

Date: July 24, 2019

To: Board of Directors

From: Doug Kelsey 

Subject: **RESOLUTION NO. 19-07-57 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) BOARD OF DIRECTORS, ACTING IN ITS CAPACITY AS THE TRIMET CONTRACT REVIEW BOARD, AUTHORIZING A SPECIAL PROCUREMENT EXEMPTION FOR PROFESSIONAL LEARNING AND DEVELOPMENT SERVICES**

1. Purpose of Item

This Resolution requests that the TriMet Board of Directors (Board), acting in its capacity as the TriMet Contract Review Board (TCRB), authorize a special procurement exemption for professional learning and development services (Services). Approval of this Resolution will allow TriMet to conduct an alternative procurement process for the Services.

2. Type of Agenda Item

- Initial Contract
- Contract Modification
- Other: Special Procurement Exemption

3. Reason for Board Action

This special procurement exemption must be approved by the TriMet Contract Review Board in accordance with state law and the TCRB Rules.

4. Type of Action

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

5. Background

Several years ago, TriMet Labor Relations/Human Resources instituted the E3 - Engage, Empower and Expand - Program (Program) for learning and development opportunities for non-union employees. The Program supports one of TriMet's Business Plan's Strategic Goals of strengthening the TriMet team. The Program offerings include management skills, professional development, organizational citizenship, computer skills, and leadership development courses. The Program's learning and development courses and activities are designed to provide rewarding and beneficial learning experiences. The goal is to equip employees with the tools, resources, knowledge, and skills needed to further develop in their professional roles at TriMet.

In order to support and sustain this program, Human Resources needs to procure and contract with learning and development professionals for a variety of courses. In March 2017, TriMet staff requested a Special Procurement Exemption for these services for a period of two years. The Board authorized that exemption via Resolution 17-03-25. To date, TriMet has entered into contracts with approximately ten (10) vendors as a result of this process, and the E3 program has continued to grow.

Given the success of that special procurement, TriMet staff believe that it is in the best interest of the Agency to continue this process for establishing contracts for Professional Learning and Development Services.

ORS 279B.085 and TCRB Rule IV(A) provide that, acting in its capacity as the TCRB, the Board may authorize a special procurement exemption if it finds that a written request submitted for authorization demonstrates that the use of a special procurement meets the following requirements:

(a) Is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts; and

(b)(1) Is reasonably expected to result in substantial cost savings to the agency or to the public; or

(2) Otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055 (competitive sealed bidding), 279.060 (competitive sealed proposals), 279B.065 (small procurements) or 279B.070 (intermediate procurements), or under any rules adopted thereunder.

6. Procurement Process

Upon approval of this exemption, TriMet will issue a Request for Professional Learning and Development Applications (Request for Applications). The Request for Applications will operate in the same way as an Invitation to Bid and Request for Proposals, and would be posted on TriMet's vendor registration system, TriP\$. It would solicit applications from qualified and interested firms and individuals that have the experience and qualifications to be able to provide a professional learning or development course to TriMet under the Program. The opportunity would be open for the period of two years and TriMet would accept applications from qualified and interested firms and individuals throughout the course of the two year period. TriMet would reissue the request at least every two years, as required to meet TriMet's business needs. TriMet staff will review applications on a rolling basis as described below.

TriMet will convene an evaluation committee (EC) comprised of staff from Human Resources and other internal stakeholders to review and evaluate each application submitted to determine if it meets the minimum requirements and demonstrates the capability to provide professional learning and development opportunities for TriMet. Once an application has been reviewed and evaluated, the EC will approve the application for a contract or may seek additional information. Contracts executed as a result of the process would be requirements-based for a five year term, and would include agreed-upon rates for the provision of professional learning and development courses. Courses would be offered under the Program at the discretion of Human Resources based upon need and internal demand, as well as budgetary approval. Rates for courses offered will be negotiated for fairness and reasonableness, and each contract will have a price adjustment clause to allow rate increases on an annual basis not to exceed the difference in the Consumer Price Index for the Portland-Salem metropolitan area from the previous year.

The goal of this alternative process is to accumulate a pool of professional resources to support and sustain the Program into the future, and to allow the Program to grow and evolve. Initially, TriMet intends to solicit applications from professional learning and development firms in specific categories. Additional categories may be added during each two-year period as requests and demand for additional courses occur. Having the Request for Applications be open for a period of two years provides a much longer opportunity for interested and qualified firms and individuals to submit an application, which furthers the goal of accumulating a pool of professional resources to support and sustain the Program. Reissuing the solicitation on a regular basis allows for a reevaluation of TriMet's needs and for new firms to provide services to TriMet.

