



REQUEST FOR PROPOSAL #HAA RFP 14-290 BH
SUBMISSION DEADLINE: July 31, 2014, 2:00 PM

Proposals submitted to: Colorado Department of Transportation's (CDOT) Purchasing; 4201 E. Arkansas, Room 200; Denver, CO 80222

NOTE: Proposers delivering their proposal in person must check into the CDOT's Headquarters Building before being allowed to proceed to the Purchasing Office to submit proposal. Proposers should allow approximately 10 minutes in advance of proposal deadline for the check in procedure. CDOT reserves the right to reject any and all proposals or parts thereof, and to waive informalities or irregularities. By submission of a proposal, proposer agrees to the State of Colorado terms and conditions.

Public Private Partnership/TIFIA Counsel (P3) I-70 East Project

The Colorado High Performance Transportation Enterprise (HPTE), a division of the Colorado Department of Transportation (CDOT), along with the CDOT Office of Major Project Development (OMPD) and the Bridge Enterprise (BE) requests proposals from qualified firms interested in providing public private partnership (P3) counsel services for the Interstate 70 East Project (Project) for the next five (5) years. By selecting a qualified firm, the HPTE is not guaranteeing a specific amount of work and specific tasks will be assigned by the HPTE through Task Orders.

Proposer must be a subscriber to the State of Colorado's BIDS system at the time of the RFP/bid opening for their bid to be considered.

Please read this Request for Proposal (RFP) thoroughly before responding. Telegraphic or electronic bids (Fax, Western Union, Telexes, etc.) cannot be accepted directly in CDOT's Purchasing Office as a sealed bid. Illegible responses may be rejected as non-responsive.

The Colorado Department of Transportation (CDOT) reserves the right to reject any and all proposals or parts thereof, and to waive informalities or irregularities. By submission of a proposal, proposer agrees to the State of Colorado terms and conditions.

By submission of a proposal, bid and/or quote, proposer agrees as follows:

- Except as replaced, modified, or supplemented by CDOT for this solicitation, all items in the State of Colorado Solicitation Instructions/Terms and Conditions are considered part of, and are incorporated by reference into this document.
- Proposer testifies that bid prices were arrived at independently and there was no collusion involved.
- The Bidder/Proposer/Vendor guarantees to the State that they understand and agree to the terms and conditions of this RFP and that they will not default from performance by virtue of a mistake or misunderstanding. Proposers shall seek clarification from CDOT of any specifications, terms and/or conditions that they determine to be unclear. The failure of a proposer to seek clarification may be deemed a waiver of any such clarification.
- If applicable, low tie bids/proposals shall be decided in accordance with the provision of C.R.S. Section 24-103-202.5, as it currently exists or is hereafter amended, which gives a preference to resident bidders. Any bidder who wishes to be considered a "resident bidder" for purposes of the tie bid procedure provided in C.R.S. Section 24-103-202.5 shall include with their bid, proof that they meet the definition of resident bidder as set forth in either C.R.S. Section 24-103-101(6)(a) or C.R.S. Section 24-103-101(6)(b).
- Pursuant to CRS 24-30-202.4 (as amended), the state controller may withhold debts owed to state agencies under the vendor offset intercept system for: (a) unpaid child support debt or child support arrearages; (b) unpaid balance of tax, accrued interest, or other charges specified in Article 22, Title 39, CRS; (c) unpaid loans due to the student loan division of the Colorado Division of Higher Education; (d) owed amounts required to be paid to the unemployment compensation fund; and (e) other unpaid debts owing to the state or any agency thereof, the amount of which is found to be owing as a result of final agency determination or reduced to judgment as certified by the controller.
- *This award shall be available for use by CDOT, other State Agencies and Institutions (with approval from State Purchasing), Local Governments and Political sub-divisions in the state of Colorado.*

All proposals must be submitted on this form and signed in ink by an authorized officer or agent of the firm.

Proposer Name _____	Signature _____
Proposer Address _____	Name (Print) _____
City, State, Zip _____	Title _____ Date _____
Proposer Phone _____ Fax _____	F.E.I.N./SSN _____

NOTE: Results will be posted on the BIDS System and/or sent via postal system but will not be discussed by phone except as noted in the RFP document.

**REQUEST FOR PROPOSAL
THE COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE**

**SECTION 1
ADMINISTRATIVE INFORMATION**

1.1 ISSUING OFFICE:

This request for proposal is issued for the State of Colorado and the HPTE, by the Colorado Department of Transportation, Center for Procurement and Contract Services. All contacts regarding this RFP is to be directed to:

Mr. Brian Hancock, Purchasing Agent
Colorado Department of Transportation
Center for Procurement and Contract Services
4201 East Arkansas Avenue, Room 200
Denver, CO 80222
Brian.Hancock@state.co.us
(303) 757-9131 FAX (303) 757-9669

1.2 PURPOSE:

The purpose of this Request for Proposal (RFP) is to obtain competitive bid proposals from qualified firms interested in providing Public Private Partnership/TIFIA Counsel (P3) I-70 East Project to the State of Colorado.

This RFP provides prospective proposers with sufficient information to enable them to prepare and submit proposals for consideration by CDOT to satisfy the needs as outlined in this RFP's Statement of Work.

