

**PRICE PLUS MULTI-PARAMETER CONTRACT POST-CONSTRUCTION EVALUATION FORM**  
(as required by ORS 279C.355)

<b>Project Name:</b> OR18: Newberg - Dundee Bypass Phase 1G (Springbrook Rd. Section) Project		
<b>Key / Contract No:</b> K 1 6 9 0 1 / C14868	<b>Findings of Fact for Exemption Order Number:</b> 2015-01	
<p><b>Project Background:</b> The OR18: Newberg – Dundee Bypass Phase 1G (Springbrook Rd. Section) Project (“the project”) scope included constructing new sub grade, drainage facilities, sound walls, waterline, landscaping, signs, sign bridges, paving, pavement markings, signals, and Intelligent Transportation facilities.</p> <p>The contractor was selected through the alternative section method Price Plus Technical Qualifications Plus Technical Approach, also known as “A+C+D”, using the competitive Request for Proposal (RFP) process outlined in the Findings of Fact for Exemption, also known as “FFE”, Order number 2015-01, which is attached as Attachment A.</p>		
<b>Estimated Construction Cost:</b> \$19,956,732.55	<b>Actual:</b> \$19,536,641.94	<b>Savings:</b> \$420,090.61
<b>GMP:</b> Not applicable for A+C+D	<b>Number of Contract Change Orders Issued:</b> 30	
<p><b>Project Successes During Construction:</b></p> <ol style="list-style-type: none"> <li>1. The use of GPS machine guided and machine controlled grading equipment was very successful; and it was the critical element or factor in the project being completed on schedule.</li> </ol>		
<p><b>Project Failures During Construction:</b></p> <ol style="list-style-type: none"> <li>1. One of the issues with design for the project was the designed outfall pipe elevation for the storm water retention pond #6. The designed elevation was well above the ordinary high water elevation of the creek. As a result, the slope was below the outfall pipe slide that could result in erosion of the slope and slope failure. ODOT issued a Contract Change Order to pay the Contractor for installing geotextile fabric and rip rap to protect the slopes. Another design issue was the location of several manholes along Springbrook Rd. These manholes were located inside the vehicle wheel paths, creating a lower ride quality. As a result, manhole adjustments were made to improve the issue.</li> </ol>		
<p><b>Objective Assessment Required by ORS 279C.355.</b></p> <p>After an objective assessment of the project and the Findings in the FFE, ODOT concludes that use of the A+C+D selection method for this project was a success.</p> <p>Narrative comparison of the A+C+D method vs. the findings and considerations as required by ORS 279C.335:</p> <ol style="list-style-type: none"> <li>1. Operational, Budget and Financial Data: ODOT received Federal, City of Newberg and State of Oregon funding for this project, as noted in Section B.1. of the FFE. (See Appendix A). Granting the exemption did not affect the sources for funding for this project.</li> </ol> <p>Actual construction cost was “less than” the estimated amount in the FFE by 2.10%.</p> <ol style="list-style-type: none"> <li>2. Did the granting of the exemption result in other substantial cost savings and other substantial benefits to ODOT or the public? (Substantial Cost Savings? No) (Substantial Benefits? Yes)</li> </ol> <p>In Section D. of the FFE, (See Appendix A) ODOT estimated a monthly direct cost savings of \$68,083 and an indirect cost savings of \$87,300; for a combined total cost savings of \$155,383.00 for every month the project completion was not delayed.</p> <p>In Section A.1 of the FFE ODOT estimated that construction would be completed in December 2017. Construction was completed December 29, 2017, which was within the estimated completion date stated in the FFE. With the on time completion of construction, the project did not incur any additional direct and indirect costs. It should also be noted that ODOT made significant modifications to the project design. Despite this, the Contractor was able to adjust their means, methods and coordination of affected subcontractors. The Contractor’s capability to adapt to the</p>		

change in scope directly resulted in the project being completed on schedule, avoiding any additional direct or indirect costs.

3. Public Benefits: The project resulted in the following benefits in-addition to the benefits noted in Section B.2. of the FFE and those noted in item 2 above. (See Appendix A)
  - The public benefited from an efficient, well managed project by the Contractor. The primary elements that the Contractor provided were the experience and expertise working with 3-D Designs and multi stage projects in urban environments. In addition, completing the project on time reduced the time that ODOT and the traveling public had to deal with construction zone traffic and safety issues.
4. Value Engineering (VE): Was not performed for this project.
5. Specialized Expertise: Expertise for ODOT personnel and the contractor are noted in Section B.4. of the FFE. (See Appendix A).
  - ODOT personnel and ODOT's legal counsel, the Oregon Department of Justice (DOJ) had the necessary experience, expertise and knowledge in using the A+C+D method. ODOT in conjunction with DOJ developed solicitation documents, selected a contractor that provided the best value in price, qualifications, experience and approach, and awarded, administered and enforced the public improvement contract.
  - The contractor was required to have and did have specialized expertise in the following project work items:
    - The Contractor had the experience and expertise using the Agency's 3-D Design data to develop the various surfaces for use in their GPS capable equipment, which increased their efficiency completing the excavation and grading work.
  - Contractor's expertise and experience provided the following benefits to the project.
    - Time efficiency and accuracy in constructing the project complex work elements as they were designed.
6. Cost and availability of specialized expertise:
  - All four contractors that submitted technical component part bids were rated as having adequate or acceptable experience and qualifications by ODOT's Technical Evaluation Committee.
7. Public Safety: Noted in Section B.5. of the FFE. (See Appendix A). Contractor's approach to project safety provided an efficient and well-planned operation that resulted in the project being completed with no significant traffic delays or incidents.
8. Exemption unlikely to encourage favoritism or substantially diminish competition for public improvement contracts: ODOT did not anticipate any measurable difference in market conditions or diminish competition if the project was contracted under the traditional low bid method, as noted in Section B.6. of the FFE. (See Appendix A).
  - ODOT anticipated approximately 3 to 6 contractors were available to bid, as noted in Section C.1. of the FFE. (See Appendix A).
  - Four contractors submitted technical component part bids and price component part bids in response to the RFP.

