


Date: March 27, 2024

To: Board of Directors

From: Sam Desue, Jr. 

Subject: **RESOLUTION NO. 24-03-22 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 TO ALLOW A BEST VALUE SOLICITATION FOR CONSTRUCTION MANAGER / GENERAL CONTRACTOR (CM/GC) SERVICES FOR THE BLUE LINE MAX STATION IMPROVEMENT 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 the low bid process in order to procure a contract for Construction Manager/General Contractor (CM/GC) services for the Blue Line MAX Station Improvement 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 low bid process for a public improvement contract 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

The eastside Blue Line MAX stations were built and put into service in approximately 1985 and have now been in service for almost 40 years. Existing stations and facilities along the Blue Line are in need of upgrades and rehabilitation to restore them to a state of good repair, and so that they meet current TriMet safety, security, and aesthetic standards.

On February 27, 2019, via Resolution No. 19-02-15, the Board authorized the existing CM/GC contract for the Blue Line Station Rehabilitation (BLSR) Program. Because funding for the Program relied only on TriMet general funds, the contract was issued without certain provisions required for federal contracts.

Under the Contract, the BLSR Program has accomplished upgrades at several Blue Line stations in Portland's eastside, including the 122nd Avenue, 162nd Avenue, and Gresham City Hall station platforms. TriMet now intends to rehabilitate the 82nd Avenue Blue Line Station as the first of three renovations of grade-separated stations along the Blue Line's Banfield alignment. Should future budgets allow, TriMet intends to utilize the same contractor to renovate the 60th Avenue and Hollywood MAX stations.

Currently, TriMet is awaiting a release of \$3,000,000 in federal grant funds, to which TriMet will provide \$1,700,000 in local match funds that will be directed to rehabilitation of the 82nd Avenue Station. These funds are intended to cover design, construction, and project administration costs for the scope of work. Due to the intended use of federal funds, TriMet must enter into new design and construction contracts that include required federal contract language to perform this work.

This Project's technical complexity, significant physical constraints, and the need to plan for potential service interruptions make securing the services of a CM/GC the best approach to meeting the agency's needs. A CM/GC can assist with the completion of project design, contribute to cost certainty, and establish needed coordination to ensure a successful construction process.

The proposed design contract for this project is currently in the negotiation phase, with contract execution expected soon. Once the contract is executed, the selected consultant will begin work to bring the 82nd Avenue station to the 30-60% design stage. Engaging with a CM/GC when a project is at the 30-60% design stage is the industry standard for obtaining the "best value" from the CM/GC contracting method, and this Project will soon be at a stage where TriMet is ready to procure CM/GC services.

An exemption from low bidding is required to enable TriMet to use a competitive "best value" solicitation process to select a CM/GC for this Project. Under the traditional low bid procurement method, TriMet may consider only price in selecting a contractor. The competitive, best value Request For Proposals (RFP) process allows TriMet to select contractors upon consideration of many factors, including price.

TriMet staff anticipate using criteria similar to the following to select the contractor: Proposer Experience/Past Performance (10 points); Proposed Project Team (35 points); Draft Project Approach, Work Plan & Schedule (50 points); Draft Contracting Plan and DBE Program (40 points); Project Management (25 points); Price (40 points).

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 low bid, 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 March 6, 2024. There were no attendees, 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.

This Project is complex and will require the selected contractor to manage tight timelines, coordinate with other contractors working on site, and work within a strict budget. Consideration of factors other than price will allow TriMet to select a CM/GC services contractor with the skill and experience to handle these complexities. TriMet has successfully utilized the RFP process to select CM/GC contractors for numerous other complex construction projects.

6. Description of Procurement Process

Upon approval of this exemption, a competitive RFP process will be used to select the CM/GC contractor that presents the best value to the Agency, based on the criteria described in the RFP.

7. Diversity

Use of the RFP process will allow TriMet to consider the bidder's workforce diversity and its proposed utilization of small business and COBID-certified subcontractors when selecting the CM/GC Contractor.

8. Financial/Budget Impact

The budget for these services is included in TriMet's five-year Engineering, Construction and Planning Capital Improvement Plan (CIP) forecast.

