

COPY

Exemption Number 2002-51

FINDINGS OF FACT
SUPPORTING AN EXEMPTION FROM COMPETITIVE BIDDING REQUIREMENTS AND THE USE
OF
THE DESIGN-BUILD COMPETITIVE SELECTION PROCESS

Before the Director, Department of Transportation
Of the State of Oregon

In the Matter of the Exemption Request for (I-84)) FINDINGS OF FACT,
Quarry Bridges Section, Old Oregon Trail Highway,) CONCLUSIONS OF LAW AND
Interstate-84 (I-84), Union County on Behalf) ORDER
of the Department of Transportation)

ORS 279.015 (1) requires, with certain exceptions, that all public contracts be based on competitive bidding and, under ORS 279.029, be awarded to the lowest responsive and responsible bidder. House Bill 4010, (First Special Session, Oregon Laws 2002, Chapter 3) amended ORS 279.015(2) to permit, respecting contracts described in ORS 279.712(2)(c), the Director of the Department of Transportation (ODOT) to grant exemptions from the requirement for competitive bidding upon the approval of specified findings. ORS 279.011(5) defines "Findings" and identifies specific information to be provided as part of the agency justification. Under ORS 279.015(3), as amended, a public hearing must be held before the findings are adopted, allowing an opportunity for interested parties to comment on the draft findings.

The hearing for review of these findings was held at 1:00 PM on October 7, 2002 at the Department of Transportation office at 355 Capitol St. NE, Salem, Oregon. There were no comments from the public, either oral or written, during this hearing or during the time for comments.

ORS 184.610 to 184.733 describes the Oregon Department of Transportation (ODOT) and the responsibilities of the Oregon Transportation Commission (OTC), the Director of Transportation and managers. ORS 366.400 authorizes the ODOT to enter into all contracts deemed necessary for the construction, operation, maintenance, improvement, or betterment of highways. ORS 279.712(2)(c) provides ODOT with independent contracting authority for public improvement contracts relating to maintenance or construction of highways, bridges, parks or other transportation facilities. ORS 366.505 describes the composition and use of the Highway Fund, including Federal funds.

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OF
THE Design-Build COMPETITIVE SELECTION PROCESS

I
BACKGROUND

1. Project Description: (I-84) Quarry Bridges (La Grande) Section

ODOT proposes to enter into a Design-Build contract on or near January 15, 2003. The purpose of the project addressed by this document is to replace the two eastbound and two westbound Quarry Bridges near La Grande in Union County, Oregon. The work under this Design-Build Contract consists of design, construction, contract administration and all support needed to complete construction. The existing bridges (Br. #08429 E&W and Br. #08430 E&W) are located at milepost 258.89 and milepost 259.13 on Old Oregon Trail Highway (I-84). The project will require the Design-Build Contractor to provide an extensive level of environmental awareness and

commitment in both the design and construction phases, including the obtaining of all required permits. The work will be done in accordance with ODOT approved geometric design standards, performance requirements, and specifications. The estimated value of the contract is between \$18 and \$24 million dollars. The project is to be funded with a combination of funds provided by the Federal Highway Administration and the state.

It is essential that the work be vigorously initiated, pursued and completed, with a minimal impact to the traveling public. This is the major traffic carrying facility in the area and carries both local and through traffic. Due to the lack of space for detours, traffic will likely be limited to one lane in each direction for a good portion of the construction time. The economy of the community of LaGrande, the surrounding area and the State of Oregon is vitally dependent on this section of roadway and it is imperative that replacement of the structures be completed as quickly as possible. It is critical this project be completed with as little interference as possible to traffic flow while assuring safety to the traveling public.

2. Nature of Business

ODOT, formerly the Oregon State Highway Department, has been contracting for road improvement projects since 1914. In recent years, the average number of projects has been approximately 150 to 200, at a cost of approximately \$200 to \$300 million. The OTC is mandated to "encompass economic efficiency" (ORS 184.618), and therefore ODOT strives to continually improve its acquisition and project delivery approaches. One of those acquisition improvements is Design-Build project delivery procurement.

