

# Exemption Number 2003- 52

## 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 Mt. Hood- )	FINDINGS OF FACT,
Chemult Section of the Clackamas, Mt. Hood, Warm Springs )	CONCLUSIONS OF LAW
and The Dalles-California Highways )	AND ORDER
(OR 224, U.S. 26 and U.S 97) Bridges Replacement Section )	
Clackamas, Jefferson, Deschutes and Klamath Counties )	(For a Public Improvement)
by the Department of Transportation )	

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 September 29, 2003. It was also posted on the ODOT web site at: <http://www.odot.state.or.us/techserv/progrsv/contract> on September 30, 2003.

The hearing for review of these findings was held at 1:30 PM on October 13, 2003 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 the Oregon Department of Transportation (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:** Mt. Hood – Chemult, (OR 224, U.S. 26 and U.S. 97) Bridge Replacement Section, Clackamas, Jefferson, Deschutes and Klamath Counties.

ODOT proposes to enter into a Design-Build contract on or near February 2, 2004. The purpose of the project addressed by this document is to replace four bridges in Clackamas County, four bridges in Jefferson County,

three bridges in Deschutes County and two bridges in Klamath County. The structures are located on the Clackamas Highway (OR 224), Mount Hood Highway (U.S. 26), Warm Springs Highway (U.S. 26) and The Dalles-California Highway (U.S. 97). ("Bridges" include: *overpasses, underpasses, tunnels, large (over 6') culverts, and similar structures.*)

The work under this Design-Build Contract consists of design, construction, contract administration and all support needed to complete construction. The existing bridges are as follows:

### Mt. Hood-Chemult Section

ODOT Bridge #	OR 224 Mile Point	Bridge Name	County
07867	5.2	U.S. 26 WB over UPRR Mainline	Clackamas
01439A	8.13	Rock Creek, WB	Clackamas
ODOT Bridge #	U.S. 26 Mile Point	Bridge Name	County
00665B	33.24	Alder Creek	Clackamas
00689B	34.09	Wildcat Creek	Clackamas
02269	116.57	U.S. 26 over BNSF	Jefferson
ODOT Bridge #	U.S. 97 Mile Point	Bridge Name	County
00971A	92.11	Willow Creek, NB	Jefferson
06613	105.44	Ochoco Main Canal North Unit	Jefferson
06909	108.99	Ochoco Main Canal North Unit	Jefferson
07768	113.94	U.S. 97 over BNSF (Terrebonne)	Deschutes
01675B	129.72	Pilot Butte Canal	Deschutes
08888	136.46	North Unit Canal & COID Canal	Deschutes
07454	183.16	U.S. 97 over Crescent Connection	Klamath
07929	202.09	U.S. 97 over UPRR	Klamath

The project will require the Design-Build Contractor to provide an extensive level of environmental awareness and commitment in both the design and construction phases, including the obtaining of all required permits. The project will further require the Design-Build Contractor to act as the agent for the Agency in connection with determination, appraisal and acquisition of real property, both temporary and permanent Rights-of-Way, anticipated necessary to complete the project. The work will be done in accordance with ODOT approved geometric design standards, performance requirements, and specifications. The estimated value of the contract is between \$30 and \$40 million dollars. The project is to be funded with a combination of funds provided by the Federal Highway Administration and the state.

This project is also anticipated to include priced optional work that ODOT may exercise consisting of:

1. The realignment and modernization of the U.S. 26/U.S. 97 intersection in Madras. This work includes the design and construction of realigned highway and signals, and will include right-of-way. Additional roadwork on city streets, as well as pavement overlay to the U.S. 26 bridge over BNSF (#02269) is included. The estimated value of this work is between \$1.8 and \$2.5 million dollars.
2. The addition of passing lanes for northbound and southbound traffic near Chemult at approximately mile point 200 on U.S. 97. This work includes the design and construction of roadway, including clearing, earthwork, base and paving. The estimated value of this work is between \$1.2 and \$1.8 million dollars.

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. OR 224, U.S. 97 and U.S. 26 are major traffic carrying facilities in the area and carry both local and through traffic. Due to the lack of space for detours, traffic will likely be limited to one lane in each direction for a good portion of the construction time. The economy of the Central Oregon area and the State of Oregon is vitally dependent on this section of roadway and it is imperative that replacement of the structures be completed as quickly as possible. It is critical this project be completed with as little interference as possible to traffic flow while assuring safety to the traveling public.

## 2. Agency Considerations:

The agency 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. 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.

Oregon has a critical problem with hundreds of its bridges. Many of these structures, built with a planned 50-year life, are now rapidly deteriorating. These bridges are exhibiting "shear cracking" in key support beams; this condition results in a reduction of the bridges' ability to carry commercial traffic, and is evidenced in weight restrictions, emergency temporary repairs and detours. The direct and indirect impacts of this increasing problem on the state's economy are estimated in billions of dollars and thousands of jobs. Additionally, in implementing legislative direction to rebuild this vital transportation system, ODOT is also enhancing the state's economic vitality as part of the Governor's economic recovery strategy.

