TRIMET

Memo

Date: March 27, 2024

To: Board of Directors

From: Sam Desue, Jr.

Subject: **RESOLUTION NO. 24-03-23 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 CONSTRUCTION MANAGER / GENERAL CONTRACTOR (CM/GC) SERVICES FOR THE COLUMBIA OPERATIONS FACILITY PROJECT**

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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 an exemption from low bid requirements to allow a "best value" solicitation for a public improvement contract for the Columbia Operations Facility Project (Project).

2. **Type of Agenda Item**
   - ☐ Initial Contract
   - ☐ Contract Modification
   - ☒ Other: Exemption of a Contract from Low Bid Requirements

3. **Reason for Board Action**
   This exemption from low-bid requirements to allow for a competitive Request For Proposal (RFP) 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 1st Reading
   - ☐ Ordinance 2nd Reading
   - ☐ Other _____

5. **Background**
   As TriMet transitions to zero-emission fuel and expands its bus fleet, the need for an additional bus operations and maintenance facility becomes crucial. Acquired in 2018 for approximately $26 million, the Columbia Operations Facility Project site located at 4421 NE Columbia Boulevard offers an ideal location to reduce deadheading and TriMet vehicle emissions. The Project site is also the planned location for TriMet's fleet of Fuel Cell Electric Buses (FCEBs), which will require hydrogen fueling. The Project includes the design and construction of parking and bus circulation areas, a modular operations building, a maintenance building, fuel and wash buildings, and supporting fueling infrastructure.

Ancillary support buildings such as the Information Technology building, a generator enclosure, and a trash enclosure are also included.

The 31-acre site is bordered by the Columbia Slough to the north and NE Columbia Boulevard to the south, with 46th Avenue to the east and 42nd Avenue to the west. Buses will enter and exit the site via NE 42nd Avenue, using a new traffic signal at the intersection of NE 42nd Avenue and Columbia Boulevard. Employee and visitor vehicles will access the site via a new road connection to NE 47th Avenue, which provides access to a signalized intersection at Columbia Boulevard. Previously used as an industrial Caterpillar Power Systems dealership facility, all existing buildings on the site will eventually be deconstructed, except the Materials Management Center (MMC), currently used as a Stores facility.

The Columbia Operations Facility Project is extremely significant to TriMet's commitment to sustainability, and is expected to house at least 250 zero-emission buses in its final configuration. The facility will also play a pivotal role in facilitating updates to other operations facilities by providing temporary housing for their diesel fleets during facility upgrades, aligning with TriMet's broader fleet growth and transition objectives. The success of this Project is intrinsically tied to achieving agency goals, with a focus on ensuring exceptional safety and quality, while carefully considering costs.

Managing a project as complex as the Columbia Operations Facility entails navigating and coordinating interdependencies among various project elements that collectively form the entire facility and affect the surrounding neighborhood. Additionally, the project is constrained by a limited budget and timeframe, necessitating efficient planning and execution. TriMet believes the selection of a CM/GC via a non-low bid approach will enhance the likelihood of selecting a contractor possessing the requisite experience and expertise needed to address these challenges effectively.

This work requires a regional, experienced, and diverse building contractor, in order to achieve as much Columbia Operations Facility buildout as possible within the Project budget, and with minimal interruption to service. The project team is ready to procure the services of a Construction Manager/General Contractor (CM/GC) to help plan and complete the work. The CM/GC contractor will provide preconstruction services, contribute to cost certainty, and establish needed coordination to ensure a successful construction process.

An exemption from low bidding is required to enable TriMet to use a competitive "best value" solicitation process to select a CM/GC for this Project. Under the traditional low bid procurement method, TriMet may consider only price in selecting a contractor. The competitive "best value" Request For Proposals (RFP) process allows TriMet to select contractors upon consideration of many factors, including price.

TriMet staff anticipate using the following criteria (or similar) to select the contractor: Proposer Experience/Past Performance (10 points); Proposed Project Team (35 points); Draft Project Approach, Work Plan & Schedule (50 points); Draft Contracting Plan and DBE Program (40 points); Project Management (25 points); Price (40 points).

TriMet has a history of successfully utilizing the RFP process to select CM/GC contractors for complex construction projects. For example, the Portland-Milwaukie Light Rail Project utilized RFPs to obtain CM/GCs for the East and West segments of that project. The Center Street Building Modifications and Powell Operations Facility Replacement Projects also successfully utilized the RFP process to contract CM/GCs for similar projects.

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 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.

Under the traditional low bid procurement method, TriMet may consider only price in selecting a contractor. The competitive RFP method proposed allows TriMet to select a general contractor upon consideration of many factors, including price. Use of the competitive RFP process allows TriMet to consider things such as experience in similar work, schedule performance, cost control, attention to safety, small business utilization and workforce diversity, and quality of workmanship, along with price.