3. Circumstances

ODOT and most other DOT's have traditionally employed at least two separate phases to implement transportation improvement projects; namely a design phase and a construction phase. Experiences from other public contracting arenas have shown that the potential exists to reduce both time and cost to complete projects that require both design and construction by including and integrating both efforts within a single Design-Build contract for the completion and delivery of the project.

ODOT has traditionally used a low bid approach for selecting construction contractors. In the future, the department anticipates using a variety of contracting methods to deliver transportation projects. One promising method is Design-Build contracting. With this approach, a Design-Build team can supply engineering design, plan preparation, value engineering, construction engineering, construction, quality control, and documentation for an entire project, and fully integrate these elements into one contract.

Other states, have demonstrated that Design-Build contracting can provide a number of benefits on transportation projects. These include:

- Saving time by overlapping and interweaving the design and construction phases of projects. A recent 2002 Survey by SAIC for the Illinois Department of Transportation on the current use of Design-Build Contracting cites responses from eleven states (Oregon was not a respondent). All respondents noted a time saving from the Design-Build method. Florida, for example, reported average time saving of 33% relative to conventional project delivery processes. Other states, for large projects, reported timesavings of over two years. www.fhwa.dot.gov/programadmin/contracts/survey02.htm
- Saving money a number of ways such as by creating expanded opportunity for cost saving innovations, reducing efforts spent preparing documents for a contracting process, allowing customization of designs for a specific contractor's proven approach and equipment, and reducing the number of change orders. In the 2002 SAIC study referred to above, respondents reflected the above through actual project experiences, and specifically noted in many instances the reduction in change orders and/or contract claims costs.
- Better projects from integrating design and construction and by incorporating contractor-specific details and methods into the construction plans.

ODOT is continuing to pursue further Design-Build contracting to realize these benefits on selected transportation projects in Oregon.

The Governor signed into law Oregon Laws 2001, Chapter 669 (House Bill 2142), known as the Oregon Transportation Investment Act (OTIA), as amended, which provides for the proceeds of a \$500,000,000 bond issue(s) to be used to fund transportation projects selected by the Oregon Transportation Commission (OTC). A project selection process, allowing for considerable public input, concluded with the OTC's formal selection of projects ending on July 17, 2002. Through the OTIA process, nineteen state bridge replacement projects have been selected as projects (including two of the four Quarry Bridges), since many state bridges (including these) are rapidly deteriorating and must either be replaced, rehabilitated or severely load limited.

During the hearings on the bonding program, ODOT agreed to implement the program as quickly as possible using innovative contracting methods where appropriate to ensure a rapid response. The use of alternative contracting methods is reinforced by the Oregon Legislature in ORS 279.015(6)(a) which, as amended, requires the Director of the Department of Transportation, where appropriate, "... to use alternate contracting and purchasing practices that take account of market realities and modern or innovative contracting and purchasing methods..." Rapid initiation and completion of OTIA work will minimize the inefficiencies associated with peak loading and respond to the trust and expectations placed in ODOT by the Legislature. Design-Build project delivery has been demonstrated as a method to initiate and complete construction work more quickly than the traditional contracting approach, and is well suited to quickly initiating bridge replacements such as those selected for OTIA.

4. Process

The procurement process to be implemented is described in Attachment A hereto. It will culminate in a lump sum contract (with progress payment provisions) for the project under this exemption. The project will be awarded to the contractor submitting the proposal determined to be most favorable in light of several factors. Those include; proposal price (including removal, design, environmental permitting and construction costs), and technical factors (including experience, personnel, schedule aggressiveness, and capabilities and plans in areas such as quality, maintainability, reliability, environmental impact, traffic disruption, project staging, staffing and organization.)

