

DEPARTMENT OF TRANSPORTATION

Transportation Commission and Office of Transportation Safety

REQUIREMENTS FOR PROCUREMENT BY THE COLORADO DEPARTMENT OF TRANSPORTATION OF DESIGN-BUILD CONTRACTS FOR TRANSPORTATION PROJECTS

2 CCR 601-15

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

Section 1 - Purpose

1. The purpose of The Rules is to implement the provisions of Part 14 of Article 1 of Title 43, *C.R.S.*, by establishing procedures and requirements for *CDOT* to procure *Design-Build Contracts* for *Transportation Projects*.
2. A *Design-Build* selection and procurement process will provide *CDOT* with: a savings of time, cost, and administrative burden, improved quality expectations with respect to the schedule and budget of *Transportation Projects*, as well as completion of such *Projects*; and a reduction in the risks associated with *Transportation Projects*, including reduced duplication of expenses and improved coordination of efforts to meet the *Transportation* needs of Colorado.

Section 2 - Authority

1. Specific statutory authority to promulgate The Rules is granted to *CDOT* by Section 43-1-1409, *C.R.S.* (1999).
2. The "Statement of Basis, Specific Statutory Authority, and Purpose" for The Rules is hereby incorporated by reference and made a part of the Rules. A copy of that Statement can be obtained by contacting *CDOT*.

Section 3 - Policy

1. *CDOT* may use a *Design-Build Contract process* to deliver a *Transportation Project* if design work is needed on that *Project* and where the Chief Engineer determines such use is appropriate and in the best interests of the public.
2. *CDOT* may use the *Adjusted Score Design-Build* (i.e., the *Two Phase Design-Build*) Contract process, the Low Bid Design-Build Contract process, or any other process the Chief Engineer determines appropriate, based on the individual needs and merits of the *Project*.
3. When a *Design-Build Contract Process* is used, *CDOT* shall enter into a contract with a single *Design-Build Firm* to provide professional engineering services and construction services, maintenance services, related services, pursuant to a *Scope of Work* Statement provided by *CDOT*.

Section 4 - Definitions

For purposes of the Rules, the following definitions apply. When the terms defined in this section are used throughout this document they will be *italicized* for ease of recognition as specifically identified terms.

1. “*Adjusted Score Design-Build Contract Process*” means the same as provided in section 43-1-1402(1), *C.R.S.* It is a process to award contracts based on the lowest adjusted score of proposals submitted to *CDOT*. It means the same as *Two Phase Design-Build Process*.
2. “*Best Value*” means the same as provided in section 43-1-1402(2), *C.R.S.* It means the overall maximum value of a proposal to the *Department* after considering all of the evaluation factors described in the specifications for the *Transportation Project* or the *RFQ*, including but not limited to the time needed for performance of the contract, innovative design approaches, the scope and quality of the work, work management, aesthetics, *Project* control, and the total cost of the *Transportation Project*.
3. “*C.R.S.*” means the *Colorado Revised Statutes*, as may be amended.
4. “*Controlled Insurance Program*” (*CIP*) means a single, *Project* based, insurance program that is designed to cover the on-site risks of all qualified participants. Such participants include the *Project* owner, architect or engineer consultant, general contractor, construction manager, and all tier subcontractors. Typical coverage's provided through a *CIP* will include Statutory Workers' Compensation and Employers Liability, General Liability, Professional Liability, Builders' Risk/Property, Railroad Protective, Pollution and Environmental Impairment. Automobile Liability is specifically excluded. This type of program replaces individual coverage's provided by the various *Project* participants. A *Controlled Insurance Program* may be initiated and managed (controlled) by *CDOT* as it determines and describes in the *Project* Specifications, including as an “*Owner Controlled Insurance Program*” (*OCIP*) or as a “*Contractor Controlled Insurance Program*” (*CCIP*).
5. “*Department*” or “*CDOT*” means the State of Colorado, *Department of Transportation*, or any duly authorized representative thereof.
6. “*Design-Build Contract*” means the same as provided in section 43-1-1402(3), *C.R.S.* It means the procurement of both the design and the construction of a *Transportation Project* in a single contract with a single *Design-Build Firm* or a combination of such *Firms* that are capable of providing the necessary design and construction services.
7. “*Design-Build Firm*” means the same as provided in section 43-1-1402(4), *C.R.S.* It means any company, *Firm*, partnership, corporation, association, joint venture, or other entity permitted by law to practice engineering, architecture, or construction contracting in the State of Colorado.
8. “*Firm*” means the same as “*Design-Build Firm*”.
9. “*Invitation for Bid*” (*IFB*) is a request for bids from prospective *Firms* when a *Two-Phase Design-Build Process* is not being utilized.
10. “*Project*” means the *Transportation Project* to be designed and constructed as described in the public notice.
11. “*RFP*” means *Request for Proposal*.
12. “*RFP Technical Review Process*” means the process established by *CDOT* to evaluate and rate Technical Proposals.
13. “*RFQ*” means *Request for Qualifications*.
14. “*RFQ Review Process*” means the process established by *CDOT* to evaluate *the Statements of Qualifications* and select the *Design-Build Firms* that will be invited to submit a proposal in response to an *RFP*.

