

**EXHIBIT A**

**RESOLUTION NO. 26-04-15**

**FINDINGS IN SUPPORT OF LOW BID EXEMPTION**

**TV Highway Transit & Safety 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. A Contract Review Board's exemption from the low-bid procurement process requires the agency to develop findings that demonstrate (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.

The agency's findings supporting an alternative procurement process must evaluate 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. Number of contractors available to bid
2. Operational, budget and financial data;
3. Public benefits;
4. Value engineering;
5. Specialized expertise required;
6. Public safety;
7. Reducing risks to the agency;
8. Funding sources;
9. Market conditions;
10. Technical complexity;
11. New or existing structure;
12. Occupied or unoccupied during construction;
13. Single or multiple phases of work; and
14. Agency expertise and experience in alternative contracting method

**B. Summary Description of the TV Highway Transit & Safety Project**

The TV Highway Transit & Safety Project (Project) will provide a TriMet-operated Bus Rapid Transit (BRT) service serving communities in Washington County. The service will be approximately 16.2 miles long, and will run primarily on TV Highway, which serves as a primary east-west arterial route through Beaverton, Aloha, Hillsboro, Cornelius, and Forest Grove. As envisioned, it will carry passengers to and from stops between the

Beaverton Transit Center at the eastern terminus and downtown Forest Grove at the western terminus.

The project will include multiple scope components that will define the construction contract including:

- 82 new station platforms with shelters, lighting, real-time digital information displays, and other critical amenities.
- 59 signal upgrades that support transit signal priority.
- Four (4) intersection rebuilds to move existing bus stations out of railroad right-of-way and to meet roadway safety standards for our station locations.
- One (1) new fully signalized intersection plus additional enhanced signalized pedestrian crossings.
- Sidewalk and curb ramp improvements that improve accessibility.
- Fiber optic improvements for a connected signal and communications system.
- Roadway improvements (i.e. concrete bus pads) at station platforms.

### **C. Critical Factors**

This project is a major infrastructure investment that includes jurisdictional permitting/design/construction coordination with the ODOT, Washington County, and the cities of Beaverton, Hillsboro, Cornelius, and Forest Grove. The proposed changes along TV Highway will affect how businesses, residents, and others use the corridor during and after construction. During the two year construction period, TriMet anticipates general purpose travel lanes to remain operational, and the contractor team will be responsible for minimizing impacts to businesses and residents dependent on the functionality of this corridor.

### **D. Considerations**

#### **1. Number of contractors available to bid**

TriMet anticipates 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 advertisement in the Daily Journal of Commerce and TriMet's internet procurement system, Ebid, 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 eliminates favoritism and encourages competition.

TriMet has found that through the alternative procurement process, when contractors develop their proposed work plan and to incorporate their value engineering and design ideas into the design and construction of the Program, it encourages significant competition between contractors with reasonable performance records.

An alternative procurement process will also allow TriMet to evaluate the contractor's program for utilizing opportunities for participation by Small Certified Businesses as required by the Federal DBE Program (49 CFR Part 26). , which is not possible in traditional low bid procurement,

## 2. Construction budget, operations and financial data

The TV Highway Transit & Safety project will be funded in part by the Federal Transit Administration (FTA), TriMet, regional partners, and other grant sources. The construction budget allocated for this capital investment is anticipated to be in excess of \$175 million. Successful project delivery includes achieving cost certainty with financial accountability to multiple stakeholders. Cost certainty will play a significant role in decision making for the Project and will build confidence in the multiple stakeholders' financial commitments.

In TriMet's experience, low bid procurements on complex projects result in numerous change orders, often exceeding 10% of the originally bid contract value. There are complex interactions on this Project: construction work, maintaining existing operations on a critical arterial, adjacent and impacted residents/businesses, and transit customers. TriMet seeks an alternative delivery method that allows us to take these complex interactions into consideration. This will result in reduce design changes, construction delays, and contractor misunderstandings inherent in the traditional design-bid-build process. The construction contractor's involvement during design is a proven approach for containing costs, defining more constructible designs and, defining coordination, phasing, and approach in a Conduct of Construction Plan. The Conduct of Construction Plan and other agreements will also establish clear expectations as defined in funding agreements with partner agencies.

Finding: Experience suggests that a CM/GC delivery method, which requires an alternative procurement process, puts TriMet in the best position to design and deliver a complex corridor transit project on this high speed and high volume corridor. As a result, the design will reflect the construction methods that the contractor intends to employ. In addition, early contractor involvement will produce greater cost certainty, reduce contractor contingencies, and reduce risk through close coordination during the process.

