

Date: November 14, 2018

To: Board of Directors

From: Doug Kelsey

Subject: **RESOLUTION 18-11-75 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 CONTRACTS FOR CONSTRUCTION SERVICES FOR THE BLUE LINE STATION REHABILITATION PROGRAM**

1. Purpose of Item

The attached Resolution exempts from the low bid process a class of public improvement contracts for construction services for TriMet's Blue Line Station Rehabilitation Program (Program), which consists of construction and rehabilitation of TriMet's existing Banfield and East Burnside MAX stations. The Program will be divided in to several solicitations. Approval of this Resolution will allow TriMet to initiate a series of competitive Request for Proposals (RFP) processes, to select the most highly qualified proposers for award of these contracts.

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

In 2014, TriMet issued solicitations for design services and construction canager/general contractor services for the first phase of this Program. Those solicitations contemplated the completion of fourteen stations over five years. Due to funding limitations, design has been completed on four of the stations and construction on three. The Program will involve

construction on the remaining stations, which include the Hollywood Transit Center, NE 60th Ave, NE 82nd Ave, Gateway/NE 99th Transit Center, E 102nd Ave, E 172nd Ave, E 181st Ave, Ruby Junction/E 197th Ave, Gresham Central Transit Center, and Cleveland Ave. Construction will be conducted immediately adjacent to and within the operating envelope of the Banfield and East Burnside portion of TriMet's light rail system. As stated above, this work will be divided into multiple solicitations with similar station types being packaged together. TriMet staff will determine whether to use design-build or CM/GC contracting methodology, depending on the stations involved in the package. Most of the work will focus on station and platform improvements including shelter rehabilitation, updated lighting and amenities, access/fare control, and safety and security improvements.

The Eastside Blue Line section is extremely active and serves TriMet's Blue, Red, and Green Lines. Construction needs to be conducted with careful attention to safety. Additionally, contractor involvement at the early stages of the design process helps ensure that optimum construction means and methods are used. This also allows for advanced planning of construction sequencing and helps limit the disruption to ongoing operations, thereby reducing the impacts on TriMet customers and operations personnel.

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 contractors 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. The Program will be constructed along an operating light rail line and public transit facility.

TriMet has a history of successfully utilizing the 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 previous 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 October 19, 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 18-11-75 as Exhibit A.

6. Procurement Process

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

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 Program is expected to total approximately \$31,500,000. Funding for the project is through the TriMet general fund and will be included in future fiscal year Capital Projects budget requests.

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 18-11-75

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 CONTRACTS FOR CONSTRUCTION SERVICES FOR THE BLUE LINE STATION REHABILITATION PROGRAM

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 public improvement contracts for construction services for the Blue Line Station Rehabilitation Program (Program); 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 Program; 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 contracts for construction services for the Program (Contracts), 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 Contracts are exempt from the competitive bidding requirements of ORS Chapter 279C.

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

Dated: November 14, 2018

Attest:

Presiding Officer

Recording Secretary

Approved as to Legal Sufficiency:



Legal Department

EXHIBIT A

RESOLUTION NO. 18-11-75

FINDINGS IN SUPPORT OF LOW BID EXEMPTION

Blue Line Station Rehabilitation Program

A. Competitive Bid Exemption under Oregon Statute

Oregon law requires all local contracting agency public improvement contracts to be procured by competitive 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 that (2) the award of the contract under the exemption will likely result in substantial cost savings to the agency 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, but are not limited to, the following:

1. Operational, budget and financial data;
2. Public benefits;
3. Value engineering;
4. Specialized expertise required;
5. Public safety;
6. Market conditions;
7. Technical complexity; and
8. Funding sources.