1.3 SCHEDULE OF ACTIVITIES:

SCHEDULE OF ACTIVITIES:	DATE:	TIME (MST)
1. RFP published on BIDS	June 30, 2014	N/A
2. Prospective proposer's inquiry deadline (No questions accepted after this date)	July 11, 2014	4:00 P.M.
3. Response to proposer questions	July 18, 2014	4:00 P.M.
4. Proposal submission deadline	July 31, 2014	2:00 P.M.
5. Top consultants selected and notified of interview (<u>estimate</u>), if appropriate	August 18, 2014	TBD
6. Oral interviews with a short list of consultants (<u>estimate</u>), if required – week of	August 25, 2014	TBD
7. Firms selected (<u>estimate</u>) – Week of	September 2, 2014	N/A
8. <i>Desired</i> date of executed contract	October 2, 2014	N/A

1.4 PROPOSAL SUBMISSION:

All proposals must be received by the CDOT's Center for Procurement Services, 4201 East Arkansas Avenue, Room 200 Denver, CO 80222, no later than the date and time shown in the Schedule of Activities, Deadline for receipt of proposals. Each proposal shall consist of **one original (identified as such) and five (5) copies** of the proposer's complete proposal. It is the responsibility of the proposer to ensure that their proposal is received in the Purchasing Office prior to the deadline. Proposers mailing

their documents should allow ample mail delivery time to ensure timely receipt of their proposals. PROPOSALS RECEIVED AFTER THE ABOVE DATE AND TIME WILL NOT BE CONSIDERED.

Proposals must be clearly identified as a proposal for the RFP # **HAA RFP 14-290 BH**, and shall show such information on the **outside** of the proposal packet. Proposals will not be accepted by facsimile transmittal.

Proposers are advised that CDOT *desires* that proposals prepared in response to this RFP be submitted on recycled paper. While the appearance of proposals is important, and professionalism in proposal presentation should not be neglected, the use of non-recyclable or non-recycled glossy materials is discouraged. In addition, it is requested that proposals be in flat bound form to facilitate filing. **Please do not submit proposals in loose-leaf binders.**

1.5 INQUIRIES:

Prospective proposers may make written inquiries concerning this RFP to obtain clarification of requirements. No inquiries will be accepted after the date and time specified in the Schedule of Activities, Prospective proposer's inquiry deadline. Questions must be submitted in writing via e-mail to:

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Center for Procurement and Contract Services
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Denver, CO 80222
Brian.Hancock@state.co.us
(303) 757-9131 FAX (303) 757-9669

Subject line of the e-mail shall clearly state "**Questions for RFP 14-290 BH**" to facilitate handling and distribution. Inquiries sent by fax will be accepted (fax number (303) 757-9669). An addendum responding to questions submitted regarding the RFP will be published on BIDS.

1.6 AMENDMENTS TO RFP:

In the event it should be necessary to revise any portion of this RFP, addenda will be published on the State BIDS system. It is the proposer's responsibility to monitor the BIDS System at the Internet site www.bidscolorado.com, and to acknowledge and/or comply with all addenda to this RFP.

1.7 RESPONSE MATERIAL OWNERSHIP:

All material submitted regarding this RFP becomes the property of the State of Colorado. Proposals may be reviewed by any person after the "Notice of Intent to Make an Award" letter has been issued, subject to the terms of Section 24-72-201 et. seq., C.R.S., as amended, Public (open) Records.

1.8 PROPRIETARY INFORMATION:

All material submitted in response to this RFP will become public record and open to inspection after Intent to Award notice is issued. Any material requested to be treated as proprietary or confidential must be clearly identified and easily separable from the rest of the proposal. Such request must include justification for the request. The request will be reviewed and either approved or denied by the CDOT Purchasing Director. If denied, the proposer will have the opportunity to withdraw its entire proposal, or to remove the proprietary restrictions. **NEITHER COST NOR PRICING INFORMATION NOR A TOTAL PROPOSAL WILL BE CONSIDERED PROPRIETARY.** Refer to Section 1.31 of this RFP for submission of Confidential/Proprietary information.

1.9 REJECTION OF PROPOSALS:

CDOT reserves the right to reject any or all proposals received in response to this RFP, or to cancel this RFP if it is in the best interest of the State to do so. Failure to furnish all information or to follow the proposal format requested in this RFP may disqualify the proposal. Any exceptions to the Statement of Work must be clearly identified in the proposal. Inclusion of exceptions does not guarantee acceptance by the State of such variation, and may instead lead to rejection of the proposal as non-responsive. (See further Section 1.12 of this RFP.)

1.10 INCURRING COSTS:

CDOT is not liable for any costs incurred by proposers prior to issuance of a legally executed contract or procurement document. All costs to prepare and submit a response to this solicitation shall be borne solely by the proposer.

1.11 EVALUATION CRITERIA:

An evaluation will be made by a committee selected to evaluate the merits of all proposals received according to the evaluation criteria defined herein (Section 3). The recommendations of this group will be forwarded to the Purchasing Director for approval.

- 1.11.1 Failure of the proposer to provide in his/her proposal any information requested in this RFP may result in disqualification of the proposal. It is the sole responsibility of the proposing individual or firm to ensure all information requested in the RFP is included.
- 1.11.2 During the evaluation process, discussions/interviews may be scheduled with proposers who submit proposals determined to be reasonably competitive for selection for award. It will be upon the recommendation of the evaluation committee if discussions/interviews for clarification are needed.
- 1.11.3 The sole objective of the evaluation committee will be to recommend the proposer(s) whose proposal(s) is/are most responsive to CDOT's needs within the available resources. The specifications within this RFP represent the minimum performance necessary for response.
- 1.11.4 Specific evaluation criteria are outlined in Section 3 of this RFP, entitled Evaluation Criteria.

