

Date: March 23, 2022

To: Board of Directors

From: Sam Desue, Jr.

Subject: RESOLUTION NO. 22-03-11 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET), ACTING AS THE TRIMET CONTRACT REVIEW BOARD (TCRB), TO AUTHORIZE A CLASS EXEMPTION FOR CONSTRUCTION OF CERTAIN BUS LAYOVER IMPROVEMENTS AND UPGRADES

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 for a class of small public improvement projects to allow a “best value” solicitation exclusively for contractors certified by Oregon’s Certification Office for Business Inclusion and Diversity (COBID).

2. Type of Agenda Item

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

3. Reason for Board Action

This exemption from the 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 1st Reading
- Ordinance 2nd Reading
- Other _____

5. Background

In October 2018, the Board adopted the Statewide Transportation Improvement Fund (STIF) Plan, which is funded on a biennial basis by revenue generated from payroll taxes. The authorized STIF projects include construction of physical improvements or upgrades intended to increase and facilitate bus service within the built environment. This will require construction work to alter or add bus layover space at existing stops or transit centers, as well as the addition of bus pads for future bus shelters and if needed, lighting for customer and operator safety.

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 Service-disabled Veteran Business Enterprises

(D/M/W/ESB/SDVBE), 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.

The class exemption authorized by this Resolution will facilitate opportunities for COBID-certified firms to win contracts and build capacity through the project delivery method. Contractors awarded work within this class of public improvement projects will be able to build relationships with TriMet staff and gain a better understanding of the administrative requirements of contracting with TriMet.

TCRB Rule V(A) and ORS 279C.335(2) provide that the Board, acting in its capacity as the TCRB, may exempt a class of contracts 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 contractors using a best value process. Under the traditional low bid procurement method, TriMet may consider only price in selecting a contractor. The competitive Request For Proposals (RFP) process allows TriMet to select contractors upon consideration of many factors, including price. Use of the RFP process allows TriMet to consider things such as experience in similar work, schedule performance, cost control, attention to safety, and quality of workmanship, along with price.

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 class of public improvement projects. Notification of the public hearing on TriMet's draft Findings was published in the Daily Journal of Commerce, and the hearing was held on March 16, 2022. 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 the RFP criteria, which is intended to define the pool of competitive bidders for these construction contracts 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 the class of construction contracts 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 FY 2022-2023 STIF Plan and funding is expected to continue on a biennial basis. The estimated range for projects within the proposed class exemption will be from \$5,000 to \$1,000,000.

9. Impact if Not Approved

If this exemption is not approved, TriMet would have to procure every project via the traditional low-bid procurement method. This would delay work and conflict with the purpose of the program, and is not the preferred option for the reasons outlined above and presented in the Findings.

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WHEREAS, the TriMet Contract Review Board (TCRB) has authority under ORS 279C.335 and TCRB Rule V to exempt a class of contracts 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 class of public improvement contracts 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 class of public improvement contracts; 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 class of contracts for construction projects, 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 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 Contracts within the specified class for particular construction projects, subject to final Board approval of the contract award.

Dated: March 23, 2022

Presiding Officer

Attest:

Recording Secretary

Approved as to Legal Sufficiency:

Gregory E. Skillman

Legal Department