

Date: April 27, 2016

To: Board of Directors

From: Neil McFarlane *Neil McFarlane*

Subject: RESOLUTION 16-04-21 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 CONSTRUCTION MANAGER/GENERAL CONTRACTOR SERVICES FOR THE POWELL LIFT RELOCATION PROJECT

1. Purpose of Item

The attached Resolution exempts from the low bid process a public improvement contract for construction services for TriMet’s Powell LIFT Relocation Project (“Project”), which consists of site redevelopment and construction of a new building for a paratransit operating base. 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 1st Reading
- Ordinance 2nd Reading
- Other _____

5. Background

Due to upcoming bus fleet expansion, TriMet must make changes to some of its existing bus maintenance facilities to expand its ability to store and maintain the growing fleet. To allow for expansion of the Powell Garage facility, TriMet is planning to relocate the Powell LIFT paratransit operation from the Powell Garage site to the nearby Powell Park & Ride site. The

need for LIFT service is also growing, and in addition to facilitating reconfiguration of the Powell garage facility, the relocation of LIFT will allow for storage of more LIFT vehicles.

Currently, utilization of the Powell Park & Ride site is approximately 10 percent of its 391 spaces. This capacity, along with the capacity of the nearby Holgate and Fuller Park & Ride sites, allows a portion of the Powell Park & Ride to be repurposed. Approximately 85 spaces of the existing Powell Park & Ride site will remain as park and ride parking and the remainder of the site, along with adjacent property, will be reconfigured for use as a LIFT facility. The new site will contain LIFT vehicle storage, employee parking and a new building. This contract would provide the civil and construction services for the Project.

Prior to deciding to relocate the LIFT facility to the Powell Park & Ride, TriMet performed a Title VI Equity Analysis to ensure that site selection was not determined on the basis of race, color, or national origin, and did not result in any disparate impacts. The analysis, which is included in the Board packet, found that the site selection was based on property size, geographic proximity to the service area, and transportation access, not race, color or national origin, and also that the selection of the site did not result in any disparate impacts.

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. For example, the Portland-Milwaukie Light Rail Project utilized RFPs to obtain Construction Manager/General Contractors (“CM/GC”) for the East and West segments of the Project, as well as the Center Street Building Modifications work. TriMet plans to use the CM/GC contracting process for this Project.

The agency’s written findings in support of the exemption, which are required by ORS 279C.335, are attached to Resolution 16-04-21 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 April 12, 2016. There were no attendees, and no comments were received.

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.

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

This Project is included in the FY 2016 and FY 2017 General Fund budget.

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 16-04-21

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 CONSTRUCTION MANAGER/GENERAL CONTRACTOR SERVICES FOR THE POWELL LIFT RELOCATION 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 construction manager/general contractor (“CM/GC”) services for the Powell LIFT Relocation 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 CM/GC services for the Powell LIFT Relocation 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.

4. That TriMet shall conduct the CM/GC services procurement in accordance with Model Rules adopted by the Attorney General under ORS 279A.065(3).

Dated: April 27, 2016

Presiding Officer

Attest:

Recording Secretary

Approved as to Legal Sufficiency:



Legal Department

RESOLUTION 16-04-21

EXHIBIT A

FINDINGS IN SUPPORT OF LOW BID EXEMPTION

Powell LIFT Relocation 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 Powell LIFT Relocation Project

Due to upcoming bus fleet expansion, TriMet must make changes to some of its existing garage locations to expand their ability to store and maintain the growing fleet. To allow for expansion of the Powell Garage facility, TriMet is planning to relocate LIFT paratransit operations, which provides transportation for people who are unable to utilize regular bus or train service due to an existing health condition, from the Powell Garage site to the nearby Powell Park & Ride site. The need for LIFT service is also growing, and in addition to facilitating the Powell garage facility to be reconfigured, the relocation of LIFT will allow for storage of more LIFT vehicles. A portion of the existing Powell Park & Ride site will remain as Park & Ride parking and the remainder of the site will be reconfigured for use as a LIFT facility. The new site will contain LIFT vehicle storage, employee parking and a new building.

