

Date: December 14, 2016

To: Board of Directors

From: Neil McFarlane *Neil McFarlane*

Subject: RESOLUTION 16-12-73 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) BOARD OF DIRECTORS, ACTING IN ITS CAPACITY AS THE TRIMET CONTRACT REVIEW BOARD, EXEMPTING FROM COMPETITIVE BIDDING REQUIREMENTS A CONTRACT FOR CONSTRUCTION MANAGER/GENERAL CONTRACTOR SERVICES FOR THE POWELL GARAGE RENOVATION PROJECT

1. Purpose of Item

The attached Resolution exempts from the low bid process a public improvement contract for construction services for TriMet’s Powell Garage Renovation Project (Project), which consists of changes to TriMet’s Powell Garage facility to accommodate bus fleet expansion and service increases. Approval of this Resolution will allow TriMet to initiate a competitive Request for Proposals (RFP) process to select the most highly qualified proposer for award of this contract.

2. Type of Agenda Item

- Initial Contract
- Contract Modification
- Other – Exemption from Low Bid

3. Reason for Board Action

This exemption from competitive bidding must be approved by the TriMet Contract Review Board (TCRB) in accordance with state law and the TCRB Rules.

4. Type of Action:

- Resolution
- Ordinance 1st Reading
- Ordinance 2nd Reading
- Other _____

5. Background

TriMet’s Powell Garage, located at 9800 SE Powell Blvd, is an important bus facility for TriMet’s service to east Portland. As TriMet’s bus fleet expands and service increases in coming years, the capacity of the Powell Garage must be increased and the facility must become more efficient. Furthermore, the likely addition of articulated buses to the TriMet fleet for the planned Division Transit Project will require TriMet to create a location to

maintain and store these larger buses. This work must be done while keeping the garage in operation.

To accommodate these changes, renovations have been planned for the Powell Garage facility. This Project would replace the existing maintenance and transportation facility that was constructed in 1976. The new facility will expand the maintenance functions to current standards as well as create maintenance bays that will accommodate the 60-foot articulated buses that are expected to be procured for the Division Transit Project. The existing fuel and wash facility will also be replaced and expanded with new updated technology to service the increased number of buses. In addition, the transportation report area will be updated to standards similar to the recently renovated Center Street report area. By rearranging the buildings and functions on the site the number of bus storage spaces will increase by approximately 100 to accommodate the increasing number of buses that will be required to deliver expanded bus service. In anticipation of this reconstruction and expansion, the Powell LIFT facility will be moved across I-205 to a new site by early-2018.

TCRB Rule V(A) and ORS 279C.335(2) provide that the TriMet Board of Directors (Board), acting in its capacity as the TCRB, may exempt a contract from competitive sealed bidding requirements upon approval of the following written findings submitted by the public contracting agency:

- (a) The exemption is unlikely to encourage favoritism in awarding public improvement contracts or substantially diminish competition for public improvement contracts; and
- (b) Awarding a public improvement contract under the exemption will likely result in substantial cost savings and other substantial benefits to the contracting agency.

An exemption from low bidding is required to enable TriMet to select its contractor using a best value process. Under the traditional low bid procurement method, TriMet may consider only price in selecting a contractor. The competitive RFP process allows TriMet to select a contractor upon consideration of many factors, including price. In addition to price, use of the RFP process allows TriMet to consider things such as experience in similar work, schedule performance and work phasing plans, cost control, attention to safety, quality of workmanship, and Disadvantaged Business Enterprise (DBE) and workforce diversity programs.

TriMet plans to use the Construction Manager/General Contractor method (CM/GC) for this Project. TriMet has a history of successfully utilizing the RFP process to select CM/GC contractors for complex construction projects. For example, the Portland-Milwaukie Light Rail Project utilized RFPs to obtain CM/GCs for the East and West segments of that project, as well as the Center Street Building Modifications work. TriMet also used an RFP process to select a CM/GC for the Blue Line Station Rehabilitation project and the eFare Installation project, both of which, like this one, involve work around existing TriMet facilities that must remain operational during the construction period.

