as the work dictates.

The Consultant shall assist with dispute and claim resolution processes, starting at the Project Engineer level through final resolution, provide assistance with contract administration and general engineering, and provide training as directed.

The Consultant shall conduct an objective analysis of the Contractor schedules, Request for Equitable Adjustment, and disputes or claims based on the documents furnished by the Region. Each dispute or claim study shall assess the role of the Colorado Department of Transportation (CDOT) and if applicable, the Design Consultant in reference to any construction delays, or contract changes, or both. The dispute or claim study shall identify and evaluate the factual basis of the Contractor's allegations and the liability for any additional costs incurred as a result of any changes to the contract. The Consultant shall not solicit work under this contract but will instead rely on the Contract Administrator to initiate contact. The Consultant's work shall be for the use of CDOT and CDOT's Legal counsel.

Schedule and Method Statement Analysis

The Consultant will, as required:

- Review the Contractor's Project Schedules, including Preliminary Schedule, Baseline Schedule, Revised Schedule, and Project Schedule updates for compliance with contract requirements.
- Assemble and review as-built data and develop a current as-built schedule.
- Perform a schedule delay analysis and determine if the delay is excusable for the Contractor and the amount of delay.
- Prepare schedule reports and exhibits to assist in the evaluation of schedule delays and remaining as-planned work.
- Provide ongoing schedule review and evaluation support through project completion.

Dispute or Claim Study

The Consultant will, as required:

- Analyze the work performed and determine whether any changes, extra work, or delays were the result of differing site conditions, suspension of work, significant changes in the character of work, plan errors, or omissions of the Department.
- Assess the liability associated with any changes, extra work, or delays in order to determine responsibility for the additional costs alleged by the Contractor.
- Evaluate the extent of the Department's liability for any delays or changes which might have occurred and recommend to CDOT what course of action would be commensurate with this liability.
- Prepare an oral recommendation and a written report of findings and recommendations to CDOT.

The Consultant's services may be undertaken in any portion or combination of phases as requested by CDOT as follows:

Phase I. Investigation and Preliminary Evaluation

- A. Conduct an initial meeting with the project's key personnel involved in the dispute or claim.
- B. Acquire the dispute or claim file that was completed by the Project Engineer, including any exhibits or other project documents as necessary.
- C. Perform a Schedule Analysis in accordance with the previous section in this scope of work.
- D. Perform damage analysis based on Contractor's or Subcontractor's submitted cost data.

Phase II. Technical Analysis

- A. Acquire copies of additional or updated project records as required.
- B. Review all contract documents between the Department and the Contractor, and if applicable the agreement between the Department and the Design Consultant in order to determine the responsibilities and required conformance of all the parties.
- C. Prepare an assessment of the outstanding issues and problems, highlighting the liability each party as appropriate including the Department, the Contractor, Subcontractors or the Design Consultant

Phase III. Report Preparation

- A. Prepare a draft report of findings, including an assessment of the each parties liabilities and a determination of the additional costs incurred by the Contractor for which either CDOT or the Contractor may be liable.
- B. Arrange a preliminary coordination meeting with the project team to review the draft.
- C. Prepare a final report to reflect comments and additional information received during the review with the project team.

Phase IV. Support Services for a Dispute Review Board, Arbitration Panel, or Litigation.

- A. Assist in planning strategy for CDOT's presentation before the Dispute Review Board, the Arbitrators, or for Litigation.
- B. Prepare CDOT staff for presenting CDOT's position to the Dispute Review Board, Arbitration, or in Litigation.
- C. Assist in presenting all or part of CDOT's position if requested.

- D. Assist in the production of detailed documents and identification of the relevant documents.
- E. Assist in the preparation of depositions of key personnel from all parties involved. This will include an identification of relevant areas of questions, drafting of questions and organizing relevant factual material.
- F. For Arbitration and Litigation, assist in preparing answers to formal written questions from the other party's attorneys.
- G. Assist in preparing for deposition or testimony.
- H. Aid in determining the necessary areas of expert testimony to be provided.
- I. Prepare physical or visual exhibits.
- J. If requested, assist counsel in strategy discussions, attend settlement conferences, participate in review sessions and participate in any of the prehearing or pretrial stages.
- K. Provide expert testimony and reports as required.

Additional Services

1. When requested, the Consultant shall provide training regarding scheduling, claims analysis, negotiations, project cost estimating, work-hour estimating, or alternate dispute resolution relative to construction contract administration.
2. The Consultant shall provide mediation or alternate dispute resolution services as requested by CDOT.
3. The Consultant shall assist with the development of specifications related to construction contract administration.