## 3. Public benefits

In an alternative procurement process that uses a Request for Proposal, there is more latitude for establishing selection criteria that gives greater consideration for contractor qualifications, experience, track record, approach, community benefit, and past performance based on cost delivery. With a Project of this magnitude, coordination complexity and geographic impact, the risks to the public – such as coordinating and minimizing impacts to the traveling public, schedule delay, and cost control – are much

greater. In these cases, an alternative procurement approach better accounts for project complexity and a contractor's ability to manage specific risks and opportunities.

Early contractor involvement in design scoping and construction strategy reduces the risk of construction schedule delays caused by permitting, design exceptions, and construction implementation strategy.

Early engagement with the contractor will help to define construction means and methods, and develop specific staging plans for temporary public access. This engagement process will allow for community, owner and jurisdictional input, ultimately benefitting outcomes for the public.

Finding: An alternative procurement process is the best method for TriMet to identify a contractor who has a proven performance record, and will allow adequate opportunities to coordinate with stakeholders in the delivery approach.

#### 4. Value Engineering

TriMet finds the greatest savings through value engineering are achieved during the design phase, before design decisions are finalized. Low bid allows for value engineering during construction, but it is often more difficult to implement because of construction schedule pressures, redesign costs, and additional time for public process.

Construction contractor input during design enhances the value engineering process that begins during preliminary design. During this phase, options are explored related to constructability, temporary facilities, and construction access without issuance of change orders during construction. The CM/GC delivery method allows value engineering ideas to be incorporated in line with the design schedule.

Finding: A CM/GC delivery method involves the contractor early to define cost-reducing and timesaving elements through value engineering that will be incorporated into the Project. This allows for maximum flexibility in the design and construction, while also maintaining standards and efficiency. This encourages the contractor to maximize cost saving ideas and methods.

#### 5. Specialized expertise required

Construction costs are highly dependent upon the design, staging, phasing and construction methods utilized on a complex project. The Project will require expertise in specific design and construction methods, but the biggest challenges will require specialized expertise in phasing and staging work in coordination with the railroad, ODOT, and multiple local jurisdiction, while maintaining roadway operations and minimizing public construction fatigue.

Finding: An alternative procurement process allows selection of a contractor with the special expertise required to complete the required work along a high volume and high

speed state highway and in coordination with the railroad, ODOT and five local jurisdictions. A CM/GC delivery method allows TriMet to select a contractor that has the versatility to manage and execute on the full range of requirements, while representing TriMet during work on the corridor. In addition, pre-construction services allows TriMet and the contractor time to understand the project needs and level of coordination required for success.

#### 6. Public safety

This construction will occur within an active, high volume, high speed, high crash state highway right-of-way, and in close proximity to pedestrians, bicyclists, motorists, and a railroad right-of way. Access must be well managed to ensure public safety and convenience, while minimizing disruptions to adjacent uses. The Project will require a contractor with a successful performance record for this type of work.

Finding: An alternative procurement process 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 environments is crucial to the success of this work. An alternative procurement process offers TriMet the best opportunity to carefully evaluate the contractor's safety performance during construction and minimize risk in the contractor's work plan.

#### 7. Reducing risks to the agency

TriMet finds that the CM/GC delivery method is the best approach to successfully deliver the Project while minimizing schedule, cost, and safety risks. This method will best control project budget and scheduling, and reduce design changes, construction and operational delays, and contractor misunderstandings inherent in the traditional design-bid-build process.

The involvement of a construction contractor during design is a proven approach for containing costs and maintaining schedules as more constructible designs and realistic construction and communication plans are developed that are also reflective of operational constraints and public needs.

Cost and schedule risks are also reduced through a CM/GC delivery method through the development of a risk matrix. Prior to negotiating the Total Contract Price (TCP), TriMet and the contractor typically develop a risk matrix, and define who will own what risk, what risk is shared, and how risk is otherwise mitigated or eliminated. This negotiated tool ultimately plays a valuable role in not only reducing cost and schedule risks on the Project, but in achieving a successful FTA risk and readiness review.

Finding: An alternative procurement process allows the contractor to anticipate and weigh-in on issues that may arise during construction, heading off costly delays during construction. A CM/GC delivery method allows for the contractor's early involvement minimizing risky late design changes which with a complex project like this, is

particularly impactful to the schedule due to extensive coordination (including right-of-way) with multiple agencies and jurisdictions. This approach contributes to cost certainty because agreements are made prior to the TCP regarding who owns the risk in various categories.

