

RULES GOVERNING CONSTRUCTION BIDDING FOR THE CENTRAL MINER ST AND SODA CREEK RD IMPROVEMENTS

CHAPTER 1 GENERAL PROVISIONS

The City of Idaho Springs, Colorado (hereinafter referred to as “City”) 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.

In order to maintain conformance with accepted industry convention and reduce opportunity for confusion, these bid rules have been adapted from the Colorado Department of Transportation’s (CDOT) bid rules. In so doing, contractors should find the bid rules familiar. Changes were only made where deviations were necessary because the project is administered by the City of Idaho Springs instead of CDOT.

Applicability

These rules apply to the City of Idaho Springs, Colorado and all Contractors that submit bids on the Central Miner St and Soda Creek Road Improvements. These rules will not apply to any other projects the City of Idaho Springs may pursue in the future. Nothing contained in the rules voids the provisions in the Invitation for Bids.

1.00 Definitions

- 1.1 Adequate Evidence: Information sufficient to support the reasonable belief that a particular act or omission has occurred.
- 1.2 Affiliates: Persons are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or, a third person controls or, has the power to control both. Indications of control include but are not limited to: interlocking management or ownership, identity of common interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the Suspension, Debarment or Voluntary Exclusion of a Person which has the same or similar management, ownership, or principal employees as the suspended, debarred, or voluntarily excluded Person.
- 1.3 Award: The acceptance by the City of Idaho Springs of a Bid.
- 1.4 Best Value: The Competitive Sealed Best Value (“CSBV”) Bid determined to provide the greatest benefit to the State of Colorado based upon the factors set forth in Section 24-92-103.5 (3), C.R.S.

- 1.5 Bid: The offer of a Contractor, on the prescribed Bid Proposal form, to perform the Work and to furnish the labor and materials in conformance with the Invitation for Bids at the prices quoted.
- 1.6 Bid Proposal: The approved form on which Bids are prepared and submitted to the City, which may be written or electronic.
- 1.7 CDOT: The Colorado Department of Transportation.
- 1.8 Civil Judgment: The disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement, stipulation, or otherwise creating a civil liability for the acts complained of in the civil action.
- 1.9 Contract: The written agreement between City 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, 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.

- 1.10 Contract Bonds: The approved forms of security, executed by the Contractor and its surety or sureties, guaranteeing complete execution of the Contract and all supplemental agreements pertaining thereto and the payment of all legal obligations pertaining to the completion of the project.
- 1.11 Contractor: Any individual, partnership, corporation, joint venture, company, firm, association, or any other legal entity contracting with, or intending to Contract with, City for performance of prescribed Work.
- 1.12 Conviction: A judgment of conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.
- 1.13 Corrective Action Plan: A written plan of action submitted by a Contractor at the request of City.
- 1.14 Debarment: Action taken by City 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.

- 1.15 Determination of Non-responsibility: A written determination by City setting forth the reasons that the Low Apparent Bidder is not eligible to be awarded the Contract on a particular project.
- 1.16 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.
- 1.17 Electronic Bid: A Bid transmitted electronically to City that complies with the requirements set forth in the Invitation for Bids.
- 1.18 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.
- 1.19 Indictment: Information or other filing by a competent authority charging a criminal offense.
- 1.20 Individual: A particular person.
- 1.21 Ineligible: Excluded from participation in Public Projects.
- 1.22 Invitation for Bids: 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.
- 1.23 Legal Proceeding: Any criminal proceeding or any civil judicial proceeding including appeals from such proceedings.
- 1.24 Letter of Guaranty: A letter from a parent company that commits to the payment and performance obligations of the subsidiary.
- 1.25 Low Apparent Bidder: The Responsive and Responsible Bid which is either the mathematically lowest Bid or the CSBV Bid.
- 1.26 Low Tie Bids: Low Bids which are identical in total Bid amount.
- 1.27 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.

