EXEMPTION NUMBER No. 2023-01

FINDINGS
SUPPORTING AN EXEMPTION FROM COMPETITIVE BIDDING REQUIREMENTS AND THE USE OF CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC") 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 South Coast Regional Seismic Ready Facility located in Coos Bay, Oregon	) FINDINGS,) CONCLUSIONS AND) ORDER

ORS 279C.335(1) requires, with certain exceptions, that all public improvement contracts be based on competitive bidding and, under ORS 279C.375, be awarded to the responsible bidder submitting the lowest responsive bid.

ORS 279C.335(2) permits the Director of the Oregon Department of Transportation to grant, under certain conditions, exemptions to the Oregon Department of Transportation ("ODOT") from the competitive bidding requirement of ORS 279C.335(1) by issuing an order stating conditions and approving specified findings that comply with ORS 279C.330, ORS 279C.335(2)(a) and (b), ORS 279C.350, and OAR 731-007-0370.

ORS 279C.335(2) and (4) and ORS 279C.350 require findings to support the exemption.

ORS 279C.330(1) defines "findings" as used in ORS 279C.350, and ORS 279C.330(2) defines "findings" as used in ORS 279C.335, and together with ORS 279C.335(2) identify required findings, factors to be considered and specific information to be provided as part of the agency justification for the exemption. ORS 279C.335(2) sets forth exemption criteria that must be addressed in the findings. OAR 731-007-0370 also addresses the required findings.

ORS 279C.330(2) provides that "findings" as used in ORS 279C.335, "means the justification for a conclusion that a contracting agency or state agency, in seeking an exemption from competitive bidding requirements of ORS 279C.335(1), reaches based on the considerations set forth in ORS 279C.335(2)." ORS 279C.350(1) provides that, with respect to an exemption request for a specific public improvement contract described in ORS 279A.050(3)(b), the Director of Transportation shall issue an order that sets forth findings supporting the decision, and those findings are as described in ORS 279C.330(1).

As required by ORS 279C.335(5)(c), in response to a written request, a public hearing will be held before the findings are approved, allowing an opportunity for interested parties to comment on the draft findings.

This request for exemption and the opportunity to request a public hearing were advertised in the Business Tribune on May 5, 2023. The request for exemption was posted on the ODOT Procurement Office web site at:

http://www.oregon.gov/ODOT/Business/Procurement/Pages/Letting_Schedules.aspx

No written request for a public hearing was received and no public hearing was held. There were no written comments from the public during the time for comments.

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.

If the exemption is granted by the Director of ODOT, the signed order will be promptly posted after the date it is signed to the following ODOT Procurement Office website under the "Alternative Contracting" section:

https://www.oregon.gov/ODOT/Business/Procurement/Pages/Bid_Award.aspx

FINDINGS

A. BACKGROUND

1. Project Description: South Coast Regional Seismic Ready Facility ("SCRSRF"), Coos Bay, Oregon

ODOT proposes to use the Construction Manager/General Contractor ("CM/GC") contracting method solicitation process, and then enter into a CM/GC contract with the selected construction contractor. The project includes but is not limited to pre-construction and construction services, environmental and quality management, safety, contract administration and all necessary support services. The SCRSRF ("the project" or "this project") is located in Coos Bay, Oregon.

The purpose of the project is to improve the safety and operations in the south coast region by building a Category IV seismic ready facility, as well as combine the location of the Area Project Managers office, Region 3 Bridge crew, and Davis Slough Maintenance crew. The facility will be a fully self-contained transportation facility with stocked construction materials to rebuild the south coast infrastructure in the event of a natural disaster.

The fully self-contained facility will include water, septic, and power with solar, generator, and battery backup. The facility will also replace the current Davis Slough Maintenance facility that provides the daily maintenance needs for the south coast infrastructure.

The project will require complex staging and scheduling of the work due to the challenges of coastal weather windows for construction activities combined with the environmentally sensitive nature of the site to include mass excavation and site grading, including 12" of base

rock as the finished grade in the building and storage areas; development of the site access road, including the first lift of asphalt paving; construction of a solder pile retaining wall; construction of several Hilfiker retaining walls; construction of a fire water retention pond; installation of site electrical power and communications; construction of two smaller buildings to include a fire pump system, the generator and all point of presence of utilities; installation of the generator; construction of a 12,000 SF single story office building; construction of a 40,000 SF heated pre-engineered metal building as the primary maintenance building; construction of a 15,000 SF non-heated pre-engineered metal storage building; and construction of a 10,000 SF non-heated pre-engineered metal building containing the functions of herbicide storage, fuel island, de-icer storage and a drive through way bay.