9. Impact if Not Approved

If this exemption is not approved, TriMet would have to procure 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.

RESOLUTION NO. 24-03-22

RESOLUTION NO. 24-03-22 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 TO ALLOW A BEST VALUE SOLICITATION FOR CONSTRUCTION MANAGER / GENERAL CONTRACTOR (CM/GC) SERVICES FOR THE BLUE LINE MAX STATION IMPROVEMENT PROJECT

WHEREAS, the TriMet Contract Review Board (TCRB) has authority under ORS 279C.335 and TCRB Rule V to exempt a Contract for a public improvement (Contract) from the competitive low bid requirements of ORS Chapter 279C in order to procure the services of a Construction Manager/General Contractor (CM/GC) for the Blue Line MAX Station Improvement Project, 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 low bid requirements for the public improvement 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 low bid requirements for the public improvement 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 low bid requirements the Contract for the Blue Line MAX Station Improvement 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 Blue Line MAX Station Improvement Project, subject to final Board approval of the Contract award.

Dated: March 27, 2024

Presiding Officer

Attest:

Recording Secretary

Approved as to Legal Sufficiency:

A handwritten signature in blue ink, reading "Gregory E. Smith", is written over a horizontal line.

Legal Department

EXHIBIT A

RESOLUTION NO. 24-03-22

FINDINGS IN SUPPORT OF LOW BID EXEMPTION

Blue Line MAX Station Improvement 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 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. 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.

B. Blue Line MAX Station Improvement Project

The contractor will be engaged to construct improvements to the grade-separated Blue Line MAX station. The initial work will be on the 82nd Ave station; should budget allow, the contractor will perform similar work on the 60th Avenue and Hollywood MAX stations.

C. Critical Factors

This is a complex project that requires the management of interdependencies between phases of multiple parts of this project, reducing impacts to adjacent uses, and minimizing disruption to public transit.

D. Findings

1. Operational, budget and financial data

The budget for the Project is limited. Because of the complex interactions between the construction work and TriMet's operations and customers, TriMet seeks to minimize the cost impact of design changes, construction delays, and contractor assumptions about means and

methods inherent in the traditional design-bid-build process in order to control and predict the Project budget. Involving the construction contractor during design is a proven approach for containing costs through implementation of more constructible designs that are reflective of realistic construction means and methods. Early construction contractor involvement also allows the owner to obtain market-based pricing that assists in decision-making and budget adherence during final design. Delays in or inefficient performance of this work would lead to increased operational costs to TriMet due to service disruptions.

Finding: For the reasons stated above, a procurement process that allows involvement of the construction contractor during final design will allow TriMet to better control costs and protect operations requirements. Low bid provides insufficient opportunity to involve the construction contractor during design, while a non-low bid selection process enables this interaction.

2. Public benefits

The public will benefit directly from a final design that considers contractor means and methods, and from involving the contractor early to assist in complex utility relocation, phasing and staging of an aggressive construction schedule that will require construction means and methods to be incorporated into the design considerations in order to reduce risk of extended service disruptions and construction impacts to pedestrian and vehicles around the 82nd station. It is critical for this Project to maintain transit service when possible, during construction and minimize disruption to service while doing so. TriMet will engage the contractor to advise on means and methods options and implications, as well as staging and access plans during the design work. This will help to ensure owner input and control over solutions increasing the predictability of schedule, cost, and transit service during construction. The community and TriMet will also benefit from a selection process that includes the opportunity to evaluate contractor experience and track record with minimizing public impacts through thorough advanced construction planning work.

Finding: Low bid offers no opportunity for the construction contractor to work with TriMet and its designer during design, and no opportunity to work with the contractor to develop and select staging and access alternatives that are minimally disruptive to transit service and the public in balance with established Project budgets. A non-low bid approach provides the opportunity to identify a contractor who has proven experience in working with all the affected stakeholders to create the least disruptive design and construction plans. This will result in fewer and shorter disruptions to service, and smoother transitions between the existing conditions to temporary public access during construction and finally to the completed Project.