- 1.28 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.
- 1.29 Materially Unbalanced Bid: A mathematically unbalanced Bid that City determines leaves reasonable doubt that Award will result in the lowest ultimate cost to City, or that Award is in the public interest.
- 1.30 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.
- 1.31 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.
- 1.32 Notice: A written communication served in person or sent by a currently accepted means of reliable delivery, which causes a record of delivery to be created, to the last known address of a Person, or its identified counsel, or its agent for service of process, or any partner, officer, director, owner, or joint venture of the person. Notice, sent by a mail service shall be considered to have been received by the addressee five days after being properly sent to the last known address.
- 1.33 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.
- 1.34 Pay Item: A specifically described unit of work for which a price is provided in the Contract; also referred to as a Contract item.
- 1.35 Performance Capability Statement: A written statement submitted by the Contractor setting forth information required by City to make its determination of Award.
- 1.36 Person: Any Individual, partnership, corporation, joint venture, company, firm, association, Contractor or other legal entity.
- 1.37 Plan Holder: Any purchaser of the plans and specifications for a particular Public Project.
- 1.38 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.

- 1.39 **Prequalification:** The process of review by City of a Contractor's fiscal and workmanship qualifications to perform Work on Public Projects through which City determines whether the Contractor will be permitted to submit Bids or to perform certain types of Work as provided in these rules.
- 1.40 **Progressive Corrective Action:** Action imposed by City 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.
- 1.41 **Project Description:** The words used in the Invitation for Bids to describe the Work to be performed.
- 1.42 **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 Contract if its Bid is accepted.
- 1.43 **Prospective Bidder:** Any Contractor who is also prequalified and who has obtained a Bid Proposal for a particular Public Project.
- 1.44 **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 where City 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.
- 1.46 **Respondent:** A person against whom a Debarment or Suspension action has been initiated.
- 1.47 **Revocation:** A process through which City terminates a Contractor's Prequalification status and ability to submit Bids to City on Public Projects.
- 1.48 **Special Prequalification:** The process of review by City 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 City determines whether the Contractor will be permitted to submit a Bid on the project set forth in the Invitation.
- 1.49 **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.

- 1.50 Suspension: The process through which City 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.
- 1.51 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.
- 1.52 Voluntary Exclusion: A status of nonparticipation in the performance of Public Projects assumed by a person pursuant to the terms of a settlement with City.
- 1.53 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

2.1 Prequalification Requirement

- 2.1.1 Prospective bidders are required to be prequalified in good standing, in at least the \$5-20 million level, with the CDOT Contracts and Market Analysis Branch, 4201 E. Arkansas Avenue, Denver, CO 80222, at the time of submitting a bid. By submitting a bid, the contractor certifies that they are prequalified with CDOT in good standing and can meet all other requirements listed in this document.

2.2 Section deleted

2.3 Prequalification Procedure

- 2.3.1 All contractors submitting a bid for this project shall be prequalified with CDOT as specified in Section 2.1 of this document. By submitting a bid, the contractor certifies that they are prequalified in good standing with CDOT.
- 2.3.2 In order to minimize expenditure of resources for both the contractors and the City, a review and verification that contractors meet the requirements of Section 2.1 will not be conducted prior to submitting bids. Contractors certify by submitting a bid, that they meet

the requirements of Section 2.1. In order to verify that assertion, the City will review submittals of the Low Apparent Bidder substantiating that the bidder is prequalified in good standing with CDOT in at least the \$5-20 million level. A condition of award is verification that the Low Apparent Bidder meets this requirement and is also in good standing with the Colorado Secretary of State to do business in Colorado, as required by CDOT's prequalification requirements. If the Low Apparent Bidder's certifications cannot be verified, that contractor's bid shall be rejected and the City will repeat this process with the next lowest bidder, until a responsible and responsive bidder meeting the supplemental prequalification requirements is verified.

2.4 Section deleted

2.5 Section deleted

2.6 Continuing Prequalification Requirements

2.6.1 A Contractor intending to submit a bids shall, in accordance with the requirements of Section 2.1 through 2.4, prequalify at least once a year or as requested by CDOT Contracts and Market Analysis Branch Manager. Prequalification status may also be reviewed by the City or CDOT at anytime, when requested by the Contractor or at City discretion.

2.6.2 Contractors must notify the City 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.

2.7 Summary Reduction, Suspension, and Revocation of Prequalification

2.7.1 In addition to termination of Prequalification as part of any Suspension or Debarment action under Chapter Three of CDOT's bid rules, the City may reduce, summarily suspend, or revoke Prequalification pursuant to this chapter if the City 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 the City, 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;
- (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;

Reduction, Suspension, and/or Revocation of Prequalification shall in no way affect the obligation of a Respondent to the City to complete Work already under contract. The City reserves the right to declare a Respondent in default on any existing contracts for cause as provided in the contract.

