



COLORADO

Department of Transportation

Office of the Chief Engineer

July 15, 2024

Kerri L. Hunter, CPA, CFE
Office of the State Auditor
Colorado Office of the State Auditor
1525 Sherman St., 7th Floor
Denver, CO 80203

Dear Auditor Hunter:

In response to your request, we have prepared the attached status report on the implementation status of audit recommendations contained in the Department of Transportation Alternative Delivery Contracting Methods Performance Audit. The report provides a brief explanation of the actions taken by the Colorado Department of Transportation (CDOT) to implement each recommendation.

Each recommendation has been implemented in compliance with identified standards to enhance efficiency and effectiveness of CDOT's Alternative Delivery program. Supporting documents have been provided to further demonstrate the updates that have been made. CDOT is committed to maintaining the highest standards of accountability and performance.

If you have any questions about this status report and CDOT's efforts to implement the audit recommendations, please contact me at 303.757.9170 or keith.stefanik@state.co.us.

Sincerely,

Keith Stefanik, Chief Engineer



Audit Recommendation Status Report

Audit Name:	Alternative Delivery Contracting Methods
Audit Number:	2251P
Agency:	Colorado Department of Transportation
Date of Status Report:	August 2024

Section I: Summary

Rec. Number	Response from Audit Report	Original Implementation Date	Current Implementation Status	Current Implementation Date
1A	Agree	January 2024	Implemented	February 2024
1B	Agree	July 2024	Implemented	February 2024
1C	Agree	January 2024	Implemented	January 2024
2	Agree	July 2024	Implemented	June 2024
3A	Agree	January 2024	Implemented	January 2024
3B	Agree	January 2024	Implemented	January 2024
3C	Agree	July 2023	Implemented	January 2024
3D	Agree	January 2024	Implemented	January 2024
3E	Agree	January 2024	Implemented	January 2024
4A	Agree	July 2024	Implemented	June 2024
4B	Agree	July 2024	Implemented	June 2024
4C	Agree	January 2024	Implemented	January 2024
5A	Agree	July 2024	Implemented	June 2024
5B	Agree	July 2024	Implemented	June 2024
5C	Agree	July 2024	Implemented	September 2023
6A	Agree	July 2023	Implemented	April 2023
6B	Agree	July 2023	Implemented	April 2023
6C	Agree	July 2024	Implemented	September 2023
7A	Agree	January 2024	Implemented	January 2024
7B	Agree	January 2024	Implemented	January 2024

Section II: Narrative Detail

Recommendation 1A

The Department of Transportation (Department) should ensure that it has a consistent process for determining the most appropriate delivery method for construction projects and documenting the basis for its decisions. The Department's process should include developing and implementing written policies and procedures to:

- A. Clarify how to determine when a Project Delivery Selection Matrix (Matrix) workshop should be conducted and describe what other method(s) can be used, and when to use these method(s), to determine the most appropriate delivery methods for projects.

Current Implementation Status	Implemented
Current Implementation Date	2/2024
Status Update Narrative	The Department has determined that regional project delivery staff should consider the need to perform a Project Delivery Selection Matrix (PDSM) Workshop for all projects where the benefit of having a contractor involved during the preconstruction phase would outweigh the cost of doing so. The CDOT Alternative Delivery Program is available for consultation in making this determination. The following language has been added to the CDOT Project Development Manual and the PDSM Guidance Document: “If a Project Manager feels that a project could benefit from contractor input during pre-construction to improve constructability, enhance innovation, shorten schedule, reduce risks, or save costs, they should reach out to the Alternative Delivery Program to schedule a meeting to determine if a Project Delivery Selection Matrix Workshop is warranted. If warranted, the Workshop will help to evaluate and select the most appropriate delivery method for the project. It is important to consider this option early in project development and ideally during the scoping phase of the project to maximize potential benefit.”

Recommendation 1B

The Department of Transportation (Department) should ensure that it has a consistent process for determining the most appropriate delivery method for construction projects and documenting the basis for its decisions. The Department's process should include developing and implementing written policies and procedures to:

- B. Clarify when a Matrix workshop can be conducted without a neutral facilitator or when the secondary factors included in the Matrix do not need to be considered, and how to document a decision to forego these aspects of the Matrix workshop.

