

EXHIBIT A

RESOLUTION NO. 25-09-49

FINDINGS IN SUPPORT OF LOW BID EXEMPTION

POWELL GARAGE FUEL CELL ELECTRIC BUS (FCEB) MAINTENANCE FACILITY UPGRADE PROJECT

A. Low Bid Exemption under Oregon Statute

Oregon law requires all local contracting agency public improvement contracts to be procured by Low Bid unless an exemption is granted by the agency's contract review board or the contract is otherwise exempt from low 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. Number of Contractors Available to Bid;
2. Operational, budget and financial data;
3. Public benefits;
4. Specialized expertise required;
5. Value engineering;
6. Public safety;
7. Reducing risks to the agency;
8. Market conditions;
9. Technical complexity;
10. Risk to the Agency;
11. Unlikely to Encourage Favoritism or Substantially Diminish Competition

B. Summary Description of the Powell Garage FCEB Upgrades Project

In support of the 82nd Avenue project and its Fuel Cell Electric Buses (FCEBs), TriMet is upgrading the Powell Garage Facility to safely accommodate maintenance and fueling of FCEBs. The project scope includes fueling and maintenance infrastructure required to support 82nd Avenue's Revenue Fleet services of fifteen (15) sixty-foot FCEBs. Construction activities will take place while Powell Garage remains fully operational, requiring continuous collaboration and communication with Bus Maintenance, Bus Operations, and Construction Management stakeholders. All activities will need to be scheduled to avoid and/or minimize disruptions to daily operations. The hydrogen fueling infrastructure will require key construction trade partner expertise for design development, permitting requirements, and installation.

C. Critical Factors

This project is intended to be a mid-term solution to support of the 82nd Ave Transit Improvement Project and will play an integral role to its success as it supports workforce development and Revenue Fleet Services. The project's complexity in budget, schedule, requirements of selective market elements, and specific contractor expertise in a relatively new industry pose multiple levels of risk to the project's success.

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 feasible.

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. Number of Contractors Available to Bid

TriMet believes the local contracting community does not include the capacity this specialized project scope necessary to meet the Jurisdictional permitting requirements and be competitive. TriMet believes there is an adequate market for this type of work and will take steps to ensure maximum competition and fair opportunity for the Project. These steps will include advertisement in the Daily Journal of Commerce, direct outreach to firms discovered through employee attended conferences, conventions, and recommendations from peer agencies; and TriMet's internet procurement system, TriP\$. The project will also schedule a pre-proposal conference and appoint 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.

A Low Bid Exemption will allow TriMet to access potential contractors beyond typical low-bid market feedback. TriMet expects a limited number of local firms with the expertise related to hydrogen fuel. However, a non-low bid procurement will allow TriMet staff to evaluate how the Contractors will utilize local businesses.

2. Operational, budget, and financial data

In a low bid procurement, the budget for the Project Element is fixed and has limited contingency. Because of the complex interactions between the construction work and TriMet's operations, TriMet seeks to minimize negative impacts on the project and contractor assumptions concerning means and methods inherent in the traditional design-bid-build process, in order to control and predict the budget in a multi-year delivery.

An RFP will allow TriMet to select a contractor based upon performance criteria in addition to price competition. The evaluation criteria will focus on selecting a contractor with the specialized skills, experience with this type of project, and ability to maximize opportunities for local businesses and firms certified by the Certification Office for Business Inclusion & Diversity (COBID). The RFP process 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 more 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 and unnecessary change orders from the phasing complexities and specialty material procurement. This procurement method will allow negotiation opportunities with contractors that are not available with the Low Bid procurement method. Confirming contractor track records on similarly complex projects will prove beneficial to TriMet in multiple respects.

Finding: The project requires a superior level of certainty for establishing cost assurances and an expertise of a specific industry skillset focused around hydrogen technology. It is paramount that TriMet protect itself from as many uncertainties as possible, as early in the project as possible. Early involvement from subject matter experts in hydrogen fuel will help address scope requirements for Jurisdictional review necessary for permit issuance. A Low Bid Exemption, allowing TriMet to select a CM/GC contractor via an RFP, will allow TriMet to better address uncertainty in the project material procurement and delivery process.

3. Public Benefits

In an alternative procurement process, there is more latitude for establishing selection criteria that have greater considerations for contractor qualifications, experience, track record, approach, community benefit, and past performance based on cost delivery.

The public will benefit from early contractor involvement in design scoping required for permitting, design assistance related to improving operational needs, costing, assist in building construction strategies to mitigate risks, schedule delays related to permitting, design exceptions, and alternative construction applications.

Additionally, the RFP procurement method will provide greater potential to incentivize small and local business participation through coordination of the subcontractor utilization plan.

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.