15. “*Scope of Work*” means information *CDOT* provides or furnishes in the *RFQ* and *RFP* that describes the *Project* work and provides *Firms* with all essential *Project* requirements.
16. “*Statement of Qualifications*” (*SOQ*) means the *SOQ* described in section 24-30-1403(1), *C.R.S.*
17. “*Stipulated Fee*”, or *stipend*, means the fee described in section 43-1-1407, *C.R.S.*
18. “*Transportation*” means the same as provided in section 43-1-102(6), *C.R.S.* It means transport of persons or property by motor vehicle, bus, truck, railroad, light rail, mass transit, airplane, bicycle, or any other form of transport, and it includes pedestrian *Transportation*.
19. “*Transportation Project*” means the same as provided in section 43-1-1402(5), *C.R.S.* It means any *Project* that *CDOT* is authorized by law to undertake including, but not limited to, a highway, tollway, bridge, mass transit, intelligent *Transportation* system, traffic management, traveler information services, or any other *Project* for *Transportation* purposes.
20. “*Two Phase Design-Build*” means the use of a *Two Phase (RFQ and RFP) process* to select the most highly qualified *Firms* to submit a proposal and to award a *Design-Build Contract* with the *Best Value*. “*Two Phase Design-Build*” means the same as “*Adjusted Score Design-Build Contract Process*”, as described in section 43-1-1406 (b), *C.R.S.*

Section 5 - Subcontracting

CDOT will identify appropriate procedures and goals for participation of subcontractors and small businesses, including DBEs and ESBs, in all Design-Build Project contracts. Such procedures and goals will be specified in the specifications or the *IFB/RFQ/RFP* for each Design-Build Project.

Section 6 - General Requirements for Design-Build Firms

Firms must comply with the requirements of *CDOT*, as set forth in the *IFB/RFQ/RFP* or specifications for the *Project*. Such requirements shall include, without limitation, the following:

1. Nothing in the Rules shall limit or eliminate the *Firm's* responsibility or liability to *CDOT* or to third parties under applicable law.
2. If at any time during the Design-Build selection process or after award of the contract a *Firm* wishes to delete or substitute members of the *Firm* or subcontractors that the *Firm* had specifically identified by name in its response to the *IFB/RFQ/RFP* and *CDOT* had considered in its evaluations, it must request and receive written approval from *CDOT*.

To qualify for *CDOT* approval, the *Firm's* written request must provide acceptable documentation that the proposed change will be “equal to or better than” that described in their response to the *IFB/RFQ/RFP*. *CDOT* will use the criteria specified in the *IFB/RFQ/RFP* to evaluate the request.

Unauthorized changes to members of the *Firm* or subcontractors, that the *Firm* had specifically identified in its response to the *IFB/RFQ/RFP* and *CDOT* had considered in its evaluations, at any time during the *Design-Build* selection process (*IFB/RFQ/RFP*) may result in the elimination of the *Firm* from further consideration.

4. Prior to the execution of a *Design-Build Contract* for a *Project*, the *Firm* or combination of *Firms* that was selected to perform the *Project* shall exist in the legal status in which it will perform the *Project*.

