

EXEMPTION NUMBER No. 2021-02

**FINDINGS
SUPPORTING AN EXEMPTION FROM COMPETITIVE BIDDING REQUIREMENTS
AND THE USE OF THE PRICE PLUS TECHNICAL QUALIFICATIONS PLUS
TECHNICAL APPROACH (“A+C+D”)
SELECTION METHOD**

Before the Director of Transportation
of the State of Oregon

In the Matter of the Exemption Request by the)
Oregon Department of Transportation for the) FINDINGS,
I-205: I-5 to OR213, Phase 1A Project, on State) CONCLUSIONS AND
Highway 064 and Interstate 205) ORDER
located in Clackamas County, Oregon)

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 requirement for competitive bidding 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).

Under ORS 279C.335(5), a public hearing must be held before the findings are finally adopted, allowing an opportunity for interested parties to comment on the draft findings.

The public hearing and this request for exemption were advertised in the Business Tribune and the Daily Journal of Commerce on May 21, 2021. 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

The public hearing for review of these findings was held at 1:00 p.m., on June 4, 2021, via WebEx Attendee Link

<https://ordot.webex.com/ordot/onstage/g.php?MTID=e02bfe38d669549086f0642cb541707e1>
and WebEx Attendee Call in Option 1-408-418-9388 Event number: 187 329 6612.

There were no comments from the public, either oral or written, during this hearing or 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: The I-205: I-5 to OR213, Phase 1A project will widen the Abernethy Bridge to add a third general purpose travel lane in each direction. The Project will minimally adjust the OR99E interchange, convert the OR43 interchange into a roundabout, and remove the existing I-205 northbound entrance ramp. In addition, the Project will seismically upgrade the Abernethy Bridge. The project is located in West Linn and Oregon City in Clackamas County Oregon.

ODOT proposes to use the "Price plus Technical Qualifications plus Technical Approach" ("A+C+D") selection method and then enter into a construction contract with the selected construction contractor. The project includes, but is not limited to construction, quality, environmental management, safety, contract administration and all necessary support services. The project area for I-205: I-5 to OR213, Phase 1A project is located on I-205, State Highway Number 064 in the cities of West Linn and Oregon City in Clackamas County between MP 8.7 and MP 9.5.

This project will address congestion, traveler safety, and seismic resiliency on I-205. More than 113,000 vehicles use this section of I-205 each day and drivers experience 6.75 hours of congestion daily. The two-lane section of I-205 on the Abernethy Bridge creates a bottleneck that causes congestion and crashes, creating delays for travelers and freight. The closely spaced on-ramps on I-205 northbound on Abernethy Bridge contribute to safety and travel-time predictability issues. The Abernethy Bridge is seismically vulnerable in the event of a major earthquake. As a result, ODOT has programmed the widening of I-205 and the Abernethy Bridge.

Oregon Department of Transportation

Through the A+C+D alternative selection method, ODOT will select and award a contract to the contractor that provides the best value in accomplishing the project work while maintaining highway mobility.

The key objective of the A+C+D 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, which include but are not limited to:

- Provide a passable north-south route in the Portland region after a major earthquake. An earthquake-ready corridor will support this critical lifeline route in providing supplies and services to the region after a disaster.
- Increase safety and decrease crashes by improving the interchanges and closely spaced on and off-ramps.
- Reduce congestion and improved travel time predictability by adding a third lane in each direction. The addition of RealTime traveler information signs will further reduce crashes and the associated delays and congestion.
- Minimize impacts on the environment, wildlife (in and around the river) and historic resources

Specific work items for each major project component are noted below. The individual project components listed below have been combined by ODOT into a single project and placed in the Statewide Transportation Improvement Plan (STIP).

Project Component Name	Scope of Work
Mobilization and Traffic Control	Provide temporary protection and direction of traffic; temporary signs, concrete barrier, plastic drums, impact attenuators, and reflective pavement markers; changeable message signs; sequential arrows; and flaggers.
Transverse Bridge Launch – Abernethy Bridge	Separate spans to accommodate widening into the median on each bridge span.
Large Diameter, Deep Drilled Shafts – Abernethy Bridge	Construct large diameter drilled shafts approximately 200 feet long with permanent steel casings.
Temporary Access Bridges – Abernethy Bridge	Construct complex work bridges to accommodate fluctuating water surface elevations, and meet navigational requirements and in-water work periods.
Customized Falsework – Abernethy Bridge	Construct customized falsework to support the forms needed to construct crossbeams that span approximately 150 feet.
Post tensioning – Abernethy Bridge	Tension prestressed steel in crossbeams
Base Isolation Bearings – Abernethy Bridge	Unique support bearings for the steel superstructure members
Highway Construction	OR 43 Interchange reconfiguration and roundabout construction

The current estimated project construction cost for the contract with the contractor is approximately \$330 million to \$350 million. It is anticipated that the project will be funded with a combination of Federal Highway Administration (FHWA) and State of Oregon money.

