

**Date:** August 8, 2018

**To:** Board of Directors

**From:** Doug Kelsey 

**Subject:** **RESOLUTION 18-08-61 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 CONTRACTOR SERVICES FOR SIGNALS AND COMMUNICATIONS SYSTEMS WORK FOR THE CLEVELAND CREW ROOM RENOVATION PROJECT**

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**1. Purpose of Item**

The attached Resolution exempts from the low bid process a public improvement contract for construction services for TriMet’s Cleveland Crew Room Renovation Systems Work Project (Project), which consists of the design, furnishing, and installation of new signals and communication systems and equipment at the new Cleveland signals and communication building. 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 1<sup>st</sup> Reading
- Ordinance 2<sup>nd</sup> Reading
- Other \_\_\_\_\_

**5. Background**

Cleveland Avenue is a light rail park-and-ride station in Gresham, located just east of Cleveland Avenue. The station is the 26th and final stop eastbound on the Blue Line. Service began here in 1986, when the original light rail opened for service. The Cleveland Station is also expected to be the final stop for the Division Transit Project.

The light rail station at this location consists of a single island platform with rail on both sides, with a building containing both an operator breakroom and signal hut located on the platform. Chronic water leaks have caused significant water damage as well as mold in the wall cavities and ceiling of the building. Environmental assessments were conducted in the building in 2017, and based on these assessments TriMet concluded that it was cost prohibitive to perform the extensive remediation and re-building necessary to make the building safe for its intended uses. Further, the existing systems and communications equipment is also outdated, and cannot be remedied under the current conditions. This Project is part of a larger civil construction project that is occurring under a separate contract. The larger project will replace the current building with two buildings, one for signal and communications equipment (Sig Comm Building) and one for use as an operator break room, which will be large enough to accommodate both current and future light rail, bus, and bus rapid transit operations personnel. This Project is to replace the existing signals and communications equipment by installing new equipment in the new Sig Comm Building.

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 competitive RFP 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, cost control, attention to safety, quality of workmanship, and Minority/Women/Emerging Small Business (M/W/ESB) and workforce diversity programs. Furthermore, the Project will be constructed along an operating light rail line and public transit facility, and it consists of specialized work in train signal and communications equipment, so consideration of these other factors is important.

TriMet has a history of successfully utilizing the competitive RFP process to select contractors for complex construction projects. For example, the Portland-Milwaukie Light Rail Project utilized RFPs to obtain contractors 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 contractor for the Blue Line Station Rehabilitation Project and the eFare Installation Project, both of which, like this one, involve work around existing TriMet facilities that must remain operational 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, and the hearing was held on July 25, 2018. 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 to Resolution 18-08-61 as Exhibit A.

**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' M/W/ESB plans and workforce diversity plans in awarding the contract.

**8. Financial/Budget Impact**

The final amount of work performed on the Project is expected to total approximately \$2,800,000, and is bond-funded. The design work has been included in TriMet's FYs 2017-2019 general fund budget within the Capital Projects and Operations Divisions, and the construction work is included in the capital budget for FYs 2018-2019 and 2019-2020.

**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 is not the preferred option for the reasons outlined above and discussed in the Findings.

## RESOLUTION 18-08-61

### 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 CONTRACTOR SERVICES FOR SIGNALS AND COMMUNICATIONS SYSTEMS WORK FOR THE CLEVELAND CREW ROOM RENOVATION 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 services for the Cleveland Crew Room Renovation Systems Work 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 construction 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:

\_\_\_\_\_  
Recording Secretary

\_\_\_\_\_  
Presiding Officer

Approved as to Legal Sufficiency:

  
\_\_\_\_\_  
Legal Department

**Resolution 18-08-61  
Exhibit A**

**FINDINGS IN SUPPORT OF LOW BID EXEMPTION**

**Signals and Communications Systems Work for the  
Cleveland Crew Room Renovation 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 Cleveland Crew Room Renovation Project (“Project”)**

Cleveland Avenue is a MAX light rail park-and-ride station in Gresham. The station is the 26th and final stop eastbound on the current MAX Blue line. Service began here in 1986, when the original light rail opened for service. The Cleveland Station will be the final stop for bus rapid transit service on the Division Transit Project, expected to open in the spring of 2021.

