

**Date:** February 24, 2016

**To:** Board of Directors

**From:** Neil McFarlane *Neil McFarlane*

**Subject:** RESOLUTION 16-02-14 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 DESIGN, FURNISH AND INSTALL SERVICES FOR THE CCTV-BASED INTRUSION DETECTION PROJECT

**1. Purpose of Item**

The attached Resolution exempts from the low bid process a public improvement contract for TriMet’s Closed Circuit Television (“CCTV”)-Based Intrusion Detection Project (“Intrusion Detection Project”). Approval of this Resolution will allow TriMet to initiate a competitive Request for Proposals (“RFP”) best value 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**

As part of the Intrusion Detection project, intrusion detection systems will be designed, furnished, installed and tested at TriMet facilities that are security sensitive. These include the Ruby Junction and Elmonica yards and the East Portal Tunnel entrance, with options for the WES Commuter Rail Yard in Wilsonville, the tunnel between Main and Division stations on the Green Line and the Vanport viaduct on the Yellow Line.

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 things 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.

TriMet has a history of successfully utilizing the RFP process to select contractors for complex construction projects. The Portland Milwaukie Light Rail Project utilized RFPs to obtain Construction Manager/General Contractor ("CM/GC") and Design Build ("D/B") contractors, as did the South Corridor Project and the Interstate MAX Project.

The RFP process was chosen for this work because the technology is relatively new and evolving, and therefore TriMet staff believes that providing performance-based program requirements is preferable to a traditional design-bid-build form of project delivery with a proscribed system specification. Performance-based requirements will allow the flexibility of contractor input, resulting in the best technological solution for TriMet. In addition, the design-build delivery method enables TriMet to accelerate the construction schedule, which is important because intrusions at the above-mentioned facilities have been a recurring problem.

The agency's written findings in support of the exemption, which are required by ORS 279C.335, are attached to Resolution 16-02-14 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 February 11, 2016. There was one attendee, representing a vendor interested in the Intrusion Detection Project. He had no comment on the draft findings.

## **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. Price is expected to account for 40 percent of the total score.

**7. Diversity**

Use of a competitive RFP process allows TriMet to consider proposers' M/W/ESB plans and workforce diversity as a criterion in awarding the contract.

**8. Financial/Budget Impact**

The Intrusion Detection Project is included in the Capital Program budget for FY 2015-16, with additional funding expected to be included in future budgets. If all six locations end up being included, the total cost is expected to be approximately \$1,650,000.

**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 16-02-14

### 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 DESIGN, FURNISH AND INSTALL SERVICES FOR THE CCTV-BASED INTRUSION DETECTION 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 Design, Furnish and Install Services for the CCTV-Based Intrusion Detection project (“Contract”); 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 Design, Furnish and Install Services for the CCTV Intrusion Detection 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 work subject to final Board approval of the contract award.

Dated: February 24, 2016

Attest:

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

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

Approved as to Legal Sufficiency:

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

**RESOLUTION 16-02-14  
EXHIBIT A**

**FINDINGS IN SUPPORT OF LOW BID EXEMPTION**

**CCTV-Based Intrusion Detection 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 CCTV-Based Intrusion Detection Project**

As part of the CCTV-Based Intrusion Detection project (“Intrusion Detection Project”), intrusion detection systems will be designed, furnished, installed and tested at TriMet facilities that are security sensitive. These include the Ruby Junction and Elmonica yards and the East Portal Tunnel entrance, with options for the WES Commuter Rail Yard in Wilsonville, the tunnel between Main and Division stations on the Green Line and the Vanport viaduct on the Yellow Line.

## **C. Critical Factors**

The design, furnishing and installation of intrusion detection systems at these facilities present many challenges, including the following:

a. TriMet staff and local engineering expertise in this area of CCTV-Based Intrusion Detection systems is limited, as the technology is relatively new and evolving. Therefore, a traditional design-bid-build form of project delivery with a well-defined system description and specification is difficult to achieve at this point.

b. Intrusions at the facilities listed above are a recurring problem. A recent example is the ‘graffiti tagging’ of commuter rail vehicles in Wilsonville. Due to the inherent safety and security issues related to intrusion, completion of construction in accordance with an aggressive schedule is beneficial. This method of procurement offers significant advantages in terms of accelerating the construction schedule, relative to the traditional design-bid-build project delivery.

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

## D. Considerations

### 1. *Type, Cost and Amount of Contract*

TriMet is planning to utilize a request for proposal (“RFP”) process to select a contractor to design, furnish and install CCTV-Based Intrusion Detection systems at TriMet facilities. TriMet estimates that the order of magnitude of the project is approximately \$950,000 for the three facilities previously referenced.

### 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. 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 maximize the number of available proposals. 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 RFP procurement process generally encourages significant competition between contractors with accomplished performance records.

An RFP 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*

An RFP 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 Intrusion Detection Project within the budget. 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 of the CCTV-Based Intrusion Detection system 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*

The public will benefit from involving the contractor at an early stage of the design process to develop specific concepts that match the needs of TriMet's Intrusion Detection Systems at these facilities. TriMet will engage the contractor in developing implementation and testing plans based on these design concepts. This will help to ensure realistic solutions to schedule, cost, and any impact to transit service during the work, as well as public safety concerns. The community and TriMet will also benefit by the selection of a contractor that is sensitive to TriMet's and the public's expectations and will get the work done quickly, safely, and in accordance with planning work it has provided and supported.

*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 the final design used for the 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 schedule pressures, the cost of evaluation or redesign efforts, and the time required for additional public processes.

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

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

This Project will require expertise in designing and installing intrusion detection systems to protect valuable public assets. The contractor will have to complete the required scope of work and implement a solution within a relatively compressed timeframe. Any delay will impact TriMet's ability to sufficiently protect its assets and could result in additional monetary costs to and potential disruptions to TriMet service.

An RFP procurement process is the best method for TriMet to identify a contractor with the specialized 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. Each Project site contains valuable public assets that are susceptible to vandalism. Additionally, the overall safety of TriMet staff and the community at large is compromised if intruders have unauthorized access to these facilities. 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. An RFP procurement allows TriMet to evaluate the contractor's safety record and previous project success at the time of selection.

*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 a utilizing an RFP procurement to secure similar types of contracts puts TriMet in the best position to successfully complete a project while minimizing schedule, cost and safety risk. An RFP 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 this Project is through TriMet's general fund. Granting of the exemption will not affect the sources of funding for this public improvement.

*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*

An RFP procurement will allow TriMet to mitigate market risk by allowing proposers to consider market conditions throughout design of the Intrusion Detection Project and take into consideration evolving technology and products.

*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 Intrusion Detection Project is due largely to the fact that the technology is relatively new and evolving. An RFP procurement method allows TriMet to evaluate a contractor's technical expertise and experience in similar work and results achieved at similar facilities.

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

The Intrusion Detection Project is for the installation of new intrusion detection systems at three facilities. It does not involve new construction or a remodel of an existing structure, but rather installation of CCTV-Based features at several facilities.

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

The three TriMet facilities will remain open to the public during construction, requiring selection of a contractor with an excellent history of safety performance.

*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 Intrusion Detection Project will require several phases of construction to address project conditions, including the fact that the three facilities are spread over a large geographic area. This consideration suggests that allowing contractor input into schedule and means and methods of installation 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 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 CCTV-Based Intrusion Detection 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 and the public.