

## INSTRUCTIONS TO BIDDERS

### 1. DEFINED TERMS

- 1.1 Terms used in these Instructions to Bidders which are defined in the Contract Documents (see Section 10 of the draft Agreement) have the meanings assigned to them therein. The term “Successful Bidder” means the lowest, qualified, responsible bidder to whom the County (hereinafter “Owner” or “County”) (on the basis of Owner’s evaluation as hereinafter provided) makes an award.

### 2. COPIES OF BIDDING DOCUMENTS

- 2.1 Complete sets of the bidding documents in the number and for the deposit sum, if any, stated in the advertisement of the Invitation for Bids for the Eagle County 2026 Crack Fill Project (the “Invitation for Bids”) may be obtained from the Eagle County website: [www.eaglecounty.us](http://www.eaglecounty.us).
- 2.2 Complete sets of the bidding documents shall be used in preparing bids; Owner does not assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of bidding documents.
- 2.3 Owner, in making copies of bidding documents available on the above terms, does so only for the purpose of obtaining bids on the Work, and does not confer a license or grant for any other use. The Work is defined in the Contract Documents.

### 3. QUALIFICATIONS OF BIDDERS

- 3.1 Briefly explain your company’s qualifications to provide the services requested, e.g., years in business, staffing, vehicles to be utilized and experience.
- 3.2 To demonstrate qualifications to perform the Work, each bidder must be prepared to submit, within five (5) days of Owner’s request, written evidence, such as financial data, previous experience, and evidence of authority to conduct business in the jurisdiction where the project is located. Each bid must contain evidence of the bidder’s qualification to do business in Colorado, or a covenant to obtain such qualification prior to award of a contract.

### 4. EXAMINATION OF CONTRACT DOCUMENTS AND SITE

- 4.1 Before submitting a bid, each bidder must (a) examine the Contract Documents thoroughly; (b) visit the site(s) to familiarize itself with local conditions that may in any manner affect cost, progress, or performance of the Work; (c) familiarize itself with federal, state, and local laws, ordinances, rules, and regulations that may in any manner affect cost, progress, or performance of the Work; and (d) study and carefully correlate bidder’s observations with the Contract Documents.

- 4.2 Before submitting its bid, each bidder will, at its own expense, make such investigations and tests as the bidder may deem necessary to determine its bid for performance of the Work in accordance with the time, price, and other terms and conditions of the Contract Documents.
- 4.3 On request, Owner will provide each bidder access to the site(s) to conduct such investigations and tests as each bidder deems necessary for submission of its bid.
- 4.4 The lands upon which the Work is to be performed, rights-of-way for access thereto, and other lands designated for use by the Successful Bidder(s) in performing the Work are identified in the Contract Documents.
- 4.5 The submission of a bid will constitute a representation by the bidder that it has complied with the material requirements of this Article 4, and that the bidder has reviewed the Contract Documents sufficiently to understand the general nature and scope of the Work and the conditions under which it will be performed.

## 5. INTERPRETATIONS

- 5.1 All questions about the meaning or intent of the Contract Documents shall be submitted to the Road & Bridge Director in writing. Replies will be issued by addenda that will be posted on the Eagle County website: [www.eaglecounty.us](http://www.eaglecounty.us). Bidders shall be solely responsible for monitoring the Eagle County website for revisions, addenda, clarifications, and the like. Questions received less than ten (10) days prior to the date for opening of bids will not be answered. Only questions answered by formal written addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

## 6. BID SECURITY

- 6.1 Bid security shall be made payable to Owner in an amount of **five percent (5%)** of the bidder's total bid amount as submitted on the Bid Form (the "Base Bid Price"), and in the form of a certified or bank check, or a bid bond issued by a surety meeting the requirements of paragraph 12 of the General Conditions.
- 6.2 The bid security of the Successful Bidder(s) will be retained until such bidder has executed an agreement for the Work and furnished the required contract security, whereupon it will be returned. The draft form of the Agreement and the Contract Documents are included with the Invitation to Bid and are incorporated therein by reference. By submitting a bid, each bidder acknowledges that it has reviewed the Agreement and Contract Documents and agrees, if selected as the Successful Bidder, to execute the Agreement in substantially the form included in the Invitation to Bid, subject only to such non-material modifications as may be approved by the County.

If the Successful Bidder(s) fails to execute and deliver the Agreement and furnish the required contract security within fifteen (15) days of the Notice of Award, Owner may

annul the Notice of Award and the bid security of the bidder will be forfeited as liquidated damages. The bid security of any bidder under consideration for award may be retained by Owner until the thirty-first (31<sup>st</sup>) day after the bid opening. Bid security of other bidders will be returned within seven (7) days of the bid opening.