No favoritism was encouraged by granting the exemption and based on the interest shown and the

number of contractors that submitted bids, competition was not substantially diminished.

9. Did the granting of the exemption result in reduction of any risks to ODOT or the public that were related to the project? Yes

10. Did the granting of the exemption better enable ODOT to control the impact that market conditions may have on the cost of and time necessary to complete the project? Yes:

The A+C+D selection method allowed ODOT to apply weighted level of importance to the contractors' prices and their approaches, which included efficiencies in their schedule and means and methods for performing complex and specialized work.

Selecting the contractor with the best value in price and approach resulted in the project being completed on schedule and efficiently, avoiding cost increases due to delays and additional change orders.

11. Did the granting of the exemption better enable the contracting agency to address the project size and complexity? Yes

12. The project was occupied during construction.

13. To address project specific conditions the project required the construction work was completed in multiple phases

14. The following project construction components and aspects worked well and should be considered for use on future projects:

- The use of GPS machine guided and machine controlled grading equipment was very successful; and the critical element or factor to the project being completed on schedule.

15. The following project construction components and aspects were problematic and should be avoided for use on future projects:

- One of the design issues for the project was the designed outfall pipe design evaluation for the storm water retention pond #6. The designed elevation was well above the ordinary high water elevation of the creek. As a result, the slope was below the outfall pipe slide that would result in erosion of the slope and slope failure. ODOT issued a Contract Change Order to pay the Contractor for installing geotextile fabric and rip rap to protect the slopes. Another design issue was the location of several manholes along Springbrook Rd. These manholes were located in the vehicle wheel paths, creating a lower ride quality. As a result, manhole adjustments were made to improve the issue.

**Conclusions:** As provided above, the project met the expectations presented in ODOT's exemption findings (the Findings in ODOT's FFE), including but limited to those for estimated cost and time-savings.

Based on the project successes and assessment of the A+C+D selection method for this project when compared to the Findings stated in the FFE and the findings and considerations under ORS 279C.335, ODOT determined that use of the alternative selection method was in ODOT's best interest.

**Appendix A – Findings and Signed Order Granting the Exemption from Competitive Bidding No. 2015-01**

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**Exemption Number 2015-01**

**FINDINGS AND ORDER  
SUPPORTING AN EXEMPTION FROM COMPETITIVE BIDDING REQUIREMENTS  
AND THE USE OF THE PRICE PLUS QUALIFICATIONS PLUS TECHNICAL  
APPROACH BEST VALUE ALTERNATIVE CONTRACTING METHOD**

Before the Director of Transportation  
of the State of Oregon

In the Matter of the Exemption Request by the )	
Oregon Department of Transportation for the )	FINDINGS OF FACT,
OR18: Newberg Dundee Bypass (Phase 1G) )	CONCLUSIONS AND ORDER
(Springbrook Rd) on Hillsboro-Silverton, Pacific )	
Highway West & OR18 located in Yamhill )	
County )	

ORS 279C.335(1) requires, with certain exceptions, that all public contracts be based on competitive bidding and, under ORS 279C.375, be awarded to the lowest responsive and responsible bidder. ORS 279C.335(2) permits the Director of Transportation to grant exemptions to the Oregon Department of Transportation (ODOT) from the requirement for competitive bidding upon the approval of specified findings. ORS 279C.335(2) 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) define "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. Under ORS 279C.335(5) a public hearing must be held before the findings are adopted, allowing an opportunity for interested parties to comment on the draft findings.

The public hearing and this request for exemption was advertised in the *Daily Journal of Commerce* on October 28, 2015 and *Washington Civil Engineering Bulletin (formally Reed Business Information)* on November 2, 2015. The request for exemption was posted on the ODOT Office of Project Letting web site at:

<http://www.oregon.gov/ODOT/HWY/OPL/Pages/Alternative-Contracting-Opportunities-Projects.aspx>

The public hearing for review of these findings was held at 10:00 a.m., on Wednesday, November 18, 2015, at the Department of Transportation office located at 3930 Fairview Industrial Drive SE, Salem, OR 97302. 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 ODOT to enter into all contracts deemed necessary for the construction, operation, maintenance, improvement, or betterment of highways. ORS 381.005 and 381.010 authorize ODOT to enter into contracts deemed necessary for the construction, reconstruction, operation and maintenance of bridges. ORS 279A.050(3)(b) provides ODOT with independent contracting authority for public improvement contracts relating to the operation, maintenance or construction of

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highways, bridges and 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:** OR18: Newberg Dundee Bypass Phase 1G (Springbrook Rd) in Yamhill County (the "Project").

