


Date: July 24, 2024

To: Board of Directors

From: Sam Desue, Jr. 

Subject: **RESOLUTION NO. 24-07-45 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET), ACTING AS THE TRIMET CONTRACT REVIEW BOARD (TCRB), AUTHORIZING AN EXEMPTION FROM LOW BID REQUIREMENTS FOR A CONTRACT FOR CONSTRUCTION SERVICES FOR THE TRIMET POWELL GARAGE GANTRY CHARGING INFRASTRUCTURE PROJECT**

1. Purpose of Item

This Resolution requests that the TriMet Board of Directors (Board), acting as the TriMet Contract Review Board (TCRB), authorize an exemption from low bid requirements in order to procure a contract for construction services (Contract) for the Powell Garage Gantry Charging Infrastructure Project (Project).

2. Type of Agenda Item

- Initial Contract
- Contract Modification
- Other: Exemption of a Contract from Low Bid Requirements

3. Reason for Board Action

An exemption from the competitive low bid approach and authorization of the use of a competitive Request for Proposals (RFP) process 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

This Project is part of continuing improvements to the Powell Garage Facility, and includes infrastructure and equipment required to support and advance TriMet’s Zero Emission Bus Fleet Transition Plan. The current vehicle charging capacity at Powell Garage can support simultaneous charging for 24 vehicles, but as the Zero Emission Bus procurement progresses, TriMet will need to significantly increase charging capacity, in phases. In this first phase of the Project, an initial section of painted, galvanized steel gantry structure will be erected over nine existing bus positions. The gantry structure ultimately will support fifty-four (54) pantograph chargers mounted over vehicle positions.

Construction activities will take place while Powell Garage remains operational. This will require the contractor to strictly adhere to schedule and construction constraints, plan all activities to avoid and/or minimize disruptions to daily operations, and communicate clearly and accurately concerning access to the construction site.

Use of the Request for Proposals (RFP) “best value” process is preferred for procuring a contractor for this Project. However, in order to use an RFP for this procurement, an exemption from the low bid approach ordinarily required by ORS Chapter 279C must be granted by the Board, acting as the TriMet Contract Review Board (TCRB). An exemption from low bidding will enable TriMet to select its construction contractor using a competitive best value solicitation process.

Under the traditional low bid procurement method, TriMet may consider only price in selecting a contractor. In contrast, the competitive, best value Request For Proposals (RFP) process allows TriMet to select contractors upon consideration of many factors, including price. Such additional factors may include experience in similar work, schedule performance, cost control, attention to safety, coordination with the owner’s critical daily operations, ability to phase construction activities, capacity for stakeholder communications, quality of workmanship, utilization of small businesses, workforce diversity and recognition of Certification Office for Business Inclusion and Diversity (COBID certification), along with price.

ORS 279C.335(2) and TCRB Rule V(A) provide that the Board, acting in its capacity as the TCRB, may exempt a contract from competitive sealed bidding requirements upon approval of written Findings made by the Agency that support the following:

- (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.

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 class of public improvement projects. Notification of the public hearing on the draft Findings was published in the Daily Journal of Commerce, and the hearing was held on July 2, 2024. There was one attendee, and no comments were received.

The Agency’s written Findings in support of the exemption, which are required by ORS 279C.335, are attached as Exhibit A to this Resolution.

6. Description of Procurement Process

Upon approval of this exemption, a competitive Request for Proposals (RFP) process will be used to select the general contractor that presents the best value to the Agency, based on the criteria described in the RFP.

7. Diversity

Use of the competitive RFP process will allow TriMet to consider the proposer’s workforce diversity and its proposed utilization of small business and COBID-certified subcontractors when selecting the contractor.

8. Financial/Budget Impact

The budget for these services is included in TriMet's five-year Capital Improvement Plan (CIP) and budget forecasts.

9. Impact if Not Approved

If this exemption were not approved, TriMet would have to procure the construction services for this Project via the traditional low-bid procurement method. This is not the preferred option for the reasons outlined above and presented in the Findings.