7. CONTRACT TIME

- 7.1 The date by which the Work is to be completed (the “Contract Time”) is set forth in the bid form and will be included in the Agreement.

8. LIQUIDATED DAMAGES

- 8.1 If a Successful Bidder fails or refuses to execute and deliver the Agreement and furnish the required contract security within fifteen (15) days after issuance of the Notice of Award, Owner may, at its sole option, annul the Notice of Award. In such event, the bid security shall be forfeited to Owner as liquidated damages, and not as a penalty. The Bidder acknowledges and agrees that Owner will incur damages as a result of such failure, including but not limited to administrative costs, delay, the expense of re-advertising or re-procuring the Work, and potential increased construction costs due to market conditions, and that such damages would be difficult or impracticable to determine with certainty at the time of bidding. The Parties therefore agree that the amount of the bid security was established as a reasonable and good-faith estimate of such damages at the time the Bid was submitted.
- 8.2 Provisions for liquidated damages relating to delay of the Work after execution of the Agreement are set forth in the Agreement.

9. SUBSTITUTE MATERIAL AND EQUIPMENT

- 9.1 The Agreement, if awarded, will be based solely on the materials and equipment described in the Overlay Project Special Provisions for purposes of bid preparation and evaluation, without consideration of possible substitute or “or-equal” items. Where the Overlay Project Special Provisions indicate that a substitute or “or-equal” item of material or equipment may be furnished or used by the Contractor if acceptable to Owner, any application for such acceptance will not be submitted or considered by Owner until after the effective date of the Agreement. Approval of any substitute or “or-equal” item shall be at Owner’s sole discretion and shall not, by itself, entitle the Contractor to any adjustment in Contract Price or Contract Time unless expressly authorized by written change order.

10. SUBCONTRACTORS, ETC.

- 10.1 If the Contract Documents require the identity of certain subcontractors and other persons and organizations to be submitted to Owner in advance of the Notice of Award, the apparent Successful Bidder, and any other bidder so requested, shall, within seven (7) days after the bid opening, submit to Owner a list of all subcontractors and other

persons or organizations (including those who are to furnish the principal items of material and equipment) proposed for those portions of the Work for which such identification is required. Such list shall be accompanied, if requested by Owner, by an experience statement and other pertinent information demonstrating the qualifications of each such subcontractor, person, or organization. If Owner, after due investigation, has reasonable objection to any proposed subcontractor, person, or organization, Owner may, prior to issuing the Notice of Award, require the apparent Successful Bidder to submit an acceptable substitute without an increase in the bid price.

If the apparent Successful Bidder declines to make any such substitution, the Agreement shall not be awarded to that bidder, however, such refusal shall not constitute grounds for forfeiture of the bidder's bid security. Any subcontractor, person, or organization so listed, and to whom Owner or Road & Bridge Director does not make written objection prior to issuance of the Notice of Award shall be deemed acceptable to Owner.

10.2 Intentionally Omitted.

10.3 No contractor shall be required to employ any subcontractor, other person, or organization against whom it has reasonable objection.

11. BID FORM

11.1 The Bid Form is attached hereto; additional copies may be obtained from the Eagle County website: [www.eaglecounty.us](http://www.eaglecounty.us).

11.2 Bid Forms must be completed in ink or by a computer word processor.

11.3 Bids by limited liability companies and corporations, must be executed in the corporate name by the manager, president or a vice president (or other corporate officer accompanied by evidence of authority to sign), and attested by the secretary, or an assistant secretary. The corporate address and state of incorporation or formation shall be shown below the signature.

11.4 Bids by partnerships must be executed in the partnership name, and signed by a partner whose title must appear under the signature, and the official address of the partnership must be shown below the signature.

11.5 All names must be typed or printed below the signature.

11.6 The bid shall contain an acknowledgement of receipt of all addenda (the numbers of which shall be filled in on the Bid Form).

11.7 The address and telephone number to which communications regarding the bid are to be directed must be shown.

12. SUBMISSION OF BIDS

- 12.1 Bids shall be submitted not later than at the time and place indicated in the Invitation to Bid, and shall be included in an opaque, sealed envelope, marked with the project title (“Eagle County 2026 Crack Fill Project”), and name and address of the bidder, and accompanied by the bid security and other required documents. If the bid is sent through the mail or other delivery system, the sealed envelope shall be enclosed in a separate envelope with the notation “BID ENCLOSED” on the face thereof. No telephone, email or facsimile Bids will be accepted. All documents submitted with the Bid shall be clearly marked with the bidder’s name.

No bids will be considered which are received after the date and time set forth in the Invitation to Bid and any bid received after such date and time shall be returned to the bidder and will not be considered under any circumstances. Sole responsibility rests with the bidder to ensure that their bid is received on time at the stated location.