1.12 ACCEPTANCE OF RFP TERMS:

A proposal submitted in response to the RFP shall constitute a binding offer. Acknowledgment of this condition shall be indicated by the autographic signature of the proposer, or an officer of the proposer, legally authorized to execute contractual obligations. A submission in response to the RFP acknowledges acceptance by the proposer of all terms and conditions including compensation, as set forth herein. Any exceptions and/or variations to the terms and conditions presented in the RFP may be submitted as part of the proposal, with each such exception and/or variation identified clearly and thoroughly. Failure to identify any exceptions and/or variations in the submitted proposal shall be deemed a waiver of any rights to subsequently modify the terms of performance, except as outlined or specified in the RFP, and may result in cancellation of the award and such vendor may be removed from future solicitations. Submission of a proposal containing exceptions and/or variations does not guarantee acceptance of such variations by CDOT, and may instead lead to the rejection of the proposal as non-responsive if the requested variations are determined to be extensive or unreasonable, by the evaluation committee assigned to this RFP solicitation.

1.13 PROVISION FOR REQUIRED INSURANCE:

Award of a contract will be contingent upon the successful proposer submitting certificates of insurance in accordance with the provisions of the sample contract, **Attachment B**.

1.14 CONSULTANT CERTIFICATION:

Proposers must submit a signed Consultant Certification Form, CDOT Form #637, with their proposal, **Attachment A** to this RFP.

1.15 CONFLICT OF INTEREST:

By submission of a proposal, proposer agrees that, at the time of contracting, the proposer has no interest, direct or indirect, that would conflict in any manner or degree with the performance of the required services. The proposer shall further covenant that, in the performance of the contract, it shall not employ any person having any such known interest. Any firm affiliated or related to an employee of CDOT shall be ineligible to submit a proposal for the required services.

1.16 REQUEST FOR PROPOSAL:

The Request for Proposal Form - the cover page for this RFP - must be signed, in ink, by a person authorized to bind the proposer, and returned with the proposal.

1.17 AUDIT OF THE SELECTED PROPOSER:

Prior to final contract award, an audit may be conducted by the CDOT's External Audit Branch of the selected proposer. This audit will be for the purpose of ensuring that the selected firm is financially capable of performing the contract, that the cost information and prices quoted are reasonable, and that the selected proposer has adequate accounting practices to assure accurate tracking of contract costs.

Prior to final acceptance of the contract work, a closing audit of the proposer may be performed by the CDOT External Audit Branch. This final closeout audit will be performed upon completion of the contract to verify the accuracy of the billings and compliance with the contract provisions.

1.18 BUDGETED FUNDS:

The funds available for this solicitation are not being disclosed at this time.

1.19 INTENT TO AWARD:

After a proposer is selected, an "Intent to Award" letter will be mailed to all firms who submitted a proposal. After intent to award has been issued, interested parties may review any/all the proposals by making an appointment with:

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Center for Procurement and Contract Services
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Denver, CO 80222
Brian.Hancock@state.co.us,
(303) 757-9131 FAX (303) 757-9669

1.20 PROTESTED SOLICITATIONS AND AWARDS:

Any actual or prospective proposer or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to Bob Corman, CDOT's Purchasing Director. The protest shall be submitted in writing within seven (7) working days after such aggrieved person knows, or should have known, of the facts giving rise thereto. Protests received after the seven-working-day period shall not be considered. The written protest shall include, as a minimum, the following:

- A. The name and address of the protestor;
- B. Appropriate identification of the procurement by bid, RFP, or award number;
- C. A statement of the reasons for the protest; and
- D. Any available exhibits, evidence or documents substantiating the protest.

1.21 STANDARD CONTRACT:

CDOT has provided as **Attachment B** a Sample Contract that it expects to enter into with the successful proposer.

1.22 SELECTION OF PROPOSAL:

All proposers will be notified in writing regarding the results of the RFP evaluation. Upon review and approval of the evaluation committee's recommendation for award(s), the CDOT Procurement Office will issue a "Notice of Intent to Make an Award" letter to the apparent successful proposer(s). Provided, however, that all proposers understand that such letter, by itself, does not grant any property interest or right of any nature in the RFP work/services or to a contract for the performance of such work/services. A contract must then be completed and signed by all parties and the State Controller, before any such right exists. Therefore, the apparent successful proposer(s) that receive a "Notice of Intent to Make an Award" letter shall not rely on that letter to make commitments to third parties, and the apparent successful proposer(s) shall not take any actions(s) to prepare for or start the performance of the RFP work/services until a contract is so negotiated and executed. In addition, a contract must be completed and signed by all parties concerned on or before the date indicated in the Schedule of Activities.

1.23 AWARD OF CONTRACT:

The award will be made to that proposer(s) whose proposal conforms to the RFP, and is/are judged to be the most advantageous to the State of Colorado and CDOT, price and other factors considered, subject to negotiation and execution of an acceptable contract as described above.

1.24 It is the intent of CDOT to select a vendor within 30 days of the deadline for receipt of proposals. However, bid proposals must be firm and valid for award for at least 120 days after the deadline for receipt of proposals.

1.25 NEWS RELEASES:

News releases pertaining to this RFP shall NOT be made prior to execution of a contract, and then will be made only with the approval of CDOT.

1.26 CERTIFICATION OF INDEPENDENT PRICE DETERMINATION:

1.26.1. By submission of this proposal each proposer thereto certifies as to its own organization, that in connection with this procurement:

- (a) The prices in this proposal have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other proposer or with any competitor;
- (b) Unless otherwise required by law, the prices which have been quoted in this proposal have not been knowingly disclosed by the proposer and will not knowingly be disclosed by the proposer prior to opening, directly or indirectly to any other proposer or to any competitor; and
- (c) No attempt has been made by the proposer to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.

1.26.2 Each person signing the Invitation for Bid form of this RFP certifies that:
He/she is the person in the proposer’s organization responsible within that organization for the decision as to the prices being offered herein and that he/she has not participated, and will not participate, in any action contrary to 1.26.1 (a) through (c) above.

or

He/she is not the person in the proposer’s organization responsible within that organization for the decision as to the prices being offered herein but that he/she has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to 1.26.1 (a) through (c) above, and as their agent does hereby so certify; and he/she has not participated, and will not participate, in any action contrary to 1.26.1 (a) through (c) above.