Use of the CM/GC alternative selection and contracting method will allow ODOT to select a CM/GC contractor based on qualifications, experience, and expertise (as opposed to selection based solely on low bid) that are necessary for addressing the complex and critical issues identified above. Among other benefits of CM/GC contracting, the method includes input from the contractor during the design process through collaboration with ODOT and the design team, to help optimize project design and reduce cost and schedule risks.

The key objective of the CM/GC selection method for this project is to select a construction contractor with necessary and relevant qualifications, expertise, and experience that will provide the best value to ODOT, given ODOT's contractor selection criteria and requirements, to accomplish ODOT's goals.

The current estimated project construction cost range for the contract with the CM/GC contractor (the Guaranteed Maximum Price ("GMP") under the CM/GC Contract) is approximately $40,000,000 to $45,000,000. It is anticipated the project will be funded with State of Oregon funds.

The work will include but is not necessarily limited to pre-construction and construction services, environmental and quality management, safety, contract administration and all necessary support services.

The work will be done in accordance with approved ODOT, performance requirements and specifications, and including other applicable contract terms, provisions and requirements as will be included in any awarded contract.

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

ODOT Facilities proposes to use the CM/GC contracting method solicitation process for the project as a proposed alternative to the competitive (low) bid process. In accordance with the applicable statutes and administrative rules, ODOT will use a selection process utilizing a one-step Request for Proposals (RFP) competitive procurement as described in Section A.3 Procurement Process of this document.

The project will be procured using the CM/GC contracting method solicitation process as described herein, for the reasons and considerations stated herein.

2. Agency Considerations:

The Oregon Transportation Commission is mandated to "encompass economic efficiency" (ORS 184.617), and therefore, ODOT strives to continually improve its procurement and project delivery approaches. One of the improvements that encompasses economic efficiency is appropriate use of alternative selection (and contracting) methods.

ODOT Facilities performed an internal evaluation of the delivery goals and alternative selection and contracting delivery mechanisms for this project. ODOT Facilities traditionally uses a competitive low bid process but has concluded that using that project delivery method for this project entails unacceptable risks, which include delivery of the project in an untimely manner. For this project, ODOT Facilities reviewed other available procurement options that could provide maximized benefit to the public. ODOT Facilities determined that an alternative selection process that considers key elements for project success beyond price is most appropriate for this project, specifically the CM/GC method.

ODOT Facilities determined that the upfront value engineering and constructability reviews pre-construction services provided by a CM/GC contractor during design development will allow ODOT Facilities to make informed cost-benefit takeoffs for addressing the critical issues as described in Section A.1.

The CM/GC process, as a proposed alternative to the competitive bid process, is becoming a more common approach for certain types of projects by public agencies both within and outside the State. Additionally, there is a growing recognition that, for certain projects, better delivery methods exist other than competitive low bid.

Potential benefits of the CM/GC method include but are not necessarily limited to saving project costs, lowering operational costs and project lifecycle costs, improving constructability, enhancing innovation, reducing risk, expediting project delivery by contracting with the CM/GC contractor in the design process and negotiating price and schedule for construction before all design is complete, being able to begin construction on portions of the project before all design for the project is complete, and shortening construction schedules. The CM/GC selection and contracting process encompasses the Oregon legislature's focus on economic efficiency and stimulation. This method also provides recognition of the value to the public in employing enhanced contracting methods that will accomplish the required work in the most effective manner.

For the CM/GC selection process, ODOT procures professional services on a qualifications, experience and expertise basis from the selected CM/GC contractor in the design phase to offer suggestions on innovations, cost and schedule savings, and constructability issues.

Upon completion of the design, or individual design packages, the CM/GC contractor and ODOT negotiate a price for the construction, and then the CM/GC contractor acts as a general contractor to complete construction. The contract can employ a guaranteed maximum price administered on a cost-reimbursable basis, with unit price and lump-sum items.

ODOT assigns weight to price (typically the fee for pre-construction services, and the CM/GC contractor's "CM/GC Fee" covering overhead and profit), as well as the proposal that contains specified non-price factors that are important to the success of the project. These factors include, but are not necessarily limited to, the proposer's qualifications, experience, key personnel expertise, roles, responsibilities, goals, and project approach.

