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MEMORANDUM

To: Beebe Draw Farms Authority Board of Directors

From: McGeady Sisneros, P.C.

Date: August 4, 2014

Re: Design-Build Process

The following memorandum outlines the Design-Build process in relation to the construction of the proposed maintenance facility.

1. Design-Build by Special Districts

Pursuant to the Integrated Delivery Method for Special District Public Improvements Act, C.R.S. § 32-1-1801, Colorado allows Special Districts to procure projects in which the "technical competence of the providers" may be an element of contractor selection and by which it may be appropriate to seek "an optional alternative public project delivery method." C.R.S. § 32-1-1802(b), (d). In Colorado, companies or teams of companies (contractors, engineers, etc.) that perform work pursuant to integrated project delivery methods (such as design-build) are known as "participating entities." C.R.S. § 32-1-1803(6). For the purposes of this memo, a "participating entity" and a "contractor" are one and the same.

To procure a project by design-build, the Authority must determine that "the integrated project delivery represents a timely or cost-effective alternative for" the project at issue. C.R.S. § 32-1-1804(a). Assuming that the Authority so determines, the Authority must then perform the following steps:

(a) Request for Qualifications

The Authority may solicit requests for qualifications by publication of a notice, and such request may contain the "criteria for prequalification," "a general description of the project, relevant budget considerations" and a request for other information about the contractor. C.R.S. § 32-1-1805 (1)(a), (b), (c). Those other requests may include the contractor's owners, partners, or members, evidence of the contractor's experience with "projects of similar size, scope, or complexity," evidence of the contractor's "sufficient experience and training" in managing the

proposed project, and evidence of all licenses, registrations, and credentials required to provide the proposed services" and any "revocation or suspension of any such license, registration, or credential." C.R.S. § 32-1-1805 (1)(a) – (1)(c). From the contractors who respond to the request for qualifications, the Authority must create a "short list" of contractors the Authority deems to be "most qualified."

(b) Pre-Bid Meeting; Site Visit

Colorado does not require pre-bid meetings or site visits, however such meetings/visits can be held at the Authority's direction.

(c) Request for Proposals

The Authority must prepare a Request for Proposal. If the Authority prepared and published a notice for a Request for Qualifications, as discussed above, the Authority need not publish the notice for Request for Proposal. The Request for Proposal must contain:

(i) The procedures to be followed for submitting proposals;

(ii) The criteria for evaluation of a proposal, which criteria may provide for selection of a proposal on a basis other than solely the lowest costs estimates submitted;

(iii) The procedures for making awards;

(iv) Required performance standards as defined by the participating entity;

(v) A description of the drawings, specifications, or other submittals to be provided with the proposal, with guidance as to the form and the acceptable level of completion of the drawings, specifications, or submittals;

(vi) Relevant budget considerations or, for an IPD contract that includes operation or maintenance services, the life-cycle cost analysis for the contract;

(vii) The proposed project scheduling; and

(viii) The stipend, if any, to be paid to participating entities responding to the request for proposals who appear on the agency's short list pursuant to section 32-1-1805 (2) but whose proposals are not selected for award of the IPD contract.

C.R.S. 32-1-1806 (1)(a) – (1)(h).

(d) Selection

"After obtaining and evaluating proposals according to the criteria and procedures set forth in the request for proposals," the Authority "may accept the proposal that, in its estimation, represents the best value to the" Authority. C.R.S. § 32-1-1806 (2). Upon selection, the Authority must notify the winning contractor in writing. *Id*.

(e) Licensing and Public Project Laws

The winning contractor must otherwise comply with "all laws applicable to public projects." C.R.S. 32-1-1806 (3). This includes the law governing engineer licensure, but the entity performing the work need not be registered to perform professional services. It is sufficient if the "person or firm actually performing such professional services on behalf of the [contractor] is appropriately licensed or registered and if the [contractor] otherwise complies with applicable state licensing laws and requirements related to such professional services." C.R.S. 32-1-1806 (4).

(f) General Public Contract Bidding Requirements

In Colorado, public entities are subject to certain rules regarding bidding for public projects ("Public Construction Rules"). To the extent these rules do contradict or make obsolete the Integrated Project Delivery rules, the Public Construction Rules arguably still apply. As a result, Special Districts seeking to build a project by an Integrated Project Delivery method (design-build being one example) should still allow for at least fourteen days between the date of notice of invitation for bids (in the case of an Integrated Project Delivery method, the Request for Proposals) and contractor selection. C.R.S. § 24-92-103(3). However, Colorado's requirement regarding public bid openings (C.R.S. § 24-92-103(4)) contradicts the selection process outlined in C.R.S. § 32-1-1806 (2); as a result, public bid openings are not required.

(g) Project Payment Type

State rules regarding Integrated Project Delivery methods (see C.R.S. § 24-93-101, et. seq.) prohibit "cost-plus-a-percentage-of-cost" contracts except "when a determination is made in writing that such contract is either likely to be less costly to the agency than any other type of contract or that it is impracticable to obtain the required construction or other services authorized under this article unless the cost-reimbursement contract is used." C.R.S. § 24-93-108. Special District rules regarding Integrated Project Delivery methods make no such prohibition. Nevertheless, the Authority should make such determinations regarding costliness and practicability of projects in writing if it seeks to enter into an Integrated Project Delivery "cost-plus" contract.