

DEPARTMENT OF TRANSPORTATION

Executive Director

Contracts and Market Analysis Branch

RULES GOVERNING CONSTRUCTION BIDDING FOR CDOT PUBLIC PROJECTS

2 CCR 601-10

CHAPTER 1 GENERAL PROVISIONS

Statement of Basis and Purpose and Statutory Authority

The rules implement the provisions of the Construction Bidding for Public Projects Act (Article 92 of Title 24, C.R.S.) as they relate to the repair, construction and maintenance of highway and bridge Public Projects where the Colorado Department of Transportation ("CDOT"), is the contracting agency.

The purpose of these rules is to set forth authority for promulgation of the rules, to set forth definitions to be applied throughout the rules, and to establish certain prohibitions applicable to the rules.

Specific statutory authority to promulgate rules relating to, and necessary to implement, the provisions of, the "Construction Bidding for Public Projects Act," Section 24-92-101, et seq., C.R.S., is granted to the Executive Director of CDOT by Section 24-92-110, C.R.S., and 24-109-202, C.R.S. The statement of basis, statutory authority and purpose is hereby incorporated by reference and made a part of the rules.

In 2014, CDOT is updating 2 CCR 601-10 as a result of HB13-1292, codified at Section 24-92-110, C.R.S., which made modifications to procurement requirements for government contracts, including the evaluation of a Competitive Sealed Best Value Bid ("CSBV") pursuant to Section 24-92-103.5(3), C.R.S.

In 2018, CDOT is updating 2 CCR 601-10 primarily as a result of SB 17-211, which directed CDOT to update the contract amounts for which a bidder is required to submit an audited financial statement reviewed by a certified public accountant, and also to make other non-substantive changes for clarification to the rules.

Rule updates: ~~April~~March 30, 2014, November 1, 2006; March 2, 1999; June 30, 1990; May 30, 1986; May 30, 1985; September 30, 1983.

Applicability

These rules are applicable to CDOT and all Contractors that submit Bids on Public Projects. Nothing contained in the rules voids the provisions in the Invitation for Bids. Exemptions to the rules are as set forth in Section 24-92-104, C.R.S., which is incorporated herein by reference.

1.00 Definitions

[No changes from Rule 1.01 through 1.05]

1.06 Bid Proposal: The approved form on which Bids are prepared and submitted to CDOT, ~~which may be written, electronic or a combination thereof.~~ through the electronic or written sealed bidding process as set forth in the Invitation for Bid.

[No changes from Rule 1.07 through 1.08]

1.09 Contract: The written agreement between CDOT and the Contractor setting forth the obligations of the parties, including, but not limited to, the performance of the Work, the furnishing of labor and materials, and the basis of payment.

The "Contract" includes the Invitation for Bids, Bid, Bid Proposal, ~~Contract Bid schedule~~, Contract forms and Contract Bonds, specifications, supplemental specifications, special provisions, and general and detailed plans, ~~non-collusion affidavit, and Notice to Proceed~~; also included are any Contract modification orders and agreements that are required to complete the construction of the Work in an acceptable manner, including authorized extensions thereof, all of which constitute one instrument.

[No changes from Rule 1.10 through 1.13]

1.14 CSBV: Competitive Sealed Best Value construction projects funded exclusively with state funds.

- 1.1~~54~~ Debarment: Action taken by CDOT pursuant to these rules prohibiting a Person from directly or indirectly performing any Work for, or otherwise in any manner participating in, a Public Project, which also includes termination of any Prequalification status of the Person.
- 1.1~~65~~ Determination of Non-responsibility: A written determination by CDOT setting forth the reasons that the Low Apparent Bidder is not eligible to be Awarded the Contract on a particular project.
- 1.1~~76~~ Disadvantaged Business Enterprise ("DBE") Certification: Verification of a firm's compliance with the requirements of and meeting the eligibility standards set forth in Part 26 of Title 49 of the Code of Federal Regulations.
- 1.1~~87~~ Electronic Bid: A Bid transmitted electronically to CDOT that complies with the requirements set forth in the Invitation for Bids.
- 1.1~~98~~ Electronic Signature: An electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record that complies with the requirements set forth in the Invitation for Bids.
- 1.~~2019~~ Indictment: Information or other filing by a competent authority charging a criminal offense.
- 1.2~~10~~ Individual: A particular person.
- 1.2~~21~~ Ineligible: Excluded from participation in Public Projects.
- 1.2~~32~~ Invitation for Bid: All documents, ~~whether attached or incorporated by reference~~, utilized for soliciting Bids for Work. Such documents will indicate with reasonable accuracy the quantity and location of the Work to be done or the character and quantity of the material to be furnished, the time and place of the opening of Bids and any Special Prequalification criteria for the Contractor to meet.
- 1.2~~43~~ Legal Proceeding: Any criminal proceeding or any civil judicial proceeding including appeals from such proceedings.
- 1.2~~54~~ Letter of Guarantee: A letter from a parent company that commits to the payment and performance obligations of the subsidiary.
- 1.2~~65~~ Low Apparent Bidder: The Responsive and Responsible Bid which is either the mathematically lowest Bid or the CSBV Best Value Bid.