ODOT proposes to enter into an A plus C plus D Best Value contract on or about March 25, 2015. The Project includes construction and quality and environmental management. The Project is located on Hillsboro-Silverton Highway (OR219) between MP 21.14 to MP 22.19 and Pacific Highway West (OR99W) MP 21.84 to MP 22.16 along with improvements to Springbrook Road, a local city street on the east side of the City of Newberg, Oregon. The individual Project components listed below have been combined by the Agency into a single project and placed in the Statewide Transportation Improvement Plan (STIP) and is a Jobs and Transportation Act (JTA) project.

The Newberg-Dundee Bypass will be an 11-mile, four-lane, access-controlled expressway located in Yamhill and Washington Counties, that will run along the south sides of Newberg and Dundee and that will extend from the Oregon 99W/Oregon 18 junction near Dayton to just past the top of Rex Hill, east of Newberg.

In 2009, the Oregon Legislature passed the Oregon Jobs and Transportation Act (JTA) (HB 2001) which authorized bonds to be issued to finance construction projects. The bill included \$192 million for the Newberg-Dundee Bypass. The funding was not adequate to construct the entire Bypass but is adequate to construct the first phase of the project (Newberg-Dundee Bypass Phase 1). Phase 1 will be a 4-mile, two-lane, access-controlled expressway connecting to OR99W at the city limits of Dundee and OR219 in Newberg. This phase of the project will construct ten bridges, construct three new signals and make improvements to two existing signals, and construct several water quality/detention facilities.

Since the majority of the funding for Phase 1 came from the Oregon Legislature through the Jobs and Transportation Act (JTA), ODOT decided to divide the project into four major construction projects, to provide the opportunity for Oregon construction firms to bid on the project as prime contractors and support the local economy. The Phase 1 project then became, OR18: Newberg-Dundee Bypass Phase 1B, 1D, 1E and 1G. Phase 1B construction is complete, Phase 1D and Phase 1E are currently under construction and Phase 1G is in design.

OR18: Newberg-Dundee Bypass (Phase 1G) (Springbrook Rd) Project is the last phase/segment of the overall Newberg-Dundee Bypass Phase 1 project and is the east connection to the overall Phase 1 Bypass project and is a critical component for the completion of this phase of the Bypass. In order for the Bypass to function, Phase 1G must be constructed in a timely manner.

The overall purpose of Newberg Dundee Bypass project Phase 1 is to reduce chronic and severe congestion on Oregon (OR) 99W through Newberg and Dundee.



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Construction of Phase 1 of the Bypass will improve safety for the traveling public as well as the pedestrians of the cities of Newberg and Dundee. This area experiences what is likely the worst congestion anywhere in Oregon, outside the boundaries of the metropolitan area. OR 99W currently serves as the “main” street for the communities of Newberg and Dundee and also serves as the major connection between the Portland metropolitan region, the communities of Yamhill County, and the Central Oregon Coast to the southwest. The current traffic situation has a negative impact on freight mobility and construction of Phase 1 of the Bypass will allow the trucks to move more efficiently through the corridor. Phase 1 will improve congestion in the downtown areas of Newberg and Dundee as well as improve the livability and safety for the citizens of these communities. Through the A plus C plus D Best Value alternative contracting and procurement method, ODOT will select and award a contract to the contractor that provides the best value in timely accomplishing the Project work while maintaining mobility.

The key goals of the best value contracting approach for this Project are to select a construction contractor with necessary and relevant qualifications, expertise and experience that has:

- A strong understanding of the partially completed Phase 1 project
- A strong and reliable technical approach for managing critical elements of the Project, including but not limited to a reliable and detailed approach to address the very challenging traffic staging
- A well-developed and realistic critical path schedule demonstrating Project completion by Winter of 2017
- A well-defined public involvement plan that demonstrates the ability to work with local government, utility companies, local businesses, general public and ODOT.

The Project requires construction of the OR18: Newberg-Dundee Bypass (Phase 1G) portion of the Newberg-Dundee Bypass Phase 1 project. Specific work items for each major project element are noted below:

Project Component Name	Mile Point/ Location	Work Scope
OR 99W	21.20-22.16	<ul style="list-style-type: none"><li>• Complete ITS work</li><li>• Install sign bridges</li><li>• Modify signal at OR99W and Springbrook Road</li><li>• Adding southbound left turn lane at Springbrook Road</li><li>• Adding a right turn lane at OR99W and Springbrook Road</li><li>• Utility relocation</li></ul>

