



Oregon

Theodore R. Kulongoski, Governor

COPY

Department of Transportation

Major Projects Branch

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DATE: July 20, 2007

File Code:

TO: Matthew Garrett
Director, Department of Transportation

FROM: Bob Pappe PE, PLS
ODOT Advanced Contracting Unit Manager

SUBJECT: Findings of Fact Exemption Request
Bundle 414 US395: McKay Creek – Silvies Slough (MSS)
Design-Build Project
Key No. 16410
Highway 28, MP 5.77, 15.27, 60.93, and 63.81, highway 5, MP 119.46
and 155.75, highway 48, MP 42.95, and highway 442, MP 0.69
Umatilla, Grant and Harney Counties

In accordance with ORS 279.335, this memo requests your approval for Exemption #2007-50 from low (competitive) bid contracting in order to use the Best-Value Design-Build contracting to design and construct the US395: McKay Creek – Silvies Slough.

The US395: McKay Creek – Silvies Slough project is a Stage 4, OTIA III project that will replace 7 structures that are rapidly deteriorating due to cracking, along with repairing one structure that is showing signs of distress. By employing the Best-Value Design-Build approach, we anticipate significant direct cost savings of approximately \$375,000 to \$742,500. The use of the Design-Build procurement method is expected to gain one year of time compared to the traditional design-bid-build contracting method.

Findings of Fact (FOF)

- Hearing advertisement dates: June 25th, 28th, and July 2nd and 5th, 2007, published in the Daily Journal of Commerce and Reed Business Information, and posted on the ODOT Office of Project Delivery website.
- Findings of Fact public hearing date: July 20, 2007.
- Public comments received on the draft Findings of Fact: zero (0)
- Findings of Fact signature date by the Department of Justice (DOJ): July 10, 2007.

Project Statuses

- Project Advertisement date: June 4, 2007, Published in the Daily Journal of Commerce and Reed Business Information, and posted on the ODOT Office of Project Delivery website.
- Request for Qualification are scheduled for released: July 27, 2007.
- Statement of Qualifications are scheduled to be received: August 31, 2007
- Request for Proposals are scheduled to be released: October 2, 2007
- Proposals are scheduled to be received : January 2, 2007

Your signature indicating approval on page 11 of the enclosed Findings of Fact will execute the exemption, developed in conjunction with the Association of General Contractors.

Attachment: Findings of Fact Exemption Number 2007-50

Cc. Douglas Tindall, Deputy Director for Highway
Cathy Nelson, Technical Services Manager (w/FOF)
Heather Mcloren, Region 5 Bundle CPM (w/FOF)
Diana Foster, Hearings Officer, ODOT Procurement Office (w/FOF)
Rob Gebhardt, Assistant Attorney General, Department of Justice (w/FOF)

Exemption Number 2007-50

FINDINGS AND ORDER
SUPPORTING AN EXEMPTION FROM COMPETITIVE BIDDING REQUIREMENTS
AND THE USE OF THE DESIGN-BUILD
ALTERNATIVE CONTRACTING METHOD

Before the Director of Transportation
of the State of Oregon

In the Matter of the Exemption Request by the)
Oregon Department of Transportation for the) FINDINGS OF FACT,
US395: McKay Creek – Silvies Slough (MSS)) CONCLUSIONS AND ORDER
Bundle 414 Project, on US395, US26, OR19, and)
OR78 highway routes located in Umatilla, Grant)
and Harney Counties)

ORS 279C.335(1) requires, with certain exceptions, that all public contracts be based on competitive bidding and, under ORS 279C.375, be awarded to the lowest responsive and responsible bidder. ORS 279C.335(2) permits the Director of Transportation to grant exemptions to the Oregon Department of Transportation (ODOT) from the requirement for competitive bidding upon the approval of specified findings. ORS 279C.330 defines "Findings" and identifies specific information to be provided as part of the agency justification. Under ORS 279C.335(4) a public hearing must be held before the findings are adopted, allowing an opportunity for interested parties to comment on the draft findings.