3. Value Engineering

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 the final design. Although low bid allows for value engineering during construction, it is less likely to occur and is often more difficult to implement because of construction schedule pressures, the cost of evaluation or redesign efforts, and the time required for additional stakeholder processes.

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. A non-low bid procurement method allows the construction contractor to work with the design team and incorporate value engineering and construction schedule saving ideas in line with the design schedule.

One of the key opportunities for value engineering includes (but is not limited to) enhanced collaboration on work zone impacts, siting of staging areas, scheduling of the MAX shutdown timeframe and reducing schedule and cost-risk of long-lead, specialized materials to be incorporated into the Project. By bringing the Contractor on board near the 60% design milestone, the team will be able to collaborate on both Contractor-procured and TriMet-procured long-lead items which will increase cost and schedule certainty where design-bid-build could not. These items include shelters, sign poles, light poles, and other associated platform amenities. Accurate and timely material procurement will be critical to keeping the Project timeline and costs in line.

Finding: A non-low bid procurement method allows the use of a value engineering approach supported by the participation of the contractor that will construct the Project prior to completion of final design, thereby maximizing potential savings.

Specifically, reducing the risk associated with staging, temporary works and early material procurement of long-lead items is paramount. A negotiated procurement will allow the contractor to weigh in on these items so as to reduce the risk of delay during construction.

4. Specialized expertise required

This Project will require expertise in conducting construction near overhead catenary, and around operating switches, track circuits, train signals and train control for light rail in a constrained urban environment. Successful installation of Light Rail Transit (LRT) platform shelters requires extensive coordination between the fabricator and the Contractor, starting with the shop drawing phase, through fabrication and delivery. The contractor will have to complete the required scope of work with the shortest possible interruption of power to the MAX light rail. Any construction delay will impact TriMet's ability to provide reliable transit service and may result in additional costs to TriMet for temporary service.

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 could be a need for an unplanned shutdown during construction that would have a significant impact on TriMet's service and add additional cost to the Project.

Finding: A negotiated procurement will allow the contractor to weigh in on any issues that they anticipate may arise during construction, heading off costly delays to this Project during construction.

6. Public safety

The Project site is in an urban area with high vehicle and pedestrian activity.. TriMet requires a contractor with a successful performance record for safety and protection of the public during this type of work. A non-low bid procurement allows TriMet to evaluate the contractor's experience and record in working safely and effectively near the public and its operating system, and allows TriMet to evaluate the contractor's safety record on past projects

Finding: A non-low bid approach offers TriMet the best opportunity to carefully evaluate the contractor's prior safety performance and mitigate safety risk in a collaborative way through the contractor's work plans. A non-low bid approach provides the best opportunity to develop and evaluate public safety plans for all phases of construction with the construction contractor prior to implementation.

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. Lead times for procurement of some specialized materials including shelters and multiple LRT platform amenities. A non-low bid procurement will increase cost and schedule certainty for portions of the work. 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 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.

8. Technical complexity

Scope of work for rehabilitation of TriMet LRT platforms dating back to construction of the original Banfield segment presents multiple challenges for the Contractor. As-built record drawings for these platforms dating back to 1985 have proven in the past to be unreliable for conduits and other pipes embedded within the concrete slab. Demolition methods must be controlled and meticulous. This will be the first of the grade separated stations on the Banfield segment to be rehabilitated under this program. It is anticipated that the previous challenges experienced on the stations from Gateway to Cleveland will be encountered, in addition to potential new challenges on this grade separated station.

To successfully execute the work, the Contractor must work closely with multiple divisions/departments within the agency to coordinate and assist with service interruption planning, in order to minimize the impact to TriMet's customers.

Staging and delivery of the materials to the site are challenging. The selected Contractor will need to have or obtain hi-rail equipment to deliver materials and perform the work.

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

9. Funding sources

TriMet is awaiting a release of grant funds sourced from federal earmarks in the amount of \$3,000,000 and providing approximately \$1,700,000 in local match funds.

Finding: Early and continued budget certainty is highly desired. A negotiated procurement is a better method than low bid to achieve earlier budget certainty.

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.

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.

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, a non-low bid procurement process generally encourages significant competition between contractors with reasonable performance records.

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.

E. 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.