

# **INSTRUCTIONS TO PROPOSERS AND NOTICE TO BIDDERS**

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## **Request for Proposal**

### **SH 92 Stengel's Hill Design-Build Project**

**PROJECT NO. STA 092A-024  
No. 17772**



**Colorado Department of Transportation  
Region 3**

January 16, 2014

**January 16, 2014**

## **TABLE OF CONTENTS**

<b>1.0</b>	<b>Introduction .....</b>	<b>3</b>
1.1	RFP DOCUMENTS.....	3
1.2	PROJECT DESCRIPTION.....	3
1.3	PROJECT VALUES AND GOALS.....	4
1.4	ESTIMATED CONSTRUCTION COST.....	4
1.5	ADDITIONAL WORK .....	4
1.6	CONTRACT DOCUMENTS AND REFERENCE DOCUMENTS .....	4
1.7	NOTICE TO PROCEED.....	4
1.8	PROCUREMENT SCHEDULE.....	5
1.9	MANDATORY PRE-PROPOSAL CONFERENCE .....	5
<b>2.0</b>	<b>Proposal Process.....</b>	<b>7</b>
2.1	PRE-PROPOSAL SUBMITTALS .....	7
2.1.1	Alternative Technical Concepts (ATCs).....	7
2.1.2	Technical Approaches (TAs) .....	7
2.1.3	CDOT's Review of ATCs and Technical Approaches .....	7
2.1.4	Pre-Proposal Submission of ATCs and Technical Approaches .....	8
2.2	PROPOSALS .....	9
2.2.1	Submission of Technical Proposals.....	9
2.2.2	Evaluation of Technical Proposals.....	9
2.2.3	Submission of Price Proposal (Bid) .....	10
2.3	ADDITIONAL INFORMATION.....	10
2.4	RANKING OF PROPOSALS .....	10
<b>3.0</b>	<b>Proposal Requirement.....</b>	<b>11</b>
3.1	STRUCTURE OF THE TECHNICAL PROPOSAL .....	11
3.2	PART I – PROJECT MANAGEMENT AND APPROACH.....	11
3.2.1	Section One: Project Management Organization .....	11
3.2.2	Section Two: Key Project Personnel.....	11
3.2.3	Section Three: Project Management Approach to the following: .....	12
3.3	PART II – APPROVED ATCS AND TECHNICAL APPROACHES.....	13
3.4	PART III – DESIGN FIRM PRE-QUALIFICATION .....	13
3.5	PRICE PROPOSAL (BID).....	13
<b>4.0</b>	<b>Evaluation Criteria .....</b>	<b>15</b>
4.1	CONFIDENTIALITY.....	15
4.2	TECHNICAL PROPOSAL RESPONSIVENESS REVIEW AND EVALUATION .....	15
4.2.1	Pass/Fail Criteria .....	15
4.3	EVALUATION OF PART I – PROJECT MANAGEMENT AND APPROACH .....	15
4.3.1	Section One: Project Management Organization .....	15
4.3.2	Section Two: Key Project Personnel.....	16
4.3.3	Section Three:Project Management Approach to the following .....	16
4.4	EVALUATION OF PART II- APPROVED ATCS AND TECHNICAL APPROACHES.....	16
4.5	EVALUATION OF PART III – DESIGN FIRM PRE-QUALIFICATION.....	16
4.6	BEST VALUE DETERMINATION.....	17
4.7	AUTHORIZATION OF PROJECT .....	17
4.7.1	Award Without Negotiations .....	17
4.7.2	Negotiations .....	17
4.7.3	Rejections of Proposals .....	17
<b>5.0</b>	<b>Procurement Requirements .....</b>	<b>18</b>
5.1	RECEIPT OF RFP DOCUMENTS AND OTHER NOTICES .....	18
5.2	EXAMINATION AND INTERPRETATION OF RFP DOCUMENTS .....	18
5.3	ADDENDA .....	18
5.4	PROPOSAL BOND.....	19