The agency's written findings in support of the exemption, which are required by ORS 279C.335, are attached to Resolution 16-12-73 as Exhibit A.

Pursuant to ORS 279C.335(5), TriMet is required to hold a public hearing to allow comment on draft findings used to grant an exemption for a public improvement. Notification of the public hearing on the draft findings was published in the Daily Journal of Commerce, and the

hearing was held on November 15, 2016. There were no attendees and no comments were received.

6. Procurement Process

Upon approval of this exemption, a competitive RFP process will be used to select the contractor that presents the best value to the agency, based on the criteria included in the RFP, including price.

7. Diversity

Use of a competitive RFP process allows TriMet to consider proposers' DBE plans and workforce diversity in awarding the contract.

8. Financial/Budget Impact

The Project is included in the TriMet Capital Improvement Program Budget for FY 2016-2017.

9. Impact if Not Approved

If this exemption is not approved, TriMet could procure this public improvement contract via the traditional low bid procurement method. This option is not preferred for the reasons outlined above and discussed in the findings.

RESOLUTION 16-12-73

RESOLUTION OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) BOARD OF DIRECTORS ACTING IN ITS CAPACITY AS THE TRIMET CONTRACT REVIEW BOARD, EXEMPTING FROM COMPETITIVE BIDDING REQUIREMENTS A CONTRACT FOR CONSTRUCTION MANAGER/GENERAL CONTRACTOR SERVICES FOR THE POWELL GARAGE RENOVATION PROJECT

WHEREAS, the TriMet Contract Review Board (TCRB) has authority under ORS 279C.335 and TCRB Rule V to exempt a contract from the competitive bidding requirements of ORS Chapter 279C upon approval of written findings submitted by the agency showing compliance with ORS 279C.335; and

WHEREAS, a public hearing was held on the agency's draft written findings in support of an exemption from competitive bidding requirements for a public improvement contract for construction manager/general contractor (CM/GC) services for the Powell Garage Renovation Project (Project); and

WHEREAS, TriMet has submitted to the TCRB its written findings that are required by ORS 279C.335 in support of an exemption from competitive bidding requirements for the Project; and

WHEREAS, ORS 279C.335(4) and TCRB Rule V(B) provide that in granting exemptions from competitive bidding requirements, the TCRB shall, where appropriate, direct the use of alternate contracting methods that take account of market realities and modern practices and are consistent with the public policy of encouraging competition;

NOW, THEREFORE, BE IT RESOLVED:

1. That the findings stated at (a) and (b) below, and the Findings In Support of Low Bid Exemption attached as Exhibit A submitted in support of (a) and (b) below, to exempt from competitive bidding requirements the contract for CM/GC services for the Project (Contract), are hereby approved and adopted.

(a) It is unlikely that the exemption will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts; and

(b) The awarding of a public improvement contract pursuant to the exemption will likely result in substantial cost savings and other substantial benefits to the agency.

2. That the Contract is exempt from the competitive bidding requirements of ORS Chapter 279C.

3. That TriMet is authorized to initiate a Request for Proposal process and negotiate a contract for the specified work subject to final Board approval of the Contract award.

4. That TriMet shall conduct the CM/GC services procurement in accordance with Model Rules adopted by the Attorney General under ORS 279A.065(3).

Dated: December 14, 2016

Attest:

Presiding Officer

Recording Secretary

Approved as to Legal Sufficiency:



Legal Department

RESOLUTION 16-12-73

EXHIBIT A

FINDINGS IN SUPPORT OF LOW BID EXEMPTION

Powell Garage Renovation Project

A. Competitive Bid Exemption under Oregon Statute

Oregon law requires all local contracting agency public improvement contracts to be procured by competitive low bid unless an exemption is granted by the agency's contract review board or the contract is otherwise exempt from competitive bidding requirements. For a contract review board exemption, ORS 279C.335(2) requires the agency to develop findings that (1) the alternative procurement process is unlikely to encourage favoritism or substantially diminish competition, and (2) that the award of the contract under the exemption will likely result in substantial cost savings and other substantial benefits to the agency.

