

Eagle Project

Request for Proposals

August 25, 2009

Today's discussion topics

- Purpose
- Scope of Eagle Project
- Contract overview
 - Payment structure
 - Remedies
 - Stipends
- Description of RFP
- Next steps
- Questions

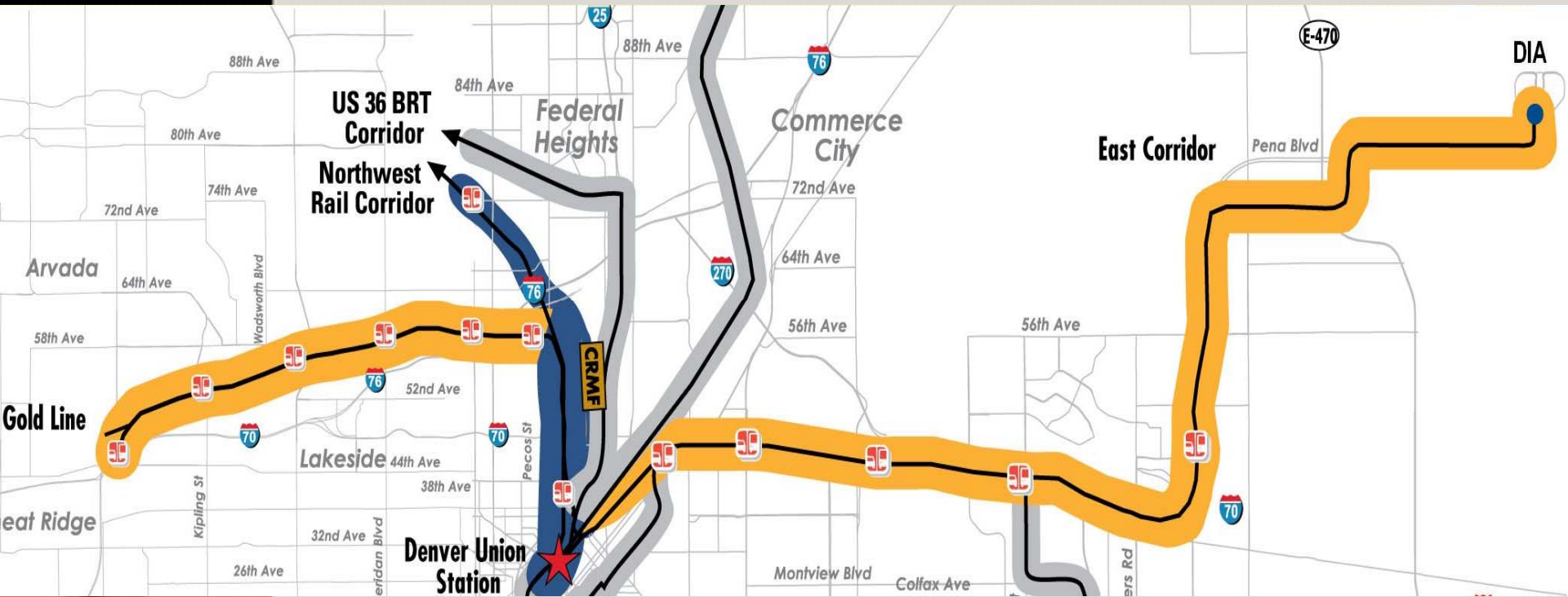
Recent prior discussions

- January briefing on the RFP after release of the Draft RFP
- April request to release the RFP in May
- May request to add a Compensation Agreement to the RFP

Purpose

- To update the Board on the Eagle Project RFP including changes from January briefing
- To identify need for any clarifications ahead of the public meeting on the RFP
- To serve as a forum for Directors to seek full understanding of the RFP

Eagle Project



Design/ build scope of work

- East Corridor
- Gold Line
- Northwest Rail Electrified Section
- Maintenance facility and control center
- Electric Multiple Units (EMUs)
- Electrical systems (OCS, signals, communications) at DUS commuter rail station
- Stations and park-n-Rides