Pursuant to ORS 279C.335(2) and (5), TriMet is required to draft written Findings in support of the exemption, and hold a public hearing to allow comment on draft Findings used to grant the exemption. Notification of the public hearing on the draft Findings was published in the Daily Journal of Commerce, and the hearing was held on March 5, 2024. There was one (1) attendee who asked several questions regarding the RFP process but offered no comments on the findings themselves.

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 receiving approval for this exemption, TriMet will initiate a rigorous competitive Request for Proposal (RFP) process to carefully evaluate and select the CM/GC that offers the most advantageous proposal for the Project. The selection will be based on a comprehensive set of criteria outlined within the RFP, ensuring that the chosen contractor not only demonstrates exceptional competency but also delivers optimal value to TriMet. This process emphasizes Project safety, quality, inclusion, transparency, fairness, and accountability, aiming to secure a contractor whose expertise and proposed approach align with the Project's objectives.

7. Diversity

Exemption from the low bid contracting process empowers TriMet to evaluate numerous factors, including the certified small business subcontracting utilization and plan, along with workforce diversity. This approach ensures that the chosen CM/GC not only demonstrates proficiency in project execution, but also exhibits a proactive commitment to leveraging small business participation and cultivating a diverse workforce.

Through this inclusive approach, TriMet aims to cultivate partnerships that not only drive Project success, but also contribute to broader socioeconomic advancement and equitable opportunities within the region.

8. **Financial/Budget Impact**

   The cost of work associated with the Project is allocated within the Engineering, Construction, and Planning Budget, in accordance with the approved Columbia Operations Facility Capital Improvement Program (CIP).

9. **Impact if Not Approved**

   If this exemption is not approved, TriMet would be obligated to pursue the procurement through the conventional low bid method. The traditional low bid procurement method entails a sequential process where the project's design, bidding, and construction phases are distinctly separate. While this method has been used on smaller, less technical projects, it possesses inherent limitations that could impede the optimal execution of the Project.

   In contrast, the exemption sought allows for the adoption of a CM/GC model, which promotes early contractor involvement, collaboration, and innovation from Project inception. 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.

RESOLUTION NO. 24-03-23

RESOLUTION NO. 24-03-23 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 CONSTRUCTION MANAGER / GENERAL CONTRACTOR (CM/GC) SERVICES FOR THE COLUMBIA OPERATIONS FACILITY PROJECT

WHEREAS, the TriMet Contract Review Board (TCRB) has authority under ORS 279C.335 and TCRB Rule V to exempt a contract for Construction Manager/General Contractor (CM/GC) services from the competitive low bid 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 June 20, 2023 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 the 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 construction project, 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 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 a Contract for the specified construction project, subject to final Board approval of the contract award.

Dated: March 27, 2024

Presiding Officer

Attest:

Recording Secretary

Approved as to Legal Sufficiency:

Legal Department

EXHIBIT A

RESOLUTION NO. 24-03-23

FINDINGS IN SUPPORT OF LOW BID EXEMPTION

Columbia Operations Facility 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 Operations Facility

As TriMet transitions to zero-emission fuel and expands its bus fleet, the need for an additional bus operations and maintenance facility becomes crucial. Acquired in 2018 for approximately $26 million, the Columbia Operations Facility (COF) project site at 4421 NE Columbia Boulevard offers an ideal location to reduce deadheading and TriMet vehicle emissions. The COF is also planned to be the location for TriMet's fleet of Fuel Cell Electric Buses (FCEBs), which will require hydrogen fueling. The project includes the design and construction of parking and bus circulation areas, a modular operations building, a maintenance and maintenance training building, fuel and wash buildings, and supporting fueling infrastructure. Ancillary support buildings such as a trash enclosure, generator enclosure, and MDF building are also included.

The 31-acre site is bordered by the Columbia Slough complex to the north and by NE Columbia Boulevard to the south, with 46th Avenue to the east and 42nd Avenue to the west. Buses will enter and exit the site via NE 42nd Avenue using a new traffic signal at the intersection of NE 42nd Avenue and Columbia Boulevard. Employee and visitor vehicles will access the site via a new road connection to NE 47th Avenue, which provides access to a signalized intersection at

Columbia Boulevard. Previously used as an industrial Caterpillar Power Systems dealership facility, all existing buildings on the site will eventually be deconstructed, except the Materials Management Center (MMC), currently used as a TM Stores facility.

The Columbia Bus Base Project holds immense significance in TriMet's commitment to sustainability and is expected to house at least 252 zero-emission buses in its final configuration. This could consist of standard 40' buses or a combination of 40' and 60' buses totaling 252 "standard bus equivalents" (SBEs). The facility will also play a pivotal role in facilitating updates to other operations facilities by providing temporary housing for their diesel fleets during facility upgrades, aligning with TriMet's broader fleet growth and transition objectives. The success of this project is intrinsically tied to achieving agency goals, with a focus on ensuring exceptional safety and quality while carefully considering costs.