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Springbrook Road		<ul style="list-style-type: none"><li>• Widen Springbrook Road to three lanes between OR99W and OR219</li><li>• Construct a new traffic signal at the intersection of Springbrook and Fernwood Roads</li><li>• Modify existing signal at Springbrook and Hayes Roads</li><li>• Modify existing traffic signal at Springbrook Road and OR219</li><li>• Construct stormwater and water quality facilities</li><li>• Construct rain gardens</li><li>• Construct a multi-use path</li><li>• Construct two masonry sound walls</li><li>• Relocate and install City of Newberg's waterline</li><li>• Landscaping</li><li>• Managing challenging traffic staging</li></ul>
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OR219	21.14 – 22.19	<ul style="list-style-type: none"> <li>• Widen OR219 to five lanes between Springbrook Road and the new Bypass signalized intersection</li> <li>• Construct Bypass connection at Wilsonville Road</li> <li>• Install new traffic signal at Bypass, OR219 and Wilsonville Road intersection</li> <li>• Construct sound wall</li> <li>• Construct a second southbound left turn lane on Springbrook Road at OR219</li> <li>• Construct sidewalk</li> <li>• Construct a right turn lane on Wynooski Road at OR219</li> <li>• Construct stormwater treatment facilities</li> <li>• Construct a median on OR219 and 2<sup>nd</sup> Street to restrict traffic to right-in/right-out</li> </ul>
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The estimated value of the best value contract is \$18,000,000 to \$20,000,000. The Project will be funded with a combination of State of Oregon and Federal money.

The construction phase of the Project is anticipated to begin with the March 2016 construction season, with completion by December 2017. The work will include construction, environmental and quality management, contract administration and all necessary support services.

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

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

Phase 1G is the east connection to the Bypass as well as the last of the four major construction phases for Phase 1. This phase is a critical component of the overall Phase 1 project as the Bypass will not function until construction is complete. The first construction project, Phase 1B, was awarded in 2013 and completed in 2014. Phase 1D was awarded in June of 2014 and Phase 1E in September of 2014. Both Phase 1D and Phase 1E are currently under construction and scheduled to be completed on or before winter of 2017. Phase 1G has several major components that require coordination with Phase 1D and Phase 1E for a timely completion.



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Given the politically sensitive nature of the Project, the complicated staging requirements for Springbrook Road, OR219 and OR99W and the need for a well-developed plan (schedule) to ensure 2017 completion, ODOT selected the A plus C plus D Best Value project delivery method which utilizes a price component and a technical component scoring criteria that enables the selection of a contractor with the best combination of price and technical qualifications and technical approach for managing the critical elements of the Project, such as maintaining mobility while completing planned work in a timely and efficient manner through phased traffic staging.

ODOT proposes to use the A plus C plus D Best Value Contracting Solicitation Process for the Project as a proposed alternative to the competitive 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 is being procured using the best value contracting method as described herein, for the reasons and considerations stated herein.

**2. Agency Considerations:** ODOT has been contracting for road improvement projects since 1914. ODOT's Construction Contracts Section contracts approximately 120 to 140 highway and bridge construction projects per year, at a cost of approximately \$300 to \$400 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 improvements encompassing economic efficiency is appropriate use of the best value project delivery method of contracting.

ODOT performed an internal evaluation of the delivery goals and alternative contracting delivery mechanisms for the Project. ODOT traditionally uses a low bid process, but has concluded that using that project delivery method entails an unacceptable risk that this Project will not be delivered in a timely manner and will not provide the local community with significant public participation in contracting opportunities. For the Project, ODOT reviewed other available procurement options that could provide maximized benefit to the public and determined that an alternative contracting process that considers key elements for project success beyond price is most appropriate for the Project.

For this Project ODOT has determined that ***completing the east connection (Phase 1G) to the Bypass is critical to the success of the overall Phase 1 Bypass project.*** Roadway up-grades, electrical upgrades and the installation of new signals need to be completed to ensure viability of this important route for local, recreational and freight traffic. The detouring of freight traffic from the cities of Newberg and Dundee's downtowns will improve safety and livability for both communities as well as improve safety for the traveling public. Timely completion of the last construction phase will honor commitments made to the Oregon Legislature and local communities.

ODOT proposes an alternative contracting process that addresses Project needs by evaluating components which include the contractor's qualifications and technical approach components, as well as price, and results in a "Best Value" selection. This procurement method encompasses the Oregon Legislature's focus on economic

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efficiency and stimulation and provides recognition of the value to the public of employing enhanced contracting methods which will accomplish the required work in the most effective manner.

The Best Value contracting process assigns weight to price as well as specified non-price factors that are important to the success of the Project, such as schedule, qualifications and technical approach. There are various contracting methods that may be used under the best value process, commonly referred to as "A + B", "A + C", or "A + D", with "A" referring to "Price" and "B" or "C" or "D" referring respectively to "Time", "Qualifications", or "Technical Approach" evaluation components. For this Project, ODOT proposes to use the form of best value that is expressed as "the A plus C plus D type of Best Value Contracting" (also referred to as "A+C+D"), wherein the procurement process includes the evaluation of a Price component, (A element), Technical Qualifications component (C element) and a Technical Approach component (D element). The Technical Qualifications component covers a proposer's qualifications, experience and history. The Technical Approach component covers how a proposer addresses important Project features such as traffic staging and accommodations, installation of municipal waterlines and service connections, understanding of the overall Project and how the two current contracts relate to this contract and overall completion. A contract is awarded to the contractor whose proposal is most advantageous to the owner, and gives the most quality per price.