The work will include, but is not necessarily limited to bridge and highway, construction, in-water work, and sign structures, temporary traffic control, environmental and quality management, safety, contract administration, and all necessary support services.

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

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

ODOT proposes to use the A+C+D selection method for the 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 A+C+D selection method as described herein, for the reasons and considerations stated herein.

2. Agency Considerations: ODOT has been contracting road improvement projects since 1914. To operate, maintain, and modernize approximately 8,000 miles of state highways throughout Oregon, ODOT contracts an average of 100 highway and bridge construction projects per year.

The Oregon Transportation Commission is mandated to “encompass economic efficiency” (ORS 184.618), 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 performed an internal evaluation of the delivery goals and alternative selection and contracting delivery mechanisms for this project. ODOT traditionally uses a competitive low bid process, but has concluded that using that project delivery method entails unacceptable risks, which include delivery of the project in an untimely manner. For this project, ODOT reviewed other available procurement options that could provide maximized benefit to the public. ODOT determined that an alternative selection process that considers key elements for success beyond price is most appropriate for this project, specifically the A+C+D method.

ODOT determined that the most cost-effective approach for this project, with the lowest risk of delays, involves a detailed schedule and timeline for the fabrication of components and the construction of large diameter drilled shafts, transverse bridge launch, customized falsework and work bridges, and pre-stressed crossbeams. Critical issues needing to be addressed with this work includes management of large equipment in and around the river, restrictions to marine and/or vehicular traffic and in-water work periods.

ODOT proposes to use an alternative selection process that addresses project needs by evaluating components that include the contractor's technical qualifications and technical approach components as well as price, resulting in a best value selection. This selection method 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 selection methods which will accomplish the required work in the most effective manner.

There are various "multi-parameter" alternative selection methods that may be used that assign weight to price as well as specified non-price factors that are important to the success of a project, including schedule, qualifications and technical approach. These are commonly referred to as "A + B", "A + C", or "A + D", with "A" referring to "Price" and "B" "C" and "D" referring respectively to "Time", "Technical Qualifications", and "Technical Approach" evaluation components. For this project, ODOT proposes using the A+C+D selection method that is expressed as "Price Plus Technical Qualifications Plus Technical Approach". The procurement process for this method includes the evaluation and scoring of a price component part, (A element) plus a technical component part, which includes both a technical qualifications component (C element) and a technical approach component (D element). The technical qualifications component covers a bidder's qualifications, experience, and history. The technical approach component covers how a bidder addresses important project features such as staged bridge construction, in-water work, traffic staging and accommodations, and overall completion. A contract is awarded to the contractor whose price and technical bids are the most advantageous to the owner, and gives the most quality per price.

The purpose for using the "A+C+D" method is to best meet project requirements by using a knowledgeable and experienced contractor that will perform this highly technical and complex work and will realistically deliver the best value project to the state. Some of the features of this approach, beyond price, are reduction in contract time or time needed to achieve critical milestones; focus on the execution of complex technical aspects and planning for technical constraints; encouraging innovations; and integration of the locally-affected and traveling public's needs into the execution of projects. This method will reduce the potential for work delays, reduce the possibility of large cost overruns, and will encourage innovation and avoid or minimize adverse impacts to the environment, local communities, and the traveling public.

ODOT has used A + multi-parameter selection methods since 1997. These methods allow ODOT to consider factors besides price when selecting the construction contractor. For multi-parameter selection, ODOT determines which technical components to use with the price component part to evaluate and score bidder's technical component part bids for construction contracts. ODOT uses key factors to select the bidder that provides the best value in meeting project objectives - such as schedule and scope, and that overcomes technical complexities and constraints.

To date, ODOT has completed 8 projects using the A + multi-parameter selection method. See Appendix A

ODOT has 1 project currently in construction using the A + multi-parameter selection method. See Appendix B

By using the A+C+D selection method, ODOT has had, and continues to have, success selecting construction contractors with the necessary qualifications, expertise, experience, and technical approach to successfully deliver complex projects. ODOT believes that the A+C+D selection method is appropriate for the selection of the construction contractor for the I-205: I-5 to OR213, Phase 1A Project.

