

Date: August 8, 2018

To: Board of Directors

From: Doug Kelsey 

Subject: RESOLUTION 18-08-60 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) BOARD OF DIRECTORS, ACTING IN ITS CAPACITY AS THE TRIMET CONTRACT REVIEW BOARD, EXEMPTING FROM COMPETITIVE BIDDING REQUIREMENTS A CONTRACT FOR CONSTRUCTION MANAGER/GENERAL CONTRACTOR SERVICES FOR THE FOURTH BUS BASE FACILITY PROJECT

1. Purpose of Item

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

2. Type of Agenda Item

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

3. Reason for Board Action

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

4. Type of Action

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

5. Background

TriMet is in the process of expanding its service, including the procurement of an additional 200 buses over the next six years, increasing the fleet size from approximately 700 buses to approximately 900 by 2024. The three bus bases currently in use throughout the region will not be adequate to accommodate this larger fleet. The Project will bring an additional bus base online for both operations and maintenance.

The Project will be located at 4421 NE Columbia Boulevard in Portland, which is the site of an existing heavy equipment maintenance facility. TriMet intends to design and build the Project in two phases. The first phase of the project will involve repurposing several existing buildings into bus operations and maintenance facilities, a new fueling/service building, a new wash building, new modular buildings for office space, site improvements, public street improvements as required by permitting, site utilities as required for the first phase, and utility stub-outs for a future phase permanent bus operations and maintenance facility.

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

(a) The exemption is unlikely to encourage favoritism in awarding public improvement contracts or substantially diminish competition for public improvement contracts; and

(b) Awarding a public improvement contract under the exemption will likely result in substantial cost savings and other substantial benefits to the contracting agency.

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

TriMet plans to use the Construction Manager/General Contractor (CM/GC) method for this Project. TriMet has a history of successfully utilizing the RFP process to select CM/GC contractors for complex construction projects. For example, the Portland-Milwaukie Light Rail Project utilized RFPs to obtain CM/GCs for the East and West segments of that project, as well as the Center Street Building Modifications work. The agency's written findings in support of the exemption, which are required by ORS 279C.335, are attached to Resolution 18-08-60 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 July 16, 2018. There were no attendees and no comments were received.

6. Procurement Process

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

7. Diversity

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

8. Financial/Budget Impact

The Project is included in the TriMet Capital Improvement Program Budget for FY 2018-2019.

9. Impact if Not Approved

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

RESOLUTION 18-08-60

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

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

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

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

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

NOW, THEREFORE, BE IT RESOLVED:

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

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

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

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

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

Dated: August 8, 2018

Attest:

Presiding Officer

Recording Secretary

Approved as to Legal Sufficiency:



Legal Department

RESOLUTION 18-08-60

Exhibit A

FINDINGS IN SUPPORT OF LOW BID EXEMPTION

Fourth Bus Base Facility Project

A. Competitive Bid Exemption under Oregon Statute

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

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

- (A) How many persons are available to bid;
- (B) The construction budget and the projected operating costs for the completed public improvement;
- (C) Public benefits that may result from granting the exemption;
- (D) Whether value engineering techniques may decrease the cost of the public improvement;
- (E) The cost and availability of specialized expertise that is necessary for the public improvement;
- (F) Any likely increases in public safety;
- (G) Whether granting the exemption may reduce risks to the contracting agency, the state agency or the public that are related to the public improvement;
- (H) Whether granting the exemption will affect the sources of funding for the public improvement;
- (I) Whether granting the exemption will better enable the contracting agency to control the impact that market conditions may have on the cost of and time necessary to complete the public improvement;
- (J) Whether granting the exemption will better enable the contracting agency to address the size and technical complexity of the public improvement;
- (K) Whether the public improvement involves new construction or renovates or remodels an existing structure;
- (L) Whether the public improvement will be occupied or unoccupied during construction;
- (M) Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions; and

(N) Whether the contracting agency or state agency has, or has retained under contract, and will use contracting agency or state agency personnel, consultants and legal counsel that have necessary expertise and substantial experience in alternative contracting methods to assist in developing the alternative contracting method that the contracting agency or state agency will use to award the public improvement contract and to help negotiate, administer and enforce the terms of the public improvement contract.