This request for exemption was advertised in the Daily Journal of Commerce on June 21, 2007 and in the Reed Business Information on June 25, 2007. It was also posted on the ODOT web site at:
http://www.oregon.gov/ODOT/HWY/OPD/DBprocurement.shtml.

The hearing for review of these findings was held at 1:00 p.m. on July 10, 2007, at the Department of Transportation office at 680 Cottage St. NE, Salem, Oregon 97301. 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 ODOT to enter into all contracts deemed necessary for the construction, operation, maintenance, improvement, or betterment of highways. ORS 279A.050(3)(b) provides ODOT with independent contracting authority for public improvement contracts relating to the operation, maintenance or construction of highways, bridges and other transportation facilities. ORS 366.505 describes the composition and use of the Highway Fund, including Federal funds.

FINDINGS OF FACT

A. BACKGROUND

1. **Project Description:** US395: McKay Creek to Silvies Slough (MSS) Bundle 414 in Umatilla, Grant and Harney Counties.

ODOT proposes to enter into a design-build contract on or about May 15, 2008. This project combines or bundles several planned projects located between mile point (MP) 5.77 on Hwy # 28 (US395) and MP 0.69 on Hwy # 442 (OR78), into a single procurement for a single project, identified as Bundle 414 under the OTIA III Bridge Delivery Program. The project has been placed in the Statewide Transportation Improvement Plan (STIP).

The goal of the single-project approach is to obtain the benefit of cost efficiencies.

Project Component Name/ ODOT Bridge #	Mile Point	Work Scope
McKay Creek, Hwy 28 (US395) #08050	5.77	Replace
East Fork Birch Creek, Hwy 28 (Pilot Rock) #02561	15.27	Repair
Camas Creek, Hwy 28 (US395) #04728	60.93	Replace
North Fork John Day River, Hwy 28 (Dale) #04729	63.81	Replace
John Day River, Hwy 5 (Goose Rock) (OR19) #02655	119.46	Replace
John Day River, Hwy 5 (Coles) (US26) #07696	155.75	Replace
Trout Creek, Hwy 48 (US395) #03596	42.95	Replace
Silvies Slough, Hwy 442 (OR78) #03522A	0.69	Replace

The estimated value of the construction contract is \$ 25 to 35 million dollars. The project is to be funded with a combination of Federal Highway Administration and state funds.

Construction of the seven (7) OTIA III Stage 4-funded bridge replacements and one (1) bridge repair is scheduled to begin during the 2008 construction season, with

completion by November 2011. The work will include design, construction, quality management, contract administration and all necessary support services.

The work will be done in accordance with ODOT-approved geometric design standards, performance requirements, and specifications.

In its solicitation, ODOT may reserve the right to include additional related work within the general project vicinity.

It is essential that the work be vigorously pursued and completed with minimal impact to the traveling public, as US395 and US26 are important commercial and recreational travel corridors connecting eastern Oregon communities.

US395 is a particularly critical route for commercial truckers. US395 is currently the only direct connecting route between Pendleton, John Day and Burns, OR that can accommodate commercial truck legal loads. The lack of practical detours presents significant out-of-direction travel. Because of the lack of alternative access routes to northeastern and central-eastern Oregon communities, the work must be scheduled, staged where possible, and prosecuted so as to minimize construction time and interference with traffic flow, while maintaining safe driving conditions.

For these reasons this project is being procured using the design-build method as described below.

2. Agency Considerations:

~~ODOT has been contracting for road improvement projects since 1914. In recent years, the average number of projects per year has ranged between 150 to 200, at a cost of approximately \$200 to \$300 million. With the advent of the OTIA I, II, and III funding sources, it is expected that ODOT may expend up to \$600 million annually by 2012.~~

The OTC is mandated to "encompass economic efficiency" (ORS 184.618), and therefore ODOT strives to continually improve its procurement and project delivery approaches. One of those improvements encompassing economic efficiency is appropriate use of the design-build project delivery method of contracting.