2.8 Section deleted

2.9 Section deleted

2.10 Section deleted

CHAPTER 3 Chapter deleted

CHAPTER 4 COMPETITIVE SEALED BIDDING

4.1 Invitation for Bids

4.1.1 An Invitation for Bids shall be issued for the Central Miner St and Soda Creek Road Rd Improvements. Public Notice 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 shall be available to Bidders a minimum of four weeks prior to opening of Bids.

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

- (a) Project number, if applicable
- (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 the City to be significant with respect to such public Notice

4.2 Revisions to Invitation for Bids

4.2.1 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, such revision shall be forwarded to each Plan Holder by Notice, as defined in the rules, in

sufficient time to be received at least one day prior to the date set for Bid opening.

4.2.2 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
- (b) The date for opening of Bids shall be deferred so that the revision may be made and Notice of such revision given to Prospective Bidders as provided in this section

4.3 Cancellation of Invitation for Bids

4.3.1 An Invitation for Bids may be canceled or deferred when it is in the best interest of the City. 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, Notice of such cancellation or deferment shall be published in a newspaper of general circulation or the City website at least seven calendar days prior to Bid opening and a written Notice of such cancellation or deferment shall be 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 and written Notices, an attempt shall be made to notify each Prospective Bidder by phone of the cancellation or deferment.

4.3.2 If for any reason the City 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. The City shall confirm that the Bid submitting software was inoperable.

4.3.3 The City shall not be held liable if Notice of cancellation or deferment is not received by any Plan Holder prior to the original date set for Bid opening.

4.4 Bid Proposal

For each Public Project, the City 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. The City shall maintain a record of each Plan Holder together with its mailing address.

4.5 Preparation of Bid

4.5.1 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 the City, 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.

- 4.5.2 The Contractor shall also submit within their Bid Proposal, the affidavit relative to collusion, the Bid Proposal Guarantee, proof of their current CDOT Prequalification at the \$5-20 million level, and a copy of their Certificate of Good Standing issued by the Colorado Secretary of State. The Contractor's Bid and affidavit relative to collusion must be signed in ink or by Electronic Signature by an Individual with legal authority to bind the Contractor. 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 the vice-president of a corporation, or an authorized agent of the Contractor. Anyone signing as agent for a Contractor must file with the City written evidence of such authority.

4.6 Delivery of Bids

- 4.6.1 All Bids shall be filed at the place and in the 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) Paper Bids. Each Bid shall be submitted separately in a sealed envelope to the City by mail, personal delivery, or messenger service at the location indicated in the Invitation for Bids. Bids submitted in a manner that results in the City 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 or thumb drive containing an electronic version of the Excel spreadsheet of the Bid Proposal. The envelope shall be clearly labeled to identify it as a Bid for the subject Public Project. The sealed Bid shall be addressed to the City at the address and in care of the official in whose office the Bids are to be received.

(b) Section Deleted

4.7 Withdrawal of Bids Prior to Bid Opening

- 4.7.1 Paper Bids

Prior to Bid opening, a Contractor may withdraw or revise a Bid after it has been deposited with the City. Withdrawal of Bids may be made either in writing or in person; however, any Bid withdrawn for the purpose of revision must be redeposited before the time set forth for opening of Bids in the Invitation for Bids. A Bid may not be withdrawn after the commencement of opening of Bids for the project, except as provided in Section 4.13.

When a Bid is withdrawn, the Individual requesting to withdraw the Bid shall provide proper identification. The withdrawal and the identity of the Person withdrawing the Bid shall be documented in writing by the City. Withdrawn Bids will not be opened.

4.7.2 Section Deleted

4.8 Receiving Bids

Bids will be received only from Contractors that are prequalified at the time of Bid opening in accordance with the provisions of Chapter Two of these rules.

4.9 Recording of Bids

- (a) Paper Bids. When a Bid is received by the City's Program Manager, the person receiving the Bid shall stamp 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 submittal log 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 the Program Manager 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.

(b) Section Deleted.

4.10 Opening of Bids

Bids shall be opened at the date, time, place, and in the manner specified in the Invitation for Bids. Such opening shall be performed by an authorized representative of the Program Manager in the presence of at least one witness. Bids submitted in paper form will be read first. Contractors, their authorized agents, and other interested parties are invited to be present.

- (a) Bids to be Awarded on the Low Apparent Bidder standard shall be read publicly unless all Bids are to be rejected including as provided in Section 43-1-113(16), C.R.S.