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 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 the necessary experience, expertise and knowledge to develop the A+C+D procurement documents and process and the resulting contract. Upon this foundation, ODOT will select the contractor, negotiate (to the extent negotiations, if any, are permitted by ODOT), 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 bidding requirements. The exemption would allow ODOT to solicit price and technical bids for the construction of the project described above using the alternative A+C+D selection method through a one-step RFP procurement process.

An RFP will be issued (formally advertised) for the project, and price and technical bids must be submitted by a date specified in the RFP. The submitted bids will be required to contain a price component part bid (the Price - A element) and a technical component part bid (the Technical Qualifications – C element, and Technical Approach – D element). The Price component part bid presents the total cost to ODOT for delivering the project. The technical component part bid, including Technical Qualifications and Technical Approach, will benefit the project by providing a prospective of the bidder's relevant qualifications and experience. The technical component part bid will also detail methods for successfully completing the project relative to the complex work elements, and achieving the mandated completion timeline as described in the project's RFP.

Scoring members of ODOT's evaluation and selection committee will independently review and score each bidder's bids for the project.

The Technical Qualifications and Technical Approach elements of the technical component part bid for each bidder will be reviewed and scored by the scoring members of the technical evaluation committee according to the evaluation and score criteria requirements stated in the RFP.

Once the scoring of each bidder's technical component part bid is complete, the price component part bids will be publicly opened, and the total price for each price component part bid and the technical component part bid scores for each bidder will be read publicly. The combined price component part bid and technical component part bid scores will be calculated using the formula set forth in the RFP, and the preliminary combined total scores for each bidder will be read publicly according to the procedures set forth in the RFP. The final scores and rankings, and notice of intent to award, will be announced by

ODOT in accordance with the procedures set forth in the RFP. Based on the final scores and rankings, the top-ranked responsive and responsible bidder will be selected for contract award and finalization of contract terms and conditions. In the event that, prior to contract execution, the selected bidder is found to be non-responsive or not responsible, or contract negotiations and finalization prove unsuccessful, at ODOT's discretion, negotiations will be conducted with the next highest-ranked bidder 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.

ODOT will use the standard ODOT Construction Contract form, modified to facilitate the A + multiple-parameter selection method and corresponding requirements for the contract. Development of the modified contract will be coordinated with the Oregon DOJ.

B. FINDINGS REGARDING REQUIRED INFORMATION

ORS 279C.330(1) provides that as used in ORS 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; and (8) Funding sources.*

ODOT finds that many of these criteria support the decision to use the A+C+D selection method best value contracting process. This request for exemption is supported by the following:

1. Operational, Budget, and Financial Data: "The project is an Oregon House Bill (HB) 2017 (Keep Oregon Moving) project. ODOT and the Oregon Legislature consider completion of this project to be a high priority." It is anticipated that the project will be funded with a combination of current and anticipated State of Oregon and federal (FHWA) funding resources. The current estimated project construction cost for the contract with the contractor is approximately \$330 million to \$350 million. 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 A+C+D selection method is the best available procurement and contracting method that allows this project to begin in the next construction season and to be completed on time, while ensuring that ODOT will not incur additional costs beyond those budgeted. This method stresses technical expertise and quality while minimizing construction time delays.

The multi-parameter A+C+D method is a recognized mechanism for agencies to obtain more value for their money, not necessarily at the lowest original contract price, but over the life cycle of a project. It is also a means of contracting for technically complex projects that require assurance of special knowledge, past experience or innovative approaches.

The A+C+D method will reduce ODOT's risk in selecting a contractor that might not be able to construct the project within budget, or within technical and/or schedule constraints. A contractor with demonstrated qualifications and a sound technical approach will provide better overall value, which is expected to support a reduction in change orders and overruns. As a result, cost savings to ODOT and the public are anticipated by using this method.

2. Public Benefits: The A+C+D method focuses on project components that are most valuable to ODOT through the ability to evaluate bidders based on their technical approaches, and therefore contributes toward meeting project goals and schedule. Bidders' technical approach will include their means and methods for efficiently staging and completing the I-205: I-5 to OR213, Phase 1A, Project that widens the Abernethy Bridge to add a third general purpose travel lane in each direction. The Project will minimally adjust the OR99E interchange, convert the OR43 interchange into a roundabout, and remove the existing I-205 northbound entrance ramp. This project will address congestion, traveler safety and travel times. In addition, the project will seismically upgrade the Abernethy Bridge. This project meets the goals and objectives of the 1999 Oregon Highway Plan, including amendments from November 1999 through May 2015, by ensuring ongoing safe and reliable operations of this section of freeway including the Abernethy Bridge for its use by nearly 113,000 daily users. See Section A.1. Completion of the project will also benefit the public by supporting regional and statewide economies.