#### 8. Effect on Funding Sources

The TV Highway Transit & Safety Project will be funded from a combination of local and federal funding. Intergovernmental agreements (IGAs) are under development regarding terms and conditions of funding. Alternative delivery methods are often used on projects that are not only complex in construction, but also have specific outcomes that are conditioned by agency or stakeholder groups. With IGAs often being included in grants, a CM/GC delivery method will provide significant flexibility to coordinate on any community and local jurisdictional requirements identified in these IGAs.

Finding: An alternative procurement process has greater flexibility for early close coordinate with the project team to achieve community priorities identified in funding IGAs. This flexibility also is beneficial to ensure compatibility and compliance with the terms of local, regional, and state funding sources.

#### 9. Market Conditions

Contractor involvement throughout design allows TriMet to obtain market-based pricing that assists in decision-making and budget adherence. Construction market conditions continue to be highly volatile. Workforce and supply chain shortages, high demand for construction services and rapidly changing commodity prices have continued to cause significant swings in escalation of rates and pricing. Lead times for procurement of some specialized materials have rapidly increased. An alternative procurement process will contribute to cost and schedule certainty, while mitigating market risk. As part of price negotiations, the contractor and TriMet will have the opportunity to discuss and apportion risk, while defining strategies that address market condition pressures.

Finding: An alternative procurement process will help to mitigate the market risks inherent in a project of this nature.

#### 10. Technical complexity

This project requires extensive coordination with the railroad and multiple governmental partners, all while managing costs and working safely in a high-speed, high-traffic, crash-prone environment. A CM/GC delivery method allows TriMet to evaluate a contractor's technical experience with similar work at the time of selection.

Finding: An alternative procurement process will ensure that the selected contractor has the technical capability to deliver a project of this nature. It also provides adequate

time for advance coordination and strategy development necessary to deliver the project on time, and at budget.

#### 11. Whether this project involves new construction or renovates existing

This project will involve a combination of new and renovated infrastructure. This can be more challenging to construct and manage. This type of project will come with many unknowns that require problem solving in the field, and during active construction. With a CM/GC delivery method, the contractor will help inform the design by tying new work into the existing infrastructure, while establishing alternative approaches for unexpected conditions.

Finding: An alternative procurement process will ensure that the selected contractor can provide input during the design phase. Preconstruction services and constructability reviews during design, can play a significant role in minimizing risk on a project that involves existing, new, and renovated infrastructure.

#### 12. Occupied or unoccupied during construction

The 16.2 mile TV Highway corridor connects Forest Grove, Cornelius, Hillsboro, Aloha, and Beaverton and is primarily a state highway. TriMet anticipates the Project will maintain traffic and business operations along the corridor during the two years of construction. The Project requires a sustained, consistent, and coordinated effort to successfully achieve this essential requirement. An alternative procurement process helps to ensure that the selected contractor is experienced in achieving these outcomes, and provides adequate time for necessary coordination.

Finding: A CM/GC delivery method helps ensure that the selected contractor will be successful in executing this complex project within a fully operational environment. This approach provides the time necessary for adequate coordination with TriMet and relevant stakeholders in advance of construction.

#### 13. Single or Multiple Phases

The Project will have multiple sequences and discipline phases throughout construction. However, it will be completed as one project phase. This consideration does not affect the Findings.

#### 14. Agency expertise and experience in alternative contracting method

TriMet has exempted projects from low bid and utilized alternative delivery methods in the past, including the Division Transit BRT Project, Powell Garage Replacement Project, 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 an Engineering and Construction Division that all contain many

professionals who have substantial experience at procuring, negotiating, administering, and enforcing public improvement contracts. The Project team has substantial experience using the CM/GC delivery method, and has a strong track record of leveraging it to deliver favorable outcomes related to cost, schedule, and community benefits on similar BRT projects.

Finding: The agency has a long history and developed practice around the use of alternative procurement process and the CM/GC delivery method in particular. This experience, combined with a delivery program capable of supporting this effort, will ensure that this approach is leveraged to achieve intended outcomes.

#### 15. Cost Savings

An alternative procurement process will allow TriMet to select a contractor based on performance criteria in addition to price competition. It will allow the selection of a contractor whose proven experience matches the nature of the work required. By selecting the most qualified contractor, TriMet will minimize the risk of delays, cost increases, and other potential impacts to this public project. In TriMet's experience, the low bid contracting method for work of this nature is more likely to result in contractor initiated change orders, and project risks that often impact the project well beyond the initial contract price and schedule.

Finding: Award of the contract using an alternative procurement process pursuant to the exemption will result in cost savings to TriMet.

### **E. Exemption from Low-Bid Contracting 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 cost savings and other substantial benefits to TriMet.