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WHEREAS, the TriMet Contract Review Board (TCRB) has authority under ORS 279C.335 and TCRB Rule V to exempt a public improvement contract (Contract) for construction services for the TriMet Powell Garage Gantry Charging Infrastructure Project (Project) from the competitive bidding requirements of ORS Chapter 279C: and

WHEREAS, the TCRB may grant such an exemption only upon approval of written Findings submitted by the Agency showing compliance with ORS 279C.335; and

WHEREAS, a public hearing was held on July 2, 2024 on the Agency's draft written Findings in support of an exemption from competitive bidding requirements for the Contract, and no objections were heard; and

WHEREAS, TriMet has submitted to the TCRB the written Findings required by ORS 279C.335, attached hereto as Exhibit A, in support of an exemption from competitive bidding requirements for the Contract; 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 the specified 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 Project, subject to final Board approval of the Contract award.

Dated: July 24, 2024



Presiding Officer

Attest:

Falesha Thrash

Recording Secretary

Approved as to Legal Sufficiency:



Legal Department

EXHIBIT A

RESOLUTION NO. 24-07-45

FINDINGS IN SUPPORT OF LOW BID EXEMPTION

The TriMet Powell Garage Gantry Charging Infrastructure Project

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 (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. Reducing risks to the agency;
6. Public safety;
7. Market conditions; and
8. Technical complexity; and
9. Funding sources
10. Unlikely to Encourage Favoritism or Substantially Diminish Competition
11. Exemption from Low-Bid Contracting and Preferred Construction Procurement Method: Request for Proposal Process.

B. Summary Description of the TriMet Powell Garage – Gantry Charging Infrastructure Project (Project)

Part of continuing improvements to the Powell Garage Facility, this project scope includes infrastructure and equipment required to support and advance TriMet's Zero Emission Bus fleet transition plan. The current vehicle charging capacity at Powell Garage can support 24 charging vehicles simultaneously, but as Zero Emission Bus Procurement progresses TriMet will need to increase charging capacity significantly in phases. In this phase of work, an initial section of painted, galvanized steel gantry structure will be erected over (9) existing bus tracks, that will ultimately support (54) pantograph chargers mounted over vehicle positions. Construction activities will take place while Powell Garage remains operational, requiring strict adherence to schedule and construction limits, scheduling all activities to avoid and/or minimize disruptions to daily operations and clear and accurate communication about construction access to the site.

C. Critical Factors

This is a complex Project that requires reducing impacts to all users of the Powell Garage facility while maintaining an aggressive schedule to reach substantial completion as soon as practicable.

Finding: TriMet believes that selection of a contractor with experience and expertise in the construction of similar projects will help meet these challenges. To ensure the selection of such a contractor, and provide the necessary coordination prior to negotiating a final price, an exemption from low-bid is being requested.

D. Findings

1. Operational, budget and financial data

TriMet is planning to utilize a competitive Request for Proposal (RFP) process. An RFP process will allow TriMet to select a contractor based upon qualifications in addition to price. The evaluation criteria will focus on selecting a contractor with the specialized skills, experience with this type of project, and ability to prioritize equity with a goal of maximizing opportunities for firms certified by the Certification Office for Business Inclusion & Diversity (COBID).

An RFP will allow TriMet to select a contractor based upon performance criteria in addition to price competition. Best value 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 impacts to the public, thereby increasing the likelihood of completing the project within the construction budget. In TriMet's experience, the low bid contracting method for work of this nature is likely to result in contractor-initiated change orders, which often cause the overall cost of the project to increase beyond the initial contract price.

TriMet seeks to reduce risk of claims and change orders which may arise from the unpredictability/lack of alignment of multiple permit approvals, and material procurement may not align at project start. Where a low-bid contract would have the reasonable expectation to be able to start and complete construction in a continuous series of events this procurement method will allow some negotiation with contractors prior to selection to confirm their plan and track record on projects with similar complexities.

Because of the need to limit and ensure predictable impacts to operations, TriMet seeks to understand contractor assumptions concerning means and methods inherent in the traditional design-bid-build process prior to selecting a contractor. Delays in or inefficient performance of this work would lead to increased operational costs to TriMet due to service disruptions.

