

INSTRUCTIONS TO PROPOSERS AND NOTICE TO BIDDERS

Request for Proposal

I-25 North Design Build Project

**PROJECT NO. I 025A-016
No. 18842**



**Colorado Department of Transportation
Region 2**

August 20, 2012 DRAFT

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1.0 INTRODUCTION

The Colorado Department of Transportation (CDOT) will issue this Request for Proposals (RFP), dated August 20, 2012 to solicit competitive proposals for a Design/Build Contractor (Contractor) to enter into a Contract (the Contract) to design and construct improvements to Interstate 25 (I-25) north of Colorado Springs (the Project).

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

1.1 RFP Documents

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

1. Contract Documents
 - A. Instructions to Proposers (ITP)
 - B. Book 1 - Contract
 - C. Book 2 - Technical Requirements

The reference documents and project documents are available on the webpage at <http://www.coloradodot.info/projects/I25NorthCOSDB>. The reference documents and the project documents are part of the contract. The Proposal will also be a Contract Document.

1.2 Project Description

I-25 is a major commercial corridor for interstate commerce among the states of New Mexico, Colorado, and Wyoming, as well as international commerce among the United States, Mexico, and Canada. It connects more than three million residents of Denver, Colorado Springs, Pueblo, and several major cities in northern Colorado.

The Major Elements of the Construction Configuration are as follows:

- Design and construct one lane, with shoulders, in each direction on I-25 north of Colorado Springs from Woodmen Interchange to the Monument Interchange.
- Design and construct continuous accel/decel lanes, with shoulders, from Woodmen Rd. Interchange to just south of Interquest Parkway Interchange
- Design and construct Signing and Pavement Marking
- Design and construct structures, drainage improvements
- Design and construct Permanent Water Quality Features
- Preparation of the Storm Water Management Plan, including obtaining Storm Water Permit.
- Stream restoration work at Kettle Creek (further defined in RFP)

1.3 Project Values and Goals

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

- Safety
- Quality
- Integrity

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- Communication/Teamwork
- Excellence

The following goals have been established for the Project:

1. Alleviate corridor congestion with expansion and augmentation of other transportation elements.
2. Minimize the effects of the project to the surrounding natural environment.
3. Reduce project impacts on travelers
4. Complete the project by December 31, 2014

1.4 Guaranteed Maximum Price (Fixed Price)

The Work required for the Basic Configuration of the Project shall not exceed the Guaranteed Maximum Price. The Basic Configuration is defined in Section 1 of the Technical Requirements. The Guaranteed Maximum Price is **\$51,700,000**. The GMP is subject to change and will be finalized with the issuance of the FINAL RFP.

1.5 Reference Documents

The Contract Drawings are Contract requirements. Subject to the Contractor's right to a Change Order with respect to Necessary Design Changes, the Proposer has sole responsibility for reviewing the preliminary design and assessing its adequacy or inadequacy to meet the Contract requirements.

The Contractor is not required to conform to the drawings included in the Reference Documents although such documents contain design solutions and other information that the Proposer may find valuable in meeting the Contract requirements and in reducing Project costs. Regardless of the level of completion or suitability of any portion of the Reference Documents, the Contractor shall be solely responsible for Project design and CDOT shall have no liability or obligation as a result of the design work contained in the Reference Documents. The Reference Documents are provided solely for Contractor's reference and are without representation or warranty by CDOT, unless specifically stated otherwise in the Contract.

1.6 Notice to Proceed

CDOT anticipates that it will complete the procurement process and issue the first Notice to Proceed (NTP 1) by December 31, 2012, and NTP 2 upon Acceptance of Initial Schedule. NTP 1 is the first written notice issued by CDOT to the Contractor to proceed with certain limited Work according to Book 1 Section 4.2 Notices to Proceed on the date specified therein. NTP 2 is the written notice issued by CDOT to the Contractor to proceed with the remainder of the Work according to Book 1 Section 4.2 Notices to Proceed on the date specified therein.

