


Date: October 25, 2017
To: Board of Directors
From: Neil McFarlane 

Subject: RESOLUTIONS 17-10-72 AND 17-10-73 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 SERIES OF CONTRACTS FOR ON-CALL CONSTRUCTION MANAGER/GENERAL CONTRACTOR SERVICES FOR BUILDINGS PROJECTS AND GUIDEWAY PROJECTS

1. Purpose of Item

These two Resolutions exempt from the low bid process a series of public improvement contracts for construction services for Buildings and Guideway projects. Given TriMet's commitment to service expansion and increased maintenance through its state of good repair program, TriMet expects to perform more construction work of these kinds in the future. Approval of these Resolutions will allow TriMet to initiate a competitive Request for Proposals (RFP) processes to select the most highly qualified proposers for inclusion into the contractor pools.

2. Type of Agenda Item

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

3. Reason for Board Action

These exemptions 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 expects to perform more construction work related to remodeling, rehabilitating, and expanding its existing infrastructure and facilities in order to meet its commitment to service expansion and increased maintenance through its state of good repair program. Both of these

resolutions are intended to provide increased efficiency, cost savings, quality, and safety by allowing the consideration of factors other than price in the selection of two pools of on-call contractors for these types of projects.

Resolution 17-10-72 would permit TriMet to select a pool of on-call contractors to provide CM/GC services for TriMet Buildings projects. These contractors will provide a variety of construction services related to TriMet buildings, including remodeling, rehabilitating, and expanding existing facilities.

Resolution 17-10-73 would permit TriMet to select a pool of on-call contractors to provide CM/GC services for projects related to TriMet's rail alignments, or "guideways." These contractors will provide a variety of services in, near, and related to the guideways, including work on light and heavy rail, ties, systems, ballast, platforms, landscaping, and related facilities.

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 contractors for inclusion in these two on-call pools 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. In addition to price, use of the RFP process allows TriMet to consider things such as experience in similar work, schedule, performance, cost control, attention to safety, quality of workmanship, and Minority/Women/Emerging Small Business (M/W/ESB) and workforce diversity programs.

TriMet has a history of successfully utilizing the RFP process to select contractors for construction projects, including buildings projects and track rehabilitation projects. TriMet also has a history of successfully utilizing on-call pools, both for contractor and consultant services.

The agency's written findings in support of the exemption, which are required by ORS 279C.335, are attached to Resolutions 17-10-72 and 17-10-73 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 September 29, 2017. There were no attendees, and no comments were received.

6. Procurement Process

Upon approval of these exemptions, competitive RFP processes will be used to select several on-call contractors for each type of work, based on the criteria included in the RFP, including price.

7. Diversity

Use of a competitive RFP process allows TriMet to consider proposers' M/W/ESB plans and workforce diversity in awarding the contracts.

8. Financial/Budget Impact

These contracts will be used for approved capital projects for which use of an on-call CM/GC contractor is determined to be appropriate. Funding will be determined on a project-by-project basis, and included in the relevant fiscal year General Fund budget within the Capital Projects or Operations Division. Project budgets will be finalized prior to the issuance of any work under any of these contracts. The total amount of work performed by on-call contractors under each of these resolutions will not exceed \$75,000,000 over five years.

9. Impact if Not Approved

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

RESOLUTION 17-10-72

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 SERIES OF ON-CALL CONTRACTS FOR CONSTRUCTION MANAGER/GENERAL CONTRACTOR SERVICES FOR BUILDINGS PROJECTS

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 to allow TriMet to select a pool of on-call contractors to provide construction manager/general contractor (CM/GC) services for TriMet Buildings Projects (Projects); 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 Projects; 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 Projects (Contracts), 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 Contracts are exempt from the competitive bidding requirements of ORS Chapter 279C.

3. That TriMet is authorized to initiate a Request for Proposal process and negotiate contracts 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: October 25, 2017

Attest:

Presiding Officer

Recording Secretary

Approved as to Legal Sufficiency:



Legal Department

RESOLUTION 17-10-72

EXHIBIT A

FINDINGS IN SUPPORT OF LOW BID EXEMPTION

On-Call CM/GC Services – Buildings Projects

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 Contracts for On-Call CM/GC Services – Buildings Projects (“Contracts”)

This Exemption is to allow TriMet to select a pool of on-call contractors to provide CM/GC services for TriMet Buildings Projects. The contractors will provide a variety of construction services related to TriMet buildings. Given TriMet’s commitment to service expansion and increased maintenance through its state of good repair program, TriMet expects to perform more construction work related to remodeling, rehabilitating and expanding existing facilities.