Consistent with the ODOT Economic & Bridge Strategy Task Force Draft Report, *ODOT Economic & Bridge Operations Report: A Report to the Oregon Transportation Commission*, January, 2003 ([http://www.odot.state.or.us/comm/bridge\\_options/index.htm](http://www.odot.state.or.us/comm/bridge_options/index.htm)), this project is part of ODOT's Stage 1 implementation plan to address the statewide replacement/repair of cracked bridges. Completion of this project is, moreover, a prerequisite to ODOT's ability to implement further phased improvements to the Interstate system since it provides necessary alternative routes.

A major reason for improving this section now is that extensive work is up-coming for Interstate 5. Interstate 5 has many bridges constructed prior to implementation of seismic design standards and that have degraded to low sufficiency ratings requiring load restrictions. I-5 is the highest volume highway facility in the state and the major North South route on the West Coast of the U.S. Currently many trucks are being required to detour to other routes. U.S. 97 will serve as an alternate North-South route for interstate trucking while the structural deficiencies on I-5 are addressed under separate contracts. This project work is necessary not only to bring this route up to standard but also to allow it to be used for the heavy truck traffic expected during the Interstate 5 construction without significant degradation due to the significant additional temporary truck volumes. It is essential that the work be vigorously initiated, pursued and completed, with a minimal impact to the traveling public. This is the major traffic carrying facility in the area and carries both local and through traffic. The economy of the Central Oregon area and the State of Oregon is vitally dependent on this section of roadway and it is imperative that replacement of the structures be completed as quickly as possible in order to deal with I-5 before many more load restrictions must be implemented. It is critical this project be completed with as little interference as possible to traffic flow while assuring safety to the traveling public.

## 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 contractor selected will be responsible for both design and construction of the project. The selection will involve a prequalification round to determine the four most qualified firms or teams. Those four (or more in case of a tie) 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 contractor 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, right-of-way acquisition 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:** These structures are included in the 2002-2005 State Transportation Improvement Program (STIP), as amended on June 18, 2003. Replacement of the 13 bridges is required to maintain full load-carrying capacity on this route. Construction costs will be funded from the State Bridge Program. The total project design and construction cost is estimated to be in the range of \$30 to \$40 million.

In ODOT's view, the Design-Build method of contracting is the quickest method of getting this project underway, 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 following project improving Interstate 5. That project will allow truck traffic desiring to use I-5 to use the most direct North South route between the Mexican and Canadian borders. This route currently has no restrictions to trucks requiring out-of-direction travel. However, the structures are evidencing cracking not designed to seismic standards and do need to be upgraded. Contracting for improvements under Design-Build ensures a more timely completion of this project and an earlier start to the improvements required for I-5. This will allow for resumed service to those currently unable to use the I-5 structures and eliminate future delays for all users during heavy maintenance projects.
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. . The Design-Build method of contracting is anticipated to result in earlier, more reliable and higher quality VE proposals produced for the project. Since a good deal of the project design and planning will be accomplished during the proposal phase, ODOT can expect to realize benefits in the initial contract price.
4. **Specialized Expertise Required:** This project involves work on a high-speed highway. Safe traffic flow must be maintained while construction proceeds. The majority of work is structural in nature and the final product must be capable of a long service life under heavy loads. The project includes 13 bridges spread over approximately 280 miles of highway. 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" 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 contractor 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 the possibility of failure of the structure before a replacement is in place.

Work on this project includes a replacement structure 07867 WB with a wider structure to support a typical section that enhances safety.

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 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 237 local jobs ( $\$35 \text{ million} \times 19 \text{ jobs/million}$ ) / 2 year job life = 332 job years). 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:** A major reason for contracting all these structures together is to assure maximum coordination of traffic control efforts and minimization of delay to the traveling public. However, scheduling of design and construction for so many structures in one corridor will be a challenge. Technical expertise will be required for environmental management, right-of-way acquisition, quality management, structural design (including geotechnical and seismic design), traffic control, and construction. This project also presents unique challenges related to the staging and removal of existing structures. 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 the three ODOT Design-Build projects currently under contract as well as the Central Oregon Highway (U.S. 20) Bridge Replacement Design-Build project that is advancing toward contract in December of 2003 (Exemption 2003-51).
8. **Funding Sources:** As mentioned earlier, this project may be funded with federal funds as well as funds from the State Bridge Program as approved by the Oregon Transportation Commission.

### 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 contractor through the Design-Build alternative contracting method will not inhibit competition or encourage favoritism. This finding is supported by the following;

As outlined below, ODOT anticipates that competition will be similar to that experienced in other ODOT projects of this type, ODOT has early indications of interest and intent to participate in this procurement, and ODOT processes for procurement of a Design-Build contractor have been developed with maintenance of competition in mind.