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1.7 Procurement Schedule

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

Milestone	Date
Issue Letters of Interest (LOI)	April 12 – May 3, 2012
Value Engineering Study	January 16-20, 2012
Project Briefings	Ongoing
Letter of Interests Due	May 10, 2012
Issue Request for Qualifications (RFQ)	May 17, 2012
Deadline for Submitting RFQ Questions	May 31, 2012
CDOT Response to RFQ Questions	June 13, 2012
Final RFQ Addendum Issued	June 20, 2012
I-25 Re-Evaluation Complete	Late April – Early May, 2012
Statement of Qualifications (SOQ) Due	July 11, 2012
Evaluation of SOQ's Complete/Short List	July 12-20, 2012
Notify Short Listed Submitters	August 9, 2012
Issue Draft RFP to Short List	August 22, 2012
Industry Review of Draft RFP	September 5-7, 2012
CDOT Modifies Draft RFP	September 10-14, 2012
PMJM BA/BO	September 14, 2012
CDOT Issues FINAL RFP	September 17, 2012
TA & ACC Meetings	October 1-5, 2012
Submitters TA's & ACC's Due	October 12, 2012
CDOT Response to TA's & ACC's	October 19, 2012
Final Proposals are Due	November 16, 2012
Evaluate Proposals	November 26-30, 2012
Price Proposals Due	December 3, 2012
Award Project	December 4, 2012
Notice to Proceed 1	December 31, 2012
Notice to Proceed 2	Acceptance of Initial Schedule
Substantial Completion Date	December 31, 2014

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RFP Industry Review of DRAFT RFP

RFP Industry Review meetings will be held on an individual basis during September 3-5, 2012, at the Colorado Department of Transportation, 1480 Quail Lake Loop, Suite A, Colorado Springs, CO 80906.

The draft documents available for review will include Technical Requirements - Sections 1-19, Reference Plan Sheets, and appropriate Standard and Project Special Provisions. The intent of this RFP Industry Review and Document Review is for CDOT to gain feedback regarding project requirements and to insure that there are opportunities for Contractor and Design innovation, are project requirements clear and understandable, could improvements be made to project requirements to provide opportunities for innovation, schedule improvements, or cost savings.

This meeting is intended to review only Contract Requirements and is not intended to review or to provide feedback to Contractor proposed Project configurations or unique project approaches. Comments received during this review may be incorporated into the Bid Documents by a subsequent Revision. Contractors should be aware that comments shared during this review are not confidential or proprietary. CDOT may choose to incorporate any comments received during this review into the Bid Documents.

2.0 PROPOSAL PROCESS

2.1 Pre-Proposal Submittals

2.1.1 Alternative Configuration Concepts

CDOT encourages the Proposer to recommend alternatives to the requirements that are equal to or better in quality or effect (as determined by CDOT in its sole discretion) ("Alternative Configuration Concepts" or "ACCs"). The Technical Requirements are a Contract Requirement except to the extent that they are superseded by pre-approved ACCs under this Section 2.1.1. No changes to the Technical Requirements will be permitted unless they have been pre-Approved by CDOT under this Section 2.1.1.

Except for incorporating pre-Approved ACCs, the Proposal may not otherwise contain exceptions to or deviations from the requirements of this RFP.

An ACC submission must include:

1. A narrative description of the ACC.
2. The locations where the ACC will be used on the Project.
3. Conceptual drawings of the ACC, if appropriate.
4. An explanation of why the proposed change is equal or better in quality.

In the event that implementation of an ACC will require Governmental Approvals, the Proposer will have full responsibility for obtaining any such approvals. If any required approval is not subsequently granted with the result that the Proposer must change its design, the Proposer will not be eligible for a Change Order that increases the Contract Price or extends the Contract Schedules.

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2.1.2 Technical Approaches

The Proposer shall submit its Technical Approaches to any Structures not historically used by CDOT; if applicable (see Technical Requirements, Section 15 (Structures)). No Technical Approach to any Structure that varies from what is historically used by CDOT will be permitted unless it has been pre-Approved by CDOT.

The Proposer may submit any other Technical Approaches.

A Technical Approach submission must include:

1. A narrative description of the Technical Approach.
2. Conceptual drawings of the Technical Approach, if appropriate.
3. An explanation of why the proposed change is equal or better in quality or effect.

2.1.3 Pre-Proposal Submission of ACCs and Technical Approaches

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

CDOT will conduct one-on-one meeting with Proposers during the week of October 1, 2012. These meetings are not mandatory. Meetings will be scheduled for up to three hours and will be scheduled on a first come first serve basis. To schedule one-on-one meetings contact Daniel Hunt, contact information below. If additional time or meetings are required they will be added and made available to all Proposers.