13. MODIFICATION AND WITHDRAWAL OF BIDS

- 13.1 Bids may be modified or withdrawn by an appropriate document duly executed (in the manner that bid must be executed), and delivered to the place where bids are to be submitted, at any time prior to the opening of bids.
- 13.2 If, within twenty-four (24) hours after bids are opened, any bidder files a fully executed written notice with Owner, and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its bid, that bidder may withdraw its bid, and the bid security shall be returned. A mistake resulting from an error in judgment, estimating, or interpretation of the Contract Documents shall not constitute a material and substantial mistake under this Section. Thereafter, that bidder may, at Owner’s sole discretion, result in the bidder being deemed non-responsive for purposes of an award of this request for proposal.

14. OPENING OF BIDS

- 14.1 When bids are opened publicly, they will be read aloud, and an abstract of the amounts of the base bids and major alternates (if any) will be made available after the opening of bids.

15. BIDS TO REMAIN OPEN

- 15.1 All bids shall remain open for thirty-one (31) days after the day of the bid opening, but Owner may, in its sole discretion, release any bid and return the bid security prior to that date.

16. AWARD OF CONTRACT

- 16.1 Owner reserves the right, in its sole discretion, to reject any and all bids, to waive any and all informalities or technicalities in any bid, to negotiate non-material contract terms with the Successful Bidder(s), to disregard all nonconforming, non-responsive, or conditional bids and to postpone the award of the Agreement for a period not exceeding thirty-one (31) days after the bid opening. Discrepancies between words and figures will be resolved in favor of words. Discrepancies between the indicated sum of any column of figures, and the correct sum thereof, will be resolved in favor of the correct sum.
- 16.2 In evaluating bids, Owner shall consider the qualifications of the bidders, whether or not the bids comply with the prescribed requirements, and alternates and unit prices if requested in the bid forms. It is the Owner's intent to accept alternates (if any are accepted) in the order in which they are listed in the bid form, but Owner may accept them in any order or combination.
- 16.3 Owner reserves the right to adjust material quantities or scope of work depending upon bid results.
- 16.4 Owner may consider the qualifications and experience of subcontractors and other persons and organizations (including those who are to furnish the principal items of material or equipment) proposed for those portions of the Work as to which the identity of subcontractors and other persons or organizations must be submitted as provided in the Contract Documents. Operating costs, maintenance considerations, performance data, and quantities of materials and equipment may also be considered by Owner.
- 16.5 Owner may conduct such investigations as it deems necessary to assist in the evaluation of any bid, and to establish the responsibility, qualifications, and financial ability of the bidders, proposed subcontractors, and other persons and organizations to do the Work in accordance with the Contract Documents to Owner's satisfaction within the prescribed time. Owner reserves the right to reject the bid of any bidder who does not pass any such evaluation to Owner's satisfaction.
- 16.6 If an Agreement is to be awarded, it will be awarded to the lowest, qualified, and responsible bidder whose evaluation by Owner indicates to Owner that the award will be in the best interests of the project(s) and the County. Owner may accept a bid other than the lowest bid if it determines that doing so is in the best interests of the project and the County.
- 16.7 When a construction contract for a public project is to be awarded, a Colorado resident bidder shall be allowed a preference against a nonresident bidder from a state or foreign country equal to the preference given or required by the state or foreign country in which the nonresident bidder is a resident, unless this requirement is inconsistent with federal law or may result in the denial of federal funds. See C.R.S. 8-19-101 et seq.

- 16.8 Whenever any public works project is financed in whole or in part by County funds, Colorado labor shall be employed to perform at least eighty percent (80%) of the work as required by C.R.S. 8-17-101.

17. PERFORMANCE AND OTHER BONDS

- 17.1 Section 12 of the General Conditions sets forth Owner's requirements as to performance and other bonds. When the Successful Bidder(s) delivers the executed Agreement to Owner, it shall be accompanied by the required contract security.

18. SIGNING OF AGREEMENT

- 18.1 When Owner issues a Notice of Award to the Successful Bidder, Owner will provide at least four (4) unsigned counterparts of the Agreement and all other Contract Documents for execution. Within fifteen (15) days after receipt of the Notice of Award, the Successful Bidder shall sign and deliver to Owner at least four (4) counterparts of the Agreement with all required Contract Documents attached. Within twenty (20) days thereafter, Owner will deliver a fully signed counterpart of the Agreement to Contractor. The sample Agreement included with the Contract Documents is provided for reference purposes only and Owner reserves the right to make non-material changes to the Agreement or changes as required by law, provided that said changes do not alter the bid price, scope of Work, or Contract Time.