


**Date:** April 24, 2024

**To:** Board of Directors

**From:** Sam Desue, Jr. 

**Subject:** **RESOLUTION NO. 24-04-28 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 A CONSTRUCTION CONTRACT FOR IMPROVEMENTS TO THE BEAVERTON, OREGON CITY, AND GATEWAY TRANSIT CENTERS**

**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 to allow for a best value solicitation for a construction services contract for improvements to the Beaverton, Oregon City, and Gateway Transit Centers (Project).

**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 a low bid procurement and authorization for a best value Request for Proposals (RFP) solicitation 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 1<sup>st</sup> Reading
- Ordinance 2<sup>nd</sup> Reading
- Other \_\_\_\_\_

**5. Background**

In 2022, TriMet received several federal grants for the improvement of the Beaverton, Oregon City and Gateway Transit Centers. Those funds will be matched with Statewide Transportation Improvement Funds (STIF), and the combined funds will support enhanced service for riders by providing for the construction of improvements to the three Transit Centers.

TriMet’s Oregon City Transit Center is located at 1035 Main Street in Oregon City. The proposed improvements at the Oregon City Transit Center include expansion and remodeling of the existing Transit Center to add bus layover spaces, and demolition and

reconstruction of a new operator layover facility. The Project also includes expanding the Transit Center area through right-of-way modifications to allow installation of two new bus stops on Main Street, and another new stop within the Transit Center area. These improvements are necessary to expand and enhance bus service throughout Clackamas County.

TriMet's Beaverton Transit Center is located at 4050 SW Lombard Avenue in Beaverton. This portion of the Project will update, reconfigure and increase the capacity of the bus layover facilities at the Beaverton Transit Center. The Project includes construction of a new operator layover facility, demolition of the existing facility, and realignment of curbs and sidewalks to provide more efficient layover pull-in and pull-out spaces. To support our battery-electric bus fleet, the improvements also will include the installation of two opportunity fast-charging units, along with infrastructure to support the future installation of four additional charging units.

TriMet's Gateway Transit Center is located at 1101 NE 99th Avenue in Portland. This part of the Project includes regrading and stabilizing a northwest portion of the existing Transit Center. This work will accommodate the construction of a new operator layover facility with amenities for use by current and future bus operators. Planned realignments of curbs and sidewalks will provide more efficient layover pull-in/pull-out spaces for our 40' standard, as well as articulated buses.

The Board's approval of this exemption authorizes the use of the best value competitive Request for Proposals (RFP) process to select the most highly qualified proposer to perform the construction services for this Project.

TCRB Rule V(A) and ORS 279C.335(2) provides that the Board, acting in its capacity as the TCRB, may exempt a contract 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 competitive RFP 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 contractors upon consideration of many factors, including price.

Based on previous RFPs, 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). As staff work to finalize the RFP, the exact criteria and point allocation may change.

This three-part Project is unique and will require the selected contractor to manage tight timelines and work within a strict budget. Consideration of factors in addition to price will allow TriMet to select a contractor with the skill and experience to handle these complexities.

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 project. Notification of the public hearing on the draft Findings was published in the Daily Journal of Commerce, and the hearing was held on April 9, 2024. There was one attendee who took no exception to the findings. No comments from anyone 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 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 each contractor's qualifications under Oregon's Certification Office for Business Inclusion and Diversity (COBID), their small business subcontracting utilization and plan, as well as workforce diversity when selecting the contractor.

**8. Financial/Budget Impact**

The cost of the Project is included in the FY2024 Engineering and Construction Budget.

**9. Impact if Not Approved**

If this exemption is not approved, TriMet will 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. 24-04-28**

**RESOLUTION NO. 24-04-28 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 a CONSTRUCTION CONTRACT FOR IMPROVEMENTS TO THE BEAVERTON, OREGON CITY, AND GATEWAY TRANSIT CENTERS**

**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 April 9, 2024 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, to exempt from competitive bidding requirements the contract for a 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: April 24, 2024

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Presiding Officer

Attest:

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Recording Secretary

Approved as to Legal Sufficiency:



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Legal Department

## **EXHIBIT A**

### **RESOLUTION NO. 24-04-28**

#### **FINDINGS IN SUPPORT OF LOW BID EXEMPTION**

#### **FOR IMPROVEMENTS TO THE BEAVERTON, OREGON CITY, AND GATEWAY TRANSIT CENTERS**

##### **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. Public Safety
5. Market conditions and reducing risks to the agency.
6. Funding sources.
7. Unlikely to Encourage Favoritism or Substantially Diminish Competition.