5. Advantage

The use of Design-Build contracting is expected to significantly reduce the overall project cost by i) reducing formal engineering documentation efforts, ii) permitting 'Long Lead' construction-related planning and procurements to be initiated prior to finalization of total, detailed design, and iii) reducing the period of performance of the project. Further, the process described in Attachment A hereto has been formulated to encourage competition. Both the construction and engineering consultant communities have been supportive of limited ODOT Design-Build contracting.

ODOT, and in particular Robert G. Burns, Acting Manager, Design-Build Program for ODOT, has the necessary capability and experience for Design-Build projects.

6. ODOT Design-Build History

The use of this contracting method has been successfully accomplished in the past by ODOT under its Design-Build Pilot projects and two OTIA "Fast Tracked" Design-Build projects currently under contract. Under the 1997 pilot program, ODOT initiated two projects to develop and gain direct experience with Design-Build contracting. The Department recognized that Design-Build contracting would require significant changes in the way all participants in transportation projects conduct business. Representatives for the design and construction industry, insurance and bonding companies, and cities and counties were invited into the pilot program and actively participated. Informational and educational publications and meetings were provided for broader audiences of stakeholders, including the OTC, and the Legislature.

Two projects were delivered using Design-Build contracts in the pilot program. The two Design-Build Pilot projects were:

- Highway 99E: Willamette River (Harrisburg) Bridge Deck Replacement
- Interstate-5: Evans Creek to Rock point, Pavement Preservation

Though relatively simple in scope and involving comparatively uncomplicated technologies, the Pilot projects showed the benefits of the Design-Build contracting method were worthy of continued use. The Harrisburg project especially was completed in a manner that saved the public significant travel time and detour costs. The solution proposed and used by the contractor for moving traffic during construction required minimal lane closure saving significant out of direction travel and associated delays.

Two Design-Build projects are currently under contract. The two Design-Build projects are:

- Lower Perry Interchange (Grande Ronde River) Bridges
- Coast Fork Willamette River (SB) Bridge

These projects are much more complex than the Pilot projects. Both of these projects are interstate bridge replacements, and require substantial design and construction efforts with attention to environmental permitting requirements and rapid completion of structures while minimizing traffic disruptions. Since entering into these contracts in April 2002, both projects have progressed dramatically and are expected to be successfully accomplished with shorter durations than those projected for a traditional contracting process. The current schedules reflect up to a 5-month time savings beyond that originally anticipated by ODOT. These anticipated additional time savings can at least in part be attributed to monetary incentives for early delivery provided within the contracts which encouraged contractors to pursue time-reducing approaches.

ODOT is currently projecting that these two Design-Build projects will be completed well under the funding levels initially established for them as design-bid-build projects. The combined underrun for both projects is estimated to exceed \$2,000,000.

ODOT believes that this project will achieve similar success in timesavings, and is optimistic that net budget savings can be realized.

7. Form

The contract form to be used will be similar to the contracts recently awarded for the Lower Perry Interchange (Grande Ronde River) Bridges and Coast Fork (Willamette River) Bridges Design-Build projects, modified to address any project unique features. Development of the modified contract will be coordinated with the Department of Justice (DOJ). The final contract will be reviewed and approved for legal sufficiency by DOJ prior to execution. There will be no separate public contract for design, since ODOT will not contract directly for the design work. Engineering work will be performed by the engineering resource furnished by the Design-Build contractor.

