

Date: August 14, 2019
To: Board of Directors
From: Doug Kelsey



Subject: RESOLUTION NO. 19-08-62 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) BOARD OF DIRECTORS, ACTING IN ITS CAPACITY AS THE TRIMET CONTRACT REVIEW BOARD (TCRB), EXEMPTING FROM COMPETITIVE BIDDING REQUIREMENTS A CONTRACT FOR CONSTRUCTION MANAGER/ GENERAL CONTRACTOR (CM/GC) SERVICES FOR THE RED LINE EXTENSION AND RELIABILITY IMPROVEMENTS PROJECT

1. Purpose of Item

This Resolution authorizes the TriMet Board of Directors (Board), acting in its capacity as the TriMet Contract Review Board (TCRB), to exempt from the low bid process a public improvement contract for Construction Manager/General Contractor (CM/GC) services for TriMet’s Red Line Extension and Reliability Improvements Project (Project). In order to improve the reliability of the MAX light rail system, the Project will extend MAX service west to the Fair Complex/Hillsboro Airport Station and will construct new sections of track near Gateway Transit Center and the Portland International Airport Station. The TCRB’s approval of this Resolution will allow TriMet to initiate a competitive Request for Proposals (RFP) process and select the most highly qualified proposals for award of the CM/GC 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 TCRB in accordance with state law and the TCRB Rules.

4. Type of Action

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

5. Background

The Red Line Extension and Reliability Improvements Project will extend service on the MAX Red Line beyond the Beaverton Transit Center to the Fair Complex Station and

construct improvements at the Gateway Transit Center and the guideway to the Portland International Airport, thus improving service and reliable on-time performance along the entire MAX system.

By extending the Red Line further west from its current terminus at Beaverton Transit Center to a new terminus at the Fair Complex/Hillsboro Airport station, the Project will efficiently provide significant new light rail service to the communities of Beaverton and Hillsboro. The Project also will improve reliability and on-time performance of the entire MAX light rail system by removing two major sources of delay -- the single-track for the Red Line at Gateway Transit Center, and the single-track for the Red Line at the Portland International Airport Station -- and converting them to double-track, thus allowing MAX Light Rail Vehicles (LRVs) to come and go at the same time.

The Project includes the purchase of eight new LRVs to operate on the extended system, and an expansion of tracks at the Ruby Junction rail yard to house and maintain those new light rail vehicles. TriMet estimates that the Project will increase ridership by about 5,000 daily trips, with the estimated additional fare revenue covering 30% to 50% of the increased operating cost. The Project is currently at 30% design and, at this time, TriMet is ready to procure the services of a CM/GC to assist with completion of the Project design, contribute to cost certainty, and establish needed coordination to ensure a successful construction process. The CM/GC would be expected to construct the civil, track, and structures elements near the Gateway Transit Center and Portland International Airport stations. Some work included in the Project, such as systems, civil and track work and the operator break facility at Fair Complex/Hillsboro Airport station, will be constructed through a different contracting method.

TCRB Rule V(A) and ORS 279C.335(2) provide that the 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.

To enable TriMet to select its contractor using a best value process, an exemption from low bidding is required. 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. The RFP process allows TriMet to consider factors in addition to price, such as experience in similar work, schedule performance and work phasing plans, cost control, attention to safety, quality of workmanship, Disadvantaged Business Enterprise (DBE) and workforce diversity programs. The Project is a major construction project along a constrained travel corridor with significant commercial, retail, and residential uses that will be constructed under budget and schedule pressures.

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 involved working adjacent to operating TriMet systems during the construction period.

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 on July 12, 2019, and the hearing was held on July 26, 2019. There were no attendees, and no comments were received. TriMet's written findings in support of the exemption, which are required by ORS 279C.335, are attached to Resolution 19-08-62 as Exhibit A.

6. Procurement Process

Upon approval of this exemption, a competitive RFP process will be used to select the contractor or contractors that present 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 evaluate each proposers' DBE plans and workforce diversity and to consider them in awarding the contract.

8. Financial/Budget Impact

The final amount of work performed on the Project is expected to total approximately \$200,000,000. The Project will be funded by a Small Starts Grant from the Federal Transit Administration (FTA) and the TriMet general fund. Currently, Project work is being paid for by the TriMet general fund as adopted in TriMet's approved FY2020 budget. TriMet's general funds will serve as the local match to the federal grant funds. Construction under the contract would not begin until final approval is received from FTA or the federal grant agreement is in place.

9. Impact if Not Approved

If this exemption is not approved, TriMet could procure this public improvement contract through a traditional low bid procurement method. This option is not preferred for the reasons outlined above and discussed in the Findings attached hereto as Exhibit A.