The CM/GC method will reduce the potential for work delays, reduce the possibility of cost overruns, and will encourage innovation and avoid or minimize adverse impacts to the project.

By using the CM/GC and other alternative contracting methods (including design-build, A+B (price plus time), A+C (price plus qualifications) and A+C+D (price plus qualifications plus technical approach), ODOT has had and continues to have success selecting construction contractors with the necessary qualifications, experience, and approach to successfully deliver complex projects. ODOT believes that the CM/GC method is appropriate for the selection of the construction contractor for the project.

ODOT started using the CM/GC method in 2008. To date ODOT has completed two projects using the CM/GC method:

- I-5 Willamette River Bridge Replacement Project: This project replaced 2 bridges on Interstate 5 (I-5) in Lane County, Oregon; the 1800-foot Willamette River Bridge, and the 100-foot Canoe Canal (a.k.a. "Patterson Slough") Bridge. ODOT built detour bridges at both locations in 2004. ODOT decommissioned the existing Willamette River Bridge and both detour bridges and the
- decommissioned bridges were removed as part of this project. The use of CM/GC contracting resulted in the I-5 Willamette River Bridge project being opened for public use about 13 months earlier than it would have been anticipated under the design-bid-build contracting method. Input from the CM/GC contractor helped ODOT to control costs, schedule, and design, manage risks, and resolve and adjust outcomes as the project proceeded. The partnership and constant collaboration among the parties that is part of the CM/GC contracting approach significantly contributed to the success of the project. Final total cost of the project was $162,917,204.00, approximately $17,000,000 lower than originally estimated. This project was completed in July 2015.

- ODOT Headquarters Building Renovation Project: This project completely modernized all systems in the aging 1950 six-story building, while preserving its marble and bronze historic exterior. The renovation included seismic reinforcing walls to mitigate earthquake risks, new electrical and telecommunication systems, a new mechanical system, new sprinklers, and stairway improvements. Thanks to its sophisticated rain harvesting system, radiant ceiling panels, and photovoltaic rooftop solar panels the project achieved LEED Platinum certification (35 % better energy efficiency that current code requirements). The partnership and constant collaboration among the parties that is part of the CM/GC contracting approach significantly contributed to the success of the project. The original estimated construction cost for the project was $47,000,000, final GMP for the project was $37,813,710, $11,633.290 lower than the originally estimated cost. The contract was executed on November 19, 2009, and the project was completed in April 2012.

ODOT personnel, and ODOT's legal counsel, the Oregon Department of Justice (DOJ), have gained the necessary experience, expertise, and knowledge in using alternative selection and alternative contracting methods to successfully deliver multiple projects varying in scope, size, and complexity, and within schedule and budget constraints.

For this project, ODOT's project team will consist of ODOT personnel (possibly third-party consultant personnel) and Oregon DOJ legal counsel that have experience, expertise, and knowledge necessary to develop the CM/GC method procurement documents and process and the CM/GC Contract. Upon this foundation, ODOT will select the contractor, negotiate (to the extent negotiations, if any, are permitted by ODOT) and award the contract, and administer the contract.

3. Procurement Process: This is a request to the Director of the Oregon Department of Transportation, on behalf of ODOT, for a contract-specific exemption from competitive low bidding requirements. The exemption would allow ODOT to solicit proposals for the construction of the project described above using the alternative contracting CM/GC method, through a one-step Request for Proposal ("RFP") procurement process. As required by ORS 279C.335(4)(c) and ORS 279C.337(1), ODOT will conduct the procurement for this project in accordance with the applicable model rules adopted by the Oregon Attorney General under ORS 279A.065(3).

An RFP will be issued (formally advertised) for the project and proposers must submit proposals by a date specified in the RFP. Each proposer will be required to submit a proposal that responds to evaluation criteria requirements and provides other required information which includes required project specific price elements.

The proposal requirements for evaluation criteria and other required information may include the following items, and other items required by the RFP:

- Proposer and key personnel qualifications.
- Pass/fail legal requirements and organizational structure.
- Key personnel expertise, roles, and responsibilities.
- Major subcontractors experience, roles, and responsibilities.
- Proposer's approach to the project scope of work and goals.

The proposal requirements for project specific price elements may include the following items, and other items required by the RFP:

- Proposer's CM/GC fee percentage.
- Proposal security.
- Proposed pre-construction services, key personnel, hours, and hourly rates.
- Maximum not to exceed amount for pre-construction phase services.