II FINDINGS REGARDING REQUIRED INFORMATION

ORS 279.011(5) states that: *"Findings" means the justification for an agency conclusion that includes, but is not limited to, information regarding: (a) Operational, budget and financial data. (b) Public benefits. (c) Value Engineering. (d) Specialized expertise required. (e) Public safety. (f) Market conditions. (g) Technical complexity. (h) Funding sources.*

Many of these criteria support the use of the Design-Build contracting process. This finding is supported by the following facts:

- a) Operational, Budget and Financial Data: By passage of HB 2142, the 2001 Legislative Assembly mandated that ODOT improve the condition of and the traffic flow on the state highway system. To support this effort, under that Act, as amended, a \$500,000,000 bonding program was approved and budget authority provided to assure that construction starts as quickly as possible. Two of the four bridges in this project are part of the package of projects to be completed under this legislatively approved program. The Design-Build method of contracting is the quickest method of getting this project underway while ensuring that ODOT will not incur additional costs beyond those budgeted for. The total project design and construction

cost is estimated to be in the range of \$18 to \$24 million. In the remainder of this document, ODOT uses the representative number of \$20 million contract cost for estimating costs savings that are based on the costs of the contract. Funding will be with federal funds matched by OTIA funds. The Design-Build method of contracting is a method of minimizing construction time and insuring critical scheduling is met. It is anticipated there will be a cost saving to ODOT as well as the motoring public by using this method of contracting on this project.

- b) **Public Benefits:** The existing bridge structures are limited in load carrying capacity, requiring out-of-direction travel for many trucks. Further deterioration of the structures, continuing despite emergency repairs in 2000, will require additional traffic limitations including lane closures and possible detours during heavy maintenance. Contracting for improvements under Design-Build ensures a more timely completion of the replacement project. This will allow for resumed service to those currently unable to use the structures and eliminate future delays for all users during heavy maintenance projects. NOTE Estimated cost savings of \$1,109,000 as described in IV below.
- c) **Value Engineering:** Value Engineering (VE) is encouraged on all projects by ODOT. The Design-Build method of contracting should result in earlier, more reliable and higher quality VE proposals produced for the project. VE has resulted in both initial savings as well as long term savings for other ODOT projects. Since a good deal of the project design and planning will be accomplished during the proposal phase, ODOT can expect to realize benefits in the initial contract price.
- d) **Specialized Expertise Required:** This project involves work on an Interstate Highway under high traffic volumes. Safe traffic flow must be maintained while construction proceeds. The majority of work is structural in nature and the final product must be capable of a long service life under heavy loads. Expertise and innovation in; managing and coordinating both design and construction in a "fast track" model, implementing performance specifications, providing value engineering and constructability review, scheduling and estimating, assessing risk and providing a complete project as a single point of responsibility are all required for successful project completion.
- e) **Public Safety:** As the project is staged, the contractor may be required to design and build temporary traffic detours. Any detour must meet the requirements of the Manual on Uniform Traffic Control Devices. The integrated relationship between the designer and the constructor in the Design-Build method of contracting should assure coordination of work, resulting in shorter lane closures and detour times. In addition, Design-Build contracting of this project will ensure all is being done as quickly as possible to minimize the possibility of failure of the structure before a replacement is in place.
- f) **Market Conditions:** Unemployment in Oregon is currently much higher than experienced in the past several years. Oregon has had the highest unemployment ranking in the nation for close to a year. In enacting OTIA and HB 4010, the Governor and the Legislature have encouraged ODOT to contract projects quickly to both take advantage of lower bid prices in the current market and to improve employment. Economic studies have shown that highway construction projects nationally create between 30 and 40 jobs per million dollars spent. ODOT conservatively estimates that highway construction jobs create more than 20 jobs in Oregon per million dollars of project cost. Contractors have had some experience with Design-Build procurement in Oregon and have become more accepting of this process assuring competition. Design-Build applied to this project is expected to accelerate the construction effort by at least one year.
- g) **Technical Complexity:** These structures carry high volumes of high-speed traffic requiring technical expertise to provide safe staging, lane closures and detours during construction. Technical expertise is also required for the environmental permitting, structural design, including geotechnical and seismic design and construction. This project presents unique challenges related to the staging and removal of existing structures and the coordination of traffic control efforts with other ongoing and anticipated projects on the same high-speed facility. The project has additional challenges related to design and construction considerations for a required crossing of an active rail facility. The project will draw upon existing skills and capabilities available in the design and construction community. This project presents challenges similar to, but greater than those faced by the two Design-Build projects currently under contract.

