

Date: March 22, 2017

To: Board of Directors

From: Neil McFarlane *Neil McFarlane*

Subject: RESOLUTION 17-03-25 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) BOARD OF DIRECTORS, ACTING IN ITS CAPACITY AS THE TRIMET CONTRACT REVIEW BOARD, AUTHORIZING A SPECIAL PROCUREMENT EXEMPTION FOR PROFESSIONAL LEARNING AND DEVELOPMENT SERVICES

1. Purpose of Item

The purpose of this item is to request that the TriMet Board of Directors (Board), acting in its capacity as the TriMet Contract Review Board (TCRB), authorize a special procurement exemption for professional learning and development services (Services). Approval of this Resolution will allow TriMet to conduct an alternative procurement process for the Services.

2. Type of Agenda Item

- Initial Contract
- Contract Modification
- Other – Special Procurement Exemption

3. Reason for Board Action

This special procurement exemption 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

TriMet Labor Relations/Human Resources Division has recently instituted the E3 Program (Program) for learning and development opportunities for non-union employees, which supports one of the Five-Year Action Plan Strategic Goals of strengthening the TriMet team. E3 stands for Engage, Empower and Expand. The Program offerings include management skills, professional development, organizational citizenship, computer skills, and leadership development courses. The Program learning and development courses and activities are designed to provide rewarding and beneficial learning experiences. The goal is to equip

employees with the tools, resources, knowledge, and skills needed to further develop in their professional roles at TriMet.

In order to support and sustain this program, Human Resources needs to procure and contract with learning and development professionals for a variety of courses. It is anticipated that Human Resources will continue adding new learning and development courses and activities each year based on the changing needs of TriMet and its employees.

ORS 279B.085 and TCRB Rule IV(A) provide that the Board, acting in its capacity as the TCRB, may authorize a special procurement exemption if it finds that a written request submitted for authorization demonstrates that the use of a special procurement meets the following requirements:

- (a) Is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts; and
- (b) (1) Is reasonably expected to result in substantial cost savings to the agency or to the public; or
(2) Otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055 (competitive sealed bidding), 279.060 (competitive sealed proposals), 279B.065 (small procurements) or 279B.070 (intermediate procurements) or under any rules adopted thereunder.

6. Procurement Process

Upon approval of this exemption, TriMet intends to issue a Request for Professional Learning and Development Applications (Request for Applications). The Request for Applications would be issued the same way as Invitations to Bid and Requests for Proposals and would be posted on TriMet's vendor registration system, eBidexchange. It would solicit applications from qualified and interested firms and individuals that have the experience and qualifications to be able to provide a professional learning or development course to TriMet under the Program. The opportunity would be open for the period of two years and TriMet would accept applications from qualified and interested firms and individuals throughout the course of the two year period. Initially, it is anticipated that TriMet would review applications monthly for the first quarter and then quarterly thereafter.

TriMet would convene an evaluation committee (EC) comprised of staff from Human Resources and other internal stakeholders to review and evaluate applications submitted to determine if the application meets the minimum requirements and demonstrates the capability to provide professional learning and development opportunities for TriMet. Once an application has been reviewed and evaluated, the EC would approve the application for a contract or may want/need to follow-up for additional information. Contracts executed as a result of the process would be requirements based for a five year term and would include agreed to rates for the provision of professional learning and development courses that could be offered under the Program at Human Resources' discretion based upon need and internal demand, as well as budgetary approval. Rates for courses offered would be negotiated for fair and reasonableness, and each contract would have a price adjustment clause that would allow the firm or individual to request an increase to their rate(s) on an annual basis not to exceed the difference in the Consumer Price Index for the Portland-Salem metropolitan area from the previous year.

The goal of this alternative process is to accumulate a pool of professional resources to support and sustain the Program into the future. The proposed process allows for this accumulation over the course of two years instead of a finite period of time that would be permitted under an Invitation to Bid or Request for Proposals process. It also allows for the Program to grow and evolve over time as TriMet initially intends to solicit applications from professional learning and development firms and individuals in specific categories and will add additional categories throughout the course of the two year period as requests and demand for additional courses occur. Lastly, having the Request for Applications be open for a period of two years provides a much longer opportunity for interested and qualified firms and individuals to submit an application, thus supporting the goal of accumulating a pool of professional resources to support and sustain the Program.

Pursuant to ORS 279B.085 and TCRB Rule IV(A), the proposed process will not encourage favoritism in awarding of public contracts or substantially diminish competition. The goal of this alternative process is just the opposite. Human Resources wants to identify and contract with as many applicable, relevant and qualified professional learning and developing firms and individuals as possible. The proposed process is also expected to result in substantial cost savings to the agency because it would prevent Human Resources staff and Procurement and Contracts staff from procuring and contracting for the Services on a separate and recurring basis. It is also believed that the proposed process substantially promotes the public interest in a manner that could not practicably be realized by requirements that are applicable under ORS 279B.055 (competitive sealed bidding), 279.060 (competitive sealed proposals), 279B.065 (small procurements) or 279B.070 (intermediate procurements) or under any rules adopted thereunder. The process promotes the public interest because of the duration for which the Request for Applications would be open and because the process allows interested and qualified firms and individuals, as members of the public, the opportunity to submit an application to provide professional learning and development courses to TriMet in the categories being solicited. It allows for continued support for the Program as it evolves and would not require interested and qualified firms and individuals to respond to multiple Requests for Proposals as would be required if this alternative process is not approved.

7. Diversity

Use of the proposed alternative Request for Applications process will allow TriMet to identify and recruit disadvantaged, minority-owned, women-owned and emerging individuals and firms (D/M/W/ESB). There are two minority individuals that TriMet has contracted with in the past for specific internal learning and development courses, and Human Resources would plan on encouraging them to submit an application under the proposed process as soon as it has been issued.