C. Critical Factors

CM/GC Services performed at TriMet buildings will provide a variety of challenges, including the fact that many projects will occur at a constrained operations site which must remain operable during construction. This will present many challenges, including the following:

- a. Public and Worker Safety: Construction must be conducted with extreme attention to public and worker safety, due to constrained environments and the need to continue utilizing most work sites during construction.
- b. Planning of the Construction Approach and Schedule: Development of a sound construction approach and schedule for Buildings projects will be critical to minimize disruption to TriMet operations during construction. Because of potential site constraints and the likely need to continue operations during construction, construction schedule and coordination will be very important. Contractor input during the planning and design phases of the projects and into the construction phasing plan will be 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 will be very important. Completion of the projects on schedule will be necessary to ensure the ability to maintain the use and functionality of the buildings.

- c. Cost Certainty: Budget confidence will be important. Obtaining cost certainty early in the construction process and avoiding significant scope changes once the contract is awarded will be paramount. 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 several contractors with experience and expertise in this type of work for use on an on-call basis will help meet these challenges. The only way to ensure selection and efficient access to such contractors 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 pool of contractors to provide construction manager/general contractor ("CM/CG") services for TriMet Buildings projects. TriMet estimates that the order of magnitude of the program (consisting of all projects) is approximately \$75,000,000 over five years, dependent on project approvals and budgets.

2. How many persons are available to bid

TriMet believes there is a sufficient market for this type of contract, and will take steps to ensure maximum competition and fair opportunity for the program. 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 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 selected pools of on-call contractors in the past for other work, and has found that the negotiated procurement process generally provides 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 pool of contractors based upon performance criteria in addition to price competition. It will allow the selection of contractors whose proven experience matches the nature of the required buildings work. By selecting the most qualified contractors and having a pool available for selected projects, TriMet will minimize the risk of delays, cost increases, and other costly impacts to the public, thereby increasing the likelihood of completing projects within their construction budgets. 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 facilities should be the same regardless of whether the projects are procured via low bid or a negotiated procurement.

4. Public benefits that may result from granting the exemption

Selecting an on-call pool of contractors to provide CM/GC services for certain selected projects should increase efficiency, reduce costs, and promote coordination between TriMet and the contractors, providing a direct benefit to the public. TriMet believes these benefits can best be achieved by utilizing a negotiated procurement process which allows the selection of a pool of contractors that have proven on-time performance records, safety records, and expertise with buildings projects.

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 permit revisions and 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. The projects for which TriMet expects to utilize this pool of contractors will require expertise in specific design and construction methods, such as the phased construction to keep facilities operational during construction.

A negotiated procurement process is the best method for TriMet to identify contractors 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. Buildings projects will often occur on constrained sites that will continue to operate during construction. TriMet requires contractors 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 contractors' safety records and previous project success at the time of selection. The contractors' 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 contractors' 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 the project while minimizing schedule, cost and safety risk. A negotiated procurement allows TriMet to select contractors with experience and expertise performing buildings 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 projects done under these contracts will mostly come from the TriMet general fund. Granting the exemption will not affect the sources of funding, but will increase TriMet's ability to control budget on projects.

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 the on-call contractors 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 buildings projects is due largely to the fact that they usually require the continued use of the existing facility during construction. Therefore, contractor involvement during the design phase to discuss construction schedule, staging, and means and methods is imperative. A negotiated procurement method allows TriMet to evaluate the contractors' 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 projects anticipated to occur under this pool of contracts will generally entail the renovation and remodel of existing structures, although there may be some minor new construction work. TriMet has successfully utilized a negotiated procurement to select a CM/GC contractor for other buildings projects, including the Merlo Fuel and Wash, the upcoming Powell Garage project and the Powell LIFT building. 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

Many projects expected to occur under these contracts will require the building to be occupied and operational during construction.

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

This will vary depending on the precise nature of the project. Some projects may require construction phasing to address project conditions, including the requirement to maintain operations at an existing facility. This 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 Garage, 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 this pool of contracts.

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 a pool of contracts under the exemption will likely result in substantial cost savings and other substantial benefits to the agency.

RESOLUTION 17-10-73

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 SERIES OF ON-CALL CONTRACTS FOR CONSTRUCTION MANAGER/GENERAL CONTRACTOR SERVICES FOR GUIDEWAYS PROJECTS

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 to allow TriMet to select a pool of on-call contractors to provide construction manager/general contractor (CM/GC) services for TriMet Guideways Projects (Projects); 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 Projects; 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 Projects (Contracts), 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 Contracts are exempt from the competitive bidding requirements of ORS Chapter 279C.