- h) Funding Sources: As mentioned earlier, two of the bridges on this project will be funded with funds approved in HB 2142 for transportation projects approved by the Oregon Transportation Commission. Additionally, federal funds will be used to fund the other two bridges on the project.

III FINDINGS ADDRESSING COMPETITION

ORS 279.015(2) requires that an agency make certain findings as a part of exempting public contracts or classes of public contracts from competitive bidding. ORS 279.015(2)(a) requires an agency to find that: *It is unlikely that such an exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts.* ODOT finds that selecting a Design-Build contractor through a competitive process in accordance with OAR 731-007-0190 will not inhibit competition or encourage favoritism. This finding is supported by the following;

It is anticipated that competition will be similar to that expected in other projects of this type. ODOT has early indications of interest and intent to participate. ODOT processes for procurement of a contractor have been developed with maintenance of competition in mind.

1. The competition remains open to all currently qualified bidders. There are over 150 firms who have directly expressed interest in pursuing ODOT Design-Build projects. Over 25 firms have expressed interest in this project. These firms should be able to locate needed complementary skills to form viable Design-Build teams to pursue this project and other Design-Build projects. The two projects ODOT currently has under Design-Build contract both had solid participation in the Qualification stage with five teams submitting for one project and six teams for the other. The Proposal stage for both of these projects was very competitive.
2. ODOT has been communicating regularly with both the construction contracting community and the engineering consulting community about Design-Build and other non-traditional contracting methods. A public hearing was held to allow oral and/or written comments. No comments were offered from the public.
3. The Design-Build evaluation and selection process ODOT intends to employ is summarized in Attachment A hereto. It is open and impartial; all requirements for both the Qualification and Proposal stage will be determined by and reflective of the significant work elements of this type of project.
4. The final selection will be made on the basis of Adjusted Price as described in Attachment A hereto, which expands the grounds of competition beyond price alone to include quality and innovation factors. While it is not clear this induces increased competition ODOT's literature search and discussions with other jurisdictions indicate competition has remained strong.
5. Pursuant to ORS 279.025, the solicitation will be advertised in the *Daily Journal of Commerce*. In addition, the notice will be advertised in *Commercial Market Data* and on the ODOT web site: www.odot.state.or.us/techserv/progsrv/contract.

IV FINDINGS REGARDING SIGNIFICANT COST SAVINGS

ORS 279.015(2) requires that a public agency make certain findings as part of exempting public contracts or classes of public contracts from competitive bidding. ORS 279.015(2)(b) requires an agency to find that: *The awarding of public contracts pursuant to the exemption will result in substantial cost savings to the public contracting agency.* This finding is supported by the following;

Design-Build benefits for this project include opportunity for significant cost and time saving through innovation including:

- improved project staging,
- incremental completion of engineering and commencement of construction (for example construction may start on a detour once designed rather than waiting until the whole project is designed),
- integrated planning (since designers and contractors are teammates from the beginning of the contract, the most cost effective construction approaches the contractor is capable of can be designed into the project),

- reduced formal engineering effort (the plans and specifications do not have to be biddable requiring that level of detail), and
- continuous improvement (products and techniques new to the market and other innovations can be identified and used).

While measurement of the results of these features of Design-Build is difficult, other state DOT's and other owner communities consistently report benefits from their Design-Build experience, including direct and indirect cost savings. ("Innovative Contracting Practice", FHWA, www.fhwa.dot.gov/programadmin/contracts/sep_a.htm)