4. Specialized expertise required

Exclusive and specialized expertise is necessary for the complete procurement and delivery process of this scope. The fueling infrastructure requires new technology, new skillsets associated with technical installation and integration of lighter than air components, and an expertise in navigating isolated and distinguished markets. The uniqueness of the fueling infrastructure demonstrates the contractor will need expertise that is new to the construction industry and can proficiently apply it on all fronts. The management of potentially local, state, and federal permits, including environmental reviews, land use approvals, safety/constructability, and special inspections will be key in project execution.

Finding: Low Bid Exemption will allow TriMet the opportunity to evaluate and rank the expertise of each contractor in addition to the price. Given the complexities of the project permitting requirements,

an alternative procurement method puts the owner in the best position to select a construction contractor who is a proven performer for the specific, specialized work required.

5. Value Engineering

TriMet's experience is that the greatest savings through value engineering are achieved during the design phase, before design decisions are finalized. While the Low Bid method allows for value engineering during the construction phase of the project, there are generally costs that could have been mitigated had contractor input been available during the design phases. An RFP procurement will allow for contractor input on the proposed design that may result in cost savings for the project. A specific skill set and advanced industry knowledge will be required of contractors to provide optimal pricing in all aspects of the scope.

Finding: This delivery method provides the opportunity to evaluate construction approach, with the potential for arriving at more economical solutions through phasing work plans, on-time delivery of material and permitting coordination with the required Piping and Instrumentation Diagram (P&ID).

6. Public safety

This construction will occur on TriMet property. However, the Hydrogen fueling infrastructure will be constructed adjacent to TriMet's property limits and in general proximity to public property. This presents distinctive challenges to the project in respect to:

- Permitting;
- Constructability;
- Contractor means and methods;
- Contractor qualifications;
- Proper turnover process;
- TriMet operations

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 experience and record on past similar projects. Thorough evaluations of project methods in staging plans, access control, and micro phasing strategies will help ensure operational success and stakeholder involvement.

Finding: A Low Bid Exemption will allow TriMet to evaluate the contractor's safety qualifications and verify performance on similar projects at the time of selection. This offers TriMet the best opportunity for mitigating operational risks through developing access and staging plans with TriMet stakeholders/occupants.

7. Funding Sources

Funding for the FCEB Powell Garage Upgrades Project will come primarily from the Federal Transit Administration (FTA). The FTA demands tight budget controls. Alternative delivery methods are often used on projects that are not only complex in construction, but also have specific outcomes that are conditioned by agency or stakeholder groups.

Finding: Early and continued budget certainty is highly desired. A Low Bid Exemption results in a negotiated construction cost including schedule and procurement risk that achieves earlier budget certainty.

8. Market Conditions

Construction market conditions continue to be highly volatile. Increased demand for construction services, combined with labor shortages, and joined with extreme price fluctuations of materials and equipment, all present substantial challenges to maintain a steady project budget.

Lead times for the equipment on this project are a key component to the schedule and have a strong possibility of being the prime impact for completion of the project. Schedule certainty, strategy, and understanding is key to the success of the project.

Finding: A non-Low Bid procurement will provide a path to contractors with known experience and partnerships that are directly applicable to the specialty scope giving TriMet the opportunity to increase cost certainty by including an evaluation of contractor experience and track record with similar projects in the selection process.

9. Technical complexity

As what may be the most notable feature of the FCEB Powell Garage Project, and for TriMet, this scope represents a first of a kind for the State of Oregon. TriMet is the only public entity in the State of Oregon with an active Hydrogen Fuel infrastructure project for public transit. Based on this understanding, it is evident that experience with this technology will be limited. The project requires an understanding from contractors that is detailed, highly technical, and well versed enough to identify and mitigate risks of all magnitudes.

Finding: A Low Bid Exemption allows TriMet to select a contractor with due consideration given to the contractor's past performance on projects with similar technical complexity. This is a key component in identifying cost savings, validating design, minimizing schedule impacts, and mitigating risks.

10. Risk to the Agency

There are many components of this project that pose risk to the Agency and require a high level of care that are not typical with the Low Bid procurement method. Components that are key to mitigating Agency risk involve, but are not limited to, the following:

- Pre-construction schedule organization management
- Permit management throughout the project, including early design phases. Limited Authority Having Jurisdiction (AHJ) knowledge of industry standards regarding hydrogen technologies in a transit setting is a likely risk.
- Design involvement for cost savings opportunities
- Commodity procurement
- Proper safety compliance with newly implemented industry standards
- Considerations and planning for Agency operational impacts
- Maintaining budget stability

Finding: Low Bid Exemption will allow TriMet to evaluate contractors' plans and experience in order to reduce the risk of unplanned impacts to operations and service.

11. 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. With limited qualified bidders being local, exceptional efforts will need to be formulated for outreach that are beyond typical TriMet labors.

E. Exemption from Low-Bid Contracting Findings: CM/GC through a 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 in design scope and schedule as well as other significant benefits to the Agency.