Pursuant to ORS 279B.085 and TCRB Rule IV(A), the proposed process will not encourage favoritism in awarding of public contracts or substantially diminish competition. The goal of this alternative process is just the opposite. Human Resources wants to identify and contract with as many applicable, relevant and qualified professional learning and development firms and individuals as possible. The proposed process is also expected to result in substantial cost savings to the Agency because it would avoid the requirement for staff to procure and contract for the Services on a separate and recurring basis.

The proposed process substantially promotes the public interest in a manner that could not practicably be realized by requirements that are applicable under ORS 279B.055 (competitive sealed bidding), 279.060 (competitive sealed proposals), 279B.065 (small procurements) or 279B.070 (intermediate procurements) or under any rules adopted thereunder. The public interest is promoted because the Request for Applications would be open for a sufficiently long period to allow interested and qualified firms and individuals the opportunity to submit an application to provide courses to TriMet in the categories being solicited. It allows for continued support for the Program as it evolves and would not require interested and qualified applicants to respond to multiple Requests for Proposals as would be required if this alternative process is not approved.

7. **Diversity**

Use of the proposed alternative Request for Applications process will allow TriMet to identify and recruit disadvantaged, minority-owned, women-owned and emerging individuals and firms (D/M/W/ESB), as TriMet previously has done for specific internal learning and development courses.

8. **Financial/Budget Impact**

Funding for the Program is currently covered under Labor Relations/Human Resource's budget. Contracts resulting from the proposed process would be requirements based, and courses offered under the Program would be determined by Human Resources within the approved budget.

9. **Impact if Not Approved**

If this exemption is not approved, TriMet may not be able to continue the Program because it would require conducting regular and multiple RFP processes in order to support and sustain it. The small size of these training engagements does not warrant the same type of comprehensive, sealed-solicitation processes utilized for other, larger service contracts. The TCRB's approval of this exemption will enhance the time, efficiency and effectiveness of TriMet staff in managing the Program.

RESOLUTION NO. 19-07-57

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TRANSPORTATION DISTRICT OF OREGON (TRIMET) BOARD OF
DIRECTORS, ACTING IN ITS CAPACITY AS THE TRIMET CONTRACT
REVIEW BOARD, AUTHORIZING A SPECIAL PROCUREMENT
EXEMPTION FOR PROFESSIONAL LEARNING AND DEVELOPMENT
SERVICES**

WHEREAS, the Tri-County Metropolitan Board of Directors (Board), acting in its capacity as the TriMet Contract Review Board (TCRB) has authority under ORS 279B.085 and TCRB Rule IV to authorize a special procurement exemption pursuant to a written request submitted by the Agency, and upon making the findings described in ORS 279B.085(4); and

WHEREAS, the Agency has submitted a written request to the TCRB for approval of a contract-specific special procurement, which is set forth in the attached Exhibit A;

NOW, THEREFORE, BE IT RESOLVED:

1. That the TCRB hereby approves the written request for a contract-specific special procurement set forth in the attached Exhibit A.
2. That the TCRB hereby finds that the written request set forth in Exhibit A demonstrates that the use of a special procurement:
 - (a) Is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts; and
 - (b)(1) Is reasonably expected to result in substantial cost savings to the agency or to the public; or (2) Otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055 (competitive sealed bidding), 279.060 (competitive sealed proposals), 279B.065 (small procurements) or 279B.070 (intermediate procurements), or under any rules adopted thereunder.

Dated: July 24, 2019

Attest:

Presiding Officer

Recording Secretary

Approved as to Legal Sufficiency:



Legal Department

**RESOLUTION 19-07-57
EXHIBIT A**

WRITTEN REQUEST FOR CONTRACT-SPECIFIC SPECIAL PROCUREMENT

Background

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In order to support and sustain this program, Human Resources needs to procure and contract with learning and development professionals for a variety of courses. In March 2017, TriMet staff requested a Special Procurement Exemption for these services for a period of two years. The Board authorized that exemption via Resolution 17-03-25. To date, TriMet has entered into contracts with approximately ten (10) vendors as a result of this process and the E3 program has continued to grow.

Given the success of that special procurement, TriMet staff believe that it is in the best interest of the Agency to continue this process for establishing contracts for Professional Learning and Development Services.

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