4.11 Rejection of Individual Bids

4.11.1 An individual Bid shall be rejected and shall not be read if the Bid is not accompanied by an affidavit relative to collusion as provided in Section 4.5.2 and a Bid Proposal Guarantee of the character and in an amount not less than the amount indicated in the Invitation for Bids. Individual Bids may also be rejected for any of the following reasons:

- (a) If the Bid is on a form other than that prescribed by the City, if the form is altered or any part thereof is detached, or if the form does not contain written or Electronic Signatures
- (b) If the Contractor submitting the Bid is affiliated with another Contractor that has submitted a Bid on the same project

4.11.2 The City reserves the right to reject any or all Bids, to waive technicalities or to advertise for new Bids, if such action is judged to be in the best interests of the City.

4.12 Consideration of Bids

4.12.1 After the Bids are opened 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. 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.
- (d) 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 the result shall be certified on the Bid tabulation.

4.12.2 If there are fewer than three bidders, no award shall be made if the award is more than ten percent over the City's estimate, unless it is determined in writing by the Mayor of Idaho Springs that it is in the City's best financial, economic, or other interest to do so.

4.13 Mistakes in Bids

4.13.1 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.

4.13.2 Mistakes Discovered After Opening But Before Award

- (a) When it appears to the City 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 the City subject to the conditions provided in this subsection, but only to the extent it is not contrary to the interest of the City, 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. The City may waive Minor Informalities or require the Contractor to correct them depending on which is in the best interest of the City. 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:
 - i. It is clear from the Bid that the Contractor received the revision and intended to be bound by its terms: or
 - ii. The revision involved had a negligible effect on price, quantity, quality, or delivery.
 - (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
- (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 the City has not relied to its detriment on the mistaken Bid

4.13.3 Mistakes Discovered After Award

Mistakes shall not be corrected after Award of the Contract except where the City of Idaho Springs Mayor or designee makes a written determination that it would be unconscionable not to allow the mistake to be corrected.

4.13.4 Determination Required

When a Bid is corrected or withdrawn or when correction or withdrawal is denied, the City of Idaho Springs Mayor or designee shall prepare a written determination showing that the relief was granted or denied in accordance with the rules.

4.14 Performance Capability Statement

Prior to Award of the Contract, the Low Apparent Bidder shall submit a Performance Capability Statement in the form prescribed for use by CDOT, which shall include identification of any partnership or joint venture for the project and certification that the Low Apparent Bidder's fiscal and workmanship qualifications have not significantly decreased from that reported in the Prequalification application.

4.15 Determination of Non-responsibility

4.15.1 Prior to Award of the Contract, the City shall review the Low Apparent Bidder's past

performance, Performance Capability Statement, and Bid to determine responsibility. In order for the City to assess the Low Apparent Bidder's past performance and fiscal or workmanship capability, the City may contact CDOT or any other owner the bidder is currently working for, or who the contractor has worked for since the prequalification was issued. Reasons for Determination of Non-responsibility may include but are not limited to:

- (a) The Low Apparent Bidder was determined to not be prequalified in good standing with CDOT at the prescribed \$5-20 million level, and/or is not in good standing with the Secretary of State's Office to conduct business in Colorado, at the time of bidding
- (b) 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
- (c) The Low Apparent Bidder has failed or is failing to perform on any construction Contract subsequent to the Prequalification action
- (d) The fiscal or workmanship capability of the Low Apparent Bidder has significantly decreased from that set forth in its Prequalification application and supplements
- (e) The review of the Bid by the City identifies any concern relative to the performance capability of the Low Apparent Bidder
- (f) If the Contractor submitting the Bid has been sent a Notice of intent to revoke Prequalification under Chapter Two of the rules
- (g) If the Contractor submitting the Bid has been sent a Notice of intent to find the Contractor in default on a City Contract
- (h) If the City 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

4.15.2 If, in the estimation of the City, the Low Apparent Bidder's submission is not responsible, the Low Apparent Bidder shall be afforded an opportunity to promptly supply information on the issue.

4.15.3 If the Low Apparent Bidder fails to promptly provide the information requested or if the information provided does not resolve the issue, the City may issue a Determination of Non-responsibility and pursue Award of the Contract to the next lowest responsible Bidder.

4.15.4 Any such Determination of Non-responsibility may, in itself, have an effect on the Low Apparent Bidder's eligibility to submit Bids or be Awarded Contracts on other projects.