- 1.276 Low Tie Bids: Low Bids which are identical in total Bid amount.
- 1.287 Low Responsive Bidder: A Contractor who has Bid in compliance with the Invitation for Bids and within the requirements of the plans and specifications for a Public Project, who has furnished Contract Bonds or their equivalent as required by law, and who has submitted the low Bid.
- 1.298 Low Responsible Bidder: A Contractor who is determined to have the financial resources, judgment, skill, ability, capacity, and integrity to perform on a Public Project and who has submitted the low Bid.
- 1.3029 Materially Unbalanced Bid: A mathematically unbalanced Bid that CDOT determines leaves reasonable doubt that Award will result in the lowest ultimate cost to CDOT, or that Award is in the public interest.
- 1.310 Mathematically Unbalanced Bid: A Bid containing unit Pay Items that do not reflect reasonable actual costs plus a reasonable proportionate share of the bidder's anticipated profit, overhead costs and other indirect costs.
- 1.324 Minor Informalities: Matters of form rather than substance that are evident from the face of the Bid, or insignificant mistakes that can be waived or corrected without prejudice to other Contractors where the effect on price, quantity, delivery, or contractual conditions is not significant.
- 1.332 Notice: A written communication ~~served in person or sent by mail by a currently accepted means of reliable delivery, which causes a record of delivery to be created,~~ to the last known physical address of a Contractor or Person, or its identified counsel, or its agent for service of process, or any partner, officer, director, owner, or joint venture of the person. Notices ~~sent~~ sent by a mail service shall be considered to have been received by the addressee on the day acknowledged in the return receipt, or if no return receipt is required then five business days after being properly sent to the last known address.
- 1.343 Participant: Any Person, or that Person's agent, who submits a Bid for, enters into, or reasonably may be expected to enter into, a Contract for a Public Project.
- 1.354 Pay Item: A specifically described unit of work for which a price is provided in the Contract; also referred to as a Contract item.
- 1.365 Performance Capability Statement: A written statement submitted by the Contractor setting forth information required by CDOT to make its determination of Award.
- 1.376 Person: Any Individual, partnership, corporation, joint venture, company, firm, association, Contractor or other legal entity.
- 1.387 Plan Holder: Any ~~Contractor who has joined the electronic plan holders list purchaser of the plans and specifications~~ for a particular Public Project.
- 1.398 Preponderance of the Evidence: Proof by information that compared with the opposing proof, leads to the conclusion that the fact at issue is more probably true than not.
- 1.4039 Prequalification: The process of review by CDOT of a Contractor's fiscal and workmanship qualifications to perform Work on Public Projects through which CDOT determines whether the Contractor will be permitted to submit Bids or to perform certain types of Work as provided in these rules.

- 1.410 Progressive Corrective Action: Action imposed by CDOT for a Contractor's failure to comply with Prequalification requirements or Contract requirements. Progressive corrective action may, but does not necessarily, precede Suspension or Debarment action against a Contractor.
- 1.421 Project Description: The words used in the Invitation for Bids to describe the Work to be performed.
- 1.432 Proposal Guarantee: The security furnished with a Bid, either in the form of a cashier's check, certified check or Bid bond, to guarantee that the Contractor will enter into ~~the~~ a Contract with CDOT if ~~its~~their Bid is accepted.
- 1.443 Prospective Bidder: Any Contractor who is also prequalified and who has obtained a Bid ~~p~~Proposal for a particular Public Project.
- 1.454 Public Project: The construction, alteration, repair, demolition or improvement of any road highway or bridge, and any maintenance project for the upkeep of such roads, highways, and bridges for which appropriation or expenditure of funds may be reasonably expected to exceed one hundred fifty thousand dollars in the aggregate for any fiscal year and where CDOT is the contracting agency. Where the context requires, a "Public Project" means any publicly funded construction project.
- ~~1.45 Registered Agent: The individual appointed by the Contractor pursuant to Section 7-90-701, C.R.S., as its agent for such legal purposes as provided for in the Colorado Corporations and Associations Act, Section 7-90-101, et seq., C.R.S.~~
- 1.456 Respondent: A person against whom a Debarment or Suspension action has been initiated.
- 1.467 Revocation: A process through which CDOT terminates a Contractor's Prequalification status and ability to submit Bids to CDOT on Public Projects.
- 1.4847 Special Prequalification: The process of review by CDOT of a Contractor's special fiscal or workmanship qualifications, beyond those typically considered in granting Prequalification pursuant to Chapter Two of these rules, as required under an Invitation for Bids to perform Work on a particular Public Project, through which CDOT determines whether the Contractor will be permitted to submit a Bid on the project set forth in the Invitation.
- 1.4948 Subcontractor: Any Individual, partnership, corporation, joint venture, company, firm, association, or any other legal entity contracting with, or intending to contract with, the Contractor or another Subcontractor for performance of Work for a Public Project.
- 1.5049 Suspension: The process through which CDOT immediately excludes a Respondent from ~~performing Work or otherwise~~ participating in Public Projects, not already under Contract, and from submitting Bids on Public Projects for a temporary period of time prior to Debarment proceedings.
- 1.5150 Unduly Burdensome: For purposes of these rules, is the grounds for a justifiable waiver from compliance with Section 8-17-101(1), C.R.S., which would establish proof that compliance would substantially prevent a project from proceeding to completion. Such a waiver may include but is not limited to consideration of geographical location, schedule of need, qualified labor resources, and in cases of natural disaster or emergency, the health, safety and welfare of the population.
- 1.512 Voluntary Exclusion: A status of nonparticipation in the performance of Public Projects assumed by a person pursuant to the terms of a settlement with CDOT.

- 1.523 Work: The furnishing of all labor, material, equipment, and other incidentals necessary or convenient to the successful completion of a Public Project according to all duties and obligations imposed by the Contract except that material which is not delivered on the Public Project site is expressly excluded from this definition.

CHAPTER 2 PREQUALIFICATION

2.01 Prequalification Application

- 2.01.1 A Contractor who wishes to submit a Bid for a Public Project is required to file a Prequalification application with the CDOT Contracts and Market Analysis Branch Manager or designee. Any new application or renewal application may be submitted not less than seventeen calendar days prior to the opening of any Bid for projects on which the Contractor desires to submit a Bid, unless the Branch Manager or designee grants an exception in writing based on a showing of reasonable cause. A letter from the Department approving or denying an applicant's Prequalification shall be sufficient written evidence of the Department granting an exception to the requirement that an application be submitted seventeen calendar days prior to a bid opening.