The purpose for using the A plus C plus D contracting method is to best meet Project requirements by using a knowledgeable and experienced contractor that will perform this highly technical and complex Project under a price proposal that will realistically deliver the best value project to the State. Some of the features of Best Value contracting 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 Project work delays, including 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 best value, or A+, alternative contracting since 1997. This method allows the agency to consider factors besides price in selecting the contractor. For A+B, A+C or A+D, A refers to price and B, C or D refer respectively to other evaluation components that ODOT has determined to be key factors in meeting Project objectives, such as contractor schedule (time), qualifications or technical approach.

ODOT has completed seven (7) projects using the best value contracting method:

Lift span Trunnion Replacement Project: Best value contracting in the form of A+C was used to obtain 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, North Bound Interstate 5 crossing of the Columbia River (Bridge No. #1377A). The use of best value contracting method for this project resulted in fewer traffic and safety issues, with less adverse impact on local jurisdictions and businesses than would have been expected from a low bid process. The project was completed approximately two weeks earlier than the original schedule anticipated. The reduced construction time on this project was



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extremely beneficial to the traveling public by reducing delays. ODOT learned that quality can be sought and found through a competitive best value contracting method.

I-5 at Hwy 217 and Kruse Way New Ramp and Structure Project: Best Value contracting in the form of A+B was used to manage and mitigate complex traffic staging issues for a busy and high profile interchange by reducing the length the project to the least amount of time, while encouraging ingenuity, innovation and creativity by the contractor. The project was completed 438 days earlier than the planned 913 days, a 54 percent reduction and minimized traffic delays, saving approximately \$4,380,000 in road user costs. Project final cost was \$42.2 million, \$1.8 million lower than ODOT's estimated project cost.

I-5 Medford Viaduct and Bridge Rehabilitation Project: Best value contracting in the form of A+B was used to manage and mitigate complex traffic staging issues impacting 40% of local traffic traveling between North and South Medford interchanges. Utilization on the Component B allowed for the contractor to use innovative and creative methods to complete the critical bridge deck overlay, joint repair, bridge rails, median barrier, end panels and deck drains as quickly and as safely as possible. This project completed under budget by approximately \$322,619 or by 4.2 percent.

St. John's (Portland) Suspension Bridge Rehabilitation Project: Best value contracting in the form of A+C was used to manage complex traffic staging issues, replace the deck and damaged suspender cables, replace the frozen truss bearing, and manage lead based paint waste on the historical and culturally significant structure. The project was completed in summer 2005, and has been profiled in The Oregonian newspaper as a highly successful project. The results of the St. John's Bridge project led ODOT's Bridge and Contracts Sections to conclude that ODOT was in a far better position to work with the contractor than if the project had been low bid and that this method reduces the State's risks on critical projects.

OR99E: Martin Luther King Jr. Blvd Viaduct Replacement Project: Best value Contracting in the form of A+C+D was selected for this highly technical and complex project whose challenges include traffic staging and detours in an urban environment with high Average Daily Traffic and confined work space, shoring requirements on the MLK structure, 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.

OR43 Willamette River Bridge Repair (Oregon City) Rehabilitation Project: Best Value contracting in the form of A+C+D was used to ensure successful completion of this historic bridge, specifically maintaining the bridge's historic significance and meeting contract environmental requirements and completion times. The bridge is listed on the National Register of Historic Places and consists of specialized construction and material. Construction requires closure of the structure. The project finished three (3) months ahead of the final contract date of March 31, 2013. In addition, the reopening of the bridge to traffic was on-time after the 21-month closure.

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US26 Dennis L. Edwards Tunnel Rehabilitation Project: Best value Contracting the form of A+C+D was selected for this highly complex project whose challenges included significant technical, specialized and complex work approaches and required highly specialized expertise in tunnel lining rehabilitation and traffic staging. The consequences of relatively small errors in planning and accomplishing the work could have especially extended the project timelines. The prime contractor was successful in moving traffic, including trucks, through the tunnel on a daily basis following the night time closures for construction. This success was due to a coordinated effort between the ODOT construction crew, the prime contractor and the flagging company including their traffic control supervisor. Project final cost was \$5.5 million, approximately \$4.6 million lower than ODOT's estimated project cost.

ODOT has one (1) project currently pending final acceptance using the best value contracting method:

I-84: Sandy River – Jordan Rd, Bundle 210 Bridge Replacement Project: Best Value contracting in the form of A+C+D was used to ensure a qualified contractor with experience working with constrained traffic control space, in water work restrictions, and diverse subcontractors and constructing a bridge with steel box girders and drilling eight (8) foot shafts with post-grouting, neither of which is commonly used in Oregon. Construction started in April 2010 and completed December 23, 2014. Prime Contractor's innovative approach in utilizing a gantry crane system to deliver bridge beams across the river proved to be very beneficial. By setting the beams from above the river, the project team avoided the need for a work bridge and additional pilings in the river. This innovative change avoided debris backing up against work bridge pilings, which would have significantly increased flood levels and high water impacts to the local communities.