3. Value Engineering: Value Engineering (VE) study is required on all STIP projects with an estimated total cost of \$25 million or more by ODOT and encouraged for projects with an estimated total project cost of less than \$25 million. FHWA requires VE studies on projects on the National Highway System (NHS) receiving Federal assistance with an estimated total cost of \$50 million or more and bridge projects on the NHS receiving Federal assistance with an estimated total cost of \$40 million or more. VE studies have resulted in both initial savings as well as long-term savings for other ODOT projects. VE is the systematic 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 transportation such as design, traffic operations, construction, maintenance, specifications, standard drawings, and planning.

ODOT screens all complex projects based upon established criteria, to determine the need to do a formal VE study. Based on the results of ODOT's screening of this project, a VE study was performed. This project also required a Cost Estimate Review (CER) study to be completed to meet FHWA major projects requirements.

The CER was conducted on all three phases of the Project while the VE study focused on constructability of Phase 1A only. The workshop was conducted December 2-4 and 9, 2020. The primary objectives of the CER-VE Study were to:

- Perform a cost estimate review on both the baseline design and the VE recommendations
- Identify high risk areas in delivering the Project
- Verify or improve upon the various concepts for the Project
- Improve the value of the Project through innovative measures aimed at improving the performance while reducing costs of the Project.

In total, the CER-VE Team generated 45 risk reducing/cost saving ideas for the Project. These ideas were compared against the baseline concept developed by the Project team. The ideas that performed the best were further developed by the CER-VE Team and resulted in 8 VE Recommendations. Five of the VE recommendations were approved to carry forward into design. The total value of the VE recommendations moving forward is approximately \$8 million. The 5 recommendations moving forward are summarized below:

- Allow for A+C+D Procurement
- Bolt the barrier to the continually reinforced concrete pavement (CRCP) in lieu of pinning
- Allow use of ODOT right-of-way (ROW) for temporary material storage and aggregate production
- Allow watertight column form instead of separate perched cofferdam and column form
- Add crossovers to place traffic on one side and single stage construct the other

4. Specialized Expertise Required: Using the A+C+D selection method will allow ODOT to select a contractor that has the necessary understanding of the project site conditions and the specific construction and staging methodologies to successfully complete work elements in the allotted time. The bidder's technical approach bid is deemed highly important in ODOT's selection of a contractor and ensuring the success of this project.

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

Abernethy Bridge Transverse Slide

The Abernethy Bridge consists of two independent structures, one for each direction of the freeway, with a longitudinal joint between them. To construct the widening, the main river spans of the bridge will be slid 8 feet towards the outside and lowered approximately 2 inches onto new bearings. Following this operation, an interior widening between the bridges, filling the space created from the transverse slide, and an exterior widening will be constructed. The slide will be performed simultaneously on the bridge's three longest spans over the Willamette River, and must be performed continuously, meaning that it must be done uniformly with carefully coordinated equipment to avoid unacceptable stress levels in the bridge. It is critical that the work is performed with a high level of precision to avoid damaging the bridge, which could result in significant bridge closure time to analyze, design, and perform any necessary repairs. Performed successfully, however, this work is expected to be completed over two weekend freeway closures, one for each direction of traffic.

In-Water Pier Construction

The in-water piers will be replaced with a new substructure consisting of large diameter drilled shaft foundations, columns, and a crossbeam that surrounds and is attached to the existing crossbeam. Once the new crossbeam is in place, the existing columns will be removed. There are three key challenges to constructing these components:

1. The diameter of drilled shafts is such that it is at the upper end of the capabilities of the drilled shaft construction industry. The shafts will also be ~200' long and will require a permanent steel casing installed over its full length. The equipment to build this size shaft is owned and operated by a very limited number of contractors. The shafts could also encounter artesian ground water, which will impose additional complexities when drilling and constructing the shafts.
2. The crossbeams will span approximately 150 feet between the columns and will require very large, customized falsework to support the forms needed to construct the crossbeam. Large cranes and barges will be needed to lift, position, and construct the falsework.
3. When the existing columns are removed, the prestressing steel that reinforces the crossbeam will have to be incrementally tensioned to release load from the existing columns without suddenly lifting the deck of the bridge when the existing columns are cut. This must be done with a high level of accuracy to avoid causing permanent damage to the structure. Removing the existing columns will require carefully cutting them into smaller sections and removing them without impacting the river.

The transverse bridge slide and the in-water work requires a knowledgeable contractor experienced and qualified in performing this type of work to ensure public safety, environmental and regulatory compliance, seamless interfacing with the I-205 widening south of the Abernethy Bridge, and successful completion of the work. Because these operations are highly dependent to the Contractor's means and methods, a traditional low-bid approach does not afford ODOT the ability to manage these risks during the Contractor selection process, unlike the Multi-parameter approach which does provide that ability.

