


Date: June 26, 2024

To: Board of Directors

From: Sam Desue, Jr. 

Subject: RESOLUTION NO. 24-06-38 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET), ACTING AS THE TRIMET CONTRACT REVIEW BOARD (TCRB), TO AUTHORIZE AN EXEMPTION FROM LOW BID REQUIREMENTS TO ALLOW A BEST VALUE SOLICITATION FOR GENERAL SITE PREPARATION AND CONSTRUCTION OF THE MAIN DISTRIBUTION FACILITY (MDF) AT THE FUTURE COLUMBIA OPERATIONS FACILITY

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 low bid contracting rules to allow a best value solicitation for Main Distribution Facility (MDF) building construction and general site preparation activities for the future Columbia Operations Facility.

2. Type of Agenda Item

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

3. Reason for Board Action

This exemption from the competitive low-bid approach and authorization for a competitive Request for Proposals (RFP) process 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

TriMet acquired the industrial property on NE Columbia Boulevard between 42nd and 46th avenues from Peterson CAT in 2019, at a cost of \$25,000,000. TriMet intends to develop the property as its future Columbia Operations Facility in support of Tri-Met’s zero emission bus fleet, which is expected to house 252 zero emissions buses in its final configuration.

The scope of work under this proposed solicitation is limited to the removal of eleven existing buildings and construction of one new building on the Columbia property, with a concurrent benefit of providing a unique opportunity for COBID-certified firms. The primary scopes of work will consist of building deconstruction, waste removal/recycling, and the construction of the Main Distribution Facility. The MDF will be the central hub for fiber optics on the property

and is essential for IT services. The project will also provide more modest opportunities for excavation, utility decommissioning, and hazardous building material abatement and physical network reconfiguration.

In January 2024, the Board approved Resolution No. 24-01-04, which authorized a low-bid exemption for the general site preparation work at the future Columbia Operations Facility. Although TriMet issued an RFP for that work which garnered considerable participation, TriMet has now determined that separating the site preparation work from the MDF construction poses too much risk to the Agency and should be handled by a single contractor. Construction of the MDF is now the critical path forward for the project.

With this Resolution, TriMet seeks the Board's authorization, in its role as the TCRB, for an exemption from the low-bid requirements of ORS Chapter 279C, so that TriMet staff may issue a Request for Proposals to select a contractor to perform the aforementioned construction activities in order to adequately prepare the site for more extensive future construction work.

For this solicitation, TriMet also seeks the Board's authorization to limit the pool of potential proposers for this project to firms certified by Oregon's Certification Office for Business Inclusion and Diversity (COBID). ORS 279A.100 provides that the State Public Contracting Code may not be construed to prohibit TriMet from engaging in public contracting practices designed to promote affirmative action goals, policies or programs. Disadvantaged, Minority-owned, Women-owned, Emerging Small, and Veteran Business Enterprises (D/M/W/ESB/VBE), often certified by Oregon's Certification Office for Business Inclusion and Diversity (COBID), face great challenges in competing on the open market with larger, more established contractors to perform work for TriMet.

Enabling a COBID-certified firm to act as the prime contractor on this project will allow that firm to build a relationship with TriMet staff and better understand the administrative requirements of contracting with TriMet under the Construction Manager/General Contractor (CM/GC) project delivery approach. Additionally, a COBID-certified firm that wins the resulting contract will be well situated to utilize its relationship with other COBID-certified firms to increase overall small business participation on the project through subcontracting.

TCRB Rule V(A) and ORS 279C.335(2) provide 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 a contractor using a best value process. Under the traditional low-bid procurement method, TriMet may consider only price in selecting a contractor. However, under the competitive, best value, RFP process, TriMet may select contractors upon consideration of many factors, including price. Use of the RFP process allows TriMet to consider matters such as experience in similar work, schedule performance, cost control, attention to safety, and quality of workmanship, along with price.

TriMet staff anticipate using the following criteria (or similar) 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).

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 contract. Notification of the public hearing on TriMet's draft Findings was published in the Daily Journal of Commerce, and the hearing was held on June 12, 2024. There were no attendees, and no comments on the Findings 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 contractors that present the best value to the Agency, based on RFP criteria which will define the pool of competitive proposers for these construction projects to COBID-certified firms.

7. Diversity

Adoption of this Resolution authorizes an exemption from the low-bid requirement and allows the Agency to limit the pool of competition for this construction contract to COBID-certified firms, using a competitive RFP process. Staff have performed extensive outreach and have identified a qualified pool of COBID-certified contractors who are interested and able to perform the type of work needed.

8. Financial/Budget Impact

The cost of the work is included in the Engineering and Construction Division's FY2025 budget. The estimated cost for this solicitation is approximately \$3,700,000.

9. Impact if Not Approved

If this exemption is not approved, TriMet will need to procure a contractor for these services via the traditional low bid procurement method. It is not the preferred option for the reasons outlined above and presented in the Findings.

RESOLUTION NO. 24-06-38

RESOLUTION NO. 24-06-38 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET), ACTING AS THE TRIMET CONTRACT REVIEW BOARD (TCRB), TO AUTHORIZE AN EXEMPTION FROM LOW BID REQUIREMENTS TO ALLOW A BEST VALUE SOLICITATION FOR GENERAL SITE PREPARATION AND CONSTRUCTION OF THE MAIN DISTRIBUTION FACILITY (MDF) AT THE FUTURE COLUMBIA OPERATIONS FACILITY

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 June 12, 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 and submitted in support of (a) and (b) below, to exempt from competitive bidding requirements the contract for construction services, 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 particular construction project.