[No changes from Rule 2.01.2 through 2.01.4]

2.02 Application Requirements

- 2.02.1 The application, along with a copy of these rules, may be obtained from the CDOT Contracts and Market Analysis Branch, Colorado Department of Transportation, at 2829 W. Howard Pl., Denver, CO 80204-4204 E. Arkansas Avenue, Denver, CO 80222. The application may be supplemented by the Contractor as necessary to ensure CDOT is given all information necessary to reach a determination as to the fiscal qualification and general type of Work for which the Contractor is qualified to submit Bids. Applicants for Prequalification shall supply the following minimum information in either the Prequalification application or supplements:
- (a) The name, address, phone number, and type of organization (Individual, partnership, corporation, joint venture, LLC, etc.) of the Contractor seeking Prequalification.
 - ~~(b) The name, address and phone number of the Registered Agent of a Contractor seeking Prequalification.~~
 - ~~(be)~~ The Contract size in dollars and the general type of Work for which the Contractor seeks Prequalification (such as general highway construction, earthwork, structures, paving, specialty-signing, fencing, guardrail, etc.).
 - ~~(ec)~~ Experience of the Contractor in past highway construction Work including the number of years experience in each type of Work ~~and a listing of all construction Contracts, highway and non-highway, performed in the past three years.~~
 - ~~(de)~~ Any ~~indictment or conviction of bid or contract-related violations~~ ~~denial of Prequalification or removal of the Contractor from a bidding list~~ within the last six years, by the federal government, CDOT, any state agency or unit of local government within Colorado, or of another state, together with an explanation of the ~~indictment or conviction~~ ~~denial or removal.~~
 - ~~(fe)~~ Information on any contract that the Contractor, ~~it's officers, or partners~~ ~~has~~ failed to complete ~~within the last six years while working for another company or managing a contract under their own names.~~

- (gf) The principal officers and supervisors of the Contractor and their type and length of experience.
- (hg) Ownership of the Contractor including any Affiliates and subsidiaries.
- (ih) List of equipment owned by the Contractor.
- (ji) A financial statement prepared in compliance with generally accepted accounting practices and standards that includes a complete report of the Contractor's financial resources and liabilities. Financial information will be considered proprietary, and confidentiality will be maintained by CDOT, as provided in the open records law, Section 24-72-201 et seq., C.R.S.:

(1) Levels of prequalification are defined below:

\$0 to ~~\$34~~,000,000

~~\$34~~,000,000 to \$5,000,000

\$5,000,000 to \$20,000,000

> \$20,000,000

(2) For those Contractors intending to submit Bids less than ~~\$34~~,000,000, the statement does not need to be audited or reviewed by a CPA.

(3) For those Contractors intending to submit Bids between ~~\$34~~,000,000 and \$5,000,000, the statement shall be reviewed by a licensed CPA in accordance with review standards published by the American Institute of Certified Public Accountants.

~~This application shall include a recently signed and dated letter from the bonding agent or bonding company indicating the contract performance bond capacity for the Contractor.~~

(4) For those Contractors intending to submit Bids exceeding \$5,000,000, the statement shall be audited by a licensed certified public accountant (CPA) in accordance with audit standards published by the American Institute of Certified Public Accountants, and accompanied by an affidavit of the CPA.

~~This application shall include a recently signed and dated letter from the bonding agent or bonding company indicating the contract performance bond capacity for the Contractor.~~

(j) This application shall include a recently signed and dated letter from the bonding agent or bonding company indicating the single project performance bond capacity for the Contractor.

(k) When a Contractor is a subsidiary of another firm, and the financial statement of the parent firm is used for Prequalification, a Letter of Guarantee must accompany the application.

(l) A statement as to whether the Contractor or any company officer or Affiliate or officer thereof, has been indicted or convicted of Bid related crimes or violations within the past six years in any jurisdiction, and the current status of any such company or officer.

- (m) A statement as to whether: 1) the Contractor, 2) any director, officer, partner, joint venturer, stockholder of five percent or more of the Contractor, or 3) any Affiliate of the Contractor, is in any jurisdiction under notice of intent to debar or has been debarred or is affiliated with another person who is under notice of intent to debar or has been debarred, and the current status of any such Debarment.
- (n) A list of persons authorized to contractually bind the firm.
- (o) A W-9 Form containing an exact name and address of the entity requesting Prequalification.
- ~~(p) A current copy of the Certificate of Good Standing issued by the Colorado Secretary of State.~~

2.03 Prequalification Procedure

2.03.1 -The following procedure shall govern approval and disapproval of Prequalification, other than instances where the Contractor is subject to Debarment, which shall be processed in accordance _____with the provisions of Chapter Three of the rules.