Maintenance of Traffic

The Project work must be completed while maintaining existing travel lanes and interchange accesses, with the exception of night-time lane closures and unavoidable limited-duration freeway closures to protect workers during the widening process. This portion of I-205 experiences some of the highest traffic for two-lane freeways in the state, with average traffic volumes exceeding 3,000 vehicles hourly every day of the week.

The Contractor's approach to developing the construction staging and traffic management will be a key component needed to maintain/restore traffic during construction, without causing substantial user-delay costs to the travelling public and heavy freight commerce. Maintaining freeway mobility for both passenger vehicles and freight is vital to the economic health of the region.

The A+C+D selection method emphasizes innovation in management and coordination, providing scheduling and estimating, assessing risk, managing mobility, public relations, safety and quality needs, and providing a complete project that is sensitive to wide public participation by all in contracting opportunities. As is typical of most, but not all multi-parameter selection methods, the most qualified prime construction services are sought, rather than just simply contracting with the lowest bidder. In addition, specialized expertise and understanding is required to successfully address the public safety issues noted below.

For this project, proposers will need to demonstrate that they have the necessary understanding of construction work similar to this project and the specific approaches to

completing the complex and challenging work elements within the schedule constraints. The selected contractor will be well qualified in transverse launching bridges, large diameter drilled shaft construction, and efficient construction and staging methodologies, and traffic management.

ODOT and the public will benefit from ODOT acquiring a contractor that has established experience, and specialized expertise to manage and perform the work for this 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 this project.

ODOT personnel and ODOT's legal counsel, the Oregon DOJ, have gained the necessary experience, expertise and knowledge in using multi-parameter methods to successfully deliver multiple projects varying in scope, size, complexity, and within schedule and budget constraints.

5. Public Safety: A contractor with a strong approach to the challenging project elements will minimize additional traffic impacts, as described in Section B.4. Specialized Expertise Required.

The selected contractor will be required to perform and stage all work necessary so that the areas within the project's footprint can be safely occupied and used by the traveling public, motor freight, and river traffic for the duration of the project.

The relationship between ODOT and the contractor will ensure coordination of work within the project site, resulting in mitigation of potential safety hazards to the traveling public.

6. Market Conditions: ODOT does not anticipate any measurable difference in market conditions if this project is contracted under the traditional low bid method or the A+C+D method. ODOT has reason to believe the market appears favorable for attracting the most desirable type of experienced firms in Oregon and the nation. As described in Section A, BACKGROUND, contractors have experience with alternative contracting methods in Oregon, and have become more accepting of alternative contracting processes, in particular when bidding technically complex projects with specialized needs, ensuring adequate competition. Using the design-bid-build method for a project of this size and complexity can result in a low-bid contractor that lacks the necessary qualifications, expertise and experience, which can be at a higher risk for performance, timeliness, safety and financial issues. The A+C+D selection method will allow ODOT to consider the bidder's qualifications, expertise and experience necessary to successfully deliver this high-impact project.

The Oregon Governor and the Legislature have encouraged ODOT to contract projects quickly to improve employment. Economic studies have shown that highway construction projects nationally create between 30 and 40 jobs per million dollars spent.

7. Technical Complexity: Technical expertise will be required for environmental management, quality management, scheduling, estimating, traffic control, staging, and pre-construction services. To be successful in completing this project, the 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 (including funds allocated or authorized by HB 2017 (Keep Oregon Moving)), and with federal (FHWA) 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 from 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 A+C+D alternative selection 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 and out of state and national 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 similar past projects. During ODOT’s history of using alternative contracting methods, more than 150 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 3 to 5 contractors are available for the project and 2 to 3 contractors will submit proposals in response to the RFP.

2. ODOT, through direct contacts and at scheduled ODOT/Associated General Contractors meetings, has been communicating regularly with the construction contracting community about multi-parameter selection, and contracting and other non-traditional selection, and contracting methods.

3. The A+C+D 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 the technical qualifications and experience of key individuals and major subcontractors and technical approach components, timely completion of previous work, and past experience with similar work in order to deliver the best value project to the State of Oregon.

4. Pursuant to ORS 279C.360, the project solicitation document (RFP) will be formally advertised in the *Daily Journal of Commerce Construction Market Data Group LLC (CMD)*, and posted on ODOT's Electronic Bidding Information Distribution System (eBIDS) website at:

<https://ecm.odot.state.or.us/cf/EBIDS/>

5. The objective of using the A+C+D selection method is to select the construction contractor most likely to successfully deliver this difficult project, with very effective execution of the staged construction, effective management of very challenging traffic staging, and a maximum degree of safety to the public as it travels through the project area, and completion of the work while ensuring a competitive price.

