

Date: August 10, 2016

To: Board of Directors

From: Neil McFarlane *Neil McFarlane*

Subject: **RESOLUTION 16-08-53 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 STEEL BRIDGE TRANSIT IMPROVEMENTS PROJECT**

1. Purpose of Item

The attached Resolution exempts from the low bid process a public improvement contract for construction services for TriMet’s Steel Bridge Transit Improvements Project (“Project”), which consists of reconstructing the trackway and replacing the rail lift joints over the Steel Bridge. Approval of this Resolution will allow TriMet to initiate a competitive Request for Proposals (“RFP”) 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

The Steel Bridge is a critical component for TriMet’s transit system. It carries TriMet’s Blue, Red, Yellow, and Green light rail lines, as well as freight rail, automobile, bicycle, and pedestrian traffic across the Willamette River. It is also the second oldest Willamette River Bridge, having been constructed in 1911.

The Steel Bridge is owned by the Union Pacific Railroad and is leased to the Oregon Department of Transportation, which subleases a portion to TriMet. The sublease requires TriMet to maintain the transit-related facilities on the bridge. Given the age of the bridge and its high use by all types of traffic, maintenance and repairs of the rail-related features are frequently needed, but difficult to perform, and create delays throughout TriMet's system.

TriMet has performed an initial assessment for trackway-related improvements across and adjoining the Steel Bridge. These improvements are designed to increase the reliability of the bridge and allow light rail vehicles to travel across the bridge at a higher speed. The Project will consist of repairs across and adjoining the bridge, including replacing worn rail that is nearing the end of its useful life with new rail that will be constructed in a more easily maintained type of track section. In addition, the Project will be replacing switch turnouts and the rail lift joints on the bridge lift span, as well as improving the drainage.

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 plans to use the Construction Manager/General Contractors ("CM/GC") contracting process for this Project. 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 CM/GC contracts for the East and West segments of the Project, as well as the Powell Lift Relocation work.

The agency's written findings in support of the exemption, which are required by ORS 279C.335, are attached to Resolution 16-08-53 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 July 27, 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 in awarding the contract.

8. Financial/Budget Impact

Partial funding for this Project is included in the FY 2017 and FY 2018 General Fund budget. The budget will be finalized prior to Board approval and award of the CM/GC contract.

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 16-08-53

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 STEEL BRIDGE TRANSIT IMPROVEMENTS 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 Steel Bridge Transit Improvements Project (“Project”); 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 Project (“Contract”), 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: August 10, 2016

Attest:

Presiding Officer

Recording Secretary

Approved as to Legal Sufficiency:



Legal Department

**Resolution 16-08-53
Exhibit A**

FINDINGS IN SUPPORT OF LOW BID EXEMPTION

Steel Bridge Transit Improvements 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 Steel Bridge Transit Improvements Project (“Project”)

The Steel Bridge is a critical transportation component for TriMet’s transit system. It carries TriMet’s Blue, Red, Yellow, and Green light rail lines, as well as freight rail, automobile, bicycle, and pedestrian traffic across the Willamette River. It is also the second oldest Willamette River Bridge, having been constructed in 1911.

The Steel Bridge is owned by the Union Pacific Railroad and is leased to the Oregon Department of Transportation, which subleases a portion to TriMet. The sublease requires TriMet to maintain the transit-related facilities on the bridge. Given the age of the bridge and its high use by all types of traffic, maintenance and repairs of the rail-related features are frequently needed, but difficult to perform, and create delays throughout TriMet’s system.

TriMet has performed an initial assessment for trackway-related improvements across and adjoining the Steel Bridge. These improvements are designed to increase the reliability of the bridge, and allow light rail vehicles to travel across the bridge at a higher speed. The Project will consist of repairs across and adjoining the bridge, including replacing worn rail that is nearing the end of its useful life with new rail that will be constructed in a more easily maintained type of track section, in addition to replacing turnouts, the rail lift joints on the bridge lift span, and improving drainage.

C. Critical Factors

The Project is a major construction project at a constrained location under schedule pressure and presents many challenges, including the following:

a. Making informed decisions during final design development for the best design outcomes and construction phasing methods is critical to the success of the Project.

b. Completion of the Project on schedule is critical to the success of the Project given the potential impacts to the public, transit operations, and adjacent businesses. TriMet must gain as much schedule efficiency as possible and minimize any shutdowns of the light rail system.

c. Construction access is constrained because the work is located on a bridge over a waterway, pedestrian, bicycle, and freight rail traffic, and is adjacent to vehicular traffic. Early input from the contractor will help ensure the design adequately considers access and phasing plans that ensures the safety of the public and minimizes impacts to revenue operations.

TriMet believes that selection of a contractor with experience and expertise in the design and construction this type of work 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 assist during final design development and construct the Project. TriMet estimates that the order of magnitude of the project is approximately \$11,000,000.

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 advertisements 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 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 for the completed improvement 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*

Critical needs for this project are to minimize impacts to and closures of light rail activities across the bridge during construction; to minimize disruption to the public, including travel in the Rose Quarter area; and to minimize disruption to businesses, including railroad and river traffic operations. TriMet believes that in order to develop and ensure realistic solutions to minimize impacts to schedule, cost, traffic, noise, and public safety concerns, a negotiated procurement will maximize opportunities for success.

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 operational impacts, 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 LRT operational constraints and 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 Project, which will consist of constructing a new trackway on a 100-year old movable bridge over an operating freight railroad above a natural waterway while adjacent to the traveling public and highly congested areas, will require highly specialized expertise. Specialized expertise is also required to sequence activities around existing light rail and bus operations and to ensure full integration with rail systems features. Additionally, specialized expertise is required to sequence and package work to minimize impacts around the Rose Quarter.

A negotiated procurement process 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 includes work on a 100-year old movable lift span steel bridge over an operating railroad, natural waterway, and pedestrian and bicycle walkway while adjacent to a roadway with existing bus and light rail vehicle operations. Vehicular and freight traffic must also be staged and maintained during construction. This type of construction mandates much attention to safety. 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 near operating railroads and on bridges 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 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 while minimizing schedule, cost and safety risk. Because of the complex nature of the Project, TriMet seeks to minimize risks of design changes, construction and operational delays, and contractor misunderstandings inherent in the traditional design-bid-build process in order to control project budget and scheduling. Involving the construction contractor during design is

a proven approach for containing costs and affirming schedules through implementation of more constructible designs and through the development of a construction plans that are realistic and reflective of operational constraints and public needs. 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 Project will likely come 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*

This is a complicated project, requiring attention to detail and understanding of the many systems that must be maintained during construction. These include city infrastructure systems, freight service, bridge lifts for river traffic, and transit operations. Demolishing and rebuilding a light rail trackway in this complex and congested urban environment requires significant planning and coordination. 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 Project involves reconstruction of a 30-year old trackway on an existing steel lift bridge. TriMet has successfully utilized a negotiated procurement to select a CM/GC contractor for other specialized and complex rail projects, including the East and West Segments of the Portland-Milwaukie Light Rail Project, the Portland Mall Light Rail Project, and the Interstate MAX Light Rail Project. 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

The Project involves replacing trackway on an existing bridge that will remain in service to freight rail, pedestrian and bicycle traffic, and vehicular traffic. A negotiated procurement method will assist with minimizing impacts on the other bridge uses.

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 Project could require several phases of construction in order to limit impacts to TriMet's revenue service operations and other impacts to the public. 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 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.