1. The competition remains open to all currently qualified bidders. There are over 150 firms who have directly expressed interest in pursuing ODOT Design-Build projects. Over 40 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 three projects ODOT currently has under Design-Build contract had solid participation in the Qualification stage with five or six 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. The

project was also presented to the Central Oregon Area Commission on Transportation (CACT), the South Central Oregon Area Commission on Transportation (SCACT), and the Lower John Day Area Commission of Transportation and they concurs with ODOT's corridor approach. Area Commissions on Transportation are organizations representing the area's city and county transportation interests. Presentation is also planned for METRO, the Metropolitan Planning Organization (MPO) in the Portland area. Additionally, presentations are ongoing through OTIA Public Open Houses occurring along the corridor.

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.

Contractor selection will be made on the basis of final scores 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 will be 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:

*(Calculations below are based on an Estimated Project Cost of \$35,000,000 and does not include priced optional work between \$3.0 and \$4.3 million that the Agency may award)*

##### 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 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 \$617,500 in additional costs associated with schedule creep that it might otherwise incur under the traditional DBB mode ( $\$35,000,000 \times (4.84\% - 2.37\%) = \$864,500$ ).

- 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 \$1,575,000 ( $\$35,000,000 \times 4.5\%$ ). (In Section 3 below, ODOT uses the more conservative figure of \$864,500 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, formalization costs can be decreased. ODOT estimates that preliminary engineering will be reduced by approximately \$125,000 for this contract.

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

Furthermore, the estimated 12-month acceleration of the project completion date could allow ODOT to avoid some interim maintenance and repair expenditure on these rapidly deteriorating bridges. Based on recent engineering and construction costs to perform short-term repairs on similar structures, ODOT estimates the cost to perform repairs the 13 bridges involved in this project at \$5.4 million. Based on its experience with previous Design-Build projects, ODOT anticipates that savings in interim maintenance and repairs to these bridges could reach \$1.6 million, or 29 percent of the estimated \$5.4 million total.

- 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 \$300,000 for this project, assuming the saving is over one year, and that half of the total contract price is expended during that year ( $3\% \times \$35,000,000 \times 1/2 = \$525,000$ ).

**2. Indirect Savings:**

2.1 Cost – There are no restrictions on the use of the bridges on OR 224, U.S. 26 and U.S. 97 at this time. The rapid deterioration of the structures is continuing and there is no guarantee that restrictions will not have to be implemented. Separately, there are currently restrictions on several bridges on I-5 requiring considerable out-of-direction travel. To start construction on this project one year early would allow early completion allowing the major effort on I-5 to advance. A cost estimate of the possible savings to truck traffic on I-5 has not been undertaken. It could be significant as I-5 traffic volumes are quite high and out of direction travel would be significant as there are not close parallel routes.

Using the Design-Build alternative contracting method, construction can proceed prior to completion of all plans and specifications eliminating an estimated one-year for completion. This results in the detour 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 contractor 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 potential amounting to approximately \$3.1 million (see table below).

Direct Contract Cost Savings Summary

Subsection	Approximate Savings
1.1 Cost and Time	\$864,500
1.2 Contract Changes	Value not used
1.3 Bid Documents	\$125,000
1.4 Maintenance	\$1,600,000
1.5 Inflation	\$525,000
<b>Total</b>	<b>\$3,114,500</b>

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 \$3,114,500.

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.


**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

10/23/03  
Date

  
Director, Department of Transportation

REVIEWED BY THE DEPARTMENT OF JUSTICE

10/17/2003  
Date

/s/ Suzanne Underwood  
Assistant Attorney General

## **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, 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 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 selected to advance to the proposal stage.

(2) A Request For Proposals (RFP) will be issued for the project to the selected teams, and Proposals shall be submitted by the selected 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 score will be used in conjunction with the proposed price component, resulting in a final score, as computed in accordance with the RFP.

The Statement of Qualifications (SOQ) and the technical component of the Proposal will be evaluated by a Technical Evaluation Committee, consisting of 3-8 people representing ODOT Technical Services and Region Management, with possibly one non-ODOT member. Other non-voting members may participate.

The scoring of the SOQs and the Proposals' technical component will be completed and confirmed by committee members. The scores for the Proposal technical component will be completed prior to the date and time set for opening of the price component.

The technical component scores will be read publicly. Then the proposal prices will be opened and read publicly, and the final score for comparison and award of the contract will be calculated in accordance with the scoring formula contained in the RFP.

The price will be taken directly as read from the Proposal. The technical component score will be expressed as a percentage of the total available points. The final scores and ranking will be calculated and announced by ODOT. The responsive and responsible proposer with the best final score will be selected for contract award. In the event that prior to contract execution the selected proposal is found to be nonresponsive or the proposer not responsible, ODOT may, if it is in the public's best interest, select the proposer with the next best final score for contract award.