

Date: August 10, 2022

To: Board of Directors

From: Sam Desue, Jr.

Subject: **RESOLUTION NO. 22-08-50 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET), ACTING AS THE TRIMET CONTRACT REVIEW BOARD (TCRB) AUTHORIZING AN EXEMPTION FROM COMPETITIVE BIDDING REQUIREMENTS FOR A CONTRACT FOR CONSTRUCTION MANAGER/GENERAL CONTRACTOR SERVICES FOR THE HOLLYWOOD TRANSIT CENTER PROJECT**

1. Purpose of Item

This Resolution requests that the TriMet Board of Directors (Board), acting as the TriMet Contract Review Board (TCRB), authorize an exemption for a public improvement project from the low bid process. The exemption authorizes a best value solicitation approach.

2. Type of Agenda Item

- Initial Contract
- Contract Modification
- Other: Exemption of a Contract from Low Bid Requirements

3. Reason for Board Action

This exemption from the competitive low-bid approach 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

The Hollywood Transit Center Community Transit Infrastructure Project (the Project) consists of 1) replacement of the existing ramp and stair structure, 2) construction of a new public plaza, bus stop relocations, and road frontage improvements, and 3) procurement of a new traction power substation to replace the existing obsolete substation. The new substation will be installed under the ramp and stair structure, which is being relocated to allow for the housing development to utilize that portion of the site.

The Project is currently at a stage where TriMet is ready to procure the services of a construction manager/general contractor (CMGC). The CMGC will assist with the completion of project design, contribute to cost certainty, and establish needed coordination to ensure a successful construction process.

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 written Findings made by the Agency that support the following:

- (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 Request For Proposals (RFP) process allows TriMet to select contractors upon consideration of many factors, including price. Use of the competitive RFP process allows TriMet to consider things such as experience in similar work, schedule performance, cost control, attention to safety, small business utilization and workforce diversity, and quality of workmanship, along with price.

This Project is complex and will require the selected contractor to manage tight timelines, coordinate with other contractors working on site, and work within a strict budget. Consideration of factors other than price will allow TriMet to select a CM/GC contractor with the skill and experience to handle these complexities. TriMet has successfully utilized the RFP process to select CMGC contractors for complex construction projects, most recently on the Division Transit Project.

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 of a public improvement project. Notification of the public hearing on the draft Findings was published in the Daily Journal of Commerce, and the hearing was held on July 27, 2022. There were no attendees, and no comments were received. The Agency's written Findings in support of the exemption, which are required by ORS 279C.335, are attached as Exhibit A to this Resolution.

6. Description of Procurement Process

Upon approval of this exemption, a competitive RFP process will be used to select the CM/GC contractor that presents the best value to the Agency, based on the criteria included in the RFP.

7. Diversity

Use of the competitive RFP process will allow TriMet to consider the certified small business subcontracting utilization and plan, as well as workforce diversity when selecting the CM/GC contractor.

8. Financial/Budget Impact

The cost of the work is included in the FY2023 Engineering, Construction, and Planning Budget.

9. Impact if Not Approved

If this exemption is not approved, TriMet would have to procure this project via the traditional low-bid procurement method. This is not the preferred option for the reasons outlined above and presented in the Findings.

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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 July 27, 2022 on the Agency's draft written Findings in support of an exemption from competitive bidding requirements for a public improvement contract for construction services, and no objections were heard; and

WHEREAS, TriMet has submitted to the TCRB the written Findings required by ORS 279C.335, attached hereto as Exhibit A, in support of an exemption from competitive bidding requirements for the public improvement contract; 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 specified construction project, 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 construction project, subject to final Board approval of the contract award.

Dated: August 10, 2022



Presiding Officer

Attest:



Recording Secretary

Approved as to Legal Sufficiency:



Legal Department

EXHIBIT A

RESOLUTION NO. 22-08-50

FINDINGS IN SUPPORT OF LOW BID EXEMPTION

Hollywood Transit Center Infrastructure Project

A. Competitive Bid Exemption under Oregon Statute

Oregon law requires all local contracting agency public improvement contracts to be procured by competitive 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 that (2) the award of the contract under the exemption will likely result in substantial cost savings to the agency 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, but are not limited to, the following:

1. Operational, budget and financial data;
2. Public benefits;
3. Value engineering;
4. Specialized expertise required;
5. Reducing risks to the agency;
6. Public safety;
7. Market conditions; and
8. Technical complexity; and
9. Funding sources.