- (a) The Contractor shall submit the application and supporting information to CDOT Contracts and Market Analysis Branch. Until all inquiries of the CDOT Contracts and Market Analysis Branch Manager or designee, relative to the application have been answered, the Prequalification application will not be considered complete.
- (b) The CDOT Contracts and Market Analysis Branch Manager or designee will give ~~Notice of~~ approval or ~~Notice of~~ disapproval within ~~twenty-one~~~~seventeen~~ calendar days of receipt of the completed Prequalification application. ~~Notice of intent to~~Prequalification disapproval ~~Prequalification to the Contractor~~ will be delivered by ~~certified mail return receipt requested~~~~electronic mail~~. In the event of ~~a Notice of intent to a~~ Prequalification disapproval ~~Prequalification~~, the CDOT Contracts and Market Analysis Branch Manager or designee shall give a written statement of reasons and identify to the Contractor the right of appeal to the CDOT Chief Engineer.
- (c) The Contractor may appeal a ~~Notice of intent to~~Prequalification disapproval ~~Prequalification~~ to the CDOT Chief Engineer. Any such appeal by the Contractor must be written and must be received by the Chief Engineer within sixty calendar days of the date the Contractor received the ~~Notice of intent to~~Prequalification disapproval ~~Prequalification~~. If no appeal is received as provided herein, the ~~Notice of intent to~~Prequalification disapproval ~~Prequalification~~ will become final.
- (d) A hearing shall be commenced within sixty calendar days of receipt of an appeal in accordance with the State Administrative Procedure Act (APA), Section 24-4-105, C.R.S. At the hearing the Contractor shall present any information it feels warrants Prequalification subject to any evidentiary ruling made concerning relevancy and admissibility. A Contractor must establish its Prequalification by a Preponderance of the Evidence.

2.04 Criteria for Granting and Determining Prequalification

2.04.1 CDOT may prequalify a Contractor to Bid on a particular Public Project or on an annual basis to Bid on Public Projects of a particular size, or kind, or both, based on an evaluation of the following criteria:

[No changes from Rule 2.04.1(a) through (f)]

- (g) Whether the Contractor is in any jurisdiction under ~~Notice-notice of Debarment~~debarment, or debarred, or subject to Debarment under Chapter Three of the rules;
- (h) Whether the Contractor has made false or deceptive statements in the application for Prequalification or any other information submitted to CDOT that includes but is not limited to claims or contractual requirements; and
- (i) Whether the Contractor meets any of the criteria for Revocation of Prequalification under Section 2.07;
- (j) Prospective Contractors or Subcontractors may be required to be Prequalified to perform certain types of construction. Such Prequalification will be determined by a panel of subject matter experts and must be renewed yearly;
- (k) In the case of a Special Prequalification for a particular project, any additional criteria which CDOT Contracts and Market Analysis Branch Manager, or their delegee, deems necessary considering the particular project.

2.05 Effect of Prequalification

- 2.05.1 Prequalification constitutes the ability of a Contractor's eligibility to submit Bids to the level of Prequalification approved pursuant to rule 2.02(j). The responsibility of a Low Apparent Bidder on a specific project will be independently evaluated prior to Award in accordance with Section 4.16 of the rules.

2.06 Continuing Prequalification Requirements

- 2.06.1 A Contractor intending to submit Bids shall, in accordance with Sections 2.01 through 2.04, prequalify at least once a year or as requested by CDOT Contracts and Market Analysis Branch Manager or delegee. Prequalification status may also be reviewed by CDOT at any time, when requested by the Contractor or at CDOT's discretion.
- 2.06.2 Contractors must notify CDOT immediately of any significant decrease in their fiscal or workmanship qualifications, or of any action taken in any jurisdiction against the Contractor or an Affiliate of the Contractor precluding its ability to Bid on, perform Work for, or otherwise in any manner participate in projects.

2.07 Summary Reduction, Suspension, and Revocation of Prequalification

- 2.07.1 In addition to termination of Prequalification as part of any Suspension or Debarment action under Chapter Three of the rules, CDOT may reduce, summarily suspend, or revoke Prequalification pursuant to this chapter if the CDOT Contracts and Market Analysis Branch Manager determines that:
 - (a) The Contractor or Affiliate of the Contractor is declared in default on any contract;
 - (b) The Contractor or Affiliate of the Contractor has made false or deceptive statements on its application for Prequalification, in any documents connected with a Bid including its Performance Capability Statement, in any other information submitted to CDOT, or in the course of any hearing associated with Prequalification;
 - (c) The Contractor has failed to report any significant decreases in capabilities or limitations on Bidding or performing Work in accordance with Section 2.06.2;

- (d) The Contractor or an Affiliate of the Contractor commits any action or inaction which evidences a lack of integrity in business-related matters; or
- (e) The Contractor no longer meets the criteria contained in Section 2.04
- (f) Reduction, Suspension, and/or Revocation of Prequalification shall in no way affect the obligation of a Respondent to CDOT to complete Work already under contract. CDOT reserves the right to declare a Respondent in default on any existing contracts for cause as provided in the contract.

[No changes from Rule 2.08 through 2.08.2(d)]

2.08.3 Reduction of Prequalification Level:

- (a) A Contractor's Prequalification can be summarily reduced one level as defined in Section 2.02.41(i) up to one year as determined by CDOT.
- (b) Additional reductions of one level in Prequalification level can follow the first reduction if the Contractor has additional occurrences of events under Section 2.08.2.11 within two years from the initial infraction, as determined by CDOT.
- (c) Suspension and Debarment proceedings may be pursued by CDOT, per Chapter Three of these rules, if the Contractor fails to remedy any reason for Prequalification reduction as determined by the Contracts and Market Analysis Branch Manager.
- (d) Anyone may contact CDOT concerning the existence of a cause for Prequalification reduction. If the CDOT Contracts and Market Analysis Branch Manager becomes aware of information warranting Prequalification level reduction, as set forth in Section 2.08.3(a), reduction in Prequalification level may be initiated by sending a Notice of intent to lower a Contractors Prequalification level. A Notice of intent to reduce Prequalification level shall be sent to the Respondent by certified mail, return receipt requested. The Notice shall include a written statement of reasons for and the effect of the Prequalification level reduction and inform the Respondent of the right of appeal to the CDOT Chief Engineer. ~~The Contractor may appeal the Notice of intent to reduce Prequalification level.~~ Any such appeal must be written in writing and must be received by the CDOT Chief Engineer within sixty calendar days of the date the ~~Contractor received the Notice~~Notice was sent to the Contractor by certified mail, return receipt. If no appeal is received as provided herein, the Respondent shall have its Prequalification level reduced in accordance with the Notice.
- (e) When an appeal is received a hearing shall be commenced within sixty calendar days. The hearing shall be conducted and the decision issued in accordance with the State Administrative Procedure Act (APA), Section 24-4-105, C.R.S. At the hearing the Contractor shall present information in support of its position subject to any evidentiary rulings made concerning relevancy and admissibility. At the hearing the cause for reduction of Prequalification must be established by CDOT by a Preponderance of the Evidence.

