

**Date:** March 22, 2023

**To:** Board of Directors

**From:** Sam Desue, Jr.

**Subject: RESOLUTION NO. 23-03-12 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) AUTHORIZING A CLASS EXEMPTION FOR ON-CALL BUS SHELTER REPAIR, MAINTENANCE AND INSTALLATION SERVICES**

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**1. Purpose of Item**

This Resolution requests that the TriMet Board of Directors (Board), acting as the TriMet Contract Review Board (TCRB), authorize a special procurement exemption for on-call bus shelter repair, maintenance, and installation services (Services).

**2. Type of Agenda Item**

- Initial Contract
- Contract Modification
- Other: Special Procurement Exemption

**3. Reason for Board Action**

This exemption from the competitive bidding 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 1<sup>st</sup> Reading
- Ordinance 2<sup>nd</sup> Reading
- Other \_\_\_\_\_

**5. Background**

Approximately 1060 bus shelters are located throughout TriMet’s service boundaries. TriMet’s Maintenance Operations department utilizes contractors to assemble and install new and used shelters, refurbish used shelters, remove discontinued or damaged shelters, as well as repair shelters and amenities on an on-call basis. Approval of this Resolution will allow TriMet to issue a solicitation for the Services exclusively to contractors certified by Oregon’s Certification Office for Business Inclusion and Diversity (COBID).

ORS 279B.085 and TCRB Rule IV(A) provide that the Board, acting in its capacity as the TCRB, may authorize a special procurement exemption, if it finds that a written Request submitted for authorization demonstrates that the use of a special procurement meets the following requirements:

- (a) Is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts; and

(b) (1) Is reasonably expected to result in substantial cost savings to the agency or to the public; or

(2) Otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055 (competitive sealed bidding), 279.060 (competitive sealed proposals), 279B.065 (small procurements) or 279B.070 (intermediate procurements) or under any rules adopted thereunder.

The written Request is attached hereto as Exhibit A.

TriMet has conducted two (2) solicitations for these Services over the last decade, both of which resulted in very few responses. TriMet staff has undertaken market research and outreach efforts prior to submitting this Resolution, and have identified a substantial pool of COBID firms that can perform the work or may have the capacity to expand their business to perform the work. It is expected that there will be multiple COBID firms to make up the limited pool. Therefore, this Special Procurement is unlikely to encourage favoritism or diminish competition.

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. COBID-certified firms have faced great challenges in competing on the open market with larger, more established contractors to perform this work, primarily due to TriMet's ordinary requirement that the selected vendor possess a facility to warehouse all bus shelter material, a significant investment. The new solicitation will require a much lower initial investment for vendors, primarily due to TriMet's decision to store bus shelter materials on its own property and to potentially divide the work among multiple contractors.

TriMet staff recognizes that utilizing this limited pool may not result in significant cost savings, but doing so is intended to serve the public interest. Limiting the pool of vendors to COBID firms will advance TriMet's goal of increasing access and opportunities in contracting among this class of vendors.

The special procurement authorized by this Resolution will facilitate opportunities for COBID-certified firms to win contracts and build capacity through the opportunity to provide these services on a regular basis. Contractors awarded work under this special procurement will be able to build relationships with TriMet staff and gain a better understanding of the administrative requirements of contracting with TriMet and other public entities. Finally, TriMet staff believes this process will help grow the pool of companies interested in performing these and similar services in the future, which will increase overall competition.

#### **6. Description of Procurement Process**

Upon the TCRB's approval of this exemption, a competitive RFP process limited to COBID-certified firms will be used to select the contractor or contractors that present the best value to TriMet.

#### **7. Diversity**

Adoption of this Resolution will increase diversity among TriMet contractors by authorizing a special procurement that allows the Procurement & Supply Chain Management Department to limit the pool of competition to COBID-certified firms, using a competitive RFP process.