O&M scope of work

- Operation and maintenance of all design/build elements
- Security of passengers, staff and assets will be a joint effort under RTD's direction
- Site maintenance including landscaping and park-n-Rides
- Long term capital maintenance and replacement of all assets
 - Excludes replacement of EMUs at end of useful life

Transit oriented development

- RFP includes a requirement for the proposer to:
 - Provide a plan for how TOD and joint development opportunities will be integrated into the design and construction
- RTD will be the lead in developments and evaluating any TOD and joint development proposals
- Concessionaire will not benefit from TOD and joint development on RTD property

Options included in the RFP

- Grade separation at 40th and Airport Blvd
- Drainage project at 40th Ave and 40th
- 18 – 24 EMUs potentially for North Metro
- There is no scope or options for:
 - Anything on North Metro except rolling stock
 - Anything on NWR north of South Westminster
 - Anything on any LRT line

Phasing of the work

- Phase 1
 - East Corridor
 - Maintenance facility, lead track from DUS and control center
 - Electric Multiple Units (EMUs)
 - Electrical systems (OCS, signals, communications) at DUS commuter rail station
 - Stations and park-n-Rides on the East Corridor
- Phase 2
 - Gold Line
 - Northwest Rail Electrified Section (NWES)
 - Stations and park-n-Rides on the Gold Line and NWES

Contract Overview

Contract terms

- Concession period will be ~46 years
 - Design/ Build period plus 40 years O&M
- RTD retains all assets at all times
- All revenues generated by the project remain with RTD
 - Fares, advertising, naming rights, commercial uses, licenses etc.
- Fare policy and structure will be established by the RTD Board
- Parking management remains with RTD
- Fare enforcement will be a joint effort

Contract terms

- DBE/SBE requirements
 - Standard federal and RTD requirements
 - Goals for Design/ Build are:
 - 19% DBE for design work on federal project
 - 20% DBE for construction on federal project
 - 19% SBE for design work on local project
 - 18% SBE for construction on local project
 - Goals for O&M are:
 - 17% SBE for all services during O&M period
 - Distribution of SBE work to each of the four categories is defined within each goal above

Contract terms

- Sustainability requirements
 - To prepare and execute a sustainability plan consistent with RTD's policy
 - To obtain LEED certification for the maintenance facility
- Renewable energy requirements
 - To minimize the amount of non-renewable energy used for traction power
 - To reduce the net-metered quantum of electrical energy used by the commuter rail system

Contract terms

- Handover
 - Handover requirements apply at end of concession or any time prior to that if the concession is terminated
 - Assets shall be in a condition consistent with well maintained assets of the age of the assets at the time of handover
 - Assets shall have a remaining life expectancy consistent with the design life and date of handover

Payment structure

- RTD will make:
 - Construction payments during design/build phase
 - Annually capped amounts payable based on earned value
 - Each month all work completed will be assessed
 - Service availability payments during O&M
 - Indexed over concession term
 - Adjustable based on performance

Service payments

- Payments paid monthly and adjusted for availability and performance
 - Provision of required service
 - On-time performance of trains
 - Station availability
 - Quality and timely maintenance
- Payment adjustments are approximately:
 - Increase of up to 0.5% for perfect delivery
 - Reduced by up to 25% for inferior delivery

Security of payments

- The debt repayment portion of the Service Payment will be treated as a multi-fiscal year commitment by RTD
- RTD is using existing TABOR debt capacity to secure the capital portion of the Service Payments
- Service payments are always subject to deductions due to sub-standard performance

Remedies during design/ build

- Quality problems
 - Construction payments will be suspended for the affected work
 - Corrective actions must be complete within 30 days or a remedial plan must be submitted
- Schedule delays
 - Delays in schedule require a corrective action plan
 - Delays will result in delayed construction payments
 - Delays to revenue service target dates will result in delayed Service Payments
 - Severe delays (>18 months) lead to termination