Current Implementation Status

Implemented

Current Implementation Date

2/2024

Status Update Narrative

The Department has determined that a neutral facilitator is required for all Project Delivery Selection Matrix (PDSM) Workshops and that the secondary factors included in the matrix shall always be considered and evaluated. The following language has been added to the PDSM Guidance document:

"Facilitation of the tool

A facilitator that is third party to the project team and is neutral in the outcome of the process, shall be brought in for the workshop. The facilitator must be a representative of the agency and have a working knowledge of the alternative delivery methods. The facilitator will assist the project management team by working through the tool and provide guidance for the project and selection of a delivery method. This individual should be knowledgeable about the alternative delivery methods and the selection process. The facilitator will help to answer questions, seed conversation, and assure the process stays on track to move the project team towards a formal selection."

"STAGE III – Secondary Factor Evaluation

. Perform a pass/fail analysis of the secondary factors to ensure that they are considered in the decision."

Recommendation 1C

The Department of Transportation (Department) should ensure that it has a consistent process for determining the most appropriate delivery method for construction projects and documenting the basis for its decisions. The Department's process should include developing and implementing written policies and procedures to:

- C. Provide guidance on the information project staff should include in the memos requesting Chief Engineer approval to use alternative delivery methods.

Current Implementation Status	Implemented
Current Implementation Date	1/2024
Status Update Narrative	A template for the Chief Engineer Delivery Method Approval Request Memorandum was created and will be provided to regional project delivery staff at the conclusion of the Project Delivery Selection Matrix (PDSM) Workshop if they want to seek approval to use a delivery method other than Design-Bid-Build.

Status Update Narrative

A template for the Chief Engineer Delivery Method Approval Request Memorandum was created and will be provided to regional project delivery staff at the conclusion of the Project Delivery Selection Matrix (PDSM) Workshop if they want to seek approval to use a delivery method other than Design-Bid-Build.

Recommendation 2

The Department of Transportation should ensure that it consistently follows its procurement requirements when evaluating and shortlisting Construction Manager/General Contractor (CM/GC) proposals. This should include revising the CM/GC manual to require creation of evaluation plans that include a proposal responsiveness checklist and guidance on how to handle proposals that do not appear responsive.

Current Implementation Status	Implemented
Current Implementation Date	6/2024
Status Update Narrative	An evaluation manual template was developed prior to this audit and an evaluation manual has been required for all CM/GC projects since this implementation date. The evaluation manual template is required for all CM Proposal Evaluations per the CM/GC Manual Section 3.3.1 and tailored for each specific project. The evaluation manual requires the creation of a project specific responsiveness checklist. The process for conducting responsiveness review and handling responsive or non-responsive proposals is covered in the evaluation manual under section 6.1.

Status Update Narrative

An evaluation manual template was developed prior to this audit and an evaluation manual has been required for all CM/GC projects since this implementation date.

The evaluation manual template is required for all CM Proposal Evaluations per the CM/GC Manual Section 3.3.1 and tailored for each specific project. The evaluation manual requires the creation of a project specific responsiveness checklist.

The process for conducting responsiveness review and handling responsive or non-responsive proposals is covered in the evaluation manual under section 6.1.

Recommendation 3A

The Department of Transportation (Department) should ensure that Construction Manager/General Contractor (CM/GC) preconstruction contracts accurately reflect project terms and that staff manage the contracts in accordance with their termination dates. This should include:

- A. Developing and implementing a structured process for Engineering Contracts Services Office staff and CM/GC project staff to coordinate on preconstruction contract terms, including ensuring that termination dates are in line with existing project timelines, contract construction budgets accurately reflect the funding available for the project at the time of contract execution, and any key terms within a project's Request for Proposal are stated within the terms of the contract.

Current Implementation Status	Implemented
Current Implementation Date	1/2024
Status Update Narrative	Preconstruction contract terms from the Request for Proposal (RFP) are now added to the cover page of the contract. The publish date of the RFP and the receipt date of the Construction Manager (CM) proposal are also included on the cover page of the contract. The contract is reviewed by the Engineering Contracts Services Office staff to confirm the preconstruction contract terms are accurate. An RFP/Contract reconciliation meeting will be held with Engineering Contracts Services Office staff and the regional project delivery staff prior to execution of the final draft to confirm details.