**SH 92 Stengel's Hill DESIGN-BUILD PROJECT**  
**Request for Proposal No. 17772**  
**Instructions to Proposers**

**January 16, 2014**

---

5.5	IMPROPER CONDUCT .....	19
5.6	WITHDRAWAL OF PROPOSAL AFTER PROPOSAL DUE DATE .....	19
5.7	RESPONSIVE PROPOSAL .....	19
5.8	STIPEND .....	19
5.9	OWNERSHIP OF PROPOSALS .....	20
5.10	COLORADO OPEN RECORDS ACT .....	20
5.11	CHANGES IN PROPOSER'S ORGANIZATION .....	21
5.12	PROTESTS .....	21
5.12.1	Protests Regarding Request for Proposal Documents .....	21
5.12.2	Protests Regarding Responsiveness, Best Value Evaluation, or Award.....	22
5.13	EX PARTE COMMUNICATIONS .....	23
5.14	PROJECT RIGHTS AND DISCLAIMERS .....	23

**FORMS**

**FORM A KEY PROJECT PERSONNEL INFORMATION (SEE REFERENCE DOCUMENTS)**

**FORM B DESIGN FIRM PREQUALIFICATION FORM (SEE REFERENCE DOCUMENTS)**

*January 16, 2014*

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## **1.0 INTRODUCTION**

The Colorado Department of Transportation (CDOT) issues this Request for Proposals (RFP), dated January 16, 2014, to solicit competitive proposals for a Design-Build Contractor (the Contractor) to enter into a Contract (the Contract) to design and construct improvements to SH 92 Stengel's Hill Design-Build Project (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. Technical Requirements.
  - C. Applicable Standards (As described in Technical Requirements)
  - D. Contract Drawings (Right of Way) Plans.
2. Reference Documents (For information only).

The Proposal submitted by the Proposer will also be a Contract Document.

### **1.2 Project Description**

This project is the next phase in the corridor improvement of State Highway 92 between Delta, CO and Hotchkiss, CO. The section of roadway considered for this project is SH 92 mile marker (MM) 13.7 to MM 15.5. The existing facility is a two-lane rural highway consisting of non-standard shoulders, deteriorating asphalt surface, non-compliant sight distances and an at-grade railroad crossing. This project consists of roadway reconstruction and re-alignment to meet sight distance criteria, shoulder and access improvements, drainage improvements and the replacement of the at-grade railroad crossing with a proposed grade separated structure (I-05-Z).

#### **The Major Elements of the Basic Configuration are as follows:**

- Design and construct structure I-05-Z for the grade separated railroad crossing.
- Design and construct roadway approaches/wall structures to accommodate grade separated railroad crossing.
- Design and construct roadway re-alignment/reconstruction to accommodate geometric safety standards and railroad crossing.
- Design and construct drainage improvements.
- Design and construct signing and pavement marking.
- Design and implementation of construction staging and traffic control during construction.
- Preparation of the Storm Water Management Plan, including obtaining Storm Water Permit.

*January 16, 2014*

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### **1.3 Project Values and Goals**

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

- Safety
- Quality
- Integrity
- Communication/Teamwork
- Excellence

The following goals have been established for the Project:

- Provide grade separated railroad crossing and geometric highway improvements to increase safety.
- Provide safe ingress/egress for approach roads and driveways.
- Have the final improvements open to traffic by December, 2015.
- Minimize construction impacts to the public and the environment.
- Construct project within the CDOT acquired ROW.
- Complete the Project within the program budget of approximately \$15.6 million.

### **1.4 Estimated Construction Cost**

The current available construction funding for this project is approximately \$12.5 million.

### **1.5 Additional Work**

If additional work is identified by CDOT during design and construction, this work will be considered a Contract Change.

### **1.6 Contract Documents and Reference Documents**

The Contract Documents 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 current design as shown in the Reference Documents 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.