RESOLUTION NO. 19-08-62

RESOLUTION NO. 19-08-62 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) BOARD OF DIRECTORS, ACTING IN ITS CAPACITY AS THE TRIMET CONTRACT REVIEW BOARD (TCRB), EXEMPTING FROM COMPETITIVE BIDDING REQUIREMENTS A CONTRACT FOR CONSTRUCTION MANAGER/ GENERAL CONTRACTOR (CM/GC) SERVICES FOR THE RED LINE EXTENSION AND RELIABILITY IMPROVEMENTS PROJECT

WHEREAS, the TriMet Contract Review Board (TCRB) has authority under ORS 279C.335 and TCRB Rule V to exempt a contract or contracts 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 CM/GC services for the Red Line Extension and Reliability Improvements Project; and

WHEREAS, TriMet has submitted its written findings to the TCRB as 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 TCRB hereby approves and adopts the findings stated at (a) and (b) below, and the Findings In Support of Low Bid Exemption attached as Exhibit A in support of (a) and (b) below, to exempt from competitive bidding requirements the contract(s) for CM/GC services for the Red Line Extension and Reliability Improvements Project.

(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(s) pursuant to the exemption will likely result in substantial cost savings and other substantial benefits to the agency.

2. That the above described 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 or contracts for specified work on the Project, 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: August 14, 2019

Presiding Officer

Attest:

Recording Secretary

Approved as to Legal Sufficiency:



Legal Department

**Resolution 19-08-62
Exhibit A**

**FINDINGS IN SUPPORT OF LOW BID EXEMPTION
Red Line Extension and Reliability Improvements 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:

1. How many persons are available to bid;
2. The construction budget and the projected operating costs for the completed public improvement;
3. Public benefits that may result from granting the exemption;
4. Whether value engineering techniques may decrease the cost of the public improvement;
5. The cost and availability of specialized expertise that is necessary for the public improvement;
6. Any likely increases in public safety;
7. Whether granting the exemption may reduce risks to the contracting agency, the state agency or the public that are related to the public improvement;
8. Whether granting the exemption will affect the sources of funding for the public improvement;
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;
10. Whether granting the exemption will better enable the contracting agency to address the size and technical complexity of the public improvement;
11. Whether the public improvement involves new construction or renovates or remodels an existing structure;
12. Whether the public improvement will be occupied or unoccupied during construction;
13. Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions; and
14. 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 MAX Red Line Extension and Reliability Improvements Project

The Red Line Extension and Reliability Improvements Project (Project) has two distinct goals:

- 1) To extend the Red Line west of its current terminus to the Fair Complex/Hillsboro Airport Station, allowing TriMet to provide up to 75% more service between Beaverton Transit Center and Fair Complex; and
- 2) To address schedule and operations difficulties currently experienced throughout the MAX system due to the two single-track sections on the Red Line, one just north of Gateway Transit Center and the other just east of the Portland International Airport station. These sections of single track, combined with existing trackwork that requires the inbound Red Line to cross over the Blue and Green Lines at Gateway, strictly limit schedule flexibility and operational reliability of the system.

To meet these two project goals, there are four locations of capital construction proposed to be funded as part of overall improvements.

- **Fair Complex/Hillsboro Airport Station:** Track and switch work, signalization, and construction of an operator break facility to allow trains to layover and reverse direction.
- **Gateway Transit Center:** Trackwork and construction of a new structure to convert single-track section to double-track and increase reliability of all MAX lines.
- **Portland International Airport Station:** Track work to convert single-track section to double-track to increase reliability of the Red Line.
- **Ruby Junction Rail Yard:** Construction of a new storage track to store the vehicles.

Included in the scope of work for this Project are the design, manufacture, installation and testing of all new signals and communications systems equipment as necessary to support train operations and functionality, as well as demolition of the existing outdated equipment.

Given the complexity of the project and its multitude of construction locations, TriMet anticipates releasing several separate construction contracts within the overall improvements. This exemption addresses the procurement method for the Gateway and Portland International Airport civil, structures, and track construction. Other areas included in the project, such as systems work and the track, civil, and the operator break facility at Fair Complex/Hillsboro Airport station, are not included as part of this exemption.

C. Critical Factors

The civil, track, and structural elements of the Gateway and Airport double-tracks will be highly complex to construct. They include the following critical factors:

- Construction elements that tie in to existing elements, requiring close coordination with TriMet operations
- Need to minimize disruption to TriMet operations
- Some work must take place within right-of-way that TriMet does not own
- Work requires coordination with outside agencies including UPRR, the City of Portland, the Oregon Department of Transportation, and the Port of Portland
- Challenging subsurface conditions at Gateway

- Changing design elements on adjacent projects by the Port of Portland may require quick responses by TriMet designers and contractors

TriMet believes that selection of a contractor with experience and expertise in construction of this type of work will significantly reduce risk and ensure that the project meets these challenges. The only way to ensure selection of such a contractor is through the use of an alternative selection process. In addition, TriMet believes that inclusion of a contractor in the design process will help ensure that the project is constructed in the most logical and least disruptive way possible.

D. Considerations

Type, Cost and Amount of Contract

TriMet is planning to utilize a Construction Manager/General Contractor (CM/GC) process (non-low bid) to select a contractor for the Civil, Structures, and Track Construction for the Gateway and Airport Locations within the Red Line Extension and Reliability Improvements Project. TriMet estimates that the order of magnitude for this work is approximately \$200,000,000.

1. 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 to compete for the Project. These steps will include advertisement in the Daily Journal of Commerce and TriMet's internet procurement system, TriP\$, 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 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 a 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.