1.26.3 A proposal will not be considered for award where 1.26.1 (a) and (c), and 1.26.2 above, have been deleted or modified. Where 1.26.1 (b) above has been deleted or modified, the proposal will not be considered for award unless the proposer furnishes with the proposal a signed statement which sets forth in detail the circumstances of the disclosure and the head of the CDOT’s Purchasing Office, or designee, determines that such disclosure was not made for the purpose of restricting competition.

1.27 TAXES

The State of Colorado, as purchaser, is exempt from all Federal taxes under Chapter 32 of the Internal Revenue Code (Registration No. 84-730123K), and from all State and Local Government Use Taxes (Ref. Colorado Revised Statutes Chapter 39-26.114[a]). Proposer is hereby notified that when materials are purchased in certain political subdivisions the seller may be required to pay sales tax even though the ultimate product or service is provided to the State of Colorado. This sales tax will not be reimbursed by the State.

1.28 FUNDS AND COMPENSATION:

The funds payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. In the event funds are not appropriated, any resulting contract will become null and void, without penalty to the State of Colorado or CDOT.

1.29 BACKGROUND, OVERVIEW, PROJECT DESCRIPTION:

Background

High Performance Transportation Enterprise

In 2009 the Colorado General Assembly enacted Senate Bill 2009-108, commonly referred to as the “FASTER” bill. A key element of that bill was the creation of the High Performance Transportation Enterprise, a Division of the Colorado Department of Transportation. The HPTE has its own board of directors (Board) and a Board-appointed director (Director). The pertinent

sections of the Colorado Statutes are CRS 43-4-806 through 810. Most notably the HPTE is charged with seeking innovative financing solutions to accelerate the completion of much needed surface transportation projects. To accomplish this charge, within certain boundaries set forth in the statute, the HPTE is authorized to impose and collect tolls, to issue revenue bonds or other forms of debt, and to enter into public private partnerships. Although the HPTE, not CDOT, has the authority to toll, any project the HPTE may deliver requires close collaboration and coordination with CDOT. To facilitate such collaboration and coordination, CDOT recently created the OMPD to work with the HPTE and to serve as the single point of contact for the HPTE as project development proceeds.

The Colorado Department of Transportation

The vision of CDOT is to enhance the quality of life and the environment of the citizens of Colorado by creating an integrated transportation system that focuses on safely moving people, goods and information and by offering convenient linkages among modal choices. It accomplishes this by relying on its core values of safety, people, respect, integrity, customer service, and excellence.

CDOT's mission is to provide the best multi-modal transportation system for State that most effectively and safely moves people, goods and information. The department endeavors to accomplish this mission through customer focus, leadership, partnership, integrated regional and statewide priorities, financial responsibilities, balanced quality of life, environment, accessible connectivity and modal choices, and social responsibility.

The Colorado Bridge Enterprise

S.B. 09-108, the FASTER bill also created the Colorado Bridge Enterprise tasked with the repair, rehabilitation, and replacement of those bridges identified as "poor" per federal guidelines and either structurally deficient or functionally obsolete. The Board of the BE consists of the members of the Transportation Commission. The BE received broad powers under this statute to allow it to pursue its mission. These include the ability to enter into an array of financial arrangements, issue revenue based (primarily license plate registration fees) debt or other forms of multiyear fiscal obligations, and contract for the services necessary to repair, replace, or rehabilitate bridges.

Overview

CDOT, HPTE and BE seek to identify a law firm qualified to provide legal advice to HPTE and its interdisciplinary team of technical, engineering and financial professionals on the application of a P3 for the Interstate 70 East Project. Counsel (P3 Counsel) will be selected based upon a number of criteria, including the respondent's demonstrated competence, experience, knowledge, qualifications, written and verbal communication skills, ability and willingness to comply with the HPTE's contracting and invoicing requirements, absence of disqualifying relationships or conflicts of interest, and reasonableness of proposed fees, among others. Selected proposer's attorneys will work with the Colorado Attorney General's Office as Special Assistant Attorney General.

The I-70 East project corridor extends through the eastern portion of the City and County of Denver. The current project limits extend (in abbreviated form) from the intersection of I-70 and I-25 east to Tower Road, a distance of approximately 11 miles. This portion of I-70 also intersects several railroad lines, I-270 and I-225. This section's most notable feature is an elevated viaduct which bisects local neighborhoods. This section of I-70 is also one of the most heavily traveled and congested highway corridors in Colorado. The corridor serves a number of critical transportation functions including interstate and intrastate travel and the main route between Downtown Denver and Denver International Airport. Additionally, this portion I-70 serves as a main access point to adjacent employment, industrial areas, entertainment venues, neighborhood and is viewed by the City as an area ripe for new development centers.

The purpose of the Project is to implement a transportation solution that improves safety, access and mobility. The need for the Project results from the following issues:

- **Increased transportation demand** – the area is experiencing rapid growth and development including new development and redevelopment with substantial residential and business activity;

- **Limited transportation capacity** – the corridor serves a number of users including commuters, tourists, regional trucking and local traffic; the demand from these users is exceeding design capacity of the corridor;
- **Safety concerns** – the corridor experiences higher than average rates of traffic collisions further worsening conditions on the corridor and can be attributed to conditions that do not meet current design standards; and
- **Transportation infrastructure deficiencies** – I-70 was originally constructed in the early 1960s and was designed to last 50 years; in particular the viaduct is structurally deficient as are several other structures on the corridor. As these are now past their anticipated lifespan and are classified as either structurally deficient or functionally obsolete and in need of replacement, rehabilitation or repair the BE is a participant in this particular project.