For example, if two or more *Design-Build Firms* submit a proposal as a joint venture or a Limited Liability Company, the *Firms* must legally exist as a joint venture or a Limited Liability Company prior to the execution of a *Design-Build Contract* for the *Project*.

5. Any *Design-Build Firm*, regardless of its organizational structure, must comply with all applicable requirements of section 12-25-104, CRS, and other related statutes and implementing Rules of the State Board of Registration for Professional Engineers, as they may be amended. A registered professional engineer of the *Design-Build Firm*, however it may be organized, must always be in “responsible charge of, and directly responsible for” the design plans for the *Project*, as provided in section 12-25-104, CRS, and implementing Rules.

Section 7 - Conflict of Interest

1. *CDOT* will award a *Design-Build Contract* only to a *Firm* that does not have impaired objectivity or an unfair competitive advantage, due to any interest of the *Firm* that creates an actual conflict or a significant potential conflict with the proposed contract.
2. Except as provided below, any consultant shall be disqualified from submitting a proposal on a *Project*, or from acting as a subconsultant or subcontractor on a *Project*, if *CDOT* determines that the consultant has such a conflict, including in the following situations:
 - a) it develops the *Scope of Work* for a *Design-Build Project*; or,
 - b) it develops the *RFQ* or *RFP* for the *Project*; or,
 - c) it performs 20% or more of the Preliminary Engineering on the *Project*.
3. Any consultant that is so disqualified may still be part of any *CDOT* oversight team for the *Project*, if *CDOT* deems it appropriate.

Section 8 - Scope of Work

The *Scope of Work* will be detailed enough to permit qualified *Firms* to submit responsive proposals in accordance with the *RFP*. Applicable standards and specifications to be used will be identified in the *IFB* or the *RFQ*

Section 9 - Selection

1. Based on the evaluation of proposals, *CDOT* recommends selection of a *Firm* to the Chief Engineer.
2. Chief Engineer approves award of the contract to the *Firm* selected.
3. The Chief Engineer, or designee, gives written notice to the *Firm* which has been selected to be awarded a contract for the *Project* and notifies the other *Firms* which submitted *RFP* proposals that they were not selected.

Section 10 - Award and Contract

1. *CDOT* may use any basis for awarding a *Design-Build Contract* that it deems appropriate if the basis for awarding such contract is adequately described in the specifications for the *Transportation Project* or the *RFP*. Such bases may include, without limitation, the following:
 - a) Best Value. Award to the responsible *Firm* whose responsive proposal is evaluated as providing the *Best Value* to *CDOT*, based on any adjustment factors and method and formula *CDOT* determines appropriate and includes in the specifications or *IFB/RFP*.

- b) Two Phase. The *Two Phase process* consists of the use of an *RFQ* to short-list qualified *Firms*, and the use of an *RFP* to evaluate qualitative technical proposals and price proposals to determine the lowest adjusted score and to select and award the contract.
 - c) Low Bid. The Low Bid Process is a 2-step process that results in an award to the responsible *Firm* offering the proposal that is the lowest priced and that is also technically responsive. If the *Project* solicitation includes a mandatory minimum technical level, no proposal shall be considered responsive unless it meets that level.
 - d) Fixed Price. In lieu of requiring qualitative technical proposals and price proposals, *CDOT* may establish a fixed dollar budget for the *Project* in the *RFP*, and require submission of only qualitative technical proposals, price being fixed for all proposers. In this approach, award is made to the proposal receiving the highest qualitative score.
2. *CDOT* will choose the specific price structure or combination of price structures that is in *CDOT's* best interests based on the specific requirements for each individual *project*.
 3. *CDOT* is not required to award a contract as a result of an *IFB* or an *RFP*. If *CDOT* does award a contract, a contract shall be executed and a notice to proceed shall be given to the successful *Firm*.

Section 11 - Two Phase Design-Build Contract Process

CDOT may use the *Two Phase Design-Build Contract Process* to award a *Design-Build Contract*. These procedures are for *Projects*, where some preliminary design work has been performed, where the *Scope of Work* is general and flexible, and where an end result that the *Department* wants to achieve is identified. *Two Phase Design-Build* procedures consist of two Phases, in which *CDOT* will issue two solicitations in sequence: Phase One is a Request For Qualifications (*RFQ*); and Phase Two is a Request For Proposals (*RFP*).

