

Date: October 26, 2022

To: Board of Directors

From: Sam Desue, Jr.

Subject: RESOLUTION NO. 22-10-62 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET), ACTING AS THE TRIMET CONTRACT REVIEW BOARD (TCRB), AUTHORIZING AN EXEMPTION FROM COMPETITIVE BIDDING REQUIREMENTS FOR A CONTRACT FOR DESIGN-BUILD SERVICES FOR THE PARK AVENUE PARK & RIDE EXPANSION 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 for the Park Avenue Park & Ride Expansion Project (Project) from the low bid process. The exemption authorizes a best value, Request for Proposals (RFP) solicitation approach.

2. Type of Agenda Item

- Initial Contract
- Contract Modification
- Other: Exemption of a Contract from Low Bid Requirements

3. Reason for Board Action

This exemption from the competitive low-bid approach 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

In September of 2015, TriMet completed the construction of the Park Avenue Park & Ride Parking Garage, concurrent with the completion of the Max Orange Line. The Park & Ride was built to provide parking for riders of the line between Milwaukie and downtown Portland. When the original garage was designed, it was anticipated that two additional floors might be needed in the future. Therefore, TriMet required the original design to accommodate possible construction of additional floors in the event future capacity became necessary.

TriMet staff determined that projected Orange Line ridership is sufficient to warrant construction of the additional floors, and initiated preparatory work on the Project. The original project was completed using the Design Build (D/B) alternative contracting

methodology, and the Project currently is at a stage where TriMet is ready to procure the services of a D/B contractor to complete the addition. The selected D/B contractor will provide Project design services going forward and carry out construction in accordance with its own design, thus contributing to cost control and certainty, and establishing coordination necessary to ensure a successful construction process.

TCRB Rule V(A) and ORS 279C.335(2) provides that the Board, acting in its capacity as the TCRB, may exempt a public improvement project from 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.

An exemption from low bidding is required to enable TriMet to select its contractor using a best value, RFP process. Under the traditional low bid procurement method, TriMet may only consider price in selecting a contractor. The competitive RFP process allows TriMet to select contractors upon consideration of many factors, including price. Use of the competitive RFP process allows TriMet to consider things such as experience in similar work, schedule performance, cost control, attention to safety, small business utilization, workforce diversity, and quality of workmanship, along with price.

This Project is complex and will require the selected contractor to manage tight timelines and work within a strict budget. Consideration of factors other than price will allow TriMet to select a D/B contractor with the skill and experience to handle these complexities. TriMet previously has successfully utilized the RFP process to select D/B contractors for complex construction projects, including the Tilikum Crossing project and, as noted above, the original construction of the Park Avenue Park & Ride.

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 from the low bid process for a public improvement project. Notification of the public hearing on the draft Findings was published in the Daily Journal of Commerce, and the hearing was held on October 5, 2022. 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.

6. Description of Procurement Process

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

7. Diversity

Use of the competitive RFP process will allow TriMet to consider the potential D/B contractor's certified small business subcontracting utilization and plan, as well as its workforce diversity when selecting the most qualified D/B contractor.

8. Financial/Budget Impact

The cost of the work is included in the Engineering, Construction, and Planning Division's FY2023 Budget.

9. Impact if Not Approved

If the exemption is not approved, TriMet would be required to procure this project via the traditional design-bid-build procurement method. This is not the preferred option for the reasons outlined above and presented in the Findings.

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TRANSPORTATION DISTRICT OF OREGON (TRIMET), ACTING AS THE
TRIMET CONTRACT REVIEW BOARD (TCRB), AUTHORIZING AN
EXEMPTION FROM COMPETITIVE BIDDING REQUIREMENTS FOR A
CONTRACT FOR DESIGN-BUILD SERVICES FOR THE PARK AVENUE
PARK & RIDE EXPANSION PROJECT**

WHEREAS, the TriMet Contract Review Board (TCRB) has authority under ORS 279C.335 and TCRB Rule V to exempt a public improvement project 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 October 5, 2022 on the Agency's draft written Findings in support of an exemption from competitive bidding requirements for a public improvement contract for construction services, 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 bidding 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, relied on to exempt from competitive bidding requirements the contract for specified construction 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 construction project, subject to final Board approval of the contract award.

Dated: October 26, 2022

Presiding Officer

Attest:

Recording Secretary

Approved as to Legal Sufficiency:

Gregory E. Skillman
Legal Department

EXHIBIT A

RESOLUTION NO. 22-10-62

FINDINGS IN SUPPORT OF LOW BID EXEMPTION

Portland-Milwaukie Light Rail Transit Project Park Avenue Garage Expansion

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. Public safety;
6. Market conditions
7. Technical complexity; and
8. Funding sources;

B. Summary Description of the Park Avenue Garage Expansion Project

The Park Avenue Garage Expansion Project ("Project") is part of the Portland-Milwaukie Light Rail Transit Project, and is located in unincorporated Clackamas County, at the south terminus of the Orange Line. The site is currently developed with an existing parking garage used as a park and ride. The existing structure includes 395 parking spaces; the expansion will add two floors and approximately 320 parking spaces in a single phase of construction. The project may also include improvements to the adjoining signalized intersections.