[No changes from Rule 2.08.4 through 3.02]

3.03 Causes for Debarment

Debarment may be imposed by CDOT for:

3.03.1 Conviction of or Civil Judgment for:

- (a) Fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Public Project;
- (b) Bribery, embezzlement, false claims, false statements, falsification or destruction of records, forgery, obstruction of justice, receiving stolen property, or theft;
- (c) Unlawful price fixing between competitors, allocation of customers between competitors, Bid rigging or any other violation of federal or state antitrust laws that relates to the submission of Bid ~~or Bid Proposals~~; or
- (d) Commission of any other offense indicating a lack of business integrity or honesty.

[No changes from Rule 3.03.2 through 3.06]

3.07 Length of Debarment

3.07.1 Debarment may be for a term of up to three years. Credit may be given for any periods of Suspension. The following criteria may be considered in making any decision as to length of debarment:

- (a) Degree of culpability;
- (b) Seriousness of the offense or conduct;
- (c) Restitution of damages to CDOT;
- (d) Cooperation in the investigation of other Bidding or performance violations;
- (e) Disassociation with those involved in Bidding or performance violations;
- (f) Whether a lengthy Debarment is required for the protection of CDOT.

3.07.2 If the Respondent submits no appeal, the Debarment shall automatically be for three years.

3.08 Scope of Debarment and Suspension

3.08.1 Suspension or Debarment of a ~~P~~person constitutes Suspension or Debarment of all their divisions and other organizational elements from Work on all Public Projects unless the Suspension or Debarment decision is limited by its terms to one or more specifically identified Individuals, organizational elements, or to specific types of Public Projects. The Suspension or Debarment may include any Affiliate of the Participant that is (1) specifically named, and (2) given Notice of the proposed Debarment and an opportunity to respond.

[No changes to Rule 3.08.2(a) to (c)]

CHAPTER 4 COMPETITIVE SEALED BIDDING

4.01 Invitation for Bids

4.01.1 An Invitation for Bids shall be issued for each Public Project. Public ~~Notice-advertisement~~ of the Invitation for Bids shall be given at least fourteen calendar days prior to the date set for the opening of Bids. The advertisement and approved plans and specifications for federally funded projects shall be available to Bidders a minimum of three weeks prior to opening of Bids except that shorter periods may be approved by the FHWA administrator, or their delegate, in special

cases when justified. Invitations for Bids for projects which are both exclusively state-funded and advertised as a CSBV Bid shall be advertised for a period of no less than five weeks.

4.01.2 Public ~~Notice advertisement~~ of the Invitation for Bids may include ~~publication in a newspaper of general circulation or other disclosed sources, including~~ but not limited to state internet or web-based services. Such ~~Notice advertisement~~ shall include, as a minimum, the following information:

- (a) Project number.
- (b) Project Description.
- (c) Project location.
- (d) Time, date, place and manner of Bid opening.
- (e) Time in which Work must be completed.
- (f) Approximate quantities of principal items.
- (g) Time and place where plans and specifications may be procured.
- (h) Place where Bids will be received.
- (i) Method by which Bids may be submitted.
- (j) Other information considered by CDOT to be significant with respect to such public ~~advertisement~~ ~~Notice~~.

4.02 Revisions to Invitation for Bids

4.02.1 When a revision to the Invitation for Bids or to the plans or specifications is made after the date such Invitation for Bids and plans and specifications are made available to the public, ~~CDOT shall post a revision letter on the CDOT Business Center web portal at <https://www.codot.gov/business/bidding>, such revision shall be forwarded to each Plan Holder by Notice, as defined in the rules,~~ in sufficient time to be ~~accessed, received~~ at least one day prior to the date set for Bid opening.

4.02.2 In the event there is not sufficient time to notify Prospective Bidders of such revision, one of the following procedures shall be followed:

- (a) The Invitation for Bids shall be canceled and reissued at a later date; or
- (b) The date for opening of Bids shall be deferred so that the revision may be made ~~and the new date of opening shall be available to the public, and Notice of such revision given to Prospective Bidders as provided in this section.~~

4.03 Cancellation of Invitation for Bids

4.03.1 An Invitation for Bids may be canceled or deferred when it is in the best interests of CDOT. The reasons for any cancellation, deferment or rejection shall be made part of the Contract file. When an Invitation for Bids is canceled or deferred, provided there is sufficient time, ~~the Notice of such cancellation or deferment shall be published in a newspaper of general circulation or on the CDOT website at <https://www.codot.gov/business/bidding>~~ at least seven calendar days prior to Bid opening and ~~an electronic written Notice update~~ of such cancellation or deferment shall be

~~provided forwarded~~ to each Plan Holder, in sufficient time to be received at least one day prior to the original date set for Bid opening. When there is not sufficient time available to provide the aforementioned published ~~update and electronic update~~ written Notices, an attempt shall be made to notify each Prospective Bidder by phone of the cancellation or deferment.