### **1.7 Notice to Proceed**

CDOT anticipates that it will complete the procurement process and issue the Notice to Proceed (NTP) for Design by May 1, 2014.

**January 16, 2014**

## 1.8 Procurement Schedule

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

Milestone	Date
Issue RFP	January 16, 2014
Mandatory Pre-Proposal Conference	January 28, 2014 (12:30 pm - 3:30 pm MST)
TA/ATC Workshops with Proposers	Beginning week of February 3, 2014
Latest Submittal of TAs/ATCs	February 20, 2014 (5:00 pm MST)
Last Date for CDOT Responses to Pre-Proposal ATC and Technical Approach Submittals	February 27, 2014
Final RFP Addendum, if any	March 6, 2014
Technical Proposals Due	March 13, 2014 (9:30 am MST)
CDOT Evaluates Technical Proposal	Beginning March 14, 2014
Price Proposals Due	March 20, 2014 (9:30 am MST) via CDOT electronic Bid Submittal program
CDOT Opens Price Proposal and Recommends Award	March 20, 2014
Escrow Proposal Documents Due	March 27, 2014 (10:00 am MST)
Award Contract	April 17, 2014
Notice to Proceed for Design	May 1, 2014 ( <u>Start of Calendar Day Count</u> )
Notice to Proceed for Construction <u>on UPRR Right-of Way</u>	<u>Estimated 60-120</u> days after Notice to Proceed for Design  Estimated date of <del>June-August 3029</del> , 2014 <del>Start of the Contractor's - Calendar Day Count</del>

## 1.9 Mandatory Pre-Proposal Conference

CDOT will hold a mandatory Pre-Proposal Conference for all interested proposers on January 28, 2014 from 12:30 pm – 3:30 pm MST at the address below:

Colorado Department of Transportation  
Montrose Residency  
2424 North Townsend Avenue  
Montrose, CO 81401

The documents available for review will include: Technical Requirements - Sections 1-19, Reference Plan Sheets and Reports, and appropriate Standard and Project Special Provisions. The intent of this conference is for CDOT to clarify/address prospective Proposer's team questions regarding the contract, general project questions and to ensure that:

- There are opportunities for Contractor and Design innovation
- The Project requirements are clear and understandable

*January 16, 2014*

- Improvements could 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 Proposers' proposed Project configurations or unique project approaches. Proposers 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 by subsequent addendum.

January 16, 2014

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## **2.0 PROPOSAL PROCESS**

### **2.1 Pre-Proposal Submittals**

#### **2.1.1 Alternative Technical Concepts (ATCs)**

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) as "Alternative Technical Concepts". The Technical Requirements are Contract Requirements except to the extent that they are superseded by pre-approved ATCs 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 ATCs, the Proposal may not otherwise contain exceptions to or deviations from the requirements of this RFP.

An ATC submission must include:

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

In the event that implementation of an ATC will require Governmental Approvals, the Proposer shall have full responsibility for obtaining any such approvals. If any required approval is not subsequently granted and it becomes necessary for the Proposer to change its design, the Proposer will not be eligible for a Change Order that increases the Contract Price or extends the Contract Schedules.

#### **2.1.2 Technical Approaches (TAs)**

The Proposer may submit its Technical Approaches for any structure type not historically used by CDOT, if applicable (see Technical Requirements, Section 15 – Structures). No Technical Approach to structure type 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.

#### **2.1.3 CDOT's Review of ATCs and Technical Approaches**

CDOT intends to review the ATCs and Technical Approaches and return verbal comments, as determined in CDOT's sole discretion, to each Proposer during the one-on-one meetings. CDOT will return written comments on or before February 27, 2014.

**January 16, 2014**

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

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

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 Technical Requirements; or
2. Identification of areas in which the approach appears to be inconsistent with the Technical Requirements.