6. 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 meeting will be allowed to submit price and technical bids.

(b) The technical component part bid evaluation process will include the following steps, or additional steps as required in the RFP:

(1) Technical component part bids will be evaluated by ODOT's evaluation and selection committee for completeness and compliance with the requirements listed in the RFP.

(2) Technical component part bids considered complete and responsive will be evaluated under the criteria set forth in the RFP.

(3) Scoring members of the evaluation and selection committee will independently score each of the submitted technical component part bids.

(4) After completion of scoring of technical component part bids, the evaluation and selection committee will conduct a meeting to obtain an agreement on the final technical component part bid scores for each bidder.

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 to 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 (particularly for highway and river users). 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: In general, initial contract prices are expected to be comparable between the A+C+D method and the design-bid-build method. Timely completion can be reasonably anticipated using the A+C+D method due to the selection criteria used in determining the most qualified contractor for the complexity of the work. Through the A+C+D method, ODOT will select the contractor that is capable of handling specialized work identified for this project based on the comprehensive set of tasks and cost presented in the bid packages, which will become part of the contract. Cost savings will be realized in the reduction of change orders, inspections, corrective work and potential claims. The contractor's expertise and experience, and possibly its technical approach, may also result in early project completion. Acceleration of project completion can also reduce ODOT's costs for some outside consultants working on the project. Less time required for completion can also provide internal benefits for ODOT, as ODOT will be able to redirect personnel to other projects and initiatives sooner. The current estimated project construction cost for the contract with the contractor is approximately \$330 million to \$350 million.

ODOT uses an annual inflation rate of 4.0% when estimating project costs. ODOT could save approximately \$283,000 in inflation for each month construction can be accelerated.

2. Indirect Cost Savings: Indirect savings are real and recognizable by the public and for this project. By selecting a contractor that can realistically meet ODOT's key project evaluation factors such as the expertise and experience of the contractor's key individuals and major subcontractors, the contractor's technical approach, and safety, quality and schedule and completion date expectations, ODOT and the contractor can jointly save the traveling public significant inconvenience due to traffic delays, detours and slower posted speeds. ODOT uses these factors, based on its experiences with other projects to judge impacts of construction on road users. Road user costs can be minimized by avoiding extension of construction completion beyond the original construction completion date.

I-205 volumes are fairly consistent throughout the year accommodating freight traffic and seasonal recreational traffic. ODOT estimates that it can avoid an estimated road user

cost for traffic of \$2,850,000 per month after the original contract completion date by avoiding extension of construction completion beyond the original contract completion date.

E. ADDITIONAL CONSIDERATIONS UNDER ORS279C.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 particular public improvement contract:

1. How many persons are available to propose? Based on the level of outreach by ODOT to the construction industry and response, ODOT anticipates approximately 3 to 5 contractors are available for the project and 2 to 3 contractors will submit price and technical bids in response to the RFP. See Section C.1.
2. The construction budget and the projected operating costs for the completed public improvement. The project is anticipated to be funded with a combination of State of Oregon and federal (FHWA) funding resources. The current estimated construction cost for the project is \$330 million to \$350 million. See Section B.1.
3. Public benefits that may result from granting the exemption. The A+C+D method provides ODOT the ability to evaluate bidders based on their qualifications, expertise, experience and technical approaches for improving public safety, increasing both the rate of traffic flow, and maintaining connectivity and mobility for all road users, and for meeting the goals and objectives of HB 2017 (Keep Oregon Moving) and the 1999 Oregon Highway Plan. The A+C+D method also promotes the use of innovative contractor approaches to complex and challenging project work elements, among other benefits discussed in this document. See Sections A.2, B.2, B.3, B.5 and Section D.
4. Whether value engineering techniques may decrease the cost of the public improvement. A VE study was performed as part of ODOT's screening for this project. The study identified 8 VE recommendations. Five of the VE recommendations were approved to carry forward into design. The total value of the VE recommendations moving forward is approximately \$8 million. See Section B.3.
5. The cost and availability of specialized expertise that is necessary for the public improvement. The A+C+D method allows ODOT to select a contractor from a pool of qualified contractors that has expertise in transverse slide construction, in-water pier construction, and maintenance of traffic to minimize risks for the project. Special expertise and maintaining competition are discussed above in this document, including the benefit of using the A+C+D selection method to select a 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 coordination between the owner and the contractor in the multi-parameter method of contracting should assure coordination of work, resulting in shorter lane closure and detour times. It will also ensure full consideration for the safety of users of the bicycle and pedestrian paths and multimodal transportation facilities crossed by the project. See Section B.5.