3. That TriMet is authorized to initiate a Request for Proposal process and negotiate contracts 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: October 25, 2017

Presiding Officer

Attest:

Recording Secretary

Approved as to Legal Sufficiency:



Legal Department

RESOLUTION 17-10-73

EXHIBIT A

FINDINGS IN SUPPORT OF LOW BID EXEMPTION

On-Call CM/GC Services – Guideways Projects

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 Contracts for On-Call CM/GC Services – Guideways Projects (“Contracts”)

This Exemption is to allow TriMet to select a pool of on-call contractors to provide CM/GC services for projects in or near TriMet’s rail alignments (also referred to as “guideways” or “rights of way”). The contractors will provide a variety of construction services in, near and related to the guideways, including work on light and heavy rail, ties, systems, ballast, platforms, landscaping, and related facilities. Given TriMet’s commitment to service expansion and increased maintenance through its state of good repair program, TriMet expects to perform more construction work of this kind in the next five years.

C. Critical Factors

CM/GC Services performed at or near TriMet’s rail alignments will provide a variety of challenges, including the fact that many projects will occur in areas that must remain in operation during construction. This will present many challenges, including the following:

- a. Public and Worker Safety: Projects will occur at constrained locations under schedule pressure at or near TriMet’s rail system, which implicates safety considerations for workers, TriMet staff, and the public. TriMet must utilize contractors with experience in this type of work and a proven record of safety.
- b. Planning of the Construction Approach and Schedule: Making informed decisions during final design development for the best design outcomes and construction phasing methods is critical to the success of this type of

work. Completion of the projects on schedule is also critical, given the potential impacts to the public, transit operations, and adjacent businesses. TriMet must gain as much schedule efficiency as possible and minimize any shutdowns of or impacts on its rail systems.

- c. Cost Certainty: Budget confidence will be important. Obtaining cost certainty early in the construction process and avoiding significant scope changes once the contract is awarded will be paramount. The contractor can offer constructability and pricing feedback on design options, and can help identify risks during the design process.

TriMet believes that selection of contractors with experience and expertise in the design and construction this type of work will help meet these challenges. The only way to ensure selection of such contractors 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 pool of contractors to provide construction manager/general contractor (“CM/CG”) services for TriMet Guideways projects. TriMet estimates that the order of magnitude of the program (consisting of all projects) is approximately \$75,000,000 over five years, dependent on project approvals and budgets.

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 projects within their construction budgets. 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 for the completed improvement 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

Selecting an on-call pool of contractors to provide CM/GC services for certain selected projects should increase efficiency, reduce costs, and promote coordination between TriMet and the contractors, providing a direct benefit to the public. TriMet believes that in order to develop and ensure realistic solutions to minimize impacts to schedule, cost, traffic, noise, and public safety concerns for this type of project, it is preferable to utilize a negotiated procurement process which allows the selection of a pool of contractors that have proven on-time performance records, safety records, and expertise with guideways projects.

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 and permitting processes.

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 operational impacts, 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 operational constraints and 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. The projects for which TriMet expects to utilize this pool of contractors will require expertise in specific design and construction methods, and experience working on rail alignments.

A negotiated procurement process is the best method for TriMet to identify contractors 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. Guideways projects will include work at and near TriMet's rail alignments, and will include work while the alignment is operational. This type of construction mandates much attention to safety. Therefore, TriMet requires contractors 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 environments near operating rail alignments is crucial to the success of this type of 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 the project while minimizing schedule, cost and safety risk. A negotiated procurement allows TriMet to select contractors with experience and expertise performing work in an operating guideway environment, 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 projects done under these contracts will mostly come from the TriMet general fund. Granting the exemption will not affect the sources of funding, but will increase TriMet's ability to control budget on projects.

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

Guideways projects are often complicated projects, requiring attention to detail and understanding of the many systems that must be maintained during construction, which is often in or near an operating rail right of way. A negotiated procurement method allows TriMet to evaluate a contractor's technical experience in similar work and its safety record at the time of selection.

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

The projects expected to occur under these contracts will generally be for work on an existing light rail alignment, but may occasionally consist of new construction related to TriMet's guideway system. TriMet has successfully utilized a negotiated procurement to select a CM/GC contractor for other specialized and complex rail projects, including the East and West Segments of the Portland-Milwaukie Light Rail Project, the Portland Mall Light Rail Project, and the Interstate MAX Light Rail Project. 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

These projects will involve work in and near existing rail alignments. A negotiated procurement method will assist with minimizing impacts TriMet's rail system.

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

This will vary depending on the precise nature of the project. A project could require several phases of construction in order to limit impacts to TriMet's revenue service operations and other impacts to the public. 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 Portland-Milwaukie Light Rail Project, the Portland Mall and I-205 Light Rail Projects, the Tilikum Crossing Bridge, and the Park Avenue and Clackamas Town Center Park and Ride structures. 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 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.