B. Summary Description of the Hollywood Transit Center Community and Transit Infrastructure Project

The Hollywood Transit Center Community Transit Infrastructure Project (the Project) consists of the replacement of the existing ramp and stair structure, the construction of a new public plaza, bus stop relocations, road frontage improvements, and the procurement of a new traction power substation to replace the existing substation which is at the end of its life span. The new substation will be placed under the ramp and stair structure as it is being relocated to allow for the housing development to utilize that portion of the site.

C. Critical Factors

This is a complex project that requires the management of interdependencies between phases of multiple parts of this project, reducing impacts to adjacent uses, and the maintenance of a functional public transit center and substation throughout the duration of construction.

D. Findings

1. Operational, budget and financial data

The budget for the Project is fixed and has limited contingency. Because of the complex interactions between the construction work and TriMet's operations and customers, as well as the need to consider the construction timeline of the adjacent TriMet Transit Oriented Development (TOD) project, TriMet seeks to minimize the cost impact of design changes, construction delays, and contractor assumptions about means and methods inherent in the traditional design-bid-build process in order to control and predict the project budget. Involving the construction contractor during design is a proven approach for containing costs through implementation of more constructible designs that are reflective of realistic construction means and methods. Early construction contractor involvement also allows the owner to obtain market-based pricing that assists in decision-making and budget adherence during final design. Delays in or inefficient performance of this work would lead to increased operational costs to TriMet due to service disruptions.

Finding: For the reasons stated above, a procurement process that allows involvement of the construction contractor during final design will allow TriMet to better control costs and protect operations requirements at station locations. Low bid provides insufficient opportunity to involve the construction contractor during design, while a non-low bid selection process enables this interaction.

2. Public benefits

The public will benefit directly from a final design that considers contractor means and methods, and from involving the contractor early to develop specific staging and access plans for temporary public access, specifically a large ramp and stair structure through the construction site to the NE 42rd pedestrian overpass. It is critical for this Project to maintain transit service when possible during construction and minimize disruption to service while doing so. TriMet will engage the contractor to advice on means and methods options and implications, as well as staging and access plans during the design work. This will help to ensure owner input and control over solutions increasing the predictability of schedule, cost, and transit service during construction. The community and TriMet will also benefit from a selection process that includes the opportunity to evaluate contractor experience and track record with minimizing public impacts through thorough advanced construction planning work.

Finding: Low bid offers no opportunity for the construction contractor to work with TriMet and its designer during design, and no opportunity to work with the contractor to develop and select staging and access alternatives that are minimally disruptive to transit service and the public in balance with established Program budgets. A non-low bid approach provides the opportunity to identify a contractor who has proven experience in working with all the affected stakeholders to create the least disruptive design and construction plans. This will result in fewer and shorter disruptions to service, and smoother transitions between the existing conditions to temporary public access during construction and finally to the completed project.

3. Value Engineering

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 the

final design used for the construction procurement. Although low bid allows for value engineering during construction, it is less likely to occur and is often more difficult to implement because of construction schedule pressures, the cost of evaluation or redesign efforts, and the time required for additional stakeholder 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 constructability, temporary facilities, and construction access. A non-low bid procurement method allows the construction contractor to work with the design team and incorporate value engineering ideas in line with the design schedule.

One of the key opportunities for value engineering includes (but is not limited to) reducing the risk to an existing pedestrian bridge. This project will require connecting a new ramp and stair to an existing pedestrian bridge owned by ODOT and extending over UPRR and ODOT ROW. Connecting to this structure without compromising its integrity will be critical to keeping the project timeline and costs in line.

Finding: A non-low bid procurement method allows the use of a value engineering approach supported by the participation of the contractor that will construct the project prior to completion of final design, thereby maximizing potential savings.

Specifically, reducing the risk associated with impacting the existing pedestrian bridge, bridge abutment and footing is paramount. A negotiated procurement will allow the contractor to weigh in on demolition of the existing ramp and stair structure and construction of the new ramp and stair structure so as to reduce the risk of delay during construction.

