



Oregon

Department of Transportation
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Addendum No. 5

Date: March 7, 2025

To: Short-Listed Proposers

**Prepared and
Approved By:** Megan Saunders

Subject: Northwest Oregon 2024 - 2027 ADA Curb Ramps Design, Phase 2

THE PURPOSE OF THIS ADDENDUM IS TO:

1. **DELETE** page 407-412 of the DB Agreement and **REPLACE** with the attached page 407-412 attached to this Addendum.

Attachments:

- C15536-RFP Attachment B, Design-Build Agreement, Page 407-412, Addendum 5

It is understood that your Proposal must and shall be submitted accordingly.

- Minor corrective Work not involving additional payment to be completed
- Documentation demonstrating that each Settlement Curb Ramp is compliant (either a passing ADA Curb Ramp Inspection form or Agency acceptance of crosswalk closure treatment, as applicable)
- Completion and submittal of all Design Documents, required certifications, bills, forms, warranties, certificates of insurance coverage, and other documents required to be provided to the Agency before Third Notification will be issued

Within 90 Calendar Days from issuance of Final Second Notification by the Agency, the Design-Builder shall complete all tasks listed in the Final Second Notification, except for any required seeding establishment or plant establishment. Unless otherwise agreed to by the Agency, failure of the Design-Builder to complete all tasks listed in the Final Second Notification, except for any required seeding establishment or plant establishment, within 90 Calendar Days from issuance of the Final Second Notification will result in the Agency rescinding the Final Second Notification and the counting of time charges will resume as of the expiration of said 90 Calendar Days.

(h) Contract Time - There are two Interim Completion Dates and one Contract Completion Date for this Project as follows:

(1) Interim Completion Date #1. The Design-Builder shall complete the first 300 Settlement Curb Ramps, not later than ~~January 15, 2026~~ March 31, 2026.

(2) Interim Completion Date #2. The Design-Builder shall complete an additional 800 Settlement Curb Ramps (for a total of 1,100 Settlement Curb Ramps), not later than December 15, 2026. (Interim Completion Date)

(3) Contract Completion Date. The Design-Builder shall complete all Settlement Curb Ramps and any other Work to be done under the Contract, except for (seeding establishment) (and) (plant establishment), not later than December 30, 2027.

DB180.60 Notice of Delay - The Design-Builder shall notify the Agency of any delay that will likely prevent completion of all of the Work required by the applicable Interim Completion Date(s) or completion of all Work by the Contract Completion Date specified in DB180.50(h). The notice must be in writing and shall be submitted within 7 Calendar Days of when the Design-Builder knew or should have known of the delay. The notice must include, to the extent available, the following:

- The reasons or causes for the delay;
- The estimated duration of the delay and the estimated resulting cumulative delay in completion of all applicable Work;
- Whether or not the Design-Builder expects to request an adjustment of Contract Time due to the delay;
- Whether or not the Design-Builder expects to accelerate due to the delay; and
- Whether or not the Design-Builder expects to request additional compensation due to the delay.

Except for delays under DB180.50(e) and DB180.65, failure to include the foregoing information will constitute waiver of the Design-Builder's right to later make a request for additional Contract Time or additional compensation due to the delay.

DB180.65 Right-of-Way and Access Delays - Right-of-Way and access delays will be taken into consideration in adjusting Contract Time and in authorizing additional compensation if the performance of the Work is delayed because of the Agency's failure to make available to the Design-Builder:

- Planned Rights-of-Way;
- Agency-owned or Agency-controlled Materials sources that are offered in the Contract for the Design-Builder's use; or
- Access to, or rights of occupancy of, buildings and other properties the Design-Builder is required to enter or to disturb pursuant to Contract requirements.

If the ending date of an anticipated Right-of-Way or access delay is stated anywhere in the Contract Documents, only the delay occurring after that date will be considered for adjusting Contract Time or providing additional compensation.

DB180.70 Suspension of Work:

(a) General - The Agency may suspend the Work, or any part of the Work, for any of the following causes:

- Failure of the Design-Builder to correct unsafe conditions;
- Failure of the Design-Builder to carry out any provision of the Contract;
- Failure of the Design-Builder to carry out orders issued by the Agency or any regulatory Authority;
- Existence of conditions unsuitable to proper or safe performance of the Work;
- Lapse or failure to file the necessary Bonds or lapse or failure to provide or maintain the required insurance coverages; or
- Any reason considered by the Agency to be in the public interest.

When Work has been suspended for any reason, the Design-Builder shall not resume the suspended Work without the Agency's written authorization.

(b) Design-Builder's Responsibilities During and After Suspension - During periods of suspension of Work, the Design-Builder shall continue to be responsible for protecting and repairing the Work according to, but not limited to Section DB170, and for ensuring that the Design-Builder's designated representatives responsible for the Project remain available according to, but not limited to DB150.40 and DB180.35(a)(2).