Scoring members of ODOT's evaluation and selection committee will independently review and score each proposer's project proposal. The scoring members of the committee will consist of individuals from ODOT. ODOT's third party consultant personnel, if any, may act

as technical support during the scoring process but will be non-scoring members during the scoring process.

After completion of the initial scoring and ranking of each proposer, ODOT will establish the competitive range to set the number of proposers that will be invited to mandatory interviews. After the interviews, and revised scoring, if any, ODOT's evaluation and selection committee will rank the proposers, identify the highest-ranked proposer and make an award recommendation.

ODOT will attempt to negotiate a contract with the highest-ranked proposer. Upon successful negotiation of the CM/GC contract, ODOT will issue notice of intent to award and proceed with final award of the CM/GC contract. If negotiations are not successful, at ODOT's discretion, negotiations will be conducted with the next highest-ranked proposer and so on, until ODOT has successfully negotiated a contract or determined that further contract negotiations would not be in the best interest of the State and that the RFP process must be terminated.

Development of the CM/GC RFP and contract will be coordinated with the Oregon DOJ.

B. FINDINGS REGARDING REQUIRED INFORMATION

ORS 279C.330(1) provides that as used in ORS 279C.345 and 279C.350, *"findings" means the justification for a contracting agency conclusion that includes, but is not limited to, information regarding:*

1. Operational, budget, and financial data.
2. Public benefits.
3. Value engineering.
4. Specialized expertise required.
5. Public safety.
6. Market conditions.
7. Technical complexity.
8. Funding sources.

ODOT finds that the information regarding these criteria as set forth below supports the use of the CM/GC contracting method. The finding and request for exemption is supported by the following:

1. Operational, Budget and Financial Data: The project budget is anticipated to be funded with State of Oregon funding resources. The current estimated project construction cost range for the contract with the CM/GC contractor (the GMP under the CM/GC Contract) is approximately $40,000,000 to $45,000,000. ODOT anticipates that all funding and necessary approvals for the project will be obtained.

In ODOT's view when compared to the design-bid-build method the CM/GC method of contracting is the quickest method for getting this project completed, while ensuring that

ODOT will not incur additional costs beyond those budgeted. The CM/GC method of contracting is a recognized method of minimizing construction costs and time while ensuring that critical schedule requirements are met. As outlined below, it is anticipated there will be cost savings to ODOT and the public by using the CM/GC method of contracting for this project.

The project will require as much knowledge as possible regarding the constructability and long-term cost/benefit analysis of innovative design. That knowledge is best obtained directly from the construction industry. Many decisions will have to be made during the design process that will require immediate feedback on constructability and pricing. Under the traditional design-bid-build process there is a significant risk of a higher number of change orders and schedule impacts for a project of this size and complexity. The CM/GC process will assist in providing a scope of work and constructability design that best meets the requirements of the project with significantly lower risk of cost overruns due to delay and redesign. Involving the CM/GC contractor during design will allow potential risks to be addressed before construction and provide the CM/GC contractor with detailed knowledge of the project, which is expected to result in lower construction costs. The design for the project is partially advanced but there is still remaining time and opportunity for the CM/GC contractor to provide input and value for the design process.

2. Public Benefits: The CM/GC method focuses on project components that are most valuable to ODOT through the ability to evaluate proposers based on their qualifications, expertise and experience, and technical approaches to build a Category IV seismic ready facility.

The fostering of innovation, mitigating risks, optimizing control of costs and schedule advantages of CM/GC provide ODOT the means to meet the goals and objectives of having a Category IV seismic ready facility on the south coast in the event of a natural disaster.

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. VE is the systemic application of recognized techniques by multi-disciplined teams that identifies the function of a product or service, proves a worth for that function, generates alternatives through creative thinking, and provides the needed functions at the lowest overall cost.

VE Studies may be conducted during one or more of the project development stages and during construction. VE has proven to be an effective tool for product value improvement and design enhancement and assisting ODOT in obtaining its goal of providing cost-effective projects and procedures, and improved productivity and efficiency. VE can be used in all aspects of the project such as design, operations, construction, maintenance, specifications, standard drawings, and planning.