4. Specialized expertise required

This Program will require expertise in the demolition and construction of substations for light rail traction electrification. The contractor will have to complete the required scope of work with the shortest possible interruption of power to the MAX light rail, specifically while transitioning between the existing substation to the new one. Any construction delay will impact TriMet's ability to provide reliable transit service and may result in additional costs to TriMet for temporary service. The contractor must have expertise in construction of complex high voltage facilities that need to come on line rapidly with minimal delay once the transition begins.

Finding: A non-low bid procurement process employs 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. It puts the owner in the best position to select a construction contractor who is a proven performer for the specific, specialized work required.

5. Reducing risks to the agency

This project is being constructed in coordination with the adjacent Hollywood HUB / BRIDGE Housing Transit Oriented Development (TOD) Project in two interdependent phases. The construction for the TOD Project cannot begin until the HTC Infrastructure Project is complete, due to the location of the temporary ramp and stair and substation relocation. Any delays to the completion of the Infrastructure Project will cause substantial costs to the TOD project. TriMet

has a substantial interest in the success and cost effectiveness of the Hollywood TOD project as a demonstration of the efficacy of transit oriented development for the Agency.

Finding: A negotiated procurement will allow the contractor to weigh in on any issues that they anticipate may arise during construction, heading off costly delays to this Project during construction. By extension, avoiding delays to this Project will avoid delays to the TOD Project.

6. Public safety

The project site is in close proximity to an operational substation that will be decommissioned and replaced as part of this project. The project also involves the construction and maintenance of a temporary stair and ramp within the active construction site that shall remain open to the public throughout construction. TriMet requires a contractor with a successful performance record for safety and protection of the public during this type of work. A non-low bid procurement allows TriMet to evaluate the contractor's experience and record in working safely and effectively near the public and its operating system, and allows TriMet to evaluate the contractor's safety record on past projects

Finding: A non-low bid approach offers TriMet the best opportunity to carefully evaluate the contractor's prior safety performance and mitigate safety risk in a collaborative way through the contractor's work plans. A non-low bid approach provides the best opportunity to develop and evaluate public safety plans for all phases of construction with the construction contractor prior to implementation.

7. Market conditions

Construction market conditions continue to be highly volatile. Workforce shortages, high demand for construction services and rapidly changing commodity prices have continued to cause significant swings in escalation rates and pricing. Lead times for procurement of some specialized materials, such as substation components and power poles, have increased rapidly. A non-low bid procurement will increase cost and schedule certainty for portions of the work. A non-low bid approach will allow the TriMet to mitigate market risk by allowing proposers and TriMet to discuss and apportion this risk, as well as to ensure materials are secured with enough lead time to avoid construction delays.

Finding: A non-low bid procurement will provide a benefit for fiscal planning and opportunity to increase cost certainty.

8. Technical complexity

Light rail traction electrification substation construction is complex and specialized. It requires understanding at a detailed and highly technical level how the trains are safely powered, and ideally familiarity with the design of TriMet substations specifically, or the nearest equivalent. The demolition and construction of substations will occur within a larger construction site including active public space, which will require complex planning and coordination with multiple disciplines of construction contractors and TriMet operations personnel.

Finding: A non-low bid approach allows TriMet to select a contractor with due consideration given to the contractor's past performance on similar projects.

9. Funding sources

Funding for the Program is through the TriMet general fund. General funds are limited due to agency budget pressures.

Finding: Early and continued budget certainty is highly desired. A negotiated procurement is a better method than low bid to achieve earlier budget certainty.

10. Unlikely to Encourage Favoritism or Substantially Diminish Competition

The steps taken to ensure maximum competition and fair opportunity for this Program will include advertisement in the Daily Journal of Commerce and TriMet's public procurement system (TriP\$), as well as scheduling a pre-proposal conference and appointing an unbiased evaluation committee.

Finding: By marketing this opportunity and attempting to notify all known potential respondents, TriMet will implement a process that does not encourage favoritism or substantially diminish competition.

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 Program, a non-low bid procurement process generally encourages significant competition between contractors with reasonable performance records.

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

E. Exemption from Low-Bid Contracting and Preferred Construction Procurement Method: Request for Proposal Process

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 cost savings and other substantial benefits to the Agency.