Finding: Best value RFP process that will allow TriMet to better address uncertainty in the procurement and delivery process.

2. Public benefits

The public will benefit directly from a reduced risk of extended and/or unplanned service disruptions and construction impacts to Powell Garage bus maintenance and operations. This will help TriMet understand contractor assumptions increasing the predictability of schedule and cost.

A RFP method will allow TriMet to evaluate contractor means and methods and their impacts. The public will benefit from a selection process that includes the opportunity to evaluate contractor experience and track record with minimizing operational impacts.

In addition, an RFP procurement will provide greater potential to incentivize DBE participation.

Finding: An RFP approach will also provide an opportunity to identify a contractor who has a proven track record of minimizing the operational impacts and uncertainties of construction.

3. Value Engineering

While the design scope is relatively defined, the advance coordination that is possible with an alternative delivery method often results in better, more efficient outcomes.

Finding: This delivery method provides the opportunity to evaluate construction approach, with the potential for arriving at more economical solutions.

4. Specialized expertise required

Specialized expertise is required for commissioning and integration of electrical vehicle charging equipment at an existing facility within an established and operational bus maintenance yard. The contractor will have to complete the required scope of work with the shortest possible interruption of bus traffic, charging and fuel/wash activities. The contractor must have expertise in construction of new and modifications to existing complex high voltage facilities that need to come online rapidly with minimal delay.

Finding: A non-low bid 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.

5. Reducing risks to the agency

Without proper preparation and coordination, there would be increased risk of an unplanned shutdowns during construction that would have a significant impact on TriMet's Powell Garage Bus service.

Finding: A negotiated procurement will allow TriMet to evaluate contractor's plans and experience in order to reduce the risk of unplanned impacts.

6. Public safety

While there is no significant direct interaction with the public anticipated, TriMet requires a contractor with a successful performance record for safety and protection of the Agency staff during this type of work. A non-low bid procurement allows TriMet to evaluate the contractor's safety experience and record on past similar projects

Finding: A non-low bid approach offers TriMet the best opportunity to carefully evaluate the contractor's prior safety performance.

7. Market conditions

Construction market conditions continue to be highly volatile. Workforce shortages, high demand for construction services, and rapidly changing commodity prices have continued to cause significant swings in escalation rates and pricing. A non-low bid approach will allow TriMet to mitigate market risk by allowing proposers and TriMet to discuss and apportion this risk, as well as to ensure materials are secured as soon as practical and with enough lead time to avoid construction delays.

Finding: A non-low bid procurement will provide a benefit for fiscal planning and opportunity to increase cost certainty by including evaluation of contractor experience and track record with similar project in the selection process.

8. Technical complexity

Installing new electrical charging equipment and infrastructure at an operational bus maintenance and operations facility is necessarily complex and specialized. It requires understanding at a detailed and highly technical level of how the vehicles are charged, serviced and maintained. It will also require coordination with TriMet operations personnel.

Finding: A non-low bid approach allows TriMet to select a contractor with due consideration given to the contractor's past performance on projects with similar technical complexity.

9. Funding sources

Funding for this project is through several federal sources (FTA), and a match of dollars from the Statewide Transportation Improvement Fund (STIF). The FTA demands tight budget controls.

Finding: Early and continued budget certainty is highly desired. A negotiated procurement is a better method than low bid to achieve earlier budget certainty and to ensure the selected contractor has experience with financial report requirements.

10. Unlikely to Encourage Favoritism or Substantially Diminish Competition

The steps taken to ensure maximum competition and fair opportunity for this project 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. Contractor qualifications will play a factor in the selection criteria, but there will also be other criteria that allow for a broader range of competition.

Finding: By marketing this opportunity, notifying a broad range of potential respondents, and providing multiple scored criteria, TriMet will implement a process that does not encourage favoritism or substantially diminish competition.

A non-low bid procurement will also allow TriMet to evaluate the contractor's program for utilizing opportunities for participation by minority and women-owned businesses, which is not possible in traditional low bid procurement.

11. 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 cost savings and other substantial benefits to the Agency.