The station and park-and-ride are bordered to the north by NE 8<sup>th</sup> Avenue and an apartment complex. To the south is the platform and rails, with an apartment building, assisted living facility and a machine shop further south of the tracks. Commercial and industrial businesses lie to the east and west. There is also a multi-modal path that runs along the southern edge of the park-and-ride.

The light rail station at this location consists of a single island platform with rail on both sides, with a building containing both an operator breakroom and signal hut located on the platform. Chronic water leaks have caused significant water damage as well as mold in the wall cavities and ceiling of the building. Environmental assessments were conducted in the building in 2017, and based on these assessments TriMet concluded that it was cost prohibitive to perform the extensive remediation and re-building necessary to make the building safe for its intended uses. Further, the existing systems and communications equipment is also outdated, and cannot be remedied under the current conditions. This Project is part of a larger civil construction project that is occurring under a separate contract. The larger project will replace the current building with two buildings, one for signal and communications equipment (“Sig Comm Building”) and one for use as an operator break room, which will be large enough to accommodate both current and future light rail, bus, and bus rapid transit operations personnel. This Project is to replace the existing signals and communications equipment by installing new equipment in the new Sig Comm building (“Systems Work” or “Project”).

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.



Work for the Project is expected to occur over a two-year period from January 2019 through August 2020.

### **C. Critical Factors**

The Project includes several major construction components constrained to locations in existing light rail right of way. All work will occur under schedule pressures and present many challenges, including the following:

a. The Systems Work must be well-coordinated with the civil, buildings and site work components of the larger project, which are being performed under a second contract. The Systems Work contractor will need to be professional, highly-communicative, efficient and organized in order to work alongside the second construction team.

b. Replacement of the rail signal and communications equipment has implications related to the ability to operate light rail. Completion of the Project on schedule is critical to minimize potential impacts to the public, transit operations, and adjacent businesses. TriMet must gain as much schedule efficiency as possible and minimize any shutdowns of the light rail system.

c. Construction access is constrained because the Systems Work is located within existing light rail right of way, with limited access and staging areas. The Project is also adjacent to vehicular, pedestrian, and bicycle traffic in the park-and-ride as well as bicycle and pedestrian traffic on the City's multi-modal path. It is critical that disruption to the public and public transit be coordinated and minimized. It is imperative that the contractor carefully consider access and construction phasing, maintain safeguards to TriMet employees and the public, and minimize impacts to revenue operations.

TriMet believes that selection of a contractor with experience and expertise in the design and construction of 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 negotiated request for proposal ("RFP") process (non-low bid) to select a contractor for the Systems Work. TriMet estimates that the order of magnitude for the Systems Work is approximately \$2,800,000.

#### *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 to compete for the Project. These steps will include advertisement in the Daily Journal of Commerce and TriMet's internet



procurement system 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.

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 for the selection of a contractor and team members 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 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 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*

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.

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. 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.

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

Construction costs are highly dependent upon the design, staging, access, and construction methods, each of which varies considerably among designers and contractors. The Project, which will consist of replacing and installing new signal and communication system components within active track and energized overhead catenary wires adjacent to an active park-and ride and city multi-modal path while coordinating efforts with another contractor, will require highly specialized expertise. 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.

7. *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.

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 utilizing a negotiated procurement to secure a contractor for this type of project puts TriMet in the best position to successfully complete a project 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.

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

The project will be funded through bond proceeds. Granting the exemption will not affect the sources of funding, but will increase TriMet's ability to control budget.

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*

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.

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

This Project will replace and reconstruct portions of the existing signals and communications systems at the Cleveland Light Rail 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.

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

The Project involves replacing signals and communication systems and associated utilities at the park-and-ride light rail station. The park-and-ride, station platform, and adjacent multi-use path will all remain in service to light rail, pedestrian and bicycle traffic, and vehicular traffic during construction. 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.

*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 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.

*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 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. 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.