

**Date:** September 18, 2019

**To:** Board of Directors



**From:** Doug Kelsey

**Subject:** **RESOLUTION NO. 19-09-74 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) BOARD OF DIRECTORS, ACTING IN ITS CAPACITY AS THE TRIMET CONTRACT REVIEW BOARD (TCRB), EXEMPTING FROM COMPETITIVE BIDDING REQUIREMENTS A CONTRACT FOR THE RUBY EXPANSION TRACTION POWER SUBSTATION EQUIPMENT PROCUREMENT AND INSTALLATION PROJECT**

**1. Purpose of Item**

This Resolution requests that the TriMet Board of Directors (Board), acting in its capacity as the TriMet Contract Review Board, exempt from the low bid process a public improvement contract for TriMet’s Ruby Expansion Traction Power Substation Equipment Procurement and Installation Project (Project). 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 1<sup>st</sup> Reading
- Ordinance 2<sup>nd</sup> Reading
- Other \_\_\_\_\_

**5. Background**

The Project will result in the procurement and installation of new equipment for the Ruby Expansion Traction Power Substation. TriMet’s Ruby Junction facility is slated to receive a new Traction Power Substation to: 1) remove operational restrictions currently in place in the yard, thereby mitigating on-time performance issues, and 2) replace the over 30-year old Ruby mainline substation. Both traction power substations are being designed into a single building to increase design and construction efficiencies.

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 contractors 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 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 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 contractors for the East and West segments of that project, as well as the Center Street Building Modifications work. TriMet also used an RFP process to select a contractor for the Blue Line Station Rehabilitation project, the eFare Installation project, and the Cleveland Crew Room Renovation Signals and Communications Systems project, all of which, like this one, involved work around existing TriMet systems.

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 August 28, 2019. 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 to Resolution No. 19-09-74 as Exhibit A.

**6. 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 the criteria included in the RFP, including price.

**7. Diversity**

Use of a competitive RFP process allows TriMet to consider proposers' M/W/ESB and workforce diversity plans in awarding the contract.

**8. Financial/Budget Impact**

The final amount of work performed on the Project is expected to total \$2,800,000. The funding source of this contract is Bond Funded, which permits alternative contracting methods.

**9. Impact if Not Approved**

If this exemption is not approved, TriMet could procure this public improvement contract through a traditional low-bid procurement method. This is not the preferred option for the reasons outlined above and discussed in the attached findings.



**RESOLUTION NO. 19-09-74**

**RESOLUTION NO. 19-09-74 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 THE RUBY EXPANSION TRACTION  
POWER SUBSTATION EQUIPMENT PROCUREMENT AND  
INSTALLATION 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 the Ruby Expansion Traction Power Substation Equipment Procurement and Installation Project; and

**WHEREAS**, TriMet has submitted to the TCRB the written findings 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 TCRB hereby adopts and approves the findings stated at (a) and (b) below, and the Findings In Support of Low Bid Exemption attached as Exhibit A which are submitted in support of (a) and (b) below, to exempt from competitive bidding requirements the contracts for construction services for the Project (Contract).

(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 contracts are 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.

Dated: September 18, 2019

\_\_\_\_\_  
Presiding Officer

Attest:

\_\_\_\_\_  
Recording Secretary

Approved as to Legal Sufficiency:

  
\_\_\_\_\_  
Legal Department

**RESOLUTION NO. 19-09-74  
EXHIBIT A**

**FINDINGS IN SUPPORT OF LOW BID EXEMPTION  
Ruby Expansion Traction Power Substation  
Equipment Procurement and Installation Contract**

**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. How many persons are available to bid;
2. The construction budget and the projected operating costs for the completed public improvement;
3. Public benefits that may result from granting the exemption;
4. Whether value engineering techniques may decrease the cost of the public improvement;
5. The cost and availability of specialized expertise that is necessary for the public improvement;
6. Any likely increases in public safety;
7. Whether granting the exemption may reduce risks to the contracting agency, the state agency or the public that are related to the public improvement;
8. Whether granting the exemption will affect the sources of funding for the public improvement;
9. Whether granting the exemption will better enable the contracting agency to control the impact that market conditions may have on the cost and time necessary to complete the public improvement;
10. If granting the exemption will better enable the contracting agency to better address the size and technical complexity of the public improvement
11. Whether the public improvement involves new construction or renovates or remodels the existing structure.
12. Whether the public improvement will be occupied or unoccupied during the construction.
13. Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions; and
14. 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 methods 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 Ruby Expansion Traction Power Substation**

TriMet's Ruby Junction facility is slated to receive a new Traction Power Substation (TPSS) in order to: 1) remove operational restrictions currently in place in the yard, thereby mitigating on-time performance issues, and 2) replace the 30+ year old Ruby mainline substation. Both traction power substations are being designed into a single building to increase design and construction efficiencies.

**C. Critical Factors**

Traction Power Substations are highly specialized pieces of equipment requiring additional design upon contractor selection. In addition to the design component, the substation will require fabrication, delivery, and testing to be ready to service both the mainline and the yard.

TriMet believes that selection of a contractor with experience and expertise in the design and construction of this type of work will ensure a seamless integration of this equipment into the TriMet system. The best way to ensure the selection of a qualified contractor is through the use of an alternative selection process based in qualifications, and not simply price.

**D. Considerations**

*1. Type and Cost of Contract*

TriMet is planning to utilize a negotiated request for proposal (RFP) process (non-low bid) to select a contractor for the Substation Work. TriMet estimates the contract order of magnitude to be approximately \$2,800,000.