1. Direct Contract Cost Saving:

- 1.1 Cost and Time – Indications from the experiences of other state DOT's are that, in general, initial contract prices are expected to be comparable between Design-Build and conventional methodologies. However, the Construction Industry Institute (CII) found that design-build construction methods have an edge over others in limiting cost and schedule creep. The study reviewed 350 building construction projects (20% Construction Management (CM), 45% Design-Build and 35% Design-Bid-Build (DBB)). The DBB method showed the greatest median cost escalation at 4.84%, followed by CM at 3.34% and Design-Build at 2.37%. The CM and Design-Build experienced almost no delays with DBB running an average of 4.44% longer. "Design-Build Has Cost, Time Edge" Engineering News Record, November 17, 1997. That difference would result in a cost savings of approximately \$494,000 ($\$20,000,000 \times (4.84\% - 2.37\%) = \$494,000$).
- 1.2 Contract Changes – Analyses by other transportation jurisdictions indicate that the number and cost of contract changes (change orders after bid opening which affect the work to be completed) decreases, and that changes may tend to result in modest *decreases* to contract price. For example, Florida (Transportation Research Record No. 1351, "Final Evaluation of the Florida Department of Transportation's Pilot Design/Build Program", 1992) has experienced a swing from +8.8% average contract cost growth using conventional DBB approaches to 2% average contract cost *reduction* for Design/Build projects. This swing of over 10% may be attributable to the continual Value Engineering opportunities the Design-Build team has by working together from proposal preparation through project completion and delivery. The 2002 SAIC Design-Build survey previously noted contains response data that appears to substantiate the decrease in contract claims on Design-Build projects. Applying Florida's experience to Oregon's situation, ODOT could see a shift from +2.5% contract cost growth experienced by ODOT under its current conventional approaches to Florida's 2% contract cost reduction, a 4.5% swing. For this project, the saving is therefore projected to be approximately \$900,000. This saving is a duplication of that described above but provides a confirmation (for which ODOT uses the smaller figure of \$494,000 in totaling Direct Cost Savings).
- 1.3 Bid Documents – There are areas of savings to be expected related to ODOT bid documentation preparation. For example, under current DBB, it is necessary for preliminary engineering design plans and specifications, adequate for identifying project performance, to be further formalized to standards appropriate for inclusion in formal Bid packages. By eliminating the separation between design and build phases of the project, formalization costs can be decreased. ODOT estimates that preliminary engineering will be reduced by approximated \$15,000 for this contract.
- 1.4 Maintenance – By contracting this project as Design-Build, ODOT estimates that the project construction can commence in the Summer of 2003 with completion estimated 12 months earlier than if conducted under the traditional process. The difference is attributable to incremental completion of engineering allowing early start of some construction tasks, and shortened project performance time span. It includes a time saving due to the opportunity to complete the in-stream work in 2004, a one-year earlier window than could be met under the conventional design-bid-build process. (There are environmental restrictions on in-stream work, which allow work to occur only at certain times of the year.) The estimated 12-month improvement in the project completion date could allow ODOT to forego some maintenance or repair expenditures on these rapidly deteriorating bridges. Due to their current condition, the savings could reach \$300,000 based on experience with nearby I-84 bridges.

- 1.5 Inflation – The one-year time saving will also save inflationary cost of construction, which has been 3% per year amounting to approximately \$300,000 for this project assuming the saving spread is over the year ($3\% \times \$20,000,000 \times 1/2 = \$300,000$).

2. Indirect Savings:

2.1 These bridges are currently forecast to be the last bridges replaced in this corridor that are currently unable to withstand modern truck loading and requiring some heavier trucks to take a detour route. The out of direction travel for these trucks is about 100 miles, which is unreasonable. However, based upon 100 mile out-of-direction routing and 40% of the trucks being detoured (the number of five axle or greater trucks being used in that area) the cost is estimated at \$300,000/day delay and \$300,000/day in out-of-direction travel for a total of over \$200 million annually to the industry. The reality is that the industry would be unlikely to send shipments in trucks subject to the detour. Some areas would likely not get deliveries or shippers would be forced to pay a premium to have the shipments hauled in smaller trucks. An estimate of this cost would be subjective and is not attempted here. It could easily exceed one million dollars.

