



Oregon

John A. Kitzhaber, M.D., Governor

Department of Transportation Interoffice Memo

September 15, 2004

File Code:

TO: Bruce Warner, P.E.
Director of Transportation

FROM: Michael D. Wolfe *M. Wolfe*
Manager, Statewide Project Delivery

RE: Interstate 5 Sutherlin to Roseburg Section-Design-Build
Project Key # 13467
Project Exemption #2004-51

I request your signature for Exemption #2004-51 from low (Competitive) bid contracting (ORS 279) to use Best-Value Design-Build contracting to design and construct the Sutherlin to Roseburg (I-5) Project.

The Sutherlin to Roseburg (I-5) project will replace 9 deteriorating bridges and permanently repair 1 bridge, modernize the Sutherlin Interchange (phase 1), and an Interstate Maintenance (including pavement preservation) segment. The project is anticipated to cost between \$40 and \$45 million, with an anticipated significant direct cost savings amounting to over \$1 million by using design-build procurement. In addition, we expected to gain one year of time compared to using the traditional design-bid-build method. This time savings alone is considered important to the implementation of bridge replacement and upgrading on I-5. We plan to include a contract feature that will make available an Award Fee for environmental excellence in the performance of the contract.

Hearing Advertisement date: May 13, 2004, published in: *Daily Journal of Commerce*. (Posted on ODOT Contracting Page May 14, 2004).

Findings of Fact hearing date: May 27, 2004, Public Comments received on Draft Finding of Fact: zero (0).

Findings of Fact signature date by DOJ: July 7, 2004.

This Project was Advertised on: April 8, 2004, published in: *Daily Journal of Commerce* and *Washington State Civil Bulletin*.

The Request for Qualifications was released on: May 3, 2004.

Statements of Qualification were received on: June 2, 2004, six (6) Statements of Qualification were received and three (3) firms shortlisted with notices sent on June 11, 2004.

The Request for Proposals was released to the 3 shortlisted firms on June 16, 2004.

The Technical and Price Proposals were received on September 3, 2004.

SEP-14 sent to FHWA on June 3, 2004, approved on July 12, 2004.

Your signature on the enclosed Finding of Fact will execute the project bid exemption, developed in conjunction with the Associated General Contractors.

cc: Technical Services Manager (w FOF)
Executive Deputy Directory (w/o FOF)
Region Manager (w/o FOF)
Hearings Officer (w FOF)

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Exemption Number 2004-51

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 for the Sutherlin)	FINDINGS OF FACT,
- Roseburg Project of I-5, a National Highway System)	CONCLUSIONS OF LAW
Interstate Highway)	AND ORDER
Douglas County)	
by the Oregon Department of Transportation)	(For a Public Improvement)
)	

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. ORS 279.015(2), as amended by the 2002 First Special Session, Oregon Laws 2002, Chapter 3 (HB4010), permits the Director of Transportation to grant exemptions to the Oregon Department of Transportation (ODOT) from the requirement for competitive bidding for certain public improvement contracts, as described in ORS 279.712(2)(c), 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), a public hearing must be held before the findings are adopted, for a public improvement contract, 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 May 13, 2004. It was also posted on the ODOT web site at: <http://www.odot.state.or.us/techserv/progrsrv/contract> on May 10, 2004.

The hearing for review of these findings was held at 1:30-3:30 PM on May 27, 2004, 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 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.

FINDINGS OF FACT

A. BACKGROUND

1. Project Description: Sutherlin – Roseburg Section, (I-5) Project, Douglas County.

ODOT proposes to enter into a Design-Build contract on or near August 25, 2004. This Project combines or bundles several planned projects located on Interstate-5, a National Highway System (NHS) highway, between mile point (MP) 139 and MP 125 into a single procurement for a single project. The goals of the single project approach include design, construction and cost efficiencies.

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The individual components listed below have been combined by ODOT into a single project and placed in the Statewide Transportation Improvement Plan (STIP).