ODOT has one (1) project currently in construction using the best value contracting method:

OR 58-Salt Creek Half Viaducts Phase 2 Project: The project is located between MP 55.88 and MP 56.48, 20 miles east of Oakridge located in Lane County. Best Value contracting in the form of A+D was used to ensure a qualified contractor with highly specialized expertise and technical approaches for viaduct removal and replacement, renovation of existing electrical building and completion of tunnel illumination equipment upgrades using staged construction techniques while planning work to minimize road closures and the best technical approach in completing unfinished bridge replacement work, roadway upgrades and electrical upgrades, with the final paving of the tunnel approaches within the scheduled April 2016 construction completion date. The Best Value contract was awarded on March 5, 2015. The use of the Best Value A+D method will reduce the potential for project work delays, including 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. The project is currently on schedule to complete in 2016.

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



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For this Project ODOT's project team will consist of ODOT personnel, third party consultant personnel and Oregon DOJ legal counsel that have the necessary expertise and experience to develop the Best Value procurement documents and process that ODOT will use to select the Best Value Bidder, negotiate (to the extent negotiations, if any are permitted by ODOT) and award the contract, and administer the contract.

**3. Procurement Process:** This is a request to the Director of Transportation, on behalf of ODOT, for a contract-specific exemption from competitive bidding requirements. The exemption would allow ODOT to solicit proposals for the construction of the Project described above using the best value contracting method through a one-step RFP procurement process. ODOT will use its standard Invitation to Bid procurement documents as a base, modified, in coordination with the Department of Justice, to be an RFP.

An RFP will be issued for the Project and technical proposals must be submitted by a specified date. The proposals submitted will be required to contain a price proposal component (the A component), a technical qualifications component (the C component) and a technical approach proposal component (the D component). The price component presents the total cost to ODOT for delivering the project. The technical qualifications component will outline the proposer's experience or qualifications as it relates to this Project. The technical approach proposal will detail methods for successfully completing the Project relative to the complex work elements and achieving the mandated completion timeline as described in the Project RFP.

The technical qualifications and technical approach proposals will be evaluated and scored by the proposal evaluation committee. This committee will consist of ODOT personnel and key stakeholders. Other ODOT and ODOT consultant personnel may act as observers, technical support or facilitators during evaluation and scoring, but will act as non-scoring members during the scoring process.

Once the scoring of the technical proposal is completed, the price proposals will be publicly opened, the final scores calculated and initial determination of the apparent best value proposer announced after the results have been verified by ODOT. The final scores and ranking, 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 ranking, the responsive and responsible proposer who provides the best value to ODOT will be selected for contract award and finalization of contract terms and conditions. In the event that, prior to contract execution, the selected best value proposer is found to be non-responsive or not responsible, or contract finalization proves unsuccessful, ODOT may, if it is in the public's best interest, select the proposer who offers the next best value for contract finalization and award.

The contract form to be used will be the standard ODOT Construction Contract form, modified to facilitate the "Price" plus "Technical Qualifications" and "Technical Approach" (A plus C plus D) components. Development of the modified contract will be coordinated with the Department of Justice.

## **B. FINDINGS REGARDING REQUIRED INFORMATION**



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ORS 279C.330(1) states 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.*

Many of these criteria support the use of the best value contracting process. This request for exemption is supported by the following facts:

**1. Operational, Budget, and Financial Data:** The Project was approved in the 2009-2012 Statewide Transportation Improvement Plan. The Project is anticipated to be funded with a combination of state and federal funding resources. ODOT considers completing the Project a high priority. The total Project construction cost is estimated to be approximately \$18,000,000 to \$ 20,000,000.

In ODOT's view, the best value method of contracting is the best available procurement method that allows this Project to begin in the next construction season and 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.

Best value contracting 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. Best value contracting is also a means of contracting for technically complex projects that require assurance of special knowledge or past experience or innovative approaches of a contractor.

Best value contracting will reduce ODOT's risk that the selected contractor might not be able to construct this Project within budget, technical and schedule constraints. A contractor with demonstrated qualifications and a sound technical approach will provide better overall value and should reduce change orders and overruns. As a result, cost savings to ODOT and the public are anticipated by using this method of contracting on the Project.

**2. Public Benefits:** The best value method focuses on project components that are most valuable to ODOT through the ability to evaluate proposers based on their technical qualifications and approaches, and therefore contributes toward meeting project goals and schedule. Accelerating OR18: Newberg-Dundee Bypass Phase 1G (Springbrook Rd) construction involves reconstruction of Springbrook Road, widening of OR99W and OR219, installing two new signals and upgrading three existing signals. This Project meets the goals and objectives of the 1999 Oregon Highway Plan by improving safety and increasing both the rate of traffic flow and the allowable load capacity along this portion of OR99W. Completion of the Project will also benefit the public by supporting regional and statewide economies.

**3. Value Engineering:** Value Engineering (VE) is encouraged on all projects by ODOT and FHWA, and has 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 which 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.