Two of the Quarry bridges are being funded in the State Transportation Improvement Plan (STIP), but no final design work has been started. The other two Quarry bridges were funded as two separate projects under HB 2142 and no final design work has been started. However, it is possible to contract this as a single project immediately, using the Design-Build process, without impeding the development of other bridge projects in the corridor. This will make the entire corridor usable sooner. All other structures are in the STIP for construction, and are scheduled to be completed by the end of 2004.

It is possible with the Design-Build process to proceed immediately, eliminating an estimated one year for the completion time of all bridges on this corridor, saving one year of truck traveling the detour route. The total saving described above could amount to millions of dollars.

2.2 There is agreement that Design-Build procurements reduce time to deliver a project. In addition to eliminating one procurement cycle; innovation, concurrent engineering, incremental starting of material acquisition and fabrication all contribute to reduction of time. Innovation was the key to Oregon's experiences with the I-5 Trunnion Gear Replacement, the Mary's River Bridge, and the Willamette River (Harrisburg) Bridge Re-decking all of which realized significant time reductions. By allowing and even encouraging innovation and aggressive program approaches, time saving can be expected. In Design-Build, the contractor is encouraged to engineer and stage the project to optimize construction, considering in-house mix of design skills and construction capabilities. This typically leads to reduction in time for start of construction and project completion, and translates into reduced costs. With this project employing Design-Build techniques, ODOT anticipates a reduction in construction-related traffic impediments by minimizing detours, lane closures and narrowing.

3. Net Expected Savings:

While there is some indication that initial contract prices might be reduced, it is difficult to estimate a probable amount. This is also the case with savings related to contract changes. Using the lower of the two figures (the value from 1.1 is used), a conservative estimate of the direct saving described above in Direct Contract Cost indicates a net savings amounting to approximately \$1,109,000 (see table below).

Direct Contract Cost Savings Summary

Subsection	Approximate Savings
1.1 Cost and Time	\$494,000
1.2 Contract Changes	Value not used
1.3 Bid Documents	\$15,000
1.4 Maintenance	\$300,000
1.5 Inflation	\$300,000
Total	\$1,109,000

The greatest saving may well be to the trucking industry and its customers and could be several million dollars. It can be expected that some of these savings will result in reduced shipping costs passed on to Oregon consumers.

4. Evaluation Process

This project will be evaluated in accordance with the requirements of ORS 279.103, This contracting method will be evaluated by comparing the Design-Build contracting costs to estimated costs if ODOT had used a traditional Design-Bid Build approach.

Evaluations, factors and comparisons of actual cost on this project will be measured against the estimated costs for the project as if procured through Design-Bid Build.

V
CONCLUSIONS OF LAW

An exemption from competitive bidding requirements is justified under the criteria outlined in ORS 279.011(5), findings have been developed in compliance with ORS 279.015(2) and 279.015(3), and ODOT will perform the post project evaluation required by ORS 279.103. Based upon the previously listed findings, ODOT concludes that:

- A) Following the described selection process, an exemption is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts; and
- B) Award of a public contract pursuant to the exemption will result in a substantial net cost savings to ODOT in the approximate amount of \$1,109,000.

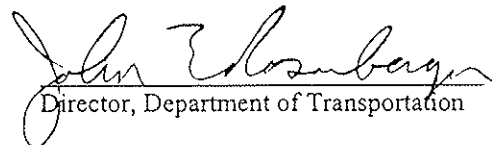
ORDER

An exemption from public competitive bidding requirements is hereby granted to the Oregon Department of Transportation to enter into a Design-Build contract for the four I-84 Quarry Bridges (La Grande) Section, Bridges (Br. #08429 E&W and Br. #08430 E&W), Old Oregon Trail Highway, Union County, by using the alternative method of procurement described in the preceding findings. This order is subject to the following conditions:

1. To the extent possible and consistent with this Exemption, this procurement will follow the provisions of ORS Chapter 279 and 291; OAR Chapter 731, Divisions 5 (ODOT Public Contract Rules) and Division 7 (ODOT Public Improvement Contracts), particularly OAR 731-007-0190 relating to use of Design-Build contracting.
2. ODOT in concert with the Department of Justice (DOJ) shall establish objective standards for evaluating proposals and for making a contract award, and they shall be followed.
3. ODOT shall work with DOJ to adapt standard contract language for the contract and shall incorporate into the contract such additional or substitute additional terms that DOJ may determine to be necessary for the protection of the State.