7. Whether granting the exemption may reduce risks to the contracting agency or the public that are related to the public improvement. Potential benefits of the A+C+D method include saving project costs, lowering operational costs and/or project lifecycle costs, improving constructability, enhancing innovation, reducing risk, and expediting project delivery by use of the contractor's technical approach. 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 A+C+D method emphasizes innovation in management and coordination, assessing risk, managing mobility needs, and providing a complete project that is sensitive to wide public participation by all in contracting opportunities. See Sections A.2, B.1, B.2, B.4 and B.5.

8. Whether granting the exemption will affect the sources of funding for the public improvement. The project is a HB 2017 (Keep Oregon Moving) project and is of high importance to the Legislature and ODOT. Granting the exemption would not have a negative impact on 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 A+C+D 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 A+C+D 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 renovation or remodeling of an existing structure. I-205: I-5 to OR213, Phase 1A Project widens the Abernethy Bridge to add a third general purpose travel lane in each direction. The Project will minimally adjust the OR99E interchange, convert the OR43 interchange into a roundabout, and remove the existing I-205 northbound entrance ramp. In addition, the Project will seismically upgrade the Abernethy Bridge. See Section A.1.

12. Whether the public improvement will be occupied or unoccupied during construction. The project area covers the section of I-205 from OR99E to OR43, which is a heavily traveled corridor and experiences a high crash rates. Traffic on I-205 and major local street crossroads consists of cars, trucks, busses, bicycles, pedestrians, and multimodal transportation facilities. The multi-parameter method will ensure all project work is being done in a "fast-track" mode to minimize impacts. See Section A.1 and 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. I-205:

I-5 to OR213, Phase 1A Project widens the Abernethy Bridge to add a third general purpose travel lane in each direction. The Project will minimally adjust the OR99E interchange, convert the OR43 interchange into a roundabout, and remove the existing I-205 northbound entrance ramp. In addition, the Project will seismically upgrade the Abernethy Bridge. The name of the Project includes "Phase 1A" but the Project itself does not have multiple phases. Other phases, for example, a Phase 2 project that may arise at a later date would be a separate project and not a phase of this current Project. See Section A.1. above.

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 experience, expertise, and knowledge necessary to develop the A+C+D method procurement documents and process and the Contract and to help administer and enforce the terms of the public improvement contract. See Sections 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 A+C+D method for this project may be evaluated based upon the accomplishment of ODOT's objectives for the project:

The contracting agency will make the final FFE post-construction evaluation report available for public inspection.

CONCLUSIONS

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

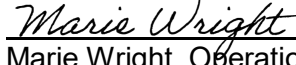
An exemption from public competitive bidding requirements is hereby granted to the Oregon Department of Transportation to enter into the described public improvement contract using the alternative contracting method as described in the preceding findings. This order is subject to the following conditions:

1. To the extent feasible, and consistent with this exemption, this procurement will follow the applicable provisions of ORS Chapter 279A and 279C; ORS Chapter 291; OAR Chapter 731, Division 5 (ODOT Public Contract Rules; Highway and Bridge Projects) and Division 7 (ODOT Public Improvement Contracts; Highway and Bridge Construction).
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.



Kris Strickler, Director of Oregon Department of Transportation 6/22/2021
Date



Marie Wright, Operations and Construction Manager,
Oregon Department of Transportation Procurement Office 6/18/2021
Date