Project Component Name/ ODOT Bridge #	Mile Point to Mile Point (I-5)	Construction Work Classification	Previous ODOT Key Number	Funding Information
Sutherlin Interchange/ #07565A (Exit 136)	136.52	Modernization	09229	OTIA II County Funds
Sutherlin to Garden Valley	125.38 – 127.25* 130.25- 136.51 *	Interstate Maintenance (IM)	10836	Interstate Maintenance (IM)
I-5: NB O-Xing Wilbur- Umpqua Road #07629B	132	Bridge	12902	OTIA II
I-5: Sutherlin Creek & County Road (NB & SB) #07628 & 07628A	131.47	Bridge	12744	OTIA II
I-5: NB over C.O.P.R. & County Rd. #07631	130.46	Bridge	13120	Advance Construction (AC) PE OTIA III
I-5: SB over C.O.P.R. & County Rd. #07631A	130.46	Bridge	13121	AC PE OTIA III
I-5: NB over Rogers Rd. Connection #07627B	133.25	Bridge	13122	AC PE OTIA III
I-5: SB over Rogers Rd Connection #07627A	133.25	Bridge	13123	AC PE OTIA III
I-5: Stearns Lane #07564A	138.6	Bridge	Not Assigned	
I-5: Calapooya Creek Bridge #07563A	138.71	Bridge	13457	AC PE OTIA III

* There will be a No Work Zone between approximately MP 127.25 and MP 130.25 (Winchester Bridge Project tentatively scheduled for 2007).

The IM component of the Project is primarily through a rural area and should have relatively low impacts to the traveling public. The Project requirements for the IM section must be consistent with past Agency practices; address all interstate maintenance issues including pavement, guard rail, drainage, pavement markings, etc.

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The two Oregon Transportation Investment Act (OTIA) II funded bridges, the Stearns Lane Bridge and the five OTIA III funded bridges, are similar bridges in type and size (relatively small). The project work on the NB Wilbur-Umpqua Road Over-crossing Bridge must provide a repair, detour or replacement structure prior to October 1, 2004.

The Sutherlin Interchange component of the project will include ramp terminus realignments, with the Northbound I-5 on ramp being most significant, installation of a traffic signal on Oregon Route 138, and replacement of the I-5 over-crossing of Oregon Route 138 (ODOT Bridge #07565A) to provide a wider cross section for Oregon Route 138. This component of the project also has a number of utilities that will require coordination for relocation. This portion of the project may also include closing the access of Westwood Lane to Oregon Route 138 and creating a side connection from Westwood Lane to Myrtle Street. The access closures are anticipated to be simple and without significant impact to existing businesses.

The work under this Design-Build Contract consists of design, construction, contract administration and all support needed to complete construction.

The work will be done in accordance with ODOT approved geometric design standards, performance requirements, and specifications. The estimated value of the construction contract is between \$45 and \$50 million dollars. The project is to be funded with a combination of funds provided by the Federal Highway Administration, the state, and local agencies.

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 initiated, pursued and completed, with a minimal impact to the traveling public. Interstate-5 is a major route connecting the Portland and the Willamette Valley with the northern California. It is an important commercial and recreational travel corridor and is the State's major north-south transportation corridor. Commercial truckers and tourists heavily use the highway. It is critical this project be completed with as little interference as possible to traffic flow in order to eliminate any possible weight restrictions while assuring safety to the traveling public. For these reasons, this project is being procured using the Design-Build method.

2. Agency Considerations:

ODOT has been contracting for road improvement projects since 1914. In recent years, the average number of projects per year has been approximately 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 over the next ten years. 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 efficiency improvements is appropriate use of the Design-Build project delivery method.

ODOT established a goal to commence construction on this project in the fall of 2004. An evaluation of internal delivery for this project determined that there was unacceptable risk that the schedule goal would not be met using traditional project delivery methods. An extensive evaluation of the Design-Build delivery method for the project determined a high probability of meeting the goal.

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

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involve a prequalification round to determine the three to four most qualified firms or teams. Those three to four (or more in case of a tie) teams will be asked to each provide a technical 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 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 technical factors (likely including experience, personnel, schedule aggressiveness, capabilities and plans in areas such as quality, maintainability, reliability, environmental impact, traffic disruption, project staging, staffing and organization.)

B. 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:

1. **Operational, Budget and Financial Data:** ODOT currently has funding identified in the draft 2004-2007 Statewide Transportation Improvement Program (STIP) for this project. ODOT has asked for special federal funding for the project. ODOT considers completing this project a high priority. The total project design and construction cost is estimated to be between \$45 and \$50 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 saving to ODOT as well as the public by using this method of contracting on this project.