- 4.03.2 If for any reason CDOT is unable to receive Electronic Bids via the Bid submitting software within a two hour time frame prior to the scheduled opening, all Bids will be deferred to a later opening. CDOT shall confirm that the Bid submitting software was inoperable.
- 4.03.3 CDOT shall not be held liable if ~~the Notice of~~ cancellation or deferment is not received by any Plan Holder prior to the original date set for Bid opening.

4.04 Bid Proposal

For each Public Project CDOT shall prepare complete plans and specifications describing, in detail, the Work to be done, and listing the estimated quantities of Work to be used as the basis for competitive sealed Bidding. Each prequalified Contractor requesting a Bid Proposal shall be given a Bid Proposal, including a schedule of the estimated quantities of Work to be done with space for insertion of unit prices and extensions. CDOT shall maintain a record of each Plan Holder together with its electronic and physical mailing address.

4.05 Preparation of Bid

- 4.05.1 The Contractor shall submit its Bid according to the provisions of the Invitation for Bids and the Bid Proposal. It shall specify a unit price in dollars and cents in figures for each Pay Item for which a quantity is given. It shall also show the mathematical products of the respective unit prices and the estimated quantities in the column provided for that purpose, together with the total amount of the Bid obtained by adding such mathematical products. ~~All written entries shall be in ink.~~ When the Bid contains an alternative Pay Item, which has been authorized by CDOT, the choice of that item by the Contractor shall be indicated in accordance with the specifications for that particular item. No further choices will be permitted.

[No changes from Rule 4.05.2 through 4.05.5]

4.06 Delivery of Bids

- 4.06.1 All Bids shall be submitted ~~filed at the place and~~ in the electronic or written manner specified in the Invitation for Bids and prior to the time specified therein. ~~Bids received after the time for opening of Bids will be returned to the Contractor unopened.~~
- (a) Written Bids. Each Bid shall be submitted separately in a sealed envelope to CDOT by ~~mail, personal delivery, or messenger service at the location~~ the method indicated in the Invitation for Bids. Bids submitted in a manner that results in CDOT receiving an incomplete Bid, a Bid without original signature(s), or a Bid not in the approved form, including submission by telephone, ~~facsimile machine, telegram or mailgram,~~ will not be accepted or considered but will be rejected. ~~For projects that include more than seven Bid items, the Bidder will be required to submit a CD containing the Bid Proposal information, or a \$25.00 data entry fee check which must be included with the Bid. The envelope shall be clearly labeled to identify it as a Bid for the subject Public Project. The sealed Bid shall be addressed to CDOT at the address and in care of the official in whose office the Bids are to be received.~~

- (b) Electronic Bids. Contractors submitting Electronic Bids are not required to deliver a sealed written Bid to CDOT. Electronic Bids submitted after the time for opening of Bids will not be accepted. CDOT will not be responsible for failures in submission of Electronic Bids for any reason.

[No changes from Rule 4.07 through 4.08]

4.09 Recording of Bids

- (a) ~~Written Bids. When a Bid is received by CDOT, the person receiving the Bid shall stamp note the date received on the sealed envelope, write the time received, and initial it. That person shall then enter the Contractors' names, in the order received, on a Bid abstract sheet for the Public Project indicated on the envelope. If the Bid has been delivered in person and there is no project indicated on the envelope, the persons receiving the Bid shall require the person submitting the Bid to write the project number on the envelope. If the Bid has been received in the mail and there is no project indicated on the envelope, an attempt shall be made to contact the Contractor submitting the Bid in order to determine for which project the Bid is intended. If the Contractor is contacted, the project number shall be written on the envelope. If this cannot be done, an authorized employee of CDOT shall open the sealed envelope in the presence of at least one witness, determine the project from the Bid in the envelope without looking at the schedule of Bid prices, reseal the envelope and write the project number on the envelope.~~
- (ab) Electronic Bids. Electronic Bid software will record Electronic Bids with an electronic time stamp when submitted for each project.

[No changes Rule 4.10 through 4.11.2]

4.12 Consideration of Bids

- 4.12.1 After the Bids are opened, the Bids will be reviewed to determine if the Low Apparent Bidder's total Bid is no more than 10% over the Department's project budget. All Bids and read, they will be compared on the basis of the summation of the mathematical products of the estimated quantities shown in the Bid schedule and the unit Bid prices and any adjustments indicated by the specifications or, pursuant to Section 4.13 in the case of exclusively state funded projects that are advertised as CSBV projects. The results of such comparisons will be made available to the public no later than the date of Award of the contract.
 - (a) In the event of a discrepancy between unit Bid price and the mathematical products of the unit Bid price and the estimated quantities in the Bid schedule, the unit Bid price shall govern.
 - ~~(b) In the event of a discrepancy between the written Bid and the electronic files on the data disk, the written copy shall govern.~~
 - ~~(c) In the event that a single Contractor submits both a written Bid and an Electronic Bid for the same project for purposes of training its employees, the written Bid will govern and the Electronic Bid will not be considered for Bidding purposes.~~
 - (db) In the event of Low Tie Bids, a drawing shall be conducted to determine the Low Apparent Bidder. ~~A witness from each of the tied Bidders shall have the opportunity to view the drawing and t~~The result for the drawing shall be certified on the Bid tabulation.
 - ~~(c) In the event the Low Apparent Bidder is more than 10% over the Department's project budget, the Bid amount shall not be published on the date of the Bid opening. The Low Apparent Bidder shall be disclosed on CDOT's website at~~

<https://www.codot.gov/business/bidding>, but the bid shall only be disclosed upon verification by the Department that funds are available to award the project.