In making these findings, the agency must consider the type, cost and amount of the contract and, to the extent applicable to the particular public improvement contract, certain factors defined by ORS 279C.335(2)(b). These include the following:

- (A) How many persons are available to bid;
- (B) The construction budget and the projected operating costs for the completed public improvement;
- (C) Public benefits that may result from granting the exemption;
- (D) Whether value engineering techniques may decrease the cost of the public improvement;
- (E) The cost and availability of specialized expertise that is necessary for the public improvement;
- (F) Any likely increases in public safety;
- (G) Whether granting the exemption may reduce risks to the contracting agency, the state agency or the public that are related to the public improvement;
- (H) Whether granting the exemption will affect the sources of funding for the public improvement;
- (I) 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;
- (J) Whether granting the exemption will better enable the contracting agency to address the size and technical complexity of the public improvement;
- (K) Whether the public improvement involves new construction or renovates or remodels an existing structure;

(L) Whether the public improvement will be occupied or unoccupied during construction;

(M) Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions; and

(N) Whether the contracting agency or state agency has, or has retained under contract, and will use contracting agency or state 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 or state agency will use to award the public improvement contract and to help negotiate, administer and enforce the terms of the public improvement contract.

B. Summary Description of the Powell Garage Renovation Project

TriMet's Powell Garage, located at 9800 SE Powell Blvd, is an important bus facility for TriMet's service to east Portland. As TriMet's bus fleet expands and service increases in coming years, the capacity of the Powell Garage must be increased and the facility must become more efficient. Furthermore, the likely addition of articulated buses to the TriMet fleet for the planned Powell-Division Bus Rapid Transit Project will require TriMet to create a location to maintain and store them.

To accommodate these changes, the Powell Garage facility is being renovated. This Project will replace the existing maintenance and transportation facility that was constructed in 1976. The new facility will expand the maintenance functions to current standards as well as create maintenance bays that will accommodate the 60-foot articulated buses that are expected to be procured for the Powell-Division Bus Rapid Transit project. The existing fuel and wash facility will also be replaced and expanded with new updated technology to service the increased number of buses. In addition, the transportation report area will be updated to standards similar to the recently renovated Center Street Report area. By rearranging the buildings and functions on the site the number of bus storage spaces will increase to accommodate the increasing number of buses that will be required to deliver expanded bus service.

C. Critical Factors

The Powell Garage Renovation Project (Project) is a major construction project at a constrained operations site which must remain fully operable at all times. This project presents many challenges, including the following:

- a. Public and Worker Safety: Construction must be conducted with extreme attention to public and worker safety, due to the constrained environment of the site and the need to continue utilizing the site during construction.

- b. Planning of the Construction Approach and Schedule: Development of a sound construction approach and schedule is critical to minimize disruption to TriMet operations during construction. Because of the constraints of the site and the need to continue operations there during construction, it is likely that construction will need to be conducted in phases. Contractor input during the planning and design phase of the Project into the construction phasing plan is essential. Furthermore, construction schedules, access, and staging alternatives must be carefully developed and evaluated in detail to limit impacts to the public and to TriMet's system. Early contractor involvement into this process is also very important. Completion of the Project on schedule is necessary to ensure the ability to maintain and repair articulated buses when they are expected to arrive, and continue to provide storage and maintenance services to the expanded TriMet bus fleet.

- c. Cost Certainty: Budget confidence is important and it is critical for TriMet to obtain cost certainty early in the construction process and to avoid any significant scope changes once the contract is awarded. The contractor can offer constructability and pricing feedback on design options, and can help identify risks during the design process.