REVIEWED BY THE DEPARTMENT OF JUSTICE

Sr. AAG Rob Gebhardt By email 06/15/2021
DOJ Attorney Date

Appendix A – Completed Price Plus Multi-Parameter Project Summary Table

Project Name: Columbia River (I-5) Bridge Northbound Lift Span Trunnion Replacement (A+C)			
Purpose/Scope: Obtain a contractor to perform the highly specialized manufacturing and construction services to replace the counterweight cable sheaves, shafts, bearings, and cable assemblies on the north tower of the historic, circa 1916, northbound Interstate 5 crossing of the Columbia River (Bridge No. 1377A).			
Completion Date	12/1/1997	Total Costs	\$7,365,829
Cost Savings (Compared to Original Estimate)	Not Available	Time Savings (Compared to ODOT's Contract Completion Date)	14 Days
Project Name: St. John's (Portland) Suspension Bridge Rehabilitation (A+C)			
Purpose/Scope: Obtain a contractor to manage complex traffic staging issues, replacement of the deck, damaged suspender cables, the frozen truss bearing, and lead-based paint waste on the historical and culturally significant structure.			
Completion Date	3/30/2006	Total Costs	\$39,173,000
Cost Savings (Compared to Original Estimate)	\$602,900	Time Savings (Compared to ODOT's Contract Completion Date)	4 Months
Project Name: US26 Dennis L. Edwards Tunnel Rehabilitation (A+C+D)			
Purpose/Scope: Obtain a contractor with significant technical, specialized, and complex work access approaches, and with highly specialized expertise in tunnel lining rehabilitation and traffic staging.			
Completion Date	7/1/2011	Total Costs	\$5,555,225
Cost Savings (Compared to Original Estimate)	\$349,041	Time Savings (Compared to ODOT's Contract Completion Date)	None
Project Name: OR99E: Martin Luther King Jr. Blvd Viaduct Replacement (A+C+D)			
Purpose/Scope: Obtain a contractor to perform restoration of the MLK structure, with traffic staging and detours in an urban environment with high traffic volumes, and a confined work space. Additional challenges on the project included shoring requirements on the MLK structure with unusual soil properties (wood waste, unconsolidated industrial fill), unique architectural finishes, demolition/construction over the main Union Pacific Railroad line, and noise and vibration considerations for businesses and neighborhoods in the area.			
Completion Date	9/29/2011	Total Costs	\$81,301,962
Cost Savings (Compared to Original Estimate)	\$2,559,000	Time Savings (Compared to ODOT's Contract Completion Date)	6 Months

Oregon Department of Transportation

Project Name: OR43 Willamette River Bridge Repair (Oregon City) Rehabilitation (A+C+D)			
Purpose/Scope: Obtain a contractor to rehabilitate this historic bridge, specifically maintaining the bridge's historic significance and to improve safety while meeting contractual environmental requirements and completion times. The bridge is listed on the National Register of Historic Places and required specialized construction and material expertise to be rehabilitated.			
Completion Date	2/1/2013	Total Costs	\$17,389,000
Cost Savings (Compared to Original Estimate)	\$1,220,000	Time Savings (Compared to ODOT's Contract Completion Date)	3 Months
Project Name: I-84: Sandy River - Jordan Rd (A+C+D)			
Purpose/Scope: Obtain a contractor to construct a bridge with steel box girders and drill eight-foot diameter shafts with post-grouting, neither of which have been commonly used in Oregon. The prime contractor employed an innovative approach by using a gantry crane system to deliver bridge beams across the river, and the project team avoided the need for a work bridge and additional pilings in the river.			
Completion Date	2/28/2015	Total Costs	\$63,336,259
Cost Savings (Compared to Original Estimate)	\$15,869,741	Time Savings (Compared to ODOT's Contract Completion Date)	3 Months
Project Name: OR58: Salt Creek Half Viaducts Phase 2 (A+D)			
Purpose/Scope: Obtain a contractor to complete the project under a second contract and scope that included removing and replacing the existing half viaduct structures, removing portions of the existing electrical building and installing a new roof, constructing maintenance access, and installing new tunnel lighting, power control equipment and a backup generator system. This work was performed within one construction season.			
Completion Date	10/27/2015	Total Costs	\$8,858,330
Cost Savings (Compared to Original Estimate)	\$1,846,630	Time Savings (Compared to ODOT's Contract Completion Date)	8 Months
Project Name: OR18: Newberg Dundee Bypass (Phase 1G) (Springbrook Rd) (A+C+D)			
Purpose/Scope: Obtain a contractor to complete the complex staged construction of the project. Phase 1G included the east connection to the Newburg Dundee Bypass project as well as the last of the four major construction phases for Phase 1. This phase was a critical component of the overall Phase 1 project, as the bypass would not be functional until construction of this project was completed.			
Completion Date	01/04/2018	Total Costs	\$19,536,641,94
Cost Savings (Compared to Original Estimate)	\$420,090.61	Time Savings (Compared to ODOT's Contract Completion Date)	None

Appendix B – In Construction Price Plus Multi-Parameter Project Summary Table

Project Name: I-5: Interstate BR (NB) Trunnion Shaft Replacement (A+C+D)			
Purpose/Scope: Obtain a contractor to perform the highly specialized manufacturing and construction services to replace the counterweight wire ropes, trunnion assemblies, on the south tower of the historic, circa 1916, northbound Interstate 5 crossing of the Columbia River (Bridge No. 1377A).			
Award Date	01/18/2019	Award Amount	\$ 7,969,493.00
Estimated Completion Date	2 nd Notification 12/21/20 (Pending 3 rd Notification)	Number of Bidders	1