2. **Public Benefits:** The greatest benefits to the public will come with the rapid improvement to the transportation system to allow safe and efficient movement of existing and future traffic volumes. It will help meet the goals and objectives of the 1999 Oregon Highway Plan by providing a safe efficient section of the interstate system. The project will improve safety, traffic flow and improve freight movement capabilities of the interstate highway system. It will integrate this segment of roadway into other recent improvements to provide a consistent corridor; accommodate increases in traffic generated by inter and intra-regional transport of goods, services, and people; support regional and statewide economies and ensure that transportation facilities are consistent with land use plans.
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 a VE study on the proposals submitted for this project.

The Design-Build method of contracting is anticipated to result in more reliable and higher quality VE proposals produced for the project. Design-Build has the inherent advantage that the Design Builder will engineer into the project cost-reducing elements to the extent environmental criteria allows. Because of the expertise required for the design and construction of several types of bridge structures that span sensitive habitat areas, ODOT plans to allow as much flexibility in the design, staging and construction as possible so that the successful Design Builder is able to maximize cost savings ideas and methods and minimize environmental impacts. Since this up-front project design and planning will be accomplished during the proposal phase, ODOT can expect to realize benefits in the initial contract price.

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4. **Specialized Expertise Required:** This project involves work on a high-speed highway. 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.

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.

5. **Public Safety:** 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 closures 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 in Oregon have been much higher than the National Average over the past two years. Oregon’s unemployment ranking has been among the top five states in the nation since February of 2001, and ranked the highest in the nation more than 12 months during that period. The Governor and the Legislature have strongly encouraged ODOT to contract and construct projects quickly to both take advantage of lower bid prices in the current market and to improve local employment. Economic studies by the Federal Highway Administration have shown that highway construction projects nationally create over 40 jobs per million dollars spent. ODOT conservatively estimates that during the life of a highway construction project 19 jobs are created in Oregon per million dollars of project cost. This project could therefore generate approximately 465 local jobs (($\$49 \text{ million} \times 19 \text{ jobs/million}$)/ 2 year job life = 465 job years), assuming a \$49 million 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 one year, 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. Remaining funding for the project is planned to come from a combination of federal, state, and local funds.

C. 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.* 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:

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As outlined below, ODOT anticipates that competition may be similar to that experienced in other ODOT projects of this type. ODOT has early indications of increased interest and intent to participate in this procurement, as opposed to earlier ODOT Design-Build projects, 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. There are over 150 firms who have directly 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 and other Design-Build projects. The five projects ODOT currently has under Design-Build contract had solid participation in the Qualification stage with several 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 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. Design Builder selection will be made on the basis of final ratings derived from proposed prices and technical proposals, 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 experience, literature search and discussions with other jurisdictions indicate competition has remained strong.
4. Pursuant to ORS 279.025, the solicitation has been advertised in the *Daily Journal of Commerce*. In addition, the notice will be advertised in *Washington State Civil Bulletin* and on the ODOT web site: <http://www.odot.state.or.us/techserv/progrsrv/contract>.
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 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 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 or the public for contracts for public improvements (such as this project) described in ORS 279.712(2)(c).* 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 both directly to ODOT and indirectly to the public by using the described alternative contracting method.

This finding is supported by the following:

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

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conventional contracting methodologies, but considerable time savings are reasonably anticipatable.

- A. Cost - However, the Construction Industry Institute (CII) found that design-build construction methods have an edge over others in limiting cost and schedule creep. The CII 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 projects 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.

If ODOT's experience on this project follows the results announced in the CII study, its use of the Design-Build contracting model could result in ODOT's avoidance of approximately \$1,210,000 in additional costs associated with schedule creep that it might otherwise incur under the traditional DBB mode ($\$49,000,000 \times (4.84\% - 2.37\%) = \$1,210,000$).

- B. Time - 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, (<http://www.fhwa.dot.gov//programadmin/contracts/survey02.htm>). 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 reported time savings of over two years for large projects. A separate Design-Build Practice Report in 2002 by Parsons Brinkerhoff 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 DB method (Oregon was not a respondent).

- 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 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 ("Final Evaluation of the Florida Department of Transportation's Pilot Design/Build Program", Transportation Research Record No. 1351, 1992). 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 the +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, such a 4.5% swing would equate to a savings of approximately \$2,205,000 ($\$49,000,000 \times 4.5\%$). (In Section 3 below, ODOT uses the more conservative figure of 1,210,000 from Section 1.1A above in calculating 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,

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formalization costs can be decreased. ODOT estimates that preliminary engineering will be reduced by approximately \$100,000 for this contract.