B. Summary Description of the Blue Line Station Rehabilitation Program

There are several locations along the original Banfield Light Rail Alignment, also known as the Blue Line, where the MAX Stations are in need of repair in order to continue to support the long-term operation of light rail on this alignment. The Blue Line opened in 1986, and the multi-year Blue Line Station Rehabilitation Program ("Program") will renovate and upgrade existing shelters, platform amenities, station lighting, and establish paid fare zones at platforms from 42nd/Hollywood east to the Cleveland station, excluding the recently renovated Rockwood/E 188th, Civic Drive, Gresham City Hall, E 122nd Ave, E 162nd Ave, and E 148th Ave platforms.

C. Critical Factors

Construction within and adjacent to the operating TriMet light rail system must be conducted with extreme attention to public safety. Designs and cost estimates must take into consideration specific construction means and methods in order to allow advanced planning of the construction sequence and limits of the construction activities. Furthermore, this portion of the light rail alignment is extremely active, serving multiple rail lines. It is critical that disruption to operations be minimized during construction, and that construction access and staging alternatives are carefully developed and evaluated in order to limit impacts.

D. Findings

1. Operational, budget, and financial data

The budget for the Program is fixed and has limited contingency. Because of the complex interactions between the construction work and TriMet's operations and customers, TriMet seeks to minimize cost impact of design changes, construction delays, and contractor misunderstandings inherent in the traditional design-bid-build process in order to control Program budget. Involving the construction contractor during design is a proven approach for containing costs through implementation of more constructible designs that are reflective of realistic construction means and methods. Early construction contractor involvement also allows the owner to obtain market-based pricing that assists in decision-making and budget adherence during final design. Delays in or inefficient performance of this work would lead to increased operational costs to TriMet due to service disruptions.

Finding: For the reasons stated above, a procurement process that allows involvement of the construction contractor during final design will allow TriMet to better control costs and protect operations requirements at station locations. Low bid provides insufficient opportunity to involve the construction contractor during design, while the Request for Proposals ("RFP") selection process enables this interaction.

2. Public benefits

The public will benefit directly from a final design that considers contractor means and methods and from involving the contractor early to develop specific staging and access plans for construction within the light rail alignment. It is critical for this Program to maintain transit service during construction and minimize disruption to service while doing so. TriMet will engage the contractor in developing means and methods, as well as staging and access plans during the design work. This will help to ensure realistic solutions to schedule, cost, and transit service during construction, as well as public safety concerns. The community and TriMet will also benefit by the selection of a construction contractor that is sensitive to the public's expectations and will get the work done

quickly, safely, and in accordance with construction planning work it has provided and supported.

Finding: Low bid offers no opportunity for the construction contractor to work with TriMet and its designer during Program design, and no opportunity to work with the contractor to develop and select staging and access alternatives that are minimally disruptive to transit service and the public in balance with established Program budgets. The RFP process is the best method to identify a contractor who has proven experience in working with all the affected stakeholders to create the least disruptive design and construction plan.

3. Value engineering

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 construction 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 construction schedule pressures, the cost of evaluation or redesign efforts, and the time required for additional stakeholder processes.

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.

Finding: The RFP procurement method streamlines the value engineering process, and allows TriMet to capture value engineering ideas prior to completion of final design, thereby maximizing potential savings.

4. Specialized expertise required

This Program will require expertise in construction near active light rail tracks and energized overhead catenary wires, and will require closely coordinated temporary shutdowns of certain areas of active MAX stations. The contractor will have to complete the required scope of work and restore the stations to a safe operating condition within pre-defined work windows. Any construction delay will impact TriMet's ability to provide service and may result in additional costs to TriMet for temporary service. The contractor must have expertise in construction of facilities that are in operation in order to minimize service disruptions.

Finding: An RFP procurement process employs 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. It puts the owner in the best position to select a construction contractor who is a proven performer for the specific, specialized work required for this Program. Low bid entails more risk that the needed specialized expertise may not be obtained.