Recommendation 3B

The Department of Transportation (Department) should ensure that Construction Manager/General Contractor (CM/GC) preconstruction contracts accurately reflect project terms and that staff manage the contracts in accordance with their termination dates. This should include:

- B. Developing and implementing guidance for CM/GC project staff on how to identify and track the preconstruction contract termination date throughout the preconstruction phase of a project.

Current Implementation Status

Implemented

Current Implementation Date

1/2024

Status Update Narrative

A report is generated each month to confirm contract expiration dates. A how-to document for creating the report was distributed to Engineering Contracts Services staff.

An electronic calendar is now used to track all contract termination dates for alternative delivery projects. Reminders are set at six months and three months out from the contract termination date to alert the Engineering Contracts Services Office staff who will work with the individual project manager to confirm the status of the project and any need for extension to the termination date or project completion date. Preconstruction contracts will also be reviewed to determine if all construction contracts for the project have been executed, or if any additional construction contracts are needed. All construction contracts must be fully executed prior to the termination date of a preconstruction contract. Design-Build contracts will be reviewed to determine if the Termination Date on Exhibit B needs to be extended. Exhibit B is the completion date form and is located in the design build contract, often on Form P.

Recommendation 3C

The Department of Transportation (Department) should ensure that Construction Manager/General Contractor (CM/GC) preconstruction contracts accurately reflect project terms and that staff manage the contracts in accordance with their termination dates. This should include:

- C. Developing and implementing guidance for Engineering Contracts Services Office staff to confirm that, when drafting CM/GC construction contracts, a CM/GC preconstruction contract was effective when the Department approved the Construction Agreed Price (CAP) proposal related to the construction contract. This should include monitoring the creation and accuracy of reports from the Department's accounting system showing alternative delivery contract start and end dates.

Current Implementation Status	Implemented
Current Implementation Date	1/2024
Status Update Narrative	The following process has been put into place with the Engineering Contracts Services staff. Prior to any construction contracts being drafted and/or sent for signature, the Engineering Contracts Services Construction Contracts Manager will email the Engineering Contracts Services Alternative Delivery Contracts Officer to confirm that the termination date of the preconstruction contract has not passed. Termination dates for the Alternative Delivery contracts are also monitored by the Alternative Delivery Contracts Officer via the monthly report. These reports are checked each month to verify that contract dates are correct and not expired. This report shows effective and expiration dates for each alternative delivery project and are generated from the CDOT accounting system. A construction contract can only be executed if the preconstruction contract has not terminated. Construction contracts must be fully executed prior to the termination date of a preconstruction contract. If it is determined the construction contract will not be fully executed prior to the termination of the preconstruction contract, the Engineering Contracts Services Alternative Delivery Contracts Officer will reach out to the project manager to initiate an amendment to the preconstruction contract to extend the termination date.

Recommendation 3D

The Department of Transportation (Department) should ensure that Construction Manager/General Contractor (CM/GC) preconstruction contracts accurately reflect project terms and that staff manage the contracts in accordance with their termination dates. This should include:

- D. Developing and implementing additional supervisory review practices related to the drafting of CM/GC preconstruction contracts.

Current Implementation Status

Implemented

Current Implementation Date

1/2024

Status Update Narrative

The following process has been put into place with the Engineering Contracts Services staff.

The Engineering Contracts Services Program Manager now reviews all draft contracts prior to routing for signature. Preconstruction contracts are sent to regional project delivery staff and Alternative Delivery Program staff for review before being sent to the contractor for review.

The CDOT Controller or delegate will do a secondary review prior to routing for electronic signatures.

The Alternative Delivery Contracts Officer sends the final draft to the Engineering Contracts Project Manager, Project Manager, Contractor, and Alternative Delivery Program staff, prior routing for review by the Controller's Office. Approval emails shall be kept in the project folder as a resource should it be needed.

Recommendation 3E

The Department of Transportation (Department) should ensure that Construction Manager/General Contractor (CM/GC) preconstruction contracts accurately reflect project terms and that staff manage the contracts in accordance with their termination dates. This should include:

- E. Determining whether to amend existing CM/GC preconstruction contracts and the current CM/GC contract template to reflect current practices of approving long-lead time procurement proposals through separate construction contracts or develop and implement processes to ensure long-lead time procurement proposals are approved through CM/GC preconstruction contract amendments.