This RFP does not affect existing legal counsel engagements with the HPTE that have been assigned for other HPTE matters. Firms that currently have an engagement and wish to serve as P3 Counsel for this project must submit a response to this RFP.

The HPTE may also, if required by the circumstances, engage other counsel (e.g., bond counsel) through a separate procurement process for this effort.

Key Goals

1. PPP Counsel will serve as an integral part of an interdisciplinary effort, liaising with other professionals that provide technical, engineering and financial disciplines to achieve a successful:
 - i. Procurement;
 - ii. Financing;
 - iii. Design-build construction;
 - iv. Long-term operation and maintenance period (including consideration of the manner in which the HPTE and a private entity will interface in the operation of the asset); and
 - v. Handback to the State in a pre-defined condition.
2. PPP Counsel will play a key role in adapting global project finance practices and precedents to Colorado's unique context: developing a PPP contract form is acceptable under Colorado law while also working with the financial advisor to ensure that appropriation risk and contract renewal requirements do not result in a project that is not bankable or incurs excessive financial premiums. PPP Counsel will also work with the advisory team to assist the HPTE in earning the trust and confidence of the market and in undertaking a thorough, advance vetting of these issues prior to commencing procurement of the Project.
3. PPP Counsel will identify and develop all documents necessary for the procurement of a private entity from industry outreach to post close of documentation, including documents (and, if necessary, appropriate legal opinions) governing the contractual relationships between the HPTE, a concessionaire and other parties. All documents are to be clear, understandable by those who have to administer the contract, enforceable, in keeping with established domestic and international best practices, acceptable to bidders, contractors, and lenders.
4. PPP Counsel will support HPTE and the advisory team in the on-time implementation and execution of a procurement process, attracting a suitable number of qualified bidders, and conducted in a fair and transparent manner that will conclude with a binding price and technical proposals (including development of contractual documents that are finalized prior to receipt of bids).

1.30 STATEMENT OF WORK:

Example / Summary of Potential Legal Scope

(Recognizing that such work will be performed in conjunction with in-house project team and financial, technical and insurance advisors)

1) Pre-procurement Efforts

- Participate in internal, interdisciplinary HPTE fatal flaw review, diligence and preparation

- Assist in internal review, issue identification and resolution with respect to potential 30+ year DBFOM availability payment contract structure – in particular regarding appropriations and contract renewal considerations and related advanced vetting with rating agencies
- Assist in internal review, issue identification and resolution with respect to potential procurement process
- Assist in internal review, issue identification and resolution with respect to environmental and permitting processes, right of way issues, operational and interface issues, identification of baseline site conditions and other design/technical areas to ensure project is ready for procurement
- Identification and evaluation of relevant precedent transactions
- Assist staff in developing recommendations and responding to questions from agency leadership on key issues
- Identification of key challenges and formulation of important strategic commercial decisions required by HPTE, CDOT, and BE to support the procurement process
- Industry Outreach and Project Symposium
- Support of staff in conduct of project symposium;
- Support of staff in one-on-one informational meetings with potential bidders in connection with project symposium;
- Assist in developing related material
- Federal interaction support (as applicable)
- Federal Credit program (TIFIA)
- Advice with respect to Major Projects Management Plan and review
- Private Activity Bonds
- Other future federal opportunities/challenges

2) RFQ Process

- Assist in preparation of required RFQ documents , including
 - Contract structure overview (as part of RFQ or accompanying Project Information Memorandum)
 - Administrative processes and pass/fail criteria
 - Interdisciplinary efforts to develop technical-related (design, construction and maintenance), financial and financial capacity-related qualifications criteria for bidders, key subcontractors and key individuals and related pass/fail criteria
 - Evaluation and short-listing process
- Assistance in conduct of bidder forum (if applicable), in responding to questions submitted by bidders, and preparation / review amendments to RFQ and development of formal published Q&A as applicable
 - SOQ evaluation:
 - Assistance in training of evaluators and expert reviewers assistance in preparation, coordination and implementation of evaluation process including production of guidance and protocols for transaction teams in matters such as security of data, independence of evaluation and conduct of evaluation teams.
 - Legal and due diligence review of statements of qualifications
 - Identification of and development of potential cures/remedies for legal issues which arise (if any)
 - Assist in selection of shortlist and communication with shortlisted bidders
 - Assist in responding to any potential or actual protest

3) RFP Process

- Development of process for interaction with shortlisted bidders prior to issuance of final RFP
- Interaction with interdisciplinary project team regarding optimum risk allocation, bankability, contractual framework, questions of law and other key issues. This would include the production and updating of a “Term Sheet” containing key commercial terms and risk allocations applicable to the DBFOM Contract in a condensed format suitable for HPTE management review

- Preparation of draft and final versions in conjunction with interdisciplinary team
- Preparation of draft and final versions of DBFOM Contract, in conjunction with interdisciplinary team
- Review and/or provide assistance in preparation (as applicable) of draft and final versions of non-technical appendices / exhibits / to the DBFOM Contract.
- Review/editing of technical provisions / attachments to ensure: no inconsistencies with Agreement, requirements are unambiguous, obligations are clearly stated and enforceable, no unenforceable obligations are assigned to third parties, cross references are correct, Technical Provisions do not contain language on risk or cost allocation and any such provisions are, where necessary, transferred to the Agreement.
- Assistance in Federal interactions including development and negotiation of baseline TIFIA term sheet to be made available to all bidders
- Assist in development/coordination of a Private Activity Bond issuance approach to be made available to all bidders
- Assist in conducting one-on-one meetings with short-listed bidders on RFP documents, alternative concepts, etc.
- Assist in developing and coordinating responses to questions submitted by bidders, and related preparation / review amendments to RFP documents
- Advise on potential legal issues from perspectives of respondents and their lenders
- Assistance in training of evaluators and expert reviewers assistance in preparation, coordination and implementation of evaluation process including production of guidance and protocols for transaction teams in matters such as security of data, independence of evaluation and conduct of evaluation teams.