ODOT has determined that currently all seven (7) replacement bridges have substandard load-rating factors. Only one bridge (02561 – E. Fork Birch Creek) can be repaired cost effectively. The estimated repair costs of the other seven (7) bridges exceed 50% of the replacement cost.

ODOT has also determined that the bridges should be upgraded, where feasible, to meet ODOT 4-R standards for replacement bridges and 3-R standards for the repair bridge, and given the strategic commercial importance of US395 and US26, should be designed to accommodate additional permit traffic.

ODOT performed an internal evaluation of the project delivery goals, and has concluded that using the traditional hard bid (design-bid-build) project delivery method entails an unacceptable risk that the project will not be delivered by the targeted completion date. Conversely, an extensive evaluation of the design-build delivery method for the project

resulted in ODOT's determination that there is a high probability of meeting the project delivery goal using that method.

3. Procurement Process:

This is a request to the Director of Transportation, on behalf of ODOT, for a contract-specific exemption from competitive bidding requirements. The exemption would allow ODOT to solicit proposals for the design and construction of the project described above using the design-build alternative contracting method.

The procurement "Selection Process Description and Objectives" to be implemented under the ODOT Design-Build Program is described in Attachment A. The design-builder selected will be responsible for both design and construction of the project. The selection will involve a qualification round to determine the three most qualified firms or teams. Those three (or more depending on the quality and distribution of scores) teams will be asked to each provide a quality proposal and a price proposal. The process will culminate in award of a lump sum contract (with progress payment provisions) for the project under this exemption. The contract will be awarded to the design-builder submitting the proposal determined to be most favorable to ODOT in light of previously-announced evaluation factors. Those will consist of the proposal price (likely including demolition, removal, design, environmental management, and construction costs), and quality factors (likely including experience, personnel, schedule aggressiveness, capabilities, concept designs, and plans in areas such as quality, environmental impact, traffic management, project staging, staffing and organization.)

B. FINDINGS REGARDING REQUIRED INFORMATION

ORS 279C.330 states that: "*Findings*" means the justification for a contracting 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; and (h) Funding sources.

Many of these criteria support the use of the design-build contracting process. This request for exemption is supported by the following facts:

1. Operational, Budget, and Financial Data: ODOT currently has OTIA III Stage 4 funding for the bridge replacements and bridge repair. In addition, ODOT has been granted federal funding for the project. ODOT considers completing this project a high priority. The total project design and construction cost is estimated to be approximately \$ 25 to 35 million.

In ODOT's view, the design-build method of contracting is the quickest method of getting this project underway and completed, while ensuring that ODOT will not incur additional costs beyond those budgeted. The design-build method of contracting is a recognized method of minimizing construction time and ensuring that critical scheduling is met. As outlined below, it is anticipated there will be a cost savings to ODOT and the public by using this method of contracting on this project.

2. Public Benefits: The design-build method of delivery will ensure rapid completion of this project, and therefore contribute toward meeting the goals and schedule

objectives of the OTIA III Bridge Delivery Program. Accelerating the replacement of seven (7) bridges and repair of one (1) other, meets the goals and objectives of the 1999 Oregon Highway Plan by improving safety and increasing both the rate of traffic flow and the allowable load capacity along these portions of eastern Oregon highways. Completion of this project will also benefit the public by supporting regional and statewide economies.

3. Value Engineering: Value Engineering (VE) is encouraged on all projects by ODOT, and has resulted in both initial savings as well as long-term savings for other ODOT projects. ODOT will perform an initial VE study of key project elements prior to release of the RFP. A second VE study may be performed on the proposals submitted for this project.

The design-build method of contracting is anticipated to result in more reliable and higher quality VE solutions for the project. The design-build project delivery method has the inherent advantage that the design-builder is required to engineer into the project cost-reducing elements to the extent environmental criteria allows. Since this up-front project design and planning will be accomplished during the proposal phase, and cost-effectiveness of the design will be included in the proposal evaluation, ODOT can expect to realize benefits in the initial contract price.