Current Implementation Status	Implemented
Current Implementation Date	1/2024
Status Update Narrative	CDOT did not amend existing CM preconstruction contracts executed prior to the audit to remove the ability to amend for long-lead time procurement (LLTP) packages, however, the Department no longer allows this, and all active CM/GC projects are procuring LLTP with separate construction packages per the new process implemented in January 2024. Long-lead time packages will be procured as construction contracts separate from the preconstruction contract. The language in the CM preconstruction contract template effective January 2024 has been updated to reflect this change. Specifically, item B of Section 10 was removed. A recent review found that not all historic LLTP amendment references were removed from the template, but they do not in any way allow LLTP packages to be amended into the preconstruction contract. CDOT will revise the contract again to ensure proper LLTP references.

Recommendation 4A

The Department of Transportation should improve its controls over Construction Manager/General Contractor (CM/GC) construction contract negotiations to ensure it effectively negotiates CM/GC construction contracts in a way that is most cost effective and provides best overall value to the State. This should include:

- A. Developing written guidance for staff on how to ensure project schedules allow enough time to negotiate Construction Agreed Price (CAP) proposals, while also determining what factors to consider prior to accepting a CAP proposal above the independent cost estimate.

Current Implementation Status

Implemented

Current Implementation Date

6/2024

Status Update Narrative

Updates to the CM/GC Manual are reflected in Chapter 5 and include language to ensure that the project's preconstruction schedule can accommodate all three rounds of negotiation and the time required to off-ramp a package if necessary. The Alternative Delivery Program consults with each project team to provide guidance in developing a critical path schedule tailored to each negotiation's unique constraints to ensure that their schedule can accommodate the negotiation requirements.

Language was also included to require that the acceptable estimate delta for projects be set and recorded prior to negotiations begin. Guidance on how to set this percentage was developed and recorded in section 5.4.

Recommendation 4B

The Department of Transportation should improve its controls over Construction Manager/General Contractor (CM/GC) construction contract negotiations to ensure it effectively negotiates CM/GC construction contracts in a way that is most cost effective and provides best overall value to the State. This should include:

- B. Designing, clarifying, and implementing written guidance related to (1) how and when the acceptable percentage difference should be established, including factors that should be considered when setting the percentage difference; (2) how the acceptable percentage difference should be documented, and (3) refining the range of the acceptable percentage difference to ensure the range does not result in paying amounts above fair market rates for construction costs.

Current Implementation Status	Implemented
Current Implementation Date	6/2024
Status Update Narrative	Updates to the CM/GC Manual are reflected in Chapter 5, Section 5.4 and include language to detail the following: The percentage should be set prior to the start of negotiation. A workshop with the project team should be held to assess the following criteria for the project: project size, project complexity, specialized work, project schedule, and project risks. A tool was created to assist project staff in this determination at the workshop. If the percentage is determined to be 0-5%, the Regional Transportation Director (RTD) shall provide concurrence with a memorandum to the project file. If the percentage is determined to be above 5% the project team shall obtain Chief Engineer concurrence with a memorandum to the project file.

Recommendation 4C

The Department of Transportation should improve its controls over Construction Manager/General Contractor (CM/GC) construction contract negotiations to ensure it effectively negotiates CM/GC construction contracts in a way that is most cost effective and provides best overall value to the State. This should include:

- C. Implementing formalized training for project staff on the tools available to project teams to conduct CM/GC construction contract negotiations.

Current Implementation Status	Implemented
Current Implementation Date	1/2024
Status Update Narrative	Negotiation tools, best practice, and guidance has been added to the CM/GC Approach and Management Training. The CDOT Alternative Delivery Program delivered this updated training to all active CDOT CM/GC project teams on Jan 17, 2024. All project teams going forward will be given the training upon execution of their CM contracts.

Recommendation 5A

The Department of Transportation (Department) should ensure that it has the information it needs to assess whether projects delivered under alternative delivery methods have achieved the expected benefits of using these types of approaches. This should include:

- A. Establishing performance benchmarks for measuring the effectiveness of the Department's alternative delivery methods, such as benchmarks related to whether projects are completed on time and on budget, collecting accurate data needed to measure projects against the established benchmarks, and developing methods for regularly analyzing and reporting results.