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

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

#### **2.1.4 Pre-Proposal Submission of ATCs and Technical Approaches**

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

CDOT will conduct one-on-one meetings with Proposers during the week of February 3, 2014. These meetings are not mandatory. Meetings will be scheduled for up to two hours and will be scheduled on a first come first serve basis. To schedule one-on-one meetings, contact Ron Alexander, 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 ATCs 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 ATCs and Technical Approaches in a sealed container no later than 5:00 p.m. (MST) on February 20, 2014 to:

Ron Alexander, P.E.  
CDOT Resident Engineer  
Colorado Department of Transportation, Region 3  
2424 North Townsend Avenue  
Montrose, CO 81401  
(970) 683-6420 or Cell (970) 596-1554

*January 16, 2014*

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The identity of the Proposer, RFP Number, and legend "Alternative Technical Concepts and Technical Approaches for the SH 92 Stengel's Hill CONFIDENTIAL – PROPRIETARY INFORMATION" shall be clearly shown on the outer cover of the container.

## **2.2 Proposals**

The Proposal will consist of two parts; a Technical Proposal and completion of a Bid Proposal utilizing CDOT's electronic bid submittal. Selection will be based on the Proposer that Passes the Technical Proposal requirements and provides CDOT with the Best Value as defined in Section 4.0. Proposals received after the date and time due will be rejected without consideration or evaluation.

### **2.2.1 Submission of Technical Proposals**

The Technical Proposal, defined in Section 3.1, must arrive at the address set forth below by 9:30 a.m. (MST) on March 13, 2014. It is the Proposer's sole responsibility to see that its Technical Proposal is received as required.

The Proposer shall submit the Technical Proposal in sealed containers, which shall contain the original Proposal and duplicate sets. The identity of the Proposer, RFP Number, and legend "Proposal for SH 92 Stengel's Hill Design-Build Project" shall be clearly shown on the outer cover of the container. The Proposer shall submit the sealed containers to:

Ronald Alexander, P.E.  
CDOT Resident Engineer  
Colorado Department of Transportation, Region 3  
2424 North Townsend Avenue  
Montrose, CO 81401

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

#### **2.2.2.2 Evaluation of Technical Proposal**

CDOT will evaluate the Technical Proposal in accordance with Section 4.2.

January 16, 2014

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### **2.2.3 Submission of Price Proposal (Bid)**

The Price Proposal shall include all items as defined in Section 3.5 and be posted utilizing the CDOT electronic bid submittal system. The price proposal shall be submitted by 9:30 am (MST) on March 20, 2014.

#### **2.2.3.1 Evaluation of Price Proposal (Bid) and Determination of "Best Value"**

The Price Proposal will be evaluated in accordance with Section 4.6.

### **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 4.6. Upon determination of the order of the Proposals, the CDOT Project Manager will authorize award or rejection of all Proposals, in accordance with Section 4.7.

*January 16, 2014*

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## **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 using a standard font, a minimum of 11 points in height and 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 ATCs and Technical Approaches
3. Part III Design Firm Pre-Qualification Form

### **3.2 Part I – Project Management and Approach**

The total page limit for Project Management and Approach is 15 pages. The Proposer has the flexibility to provide less pages than the suggested page limits but shall not exceed the 15 total page limit. The Project Management and Approach shall contain the following items:

#### **3.2.1 Section One: Project Management Organization**

Provide the organization and communication structure among the Proposer and Principal Participants, its Designers, its Key Managers and the Department. This information may be submitted in an organization chart and may be on an 11 inch by 17 inch sheet.

#### **3.2.2 Section Two: Key Project Personnel Information**

The following provides a brief job description and minimum requirements of the Key Personnel assigned to the Project. Proposers may choose to assign the same individual to multiple positions. One Form A-Key Project Personnel Information can be used, but must include the minimum requirements. Any licenses or certifications that are required to meet the requirements of the RFP shall be in place by the time the Notice to Proceed is issued. Provide three references for the Contractor's Project Manager and two references for all other Key Personnel. Indicate the name, position, company, or agency and current phone number, and e-mail address for each reference. Project Key Personnel are required to have experience on projects of similar size and complexity. Provide details that will demonstrate and support the following qualifications. Proposers shall use Form A to provide the required information and will be limited to one page per individual and will be counted as part of the 15 page limit.