5. Public safety

TriMet seeks to reduce public safety risk as much as practical. The Program site includes close proximity to operating light rail and pedestrian accesses to and from light rail stations. TriMet plans to continue its operations during some of the preparatory demolition and finish work, only temporarily shutting down service when absolutely necessary. TriMet requires a contractor with a successful performance record for safety and protection of the public during this type of work. A negotiated procurement allows TriMet to evaluate the contractor's experience and record in working safely and effectively near the public and its operating system, and allows TriMet to evaluate the contractor's safety record on past Programs.

Finding: An RFP procurement offers TriMet the best opportunity to carefully evaluate the contractor's prior safety performance and mitigate safety risk in a collaborative way through the contractor's work plans.

6. Market conditions

Construction market conditions continue to be highly volatile. Workforce shortages and rapidly changing commodity prices have continued to cause significant swings in escalation rates and pricing. A negotiated procurement will provide a benefit to TriMet by increasing cost and budget certainty for portions of the work occurring later in the term of this Program. A negotiated procurement will allow TriMet to mitigate market risk by allowing proposers and TriMet to discuss and apportion this risk.

Finding: An RFP procurement will provide a benefit for fiscal planning. 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.

7. Technical complexity

Light rail work in TriMet's active right-of-way is complex and specialized. It requires understanding of the many systems that must be maintained during construction. These include infrastructure systems such as train signals, overhead power, communications, closed circuit television, station lighting and ticket vending machines. This requires complex planning and coordination with multiple disciplines of construction contractors and TriMet operations personnel.

Finding: The technical complexity involved in delivering the Program at high public use locations during operations requires a contractor that has been successful with construction in similar contexts, including working in operating traffic corridors and active pedestrian work areas, while minimizing disruption to those operations. Low bid procurement does not allow for evaluation and scoring of a bidder's technical qualifications in these areas. Failure to perform the work in accordance with the agreed-upon Program objectives would result in adverse impacts to the public and TriMet operations personnel, as well as adverse cost impacts to TriMet. A negotiated procurement allows TriMet to select a contractor with due consideration given to the contractor's past technical performance in similar work.

8. Funding sources

Funding for the Program is through the TriMet general fund. General funds are limited due to agency budget pressures.

Finding: Early and continued budget certainty is highly desired. A negotiated procurement is a better method than low bid to achieve earlier budget certainty.

9. Unlikely to encourage favoritism or substantially diminish competition

The steps taken to ensure maximum competition and fair opportunity for this Program will include advertisement in the Daily Journal of Commerce and TriMet's public procurement system (TriP\$), as well as scheduling a pre-proposal conference and appointing an unbiased evaluation committee.

Finding: By marketing this opportunity and attempting to notify all known potential respondents, TriMet will implement a process that does not encourage favoritism or substantially diminish competition.

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 Program, 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, women-owned and emerging small businesses, which would not be possible in traditional low bid procurement.

10. Cost savings

An RFP procurement process will allow TriMet to select a contractor based upon performance criteria as well as price competition. By selecting the most qualified

contractor, TriMet will minimize the risk of serious delays, cost increases, and other costly impacts to the public.

In TriMet's experience, the low bid contracting method for work of this nature is likely to result in contractor initiated change orders, since no early dialog occurs regarding Program assumptions and contractors must, as part of the low bid process, assume optimum conditions to remain competitive. As a result, the overall cost of the Program may increase well beyond the initial contract price. In contrast, for light rail work TriMet has procured through the RFP procurement method, changes and claims during construction were significantly less than the low bid Westside-Hillsboro light rail extension. This provides TriMet with increased budget certainty and an increased ability to manage available funds.

Use of a negotiated procurement method allows TriMet to select a contractor based upon performance and price competition, and allows selection of a contractor whose proven experience matches the nature of the required work. By selecting the most qualified contractor and getting that contractor's input in the design process, TriMet minimizes the risk of coordination delays and Program cost risks.

Finding: Award of the contract pursuant to the exemption will result in substantial cost savings through risk reduction and increased budget certainty to TriMet.

E. Exemption from Low-Bid Contracting and Preferred Construction Procurement Method: Request for Proposal Process

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.