A. Phase One: Request For Qualifications

1. The Phase One *RFQ* procedure will solicit *SOQs* from interested *Design-Build Firms*. The *RFQ* procedure will determine the most highly qualified *Firms* with the capabilities to successfully deliver the *Project*. *CDOT* will publish a notice of an *RFQ* at least 45 days prior to the anticipated date for award of a contract to a *Firm* under the *RFP* process.
2. The *RFQ* shall include:
 - a) A *Scope of Work* Statement;
 - b) A description of the elements that will be evaluated; and
 - c) The basis and factors upon which the most highly qualified *Firms* will be determined and any other requirements for the submittal of a *SOQ*.
3. *Firms* that desire to submit Phase Two *RFP* proposals on a *Transportation Project* shall submit a Phase One *SOQ* setting forth: the qualifications of the *Firm*, its key personnel, information on the *Firm's* technical approach; and any other information required by the *RFQ*.
4. *CDOT* will establish an *RFQ Review Process* which shall:
 - a) Evaluate the *SOQs* submitted in response to the *RFQ*;
 - b) Determine and short-list the most highly qualified *Firms* in accordance with the *RFQ*.

- c) *CDOT* will short-list the most highly qualified *Firms* not less than 10 days, nor more than 60 days, after the deadline for submission of *SOQs*. *Firms* to be short-listed shall be determined by the relative ability of each *Firm* to perform the services required for each *Project*, as addressed in the *SOQs*, and based upon the evaluation factors stated in the *RFQ*.
5. The Chief Engineer, or designee, will notify all responding *Firms* of their ranking, and will invite those short-listed *Firms* to submit a proposal in accordance with the *RFP*.
6. The *SOQ* shall not include cost or price information.
7. The maximum number of *Firms* to be short-listed during the *RFQ* process and invited to submit a proposal in response to an *RFP*, shall be specified in the *RFQ*. The minimum number shall be two *Firms*. If less than two *Firms* submit *SOQs*, or if less than two *Firms* are short-listed during the *RFQ* process, the selection process shall be terminated and the *Project* delivery method shall be re-evaluated by *CDOT*.
8. Only *Firms* that have been short-listed during the *RFQ* process will be allowed to submit a proposal in response to an *RFP*.

B. Phase Two: Request for Proposal

1. The Phase Two *RFP* procedure will solicit proposals from the *Firms* short-listed in the Phase One *RFQ* procedure.
2. *CDOT* will issue an *RFP* as soon as practicable after completion of the *RFQ* process, but not more than 90 days after short-listing *Firms* in the *RFQ* procedure. If *CDOT* first issues a draft *RFP*, the date for issuing a final *RFP* shall be extended the same amount of time as that used for the draft *RFP* process. The specific timeline for such issuance will be described in the *RFQ*.
3. The *RFP* may include, without limitation:
 - a) the *Scope of Work*;
 - b) instructions;
 - c) bid proposal forms;
 - d) provisions for contracts;
 - e) general and special conditions;
 - f) basis for evaluation of proposals;
 - g) procedures to be followed for submitting proposals;
 - h) the criteria for evaluation of proposals and their relative weight, and the procedures for making awards;
 - i) proposed terms and conditions for the *Design-Build Contract*;
 - j) description of the drawings, specifications, or other submittals to be submitted with the Proposal, with guidance as to the form and level of completeness of the drawings, specifications, or submittals that will be acceptable;