Current Implementation Status	Implemented
Current Implementation Date	6/2024
Status Update Narrative	CDOT's CM/GC (Chapter 2) and Design-Build (Chapter 2) manuals now require that the project teams provide data to be displayed in a project specific and public facing website. The data will be displayed in a dashboard format that can be easily viewed and interpreted to determine overall project health, project progress and budget performance. The benchmarks established for budget and schedule will include establishing a baseline at the start of preconstruction, tracking project progress monthly throughout the lifecycle of the project, and showing the impact of change to the project. When construction is complete, a final dashboard report will show the entire project lifecycle.

Recommendation 5B

The Department of Transportation (Department) should ensure that it has the information it needs to assess whether projects delivered under alternative delivery methods have achieved the expected benefits of using these types of approaches. This should include:

- B. Establishing written guidance for Department staff for writing lessons learned reports for alternative delivery projects, including direction for the reports to provide analysis on whether the projects met the expected benefits of using the alternative delivery methods.

Current Implementation Status	Implemented
Current Implementation Date	6/2024
Status Update Narrative	CDOT's CM/GC (Chapter 2) and Design-Build (Chapter 2) manuals have been updated to include a process for all projects to develop and report lessons learned at the close out of the project. The minimum content required to be included in the lessons learned report is described and includes a requirement for the report to be submitted to the Alternative Delivery Program for distribution and archiving. The reports will be analyzed by the Alternative Delivery Program and as appropriate, updates will be made to the appropriate manual, Request for Qualification (RFQ), Request for Proposal (RFP), or other documentation.

Recommendation 5C

The Department of Transportation (Department) should ensure that it has the information it needs to assess whether projects delivered under alternative delivery methods have achieved the expected benefits of using these types of approaches. This should include:

- C. Obtaining feedback from the Transportation Commission of Colorado's Efficiency and Accountability Committee about what types of information on alternative delivery methods the Department should collect in order to assess the efficiency and statutory compliance of alternative delivery methods, as well as the effectiveness of newly created reports, benchmarks and data collection efforts.

Current Implementation Status	Implemented
Current Implementation Date	9/2023
Status Update Narrative	On September 21, 2023, the CDOT Chief Engineer presented a plan to track alternative delivery project benchmarks to the CDOT Efficiency and Accountability Committee to solicit feedback and concurrence on the concept plan. The focus areas presented were: ● Procurement Information Tracking ○ Proposals ○ Shortlist information ○ Evaluation results ● Design Innovation Tracking ○ Number and value of innovations ● Project Scope Tracking ○ Owner requested change orders ○ Contractor requested change orders ● Schedule Tracking ○ Establish baseline schedule and track ● Budget Tracking ○ Establish baseline budget and track This information will be tracked in dashboards on project websites. CDOT did not receive any objections for the conceptual plan and began implementation following the presentation.

Recommendation 6A

The Department of Transportation (Department) should improve transparency for alternative delivery projects. This should include:

- A. Expanding written guidance, templates, and/or forms and establishing related tools, as needed, to specify the type and amount of detail to include when posting information on the Department's website project pages, including what events should be reflected in timelines, what information should be updated (such as project scope, cost, or schedule changes), and the reasons for such changes, to meet the needs of the Department's key audiences and to demonstrate how projects perform in terms of being on-time and on-budget. Details should include significant changes to project scope, budget, or schedule and the reasons therefore; and date references that indicate when the information was posted.

Current Implementation Status	Implemented
Current Implementation Date	4/2023
Status Update Narrative	CDOT has a standard template used to ensure consistency in messaging on all project web pages on codot.gov. This includes all phases of the project, and updates are managed by the Office of Communications via the CDOT Web & Digital Request form process. All project websites shall contain the following content areas that are updated weekly during active construction: ● About the Project ● Work this Week and Lane Closures ● Project Facts ● Project Benefits ● Work Schedule ● Traffic Impacts ● Contact Information ● Resources An updated Template and Guidelines was sent to all Office of Communications Staff.