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

Following the one-on-one meetings, the Proposer shall submit two copies of its desired ACCs and Technical Approaches in a sealed container no later than 5:00 p.m. on October 12, 2012 to:

Mr. Daniel Hunt, P.E.
CDOT Project Manager
Colorado Department of Transportation, Region Two
1480 Quail Lake Loop, Suite A
Colorado Springs, Colorado 80906
(719) 227-3231 or Cell (719) 491-4303

The identity of the Proposer, RFP Number, and legend "Alternative Configuration Concepts and Technical Approaches for the "I-25 North Design Build Project" and the words "CONFIDENTIAL – PROPRIETARY INFORMATION" shall be clearly shown on the outer cover of the container.

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2.1.4 CDOT's Review of ACCs and Technical Approaches

CDOT intends to review the ACCs and Technical Approaches (TAs) and return verbal comments to each Proposer during the one-on one meetings. CDOT will return written comments on ACCs and TAs on or before October 19, 2012.

CDOT's comments on ACCs will be limited to one of the following statements:

1. The ACC is Approved.
2. The ACC is not Approved.
3. Identification of any conditions, which must be met in order to Approve the ACC.

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

1. The Technical Approach appears to be generally acceptable and within the Contract Documents requirements; or
2. Identification of areas in which the approach appears to be inconsistent with the Contract Documents requirements.

Proposer may incorporate zero, one or more Approved ACCs as part of its Proposal. If CDOT responded to an ACC by stating that certain conditions must be met for Approval, Proposer may incorporate such ACC with conditions into the Proposal at its own risk. If Proposer incorporates an ACC with conditions into its Proposal, the Proposer shall be responsible to comply with such ACC conditions if Awarded the Contract. Copies of CDOT's ACC Approval letters for each incorporated ACC shall be included in the Technical Proposal, Part II.

Except for incorporating Approved ACCs or ACCs with conditions at Proposer's risk, the Proposal may not otherwise contain exceptions to or deviations from the requirements of the RFP.

2.2 Proposals

The Proposal will consist of a Technical Proposal. Selection will be based on the proposal which meets the Technical Proposal and provides CDOT with the Best Value as defined in Section 4.4. Proposals received after the date and time due will be rejected without consideration or evaluation.

2.2.1 Submission of Technical Proposals and Price Proposals

The Technical Proposal, defined in Section 3.1, must arrive at the address set forth below. It is the Proposer's sole responsibility to see that its Technical & Price Proposal is received as required.

The Proposer shall submit seven (7) bound copies of the Technical Proposal by **3:00pm November 16, 2012** in sealed containers, which shall contain the original Proposal and

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duplicate sets. The identity of the Proposer, RFP Number, and titled "**Technical Proposal** for the I-25 North Design Build Project" shall be clearly shown on the outer cover of the container.

One (1) Price Proposal shall also be submitted by **3:00pm December 3, 2012** in a sealed container with the identity of the Proposer, RFP number, and titled "**Price Proposal** for the I-25 North Design Build Project" clearly on the outer cover of the container. The Proposer shall submit the sealed containers to:

Steven Giampaolo
Agreements & Contracts
CDOT Contracting Officer, Fourth Floor
4201 East Arkansas Avenue
Denver, CO 80222

The original documents shall include a cover letter with signature(s) of the authorized representative(s) of the Proposer's organization in BLUE ink and shall have the word "ORIGINAL" clearly marked on the outer cover, and provide three additional copies.

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

2.2.2 Evaluation of Technical Proposals

2.2.2.1 Responsiveness Review

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

2.2.2.2 Evaluation of Technical Proposal

CDOT shall evaluate the Technical Proposal in accordance with Section 4.3 – 4.4.

2.2.3 Evaluation of Price Proposal

The Price Proposal will be evaluated in accordance with Section 4.5.

2.3 Additional Information

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

2.4 Ranking of Proposals

The order of the Proposals will be determined based on a "Best Value" determination in accordance with Section 4.5. Upon determination of the order of the Proposals, the CDOT Project Manager will present the results to the Project Executive Oversight Committee and

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recommend that it authorize award or rejection of all Proposals, in accordance with Section 4.6.

3.0 PROPOSAL REQUIREMENT

3.1 Structure of the Technical Proposal

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

1. Part I Project Management and Approach
2. Part II Approved ACCs and Technical Approaches
3. Part III Price Proposal

3.2 Part I – Project Management and Approach

The Proposers shall address the following areas in Part I:

1. Project Management
2. Maintenance of Traffic
3. Environmental Compliance
4. Safety Program approach and commitments
5. Substantial Completion Date and Schedule

3.3 Part II – Approved ACCs and Technical Approaches

The Proposer shall provide the pre-Approved ACC's with conditions at Proposer's own risk and CDOT's ACC Approval letters or comments.