TriMet believes the selection of a contractor with experience and expertise in this type of work will help meet these challenges. The only way to ensure selection of such a contractor is through the use of an alternative selection process.

D. Considerations

1. Type, cost, and amount of contract

TriMet is planning to utilize a request for proposal process to select a construction manager/general contractor ("CM/CG") to construct the Project. TriMet estimates that the order of magnitude of the Project is approximately \$44,000,000 - \$50,000,000 dependent on schedule and escalation costs.

2. How many persons are available to bid

TriMet believes there is a sufficient market for this type of project, and will take steps to ensure maximum competition and fair opportunity for the Project. These steps will include advertisement in the Daily Journal of Commerce and TriMet's internet procurement system, Ebid, as well as scheduling a pre-proposal conference and appointing of an unbiased evaluation committee.

By marketing this opportunity and attempting to notify all known potential respondents, TriMet will implement a process that maximizes the number of available proposers. TriMet has found that by allowing contractors to develop their proposed work plan and to incorporate their value engineering and design ideas into the design

and construction of the project, the negotiated procurement process generally encourages significant competition between contractors with accomplished performance records.

A negotiated procurement will also allow TriMet to evaluate the contractor's program for utilizing opportunities for participation by minority and women-owned businesses, which would not be possible in traditional low bid procurement.

3. The construction budget and the projected operating costs for the completed public improvement

A negotiated procurement will allow TriMet to select a contractor based upon performance criteria in addition to price competition. It will allow the selection of a contractor whose proven experience matches the nature of the required work. By selecting the most qualified contractor, TriMet will minimize the risk of delays, cost increases, and other costly impacts to the public, thereby increasing the likelihood of completing the Powell Garage Renovation Project within the construction budget. In TriMet's experience, the low bid contracting method for work of this nature is more likely to result in contractor initiated change orders, which often cause the overall cost of the project to increase well beyond the initial contract price.

The operating costs of the Powell Garage facility should be the same regardless of whether the project is procured via low bid or a negotiated procurement.

4. Public benefits that may result from granting the exemption

Completing the Project on a relatively short schedule will directly benefit the public by reducing costs and ensuring adequate maintenance of the expanding TriMet bus fleet, including the anticipated arrival of articulated busses. TriMet believes it can best achieve this objective by utilizing a negotiated procurement which allows the selection of a contractor that has a proven on-time performance record. This also allows for early procurement of long lead time items such as specialized bus wash and maintenance equipment, maximizing opportunity for the contractor to succeed in executing the shortest construction schedule, directly benefiting the public.

5. Whether value engineering techniques may decrease the cost of the public improvement

TriMet's experience is that the greatest savings through value engineering are achieved during the design phase, before design decisions are finalized and before money is spent to develop a design only to change it later. Although low bid allows for value engineering during construction, it is often more difficult to implement because of construction schedule pressures, the cost of the redesign effort, and time required for additional public process.

Construction contractor input during final design enhances the value engineering opportunities during design. Options can be considered while the design is being finalized, without issuance of change orders during construction. Options can also be considered in terms of their implications to constructability, temporary facilities, and construction access. The RFP procurement method allows the construction contractor to work with the design team and incorporate value engineering ideas in line with the design schedule, thereby maximizing cost saving ideas and methods.

6. Cost and availability of specialized expertise that is necessary for the public improvement

Construction costs are highly dependent upon the design, staging, and construction methods, each of which varies considerably among designers and contractors. This Project will require expertise in specific design and construction methods, such as the phased construction of the new Powell Garage building.

A negotiated procurement process is the best method for TriMet to identify a contractor with the special expertise required, by employing a best value selection methodology, which allows TriMet to evaluate and rank the expertise of each contractor in addition to the contractor's proposed price.

