


**Date:** January 24, 2024

**To:** Board of Directors

**From:** Sam Desue, Jr. 

**Subject:** **RESOLUTION NO. 24-01-04 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET), ACTING AS THE TRIMET CONTRACT REVIEW BOARD (TCRB), AUTHORIZING AN EXEMPTION FROM LOW BID REQUIREMENTS TO ALLOW A BEST VALUE SOLICITATION FOR A PUBLIC IMPROVEMENT CONTRACT FOR THE COLUMBIA BUS BASE SITE PREPARATION PROJECT**

**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 requirements to allow a “best value” solicitation for a public improvement contract for the Columbia Bus Base site preparation Project (Project).

**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 to allow for a competitive Request for Proposals (RFP) process must be approved by the 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**

In 2019, TriMet acquired property on NE Columbia Blvd between NE 42<sup>nd</sup> and NE 46<sup>th</sup> Avenues (the Columbia Bus Base) from Peterson CAT at a cost of \$25,000,000. TriMet intends to develop the Columbia Bus Base as a facility to support the Agency’s transition to a Zero Emission Bus Fleet. The facility is ultimately projected to house as many as 252 zero emissions buses.

The Project will consist largely of site preparation and waste removal/recycling efforts, with additional opportunities for excavation, utility decommissioning, and hazardous building material abatement. The overall Project will be divided into a number of smaller elements, including phased demolition and removal of twelve buildings. Segregating the Project into a

number of smaller bid packages is intended to advance site preparation and construction activities as rapidly as possible, while making the most productive use of federal funding and local grants. Doing so also is intended to encourage greater participation in the procurement from local small businesses certified by Oregon's Certification Office of Business Inclusion and Diversity (COBID).

For this Project, TriMet seeks an exemption from the low bid procurement process in order to allow it to select a demolition contractor using a "best value" procurement.

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 low 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 for TriMet to select contractors using a "best value" process. Under the traditional low bid procurement method, TriMet may consider only price when selecting contractors. However, a competitive RFP "best value" process would allow TriMet to select contractors upon consideration of many factors, including price.

Use of the competitive RFP process would allow TriMet to consider factors such as experience in similar work, schedule performance, cost control, attention to safety, small business utilization, workforce diversity, and quality of workmanship, as well as price, when selecting contractors. This would allow the Agency to assign high values to such considerations as COBID certification, or reducing the Project's carbon footprint through innovative waste reuse/recycling methodologies, when selecting contractors. A competitive RFP also is best suited to build upon the existing pool of general contractors familiar with TriMet projects, which has the potential to reduce the overall cost of future TriMet projects by increasing competition.

Pursuant to ORS 279C.335(5), TriMet must hold a public hearing to allow comment on draft Findings used to grant an exemption of a public improvement project. Notification of the public hearing on the draft Findings was published in the Daily Journal of Commerce, and the hearing was held on January 5, 2024. 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 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 TriMet based on the criteria included in the RFP.

7. **Diversity**

Use of the competitive RFP process will allow TriMet to consider utilization of COBID-certified small business contractors and workforce diversity when selecting the general contractor for the work. TriMet staff have identified a number of COBID-certified firms that are well suited to serve as the general contractor or as subcontractors on this Project.

8. **Financial/Budget Impact**

The cost to begin this work is included in the approved FY2024 Engineering and Construction budget.

9. **Impact if Not Approved**

If this exemption is not approved, TriMet would have to procure this work via the traditional low bid procurement method, rather than a best value process. This is not the preferred option for the reasons outlined above and presented in the Findings.

**RESOLUTION NO. 24-01-04**

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TRANSPORTATION DISTRICT OF OREGON (TRIMET), ACTING AS  
THE TRIMET CONTRACT REVIEW BOARD (TCRB), AUTHORIZING  
AN EXEMPTION FROM LOW BID REQUIREMENTS TO ALLOW A  
BEST VALUE SOLICITATION FOR A PUBLIC IMPROVEMENT  
CONTRACT FOR THE COLUMBIA BUS BASE SITE PREPARATION  
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 duly noticed public hearing was held January 5, 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 a 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 submitted in support of (a) and (b) below, to exempt from competitive bidding requirements the contract for the specified Project, are hereby approved and adopted.