8. Financial/Budget Impact

Funding for the Program is currently covered under Labor Relations/Human Resource's budget. Since the contracts resulting from the proposed process would be requirements based, there is no impact to the budget as a result of how many contracts are awarded. Courses offered under the Program would be as determined by Human Resources within the approved budget.

9. **Impact if Not Approved**

If this exemption is not approved, TriMet would anticipate having to conduct multiple Requests for Proposals processes to continually contract with firms and individuals to support and sustain the Program. The small size of these training engagements does not warrant the same full, sealed-solicitation process utilized for other, larger service contracts. It is strongly recommended that this exemption be approved for time, efficiency and effectiveness of Human Resources and Procurement and Contracts staff.

RESOLUTION 17-03-25

RESOLUTION OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) BOARD OF DIRECTORS, ACTING IN ITS CAPACITY AS THE TRIMET CONTRACT REVIEW BOARD, AUTHORIZING A SPECIAL PROCUREMENT EXEMPTION FOR PROFESSIONAL LEARNING AND DEVELOPMENT SERVICES

WHEREAS, the TriMet Contract Review Board (TCRB) has authority under ORS 279B.085 and TCRB Rule IV to authorize a special procurement exemption based upon written request submitted by the agency, and upon making the findings set forth in ORS 279B.085(4); and

WHEREAS, the agency has submitted a written request to the TCRB for approval of a contract-specific special procurement, which is set forth in the attached and incorporated Exhibit A; and

NOW, THEREFORE, BE IT RESOLVED:

1. That the TCRB hereby approves the written request for a contract-specific special procurement set forth in the attached and incorporated Exhibit A.
2. That the TCRB hereby finds that the written request set forth in Exhibit A demonstrates that the use of a special procurement as described in the request:
 - (a) Is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts; and
 - (b) (1) Is reasonably expected to result in substantial cost savings to the agency or to the public; or
(2) Otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055 (competitive sealed bidding), 279.060 (competitive sealed proposals), 279B.065 (small procurements) or 279B.070 (intermediate procurements) or under any rules adopted thereunder.

Dated: March 22, 2017

Presiding Officer

Attest:

Recording Secretary

Approved as to Legal Sufficiency:



Legal Department

**RESOLUTION 17-03-25
EXHIBIT A**

WRITTEN REQUEST FOR CONTRACT-SPECIFIC SPECIAL PROCUREMENT

Special Procurement

ORS 2798.085 requires a public agency to submit a written request to its contract review board for approval of a special procurement, if it desires to procure goods or services by a procedure other than the procedures specified by ORS Chapter 279B (competitive sealed bidding, competitive sealed proposals, intermediate or small procurements). This written request describes the proposed contracting procedure to be used by TriMet and the circumstances that justify the use of a special procurement in accordance with ORS 279B.085.

Background

TriMet Labor Relations/Human Resources Division has recently instituted the E3 Program (Program) for learning and development opportunities for non-union employees, which supports one of the Five-Year Action Plan Strategic Goals of strengthening the TriMet team. E3 stands for Engage, Empower and Expand. The Program offerings include management skills, professional development, organizational citizenship, computer skills, and leadership development courses. The Program learning and development courses and activities are designed to provide rewarding and beneficial learning experiences. The goal is to equip employees with the tools, resources, knowledge, and skills needed to further develop in their professional roles at TriMet.

In order to support and sustain this program, Human Resources needs to procure and contract with learning and development professionals for a variety of courses. It is anticipated that Human Resources will continue adding new learning and development courses and activities each year based on the changing needs of TriMet and its employees.

Contracting Procedure

ORS 279B.085 and TCRB Rule IV(A) provide that the Board, acting in its capacity as the TCRB, may authorize a special procurement exemption if it finds that a written request submitted for authorization demonstrates that the use of a special procurement meets the following requirements:

- (a) Is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts; and
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Justification for Use of Special Procurement

Upon approval of this exemption, TriMet intends to issue a Request for Professional Learning and Development Applications (Request for Applications). The Request for Applications would be issued the same way as Invitations to Bid and Requests for Proposals and would be posted on TriMet's vendor registration system, eBidexchange. It would solicit applications from qualified

and interested firms and individuals that have the experience and qualifications to be able to provide a professional learning or development course to TriMet under the Program. The opportunity would be open for the period of two years and TriMet would accept applications from qualified and interested firms and individuals throughout the course of the two year period. Initially, it is anticipated that TriMet would review applications monthly for the first quarter and then quarterly thereafter.

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Pursuant to ORS 279B.085 and TCRB Rule IV(A), the proposed process will not encourage favoritism in awarding of public contracts or substantially diminish competition. The goal of this alternative process is just the opposite. Human Resources wants to identify and contract with as many applicable, relevant and qualified professional learning and developing firms and individuals as possible. The proposed process is also expected to result in substantial cost savings to the agency because it would prevent Human Resources staff and Procurement and Contracts staff from procuring and contracting for the Services on a separate and recurring basis. It is also believed that the proposed process substantially promotes the public interest in a manner that could not practicably be realized by requirements that are applicable under ORS 279B.055 (competitive sealed bidding), 279.060 (competitive sealed proposals), 279B.065 (small procurements) or 279B.070 (intermediate procurements) or under any rules adopted thereunder. The process promotes the public interest because of the duration for which the Request for Applications would be open and because the process allows interested and qualified firms and individuals, as members of the public, the opportunity to submit an application to provide professional learning and development courses to TriMet in the categories being solicited. It allows for continued support for the Program as it evolves and would not require interested and qualified firms and individuals to respond to multiple Requests for Proposals as would be required if this alternative process is not approved.