4) P3 Contract Execution and Financial Close

- Assist in final review and clarifications of all documentation required for close including concession agreement, exhibits, financing agreements, letters of credit, and organizational documents of financing pass-through entities, etc. as required/applicable
- Assist in federal interactions and support finalization of TIFIA loan
- Assist in coordination of private activity bond issuance by P3 concessionaire (as applicable), including review of offering documents on behalf of issuer.
- Preparation of legal opinions (if/as appropriate – local, ROW and bond/disclosure counsel matters may be handled via other counsel)
- Coordination and implementation of closing mechanics

5) Post-Closing Compliance and Contract Implementation

- Assist HPTE, CDOT and BE in on-going legal matter involving TIFIA and other parties associated by contract or otherwise with the Project
- Assist HPTE, CDOT and BE in providing legal support in connection with legislative requests and/or proposals
- Assist HPTE, CDOT and BE in oversight responsibilities of the Concession Agreement

Training of HPTE, CDOT and BE staff and counsel on executed DBFOM contract, including assistance with the production of non-legal guidance manuals, flowcharts etc. to support oversight and management of project.

1.31 Responsibilities

The successful proposer will respond with a single proposal to this RFP. This response will address CDOT, HPTE, and BE's requirements. CDOT, HPTE, and/or BE will enter into a single contract with the successful proposer. Depending upon the task the appropriate entity will issue task orders detailing the work to be performed within the scope of this contract. Although CDOT, HPTE, and/or BE expect to issue a number of task orders, no minimum amount of work or tasks is guaranteed as all are subject to availability of funds and subject to specific needs as they may or may not arise.

1.32 Submission of Confidential/Proprietary Information

The State neither requests nor encourages the submission of confidential/proprietary information in response to this RFP. Information submitted will be open for public inspection. However, written requests for confidentiality can be submitted to the CDOT Purchasing Director, provided that the submission must be in STRICT accordance with the following procedures. The submission of information in strict accordance with such procedures shall be the SOLE RESPONSIBILITY of the proposer.

PROCEDURE FOR SUBMISSION:

- A. A written request for confidentiality shall be submitted, by the proposer with the proposal documents.
- B. The written request will be enclosed in an envelope marked "REQUEST FOR CONFIDENTIALITY", and attached to the cover of the ORIGINAL copy of the proposer's proposal that contains the invitation for proposal page with the proposer's ORIGINAL autographic signature.
- C. The written request must state SPECIFICALLY, AND IDENTIFY BY PAGE NUMBER, what elements of the proposal are to remain confidential. The request must also IDENTIFY THE BASIS for the claim of confidentiality, OTHER than a recitation of a SPECIFIC State or Federal statute.
- D. Confidential/propriety information MUST be readily IDENTIFIED, MARKED and SEPARATED/PACKAGED from the rest of the proposal. Co-mingling of confidential/propriety information and other information is NOT acceptable.
- E. The CDOT Purchasing Director will make a written determination as to the apparent validity of any request for confidentiality. The written determination of the Purchasing Director will be sent to the proposer.
- E. Proposals that are determined to be at variance with this procedure may be declared non-responsive by the Purchasing Director, and not given further consideration.

1.33 ORAL PRESENTATION/SITE VISITS:

Proposers may be asked to make oral presentations by the evaluation committee. Such presentations and/or site visits will be at the proposer's expense and for the total evaluation committee and the Purchasing Agent.

1.34 PROPOSAL PRICES:

Estimated proposal prices/amounts are not acceptable. Best and final offers may be considered in determining the apparent successful proposer, if requested, by the evaluation committee after oral presentations.

1.35 RFP CANCELLATION:

The State reserves the right to cancel this Request for Proposal at any time, without penalty.

1.36 ASSIGNMENT AND DELEGATION:

Except for assignment of antitrust claims, neither party to any resulting contract may assign or delegate any portion of the agreement without the prior written consent of the other party.

1.37 VENUE:

The laws of the State of Colorado shall govern in connection with the formation, performance and the legal enforcement of any resulting contract. Further, Title 24, C.R.S. as amended, Article 101 through 112 and Rules adopted to implement the statutes govern this procurement.

SECTION 2.0
INFORMATION REQUIRED FROM PROPOSERS
General Proposer Response Format

- 2.1 A “proposal” is a responsive, conforming, unconditional, complete, legible and properly executed offer from a qualified, responsible party interested in providing the services called for, and solicited by, this RFP. It shall be the sole responsibility of the proposer to ensure that the proposal is in the proper form, and in CDOT’s possession at the designated location, before the scheduled time on the due date of receipt. Proposals will not be returned unless the RFP solicitation is cancelled prior to the submittal due date, in which case such proposals will be returned unopened, or opened for identification purposes only. Any proposal received AFTER the submittal due date and time will be returned unopened, or opened for identification purposes only. It is the primary proposer’s further responsibility to identify any anticipated subcontractors, and their anticipated work responsibilities.

