


Date: September 27, 2023

To: Board of Directors

From: Sam Desue, Jr. 

Subject: **RESOLUTION NO. 23-09-50 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET), ACTING AS THE TRIMET CONTRACT REVIEW BOARD (TCRB), AUTHORIZING A CONTRACT-SPECIFIC SPECIAL PROCUREMENT EXEMPTION FOR LED LIGHTING REMOVAL AND INSTALLATION SERVICES**

1. Purpose of Item

This Resolution requests that the TriMet Board of Directors (Board), acting as the TriMet Contract Review Board (TCRB), authorize a contract-specific special procurement exemption for LED lighting removal and installation services (Services).

2. Type of Agenda Item

- Initial Contract
- Contract Modification
- Other: Special Procurement

3. Reason for Board Action

This exemption from competitive bidding must be approved by the TCRB in accordance with state law and the TCRB Rules.

4. Type of Action

- Resolution
- Ordinance 1st Reading
- Ordinance 2nd Reading
- Other _____

5. Background

Since 2020, TriMet has been in the process of upgrading its Facilities to install LED lighting. The process began when the lighting at Center Garage Maintenance Facility (Center) was determined to not be fire and electrical code compliant. At the same time, TriMet determined that the light fixtures at the other three Maintenance Facilities, Merlo, Ruby Junction, and Elmonica, were not code compliant and at the end of, or well beyond their useful life expectancy.

While the LED lighting products were purchased pursuant to an existing State of Oregon Price Agreement, TriMet does not have a contract in place for the removal of existing and the installation of new LED lighting at its numerous locations. TriMet has conducted two solicitations for electrical repair and maintenance Services, both of

which resulted in very few responses, and therefore has had to rely on its more specialized on-call electrical services contractor, which is licensed to conduct more technical work, including ARC Flash Studies and Infrared Scanning, to perform this work. Doing so has nearly exhausted the on-call contract funds, and TriMet has had to seek Board authorization to increase the amount of the on-call electrical services contract. As a result, TriMet has had to undertake a new contract solicitation for this specialized electrical work years earlier than originally estimated.

With this Resolution, TriMet seeks the Board's authorization, in its role as the TCRB, for a special exemption from the public contract procurement requirements of ORS Chapter 279B, so that TriMet may obtain electrical services limited to the removal of existing lighting and installation of new LED lighting at pre-determined locations within the District. Approval of this Resolution will allow TriMet to conduct a solicitation for the Services exclusively for contractors certified by Oregon's Certification Office for Business Inclusion and Diversity (COBID).

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 the use of a special procurement:

- (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), 279B.060 (competitive sealed proposals), 279B.065 (small procurements) or 279B.070 (intermediate procurements) or under any rules adopted thereunder.

TriMet staff undertook market research and outreach efforts prior to submitting this Resolution, and identified a substantial pool of firms certified by Oregon's Certification Office for Business Inclusion and Diversity (COBID) that can perform the work or may have the capacity to expand their business to perform the work. Staff expect that multiple COBID firms will make up the limited pool. Therefore, this Special Procurement is unlikely to encourage favoritism or diminish competition.

ORS 279A.100 provides that the State Public Contracting Code may not be construed to prohibit TriMet from engaging in public contracting practices designed to promote affirmative action goals, policies or programs. COBID-certified Disadvantaged Business Enterprises (DBE), Minority-owned Business Enterprises (MBE), Women-owned Business Enterprises (WBE), Emerging Small Businesses (ESB), and Service-disabled Veteran Business Enterprises (SDVBE), often face great challenges in competing on the open market with larger, more established contractors to perform electrical work for TriMet.

This is primarily due to TriMet's requirement that the selected vendor be able to perform ARC Flash Studies and Infrared Scanning services, which is a significant investment requiring additional licensing. The proposed solicitation authorized by this Resolution will require a much lower initial investment, because there will not be

a requirement for the firms to provide ARC Flash Studies or Infrared Scanning services. Therefore, the use of this limited pool may yield significant cost savings because the potential contractors will not need the extra licensing and proficiencies provided by TriMet's current on-call electrical services provider.