4. Specialized Expertise Required: Expertise and innovation is required in managing and coordinating both design and construction in a "fast track" design-build model, implementing performance specifications, providing value engineering and constructability reviews, scheduling and estimating, assessing risk, and providing a complete project as a single point of responsibility. As is typical for design-build contracts, qualified engineering design services are required along with general contractor construction services. In addition, specialized expertise is required to successfully address the public safety issues noted below.

5. Public Safety: Safe traffic flow must be maintained while construction proceeds. It is crucial that all work be coordinated between work sites to avoid unnecessary delay and safety risks to the traveling public, and to ensure efficiency in construction.

As the project is staged, the design-builder 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 closure and detour times. In addition, design-build contracting of this project will ensure all is being done as quickly as possible to minimize delays.

6. Market Conditions: Unemployment rates recently posted on the Oregon Employment Department's Oregon Labor Market Information System web site states that Oregon's unemployment rate remains one of the 10 highest in the country and the second-highest among the 11 western states. The Governor and the Legislature have strongly encouraged ODOT to contract and construct projects quickly to both take advantage of lower bid and proposal prices in the current market and to improve local employment. The standard ratio used by FHWA to estimate the employment effects of investment in highway construction is: for every \$1 billion invested, 42,100 jobs are generated, including direct, indirect, and

induced employment ODOT conservatively estimates that the bridge program will sustain an annual average of 5,000 family-wage jobs over the life of the program. The OTIA program makes a significant contribution to Oregon jobs and the Oregon economy: for every \$1 million invested in transportation construction related spending supports about 17 family-wage jobs on a year-to-year basis. Once the program is complete, a revitalized transportation infrastructure will continue to positively affect the state's economy. Over the project life cycle, this project could therefore generate approximately 423 local jobs ($\$ 25 \text{ million} \times 17 \text{ jobs/million} / 3 \text{ year job life} = 141 \text{ jobs per year}$), assuming a \$ 25 million contract value for purposes of this calculation and others in the "Cost Savings" section below. Furthermore, since use of the design-build contract model on this project is expected to accelerate construction by at least two (2) years, such a jump-start would make those jobs available that much sooner.

7. Technical Complexity: Technical expertise will be required for environmental management, quality management, roadway and structural design (including geotechnical and seismic design), traffic control, and construction. However, the project will draw upon existing skills and capabilities available in the design and construction community, and presents overall challenges similar to those faced on many ODOT projects.

8. Funding Sources: As mentioned earlier, ODOT has obligated funding for this project in the Statewide Transportation Improvement Program and federal funding has been approved for this project. All federal rules and guidelines apply.

C. FINDINGS ADDRESSING COMPETITION

ORS 279C.335(2) requires that an agency make certain findings as a part of exempting public improvement contracts or classes of public improvement contracts from competitive bidding. ORS 279C.335(2)(a) requires an agency to find that: *It is unlikely that the exemption will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts.* It is anticipated that competition for this contract will be similar to that expected in other projects of this type. ODOT finds that selecting a design-builder through the design-build alternative contracting method will not inhibit competition or encourage favoritism. This finding is supported by the following:

As outlined below, ODOT anticipates that competition may be similar to that experienced in other ODOT projects. ODOT has early indications of interest and intent to participate in this procurement, and ODOT processes for procurement of a design-builder have been developed with maintenance of competition in mind.