Recommendation 6B

The Department of Transportation (Department) should improve transparency for alternative delivery projects. This should include:

- B. Including in written policies or directives a description of the duties of Department staff with respect to online information that includes the parameters of the review process to ensure that it includes verifying the accuracy, completeness, consistency, and understandability of information before it is posted on the Department's project pages.

Current Implementation Status	Implemented
Current Implementation Date	4/2023
Status Update Narrative	A Project Pages Directive and Guidance Memorandum was sent to all Office of Communications Staff. The memo directs communications managers to conduct monthly reviews of project web pages to ensure key information remains up to date. The memorandum also lays out example language and guidelines for making updates to key information so that the public can ascertain relevant context and the time of changes. Contract specifications have always required Department staff to review and approve information before it is posted online. This aligns with our commitment to quality. We've faced challenges in regularly validating posted information to avoid outdated content. The provided memo outlines the adopted process to ensure regular checks and updates.

Status Update Narrative**Recommendation 6C**

The Department of Transportation (Department) should improve transparency for alternative delivery projects. This should include:

- C. Involving the Transportation Commission of Colorado's Efficiency and Accountability Committee in identifying and implementing processes to enhance online transparency of alternative delivery projects.

Current Implementation Status	Implemented
Current Implementation Date	9/2023
Status Update Narrative	On September 21, 2023, the CDOT Chief Engineer presented audit Recommendation 6 to the Efficiency and Accountability Committee to facilitate a discussion on standardized project webpages and reviewed the new template currently in use. The Department will maintain ongoing outreach with the Committee to incorporate input as to how the Department can enhance the online transparency of alternative delivery projects.

Status Update Narrative

Recommendation 7A

The Department of Transportation should ensure that it adheres to accountability and transparency expectations under the Colorado Open Records Act (CORA) when responding to CORA requests for alternative delivery projects. This should include:

- A. Developing written policies and procedures for inspecting alternative delivery project proposals and statements of qualifications upon receipt to assess the validity of CORA-exempt material identified by the contractor and resolve any discrepancies.

Current Implementation Status	Implemented
Current Implementation Date	1/2024
Status Update Narrative	The following process has been adopted by the Department. The Design-Build Request for Qualifications (RFQ), Design-Build Request for Proposals (RFP), and the Preconstruction Construction Manager (CM/GC) RFP will include language that the Proposer is to provide a redacted Statement of Qualifications (SOQ) and/or Proposal within 10 business days of the receipt of the original. Engineering Contracts Services Staff will confirm receipt of SOQ and Proposal on or before the deadline date and email the Proposer to remind them that CDOT should receive the redacted Proposal version within 10 business days of the original Proposal. Engineering Contracts Services Staff will review the received redacted documents to confirm consistency of redacted pages with those marked "Confidential" or "Proprietary" in the Proposal. Engineering Contracts Services Staff and the CORA Records Request and Public Information Officer will meet to discuss the status of the redacted version from the original. The CORA Records Request and Public Information Officer will then review the redacted version to confirm all redactions are appropriate. The CORA Records Request and Public Information Officer reserves the right to engage with other CDOT teams in the event it is unclear as to whether the proposed redaction is protected under CORA. The CORA Records Request and Public Information Officer will reach out to the proposer should there be an issue with their redacted version. The CORA Records Request and Public Information Officer will confirm compliance with the provisions of Procedural Directive 508.2

Recommendation 7B

The Department of Transportation should ensure that it adheres to accountability and transparency expectations under the Colorado Open Records Act (CORA) when responding to CORA requests for alternative delivery projects. This should include:

- B. Updating standard language used in Design-Build solicitations to indicate what sections of the statement of qualifications or proposals have the potential to contain CORA-exempt materials in accordance with Procedural Directive 508.2.

Current Implementation Status

Implemented

Current Implementation Date

1/2024

Status Update Narrative

The Design-Build RFP template has been updated to include the following language:

“Certain materials are not subject to disclosure under CORA based on the CORA exemptions for proprietary and confidential materials. Such protections may include, but are not limited to, Alternate Technical Concepts (ATCs) and the associated supporting information are proprietary materials exempt from CORA. Accordingly, CDOT will automatically redact the sections dedicated to ATCs as well as invite proposers to identify information associated with other portions of their proposal that may need protection.”