The Proposer shall also provide its Technical Approaches that CDOT determined to be generally acceptable and within the Contract requirements and CDOT's TA Approval letters or comments.

3.4 Part III – Price Proposal

Proposers shall submit a Price Proposal that includes a Lump Sum price for highway and bridge design and construction work and unit prices for; Mobilization – 1 lump sum, Sanitary Facility – 5 Each, Field Office (Class 2) – 1 each and Field Laboratory (Class 2) – 1 Each. This will be the price to complete all Work as identified in the Technical Requirements and other contract documents.

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

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- Design
- Environmental Permitting
- Foundations or foundation modifications
- New bridge structures
- Resurfacing
- New Pavement and Pavement structure
- Bridge and roadway guardrail
- Construction Traffic Control
- Drainage
- Water Quality and Environmental Management
- Public Information
- Signing and Striping
- Lighting

4.0 EVALUATION CRITERIA; AUTHORIZATION OF PROJECT EXECUTIVE COMMITTEE

4.1 Confidentiality

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

4.2 Technical Proposal Responsiveness Review and Evaluation

The Technical Proposals will be distributed to the Evaluation Committee. They will be reviewed for: (i) the Proposal's conformance to the RFP instructions regarding organization and format, (ii) the responsiveness of the Proposer to the requirements set forth in the RFP (iii) minor informalities, irregularities and apparent clerical mistakes which are unrelated to the technical content of the Proposals and (iv) compliance with the criteria set forth in this Section 4.2. CDOT will have the right to contact or submit written questions to the Proposers regarding the Proposals for the following purposes:

1. Resolving any uncertainties or to obtain clarifications concerning the Proposal.
2. Resolving any suspected mistakes by calling them to the attention of the Proposer.
3. Providing the Proposer a reasonable opportunity to submit any revision to its Technical Proposal that may result from the questions.

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

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4.3 Evaluation of Part I – Project Management and Approach

1. Project Management:

The effectiveness of the project management approach to facilitate communication and coordination within the internal structure of the Contractor's project team, with CDOT, project field personnel and stakeholders.

The effectiveness of the management philosophy and partnering approach to resolving disagreements, conflicts and disputes with CDOT as it relates to the Project.

2. Maintenance of Traffic:

The effectiveness of the Project Phasing Plan to facilitate construction and minimize impacts to the travelling public.

3. Environmental Compliance:

Was an adequate approach presented that described the contractors approach to managing, controlling and monitoring water quality during construction, including the use of Best Management Practices (BMPs).

How was the approach demonstrated to be in conformance with the I-25 EA.

4. Safety Program approach and commitments:

Does the safety program outlined in the approach address the specific challenges to this project and corridor. Does the safety plan comply with the project goals.

5. Substantial Completion Date and Schedule:

The contractor's Substantial Completion Calendar Day schedule is defined in Section 1 – General, Revision of Section 105.21. This will contribute to the "B" portion of the price proposal in accordance to Section 4.5. CDOT has determined the **Road User Cost** of each Calendar Day is **\$35,000/day**.

Does the schedule comply with the completion date of December 31, 2014 and the I-25 EA.

4.4 Evaluation of Part II- Approved ACCs and Technical Approaches

Were the Approved ACCs and Technical Approaches included by the Proposer the same ACCs and TAs approved by CDOT, and were the CDOT Approval Letters included?

4.5 Best Value Determination

Award of the Project shall be based on a Best Value determination defined by price proposal, schedule, project management and approach (including ACCs & TAs),

SELECTION PROCESS

The selection of a Design-Builder from the short-listed Design-Build Proposers will be based upon the score of its Technical Proposal, Schedule and Price Proposal submittal.

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Technical Proposals submitted in a timely manner will be sent to the Selection Team for evaluation. The Selection Team will review the submitted Technical Proposals to determine if they are responsive to the requirements of the Request for Proposal. The Department reserves the right to reject any Technical Proposal if it is non-responsive. Non-responsive Design-Build Proposers will be so notified prior to the opening of their Price Proposals.