1. The competition remains open to all qualifying proposers. Over the course of design-build procurement in Oregon, more than 150 firms have expressed interest in pursuing ODOT design-build projects. Numerous 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. The design-build projects ODOT has completed, that are currently under design-build contract, or that are in the procurement process, have had solid participation in the qualification stage, with multiple teams submitting for each project. The Proposal stage for each 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.
3. The design-build evaluation and selection process ODOT intends to employ is summarized in Attachment A. It is open and impartial; all requirements for both the qualification and proposal stages will be determined by and be reflective of the significant work elements of this type of project. Design-builder selection will be made on the basis of final proposal scores derived from a price component and a quality component, as described in Attachment A, which expands the grounds of competition beyond price alone to include quality and innovation factors. While it is not clear that this induces increased competition, ODOT's experience, literature search and discussions with other jurisdictions indicate competition has remained strong.
4. Pursuant to ORS 279C.360, the solicitation has been advertised in the *Daily Journal of Commerce*. In addition, the notice has been advertised in *Reed Business Information* and on the ODOT Office of Project Delivery website at: <http://www.oregon.gov/ODOT/HWY/OPD/DBprocurement.shtml>
5. ODOT decisions about grouping related projects or work elements into a single solicitation for one or more contracts involve contract packaging issues. Those decisions are separate from the consideration of whether to use competitive proposals under an alternative contracting method. For example, several related construction projects might be bundled into a single hard bid procurement for which a competitive bidding exemption would not be required. Accordingly, the project effects on competition resulting from contract packaging decisions, including the resulting size or estimated dollar amount of contracts, are not part of the impact of utilizing an alternative contracting method and are therefore not required to be considered within these findings in support of an exemption from competitive bidding.

D. FINDINGS REGARDING SIGNIFICANT COST SAVINGS

ORS 279C.335(2) requires that a public agency make certain findings as part of exempting public improvement contracts or classes of public improvement contracts from competitive bidding. ORS 279C.335(2)(b) requires an agency to find that: *The awarding of public improvement contracts under the exemption will result in substantial cost savings to the contracting agency or, if the contracts are for public improvements described in ORS 279A.050(3)(b) (such as this one), to the contracting agency or to the public.* These findings therefore consider whether cost savings accrue directly to ODOT as the contracting agency or indirectly to the general public (particularly for highway users). ODOT finds that on this project substantial cost savings will accrue to ODOT and the general public.

This finding is supported by the following:

1. Direct Contract Cost Saving:

1.1 Cost and Time – Indications from the experiences of other state DOTs are that, in general, initial contract prices are expected to be comparable between design-build and conventional contracting methodologies, but considerable time savings are reasonably anticipatable. Recent studies conducted by the Florida Department of Transportation, the California Legislative Analyst's Office, Science Applications

International Corporation, and Tom Warne and Associates are consistent with these conclusions.

A. Cost –

California Study. In a recent study of California's use of design-build contracting from 1995 to 2004, the California Legislative Analyst's Office concluded that cost savings in design-build contracting over design-bid-build were generally attributable to earlier completion time. "Design-Build: A Construction System," California Legislative Analyst's Office, February 3, 2005.

Florida Study. In its analysis of the 33 design-build projects delivered under the state's design-build program between July 1996 and June 2003, the Florida Department of Transportation found that out of the cumulative total estimated cost of \$162 million, the cumulative total of proposal prices came in at \$135 million, and total amount paid was \$137 million. The study found no contract cost under-runs on any design-build projects except paving projects, which ranged from 0% to 56%, with an average cost under-run of 35%. On virtually every other of its design-build construction projects, Florida experienced cost over-runs, with most contract over-runs ranging from 1% to 10%, and three entailing dramatic cost over-runs of between 66% and 95%. However, the agency noted that every significant contract cost and time over-run on Florida design-build contracts had been due to change or omission in project scope. Florida concluded that cost savings in its design-build projects were uniformly derived from savings in time. "Florida Department of Transportation Design-Build Program: Final Evaluation for July 1996 – June 2003," Project Management, Research & Development Office.

B. Time –

A design-build Practice Report in 2002 by Parsons Brinckerhoff Quade and Douglas for the New York State Department of Transportation included in-depth survey results that further support the time savings potential of the design-build method (Oregon was not a respondent).

C. Comparative Analysis –

In its comparative analysis, the Construction Industry Institute (CII) found that design-build construction methods have an edge over other methods in limiting cost and schedule creep. The CII study reviewed 350 building construction projects (20% construction management, 45% design-build and 35% design-bid-build). The design-bid-build method showed the greatest median cost escalation at 4.84%, followed by construction management at 3.34% and design-build at 2.37%. The construction management and design-build projects experienced almost no delays, with design-bid-build running an average of 4.44% longer. "Design-Build Has Cost, Time Edge" *Engineering News Record*, November 17, 1997.