C. Critical Factors

The Powell LIFT Relocation Project is a major construction Project at a constrained site under schedule pressure and presents many challenges, including the following:

a. Making an informed decision regarding building type (modular building or traditional stick built construction) early on in design is critical to the success of the Project.

b. Completion of the Project on schedule is critical to the success of the subsequent Powell Garage expansion which cannot begin until LIFT operations have moved off the site. TriMet must gain as much schedule efficiency as possible. Any reduction in the duration for design, permitting, and construction of the LIFT Project will reduce the chance that this project negatively impacts the subsequent Powell Garage expansion.

c. Construction access to the site is constrained because all access is through the Park & Ride which will remain open during construction. Early input from the

construction contractor will help ensure the design adequately considers access and phasing plans that ensure the safety of the public.

TriMet believes that selection of a contractor with experience and expertise in the design and construction of facilities will help meet these challenges. The only way to ensure selection of such a contractor is through the use of an alternative selection process.

D. Considerations

1. Type, Cost and Amount of Contract

TriMet is planning to utilize a request for proposal process to select a construction manager/general contractor (“CM/CG”) to design and construct the Powell LIFT Project. TriMet estimates that the order of magnitude of the project is approximately \$3,000,000 to \$4,000,000.

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 for the Project. 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 implement a process that maximizes the number of available proposers. 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 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 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

A negotiated 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 LIFT Project within the construction 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 LIFT Project 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

Completing the LIFT Project on the shortest possible schedule will directly benefit the public by reducing costs and preventing the delay of the subsequent Powell Garage expansion project. TriMet believes it can best achieve this objective by utilizing a negotiated procurement, which allows the selection of a contractor that has a proven on-time performance record. Also, this allows for early procurement of long lead time items such as a modular building, maximizing opportunity for the contractor to succeed in executing the shortest construction schedule, directly benefiting the public.

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 a design only to change it later. Although low bid allows for value engineering during construction, it is often more difficult to implement because of construction schedule pressures, the cost of the redesign effort, and time required for additional public process.

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, thereby maximizing cost saving ideas and methods.

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

Construction costs are highly dependent upon the design, staging, and construction methods, each of which varies considerably among designers and contractors. The LIFT Relocation Project will require expertise in specific design and construction methods, such as modular buildings and a sanitary sewer pump station.

A negotiated procurement process procurement is the best method for TriMet to identify a contractor with the special 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. The Project site is adjacent to an operating Park & Ride and all site access is through the Park & Ride. TriMet plans to keep the Park & Ride open to the public during construction; 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. A negotiated procurement allows TriMet to evaluate the contractor's safety record and previous project success at the time of selection. The contractor's actual safety performance on similar projects in similar urban environments is crucial to the success of this work. An alternate method of procurement offers TriMet the best opportunity to carefully evaluate the contractor's safety performance during construction.

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 a negotiated procurement to secure a CM/GC contract for this type of project puts TriMet in the best position to successfully complete a project at a publicly accessible facility while minimizing schedule, cost and safety risk. A negotiated 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 the LIFT Project comes from the TriMet general fund. Granting the exemption will not affect the sources of funding, but will increase TriMet's ability to control budget.

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

A negotiated procurement will allow TriMet to mitigate market risk by allowing proposers and TriMet to discuss and apportion this risk. Further, the construction market is currently busy, and use of 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.

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 LIFT Relocation Project is due largely to the fact that the building type has not yet been decided. The sanitary sewer connection will also be technically complex because it will likely require a pump station. A negotiated procurement method allows TriMet to evaluate a contractor's technical experience in similar work and its safety record at the time of selection.

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

The LIFT Project is for construction of a new building. TriMet has successfully utilized a negotiated procurement to select a CM/GC contractor for other buildings, including the Merlo Fuel and Wash and LIFT building, and the existing LIFT building at Powell garage. Based on its prior experience, TriMet believes that utilizing this procurement and construction method mitigates risk and increases efficiency.

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

TriMet plans to keep the adjacent park & ride 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 LIFT Relocation Project will require several phases of construction to address project conditions, including the potential for procurement of a modular or prefabricated building. This consideration suggests that allowing contractor input into construction schedule and means and methods 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 LIFT Relocation 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.