Dated: June 26, 2024



Presiding Officer

Attest:



Recording Secretary

Approved as to Legal Sufficiency:



Legal Department

EXHIBIT A

RESOLUTION NO. 24-06-38

FINDINGS IN SUPPORT OF LOW BID EXEMPTION

Columbia Operations Facility MDF Building Construction and General Site Preparation

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. Summary Description of the Columbia Operations Facility MDF Building and Site Preparation Project

The work for the Project will include, but not be limited to the following:

- Site preparation;
- Building deconstruction
- Removal of debris;
- Hazardous material abatement;
- Utility decommissioning;
- Contaminated soil handling;
- Building construction (structure, electrical, HVAC, etc)
- Network infrastructure reconfiguration;

C. Critical Factors

While the overall work is of moderate complexity, there are elements that may require specific experience. Enabling the Agency to advance to full construction quickly is a key part of this

Project. Additionally, TriMet has an overall goal of expanding its pool of potential contractors, which is furthered by engaging firms that have little or no previous TriMet experience. Finally, as the site was previously used for heavy industrial purposes, utilizing innovative waste recycling and reuse techniques will be critical to reducing the overall carbon footprint of the larger Columbia Operations Facility project.

D. Findings

1. Operational, budget and financial data

The budget of the overall Columbia Operations Facility project is limited. Controlling costs in the early stages will help preserve budget for future, larger elements of the Project. Selecting an innovative, well-qualified firm for the initial site preparation activities will be key to controlling these early costs. Additionally, delays in or inefficient performance of this work could lead to increased operational costs if TriMet is unable to meet its construction schedule.

Finding: For the reasons stated above, a procurement process that allows the evaluation of qualitative factors will allow TriMet to select a well-qualified contractor and to better control overall Project costs, while a non-low bid selection process does not allow for an evaluation on this basis. Contractor selection based on experience, resources, and innovative processes ensures the work can be performed as expeditiously as possible and with maximum return on investment.

2. Public benefits

TriMet has a core goal and objective to increase opportunities for COBID certified firms. This contract exemption aligns with this goal and results in a significant public benefit because market research indicates that there are a significant number of COBID certified firms able to perform this work. This contract exemption aligns with this goal and results in a significant public benefit because most of the work resulting from this exemption and the resulting solicitation will be performed by COBID certified firms, whether as the prime contractor or as a subcontractor. This will help the awarded firm increase their capacity and develop strong working relationship with TriMet. It also provides the awarded firm experience working on a TriMet project that they may not have had the opportunity to work on, if this exemption isn't approved.

Additionally, as stated above, the Project site has historically been used for heavy industrial purposes. Evaluating proposers' approaches to waste recycling, reuse, and hazardous material abatement will be key to addressing TriMet's stated goal of reducing its environmental impact.

Finding: Low bid offers no opportunity to consider a contractor's utilization of COBID certified firms. A non-low bid approach provides the opportunity to identify a contractor who has proven experience in working on these types of projects while achieving substantial COBID goals. A non-low bid approach provides the opportunity to identify a contractor who has proven experience in working on these types of projects and on sites that may present unknown hazards. This will enable a smoother site preparation project, which will allow a quick and safe start to the construction phase.

3. Value Engineering

Procurement of a firm with experience in building deconstruction, material reuse, and/or reconfiguring existing telecommunications infrastructure will increase value engineering (VE) opportunities. While direct VE opportunities related to this Project are modest, participation of a contractor with specific experience is more likely to result in innovative techniques that may result

in savings. Novel approaches to the phasing of this work, including collaboration with stakeholders (e.g. TriMet's IT department, and both Comcast and the City of Portland acting jointly as the campus ISP), could lead to significant reductions in overall schedules, which could provide significant cost savings to the larger Columbia Operations Facility project.

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.

4. Specialized expertise required

This Project will require some expertise in hazardous material mitigation, waste recycling, and waste reuse. Knowledge of building deconstruction practices should greatly increase the resale value of the existing building materials. Familiarity with the reconfiguration of live networks will help ensure uninterrupted continuity of TriMet's operations at the Columbia facility.

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

Network disruptions could delay or halt commissioning of new electric busses in Building 4, maintenance and replacement of damaged bus shelters in Building 7, and most critically the acceptance and disbursement of bus and train components from the MMC. Interruptions of physical trucking access to the MMC could similarly disrupt the distribution of critical vehicle components throughout the district.

Finding: A best-value procurement will allow the contractor to weigh in on any issues that they anticipate may arise during the Project, heading off costly delays to ongoing operations and the continued development of the Columbia Operations Facility. A best-value procurement will allow TriMet to evaluate proposers on their willingness and ability to collaborate with adjacent projects to minimize delays to the overall Columbia Operations Facility.

6. Public safety

The Project scope includes hazardous material mitigation as well as waste recycling and reuse. As such, ensuring the proper removal and disposal of this material is key to reducing harm to the public.

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 the Project with the 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. 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.

Finding: A non-low bid procurement will provide a benefit for fiscal planning.

8. Technical complexity

The work contemplated under this exemption presents a reasonable amount of complexity in regard to both building deconstruction and the reconfiguration of the campus network infrastructure. Untangling existing communications pathways from interconnected buildings and relocating network equipment shared with both Comcast and the City of Portland will take significant coordination and technical ability. In an effort to reduce the duration of this and other project elements, multiple relocations of the primary network node may be necessary. As stated in Finding 5, sustained disruptions to network availability at this campus could have numerous negative impacts to the district.

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. 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. Project staff also intends to conduct direct outreach to firms that may be suitable to perform the work.

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 ideas into the 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 COBID-certified firms, 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 TriMet.