**8. Financial/Budget Impact**

Bus Shelter Repair, Maintenance and Installation costs are budgeted as an element of the Facilities Management department's annual operating budget.

**9. Impact if Not Approved**

If the TCRB does not approve this exemption, TriMet would need to procure these services on the open market. This is not the preferred option for the reasons outlined above.

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TRANSPORTATION DISTRICT OF OREGON (TRIMET) AUTHORIZING A  
CLASS EXEMPTION FOR ON-CALL BUS SHELTER REPAIR,  
MAINTENANCE AND INSTALLATION SERVICES**

**WHEREAS**, the TriMet Board of Directors (Board), acting as the TriMet Contract Review Board (TCRB), has authority under ORS 279B.085 and TCRB Rule IV to authorize a special procurement exemption based upon a written Request submitted by the Agency, and upon making the findings set forth in ORS 279B.085 (4); and

**WHEREAS**, the Agency has submitted a written Request to the TCRB for approval of a contract-specific special procurement, which is incorporated herein and set forth in the attached Exhibit A; and

**NOW, THEREFORE, BE IT RESOLVED:**

1. That the TCRB hereby finds that the written Request set forth in Exhibit A demonstrates that the use of a special procurement, as described in the Request:

(a) Is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts; and

(b) (1) Is reasonably expected to result in substantial cost savings to the agency or to the public; or

(2) Otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055 (competitive sealed bidding), 279.060 (competitive sealed proposals), 279B.065 (small procurements) or 279B.070 (intermediate procurements) or under any rules adopted thereunder.

2. That the TCRB hereby approves the written Request for the contract-specific special procurement exemption set forth in the attached Exhibit A.

Dated: March 22, 2023



Presiding Officer

Attest:



Recording Secretary

Approved as to Legal Sufficiency:



Legal Department

## EXHIBIT A TO RESOLUTION 23-03-12

### WRITTEN REQUEST FOR CONTRACT-SPECIFIC SPECIAL PROCUREMENT EXEMPTION

#### **Background**

Approximately 1060 bus shelters are located throughout TriMet's service boundaries. TriMet's Maintenance Operations department utilizes contractors to assemble and install new and used shelters, refurbish used shelters, remove discontinued or damaged shelters, as well as repair shelters and amenities on an on-call basis. Previous solicitations for these services has resulted in limited competition. TriMet staff believe that soliciting from a pool of contractors limited to COBID-certified firms is in the Agency's best interest and the best way to increase competition.

ORS 279B.085 and TCRB Rule IV(A) provide that the Board, acting in its capacity as the TCRB, may authorize a special procurement exemption if it finds that a written Request submitted for authorization demonstrates that the use of a special procurement meets the following requirements:

(a) Is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts; and

(b) (1) Is reasonably expected to result in substantial cost savings to the agency or to the public; or

(2) Otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055 (competitive sealed bidding), 279.060 (competitive sealed proposals), 279B.065 (small procurements) or 279B.070 (intermediate procurements) or under any rules adopted thereunder.

#### **Procurement Process**

Upon approval of this exemption, TriMet will issue a Request for Proposals for On-Call Bus Shelter Repair, Maintenance, and Installation Services (RFP). The RFP will only be open to those Contractors that are COBID-certified. The remainder of the process will follow TriMet's established procurement rules.

Pursuant to ORS 279B.085 and TCRB Rule IV(A), the proposed process will not encourage favoritism in awarding of public contracts or substantially diminish competition. The goal of this alternative process is just the opposite. TriMet wants to identify a large pool of COBID-certified firms and potentially make multiple awards.

It is also believed that the proposed process substantially promotes the public interest in a manner that could not practicably be realized by requirements that are applicable under ORS 279B.055 (competitive sealed bidding), 279.060 (competitive sealed proposals), 279B.065 (small procurements) or 279B.070 (intermediate procurements) or under any rules adopted thereunder. The public interest is promoted by increasing opportunity and access in contracting for underrepresented and underutilized companies.