1. Contractor's Project Manager
  - The Contractor's Project Manager shall be responsible for overall design, construction, and contract administration for the Project. During construction, this person shall, at a minimum, visit the project site weekly. The Contractor's Project Manager's presence shall be required in design progress meetings, progress status meetings and other required meetings.
  - Shall have at least five years of recent experience managing the design and/or construction of state highway systems.
  - Shall have the authority and duty to stop any and all work that does not meet the standards, specifications, or criteria established for the Project.

*January 16, 2014*

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2. Design Manager
  - The Design Manager shall be responsible for ensuring that the overall Project design is completed and design criteria requirements are met.
  - The Design Manager shall work under the direct supervision of the Contractor's Project Manager.
  - Shall be a registered professional engineer in the State of Colorado.
  - Shall have at least five years of recent experience in managing the design of state highway systems.
  
3. Structure Design Manager
  - Shall be a registered professional engineer in the State of Colorado.
  - Experience in structure design and phasing.
  - Experience in retaining wall design.
  - Shall have at least five years of recent experience in structure design engineering on similar projects.
  
4. Construction Superintendent
  - Shall be on site during all construction activities.
  - Shall have at least five years of recent experience in highway and structure construction.
  
5. Design Quality Manager
  - Shall be a registered engineer in the State of Colorado.
  - Experience coordinating design and construction activities.
  - Experience in design and construction of state highway systems and structures.
  
6. Construction Storm Water Supervisor
  - Shall have a minimum of five years of recent experience in construction monitoring, water quality and environmental documentation.
  - Shall have experience with Regulatory Agencies.
  - Shall have current Erosion Control Supervisor Certification and training.
  - Shall have experience, certification and training for storm water management.
  
7. Geotechnical Engineer
  - Shall be a registered professional engineer in the State of Colorado.
  - Experience in foundation and wall design.
  - Shall have at least five years of recent experience in geotechnical design engineering on similar projects.

**3.2.3 Section Three: Project Management Approach to the following:**

1. Maintenance of Traffic:
  - Describe or depict the approach to project phasing and describe the team's commitment to maintain traffic flow during construction. This information may be submitted on an 11 inch by 17 inch sheet(s).
  
2. Project Management:
  - Describe your plan for project communication. Specifically address your approach to integrating CDOT with your project Team. Describe how your team

January 16, 2014

will integrate project design with construction and how your team will address construction field changes.

- Describe your approach to partnering; include conflict and dispute escalation and resolution process.

3. Environmental Compliance:

- Describe your team's approach and commitment to managing, controlling and monitoring construction storm water during the life of the project.

4. Safety Program:

- Describe your team's approach and commitment to minimize or eliminate the risk associated with Safety Critical work activities.

5. Quality Program:

- Describe your team's approach to providing design and construction quality

### 3.3 Part II – Approved ATCs and Technical Approaches

The Proposer shall provide the pre-Approved ATCs or ATCs with conditions at Proposer's own risk and CDOT's ATC 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 – Design Firm Pre-Qualification

Proposers shall use the services of Professional Engineering firms to complete project Technical Requirements. Proposers shall submit a "Design Firm Pre-Qualification Assurance Form", which is included in the Reference Documents (Form B-Design Pre-Qualification Form). This form will not count towards the 15 page limit. Professional Engineering Firms shall be used for Highway and Street Design (HD), Bridge Design (BR), Structural Engineering (SE), Hydraulics (HY), Traffic Engineering (TR) and Geotechnical Engineering (GE).