##### **B. Summary Description of the construction for the Beaverton Oregon City, and Gateway Transit Centers**

In 2022, TriMet was granted several federally funded awards for improving the Beaverton, Oregon City and Gateway Transit Centers. These funds will be matched with Transportation Improvement Funds. These funds will support enhanced service for riders to meet future ridership demands

Oregon City Transit Center is located at 1035 Main St, Oregon City, OR 97045 Construction at TriMet's Oregon City Transit Center will include expansion and remodeling of the existing transit center to add bus layover spaces, and demolition and reconstruction of a new operator layover facility. The project also includes expanding the transit center area by installing two new bus stops through right-of-way modifications to Main St. and one new stop within the transit center area in Oregon City. These improvements are necessary to expand bus service throughout Clackamas County.

Beaverton Transit Center is located at 4050 SW Lombard Ave, Beaverton, OR 97005

This project updates, reconfigures and increases capacity of the bus layover facilities at TriMet's Beaverton Transit Center. Outcomes for the project include constructing a new operator layover facility and demolition of the existing facility, realignment of curbs and sidewalks to provide more efficient layover pull-in and pull out spaces, and in support of our electric bus fleet the installation of two opportunity fast-charging units along with infrastructure to install four additional charging units at a later time.

Gateway Transit Center is located at 1101 NE 99th Ave, OR 97220

This project includes regrading and stabilizing a northwest portion of the existing transit center. This effort is to accommodate the construction of a new operator layover facility with amenities for the current and future increase of bus operators. Realignments of curbs and sidewalks will provide more efficient layover pull-in and pull out spaces for our 40' standard buses, as well as for articulated buses.

### **C. Critical Factors**

The project requires management of the interdependencies between phases in order to minimize impacts to bus operations and public right-of-ways to accomplish concurrent efforts at two different sites.

### **D. Findings**

#### **1. Operational, budget and financial data**

TriMet is planning to utilize a competitive Request for Proposal (RFP) process. An RFP process will allow TriMet to select a contractor based upon qualifications in addition to price. The evaluation criteria will focus on selecting a contractor with demonstrated skills and experience with these types of projects, who understands the complexity of interactions between construction work and TriMet's operations and customers, and demonstrated ability to prioritize equity with a goal of maximizing opportunities for firms certified by the Certification Office for Business Inclusion & Diversity (COBID).

An RFP will allow TriMet to select a contractor based upon performance criteria in addition to price competition. Best value 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 impacts to the public. In TriMet's experience, the low bid contracting method for work of this nature is likely to result in contractor-initiated change orders, which often cause the overall cost of the project to increase beyond the initial contract price.

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 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. Additionally, contractor selection based on experience, resources, and owner supplied equipment ensures the work can be performed as expeditiously as possible and with maximum return on investment.

## 2. Public benefits

The public will benefit directly from a design that considers contractor means and methods, and from involving the contractor early to develop specific phasing and access plans for bus service to continue uninterrupted at both sites. TriMet will engage the contractor to advice on means and methods options and implications, as well as how to mobilize between both constructions sites for efficiency and to progress work at a consistent pace. Having the contractor involved earlier in the design work 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 thorough advanced construction planning work.

In addition, an RFP procurement will provide greater potential for DBE participation through coordination of the sub-contractor utilization plan.

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 Program 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 used for the construction procurement. 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 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, construction access, and continuing bus services. A non-low bid procurement method allows the construction contractor to work with the design team and incorporate value engineering in line with the design schedule. Further, it allows the contractor to develop a plan for phasing of construction between to different locations.



Finding: A non-low bid procurement method facilitates 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 and having more time to plan construction activities.

4. Public safety

For both sites, the Contractor will need to work around and throughout active transit centers, public streets and sidewalks. Working safely around these related systems and the public is critical to project success. TriMet requires a contractor with a successful performance record for safety and protection of the public and safety critical equipment 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, within right-of-ways, and bus operations 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. A non-low bid approach allows TriMet to consider the best contractor to safely work around our safety critical equipment and minimize damage to this equipment which has both safety and schedule implications.

5. Market conditions and reducing risks to the agency

The project scope includes opportunity charging infrastructure for battery electric buses. Quotes for the procurement of the opportunity chargers, and related electrical equipment and cabinets are estimated to have long lead times and are one of the critical phase dependencies that must be managed.

Finding: A negotiated procurement will allow the contractor to provide price and schedule information before start of construction heading off costly delays to this Project during construction.

6. Funding sources

Funding for this project is through the several federal grants (FTA), an earmark and a match of dollars from the Statewide Transportation Improvement Fund (STIF).

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

8. Unlikely to Encourage Favoritism or Substantially Diminish Competition

The steps taken to ensure maximum competition and fair opportunity for this Program 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. Initial pricing will play a factor in the selection criteria, but there will also be other criteria that allow for a broader range of competition.

Finding: By marketing this opportunity, notifying a broad range of potential respondents, and providing multiple scored criteria, 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 Program, 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.