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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 STIP 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 *not* performed. Phase 1D and Phase 1E are currently under construction, each awarded to a different contractor. The Phase 1D project was modified by a contractor proposal to change an aesthetic element to reduce the number of form liners needed resulting in a cost savings. In Phase 1E, the contractor has proposed a change of the designed steel bridge to a smaller pre-cast bridge structure which will result in a cost savings.

**4. Specialized Expertise Required:** By using the Best Value contracting method ODOT will ensure that the prospective prime contractor has the necessary understanding of the prior construction work as well as the construction that is currently in progress, Project site conditions and the specific construction and staging methodologies to successfully complete the Project work elements in the allotted time. The bidder's technical qualifications and technical approach proposal is deemed highly important in ODOT's selection of a Best Value Contractor and ensuring the success of this Project.

This Project will require a variety of construction activities within a high traffic area. The consequences of relatively small errors in such complex projects, including construction staging, demolition, and shoring work have been documented as causing increased project costs, safety problems, schedule deviations and other significant, negative project impacts.

One specific work element is the complicated staging on Springbrook Road. The sequence will include staged removal of the existing roadway, removal of City's old waterline and installation of the new relocated waterline, installation of storm sewer pipes, construction of an additional travel lane, curb and rain gardens. During construction, it will be crucial to maintain business access. One business in particular, Harris Thermal Transfer Products, manufactures oversized equipment and transports the loads to the Port of Portland for shipping by ocean cargo or cargo rail. Construction in front of this business will need to be coordinated with their manufacturing and shipping schedule in order to accommodate transport movement.

The consequences of construction issues with staging, scheduling or quality will increase traffic impacts, direct costs and the likelihood of failing to meet the winter 2017 completion deadline. It is imperative the construction contractor proactively develops and completes a reliable approach plan for accomplishing the necessary interrelated work elements.

The Price (A) plus technical qualifications (C) plus technical approach (D) model emphasizes innovation in management and coordination, providing scheduling and estimating, assessing risk, managing mobility, public relations and safety and quality



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needs and providing a complete Project that is sensitive to wide public participation by all in contracting opportunities. As is typical of Best Value contracts, 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.

ODOT and the public will benefit by ODOT acquiring a contractor which 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 the Project.

**5. Public Safety:** Safe traffic flow must be maintained while construction proceeds. It is crucial that all work be coordinated between work sites to avoid unnecessary delay and safety risks to the traveling public, and to ensure efficiency in construction. 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 most complicated staging and cause for delays for this Project is the work on Springbrook Road. Seamless execution of a thorough staging plan is necessary to address these concerns.

The relationship between ODOT and the contractor will assure 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 or the Price plus qualifying and technical component best value method. As described in Section **A, BACKGROUND**, contractors have some 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.

The Governor and the Legislature have encouraged ODOT to contract projects quickly to take advantage of lower construction prices in the current market, and 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:** To be successful in completing this Project the contractor must be able to develop and execute an accurate work plan for completing the staged construction of Springbrook Road as noted in Section **B.4. Specialized Expertise Required**. The construction schedule will be best achieved by a contractor who comes into the Project with a strong understanding of the overall Newberg-Dundee Bypass project, Newberg-Dundee Bypass Phase 1 project and how Phase G relates to Phases B, D and E. The consequences of relatively small errors in planning, construction staging work, and coordinating with the other construction phases have the potential to delay the Project work, miss completion dates and produce cost overruns. The Project's work activities present a complex technical challenge to the construction contractor and ODOT.

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**8. Funding Sources:** As mentioned earlier, this Project is anticipated to be funded with state and federal funds, the use of which has been approved by the Oregon Transportation Commission.

**C. FINDINGS ADDRESSING COMPETITION**

ORS 279C.330(2) states that as used in ORS 279C.335 “findings” 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) requires that an 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.* It is anticipated that competition for the Project’s contract will be similar to that expected in other large ODOT highway and bridge projects. ODOT finds that selecting a best value contractor through the best value alternative contracting method will not inhibit competition or encourage favoritism. This finding is supported by the following:

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

1. The competition remains open to all qualifying proposers. The contracting community is aware of ODOT’s use of alternative contracting processes and success with contractors on similar past projects ODOT expects that with this experience, normal competition will prevail. Based on the level of contractor participation for previous alternative contracting projects, ODOT anticipates approximately three (3) to five (5) 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 best value contracting and other non-traditional contracting methods.

3. The Price plus Technical Qualifications plus Technical Approach evaluation and selection process ODOT intends to employ is summarized in Section **A.3. Procurement Process**. The process is open and impartial, and proposers will be evaluated equally based on criteria that is reflective of the significant work elements of this type of project. Selection will be made on the basis of final proposal scores derived from a price component that includes technical qualifications and technical approach elements as described in Section **A. BACKGROUND** and Section **A.3 Procurement Process**. This method expands the grounds of competition in the evaluation process beyond price alone to technical qualifications, technical approach, and timely completion of previous work, and past experience in similar work in order to deliver the best value project to the State.