The unique process and relationship of the owner, construction contractor and the designer under the CM/GC process fosters a team approach to VE that features continuous constructability reviews. In essence, this method allows the value engineering process to happen all the way through the project, not just during the design process. Multiple options for high cost or impact items, such as construction methods, materials, environmental

permitting, and local design requirements are analyzed in real time to determine cost/benefits analysis.

Under the traditional design-bid-build method, VE occurs once during the design phase. With design-bid-build, any savings from cost reduction proposals suggested by the construction contractor are dived between ODOT and the contractor. Under the CM/GC method, savings from expanded VE efforts accrue to the State.

ODOT has not conducted an advance VE study for this project but opportunities for VE input from the CM/GC contractor will be available during the remaining design phase and during construction.

4. Specialized Expertise Required: Using the CM/GC selection method will allow ODOT to select a CM/GC contractor that has expertise in areas the method emphasizes, including but not limited to: management; coordinating with design development; pre-construction and construction phase services in a "fast-track" CM/GC contracting method; providing value engineering and constructability reviews; scheduling and estimating; assessing and mitigating risks; safety; quality; public relations; competitively bidding and selecting contractors with wide participation; and managing subcontractors.

The project will require specialized expertise for the following identified critical issues and technical complexities:

- Construction of a large-scale civil (soldier pile wall, site compaction, site utilities) and Category IV seismic ready buildings and facilities.

ODOT and the public will benefit from ODOT acquiring a CM/GC contractor that has established experience and specialized expertise to manage and perform the work for this project. The CM/GC selection method allows the selection of a contractor with appropriate experience and specialized expertise necessary to provide VE and design input, together with construction approaches, to reduce schedule and costs and successfully complete this complex project. A low bid process does not provide an opportunity for ODOT to obtain the most qualified and experienced contractor with the specialized expertise needed for the project.

5. Public Safety: It is crucial that all work be carefully coordinated to avoid unnecessary delay, and to ensure efficiency in construction. A CM/GC contractor with a strong approach to the challenging project elements will minimize impacts, as described in Section B.4.

The coordination between the owner, designer, and the contractor in the CM/GC method of contracting should assure coordination of work, resulting in the site being operational and ready for use should a natural disaster occur. In addition, CM/GC contracting of this project will ensure all is being done in a "fast-track" mode to minimize delays.

6. Market Conditions: Oregon firms with CM/GC experience in projects of this technical complexity may propose on this project, ensuring adequate competition. Using design-bid-build method for a project of this complexity can result in a low-bid contractor that lacks the

necessary qualifications, expertise, and experience, which can be a at a higher risk for performance, timeliness, safety, and financial issues. The CM/GC selection method will allow ODOT to consider the proposers' qualifications, expertise, and experience necessary to successfully deliver this high-impact project.

7. Technical Complexity: Technical expertise will be required for environmental management, quality management, scheduling, estimating, and pre-construction services, which include but are not necessarily limited to input on design development, value engineering, and constructability reviews to optimize cost, schedule, and performance of the project and construction services.

To be successful in completing this project the CM/GC contractor must be qualified, experienced and capable to address the issues, goals, concerns, and technical complexities of the project as described in this document, including but not limited to Section B.4.

8. Funding Sources: As stated earlier, it is anticipated this project will be funded with State of Oregon funds.

C. FINDINGS ADDRESSING COMPETITION

ORS 279C.330(2) states that "findings" as used in ORS 279C.335 "means the justification for a conclusion that a contracting agency in seeking an exemption form the competitive bidding requirement of ORS 279C.335(1) reaches based on the considerations set forth in ORS 279C.335(2)." ORS 279C.335(2) also requires that a public agency make certain findings as a part of exempting public improvement contracts or classes of public improvement contracts from competitive bidding requirements.

ORS 279C.335(2)(a) requires an agency to find that: *"The exemption is unlikely to encourage favoritism in awarding public improvement contracts or substantially diminish competition for public improvement contracts."*

ODOT finds that selecting a contractor through an exempted selection process method for the CM/GC alternative contracting method is unlikely to encourage favoritism in awarding public improvement contracts or substantially diminish competition for public improvement contracts. This finding is supported by the following:

ODOT anticipates that competition for this project is likely to be similar to that experienced with other ODOT projects. ODOT has observed early indications of interest and intent to participate in the procurement process for this project, and ODOT processes for procurement of a contractor using alternative methods have been developed with maintenance of competition in mind. As noted in Section B.6, ODOT expects bids from Oregon construction firms.