4.13 CSBV Bid Evaluation Factors

4.13.1 CSBV Bid projects shall be Awarded to the Contractor whose offer is technically acceptable to CDOT and offers the CSBV to the State as determined by the total overall score from the evaluation criteria specified below:

(a) CDOT shall use a technical rating scale as follows:

Technical Rating Scale		
Numeric Rating	Adjective	Description
1	Unacceptable	Fails to meet minimum requirements; major deficiencies which are not correctable.
2	Poor	Fails to meet requirements, significant deficiencies that may be correctable.
3	Acceptable	Meets requirements; only minor deficiencies which can be clarified.
4	Good	Meets requirements and exceeds some requirements; no deficiencies.
5	Excellent	Exceeds most, if not all requirements; no deficiencies.

For example, if a factor has a point evaluation of 0 to 20 points, and using the appropriate Rating Scale in Section 4.13.1 CDOT evaluates as "good" the part of the Bid Proposal applicable to the factor, the score for the factor is 16 (4/5 of 20).

- (b) CDOT shall analyze CSBV Bids based on staffing, management, quality management, design, price criteria and other factors detailed in the Invitation to Bid and shall calculate a total score from a technical rating of these factors.
- (c) The price evaluation shall be objective. The Contractor with the lowest price shall receive the maximum price points. All other Bid Proposals shall receive a proportionately lower total score.
- (d) The following formula shall be used to determine each Contractor's evaluated score:

Total Score Scale for CSBV	
Design	To be specified in the bid advertisement
Staffing/Management/Quality Management	To be specified in the bid advertisement.
Price	To be specified in the bid advertisement.
Evaluated Price Score	100

- (e) The Contractor with the highest total score shall be ~~provided written Notice~~ notified they are the Low Apparent Bidder within a reasonably prompt time of the Bid opening.

4.14 Mistakes in Bids

4.14.1 Mistakes Discovered Before Opening

A Contractor may correct any mistakes discovered before Bid opening by withdrawing and correcting the Bid as provided in Section 4.07.

4.14.2 Mistakes Discovered After Opening ~~But~~ Before Award

- (a) When it appears to CDOT from a review of the Bid that a mistake has been made, the Contractor will be requested to confirm the Bid. Situations in which confirmation will be requested include obvious, apparent errors on the face of the Bid or a Bid unreasonably lower than the other Bids submitted. If the Contractor alleges mistake, the Bid may be corrected or withdrawn if conditions set forth in this subsection are met.
- (b) If the mistake is attributable to an error in judgment, then the Bid may not be corrected or withdrawn.
- (c) If the mistake is inadvertently made and not attributable to an error in judgment, then Bid correction or withdrawal may be permitted at the discretion of CDOT subject to the conditions provided in this subsection, but only to the extent it is not contrary to the interest of CDOT, or to the treatment of others, or to the integrity of the competitive Bidding process.
- (d) A Contractor may correct inadvertent mistakes discovered after Bid opening but before Award, or may withdraw a Bid after Bid opening but before Award, only as provided in the following three situations:

- (1) Minor Informalities. CDOT may waive Minor Informalities or require the Contractor to correct them depending on which is in the best interest of CDOT. Minor Informalities in the written or Electronic Bid include, but are not limited to, the failure of the Contractor to:
 - (a) Sign all forms included in the Bid Proposal, except the affidavit relative to collusion, signature of which may not be waived.
 - (b) Acknowledge receipt of a revision to the Invitation for Bids, but only if:
 1. It is clear from the Bid that the Contractor received the revision and intended to be bound by its terms: or
 2. The revision involved had a negligible effect on price, quantity, quality, or delivery.

~~(c) Submit the \$25.00 data entry fee, a CD, or data disk.~~

- (2) Mistakes Where Intended Correct Bid is Evident

If the mistake and the intended correct Bid are clearly evident on the face of the Bid, the submitted Bid shall be corrected to the intended correct Bid and may not

be withdrawn so long as the Bid both corrected and intended is the lowest received. Examples of mistakes that are evident on the face of the Bid are typographical errors, errors in extending unit prices, transposition errors and arithmetical errors.

(3) Mistakes Where Intended Correct Bid Is Not Evident

A Low Apparent Bidder may be permitted to withdraw a Bid if:

- (a) A mistake is clearly evident on the face of the Bid, and the intended correct Bid is not similarly evident: or
- (b) The Contractor submits proof of evidentiary value which clearly and convincingly demonstrates that a material mistake of a clerical, mathematical, or similar non-judgmental nature was inadvertent and not intentional, that it was made in good faith, and that CDOT has not relied to its detriment on the mistaken Bid.

[No changes from Rule 4.14.3 through 4.15]

4.16 Determination of Non-responsibility

4.16.1 Prior to Award of the Contract, CDOT shall review the Low Apparent Bidder's past performance, Performance Capability Statement, and Bid to determine responsibility. Reasons for Determination of Non-responsibility may include but are not limited to:

- (a) The Low Apparent Bidder has submitted a Bid on a general type of project for which the Contractor and Subcontractors cannot establish a demonstrated performance capability at the time of Prequalification; or
- (b) The Low Apparent Bidder has failed or is failing to perform on any construction Contract subsequent to the Prequalification action; or
- (c) The fiscal or workmanship capability of the Low Apparent Bidder has significantly decreased from that set forth in its Prequalification application and supplements; or
- (d) The review of the Bid by CDOT identifies any concern relative to the performance capability of the Low Apparent Bidder; or
- (e) If the Contractor submitting the Bid has been sent a Notice of intent to revoke Prequalification under Chapter Two of the rules; or
- (f) If the Contractor submitting the Bid has been sent a Notice of intent to find the Contractor in default on a CDOT Contract; or
- (g) If the Contractor submitting the Bid has been sent a Notice of intent to debar or of Suspension under Chapter Three of the rules; or
- (h) If CDOT determines that the Contractor's good faith efforts to comply with DBE requirements were unsatisfactory; ~~or~~
- (i) If CDOT determines that the Contractor's requested waiver of Section 8-17-101, C.R.S., is insufficient to make a determination whether a waiver is warranted.

