



Oregon

John A. Kitzhaber, M.D., Governor

Department of Transportation

Director's Office

1158 Chemeketa St. NE

Salem, OR 97301

DATE: February 8, 2012

TO: House Committee on Transportation and Economic Development

FROM: Paul Mather
Highway Division Administrator

SUBJECT: HB 4129 – contracting out highway maintenance

INTRODUCTION

House Bill 4129 repeals Oregon law requiring the Oregon Department of Transportation to contract out highway maintenance activities on a segment of highway.

BACKGROUND

The 2009 Jobs and Transportation Act (JTA) required the Oregon Department of Transportation (ODOT) to undertake a six-year pilot project to contract out the maintenance of a 10- to 30-mile section of highway.

ODOT selected a 26-mile segment of OR 219 from Scholls, north of Newberg (mile point 10.05) to about one mile west of I-5 at the Marion County line near Woodburn (mile point 36.05). This segment is shown in blue on the attached map. The highway segment was selected for the pilot project based on the following criteria:

- Requires continual regular and monthly maintenance work
- Requires maintenance for a majority of features on Oregon's highway system: electrical, signs, culverts, bridges
- Has environmental challenges, a good representation of most Oregon highways
- Good proximity to contractor community and near population centers to encourage competition
- Good proximity to ODOT district office and good visibility for the traveling public
- Requires reasonable winter maintenance without requiring vast initial contractor investment in winter equipment (i.e. a \$500,000 snow blower)

ODOT has completed the procurement process, selected a best value contractor and entered into a six-year contract to meet the requirements of the JTA. The first year of the contract is complete and the contractor has had acceptable performance.

Contracting Method and Selection

Working through the ODOT's Office of Innovative Partnerships, the local ODOT regional office and the Office of Maintenance spent several months defining the performance measures and contracting method for the pilot. The contract for maintenance of OR 219 was originally developed as a performance-based contract. Under a performance-based contract, ODOT provides the contractor with a set of goals and objectives and allows the contractor freedom to determine how best to achieve them. Under a performance-based contract, the contractor is paid based on how well the contractor delivers the services.

Proposals included both technical and price components, weighted 70 and 30% respectively. The timeline of ODOT's procurement process is as follows:

- Dec. 2009 – released Request For Interest (RFI) to the contracting community through ORPIN
- Jan. 2010 – mandatory RFI meeting, 35 firms represented; received 13 letters of interest
- Apr. 2010 – Request for Proposal sent to the 13 firms who responded to RFI; received three proposals
- May 2010 – interviews with two highest scoring proposers; Eagle-Elsner contract executed
- Dec. 2010 – Work Order Contract executed as time and materials based and Eagle-Elsner begins work

ODOT's historic four-year average for this section is \$245,610 per year. All three proposals came in much higher than expected, \$5.27 million, \$5.936 million, and \$9.178 million for the six-year contract period. This was due to the contractors factoring in the cost of risks and uncertainty. The agency then chose to negotiate a more reasonable price with the best value contractor, Eagle-Elsner Incorporated, for the first year of the pilot program using a time and materials approach. Under this time and materials-based contract, ODOT provides more oversight and pays the contractor based on actual work performed. This approach allows the contractor to gain experience, reduce potential risks, and reduce costs significantly. ODOT inspects the contractor's work for compliance to quality standards before payment.

Performance Management

Eagle-Elsner, with an office adjacent to the pilot area, has been on the job as the project contractor for one year. During this first year of the contract, they have been exposed to most aspects of highway maintenance. Eagle-Elsner's performance has been good, and its employees are eager to improve their highway maintenance skills.

Over the past year, ODOT staff spent time teaching the crews the appropriate processes for highway maintenance activities and helping develop their workforce. In the beginning, ODOT staff spent a lot of time answering questions from the contractor. As contracted employees have gained experience in highway maintenance practices, questions have become less frequent. The contract was established so that Eagle-Elsner is responsible for routine maintenance activities. Projects outside of routine maintenance, such as paving overlays and new installations of guardrail remain ODOT's responsibility.

ODOT staff holds monthly meetings with Eagle-Elsner to provide feedback on its crew's performance in areas such as highway surface conditions, shoulder maintenance, drainage work, roadside vegetation, traffic services, structure maintenance, snow and ice treatments, and other highway maintenance activities. ODOT monitors conditions by driving the segment of highway twice per week. ODOT provides more immediate feedback to the contractor as needed. The contractor's performance has improved as they have gained additional experience.

Contract Status

The first year of the contract is complete. ODOT and Eagle-Elsner are in the process of negotiating the second year of the contract. While the contractor is doing well in its maintenance of OR 219, ODOT and Eagle-Elsner, have agreed to continue with a time and materials-based contract. This will provide ODOT and Eagle-Elsner a longer period of time to gather data on the true costs and possible liabilities that may accrue. After the contractor gains additional experience, it may be possible for ODOT to negotiate a better lump-sum contract price for the maintenance work.

Costs

ODOT:

As stated previously, proposals for performance-based maintenance came in at \$873,333 - \$1,529,667 annually; while ODOT's historic four-year average was about \$245,610 annually.

ODOT took the following cost containment measures, reducing the impact of the limited size of contracted area:

- Provided the contractor with materials from the nearby maintenance station, such as sand and deicer. These costs are not included in the total contract cost which could be about \$20,000. The costs of materials are included in the ODOT average costs.
- Leased specialty equipment to the contractor: 2 plow/sander/deicer trucks @ \$2,000/month total
- Leased use of the Newberg yard @ \$200/month
- Removed the requirement to provide first responder service but require them to assist at incidents as our maintenance crews do.
- All engineering and technical support, such as traffic, environmental, and geo-technical is done by ODOT without charge to the contractor
- All permitting, such as approach, utilities and miscellaneous, is done by ODOT without charge to the contractor

ODOT District 3 oversight and administration of the contract averages about \$1,400 per month:

- \$1,200/month - Transportation Maintenance Manager - 20 hours per month
- \$200/month - office staff - five hours a month

Contractor:

The contract payments for the first year are approximately \$698,500. This includes:

- \$247,000 allowance for contractor administrative and overhead costs
- \$451,500 for work performed
- The labor, equipment, material, and subcontractor rates have mark-up rates of 20, 17, 17 and 8 percent respectively, consistent with what ODOT allows in construction contracts.

WHAT HB 4129 DOES

HB 4129 repeals Oregon law that required ODOT to enter into a pilot project for ODOT to contract out the maintenance of a segment of highway.

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SUMMARY

ODOT is pleased with both the progress made by Eagle-Elsner's staff in maintaining OR 219 and the cooperative working relationship that has developed. ODOT believes that extending the time and materials-based contract will benefit both the contractor and the Department.

ODOT anticipates a six-year pilot project would provide ODOT with data that will demonstrate whether contracting-out highway maintenance proves to be a cost-effective method to assist with maintaining Oregon's highways.

Attachment: Map of Contracted Segment of OR 219

Map identifying route of contracted segment of OR 219