When Work is resumed after suspension, unless otherwise specified in the Contract, the Design-Builder shall perform the following at no additional compensation:

- Replace or repair Work, and Materials and Equipment to be incorporated into the Work, that were lost or damaged because of the temporary use of the Project Site by the public; and

- Remove Materials, Equipment, and temporary construction necessitated by temporary maintenance during the suspension, as directed by the Agency.

(c) Compensation and Allowances for Suspension - Compensation and allowance of additional Contract Time due to suspension of any portion of the Work will be authorized only for Agency-initiated suspensions for reasons other than the Design-Builder's failure or neglect. (See DB180.50(e), DB180.65, and DB195.40.)

DB180.80 Adjustment of Contract Time:

(a) General - Contract Time established for the Work will be subject to adjustment, either by increase or decrease, for causes beyond the control of the Design-Builder, according to the terms of this Subsection. After adjustment, the Contract Time will become, and be designated as, the "Adjusted Contract Time". Except as provided in DB180.65 above and DB195.40, an adjustment of Contract Time will be the Design-Builder's only remedy for any delay arising from causes beyond the control of the Design-Builder.

If the Project Work falls behind the latest Project Work Schedule and the Monthly Progress Schedule shows that completion dates will not be met, the Design-Builder shall provide a revised Baseline Schedule and written proposal that explains how the Design-Builder will get back on schedule. The Design-Builder may also include a request for adjustment of Contract Time or a written acknowledgement that liquidated damages will be incurred.

(b) Design-Builder's Request Not Required - The Agency may increase or decrease the Contract Time or the Adjusted Contract Time if Change Orders or Extra Work orders issued actually increase or decrease the amount of time required to perform the Work. The Agency may also increase Contract Time in the event of Right-of-Way and access delays (see DB180.65) and those delays due to causes beyond the Design-Builder's control specified in DB180.50(e). The Agency will promptly inform the Design-Builder of adjustments made to Contract Time according to this Subsection and will include the reasons for adjustment.

If the Agency anticipates delay during performance of the Contract, and specifies its expected duration in the Contract Documents, the Agency will only consider additional delay beyond the stipulated duration in determining whether to adjust Contract Time.

(c) Design-Builder's Request Required - In the event the Design-Builder believes that additional Contract Time is due, the Design-Builder shall submit to the Agency a timely request for adjustment of Contract Time. The Agency will not consider untimely requests. The Agency regards as timely only those requests for adjustment of Contract Time that:

- Accompany a proposed revision to the Project Work Schedule with Fragnets as described in DB180.41(g)(6), for comparison with the last revision of the Project Work Schedule; or
- Are made in accordance with DB180.80(a); or
- Are not otherwise deemed waived and is submitted within 45 Calendar Days after the date of Final Second Notification, if Final Second Notification has been issued.

The Agency will not grant an adjustment of Contract Time for events that occurred prior to the date of the last revision of the Accepted Baseline Schedule. The Agency will not authorize, nor will the Agency pay, acceleration costs incurred by the Design-Builder prior to its submittal of a request for adjustment of Contract Time to which the acceleration costs relate.

The Design-Builder's request for adjustment of Contract Time shall be submitted to the Agency on a form provided by, or in a format acceptable to, the Agency, and must include a copy of the written notice required under DB180.60. The request must include without limitation:

- Consent of the Design-Builder's Surety if the request totals more than 30 Calendar Days of additional Contract Time;
- Sufficient detail for the Agency to evaluate the asserted justification for the amount of additional Contract Time requested;
- The cause of each delay for which additional Contract Time is requested, together with supporting analysis and data;
- Reference to the Contract provision allowing Contract Time adjustment for each cause of delay;
- The actual or expected duration of delay resulting from each cause of delay, expressed in Calendar Days; and
- A schedule analysis based on the current Accepted Baseline Schedule for each cause of delay, indicating which Activities are involved and their impact on Contract completion.

(d) Basis for Adjustment of Contract Time:

(1) In the adjustment of Contract Time, the Agency will consider causes that include, but are not limited to:

- Failure of the Agency to submit the Contract to the Design-Builder for execution within the time stated in the RFP, or to submit the Notice to Proceed within the time stated in the RFP.
- Errors in information provided by the Agency upon which the Design-Builder was entitled to rely under the terms, provisions and conditions of the Contract;
- Performance of Extra Work;
- Failure of the Agency or Entities acting for the Agency to act promptly in carrying out Contract duties and obligations;
- Acts or omissions of the Agency or Entities acting for the Agency that result in unreasonable delay referenced in DB195.40;
- Causes cited in DB180.50(e); and
- Right-of-Way and access delays referenced in DB180.65.