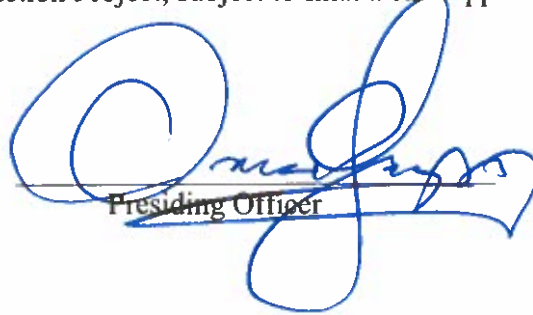
(a) It is unlikely that the exemption will encourage favoritism in the awarding of a public improvement contract or substantially diminish competition for public improvement contracts; and

(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 the contract for the specified construction Project, subject to final Board approval of the contract award.

Dated: January 24, 2024



Presiding Officer

Attest:



Recording Secretary

Approved as to Legal Sufficiency:



Legal Department

## EXHIBIT A

### RESOLUTION NO. 24-01-04

#### FINDINGS IN SUPPORT OF LOW BID EXEMPTION

##### Columbia Bus Base Site Preparation 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. 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 Bus Base Site Preparation Project

The work will be for site preparation at the Columbia Bus Base Property including, but not be limited to the following:

- Site preparation;
- Removal of debris;
- Hazardous material abatement;
- Utility decommissioning;
- Excavation

###### C. Critical Factors

While the overall work is not complex, 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 Project.

## D. Findings

### 1. Operational, budget and financial data

The overall budget of the Columbia Bus Base Project is limited. Controlling costs at early stages of the Project will help preserve budget for future, larger elements of the Project. Selecting an innovative, well qualified firm for site preparation work 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 during design, while a non-low bid selection process enables this interaction. 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. While the pool of eligible contractors is not limited to COBID-certified firms, use of the RFP process presents a better opportunity to evaluate firms more fully. While many COBID firms may not be able to compete on price alone, evaluating qualitative factors will ensure a more robust competition. Additionally, as stated above, the Project site has 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 approach to hazardous material mitigation, innovative processes for waste recycling and other project scope, or to consider diversity criteria. 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 quicker start to the construction phase.

### 3. Value Engineering

Procurement of a firm with experience in deconstruction and material reuse will increase value engineering (VE) opportunities. While VE opportunities related to this Project are modest, participation of a contractor with specific experience is more likely to result in innovative approaches based on efficient construction means and method considerations that may result in savings.

Finding: A non-low bid procurement method allows the use of a value engineering approach supported by the participation of the contractor prior to completion of final Project design, thereby maximizing potential savings.

#### 4. Specialized expertise required

This Project will require some expertise in hazardous material mitigation, waste recycling and waste reuse. While the overall work of site preparation does not require specialized expertise, ensuring that the Agency contracts with a well-qualified firm is critical to the smooth progression of the overall Project.

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

This Project is part of the overall Columbia Bus Base Project. TriMet has a substantial interest in the success and cost effectiveness of the Project, as it will be key to our Zero Emissions Bus Transition.

Finding: A best-value procurement will allow the contractor to weigh in on any issues that may arise during the Project, heading off costly delays to the continued development of the Columbia Bus Base.

#### 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 modest amount of complexity. The site is home to TriMet's Materials Management Center which must operate throughout the work without interruption. The buildings on the Columbia campus also share an array of interconnected utilities including power, sewer, and telecommunications. It is critical that during the demolition of buildings contained in this scope of work that operations of other buildings housing various TriMet functions are not interrupted for any significant period of time.

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. Funding sources

Funding for the Project is through the TriMet general fund and potentially Federal grants. General funds are limited due to agency budget pressures.

Finding: Early and continued budget certainty is highly desired. A best-value procurement is a better method than low-bid to achieve earlier budget certainty.

## 10. 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 participated in direct outreach to sixty COBID-certified firms that may be suitable to perform the work; to-date forty firms have expressed interest in bidding this 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 the Agency.