1. The competition remains open to all qualifying bidders. The contracting community is aware of ODOT's use of alternative contracting processes and success with contractors on past projects where alternative contracting methods were used. During ODOT's history

of using alternative contracting methods, many firms have expressed interest in pursuing the alternative contracting projects. ODOT expects that with this experience, normal competition will prevail.

Based on the level of contractor participation for previous alternative contracting projects, early outreach, and the size and nature of this project, ODOT anticipates approximately 7 to 9 contractors are available for the project and3 to 5 contractors will submit proposals in response to the RFP.

2. The CM/GC evaluation and selection process ODOT intends to employ for this project is summarized in Section A.3. Procurement Process. The process is open and impartial, competition will be obtained, and bidders will be equally evaluated based on criteria that is reflective of the significant work elements for this type of project. Selection will be made on the basis of final scores derived from the evaluation process described in Section A. BACKGROUND (A.1 and A.2) and Section A.3 Procurement Process. This method expands the grounds of competition in the evaluation process beyond price alone to include consideration of other factors, including but not necessarily limited to the proposer's qualifications, experience, key personnel experience, roles, responsibilities, major subcontractors, goals and approach.

3. Pursuant to ORS 279C.360, the CM/GC solicitation (RFP) will be advertised in the Business Tribune. In addition, solicitation documents will be available through the automated OregonBuys System. Solicitation documents will not be available in hard copy form.

4. The procurement process is anticipated to include the following, which supplements (and in some cases repeats) what is provided in Section A.3 Procurement Process:

    a) A mandatory pre-bid meeting, open to all interested parties, will be held at the time stated in the RFP and will offer the opportunity for potential bidders to informally ask questions, and request clarifications. Only those attending this mandatory pre-bid meeting will be allowed to submit a proposal.

    b) The proposal evaluation process may include the following steps, or additional steps as required in the RFP:

        1. Proposals will be evaluated by ODOT's evaluation and selection committee for completeness and compliance with the requirements listed in the RFP.

        2. Proposals considered complete and responsive will be evaluated under the criteria set forth in the RFP.

        3. Scoring members of the evaluation committee will independently score each proposal.

        4. A group of up to 3 of the highest scoring proposers will be short-listed through a competitive range selection process.

5. Only those proposers in the competitive range will receive an invitation to interview as the next phase of the evaluation and award process.

If determined to be necessary or appropriate, adjustments may be made in the details of the procurement process.

D. FINDINGS REGARDING SUBSTANTIAL COST SAVINGS AND OTHER SUBSTANTIAL BENEFITS

ORS 279C.335(2) also 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 find that: *Awarding a public improvement contract under the exemption will likely result in substantial cost savings and other substantial benefits to the contracting agency or, if the contract is for a public improvement described in ORS 279A.050(3)(b)* [such as this project], *to the contracting agency or to the public.* This finding therefore considers whether cost savings accrue directly to ODOT as the contracting agency or indirectly to the general public. ODOT finds that on this project, substantial cost savings and other substantial benefits will likely accrue to ODOT and the general public.

This finding is supported by the following:

1. Direct Cost Savings: The current estimated project construction cost range for the contract with the CM/GC contractor (the GMP under the CM/GC Contract) is approximately $40,000,000 to $45,000,000. ODOT could save a significant amount of money with a compressed schedule where buildings can start being built 1.5 years earlier because the CM/GC can construct buildings at the same time as finishing the civil work. For example, when compared to the design-bid-build method, the civil package would need to be finished first before the buildings are built. ODOT estimates a cost savings of $2,600,000 in ODOT overhead by shortening the project duration, and ODOT could save another $3,000,000 in construction inflation costs (based on the last few years of actual inflation history).

The CM/GC contracting method involves the CM/GC construction contractor in the design phase, allowing for: ongoing VE and constructability reviews; quick cost comparisons between various design options; ability to identify and mitigate potential construction risks early; and a substantial amount of time for the CM/GC contractor to become very familiar with all aspects of the project prior to developing the GMP, as opposed to the typical 4 weeks bidders have under competitive (low) bid to formulate a price for all construction. These factors should result in lower risk factors in the GMP and a lower construction cost than under competitive (low) bid contracting. In general, the CM/GC method provides ODOT great confidence in completion of complex work, and fast-tracking completion of projects can be reasonably anticipated using the CM/GC method. Through the CM/GC method, ODOT will select the CM/GC contractor who is most capable of handling the project, including specialized work identified for this project.