C. Critical Factors

This project will ensure the full ridership potential of the Portland-Milwaukie Light Rail Transit Project. Construction at this site is constrained by a major state highway (OR 99E), a local street (Park Avenue), a county park multi-use path facility (trolley trail), and adjacent development (Elks Lodge).

The existing garage has a complicated stormwater collection system that collects runoff from areas outside of TriMet property that must be protected and maintained throughout construction. Likewise, there is complex artwork and a solar panel system that must also be protected and maintained.

Access to neighborhoods, businesses, trails, and transportation facilities must be coordinated and maintained. The project must also maintain function of a portion of the existing garage during construction.

D. Findings

1. Operational, budget and financial data

The budget allocated for the Park Avenue Garage Extension is partially funded by the Federal Transit Administration as a part of the Portland-Milwaukie Light Rail Transit Project funding, and partially funded by TriMet's General Fund. The funding is fixed and has limited contingency. Historically, TriMet has found that contracts secured by low bid procurements result in numerous change orders, often exceeding 10 percent of the originally bid contract value. Because of the complex interactions between the construction work, the neighboring residents and businesses, and TriMet customers, TriMet seeks to minimize risks of design changes, construction delays, and contractor misunderstandings inherent in the traditional design-bid-build process in order to control Project budget and maintain schedule. Involving the construction contractor during design is a proven approach for containing costs through implementation of more constructible designs and through the development of a Conduct of Construction Plan that is realistic and reflective of community needs. Contractor involvement throughout design also allows the owner to obtain market-based pricing that assists in decision-making and budget adherence.

Finding: TriMet's experience is that a design-build contracting method for this type of project puts TriMet in the best position to design additional garage levels in the way that is most practical and quickest to build. The design will reflect the methods that the contractor intends to employ. Delays in construction due to design would be the contractor's responsibility. Therefore, the contractor has an inherent incentive to design and build efficiently and at the lowest cost.

2. Public benefits

The public will benefit from the shortest design/permit/construction schedule by avoiding risks of construction schedule delays and associated costs, minimizing changes to scope due to permit requirement uncertainty, and keeping the project on schedule.

A design that considers contractor means and methods, and development of specific staging and access plans for temporary public access early in the process will allow for owner and jurisdictional input, ultimately benefiting the public. It is critical for this Project to maintain access to a portion of the existing garage 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: A design-build is the best method for TriMet to identify a contractor who has a proven on-time performance record. Also, by placing design responsibility with the contractor, TriMet will maximize opportunity for the contractor to succeed in executing the shortest construction schedule, which, in turn, directly benefits the public.

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 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 design enhances the value engineering process that begins during preliminary 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 design-build procurement method allows the contractor to incorporate value engineering ideas in line with the design schedule. Additionally, the owner realizes 100 percent of the savings initiated during design.

Finding: Design-build has the inherent advantage that the contractor will engineer cost-reducing and timesaving elements into the Project, to the extent the TriMet Design Criteria allows. TriMet plans to allow as much flexibility as possible in the design and construction while maintaining standards and efficiency. This will encourage the successful contractor to maximize cost saving ideas and methods.

4. Specialized expertise required

Construction costs are highly dependent upon the design, staging, and construction methods, each of which varies considerably among designers and contractors. The Project will require expertise in specific design and construction methods, such as post-tensioning of concrete beams and decks, cantilevered walkways, elevators, and matching or complementing the design aesthetic of the existing garage. Protection of, and/or repair of, the existing stormwater system, artwork and solar power system is also of the utmost importance.

Finding: A design-build is the best method for TriMet to identify a contractor with the special expertise required. TriMet's experience is that a single design-build contract is the best method of achieving the goals for this particular type of work.

5. Public safety

This construction will occur on a site constrained by a major state highway (OR 99E), a local street (Park Avenue), a county park multi-use path facility (trolley trail), and an adjacent development (Elks Lodge). Access to the site is limited to public streets. Access must be well managed to ensure public safety and access to the open portion of the garage, while keeping disruptions to the adjacent existing uses to a minimum. TriMet desires a contractor with a successful performance record for this type of work.

Finding: A design-build 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 and not assume risk for the contractor's work plan as a result of TriMet controlled design specifications.

6. 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 have increased rapidly. A design-build procurement will increase cost and schedule certainty for the work and 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 design-build procurement will provide a benefit for fiscal planning and opportunity to increase cost certainty.

7. Technical complexity

The special expertise of this Project is due to the anticipated type of structure, constraints of the site, access, and schedule constraints. In addition, the engineering of the Project elements are critical in order to match the existing garage aesthetic. The development of solutions that fit permit requirements, schedule, and site constraints will be a key component in the design and construction of the Project.

Finding: A design-build method allows TriMet to evaluate a contractor's technical experience in similar work at the time of selection. Furthermore, design-build allows TriMet to place overall responsibility with one entity.

8. Funding sources

Financing for the Park Avenue Garage Expansion comes from several sources. Complex intergovernmental agreements are in place regarding funding. The financing partners, including the Federal Transit Administration, demand tight budget control.

Finding: Early budget certainty is highly desired. A design-build is a better method than traditional low bid for TriMet to achieve the necessary cost control, through negotiated risk allocation and design to budget methodology.

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.