To be considered responsive, proposers must adhere to, and include, the following when preparing their proposal (alternate proposals shall be clearly labeled as alternate and follow the same criteria):

- Reference by RFP subsections the information responding to and ***adherence to the page established limitation.***
- ***The basic response may not exceed 15 pages. One page shall equal one side of an 8 ½ X 11 inch sheet of paper, single spaced in 12-point font.*** Describe in full the subject item. The description may be in narrative or outline format, while remaining as brief and concise as possible.
- The proposer may provide additional material in appendices and refer to material contained in the appendices in the basic proposal but the basic response itself must contain the essential elements of the response as a “stand alone” document.
- Reference to, and attachment of, any supporting documentation assisting in the description of, or contribution to, any identified and addressed item. Additional materials must be referred to in the basic response proposal and Appendices appropriately labeled.
- Include an index to assist in evaluation and review and fully comply with Section 1.4 of this RFP.
- Complete and return ALL required forms provided in this RFP solicitation. Failure to do so may disqualify a proposer

2.2 BACKGROUND/APPROACH TO PROJECT

This section of the proposal, should demonstrate the proposer’s understanding of, and approach to, the described services, specifically addressing how *each element* of the Statement of Work will be accomplished using the I-70 East Project as an example.

The proposer must not simply duplicate or rephrase this RFP, but rather submit a response containing information that demonstrates a good understanding of CDOT, HPTE, and the BE needs and objectives and how the proposer will attain those needs and objectives.

The goal of the proposer in responding to this section of the RFP is to provide the CDOT, HPTE, and BE evaluation panel enough information to properly review and score in accordance with the criteria presented in Section 3.3.

A. Legal Experience of the proposing firm(s):

The proposal should list and describe all relevant work experience and qualifications, including but not limited to:

- A. Why your firm is well qualified to provide the legal services that have been described in this RFP.
 - a. Please submit the name of the lead partner, the other partners, and the associates who will be assigned to the engagement. Please include résumé and state their relevant experience with P3 financing and, in particular availability payment model procurements. (We would like to know specifically in what roles they gained their relevant experience; e.g. developer counsel, lender counsel, etc.) Please include the state or federal bar(s) to which he or she is

admitted to practice and a listing of all courts before which he or she is actively practicing. Please note that if a firm elects to change the lead partner on the Project, HPTE, CDOT, and BE will have to approve.

- b. Provide the availability and percentage of time that the individuals will be assigned to the engagement;
 - c. Provide a commitment of the lead partner, why this partner was selected as the lead and document his or her demonstrated ability to successfully conclude the engagement
- B. Recent experience in providing such legal services. In particular, describe:
- a. Your firm's relevant knowledge, including a description of your firm's expertise and experience in representing government entities on large scale public-private partnership infrastructure and other transactional matters (again, we want to know your firm's specific roles);
 - b. Your firm's experience with financing projects with TIFIA and Private Activity Bonds; and
 - c. Your firm's experience with the Colorado Taxpayer's Bill of Rights; Colorado State Statutes and Fiscal Rules—again, please be specific.
- C. Briefly describe your perspective on the key legal issues in the financing alternatives available to the HPTE;
- D. Briefly describe how your firm resolved particularly challenging legal issues in innovative financings similar to those contemplated by the Project;
- E. The steps that will be taken and procedures routinely used to ensure that any legal representation provided to HPTE will be provided in a cost effective manner;
- F. Your firm's resources and accessibility including a statement regarding the factual/legal resources available to your firm and the level of accessibility the HPTE will have to your firm's services including the name(s) of the individual(s) that would be available to provide the requested legal service in the event the primary attorney is temporarily unavailable.
- G. Please attach the biography and/or curriculum vitae of any paralegal or other employee who would bill time for any matter assigned to your firm.

B. Conflict Identification

Identify all current and former contract activity with any existing State agency or transportation authority related to this Project. Indicate when involvement occurred and length of activity, type of activity with such transportation authority, and indicate extent of involvement with such entities. See also section 1.15.

C. References

Please list three (3) relevant references, for which you have provided similar services during the last five (5) years. Include the name of the organization, contact person, phone number, e-mail address, contract number and a brief description of the services provided.

D. Fee:

Please propose the fees your firm would charge for the legal services described in the Statement of Work. You are encouraged to propose innovative fee structures. The following are examples of fee arrangements that may be considered:

- Individual hourly fees for legal services, with a not to exceed fee cap, and/or a deferred fee arrangement;
- Reduced hourly rates with a success or completion fee; and/or
- Blended or staged fees.

Please also include the expense reimbursements you require, specifically including travel, internet, copying, and telephone expenses. Also include your firm's hourly fees for legal services in the circumstance that HPTE, CDOT or BE cannot accept your alternative fee structure.

Finally, please include in your proposal the fees associated with the individual lawyers you expect to assign to the engagement and the estimated time (by percentage, if appropriate) such individuals are expected to be involved.

Any changes to staff, either before or during the term of the resulting contract, must be provided in writing, to the State *prior to* their beginning work as part of the proposer's staff assigned to this project. In addition, all cost adjustments/modifications (if any) resulting from such staff changes must be submitted for approval by the State.

2.3 MBE/WBE AND LOCAL PARTICIPATION:

The State encourages its agencies to utilize minority-owned and women-owned businesses to the greatest extent possible without sacrificing adequate competition. Proposers are reminded of the illegality of discrimination, and the provisions of Procurement Code Section 24-111-102.

In accordance with 49 CFR Parts 23 and 26 and 14 CFR Part 152, the Colorado Department of Transportation and the contractors, subcontractors, cities, counties and other local entities with whom it does business will take all necessary and reasonable steps to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and participate in contracts and subcontracts financed with state and federal funds. This policy specifically upholds the Transportation Commission's commitment to fair and equitable business practices and is supported by CDOT's DBE program.

IT IS REQUIRED THAT EACH PROPOSING FIRM HAVE A LOCAL (COLORADO) OFFICE, OR AGREE IN THE PROPOSAL TO AN ASSOCIATION FOR THIS ENGAGEMENT WITH A LOCAL FIRM ON TERMS AND OTHERWISE AS ACCEPTABLE TO HPTE, CDOT, AND THE BE.