TriMet also believes that limiting the pool of bidders to COBID-certified firms will promote the public interest. Limiting the pool of vendors to COBID-certified firms will serve TriMet's goal of increasing access and opportunities in contracting. The special procurement authorized by this Resolution will facilitate opportunities for COBID-certified firms to obtain contracts and build capacity through technical assistance and the opportunity to provide these services on a regular basis. Contractors who are awarded work under this special procurement will be able to build relationships with TriMet staff and gain a better understanding of the administrative requirements for further contracting with TriMet and other public entities.

6. Description of Procurement Process

Upon approval of this exemption, a competitive solicitation process limited to COBID-certified firms will be used to select the most responsive and responsible contractor for the Agency.

7. Diversity

Adoption of this Resolution authorizes a special procurement and allows the Agency to limit competition to COBID-certified firms, using a competitive Invitation to Bid (ITB) process, which will result in a more diverse workforce on these LED lighting projects.

8. Financial/Budget Impact

LED lighting removal and installation costs are budgeted as an element of the Facilities Management department's annual operating budget.

9. Impact if Not Approved

If this exemption is not approved, TriMet would need to procure these services on the open market. This is not the preferred option for the reasons outlined above.

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TRANSPORTATION DISTRICT OF OREGON (TRIMET), ACTING
AS THE TRIMET CONTRACT REVIEW BOARD (TCRB),
AUTHORIZING A CONTRACT-SPECIFIC SPECIAL
PROCUREMENT EXEMPTION FOR LED LIGHTING REMOVAL
AND INSTALLATION 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), 279B.060 (competitive sealed proposals), 279B.065 (small procurements) or 279B.070 (intermediate procurements) or under any rules adopted thereunder.

Dated: September 27, 2023

Presiding Officer

Attest:

Recording Secretary

Approved as to Legal Sufficiency:



Legal Department

RESOLUTION 23-09-50

EXHIBIT A

WRITTEN REQUEST FOR CONTRACT-SPECIFIC SPECIAL PROCUREMENT

Background

Since 2020, TriMet has been in the process of upgrading the lighting at its Facilities to LED. The process began when the lighting at Center Garage Maintenance Facility (Center) was determined to be not code compliant. At the same time it was determined that the light fixtures at TriMet's Merlo, Ruby Junction, and Elmonica Maintenance Facilities were not code compliant and were at the end of or well beyond their useful life expectancy.

While the LED lighting was purchased pursuant to an existing State of Oregon Price Agreement, TriMet does not have a contract in place for the removal of existing and the installation of new LED lighting at its numerous locations, and has been using its on-call electrical services contract to do this work. This resulted in TriMet's need to seek authorization for additional funds from the Board for the on-call electrical services contract via a modification; and ultimately having to conduct a new contract solicitation for on-call electrical services earlier than originally planned.

With this Resolution, TriMet seeks the Board's permission for an Exemption in order to procure electrical services limited to the removal of existing lighting and installation of new LED lighting at pre-determined locations throughout the TriMet District.

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:

(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), 279B.060 (competitive sealed proposals), 279B.065 (small procurements) or 279B.070 (intermediate procurements) or under any rules adopted thereunder.

Procurement Process

Upon approval of this exemption, TriMet will issue a Solicitation for LED Lighting Removal and Installation Services. The Solicitation will only be open to COBID-certified Contractors. The remainder of the process will follow TriMet's established procurement rules.

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. TriMet wants to identify a large pool of COBID-certified firms and potentially make multiple awards. TriMet also believes 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), 279B.060 (competitive sealed proposals), 279B.065 (small procurements) or 279B.070 (intermediate procurements) or under any rules adopted thereunder. The public interest is promoted by increasing opportunity and access in contracting for underrepresented and underutilized companies.