- k) a schedule for planned commencement and completion of the *Design-Build Contract*;
 - l) budget limits for the *Design-Build Contract*, if any;
 - m) requirements for performance bonds, payment bonds, and insurance;
 - n) amount of the *Stipulated Fee (Stipend)*, if any; and
 - o) any other information that *CDOT* in its discretion chooses to supply, including without limitation, surveys, soils reports, drawings or models of existing structures, environmental studies, photographs, or references to public records.
4. The *RFP* shall require submittal of a proposal meeting the requirements specified in the *RFP*. The proposals must be received by *CDOT* by the deadline specified in the *RFP*, which deadline shall be not less than 10 days after issuance of the *RFP*.
 5. The proposal shall be in two parts: a Technical Proposal; and a separate Price Proposal.
 6. The Technical Proposal shall include all information requested in the *RFP*.
 7. The Price Proposal shall include a price for the completed *Project*. The Price Proposal shall also include a price for each of the salient features of the *Project*, if so specified in the *RFP*.
 8. The Technical Proposals and Price Proposals shall be evaluated separately, in accordance with the evaluation factors and process set forth in the *RFP*. Only after the Technical Proposals evaluation is final will *CDOT* open the Price Proposals.
 9. The *RFP* may require technical proposals to meet a mandatory minimum technical level, and the *RFP* may include a request for alternative proposals.
 10. *CDOT* will establish an *RFP Technical Review Process* for each *Transportation Project*.
 11. *CDOT* shall consider the nature of the elements being evaluated and the evaluator's qualifications when selecting members for the *RFP* evaluation teams.
 12. *CDOT* may make refinements in scope and price of the *Project* without invalidating the *Two Phase Design-Build Process*.
 13. The relative weight or value of the Price Proposal, and the method or formula that will be used to measure and evaluate the Price Proposal (together with any adjustments thereto), and to integrate the price proposal with the Technical Proposal for ranking of the Proposals, will be clearly defined and described in the *RFP* or in the *Project Specifications*.
 14. *CDOT* will complete evaluation of Proposals and select the *Firm* to be awarded the contract under the *RFP* as soon as practicable, but not later than 180 days after the date Proposals are required to be submitted. If a Best and Final Offer (BAFO) is requested, the date for selection shall be extended the same amount of time as that used for the BAFO process.
 15. *CDOT* may award the *Design-Build Contract* without formal discussions, based solely on the initial Technical and Price Proposals. Alternatively, *CDOT* may hold formal discussions with all *Firms* and offer all *Firms* an opportunity to submit a Best and Final Offer (BAFO).
 16. Selection of a proposal shall be by written notice to the *Firm* that submitted the accepted proposal. At the same time that notice of selection is sent, *CDOT* shall also send to the other *Firms* a written notice that their proposals were not selected.

17. *CDOT* may pay a *stipend* to the *Firms* that submit responsive proposals under the *RFP*, but that are not awarded the *Design-Build Contract*, provided the Project solicitation is not cancelled and the *Project* is awarded.. Whether a *stipend* will be paid, and the amount of the *stipend* (if any), shall be identified in the *RFQ* and the *RFP*.

If *CDOT* notifies proposers that it will pay a *stipend* on a particular *design-build project*, as described in the *project* advertisement or specifications, the submission of a proposal by a *Firm* in response to such advertisement or specifications will constitute the *firm's* acceptance of the *stipend* as full payment for. and as an irrevocable transfer to *CDOT* of sole ownership of, all technical solutions/design concepts contained in the proposal.

After submission of a proposal in response to such notice, the acceptance of the *stipend* by the proposer and the transfer to *CDOT* of such ownership right shall be mandatory, and automatic, and the proposer shall not have the option to refuse the *stipend* and not transfer ownership.

When a *stipend* is paid to a *Firm*, *CDOT* shall own and shall have the unlimited right to use on any *Transportation Project* all or any part of the technical solutions/design concepts contained in such proposals.

18. At the time of award, *CDOT* may also negotiate minor changes with the selected *Firm* for the purpose of clarifying the design criteria and work to be done, provided that the negotiated changes do not affect the ranking of the proposals based on their adjusted scores.

Section 12 - Pre-Proposal Inquiries

1. In cases where an *RFP* raises questions or concerns from *Firms* or may require interpretation, before proposals are submitted, all *Firms* known to be participating must be given an opportunity to ask questions and to receive answers or clarifications. This may be accomplished by use of a pre-proposal conference, via a formal inquiry period, or a combination of options. If any of these options is anticipated, the *RFP* shall so state and shall list appropriate dates, times and locations.
2. Pre-proposal conferences may be mandatory or optional, as stated in the *RFP*. However, if such meetings result in any material changes to the *Scope of Work* or otherwise affect the manner or form of response, all *Firms* known to be participating will be notified in writing of any such change.
3. If responses to inquiries result in any material changes to the *Scope of Work* or otherwise affect the manner or form of response, all *Firms* known to be participating will be notified in writing of any such change.
4. When such written notice is given, *Firms* will be afforded a reasonable amount of time to review these materials, to contemplate any consequences and to consider the content for inclusion in their proposals.