2. Indirect Cost Savings: Indirect savings are real and recognizable by the public for this project by selecting a CM/GC contractor that can realistically meet ODOT's expectations for the contractor's key personnel, expertise, roles, responsibilities, major subcontractors, goals, project approach, and project completion time.

The CM/GC contracting method involves the CM/GC construction contractor in the design phase, allowing: ongoing VE and constructability review; quick cost comparisons between various design options; the ability to identify and mitigate potential construction risks early; and a substantial amount of time for the CM/GC contractor to become very familiar with all aspects of the project prior to developing the GMP, as opposed to the typical 4 weeks bidders have under competitive (low) bid design-bid-build. These factors should result in lower risk factors in the GMP and a lower construction cost than under the competitive (low) bid contracting method. In Section D.1 ODOT identifies several factors and benefits of the CM/GC method.

E. ADDITIONAL CONSIDERATIONS UNDER ORS 279C.335(2)(b):

In approving a finding under ORS 279C.335(2)(b), the Director of the Oregon Department of Transportation must consider the type, cost, and amount of the contract (see Sections A, B and D above), and the following factors to the extent applicable to this public improvement contract:

1. How many persons are available to propose: Based on the level of outreach by ODOT Facilities to the construction industry and response, ODOT Facilities anticipates approximately 7 to 9 contractors are available for the project and 3 to 5 contractors will submit proposals in response to the RFP. See Section C.1.

2. Construction budget and projected operating costs for the completed public improvement: The project is anticipated to be funded with State funds. The current estimated construction cost range for the project (the GMP under the CM/GC Contract) is approximately $40,000,000 to $45,000,000. See Section B.1.

3. Public benefits that may result from granting the exemption: The CM/GC method provides ODOT the ability to evaluate proposers based on their qualifications, expertise, experience, and technical approaches. CM/GC teams have brought certain perspectives to the design and construction process that have proven valuable to the State in projects involving the renovation of buildings of local and State significance. The CM/GC method also promotes fast-tracking for project completion, among other benefits discussed in this document. See Sections A.2, B.2, B.3, B.5 and D.

4. Whether value engineering techniques may decrease the cost of the public improvement: One of the benefits of the CM/CG method is that value engineering is an ongoing process throughout the project, with the CM/GC contractor engaging in the design process to maximize the cost benefits of the value engineering process. See Section B.3.

5. The cost and availability of specialized expertise that is necessary for the public improvement: The CM/GC method allows ODOT to select a CM/GC contractor from a pool of qualified contractors that has expertise in the CM/GC method of contracting with design

development, pre-construction and construction phase services and minimizing risk for the project. Special expertise and the pool of competition are discussed above in this document, including the benefit of using the CM/GC selection method to select a CM/GC contractor that has a team with the necessary qualifications, expertise and experience needed for the project. See Sections B.4, C.1, C.3 and D.

6. Any likely increases in public safety. The ongoing coordination between the owner, designer, and the contractor in the CM/GC method of contracting promotes coordination of work, resulting in a preferred construction approach option for each type and location of proposed work that reflects project goals. In addition, the very nature of the project is directed at providing safety and support for the public in the event of a natural disaster. See Section B.5.

7. Whether granting the exemption may reduce the risks to the contracting agency or the public that are related to the public improvement: Potential benefits of the CM/GC method include saving project costs, lowering operational costs and project lifecycle costs, improving constructability, enhancing innovation, reducing risk, and expediting project delivery by contracting with the CM/GC contractor in the design process, negotiating price and schedule for construction before the design is complete, and shortening construction schedules. This method also provides recognition of the value to the public in employing enhanced contracting methods that will accomplish the required work in the most effective manner.

The CM/GC method emphasizes innovation in management and coordination, providing scheduling and estimating, assessing risk, public relations, safety, and quality needs, and providing a complete project. See Sections A.2, B.1, B.2, B.4, B.5 and D.2.

8. Whether granting the exemption will affect the sources of funding for the public improvement**:** Granting the exemption will not affect the sources of funding for the Project. See Section B.1.

9. Whether granting the exemption will better enable the contracting agency to control the impact that market conditions may have on the cost of and time necessary to complete the public improvement: Market conditions are discussed above, as are the potential cost savings benefits of using the CM/GC method for this project. See Sections B.6 and D.