7. Any likely increases in public safety

TriMet seeks to reduce public safety risk as much as possible. The Project will occur on a constrained site that will continue to operate during construction. The facility also receives daily delivery of parts and equipment from third party vendors. The Project also includes the installation of a new traffic signal on Powell Blvd and reworking the facility frontage along Powell Blvd. TriMet requires a contractor with a successful performance record for safety and protection of the public, and with experience performing this type of work. A negotiated procurement allows TriMet to evaluate the contractor's safety record and previous project success at the time of selection. The contractor's actual safety performance on similar projects in similar urban environments is crucial to the success of this work. An alternate method of procurement offers TriMet the best opportunity to carefully evaluate the contractor's safety performance during construction.

8. Whether granting the exemption may reduce risks to the contracting agency or the public that are related to the public improvement

TriMet's experience is that a utilizing a negotiated procurement to secure a CM/GC contract for this type of project puts TriMet in the best position to successfully complete a project at a publicly accessible facility while minimizing schedule, cost, and safety risk. A negotiated procurement allows TriMet to select a contractor with experience and expertise performing this type of work, instead of requiring the selection of a contractor based only on price.

9. Whether granting the exemption will affect the sources of funding for the public improvement

The funding for the Project will come from two sources, the Small Starts Grant for the Division bus rapid transit project and the TriMet general fund. Granting the exemption will not affect the sources of funding, but will increase TriMet's ability to control budget on this complex phased project.

10. 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

A negotiated procurement will allow TriMet to mitigate market risk by allowing proposers and TriMet to discuss and apportion this risk. Further, the construction market is currently busy, and use of a negotiated procurement will allow the contractor and TriMet to engage in a dialog about current market forces and construction schedule and require the contractor to assume some of the risks of price escalation and delay.

11. Whether granting the exemption will better enable the contracting agency to address the size and technical complexity of the public improvement

The technical complexity of the Project is due largely to the fact that the existing facility must continue to function during all phases of construction. This requirement results in a phased approach not only for the general facility, but also for the new garage building itself. A negotiated procurement method allows TriMet to evaluate a contractor's technical experience in similar work at the time of selection.

12. Whether the public improvement involves new construction or renovates or remodels an existing structure

The Project entails the renovation of an existing property including the construction of a new fuel and wash building as well as a new garage building including facilities for bus maintenance, parts storage, and support staff. TriMet has successfully utilized a negotiated procurement to select a CM/GC contractor for other buildings, including the Merlo Fuel and Wash, the upcoming Powell LIFT building, and the existing LIFT building at Powell garage. Based on its prior experience, TriMet believes that utilizing this procurement and construction method mitigates risk and increases efficiency.

13. Whether the public improvement will be occupied or unoccupied during construction

TriMet plans to keep the existing Powell Garage facility fully operational during all phases of construction, including during the construction of the new garage building

and the partial demolition of the existing garage building. During a portion of this work, the original garage building will be occupied by TriMet staff.

14. Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions

The Project will require several phases of construction to address project conditions, including the requirement to maintain operations of the existing facility throughout the entire project. This consideration suggests that allowing contractor input into construction schedule and means and methods will be important. Such input is only possible through a negotiated procurement.

15. 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.

TriMet has exempted projects from low bid and utilized alternative procurement methods to select contractors many times in the past, including for the Powell LIFT Facility, Portland-Milwaukie Light Rail Project, the Portland Transit Mall, I-205 Light Rail Projects, the Tilikum Crossing Bridge, the Park Avenue Park and Ride structure, and the Clackamas Town Center Park and Ride structure. TriMet has a Procurement Department, a Legal Department, and a Capital Projects division that all contain many professionals who have substantial experience at procuring, negotiating, administering, and enforcing public improvement contracts, and will be working on the Powell Garage Renovation Project.

E. Findings

For the reasons stated above, an exemption from low bid is unlikely to encourage favoritism or substantially diminish competition, and the award of the contract under the exemption will likely result in substantial cost savings and other substantial benefits to the agency.