Section 13 - Formal Discussions

1. *CDOT* intends to evaluate proposals and to award *Design-Build Contracts* without formal discussions unless *CDOT* determines, in its discretion, that formal discussions are needed.
2. After proposals are submitted, *CDOT* may engage in formal discussions with *Firms* if *CDOT* determines that such discussions are needed for any of the following reasons:
 - a) to promote understanding of *CDOT's* requirements and of the proposals;

- b) to clarify initial proposals, identify deficiencies in initial proposals, or resolve ambiguities or mistakes in initial proposals, to insure conformance of proposals with the *Project* work requirements; or
 - c) to facilitate the development of a *Design-Build Contract* that will be most advantageous to *CDOT*, taking into consideration price and the other evaluation factors set forth in the *RFP*.
3. If *CDOT* determines that such discussions are needed, the following procedures will apply:
- a) The content and manner of formal discussions is a matter of *CDOT*'s judgment, at its discretion.
 - b) If formal discussions are held, *CDOT* shall not disclose information or details of competing *RFP* proposals, or furnish information about a *Firm*'s construction techniques, processes, strategies or equipment, or engage in auction techniques, during such formal discussions. "Auction techniques" include: a) indicating to a *Firm* a cost or price it must meet to obtain further consideration; or b) advising a *Firm* of its price standing relative to another *Firm*; or otherwise furnishing information about other *Firm*'s prices.
 - c) If formal discussions are held with one *RFP Firm*, they will be held with all *RFP Firms* but *CDOT* will conduct separate discussions with each *Firm*. All *RFP Firms* shall be accorded fair and equal treatment in discussion and revision of their proposals.
 - d) *CDOT* may also contact an individual *Firm* regarding minor clarifications in a proposal. A minor clarification, must be one that does not result in any changes, additions or deletions to the initial proposal. Such a contact will not be considered a formal discussion for purposes of this section.

Section 14 - Best and Final Offer (BAFO)

1. If formal discussions are held regarding *RFP* proposals, best and final offers (BAFOs) will be requested by *CDOT* in order to provide each *RFP Firm* a reasonable opportunity to submit, in writing, revised technical or price proposals that may result from the formal discussions.
2. The request for BAFOs shall include the following:
 - a) notice that formal discussions are concluded;
 - b) notice that this is the opportunity to submit a best and final offer;
 - c) a common cutoff date and time that allows a reasonable opportunity for submission of written best and final offers; and
 - d) notice that if any modification is submitted, it shall be received by the date and time specified and is subject to the Late Submissions, Modifications, and Withdrawals of Proposals provision of the solicitation.
3. After receipt of BAFOs, *CDOT* will not reopen formal discussions, and the BAFO's will be the basis for any award.
4. If BAFO's requested, they will be the basis for award and will be evaluated as stated in the *RFP*, based on a consideration of the revised technical and price proposals.