Remedies during O&M

- Quality problems
 - Sub-standard operations reduce service payments by up to 25%
 - Failure to provide safe operations result in a 30 day cure notice and eventually to termination
 - Consistent loss of more than 3% of service payment and/or failure to provide reliable service for 6 out of 8 months result in a 30 day cure notice and eventually to termination
 - If the Concessionaire defaults termination payments will be determined through a bid process – i.e. market value

Remedies during the concession

- Legal problems that cause immediate termination of concession
 - Liquidation of Concessionaire and/ or major contractor(s) and no acceptable replacement
 - DB contractor
 - Rolling stock supplier
 - O&M contractor
 - Failure to achieve financial close
- Failure to comply with certain other legal requirements
 - Allow a 30 day cure period before termination

Remedies against RTD during the concession

- An RTD default occurs if:
 - RTD fails to pay
 - A change in law occurs and RTD does not provide necessary compensation
 - All or part of the project is condemned
 - RTD's material obligations become illegal or unenforceable
- Then RTD is liable to payment of a termination amount and the concession is terminated
- No other RTD liability remains

Dispute resolution

- Any technical and financial disputes will be escalated as follows:
 - Respective project managers
 - Respective Senior Representatives
 - Dispute resolution panels comprising an independent chair, one RTD and one Concessionaire representative
 - Technical
 - *All issues of a technical nature including O&M*
 - Financial
 - *All issues of a financial nature*
 - District Court of Colorado

Independent engineer during design/ build period

- An independent engineer will be employed on the project and paid for by both parties
 - To resolve any disputes over construction payments
 - To certify achievement of readiness for revenue operations
 - To certify achievement of final completion
- The Independent Engineer's determination is final
- RTD may use the Independent Engineer required by the lenders

Recommended stipends

- Stipends of \$2.5 million available to unsuccessful teams that submit responsive and technically acceptable proposals
 - Proposals may be deemed non-responsive if price is over the upset limit
- Stipends would be payable to all teams remaining in competition (as demonstrated by continuing participation in meetings, submittal of questions etc.) if RTD withdraws the RFP prior to approval of an award of contract

Compensation agreement

- Compensation of no less than \$2.5 million and up to \$20 million will be provided to a team that:
 - Is approved by the Board for award of the contract and;
 - Does not receive an executed contract or;
 - Is not issued a notice to proceed for Phase 1 through no fault of the team
- Documented expenses allowable under federal guidelines accumulated from the date of issuance of the RFP will be considered for compensation

Contract key dates

- Deadline for Start of Operations for Northwest Rail Electrified Section* – No later than June 30, 2016
- Deadline for Start of Operations for East Corridor – No later than December 31, 2016
- Deadline for Start of Operations for Gold Line* – No later than December 31, 2016

* Contingent on Phase 2 being awarded

- Note: Revenue Service Target Dates will be set in the accepted proposal but shall be no later than the above

Request for Proposals

RFP format

- Volume 1 – Instructions to Proposers
 - Defines the requirements to respond to the RFP
- Volume 2 – Concession Agreement including 23 attachments
 - The selected proposal will be appended as Attachment 19 to form part of the contract documents
- Volume 3 – Reference Data
 - Various documents that inform but do not form part of the contract documents

Volume 1: Instructions to Proposers (ITP)

- Overview of project
- Instructions to Proposers regarding delivery and contents of submissions
- Description of evaluation criteria
- Weighting of criteria
- Administrative matters
- Stipend Agreement
- Compensation Agreement

Volume 2: Concession Agreement

- Concession Agreement
 - Principal agreement between RTD and Concessionaire
 - Defines risk allocation for all phases of agreement
 - Includes 23 attachments