4. Pursuant to ORS 279C.360, the Project will be advertised in the *Daily Journal of Commerce* and *Reed Business Information* and posted on ODOT’s Electronic Bidding Information Distribution System (eBIDS) web site at:



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

5. The objective of using the Price plus Technical Qualifications plus Technical Approach Best Value Contracting method is to select the construction contractor most likely to successfully deliver this difficult Project, with a very effective execution of the staged construction, effective management of very challenging traffic staging, maximum degree of safety to the public as it travels through the Project area, and timely completion of the work while ensuring a competitive price.

**D. FINDINGS REGARDING SUBSTANTIAL COST SAVINGS AND OTHER SUBSTANTIAL BENEFITS**

ORS 279C.335(2) 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 users). ODOT finds that on the 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 Contract Savings:** In general, initial contract prices are expected to be comparable between A plus C plus D best value and conventional contracting methodologies, but great confidence in completion of complex work and timely overall completion can be reasonably anticipated. Through A plus C plus D alternative contracting ODOT will select the contractor who is most 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 saving will be realized in the reduction of change orders, inspections, and potential claims. The current estimated cost of this Project is between \$18,000,000 and \$20,000,000. ODOT uses an inflation rate of 4.3% when estimating project costs. ODOT will save approximately \$68,083 in inflation for each month the Project is not delayed. Project-related delays totaling one year could cost ODOT approximately \$817,000.

**2. Indirect Savings:** Indirect savings are real and recognizable by the public and for this Project. By awarding to a contractor who can realistically meet ODOT's quality, technical approach, schedule and safety expectations, the State and the contractor jointly save the traveling public significant inconvenience due to traffic delays, detours and slower posted speeds. ODOT uses these factors, based on our experiences with other projects, to judge impacts of construction on road users. The Springbrook Road volumes are fairly consistent throughout the year but due to development in this area, the traffic is expected to increase. ODOT estimates that it can avoid an estimated road user cost for traffic of \$87,300 per month by avoiding extension of construction completion beyond the original contract completion date. In addition, the potential exists for a contractor to complete the work early, ultimately saving detour costs to the traveling public.



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**3. Total Expected Savings:** The competitive nature of selecting a best value contractor will maximize total expected savings to ODOT for the Project. There is an estimated savings to ODOT and the public by not delaying the scheduled Project completion date. The total minimum estimated monthly savings, based on the direct and indirect savings described above, is expected to exceed \$155,000 by ODOT selecting a contractor that has the experience and most efficient technical approach and schedule in completing the work within the constrained timelines for this Project.

**E. ADDITIONAL CONSIDERATIONS UNDER ORS 279C.335(2)(B)**

In approving a finding under ORS 279C.335(2)(b), the Director 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. See Section **C.1** above.
2. The construction budget and the projected operating costs for the completed public improvement. See Section **B.1** above.
3. Public benefits that may result from granting the exemption. See Sections **B.2** and **D** above.
4. Whether value engineering techniques may decrease the cost of the public improvement. See Section **B.3** above.
5. The cost and availability of specialized expertise that is necessary for the public improvement. See Sections **B.4**, **C.1** and **D** above.
6. Any likely increases in public safety. See Section **B.5** above.
7. Whether granting the exemption may reduce the risks to the contracting agency or the public that are related to the public improvement. See Sections **A.2**, **B.1**, **B.2**, **B.4** and **B.5** above.
8. Whether granting the exemption will affect the sources of funding for the public improvement. See Section **B.1** above.
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. See Section **B.6** above.
10. Whether granting the exemption will better enable the contracting agency to address the size and technical complexity of the public improvement. See Section **B.4** and **B.7** above.
11. Whether the public improvement involves new construction or renovates or remodels an existing structure. See Section **A.1** above.
12. Whether the public improvement will be occupied or unoccupied during construction. See Section **B.5** above.

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13. Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions. 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. See Section A.2 above.

**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 Price plus Technical Qualifications plus Technical Approach best value contracting method will be evaluated based upon the accomplishment of ODOT's primary objectives as noted below:

- Achieve Project completion date, including mobility impact restrictions per the successful contractor's detailed construction schedule included in their technical proposal.
- Execute staged construction and traffic control for the Project, especially Springbrook Road, according to final plans and specifications and per the successful contractor's detailed plan and schedule included in their technical proposal.
- Meet Project budget and minimize modifications based on a final analysis of change orders.

**CONCLUSIONS OF LAW**

Findings have been developed in compliance with ORS 279C.330, 279C.335(2) through 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 those 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 a substantial cost savings and other substantial benefits to ODOT and the public.

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**ORDER OF DIRECTOR**

An exemption from public competitive bidding requirements is hereby granted to the Oregon Department of Transportation to enter into the described public improvement contract utilizing the best value 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 279A and 279C; ORS Chapter 291; OAR Chapter 731, Division 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 and other applicable law.

THE FINDINGS OF FACT SUBMITTED IN SUPPORT OF THIS REQUEST ARE HEREBY APPROVED.

  
Matt Garrett, Director of Oregon Department of Transportation

12-7-15  
Date

  
Wynnette Gentemann, Construction Contracts Manager,  
ODOT Procurement Office

12/1/15  
Date

**REVIEWED BY THE DEPARTMENT OF JUSTICE**

"By Sr. AAG Rob Gebhardt by email dated 12-1-2015".

Rob Gebhardt, Senior Assistant Attorney General

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Date