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.


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 *SOQ*’s, 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

History