A recent analysis by Tom Warne and Associates for the California Design-Build Coalition included data on 21 large design-build projects (ranging in size from \$83 million to \$1.3 billion, and averaging \$368 million). Cost growth ranged from

0% to 15%, with an average growth of less than 4%, as compared to cost growth on typical design-bid-build projects of between 5% and 10%. With regard to time, all design-build projects studied were completed faster than they would have been under the design-bid-build method.

If ODOT's experience on this project follows the results announced in the CII, ODOT's use of the design-build contracting model would result in ODOT's avoidance of approximately \$ 617,500 in additional costs associated with schedule creep that it might otherwise incur under the traditional design-bid-build mode ($\$25,000,000 \times (4.84\% - 2.37\%) = \$ 617,500$). Alternatively, employing the most conservative figures concerning cost escalation announced in the California coalition study, ODOT would expect to save at least \$ 250,000 compared to what it would incur utilizing design-bid-build contracting ($\$25,000,000 \times (5\% - 4\%) = \$ 250,000$).

A 2002 Survey by Science Applications International Corporation (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, (<http://www.fhwa.dot.gov//programadmin/contracts/survey02.htm>). All respondents noted a time savings from the design-build method. Florida, for example, reported average time savings of 33% relative to conventional project delivery processes. Other states reported time savings of over two years for large projects. A separate design-build Practice Report in 2002 by Parsons Brinckerhoff Quade and Douglas for the New York State Department of Transportation included in-depth survey results that further support the time savings potential of the design-build method (Oregon was not a respondent).

1.2 Bid Documents – There are areas of savings to be expected related to ODOT bid documentation preparation. For example, under current design-bid-build, it is necessary for preliminary engineering design plans and specifications, adequate for identifying project performance, to be further formalized to design specifications standards (rather than performance specifications) appropriate for inclusion in formal bid packages. By eliminating the separation between design and build phases of the project, formalization costs can be decreased. Based on national averages, Design-Build versus Design-Bid-Build provides an estimated five (5) percent savings in engineering costs. Applying this cost savings principle to this project, ODOT estimates that preliminary engineering will be reduced by approximately \$125,000 for this contract.

1.3 Maintenance – Maintenance that would otherwise be required over the next several years, either as routine maintenance or as maintenance necessitated by the current condition of the roadway and bridges in question, will be avoided by early completion of construction. Construction is anticipated to commence in 2008, and ODOT estimates that the Project will be completed a full 24 months earlier than would be possible under the traditional design-bid-build model. The early completion is attributable to incremental completion of engineering, allowing early start of some construction tasks, and a shortened project performance time span. It includes a time savings due to the opportunity to start the in-stream work in 2008, a two (2) 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.) Early completion of construction is

therefore expected to result in cost savings to the State, although the specific amount is not calculable.

2. Total Expected Savings:

While there is some indication that initial contract prices will be reduced through the use of the design-build contracting model, it is difficult to estimate a probable amount. This is also the case with savings related to contract changes. However, using the conservative estimate of direct savings described in Subsection 1.1 above indicates a net savings amounting to between nearly \$375,000 and \$742,500 (see table below).

Direct Contract Cost Savings Summary:

Subsection	Anticipated Savings
1.1 Cost Containment	\$250,000 to \$617,500
1.2 Bid Documents	\$125,000
1.3 Maintenance	Value not used
Total	\$375,000 to \$742,500

3. Post-Project Evaluation Process

This project will be evaluated in accordance with the requirements of ORS 279C.355, including analysis of project cost and savings.

CONCLUSIONS OF LAW

An exemption from competitive bidding requirements is justified under the criteria outlined in ORS 279C.330, findings have been developed in compliance with ORS 279C.335(2) through 27C.335(4), and ODOT will perform the post-project evaluation required by ORS 279C.355. Based upon the previously listed findings, ODOT concludes that:

1. Following the described selection process, an exemption is unlikely to encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts; and
2. Award of a public improvement contract pursuant to the exemption will result in a substantial cost savings to ODOT and the general public.