### 3.5 Price Proposal (Bid)

Proposers shall submit a price for the bid schedule. The evaluation of each price proposal will take into account the price and the time the Proposer intends to take to reach **Substantial** Completion.

The Contractor's **Substantial**-Completion Calendar Day schedule is defined in Section 1 – General, Revision of Section 105.21. This will be the "B" portion of the price proposal. CDOT has determined the daily cost of each Calendar Day is \$5,000/day.

Proposers shall submit a Bid Price that includes

- A Lump Sum price for Highway Design and Construction
- A Lump Sum price for Bridge Design and Construction
- Unit prices for:
  - ~~Mobilization – 1 Lump Sum~~
  - Sanitary Facility – 1 Each
  - Field Office (Class 2) – 1 Each

*January 16, 2014*

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- Field Laboratory (Class 2) – 1 Each

The total Bid Price shall be the price to complete all Work as identified in the Technical Requirements and other contract documents.

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

- Highway and Approach Roads
- Bridge Structure
- Wall Structures
- Drainage Structures and Ditches
- Pavement and Pavement structure
- Bridge and roadway guardrail
- Construction Traffic Control and Phasing
- Water Quality and Environmental Management
- Public Information
- Signing and Striping

*January 16, 2014*

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## **4.0 EVALUATION CRITERIA**

### **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 Proposer's Concepts and 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:

- the Proposal's conformance to the RFP instructions regarding organization and format
- the responsiveness of the Proposer to the requirements set forth in the RFP
- minor informalities, irregularities and apparent clerical mistakes which are unrelated to the technical content of the Proposals, and
- compliance with the pass/fail criteria set forth in this Section 4.2.

CDOT will have the right to submit written questions to the Proposer's regarding the Proposals for the following purposes:

- Resolving any uncertainties or to obtain clarifications concerning the Proposal.
- Resolving any suspected mistakes by calling them to the attention of the Proposer.
- Providing the Proposer 3 working days 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.

#### **4.2.1 Pass/Fail Criteria**

The Technical Proposal, Alternative Configuration and Technical Approaches, and Design Firm Pre-qualification will be evaluated on a "pass/fail" basis. The criteria used to determine a "pass" Score is described below. A Proposal must receive a "pass" on all "pass/fail" criteria, for the Proposal to be further evaluated. Failure to achieve a "pass" rating on a "pass/fail" factor or sub-factor may result in the Proposal being declared non-responsive and the Proposer being disqualified.

Failure to submit information in the manner, format, and detail specified may result in the Proposal receiving a "fail" rating and being declared non-responsive.

## **4.3 Evaluation of Part I – Project Management and Approach**

### **4.3.1 Section One: Project Management Organization**

- Was the Proposer's Organization clearly described?
- Were lines of communication defined? Were areas of responsibility noted and clearly presented? Was the role of the Department adequately described or depicted? Did the project organization provide appropriately qualified personnel at functional levels of

*January 16, 2014*

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authority and responsibility to execute the management of the design and construction of the project?

#### **4.3.2 Section Two: Key Project Personnel**

- Was the proper Form used to describe the qualifications of each key person?
- Were appropriate references provided?
- Did the key person have the required experience and qualifications?

#### **4.3.3 Section Three: Project Management Approach to the following**

1. Maintenance of Traffic:
  - Was an adequate approach used in the Project Phasing Plan to facilitate construction and minimize impacts to the travelling public?
2. Project Management
  - Was there an adequate approach of the project management plan to facilitate communication and coordination within the internal structure of the Contractor's project team, with CDOT, and project field personnel?
  - Was there an adequate approach to the management philosophy and partnering approach to resolving disagreements, conflicts and disputes with CDOT as it relates to the Project?
3. Environmental Compliance
  - Was an adequate approach presented to describe the contractors approach to managing, controlling and monitoring water quality during construction, including the use of Best Management Practices (BMPs)?
4. Safety Program approach and commitments
  - Were the safety critical activities identified? Did the contractor adequately describe the approach and commitments for the Safety Program to eliminate or control accident risks to personnel, general public, and the environment?
5. Quality Program and commitments
  - Did the contractor adequately describe the approach and commitments to design and construction quality?