Each responsive Technical Proposal will be evaluated by the individual members of the Selection Team, on the basis of the criteria provided in the Request for Proposal. The scores awarded by the individual committee members will be averaged, with the result being reported to the nearest 1/10 of a point. This average will be the Design-Build Proposer's "Technical Proposal Score".

The sealed Price Proposals will be opened on **December 4, 2012**. Comparison of Price Proposals will utilize the method known as "A+B". The "A+B" method takes into account not only the price offerings of the Design-Build Proposer, but also the time within which the Design-Build Proposer will achieve the Substantial Completion of the construction of the project. The "A" amount shall be the Price Proposal, total bid cost for construction as shown in the Bidding Schedule. The "B" portion of the Price Proposal will be the product of the **Design-Builder Construction Calendar Days** and the **Road User Cost** determined by the Department. The **Road User Cost** for this project is **\$35,000/day**.

The Design-Build Proposer shall determine the Design-Builder Construction Calendar Days and enter the number in the space provided in the Bidding Schedule. The Design-Builder Specified Construction Calendar Days shall not exceed the Department-determined completion date of December 31, 2014. The Design-Builder Construction Calendar Days that exceed the Department-determined Construction completion date will be considered non-responsive. The amount used for comparison of proposals to establish the lowest responsive Design-Build Proposer for award purposed shall be as shown in the following equation:

("A+B" amount) = ("A" amount) + (Design-Builder Construction Calendar Days x Road User Cost)

Comparison of proposals will utilize the Design-Build Proposer's A+B total as submitted in its Price Proposal. The A+B total will be divided by the Technical Proposal Score and the result will be termed the Adjusted Score. The formula for calculating a Design-Build Proposer's Adjusted Score is:

$$AS = (A+B)/TPS$$

Where:

AS = Adjusted Score

A = Construction Cost Bid, as shown on Bidding Schedule (the "A" Amount)

B = (T*Road User Cost)

T = Design-Builder Construction Calendar Days

TPS = Technical Proposal Score

The Department will recommend award to the responsive and responsible Design-Build Proposer having the **lowest Adjusted Score** or will recommend that all Technical and Price Proposals be rejected. Award and Payment will be made for the "A" amount and the Design-Builder Construction Calendar Days contained in the Price Proposal.

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The Adjusted Score is for selection purpose only and shall not affect other contract provisions. The Proposal Guaranty, Payment Bond and Performance Bond required for this contract shall be based on the Price Proposal cost (the “A” portion) only.

The following table shows an example of the calculations involved in the Selection Process:

AN EXAMPLE OF CALCULATING ADJUSTED SCORE RANKINGS							
Design Build Proposer	Technical Proposal Score	Proposed Calendar Days	“A” Price Proposal (\$)	“B” Total Time Value (\$)**	“A+B” Adjusted Price (\$)	Adjusted Score	Rank
A	98.2	630	55,000,000	22,050,000	77,050,000	784,623.2	3
B	96.4	570	53,750,000	19,950,000	73,700,000	764,522.8	1*
C	93.3	590	52,000,000	20,650,000	72,650,000	778,671.0	2

*Successful Design-Build Proposer

** Road User Cost for Example = \$35,000 / Day

In the above example, the Department would recommend that award be made to Design-Build Proposer B in the amount of **“A” Price (\$53,750,000)** with a Design-Builder Specified Construction Phase Time for achievement of Substantial Completion of Construction Phase of entire project within **Proposed Calendar Days (570)**.

The Technical Proposal of the selected Design-Builder may be reviewed by interested parties only after execution of the contract. Copying will not be permitted.

4.6 Authorization of Project Executive Oversight Committee

The I-25 North Design Build Project Manager will present the results to the Project Executive Oversight Committee and recommend that it authorize award or rejection of all Proposals, as follows.

4.6.1 Award Without Negotiations

The I-25 North Design Build Project Manager may request award of the Contract without negotiations to the Proposer with the best value Proposal.

4.6.2 Negotiations

The I-25 North Design Build Project Manager may request authorization to proceed with negotiations prior to award. Such negotiations shall be limited to allocation of the Bid Price among the various work breakdown structure items desired by CDOT.

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

4.6.3 Rejections of Proposals

CDOT may request authorization to reject all Proposals.

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5.0 PROCUREMENT REQUIREMENTS

5.1 Receipt of RFP Documents and Other Notices

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

5.2 Examination and Interpretation of RFP Documents

The RFP Documents will be available to all short listed firms.