ORDER OF DIRECTOR

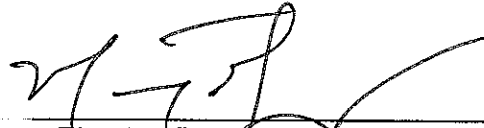
An exemption from public competitive bidding requirements is hereby granted to the Oregon Department of Transportation to enter into a public improvement contract utilizing the design-build alternative contracting method as described in the preceding findings. This order is subject to the following conditions:

1. To the extent possible, and consistent with this Exemption, this procurement will follow the provisions of ORS Chapter 279A and 279C; ORS Chapter 291; OAR Chapter 731, Division 5 (ODOT Public Contract Rules) and Division 7 (ODOT Public Improvement Contracts).
2. ODOT, in concert with the Department of Justice (DOJ), shall establish and follow standards for evaluating proposals under this procurement.
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 compliance with Oregon law.

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

7-23-07

Date



Director, Department of Transportation

REVIEWED BY THE DEPARTMENT OF JUSTICE

July 10, 2007
Date

/s/ Rob Gebhardt
Assistant Attorney General

Attachment A – Selection Process Description and Objectives

ODOT Design-Build Program

The selection process that will be used for this project consists of two steps as follows

(1) A Request for Qualifications (RFQ) for the 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, past performance, and organizational information, which will be compared to standards established for specific key elements of this project. The Statements of Qualifications (SOQs) received will be evaluated, and the three (or more if warranted) highest-scored teams demonstrating that they meet the established experience and organization requirements stated in the RFQ, will be short-listed to advance to the proposal stage.

The SOQs will be evaluated and scored by the evaluation team. This team will consist of a minimum of three individuals, at least two of whom are ODOT personnel. Other ODOT and ODOT consultant personnel may serve in non-scoring support capacities.

The score of the SOQ factors will be reviewed and compiled by the evaluation team, and then presented to the ODOT Design-Build Manager, who will either ratify the total consensus quality scores or remand them to the proposal evaluation team with direction for further review, investigation and/or reassessment. These SOQ scores are not carried over to the proposal evaluation and scoring.

(2) A Request For Proposals (RFP) will be issued for the project to the short-listed teams, and proposals must be submitted by the short-listed teams by a specified date.

The proposals submitted will be required to contain two components, a price component and a quality component.

The price component presents the total cost to ODOT for delivering the project, broken down by price centers per work location. The quality component describes the proposer's understanding of the project, identifies key personnel to be committed to the project, and explains the proposer's approach to delivering project key elements described in the project RFP. The proposal quality component score will be used in conjunction with the proposed price, resulting in a final overall score, as described in the RFP and the Proposal Evaluation and Selection Plan.

The quality component of the Proposals will be evaluated and scored by the proposal evaluation team. This team will consist of a minimum of six individuals from ODOT. Other ODOT and ODOT consultant personnel may serve in technical and administrative support capacities. The consensus quality scores developed by the proposal evaluation team will be presented to the ODOT Design-Build Manager, who will either ratify the consensus scores or remand them to the proposal evaluation team with direction for further review, investigation and/or reassessment. The scores for the proposal quality component will be completed prior to opening of prices.

Once the quality component scores are completed and compiled, the price will be opened and the final score for comparison and award of the contract will be determined

in accordance with the procedures set forth in the RFP and the Proposal Evaluation and Selection Plan.

The final scores and ranking will be determined and announced by ODOT.

Based on the final scores and ranking the responsive and responsible proposer that provides the best value to ODOT will be selected for final contract negotiation and award. In the event that prior to contract execution the selected proposal is found to be non-responsive or the proposer not responsible, or contract negotiation proves unsuccessful, ODOT may, if it is in the public's best interest, select the proposer that offers the next best value for contract negotiation and award.