10. Whether granting the exemption will better enable the contracting agency to address the size and technical complexity of the public improvement: As is typical of alternative contracting methods, this method allows the contracting agency to select the most qualified construction contractor, rather than just simply contracting with the lowest bidder. Through the CM/GC procurement process, ODOT will select a contractor with the specialized qualifications, expertise, skills, experience and understanding that is required to successfully address the project construction, safety and risks issues, technical complexities, and completion timeframes. See Sections A.2, B.4 and B.7.

11. Whether the public improvement involves new construction or renovates or remodels an existing structure: The SCRSRF builds a Category IV self-contained ready facility. The site will stock construction materials and management to rebuild the south coast infrastructure

in the event of a natural disaster. The facility will be fully self-contained with water, septic, and power to include solar, battery backup, and generator. The facility will also replace the current Davis Slough Maintenance facility that provides the daily maintenance needs for the south coast infrastructure as well as combine the Area Project Managers office, Region 3 Bridge crew, and Davis Slough Maintenance crew.

12. Whether the public improvement will be occupied or unoccupied during construction: The public improvement will not be occupied during the majority of the construction but will start to stage necessary materials for emergency purposes as soon as the storage site is available. The CM/GC method will ensure all project work is being done efficiently. See Section B.5.

13. Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions: Coordination of multiple activities to finish the mass grading, solder pile wall, Hilfiker walls, access road, water retention pond and construction of 4 buildings will be complex and require one firm to manage all the activity on the site. The CM/GC method will ensure the contractor participates in constructability reviews and develops a Construction Approach, Means and Methods Report describing the Contractor's approved construction approach to work activities. See Section A.1.

14. Whether the contracting agency has, or has retained under contract, and will use contracting agency personnel, consultants and legal counsel that have necessary expertise and substantial experience in alternative contracting methods to assist in developing the alternative contracting method that the contracting agency will use to award the public improvement contract and to help negotiate, administer, and enforce the terms of the public improvement contract: For this project, ODOT's project team will consist of ODOT personnel, third party consultant personnel, and Oregon DOJ legal counsel that have the necessary experience, expertise, and substantial knowledge necessary to develop the CM/GC method procurement documents and process and the CM/GC Contract. See Section A.2.

F. 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. In addition to the matters to be evaluated under ORS 279C.355(2), the use of the CM/GC method for this project may be evaluated based upon the accomplishments of ODOT objectives for the project.

The final FFE post-construction evaluation report will be made available for public inspection.

CONCLUSION

Findings have been developed in compliance with ORS 279C.330, 279C.335(2) and 279C.335(4) and 279C.350, applying the criteria required by ORS 279C.330 and 279C.335(2), and the additional considerations under ORS 279C.335(2)(b). ODOT will also perform the post-project evaluation required by ORS 279C.355. Based upon these findings and the following conclusions,

ODOT has determined that an exemption from competitive bidding requirements is justified for the described public improvement contract:

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 likely result in substantial cost savings and other substantial benefits to ODOT and the public.

ORDER OF DIRECTOR

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

1. To the extent feasible, and consistent with this exemption, this procurement will follow the applicable provisions of ORS Chapters 279A, 279C and 291. And, as required by ORS 279C.335(4)(c) and ORS 279C.335(1), this procurement will be conducted in accordance with DOJ Model Rules applicable to procurement of CM/GC services (OAR 137, Division 49).

2. ODOT, in concert with the Oregon DOJ, shall establish and follow standards for evaluating bids under this procurement and for making a contract award.

3. ODOT shall work with the Oregon DOJ to develop suitable contract language for the contract and shall incorporate into the contract such additional or substitute terms that ODOT and the Oregon DOJ may determine to be necessary for compliance with Oregon law and other applicable law or otherwise appropriate for the protection of the State.

THE PRECEDING FINDINGS AND CONCLUSIONS AND CONSIDERATION OF OTHER FACTORS SUBMITTED IN SUPPORT OF THIS REQUEST ARE HEREBY INCORPORATED, APPROVED AND ADOPTED.

Kristie W. Stein — 5/24/2023

Kris Strickler, Director of Oregon Department of Transportation — Date

Marie Wright — 5/24/2023

Marie Wright, Operations and Construction Manager, Oregon Department of Transportation Procurement Office — Date

REVIEWED BY THE DEPARTMENT OF JUSTICE

Sr. AAG Rob Gebhardt — By email 05/23/2023

DOJ Attorney — Date