2. 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 and team members whose proven experience matches the specialized 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 Project within the construction budget. Involving a contractor in the design process also provides for more constructible designs that are reflective of realistic construction means and methods and allows the owner to obtain market-based pricing that assists in decision-making and budget adherence during final design. 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 MAX Red Line Extension and Reliability Improvements Project would be the same regardless of whether these elements of the project are procured via low-bid or a negotiated procurement.

3. *Public benefits that may result from granting the exemption*

Critical needs for this Project are to minimize impacts to and coordinate closures of light rail activities during construction, to minimize disruption to the public, and to minimize disruption to businesses. TriMet believes that a negotiated procurement will maximize opportunities for success in developing and ensuring realistic solutions to minimize impacts to schedule, cost, traffic, noise, and public safety concerns. Involving a contractor early also provides for alternative thinking in performing the work to increase efficiencies while balancing disruptions to the public and transit operations. It also allows TriMet to have a direct role in phasing work that requires proposed revenue service shutdowns or other impacts to service and increases the ability to timely inform the public of potential impacts.

4. *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. Low-bid also does not offer flexibility in coordinating construction work schedules within TriMet's limited tolerance for shutdowns and impacts to revenue service.

Construction contractor input during final design enhances the value engineering opportunities during design. 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, staging and construction access. The negotiated RFP procurement method allows the construction contractor to work with the design team and incorporate value engineering ideas in line with operational constraints, TriMet communications needs, and the design schedule, thereby maximizing cost saving ideas and methods.

5. *Cost and Availability of specialized expertise that is necessary for the public improvement*

Construction costs are highly dependent upon the design, staging, access, phasing, and construction methods, each of which varies considerably among contractors. The Project will consist of constructing new trackway and associated signals and communication systems, some of which will be on top of a new structure above I-84. Some of this work will occur adjacent to an active transit center and park-and ride, some of it will occur within an active City Park, and some of it will occur within land owned by the Port of Portland, who will also have nearby construction work. This work requires specialized expertise in order to provide the best possible experience to TriMet riders and other members of the public during the construction period. Specialized expertise is also required to sequence activities around existing light rail operations and to ensure full integration with rail systems features, including restoring the system to operating condition within pre-defined work windows. Construction delays could impact TriMet's ability to provide service to the public.

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.

6. *Any Likely Increases in Public Safety*

TriMet seeks to reduce public safety risk as much as possible. The Project site includes close proximity to operating light rail and vehicle, pedestrian and bicycle accesses to and from light rail stations, sometimes within the public right-of-way and around automobile traffic. This type of construction mandates close attention to safety. Therefore, 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. It is crucial to understand the contractor's actual safety performance on similar projects in similar urban environments. An alternate method of procurement offers TriMet the best opportunity to carefully evaluate the contractor's history of safety performance.

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

When TriMet has utilized a negotiated procurement to secure a contractor for this type of project in the past, TriMet has been able to complete the project successfully while minimizing schedule, service impacts, cost, and safety risk. Because of the complex nature of the Project, TriMet seeks to minimize risks of design changes, construction and operational delays, and contractor misunderstandings inherent in the traditional design-bid-build process in order to control Project budget and scheduling. Involving the construction contractor during design is a proven approach for containing costs and affirming schedules through implementation of more constructible designs and through the development of a construction and communication plans that are realistic and reflective of operational constraints and public needs. A negotiated procurement allows TriMet to select a contractor with experience and expertise performing this type of work that can collaborate on final designs and schedule requirements, instead of requiring the selection of a contractor based only on price.

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

The use of federal funding from the Federal Transit Administration brings with it certain requirements related to schedule, as well as tight budget control. Completing the Red Line Extension and Reliability Improvements Project within these constraints will require the selection of an experienced and efficient contractor, which can only be guaranteed through the use of a negotiated procurement process.

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*

A negotiated procurement will allow TriMet to mitigate market risk by allowing proposers and TriMet to discuss and apportion this risk. Furthermore, 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.

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

This is a complicated project, requiring attention to detail and understanding of the many systems that must be maintained during construction. These include city infrastructure systems, light rail signals, overhead power, communications, the light rail trackway, and transit operations. 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.

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

This Project will construct new track, structures, and platforms near existing active rail lines at the Gateway Transit Center and at the Portland International Airport MAX station. TriMet has successfully utilized a negotiated procurement to select a contractor for other specialized and complex rail projects, including the Banfield Light Rail Track Rehabilitation Project, 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.

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

The Project construction will occur within active right-of-way that is used by light rail vehicles, pedestrians, bicycles, trucks and automobiles. The Gateway Transit Center and the Portland International Airport Station will remain open during the majority of the project construction schedule. In order to minimize impacts to revenue service and TriMet employees and customers, it is important to select a contractor with experience in this type of work in a busy environment.

13. 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 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 is critical to both the public and TriMet. Such input is only possible through a negotiated procurement.

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.

TriMet has exempted projects from low-bid and utilized alternative procurement methods to select contractors many times in the past, including the Banfield Light Rail Track Rehabilitation Project, 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.

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.