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### **Audit Identifies Concerns with Transportation Department's Contracting Methods for Large Highway Construction Projects**

DENVER—The Colorado Office of the State Auditor (OSA) has issued a performance audit of alternative delivery contracting methods at the Colorado Department of Transportation (Department). Overall, auditors concluded that the Department lacks sound, consistent, and transparent processes for deciding to use alternative delivery methods, awarding and determining the parameters of alternative delivery contracts, managing alternative delivery contracts, ensuring that alternative delivery contracts provide expected cost-effectiveness benefits, and adhering to accountability and transparency expectations.

The Department is responsible for constructing and maintaining all roads comprising the state highway system, which currently covers more than 23,000 lane miles, 3,400 bridges, and 35 mountain passes. Alternative delivery methods are often used for high-cost or complex projects to provide greater certainty about their schedules or costs. For example, for Construction Manager/General Contractor (CM/GC) projects, the Department contracts with a construction firm to provide input on the design of a project and then awards separate construction contracts to that firm to build the project. For Design-Build projects, the Department awards a single contract with a firm for the design and construction of a project. In Fiscal Years 2021 and 2022, the Department managed 19 alternative delivery projects totaling \$3.5 billion, ranging from \$8.3 million to \$1.17 billion per project.

Auditors identified a number of significant issues, including that for 8 of 16 alternative delivery projects they reviewed, the Department either did not use or consistently adhere to its project delivery evaluation and selection process before deciding to use an alternative delivery method for

the project. “When the Department does not follow its established process for determining the most appropriate delivery method for a project, this can result in increased cost to the State, such as difficulty negotiating a contract price, as well as undesirable project outcomes, such as schedule delays or legal risks,” said Stefanie Winzeler, Legislative Audit Supervisor. “Our analysis showed that Design-Build projects are more likely to have schedule delays, cost overruns, and legal disputes when compared to the default, low-bid delivery method. The Department’s management of CM/GC projects has resulted in statutory violations and payments above fair market values.”

Auditors also found that the Department did not have effective processes for ensuring proper management of CM/GC preconstruction contracts. Specifically, for 5 of the 12 CM/GC projects active in Fiscal Years 2021 and 2022, the Department paid contractors about \$700,000 to continue work after the preconstruction contracts had expired, in violation of statute, and had awarded about \$158 million for construction work related to the expired contracts. Additionally, auditors found that construction budget amounts included in CM/GC preconstruction contracts were not always consistent with the construction budget amounts included in the request for proposals (RFP) or the funding available for the project. For example, for one CM/GC project, the preconstruction contract incorrectly stated that the construction budget was up to \$900 million, instead of \$90 million, as stated in the project’s RFP. The Department amended the contract 9 months later to revise the project’s construction budget to be \$150 million based on an increase of \$60 million in available funding.

Auditors also found that the Department did not always effectively negotiate CM/GC construction contracts to ensure they are cost effective and provide the best overall value to the State. For example, the Department paid a net total of \$18 million more than independent cost estimates across all 27 CM/GC construction contracts executed for nine projects active in Fiscal Years 2021 and 2022. The Department separately awards a professional services contract to a firm to perform work as an independent cost estimator for the project. This independent cost estimate is intended to be used during the construction contract negotiation process to help ensure the Department is receiving a fair and open price from the contractor. The audit’s analysis showed that the Department accepted the contractor’s initial price proposal for about 70 percent of CM/GC construction projects. Fifteen percent of projects went through two rounds of pricing proposals, and the remaining 15 percent of projects went through three rounds of pricing proposals before the contract price was finalized.

Finally, auditors found that the Department’s website needed clearer and more complete information about each alternative delivery project, including indicators of how the projects are performing. Auditors also found that the Department’s process for handling information requests for procurement records under the Colorado Open Records Act (CORA) needs refinement. For example, auditors found that the Department allowed inappropriate redactions of information

within 4 of the 10 proposals and statements of qualifications in the procurement documentation on two alternative delivery projects that were the subject of CORA requests.

The audit makes seven recommendations to the Department for improvements. The full audit report is available online at [www.colorado.gov/auditor](http://www.colorado.gov/auditor).

### **About the Office of the State Auditor**

Under the direction of the State Auditor, the OSA's nonpartisan, professional staff promote government accountability by conducting independent performance, financial, and IT audits and evaluations of state agencies, departments, and institutions of higher education; conducting independent evaluations of the State's tax expenditures (e.g., credits, exemptions, deductions); tracking about 4,000 Colorado local governments for compliance with the Local Government Audit Law; and operating a statewide fraud reporting hotline.

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