2.4 VETERANS PREFERENCE:

Pursuant to C.R.S. 24-50-511, the State shall give consideration to proposers utilizing a preference for hiring veterans of military service *only* in the following manner:

- To break a tie between proposals following review, scoring and ranking by the evaluation committee. Such tie shall be broken by awarding the resulting contract to the proposer utilizing the greatest quantitative (numerical) preference for veterans in the hiring of its employees.

Veterans' preference will not be used as a scored criterion in the evaluation and ranking of proposals received in response to this RFP solicitation.

2.5 OTHER

1. Include a certification that the attorneys providing services are licensed to practice law in the State of Colorado or are associated (in your firm or otherwise) with attorneys licensed to practice law in the State of Colorado. Attorneys shall not engage in the unauthorized practice of law pursuant to applicable rules of professional conduct.
2. Please provide the form and amount of your firm's malpractice insurance coverage as an appendix. The Contractor named in this State Contract promises and agrees to maintain in full force and effect a Professional Liability Insurance Policy in the minimum amount of \$3,000,000.00 (Three Million Dollars and no cents) that provides coverage for work undertaken pursuant to this Contract, however nothing in this requirement shall limit any greater obligation imposed upon proposer by law for professional liability insurance.

SECTION 3 EVALUATION CRITERIA

3.1 AWARD OF BID:

This section will outline the evaluation criteria to be used by the evaluation committee in the review, rating, and selection of submitted proposals. After evaluation of the written proposals, HPTE, CDOT and BE *may* request oral presentations from top-ranked proposers. The highest ranked proposals will be given fair and equal treatment during the second (optional) phase of the evaluation. Oral presentations will not be scored separately as part of this solicitation. Oral presentations will only be used to adjust the proposal scores accordingly (per the same evaluation criteria), based upon the information discussed at the presentation. The top-ranked proposal (following conclusion of all phases of the evaluation) shall be recommended, by the evaluation committee, to enter into contract negotiations. The contract(s) will be awarded to the proposer whose proposal is deemed to be the most advantageous to the State, price and other factors considered.

3.2 EVALUATION PROCESS:

- 3.2.1 Each member of the evaluation committee will first independently evaluate the merit of proposals received in accordance with the evaluation factors defined in the RFP, followed by panel discussion and final scores ranking. The recommendations of this committee will then be forwarded by the project leader/manager, to the CDOT Procurement office for review. The HPTE Director shall have final approval.
- 3.2.2 Failure of the proposer to provide any information requested in the RFP may result in disqualification of the proposal as nonresponsive. It is the responsibility of the proposer to provide all information required by this RFP.
- 3.2.3 The sole objective of the evaluation committee will be to recommend the proposal most responsive to the State's needs. The specifications detailed in this RFP represent the minimum performance necessary for such response.
- 3.2.4 The top ranked proposal(s) (highest score(s)), following independent review and panel discussion, will be recommended either for award or, if the evaluators deem in appropriate, to make an oral presentation.
- 3.2.5 The sole objective of the evaluation committee will be to score the responses and recommend the proposer(s) whose proposal is/are most advantageous to the State of Colorado, taking into consideration all evaluation factors set forth herein. Following independent review and panel discussion, the successful proposer(s) will be the one(s) accumulating the highest number of points (of a maximum 100) at the conclusion of the final stage of the selection process and whose proposal(s) is/are deemed most advantageous to the State, and who successfully negotiates the ensuing contract.

3.3 EVALUATION CRITERIA:

The complete proposal package will include, *but not be limited to*, evaluation using the factors listed below. These factors are designed to incorporate specific evaluation of the items presented in Section 1.30 and Section 2 of this RFP.

As stated in Section 2, proposals should not simply repeat what is written in the Statement of Work, but rather evidence the proposer's understanding of the State's requirements and its ability to provide the services needed within a clearly defined and cost-effective budget. (Refer to Section 2 of this RFP).

The proposals will be evaluated using the following criteria:

1. Legal Experience of the Lead Partner: (20%)

- a. Sufficient level of experience on P3 projects that involve new or existing major transportation-related facilities. This includes:
 - i. Experience as lead counsel representing governments procuring such contracts, including a primary role in the development of the contractual, procurement documents; transaction closure, and, post closure matters;
 - ii. Experience as lead counsel on availability payment model procurements;
 - iii. Experience as lead counsel representing proposers on such projects.

2. Legal Experience of Proposing Firm (20%)

- a. Federal knowledge and experience in the areas of:
 - i. Federalization/major project requirements;
 - ii. TIFIA loans;
 - iii. Private activity bonds; and
 - iv. Public Private Partnerships for transportation projects.
- b. Strong understanding of Colorado law, TABOR (and its implications to HPTE's interaction with CDOT) credit considerations, procurement and construction.
- c. General knowledge of, and experience with, procurement, construction and environmental law.
- d. Demonstrated, first-hand knowledge of international and U.S. precedents and practices for similar projects. Demonstrated, first-hand experience of domestic precedents and practices for similar projects – including issues arising as U.S. government entities seek to adapt existing practices to implementation of similar procurements.

3. Understanding of Required Services: (20%)

- a. Understanding of the services requested.
- b. Has the capacity and organizational efficiency to deliver the services.
- c. Has a well-conceived approach to the work and the capacity and capability to successfully complete it.

4. References: (10%)

5. Fee Proposal: (20%)

- a. Information is provided as required in 2.2(D). Fee proposal must outline proposer's fees for the entire terms of the contract with CDOT, HPTE and/or BE.

6. Feasibility and Completeness: (10%)

- a. The proposal is both adequate and complete, as defined through the RFP.
- b. The proposal inspires confidence in production of a quality-required product, solicited under the RFP.