#### **4.4 Evaluation of Part II- Approved ATCs and Technical Approaches**

- Were the Approved ATCs and Technical Approaches that were included by the Proposer the same ATCs and Technical Approaches approved by CDOT?
- Were the CDOT Approval Letters included?

#### **4.5 Evaluation of Part III – Design Firm Pre-Qualification**

- Did the proposer include the proper form?
- Was the Design Firm on CDOT's pre-qualification list for Engineering services?

January 16, 2014

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## 4.6 Best Value Determination

Award of the Project will be based on a Best Value determination defined by the following: a Pass rating on the Technical Proposal and Bid Price plus "B" (calendar day to ~~substantial~~ completion times \$5,000/day).

### Best Value

Best Value = Technical Proposal Pass. And lowest of:  
Bid Price ("A") + "B" (Calendar Days to ~~Substantial~~-Completion x \$5,000)

The adjustments will be made solely for the purpose of determining the lowest successful price proposal. The Contract Price shall be the proposer's bid price to complete the Work only. The Contract Time shall be the Proposer's Calendar Day submittal for ~~Substantial~~-Completion, per Revision of Section 101.21.

## 4.7 Authorization of Project

The Project Manager will authorize award or rejection of all Proposals, as follows.

### 4.7.1 Award Without Negotiations

The Project Manager may request award of the Contract without negotiations to the Proposer with the best value Proposal.

### 4.7.2 Negotiations

The 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.

### 4.7.3 Rejections of Proposals

The CDOT Project Manager may request authorization to reject all Proposals.

January 16, 2014

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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 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 including all Reference and Contract Documents will be posted on CDOT's web site at <http://www.coloradodot.info/projects/sh92stengelshill>

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:

Ronald Alexander  
CDOT Resident Engineer  
Colorado Department of Transportation, Region 3  
2424 North Townsend Avenue  
Montrose, CO 81401

Written comments or requests on the RFP must arrive no later than February 27, 2014.

If CDOT determines, in its sole discretion, that such comments, clarification, or interpretation requires a change to the RFP Documents, CDOT will prepare and issue Addenda. CDOT will not be bound by, and the Proposer shall not rely on, any oral communication regarding the RFP Documents. 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. Any addenda will be placed on the CDOT Innovative Contracting website: <http://www.coloradodot.info/business/bidding/cmqc-other-special-projects.html>

*January 16, 2014*

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## **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 Proposer'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 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 will 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 from 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 on its Proposal. Failure to provide the requested information may result in CDOT's determination, at its sole discretion, 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. CDOT has allocated a total Stipend amount of \$30,000 that will be apportioned equally to the three highest ranked fully responsive but unsuccessful Proposers. The Stipend shall be provided to such Proposers 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, such Proposer shall no longer be entitled to the Stipend.

*January 16, 2014*

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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 ATCs 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, be entitled to receive a Stipend.

## **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) submitted by an unsuccessful Proposer, upon payment of the Stipend.

## **5.10 Colorado Open Records Act**

Except for the Escrow Proposal Documents (EPDs), 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

*January 16, 2014*

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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.

## **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 3, 2424 North Townsend Avenue, Montrose, CO, 81401 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 will decide it on the basis of the written submissions. Any additional information regarding the protest shall 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 will be based on and limited to a review of the issues raised by the aggrieved Proposer(s) and will set forth each factor taken into

*January 16, 2014*

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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 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 2424 North Townsend Avenue, Montrose, CO, 81401 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 will 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 will 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 will not be liable for damages to the entity filing the protest or to any participant in the protest, on any basis, express or implied.

*January 16, 2014*

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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 shall 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.

*January 16, 2014*

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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.