Volume 3: Reference Data

- Various non-binding documents that have been developed during project development
- Examples include:
 - Drawings and plans of projects
 - Geotechnical, bridge and traffic reports
 - Environmental impact statements (Record Of Decisions are binding in contract)
 - Management plans
 - Guidelines and criteria

RFP requirements

- Technical proposal that:
 - Details how the proposer intends to meet contract requirements
 - Description of the physical project
 - Plans of how they will manage the project
 - Plans for O&M
- Financial proposal that provides:
 - An executable financial plan
 - Firm fixed cost data for design/build of East, CRMF and EMUs and O&M for entire Eagle Project
 - Cost data in 2010\$ for Gold Line and Northwest Rail Electrified Section – costs will be escalated by agreed formulae
 - Prices for options

Evaluation Criteria

Pass/fail criteria

- **Administrative Pass/Fail Requirements**
 - The Proposer has provided all documents required to be submitted as part of the Final Proposal
 - The Final Proposal does not contain any significant irregularities rendering it incomplete, indefinite, or ambiguous
 - The Proposer has otherwise complied with the requirements of the ITP
- **Financial Pass/Fail Requirements**
 - The Proposer has submitted evidence of Equity Commitments and committed debt financing that is sufficient to comply with the requirements
 - The Financial Proposal contains each of the submittals required by the ITP
- **Technical Pass/Fail Requirements**
 - The Technical Proposal contains each of the submittals required by the ITP

Financial evaluation criteria (55%)

- Aggregate Base Annual Service Payment (ABASP) (50 points)
 - The lowest ABASP proposed scores 50
 - A formula is included in the ITP
- Quality of financial proposal (3 points)
 - Executability of debt portion of financing plan
 - Commitment of equity providers and core contractors
 - Robustness of financial proposal
 - Hedging strategy
 - Use of TABOR debt capacity
- Options (2 points)
 - Price and other factors will be considered in allocating a score

Technical evaluation criteria (45%)

- Technical approach (25 points)
 - Quality of the technical solutions offered
 - Quality of the operations and maintenance plans proposed and commitment to provide and maintain a quality revenue service
 - Quality of proposal for inclusion of safety in design and operation
 - Quality of proposal for integration of components, systems, civil and building works and operations in a systematic manner

Technical evaluation criteria cont'd

- Quality of team and approach (12 points)
 - Proposer's ability and commitment to deliver a safe Project
 - Proposer's ability and commitment to deliver the Eagle Project with quality assured
 - Proposer's ability and commitment to deliver the Eagle Project on time through a comprehensive management program
 - Proposer's ability and commitment to exceed the system assurance requirements
 - Proposer's experience and key personnel

Technical evaluation criteria cont'd

- DBE and SBE approach (3 points)
 - Creativity of approach
 - Demonstrated commitment to RTD's DBE and SBE policies and programs
 - Ability to successfully comply with RTD's DBE and SBE requirements
- Value-added proposals (5 points)
 - Any value-added proposals will be awarded points in accordance with RTD's determination of the value of such proposals to RTD

Summary of key changes from the draft RFP

- Use of TABOR debt capacity to secure debt repayment
- Phased approach to allow progress while awaiting FFGA
- Addition of Northwest Electrified Section
- Recommended increase in stipends
- Introduction of compensation for successful proposer if project is not implemented

RFP key dates

- RFP released – September 30, 2009
- Proposals received – March 31, 2010
- Selection and Award by the Board – June 15, 2010
- Contract Execution – by July 6, 2010
- Financial Close for Phase 1 – August, 2010
- Ground breaking on early construction work (RR relocation work) – August, 2010
- Deadline for Phase 2 NTP – December 31, 2011

Next steps

- Provide a briefing on the RFP in a public meeting
 - September 1, 2009
- Recommend to the FasTracks Monitoring committee release of the RFP
 - September 15, 2009
- Seek Board approval to release RFP
 - September 22, 2009
- Issue RFP to the pre-qualified teams
 - September 30, 2009

Questions?