B. Summary Description of the Fourth Bus Base Project

As TriMet's bus fleet expands and service increases in coming years, TriMet requires a fourth bus base for operations and maintenance. The 30 acre site located at 4421 NE Columbia Blvd. provides an opportunity to accommodate the expanding bus fleet. With the site's existing buildings and facilities, the site can be developed on a shorter timeframe allowing TriMet to quickly transfer buses to the site for operations and maintenance. This transfer will relieve the pressure on TriMet's current three operations and maintenance facilities, increasing efficiency and performance of operations and maintenance activities. The Columbia site is ideally located for bus operations which will reduce deadheading costs for the Agency. This location and the large size of the site are also conducive to making the site the permanent location for the fourth bus base facility.

The first phase of the project involves repurposing several existing buildings into bus operations and maintenance facilities, a new fueling/service building, a new wash building, new modular buildings for office space, site improvements, public street improvements as required by permitting, site utilities as required for the first phase, and utility stub-outs for a future phase two new operations/maintenance building. The contractor may also be needed to remodel other buildings located on the property for other TriMet uses as needs arise or a program is developed out of the master planning of the property.

C. Critical Factors

The Fourth Bus Base Facility Project ("Project") is a major construction project at an existing developed site which presents unique challenges. TriMet's growing bus fleet and coming shortage of space for the fleet requires the first phase of the project to be expedited.

- a. Public and Worker Safety: Construction must be conducted with extreme attention to public and worker safety, due to the environment of the site with existing buildings and facilities. The potential phasing of the site could lead to construction occurring alongside operations and maintenance activities on-site.
- b. Planning of the Construction Approach and Schedule: Development of a sound construction approach and schedule is critical to expedite the project so that TriMet meets deadlines related to bus storage needs. Because of the bus storage needs and the expedited timeline, it is likely that construction will need to be conducted in phases. Contractor input during the planning and design phase of the Project into the construction phasing plan is essential. Completion of the Project on schedule is essential to the Agency as a whole to provide storage and maintenance services to the expanded TriMet bus fleet. Delays would create problems throughout the Agency and could potentially impact the Public through service failures and increased costs.

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

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

D. Considerations

1. Type, cost and amount of contract

TriMet is planning to utilize a request for proposal process to select a construction manager/general contractor ("CM/GC") to construct the Project. TriMet estimates that the order of magnitude of the first phase of the Project is approximately \$30,000,000-\$40,000,000 depending on schedule and escalation costs. The contract for the CM/GC would only include Phase 1 construction, potential other building remodels, and utility preparations for Phase 2.

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 Columbia Bus Base Facility project within the construction budget and on-time. 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 and extend the length of the project.

4. Public benefits that may result from granting the exemption

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

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

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

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

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

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

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

7. Any likely increases in public safety

A negotiated procurement allows TriMet to evaluate the contractor's safety record and previous project success at the time of selection. The contractor's actual safety performance on similar projects in similar urban environments is crucial to the success of this work. An alternate method of procurement offers TriMet the best opportunity to carefully evaluate the contractor's safety performance during construction.

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

A negotiated procurement allows TriMet to select a contractor with experience and expertise performing this type of work, instead of requiring the selection of a contractor based only on price.

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

The funding for the Project will come from the TriMet general fund. Granting the exemption will not affect the sources of funding, but will increase TriMet's ability to control budget on this complex phased project.

10. *Whether granting the exemption will better enable the contracting agency to control the impact that market conditions may have on the cost of and time necessary to complete the public improvement*

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

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

The technical complexity of the Project is due largely to the facts that the site has existing buildings and facilities that need to be analyzed for suitability of renovation for use in the bus base facility and the expedited timeline required. These requirements will most likely result in a phased approach. A negotiated procurement method allows TriMet to evaluate a contractor's technical experience in similar work at the time of selection.

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

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

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

Some portions of the numerous existing buildings and facilities may be occupied during early construction. Also, there is the potential that operations and maintenance activities could continue during the construction of a permanent new bus maintenance facility during the transition from Phase 1 to Phase 2.

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

The Project will require more than one phase of construction to address project conditions. This consideration suggests that allowing contractor input into construction schedule and means and methods will be important. Such input is only possible through a negotiated procurement.

15. Whether the contracting agency has, or has retained under contract, and will use contracting agency personnel, consultants and legal counsel that have necessary expertise and substantial experience in alternative contracting methods to assist in developing the alternative contracting method that the contracting agency will use to award the public improvement contract and to help negotiate, administer and enforce the terms of the public improvement contract.

TriMet has exempted projects from low bid and utilized alternative procurement methods to select contractors many times in the past, including for the Powell Garage Renovation, 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.

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.