[No changes from Rule 4.16.2 through 4.19]

4.20 Return of Bid Proposal Guarantee

As indicated in the Invitation for Bids, each Bid must be accompanied by a Bid Proposal Guarantee. All Bid Proposal Guarantees consisting of certified checks or cashier checks will be treated as follows:

- (a) For Contractors submitting the second and third lowest Bids, the Bid Proposal Guarantee will be held until the Contract is signed by the Low Apparent Bidder, at which time the Bid Proposal Guarantees of the second and third low Bidders will be returned. The Bid Proposal Guarantee will not be returned to the Low Apparent Bidder until satisfactory Contract Bonds have been furnished and the Contract has been signed by the Low Apparent Bidder.
- (b) For all other Contractor's submitting Bids, the Bid Proposal Guarantee will be returned promptly after the opening and verification of Bids.
- (c) For Contractor's Bids rejected by CDOT, the Bid Proposal Guarantee will be returned promptly after formal notification of the rejection.
- (d) For Contractor's Bids withdrawn under Section 4.14. ~~12(b), C.R.S.~~, the Bid Proposal Guarantee will be returned promptly after withdrawal of the Bid.

[No changes to Rule 4.21]

4.22 Execution and Approval of Contract

The Contract must be executed on behalf of the Low Responsible and Responsive Bidder ~~in ink~~ by an Individual with legal authority to bind the Low Responsible and Responsive Bidder. Such an Individual includes the owner of a sole proprietorship, one or more partner members of a partnership, one or more authorized members or officers of each firm representing a joint venture, the president or vice-president of a corporation, or an authorized agent of the Contractor. Anyone signing as agent for the Low Responsible and Responsive Bidder must file with CDOT written evidence of such authority. The Contract shall be returned, together with the Contract Bonds, within fifteen calendar days after the date of Award unless otherwise specified by CDOT. If the Contract is not executed by CDOT within thirty calendar days from date of Award, the Low Responsible and Responsive Bidder shall have the right to withdraw its Bid without penalty, provided the Contractor returned the executed Contract and bond within fifteen calendar days from the date of the Award. No Contract shall be considered effective until it has been fully executed by all of the parties thereto.

[No changes to Rule 4.23]

4.24 Notice to Proceed

After the Contract has been fully executed, the Contractor shall be given a written "Notice to ~~p~~Proceed" which will instruct it when Work may be commenced and when the Contract time will commence.

4.25 Protests

4.25.1 Protests will be handled as follows:

- 4.25.1.1 Any actual or Prospective Bidder, offeror or Contractor who is aggrieved in connection with the solicitation or Award of a Contract may protest to the CDOT Chief Engineer or a designee. The protest shall be submitted in writing within seven working days after such aggrieved Person knows or should have known of the facts giving rise thereto.

4.25.1.2 The CDOT Chief Engineer or designee shall have the authority to settle and resolve a protest of an aggrieved Bidder, offeror, or Contractor, actual or prospective, concerning the solicitation or Award of a Contract. A written decision regarding the protest shall be rendered within seven working days after the protest is filed. The decision shall be based on and limited to a review of those issues raised by the aggrieved Bidder, offeror, or Contractor and shall set forth each factor taken into account in reaching the decision. The decision shall constitute the final agency action of CDOT regarding the protest.

4.25.1.3 Entitlement to costs: When a protest is sustained by the CDOT Chief Engineer or designee or upon administrative or judicial review and the protesting Bidder or offeror should have been Awarded the Contract under the solicitation but was not, the protestor shall be entitled to the reasonable costs incurred in connection with the solicitation, including Bid preparation costs. No other costs or fees shall be permitted or Awarded, and reasonable costs and fees shall not include attorney's fees.

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4.26 Declaratory Order

~~4.26.1 CDOT may entertain, at its sound discretion, petitions for declaratory orders pursuant to § 24-4-105(11), C.R.S.~~

~~**[No changes to Chapter 5 and Chapter 6]**~~

CHAPTER 7 SUPPLEMENTAL DISCLOSURES AND RECORD RETENTION FOR CDOT'S PUBLIC PROJECTS THAT ARE NON-FEDERALLY FUNDED

~~**[No changes from Rule 7.01 through 7.03]**~~

7.04 CDOT shall post on the CDOT website any ~~report~~Notice received by CDOT from Contractors who either:

- (a) Report that they anticipate their Work or any Subcontractor's Work will be performed outside of the United States or Colorado; or
- (b) Report that they have learned, after the Award of the Contract, the Work under the Contract will be performed outside of the United States or Colorado.

7.05 CDOT shall summarize Reports posted pursuant to Section 7.04 of the rules in an annual report to the Colorado General Assembly by January 1 each year.

CHAPTER 8 INCORPORATION BY REFERENCE

8.01 The Rules are intended to be consistent with and not be a replacement for the federal requirements set forth Part 26 of Title 49 of the Code of Federal Regulations in effect as of March 2018, which are hereby incorporated into these Rules by reference, and do not include any later amendments.

8.02 All referenced laws and regulations shall be available for copying for a reasonable charge or for public inspection during regular business hours from the Office of Policy and Government Relations, Colorado Department of Transportation, 2829 W. Howard Pl., Denver, Colorado 80204.

8.03 Copies of the referenced Code of Federal Regulations may be obtained from the following address:

U.S. Government Publishing Office
732 North Capitol Street, N.W.
Washington, DC 20401
(202) 512-1800