Maintenance – By contracting this project as Design-Build, ODOT estimates that the project construction can commence in the Fall of 2004 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 start the in-stream work in 2005, 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.)

- 1.5 Inflation – Recent construction costs have been relatively stable, showing little to no inflation. However, historic averages indicate that inflation has tracked at approximately 3% per year. Assuming that recent stability in contract prices will be short lived with an improving economy in the future, early contracting will lock in a lower price for the project. Taking advantage of this short-term opportunity amounts to approximately \$735,000 for this project, assuming the saving is over one year, and that half of the total contract price is expended during that year ($3\% \times \$49,000,000 \times 1/2 = \$735,000$).

2. Indirect Savings:

- 2.1 Cost – In the 2004-2007 draft STIP, ODOT projected construction to start in 2005, utilizing DBB. To start construction on this project one year early would allow early completion. A cost estimate of the possible savings to commercial truck traffic has not been undertaken. It could be significant as traffic volumes are quite high.

Using the Design-Build alternative contracting method, construction can proceed prior to completion of all plans and specifications, eliminating an estimated two-years for completion. This results in any detours and weight restrictions being required for a shorter time period.

- 2.2 Time – There is wide agreement that Design-Build procurements reduce time to deliver a project. In addition to eliminating one procurement cycle; innovation, concurrent engineering, and incremental starting of material acquisition and fabrication, all contribute to reduce project duration. Innovation was the key to Oregon's experiences with the I-5 Trunion 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, given the in-house mix of design skills and construction capabilities, the Design Builder is encouraged to engineer and stage the project to optimize efficiency of construction. This typically leads to earlier construction start up and project completion, which combined translates into reduced costs.

3. 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 saving described in Subsection 1.1 above indicates a net savings amounting to approximately \$2.1 million (see table below).

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Direct Contract Cost Savings Summary

Subsection	Approximate Savings
1.1 Cost and Time	\$1,210,000
1.2 Contract Changes	Value not used
1.3 Bid Documents	\$100,000
1.4 Maintenance	Value not used
1.5 Inflation	\$735,000
Total	\$2,045,000

These savings do not include projected indirect savings accrued to the trucking industry and its customers.

The total of both the direct and indirect project cost savings is therefore \$2,045,000.

4. Evaluation Process

This project will be evaluated in accordance with the requirements of ORS 279.103, including analysis of project cost and savings.

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:

1. 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
2. Award of a public contract pursuant to the exemption will result in a substantial cost savings to ODOT.

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ORDER OF DIRECTOR

An exemption from public competitive bidding requirements is hereby granted to the Oregon Department of Transportation to enter into a 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 279 and 291; OAR Chapter 731, Divisions 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

Date

9/16/04

Director, Department of Transportation



REVIEWED BY THE DEPARTMENT OF JUSTICE

Date

7/7/04

/s/ Dana A. Anderson
Assistant Attorney General

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Attachment A – Selection Process Description and Objectives

ODOT Design-Build Program

Unless otherwise announced in a specific Request for Qualifications or Request for Proposals, the selection process that will be used for contract awards under the ODOT Design-Build Program consists of two steps:

(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 (SOQ's) received will be evaluated, and the three to four (or more in case of tie) highest-scoring teams demonstrating that they meet the established minimum experience and organization requirements stated in the RFQ, will be short-listed to advance to the proposal stage.

(2) A Request For Proposals (RFP) will be issued for the project to the short-listed teams, and Proposals will 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 technical component.

The price component presents the total cost to ODOT for delivering the project. The technical 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 technical component rating will be used in conjunction with the proposed price rating, resulting in a final overall rating, as described in the RFP and evaluation and selection procedures.

The Statement of Qualifications (SOQ) and the technical component of the Proposal will be evaluated by a Selection Committee, consisting of three to eight ODOT people, with possibly one non-ODOT member. Other non-voting members may participate.

The rating of the SOQs and the Proposals' technical component and price proposal component will be completed and confirmed by the Selection Committee members. The ratings for the Proposal technical component will be completed prior to the Selection Committee being briefed on the results of the evaluation of the price component.

Once the technical component ratings are completed and compiled, the price component evaluation will be presented to the Selection Committee and the final rating for comparison and award of the contract will be determined in accordance with the procedures set forth in the RFP and the evaluation and selection procedures.

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

The responsive and responsible proposer that provides the best value to ODOT will be selected for final contract negotiation 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 award.