(2) The Agency will not consider requests for adjustment of Contract Time based on any of the following:

- Contentions that insufficient Contract Time was originally specified in the Contract;
- Delays that do not affect any specified or adjusted Interim Completion Dates or Contract Completion Date;
- Delays that affect the Design-Builder's planned early completion, but that do not affect the specified or adjusted Contract Time;
- Shortage or inadequacy of Materials, Equipment, or labor;
- Late delivery of Materials and Equipment to be incorporated into the Work, except under those conditions referenced in DB180.50(e);
- Different area of Material source in DB160.40(a);
- Substitution of Equipment in DB180.31(c);
- Reasonably predictable weather conditions; or
- Other matters within the Design-Builder's control or Contract responsibility.

(e) Consideration and Response by Agency - The Agency will only consider a Design-Builder's request for adjustment of Contract Time submitted according to the requirements of DB180.80(c). The Agency may elect not to consider claimed delays that do not affect any specified or adjusted Interim Completion Dates or Contract Completion Date.

The Agency may adjust Contract Time for causes not specifically identified by the Design-Builder in its request.

The Agency will review a properly submitted request for Contract Time adjustment and within a reasonable time will advise the Design-Builder of the Agency's findings. If the Design-Builder disagrees with the Agency's findings, the Design-Builder may request review according to the procedure specified in DB199.40.

DB180.85 Failure to Complete on Time; Liquidated Damages:

(a) Time is of the Essence - Time is of the essence in the Design-Builder's performance of the Contract. It is essential and in the public interest that the Design-Builder prosecute the Work vigorously to Contract completion and within Contract Time or adjusted Contract Time.

The Agency does not waive any rights under the Contract by permitting the Design-Builder to continue to perform the Contract, or any part of it, after the Contract Time or adjusted Contract Time has expired.

(b) Liquidated Damages - Delays in the Design-Builder's performance of the Work will cause the Agency to sustain damages; increase risk to, inconvenience, and interfere with the traveling public and commerce; and increase costs to taxpayers. Because the Agency finds it is unduly burdensome and difficult to demonstrate the exact dollar value of such damages, the Design-Builder agrees to pay to the Agency, not as a penalty but as liquidated damages, the amount(s) determined as specified below for each Calendar Day the Work remains incomplete after the expiration of the Contract Time or adjusted Contract Time applicable to that Work.

Payment by the Design-Builder of liquidated damages does not release the Design-Builder from its obligation to fully and timely perform the Contract according to its terms, provisions and conditions. Nor does acceptance of liquidated damages by the Agency constitute a waiver of the Agency's right to collect any additional damages it may sustain by reason of the Design-Builder's failure to fully perform the Contract according to its terms, provisions and conditions.

If the Contract is terminated according to DB180.90(a), and if the Work has not been completed by other means on or before the expiration of Contract Time or adjusted Contract Time, liquidated damages will be assessed against the Design-Builder for the duration of time reasonably required to complete the Work.

There are three daily amounts of liquidated damages on this Project as follows:

- Liquidated damages for failure to complete the Work on time required by DB180.50(h)(1) will be \$ ~~2,300~~2,400 per Calendar Day *.
- Liquidated damages for failure to complete the Work on time required by DB180.50(h)(2) will be \$ ~~8,600~~8,900 per Calendar Day *.
- Liquidated damages for failure to complete the Work on time required by DB180.50(h)(3) will be \$ ~~15,000~~16,000 per Calendar Day *.

* Calendar Day amounts are applicable when the Contract time is expressed on the Calendar Day or fixed date basis.

(c) Lane Closures - Lane closures beyond the limits specified will inconvenience the traveling public and will be a cost to the Agency.

It is impractical to determine the actual damages the Agency will sustain in the event Traffic Lanes are closed beyond the limits listed in DB141.31(c)(9). Therefore, the Design-Builder shall pay to the Agency, not as a penalty, but as liquidated damages, \$500 per 15 minutes, or for a portion of 15 minutes, per lane, for any lane closure beyond the limits listed in DB141.31(c)(9)d or the Accepted Design-Builder Specifications.

The Agency Engineer will determine when it is safe to reopen lanes to traffic. Assessment of liquidated damages will stop when all lanes have been safely reopened. Any liquidated damages assessed under these provisions will be in addition to those listed in DB180.85(b).

(d) Traffic Delays Beyond 20 Minutes - Stopping or holding vehicles beyond the limits specified will inconvenience the traveling public and will be a cost to the Agency.

It is impractical to determine the actual damages the Agency will sustain in the event traffic is stopped or held longer than the 20-minute limit listed in DB Standard Technical Specifications 00220.02. Therefore, the Design-Builder shall pay the Agency, not as a penalty, but as liquidated damages, \$500 per 20 minutes, or for a portion of 20 minutes, for stopping or holding traffic longer than 20 minutes.

Assessment of liquidated damages will stop when the Agency Engineer determines that traffic is no longer stopped or held beyond the 20-minute limit. Any liquidated damages assessed under these provisions will be in addition to those listed in DB180.85(b).