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

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

Mr. Daniel Hunt, P.E.
CDOT Project Engineer
Colorado Department of Transportation, Region Two
1480 Quail Lake Loop, Suite A
Colorado Springs, Colorado 80906

If the Proposer has meetings or discussions with other agencies or entities during the procurement phase, the Proposer shall be responsible for verifying any information received from such meetings or discussions with CDOT.

5.3 Addenda

CDOT reserves the right to revise the RFP Documents. Such revisions, if any, will be announced by addenda to the RFP Documents ("Addenda"). CDOT will also identify questions received from Proposers and answers given by CDOT ("Questions and Answers"). If any Addendum includes changes that significantly impact this RFP, as determined in CDOT's sole discretion, CDOT may set a new Proposal Due Date. The announcement of such new date, if any, will be included in the Addendum.

5.4 Proposal Bond

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

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the funds represented by its Proposal Bond shall be released to CDOT and become and remain the property of CDOT.

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

5.5 Improper Conduct

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

5.6 Withdrawal of Proposal After Proposal Due Date

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

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

5.7 Responsive Proposal

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

5.8 Stipend

CDOT has determined that it is appropriate to award a stipend (the "Stipend") to the unsuccessful responsive Proposers that provide a fully responsive, but unsuccessful, Proposal that is deemed acceptable by CDOT. The amount of the Stipend shall be \$20,000, and shall be provided to such Proposer within 90 days after award of the Contract. Notwithstanding the foregoing, if the second highest ranked Proposer becomes the selected Contractor as a result of the failure of the higher ranked Proposer to comply with the award conditions set forth in Section 6, such Proposer shall no longer be entitled to the Stipend.

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

In no event shall any Proposer that is selected for award but fails to satisfy the award conditions set forth in Section 6 be entitled to receive a Stipend.

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5.9 Ownership of Proposals

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

5.10 Colorado Open Records Act

Except for the EPDs, as defined in Section 5.12, all records, documents, drawings, plans, specifications, and other material relating to the conduct of CDOT business, including materials submitted by Proposers, are subject to the provisions of the Colorado Open Records Act (C.R.S. secs. 24-72-101, et seq.) and any other laws and regulations applicable to the disclosure of documents submitted under this RFP. CDOT's use and disclosure of records are governed by such laws.

During the Proposal process, including any BAFOs and negotiation period, CDOT will accept materials clearly and prominently labeled "TRADE SECRET" or "CONFIDENTIAL" by the submitting party. Any such proprietary information, trade secrets, or confidential commercial and financial information that a Proposer believes should be exempted from disclosure shall be specifically identified and marked as such. Blanket, all-inclusive identifications by designation of whole pages or sections as containing proprietary information, trade secrets or confidential commercial or financial information shall not be permitted and shall be deemed invalid. The specific proprietary information, trade secrets or confidential commercial and financial information must be clearly identified as such. CDOT will advise the submitter of any request pursuant to the Colorado Open Records Act and any other applicable laws for the disclosure of any material properly labeled as proprietary, trade secret or confidential so as to allow the submitter the opportunity to protect such materials from disclosure. Under no circumstances, however, will CDOT be responsible or liable to the submitter or any other party for the disclosure of any such labeled materials, whether the disclosure is deemed required by law, by an order of court, or occurs through inadvertence, mistake or negligence on the part of CDOT or its officers, employees, contractors or consultants.

CDOT will not advise a submitting party as to the nature or content of documents entitled to protection from disclosure under the Colorado Open Records Act or other applicable laws, as to the interpretation of the Colorado Open Records Act, or as to the definition of trade secret. The submitting party shall be solely responsible for all determinations made by it under applicable laws, and for clearly and prominently marking each and every page or sheet of materials with "TRADE SECRET" or "CONFIDENTIAL" as it determines to be appropriate. Each submitting party is advised to contact its own legal counsel concerning the Colorado Open Records Act, other applicable laws and their application to the submitting party's own circumstances.

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

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5.11 Changes in Proposer's Organization

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

5.12 Protests

5.12.1 Protests Regarding Request for Proposal Documents

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

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

Protests regarding the RFP Documents shall be filed by hand delivery to the Project Manager, at Colorado Department of Transportation Region Two, 1480 Quail Lake Loop, Suite A, Colorado Springs, Colorado 80906 within 7 working days after the protester knows or should have known of the facts giving rise to the basis for the protest. The Proposer is responsible for obtaining proof of delivery.