*2. How many persons are available to bid?*

TriMet believes there is a sufficient market for this type of work and we will use the Daily Journal of Commerce and TriMet's internet procurement system to notify potential contractors. Furthermore, this has been the traditional approach to substation procurement.

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 a project, the negotiated procurement process generally encourages significant competition between contractors with accomplished performance records.

*3. The construction budget and the projected operating costs for the completed public improvement.*

Selection of a qualified contractor is based on a number of factors including Contractor experience and proposal cost. All factors weigh in to inform the final decision on the best contractor. TriMet expects competitive and reasonable prices from qualified, experienced contractors.

*4. Public benefits that may result from granting the exemption.*

The public will benefit directly from a well-planned installation, from a qualified and experienced contractor that completes the project within the allotted time. Finalizing the design, fabrication, installation, testing, and coordination with all project stakeholders will help mitigate yard and mainline operational interruptions and directly benefit the public who depend on LRV services.

*5. Whether value engineering techniques may decrease the cost of the public improvement.*

By combining two substations into one pre-fabricated building, the current design has accounted for increased design and construction efficiencies.

In addition to this approach, it has been TriMet's experience that the value engineering process can best be served by contracting with a contractor with the specialized experience that traction power substations require. As this is a both a design and construction contract, TriMet will actively seek out and apply contractor-provided value engineering ideas that align with our design criteria.

6. *Cost and availability of specialized expertise that is necessary for the public improvement.*

This project requires highly specialized personnel and equipment. TriMet believes that through the RFP process we are most likely to award the Contract to the most qualified Contractor, specific to the skills required. If granted the exemption, TriMet will weigh experience alongside cost and other considerations. Availability of specialized expertise is a concern that will be mitigated through outreach and procurement posting techniques.

7. *Any likely increase in public safety.*

The existing mainline substation is over 30 years old and is reaching the end of its useful life. There have been changes to the code since the installation of this substation that will increase the safety to TriMet maintenance staff. In addition to TriMet staff safety, given the age of the equipment, certain parts are no longer available, thereby increasing both the risk and duration upon failure. These factors, combined with the existing yard substation being underpowered, may lead to substation failure and TriMet's inability to deliver trains on time, requiring patrons to either find alternate routes to their destinations or to linger at platforms for extended periods of time.

8. *Whether granting the exemption may reduce risks to the contracting agency or the public that are related to the public improvement.*

Traction Power Substation design, fabrication, installation, and testing is a niche industry that requires significant resources from specialized firms. Granting this exemption allows TriMet to weigh the specific expertise and experience required to do this type of work, reducing the risk to both TriMet and the public.

In addition to the financial and construction schedule risk of selecting an unqualified firm based solely on cost, there are considerable safety risks that must be considered as well. With liberty to consider experience level through an alternative contracting method, TriMet can mitigate these risks by first identifying qualified and experienced contractors, and then considering all competitive bids based on experience, along with price.

9. *Whether granting the exemption will affect the sources of funding for the public improvement.*

The funding source of this contract is Bond Funded, which permits alternative contracting methods.

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 potential risk. Furthermore, a negotiated procurement will allow the contractor and TriMet to discuss current market forces and their possible effects on the construction schedule.

11. *Whether granting the exemption will better enable the contracting agency to address the size and technical complexity of the public improvement.*  
This contract will require the performance of highly technical work, made more complex by the need to integrate it with the existing yard and mainline system. If allowed this exemption, TriMet believes it can be more selective of contractors able to work in a highly coordinated environment involving multiple contractors, design firms, local service providers, and TriMet yard operations (which are to be maintained at all times).
12. *Whether the public improvement involves new construction or renovates or remodels an existing structure.*  
This project involves the replacement of the existing Ruby mainline substation. In addition to this replacement, the new yard substation requires some reconfiguration of the yard sectionalizing strategy in order to facilitate the balancing of the loads in the yard as shared by the new yard Traction Power Substation. A solid work plan will be very important to complete the necessary work within the demands of the schedule. Through an alternative contracting method, TriMet can evaluate the work plan along with experience and cost to make an informed decision.
13. *Whether the public improvement will be occupied to unoccupied during construction.*  
The substation installation will occur within the property lines of the operational Ruby Junction facility while maintaining mainline service for the duration of the work.
14. *Whether the public improvement will require a single phase of construction or multiple phases of construction to address specific project conditions.*  
A coordinated work plan will be a critical element to the successful integration into the phased construction approach. The total project is currently considering four (4) construction phases:  
Phases 1 & 2. A civil contractor (prime construction contract selected via a 2-step low-bid process) will install all of the required site duct banks, substation foundation, and OCS equipment in preparation for the substation installation.  
Phase 3. This will begin upon the arrival of the substation on-site. It will be shipped to the site sectionalized and assembled in the field. Once assembled, the testing and verification phase will be completed.  
Phase 4. The substation will tie-in to the yard and mainline power grid/system.
15. *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 methods 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.*  
TriMet has utilized alternative means of contracting, such as RFP, on several occasions such as Banfield Light Rail Track Rehabilitation Project, 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. TriMet's Procurement, Legal, and Engineering and Construction Departments have extensive experience with alternative contracting methods and will be working on this project.

## **E. Findings**

For reasons stated above, TriMet believes a contract procurement strategy not strictly based on price can be executed without bias or favoritism while still exercising substantial competition. An exemption from the low bid requirement will allow for an improved final

product for the public and improved construction coordination between all the necessary agencies and contractors.