

Date: September 24, 2025

To: Board of Directors

From: Sam Desue, Jr.



Subject: **RESOLUTION NO. 25-09-49 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET), ACTING AS THE TRIMET CONTRACT REVIEW BOARD, AUTHORIZING AN EXEMPTION FROM LOW BID REQUIREMENTS TO PROCURE CONSTRUCTION SERVICES FOR THE POWELL GARAGE FUEL CELL ELECTRIC BUS MAINTENANCE FACILITY UPGRADE PROJECT**

1. Purpose of Item

This Resolution requests that the TriMet Board of Directors (Board), acting as the TriMet Contract Review Board, authorize an exemption from the low bid process to allow a competitive, best value, Request For Proposals (RFP) process to procure construction services and a key specialty trade partner for the Powell Garage Fuel Cell Electric Buses Maintenance Facility Upgrade Project (Project).

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 low bid solicitation requirements to allow a competitive, best value, Request For Proposals (RFP) process to select the most highly qualified proposer 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

5. Background

TriMet began the application process for a \$39 million Federal Low or No Emission Grant in early 2023. Confirmation of Grant status was achieved in September of 2024, and the Grant was fully executed on May 2, 2025. The Grant provides funds for fourteen Fuel Cell Electric Buses (FCEB), Facility Upgrades to maintain this vehicle type, a Hydrogen Fueling Station, and Workforce Development training. The Grant also provides TriMet with funding necessary to execute the work at the Powell Garage Facility. This will allow maintenance

and fueling of the FCEB fleet that ultimately will support revenue service for the 82nd Avenue Transit Project.

At this time, Project development services for the building modifications and the fueling infrastructure have been implemented, 30% Project design has nearly been achieved, and TriMet is ready to begin the process of selecting a construction contractor for the Project. TriMet envisions utilizing the services of a Construction Manager/General Contractor with a key trade partner specializing in hydrogen infrastructure design and construction for the Project.

Under the traditional low bid method, TriMet may consider only price in selecting a contractor. Using a competitive RFP procurement process, TriMet can select contractors upon consideration of many factors, including price, but an exemption from low bidding is required for TriMet to select a contractor using an alternative procurement method.

This Project is complex in nature, requires exclusive expertise in selective applications, and involves a wide and complex market structure. These hydrogen fuel upgrades will require the contractor to manage the Project within a strict budget, and maintain a schedule necessary to support the 82nd Avenue Transit Project's start of revenue service in 2029. An exemption that allows TriMet to consider factors other than price will provide TriMet with the ability to select a contractor with the skills and experience to handle these complexities.

TriMet has successfully utilized competitive RFP procurement processes to select contractors on multiple construction projects, including the Portland Milwaukie Light Rail Project, Powell Garage Replacement Project, the Division Transit Project, and most recently the 82nd Avenue Transit Project.

The TCRB's approval of the exemption from low-bid requirements will allow TriMet to post a Request for Proposal (RFP) to obtain a contractor to provide Construction Manager/General Contractor (CMGC) services. The selected contractor will help establish design constructability, costs, and schedule certainty throughout the project.

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.

TriMet staff anticipate using criteria similar to the following to select the contractor: Proposer Experience/Past Performance (15 points); Proposed Project Team (30 points); Draft Project Approach, Work Plan & Schedule (50 points); Draft Contracting Plan and DBE Program (25 points); Project Management (25 points); Availability (10 Points) and Price (45 points).

6. Description of Procurement Process

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

7. Disadvantaged and Small Business Utilization

Use of the competitive RFP process will allow TriMet to consider each proposer's Disadvantaged Business Enterprise (DBE) and Small Business utilization and subcontracting plan.

8. Financial/Budget Impact

The budget for these services is included in TriMet's five-year Capital Improvement Plan and budget forecasts.

9. Impact if Not Approved

If this exemption were 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 attached as Exhibit A.

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WHEREAS, the TriMet Contract Review Board (TCRB) has authority under ORS 279C.335 and TCRB Rule V to exempt a public improvement contract (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 September 4, 2025 on the Agency's draft written Findings in support of an exemption from competitive bidding requirements for the 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 a 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: September 24, 2025

Presiding Officer

Attest:

Recording Secretary

Approved as to Legal Sufficiency:

A handwritten signature in blue ink, reading "Gregory E. Smith", followed by a horizontal line.

Legal Department