THE FINDINGS OF FACT SUBMITTED IN SUPPORT OF THIS REQUEST ARE HEREBY APPROVED

10-18-02
Date


Director, Department of Transportation

REVIEWED BY THE DEPARTMENT OF JUSTICE

10-14-02
Date


Assistant Attorney General

Attachment A – Selection Process Description and Objectives

The selection process that will be used for the Design-Build Program consists of two steps, 1) A Request For Qualifications (RFQ) for the specific project will be advertised industry wide, the same as with current conventional projects. The RFQ will ask for the specific experience of proposers (Design-Build teams), key personnel, and organizational information, which will be compared to standards established for specific key elements of this project. The Statements of Qualifications (SOQ's) received will be evaluated, and the three (four in case of tie) highest scoring teams demonstrating that they meet or exceed previously established minimum experience and organization requirements stated in the RFQ, will be selected to advance to the proposal stage. 2) Requests for Proposal (RFP) will be issued for the project to the selected teams, and Proposals shall be submitted by the selected teams by a specified date.

The Proposals submitted will be required to contain two components, a price component and a technical component. The price component presents the total cost to ODOT for delivering the specific project. The technical component describes the proposer's understanding of the project, key personnel to be committed to that project, and the proposer's approach to delivering project key elements described in the project RFP. The Proposal technical component score will be used to adjust the proposed price component, resulting in a final score, or Adjusted Price.

The Statement of Qualifications and the technical component of the Proposal will be evaluated by a Technical Evaluation Committee, consisting of 4-7 people representing ODOT Technical Services and Region Management, with possibly one non-ODOT member. Other non-voting members will participate.

The scoring of the SOQs' and the Proposals' technical component will be completed and approved by committee members. The scores for the Proposal technical component will be completed prior to the date and time set for opening of the price component.

The technical component scores will be read publicly. Then the proposal prices will be opened and read publicly. The 'Adjusted Price' for comparison and award of the contract will be determined using combined technical and price components. The formula for adjustment will be contained in the RFP.

The price will be taken directly as read from the Proposal. The technical component score will be expressed as a percentage of the total available points. The final score will be calculated and will be announced. The responsible proposer with the lowest, responsive Adjusted Price will be selected.

OREGON DEPARTMENT OF TRANSPORTATION

DATE: October 7, 2002 at 1:00 pm

SUBJECT: Public Hearing Meeting Minutes
Design-Build: Quarry Bridges Section, I-84, Union County

HEARINGS OFFICER: Rob Rickard, CPPO

TO: ATTENDEES

Bob Burns, ODOT
Lea Ann Hart-Chambers, ODOT
Joe Speight, ODOT Consultant
John Parsons, ODOT
Rob Gebhardt, DOJ
Johnny Alexander, ODOT

Rob Rickard called the Public Hearing to order at 1:00 PM, in room 122 of Transportation Building. Rob Rickard, for the record, is the Chief Procurement Officer with Purchasing and Contracts Management for the Oregon Department of Transportation.

Also for the record, the Purchasing & Contracts Management Unit will not be responsible for the letting or awarding of this particular contract so in that sense Rob Rickard has no vested interest in this particular action.

This meeting is to provide an opportunity for discussion of the A + B Procurement Process to be used in the Medford area.

Public Testimony: There were no comments offered from the public, either oral or written, during this hearing or during the time for comments which preceded this hearing

The meeting was adjourned at 1:15 PM