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

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

If necessary to correct any error, omission, or ambiguity identified by the protest CDOT will make appropriate revisions to the RFP Documents by issuing Addenda. The failure of a Proposer to raise a ground for a protest regarding the RFP Documents shall preclude

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consideration of that ground in any protest of a selection unless such ground was not and could not have been known to the Proposer in time to protest prior to the final date for such protests. CDOT may extend the Proposal Due Date, if necessary, to include any such protest issues.

5.12.2 Protests Regarding Responsiveness, Best Value Evaluation, or Award

Protests regarding CDOT's approval of changes in Proposer's organization or decisions regarding responsiveness, best value evaluation rankings or award of the Contract must be filed by hand delivery to the Project Manager at Colorado Department of Transportation Region Two, 480 Quail Lake Loop, Suite A, Colorado Springs, Colorado 80906 within 7 working days after CDOT releases notice of its approval of a change in a Proposer's organization or decision regarding responsiveness, rankings, or award, as applicable. The protestant shall concurrently file a Notice of Protest with the other Proposers whose addresses may be obtained from the Project Manager. The Notice of Protest shall state the grounds of the protest.

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

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

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

If a Notice of Protest is filed, CDOT may proceed with BAFOs or negotiations but shall not award the Contract until the protest is withdrawn or decided, unless CDOT determines that the public interest requires CDOT to proceed with the award prior to a decision on the protest, or that the protest is so wholly lacking in merit that the protestant is unlikely to succeed in the protest. Such a determination shall be in writing and shall state the facts upon which it is based.

If the protest is denied, the entity filing the protest shall be liable for CDOT's costs reasonably incurred in defending against the protest, including consultant fees, and any unavoidable damages sustained by CDOT as a consequence of the protest. If the protest is granted, CDOT shall be liable for payment of the protestant's reasonable costs, as defined in 2 CCR 601-15, § 22, No. 3. Except as provided in the previous sentence, CDOT shall not be liable for damages to the entity filing the protest or to any participant in the protest, on any basis, express or implied.

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5.13 Ex Parte Communications

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

5.14 Project Rights and Disclaimers

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

1. Investigate the qualifications of any Proposer.
2. Require confirmation of information furnished by a Proposer.
3. Require additional evidence of qualifications to perform the Work.
4. Reject any or all of the Proposals.
5. Issue a new request for proposals.
6. Cancel, modify or withdraw the entire RFP, or any part hereof.
7. Issue Addenda, supplements and modifications to this RFP.
8. Modify this RFP process.
9. Appoint evaluation committees to review Proposals, and seek the assistance of outside technical experts and consultants in Proposal evaluation.
10. Revise and modify, at any time, the factors it will consider in evaluating responses to this RFP and to otherwise revise or expand its evaluation methodology.
11. Hold meetings and conduct discussions and correspondence with the Proposers to seek an improved understanding and evaluation of the responses to this RFP.
12. Seek or obtain data from any source that has the potential to improve the understanding and evaluation of the responses to this RFP.
13. Waive or permit corrections to data submitted with any response to this RFP.
14. Waive or permit submittal of addenda and supplements to data previously provided with any responses to this RFP.
15. Approve or disapprove changes in the Proposer team or Proposal
16. Require correction of or waive deficiencies, informalities and minor irregularities in Proposals; or seek clarifications or modifications to a Proposal.
17. Add or delete Work.
18. Disqualify any Proposer that changes its submittal without CDOT approval.
19. Negotiate with one or more Proposers concerning its Proposal and/or the Contract.

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20. Suspend and/or terminate negotiations at any time, elect not to commence negotiations with any responding Proposer and engage in negotiations with other than the highest ranked Proposer.
21. Hold the Proposals and Proposal Bonds under consideration for a maximum of 180 days after the Proposal Due Date until the final award is made.

This RFP does not commit CDOT to enter into the Contract or any other contract. CDOT assumes no obligations, responsibilities, or liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to and/or responding to this RFP. Except for payment of the Stipend to certain Proposers as provided in Section 5.8, all of such costs shall be borne solely by each Proposer.

In no event shall CDOT be bound by, or liable for, any obligations with respect to the Project until such time (if at all) as a Contract, in form and substance satisfactory to CDOT, has been executed and authorized by CDOT and, then, only to the extent set forth therein.