Section 15 - Low Bid Design-Build Process

1. *CDOT* may also use Low Bid Design-Build procedures to award a lump sum *Design-Build Contract*. The Low Bid Design-Build procedures are used for *Design-Build Projects*, where the *Scope of Work* can be clearly defined and a portion of the design of the *Project* has been completed and will be provided to the bidder *Firms*.
2. *CDOT* may use any Low Bid Design-Build procedures that it describes in the *Project Specifications* or in the *IFB*. Such procedures may include, without limitation, the following:
 - a) Low Bid Design-Build *Projects* may not require an *RFQ*, or short-listing of proposals, or an *RFP*. For Low Bid Design-Build *Projects*, *CDOT* will issue an *Invitation for Bids (IFB)*.
 - b) Low Bid Design-Build procedures include a 2-step sealed bid process. Submitted proposals must include, separately, a Technical Proposal and a Price Proposal.
 - c) The first step is the review of the Technical Proposal. *CDOT* will open the Technical Proposal first and will determine if it complies with the requirements of the *IFB* and is responsive.
 - d) The second step is the determination of the low bidder based on the Price Proposal. *CDOT* will not open the Price Proposal until the review of the Technical Proposal is complete.
 - e) Award under Low Bid Design-Build procedures will be made to the sealed bid that is responsive to the technical requirements and that is also the lowest bid.
 - f) For *Transportation Projects* using Low Bid Design-Build procedures, the construction contractor must be prequalified under the *Department's* existing Bidding Rules procedures, as provided in 2 Code of Colorado Regulations 601-10, and any engineering consultant that completes the design for the Low Bid Design-Build *Project* must have previously filed an acceptable *Statement of Qualifications* with the *Department* as provided in section 24-30-1403(1), *C.R.S.*
3. The public notice advertisement for the Low Bid Design-Build *Project* may vary the deadline within which price and technical proposals must be submitted by bidder *Firms* for a particular *Project*, based upon the percent of completed design provided by *CDOT* to interested bidder *Firms* in the bid documents. The minimum time shall be not less than 35 days from the date of the notice.

Section 16 - Other Procedures/Specifications

1. The general procedures for *Design-Build Contracts* that are described in the Rules are not intended to be all-inclusive. *CDOT* may also implement other procedures for *Design-Build Contracts*, including *Project-specific* procedures that will be described in the Contract documents.
2. Such other procedures may include, without limitation, a selection procedure for a "value of time adjustment" where a *Project* will operate under time constraints. That adjustment will be based on the *Firm's* proposed number of days to complete the *Project*, multiplied by a value per day established by the *Department* in the *Scope of Work* Statement, i.e., number of days multiplied by the dollar value per day equals the price proposal adjustment (increase).

Section 17 - Bid Security and Performance and Payment Bonds

1. At a minimum, *CDOT* will require a bid bond for each *Design Build Project* as provided by applicable law. Further, the Chief Engineer shall have the right to establish the amount of the bid bond for each individual *Design Build Project* as determined to be appropriate to protect the interests of *CDOT* and as described in the *IFB/RFQ/RFP* for that project.

2. At a minimum, *CDOT* will require payment and performance bonds for each *Design Build Project* as provided by applicable law. Further, the Chief Engineer shall have the right to establish the amount of the payment and performance bonds for each individual *Design Build Project*, or on any particular part(s) or phase(s) thereof determined to be appropriate to protect the interests of *CDOT* and as described in the *IFB/RFQ/RFP* for that project.
3. Any payment and performance bonds that are required shall cover all of the work responsibilities under the *Design-Build Contract*, including any and all necessary professional architecture and engineering services.
4. The amounts of the bid bond and payment and performance bonds for a particular project shall be specified in the *IFB/RFQ/RFP/Project Specifications* and the performance and payment bonds must be provided on the forms included therein.

Section 18 - Controlled Insurance Program

1. *CDOT* may implement and use an *Owner Controlled Insurance Program (OCIP)* or *Contractor Controlled Insurance Program (CCIP)* for a *Transportation Project*, or any other alternative *Controlled Insurance Program (CIP)* approved by the Chief Engineer, in accord with terms and conditions as the Chief Engineer determines appropriate and in the best interests of the State.
2. As part of an *OCIP*, *CDOT* may assess charges to the *Firm* and subcontractors to pay their respective shares of the cost of such insurance, and *CDOT* may provide financial incentives to the *Firm* and subcontractors if savings are realized from reduced claims under the *OCIP*.

Section 19 - Warranty/Long-Term Maintenance

The *Project Scope of Work* may include Warranties/ Long-term Maintenance. The Warranties/Long-term Maintenance, if required, will be addressed in the *RFP*.

Section 20 - Preparation of Specifications

CDOT may use any method of specifying construction items which the Chief Engineer determines is in the best interest of *CDOT*.