4.16 Determination of Non-responsiveness

4.16.1 Prior to Award of the Contract, the City shall review the Low Apparent Bidder's Bid submittals to ensure that they conform to the terms and conditions as specified in the Bid documents and that they are free of irregularities. Reasons for Determination of Non-responsiveness may

include but are not limited to:

- (a) If there are unauthorized additions, conditional or alternate Bids, or irregularities of any kind which may tend to make the Bid incomplete, indefinite, or ambiguous as to its meaning
- (b) If the Bid does not contain a (positive and non-zero) unit price for each Pay Item listed except in the case of authorized alternative Pay Items, the mathematical products of the respective unit prices and the estimated quantities, and the total amount of the Bid obtained by adding such mathematical products
- (c) If the Low Apparent Bidder has submitted a Bid that is determined by the City to be a Materially Unbalanced Bid

4.16.2 In the event that individual unit prices in a particular Bid are deemed by the City to be Mathematically Unbalanced Bids, the Contractor will be allowed to furnish any records or explanations which indicate how the prices for those items were established before a determination is made by the City that the Bid is a Materially Unbalanced Bid.

4.16.3 If, in the estimation of the City, the Low Apparent Bidder's submission is not responsive, the Low Apparent Bidder shall be afforded an opportunity to promptly supply information on the issue.

4.16.4 If the Low Apparent Bidder fails to promptly provide the information requested or if the information provided does not resolve the issue, the City may issue a determination of non-responsiveness and pursue Award of the Contract to the next lowest responsive Bidder.

4.16.5 Any such determination of non-responsiveness may, in itself, have an effect on the Low Apparent Bidder's eligibility to submit Bids or be Awarded Contracts on other projects.

4.17 Award of Contract

4.17.1 If the Contract is Awarded, the Award will be made within thirty calendar days after the opening of Bids to the Low Responsible and Responsive Bidder. The Low Responsible and Responsive Bidder must comply with all the requirements and criteria prescribed in the Invitation or Bids, in the rules, and otherwise as provided by law. The City will notify the Low Responsible and Responsive Bidder by letter, mailed to the address shown on its Bid, that its Bid has been accepted and that it has been Awarded the Contract.

4.17.2 After the time of Award, all Bids, Bid documents and project documents shall be open or closed to public inspection, as provided in the open records law, Section 24-72-201 et seq., C.R.S.

4.18 Cancellation of Award

The City reserves the right to cancel the Award of any Contract at any time before the execution of the Contract by all parties without any liability against the City.

4.19 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 the City, the Bid Proposal Guarantee will be returned promptly after formal notification of the rejection
- (d) For Contractor's Bids withdrawn under Section 4.14.2(b), C.R.S., the Bid Proposal Guarantee will be returned promptly after withdrawal of the Bid

4.20 Requirement of Contract Bonds

At the time of the execution of the Contract, the Low Responsible and Responsive Bidder shall furnish two surety Bonds, consisting of a payment bond and a performance bond. Each bond shall be in the penal sum of the Bid and those force account items designated for bonding equal to the next highest integral one hundred dollars. Said Bonds shall be in the forms provided by the City.

4.21 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 the City 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 the City. If the Contract is not executed by the City 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.

4.22 Failure to Execute Contract

Failure of the Low Responsible and Responsive Bidder to so execute the Contract and file acceptable Contract Bonds within fifteen calendar days or other duration specified by the City after the date of Award shall be just cause for the cancellation of the Award and the forfeiture of the Bid Proposal Guarantee which shall become the property of the City. The City may elect to waive forfeiture of the Bid Proposal Guarantee only if the City determines that the Low Responsible and Responsive has made a good faith effort, which was an honest, nonjudgmental error, not the result of intentional conduct, gross negligence or willful neglect, and that no damages were sustained by the City as a result of the failure by the Low Responsible and Responsive Bidder to execute the Contract and file acceptable Contract Bonds within the time prescribed. Award may then be made, in accordance with the provisions of Section 4.18 to the next lowest responsible and responsive Bidder, or the project may be re-advertised.

4.23 Notice to Proceed

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

4.24 Protests

4.24.1 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 City of Idaho Springs Mayor 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 City of Idaho Springs Mayor 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 the City regarding the protest.

4.25.1.3 Entitlement to costs: When a protest is sustained by the City of Idaho Springs Mayor

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.

CHAPTER 5 Chapter deleted

CHAPTER 6 Chapter deleted

CHAPTER 7 Chapter deleted