



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

July 11, 2008

Douglas Tindall
Deputy Director
Oregon Department of Transportation
Highway Division
355 Capitol St. NE Rm 35
Salem, Oregon 97301-3871

Re: Modified Exemption from DOJ Legal Sufficiency Review and Approval for
ODOT Highway Construction Contracts
DOJ File No. 734-130-GF0172-97

Dear Mr. Tindall:

By letter to John Rosenberger dated March 12, 1998, Don Arnold approved a class exemption from the requirement for Attorney General legal sufficiency approval of Oregon Department of Transportation (ODOT) highway construction contracts. By letter to Mr. Rosenberger dated November 25, 2002, Mr. Arnold modified the exemption. This letter further modifies the exemption.

Approval of the original exemption was based upon ODOT's use of "*Standard Specifications for Highway Construction 1996*", as well as a set of preexisting Supplemental Specifications and Special Provisions. Consistent with the original exemption, individual changes to any of the "Part 00100 – General Requirements" provisions have been approved by DOJ for legal sufficiency prior to use under the class exemption.

The 2002 modified exemption approved a set of ODOT/APWA Standard Specifications 2002, entitled "*Oregon Standard Specifications for Construction*."

As of the date of this letter, the following conditions apply to the class exemption for ODOT highway construction contracts and replace the conditions in our 2002 letter:

1. Scope. This class exemption applies to competitively bid public improvement contracts procured by the ODOT Highway Division. It does not apply to contracts exempted from competitive bidding under ORS 279C.335 and 279C.350.
2. Specifications. Contracts under this class exemption must use the 2008 version of ODOT's *Oregon Standard Specifications for Construction* (Standard Specifications), which are hereby approved for use, or the Specifications previously approved under the 2002 modified class exemption pending ODOT's full implementation of the 2008 version, or shall otherwise include only the Standard Specifications, Supplemental

Specifications and Special Provisions (collectively referred to as Specifications) approved for legal sufficiency under this exemption by the Attorney General through the Attorney in Charge of the Business Transactions Section or designee (DOJ Approval) as follows:

- a. The 2008 version of the Standard Specifications is comprised of the Part 00100 General Conditions in Volume 1 and the Parts 00200 through 03000 Technical Specifications in Volume 2.
- b. Other than the fill-in-the-blank portions of the Part 00100 General Conditions of the Specifications, ODOT and its contractors may not add to, delete from or otherwise modify the Part 00100 General Conditions relating to general legal requirements without first obtaining DOJ Approval.
- c. Before using the 2008 version of the Standard Specifications on new projects, ODOT must obtain DOJ Approval of the updated Bid Booklet, related contract documents (including the contract form, bonds, certificates, federal provisions and required disclosures) and accompanying Special Provisions required to implement the new set of Standard Specifications.
- d. In order to maintain an accurate record of approved Specifications, ODOT must submit numbered requests for DOJ Approval consistent with numbering and tracking systems to be mutually established by DOJ and ODOT staff, and shall provide DOJ with conformed sets of approved Specifications in standard loose-leaf notebook or electronic forms upon request.
- e. The Part 00200 through 03000 Technical Specifications of the Specifications are excluded from legal sufficiency review under OAR 137-045-0015(5)(c). However, ODOT may not add any general legal requirement to the Part 00200 through 03000 series of the Specifications (including warranties, surety bonds, liquidated damages, penalties, bonuses, incentives, disincentives or general legal requirements of the type addressed in the Part 00100 General Conditions of the Specifications) without first obtaining DOJ Approval.
- f. Designees for purposes of DOJ Approval are: Rob Gebhardt, Blake Underwood, and Keith Jones.

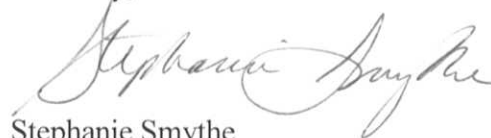
3. Statutes and Rules. Contracts under this exemption must be awarded by competitive bidding, under the requirements of ORS Chapter 279C, to the lowest responsive and responsible bidder. ODOT must follow all applicable public contracting rules, including ORS Chapter 279C (as may be amended), and administrative rules adopted by ODOT under ORS 279A.065 in lieu of the *Attorney General's Model Public Contract Rules*. Those rules, parallel to the *Model Rules* structure, are at OAR Chapter 731, Division 5 (Public Contract Rules) and Division 7 (Public Improvement Contracts). In the event these statutes or rules are amended in a manner that requires revision of the approved Part 00100 General Conditions of the Specifications, ODOT must obtain DOJ Approval of such revisions before use.

4. Legislative Sessions. Following each state legislative session, ODOT must submit to DOJ for legal sufficiency review, through the Attorney- in-Charge of the Business Transactions Section, any changes to the Part 00100 General Conditions of the Specifications proposed in response to new state laws. ODOT must allow adequate time for review and comment, typically 30 days before new laws taking effect (absent an emergency clause or other earlier effective date for new legislation). ODOT must obtain DOJ Approval of such changes prior to their use.
5. Change Orders. Change orders to contracts awarded under this class exemption are also exempt, provided that they are within the general scope of the procurement and are implemented in accordance with the change provisions of the Specifications.
6. Performance Reviews. ODOT must make procurement and contract records available to DOJ upon request for periodic review of systems or individual procurements, at such times and locations as DOJ may reasonably request.
7. Advance Review of Particular Contracts. The Attorney- in- Charge of the Business Transactions Section may require review and legal sufficiency approval of particular ODOT Highway Division public improvement contracts before they become binding on the State, and before any services are performed under them.
8. Modification or Revocation. This exemption may be modified or revoked at any time by the Attorney General upon a determination that modification or revocation of the exemption is in the best interest of the State. Such modification or revocation will be made by written notice to ODOT.

Subject to the above conditions, I hereby further modify the class exemption for ODOT highway construction contracts as stated in this letter.

Please feel free to contact me with any questions or comments regarding this exemption.

Sincerely,



Stephanie Smythe
Attorney-in-Charge
Business Transactions Section

SS4:III/GENY4007
cc: Rob Gebhardt
Blake Underwood
Keith Jones
Dale Deatherage