Section 21 - Cancellation of Solicitation: Rejection of Proposals

1. *CDOT* may cancel any Design-Build solicitation or reject any or all Design-Build proposals in whole or part, in the same manner as described in section 24-103-301, *C.R.S.*, and implementing Rules of the Colorado Procurement Code, when the Chief Engineer determines that such action is in *CDOT's* best interest.
2. *CDOT* shall have the right to reject any and all proposals, except for the purpose of evading the provisions and policies of the Rules.
3. *CDOT* may thereafter solicit new proposals using the same or different requirements.

Section 22 - Protests

1. Subject to the changes described below, *CDOT* hereby adopts as part of the Rules the procedures and requirements described in sections 24-109-101 through 24-109-404, *C.R.S.*, regarding prelitigation resolution of proposal/bid protests and other contract controversies. A copy of those *C.R.S.* sections shall be made available by *CDOT* upon request.

2. *CDOT* will use such procedures and requirements to resolve a protest of any *RFP Firm* or bidder or *Firm* who is aggrieved in connection with the solicitation, or the intended decision of *CDOT* to award, or the award, of a Design-Build Contract, as well as to resolve any other contract controversies concerning its procurement of Design-Build Contracts.
3. For purposes of these Design-Build Rules, the following changes are made to such procedures and requirements:
 - a) "head of a purchasing agency" shall mean *CDOT's* Chief Engineer;
 - b) "executive director" shall mean *CDOT's* Executive Director;
 - c) "contract" shall mean Design-Build Contract;
 - d) "the state" shall mean *CDOT*;
 - e) "rules of procedure" or "this code" shall mean these Design-Build Rules;
 - f) "protesting bidder or offeror" shall be limited only to an *RFP Firm* or to a bidder under the Low Bid process;
 - g) Under section 24-109-104, *C.R.S.*, the phrase "reasonable costs incurred in connection with the solicitation, including bid preparation costs" shall be limited to the amount of such costs, less the amount of any *stipend* that *CDOT* elects to award to *Firms*/bidders that submit responsive proposals but that were not awarded the contract for a particular *Project*. If the protesting party has received or will receive such a *stipend* on the *Project* for which the protest is filed, then the amount of that *stipend* shall be deducted from the total amount of the reasonable costs awarded to the protesting party if it prevails. The *stipend* shall be regarded as part payment of such costs. No other costs shall be permitted to be recovered, and reasonable costs shall not include attorney fees.

Recovery of such reasonable costs shall be the sole and exclusive remedy of a prevailing protesting party, and injunctive relief shall not be allowed.
 - h) Any aggrieved *RFP Firm*, or bidder, who files a protest of the solicitation or award of a Design-Build Contract shall post with *CDOT*, at the time of filing the protest, a bond payable to *CDOT* in an amount equal to one percent of the lowest priced proposal/bid submitted, or a minimum of \$100,000, whichever is greater.
 - i) If *CDOT* prevails after completion of the administrative protest procedure described above and any appellate court proceedings, *CDOT* shall be entitled to recover all reasonable costs and charges it incurred and that are included in the final order or judgment, excluding attorney fees. Upon payment of such costs and charges by the protester, the bond shall be returned.
 - j) If the protesting party prevails after completion of the administrative protest procedure described above and any appellate court proceedings, the bond shall be returned, and the protesting party shall be entitled to recover from *CDOT* the reasonable costs incurred in connection with the solicitation, including proposal/bid preparation costs, except as otherwise limited by this section.
 - k) The entire amount of the bond shall be forfeited if the *CDOT* Executive Director, or designee, determines that a protest was filed for a frivolous or improper purpose, including but not limited to, the purpose of harassing, causing unnecessary delay, or causing needless cost for *CDOT* or other *Firms*/bidders.

- l) All protest bonds, to be acceptable, must be made payable to *CDOT*, and must be signed and sealed by the protesting party and surety. Such bonds must bind the protesting party and surety and be conditioned upon the satisfaction of any cost and charges included in any final order of judgment or appellate proceedings, in the event that *CDOT* prevails. In lieu of a bond, the protester may submit a cashier's check or bank money order made payable to *CDOT*, which monies will be held in trust by *CDOT*. Protest bond forms may be obtained from *CDOT*.

- m) *CDOT* shall be deemed the prevailing party if the protesting party withdraws the protest at any time before entry of the final order.

Editor's Notes

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