C. Critical Factors

Managing a project as complex as the Columbia Operations Facility entails navigating and coordinating interdependencies among various project elements that collectively form the entire facility and affect the surrounding neighborhood. Additionally, the project is constrained by a limited budget and timeframe, necessitating efficient planning and execution. TriMet believes the selection of a CM/GC via a non low bid approach will enhance the likelihood of selecting a contractor possessing the requisite experience and expertise needed to address these challenges effectively.

Critical Factors include:

Hydrogen Fueling:
This project is crucial for TriMet as it enables the agency to shift to zero emission, hydrogen-powered vehicles, thereby improving operational efficiency with a reliable, sustainable fueling solution. This transition aligns with TriMet's environmental goals, reducing emissions, enhancing air quality, providing sustainable mobility and achieving long-term strategic objectives.

Public, TriMet Employee and Worker Safety:
Construction must be conducted with extreme attention to public, TriMet Employees and worker safety, due to the environment of the site with existing buildings and facilities such as the brand new Material Management Center building on site. The existing operations of the site will lead to construction occurring alongside operations and maintenance activities on-site.

Planning of the Construction Approach and Schedule:
Development of a sound construction approach and schedule is critical to expedite the project so that TriMet meets deadlines related to bus storage needs. Contractor input during the planning and design phase of the Project with respect to the overall campus construction-sequencing plan is essential. Completion of the Project on schedule is essential to the Agency as a whole to address storage and maintenance services for the expanding TriMet bus fleet. Delays would create problems throughout the Agency and could potentially impact the public through service failures and increased costs.

Cost Certainty:
Budget confidence is important and it is critical for TriMet to obtain cost certainty early in the construction process and to avoid any significant scope changes after the contract is awarded.

The contractor can offer constructability and pricing feedback on design options, and can help identify risks during the design process.

D. Findings

1. Operational, budget and financial data

The Project budget is fixed at $302 million with limited contingency. Given the intricate interplay between construction activities and TriMet's desire to transition to zero-emission buses, an expedited construction schedule is essential, encompassing operational aspects such as considerations for customer impact and service continuity. Due to the presence of ongoing site preparation projects (such as PBOT LID, existing building deconstruction and main gate improvements), coupled with dynamic site conditions, a thoughtful evaluation of our project approach is required. In this context, adopting a non-low bid approach such as the CM/GC method is proposed. This process is anticipated to significantly enhance control and predictability of both the project budget and schedule.

Finding: Engaging a qualified construction contractor during the design phase has proven to be an effective strategy for predicting and containing costs. This collaborative approach ensures the implementation of more constructible designs that align with realistic construction means and methods. Early involvement of the construction contractor also facilitates obtaining market-based pricing, aiding decision-making and budget adherence during the final design phase. The significance of this approach becomes even more evident when considering potential delays or inefficient performance during the project. Any disruptions to the COF build-out could lead to increased operational costs for TriMet. Therefore, a proactive and collaborative CM/GC approach is recommended to mitigate risks, streamline the construction process, and ultimately contribute to the overall success of the project.

2. Public benefits

The public stands to directly benefit from a design that takes into account contractor means and methods, particularly when involving the contractor early in the project to develop specific phasing, staging, and access plans. This is especially crucial for a project of this magnitude, a 31-acre site with existing building infrastructure to be deconstructed, an operational TriMet stores facility, sensitive environmental zones, subsurface unknowns, stormwater concerns and concurrent PBOT LID.

TriMet plans to seek the contractor's advice on means and methods options and implications, as well as staging and access plans during the design work. This collaborative effort is designed to ensure owner input and control over solutions, ultimately increasing the predictability of the schedule, cost, and transit service during the construction phase.

Finding: The traditional low bid approach offers little opportunity for the construction contractor to collaborate with TriMet and its designer during the design phase. It lacks the flexibility to develop and select staging and access alternatives that are minimally disruptive to transit service and the public while maintaining alignment with established Project budgets. In contrast, a non low bid approach provides the opportunity to select a contractor with proven experience in working with all affected stakeholders, resulting in a less disruptive design and construction plan. The broader community and TriMet as an organization will benefit from a selection process that considers the contractor's experience and record of accomplishment in minimizing public impacts.

3. Value Engineering

It is expected that adopting a non-low bid procurement method is the way to achieve optimal savings through value engineering in our upcoming project. TriMet's extensive experience underscores that the greatest savings in value engineering are realized during the design phase, before final decisions are made and resources are allocated to the construction procurement process. While low bid procurement allows for some value engineering during construction, it is often less likely to occur due to construction schedule pressures, the expense of evaluation or redesign efforts, and the additional time required for stakeholder processes. This reduces the need for change orders during construction. A non-low bid procurement method empowers the construction contractor to actively engage with the design team, ensuring the incorporation of value engineering ideas aligned with the design schedule.

Finding: A non-low bid procurement method facilitates the utilization of a value engineering approach with active participation of the contractor responsible for constructing the project. This strategy, implemented prior to the completion of the final design, is pivotal in maximizing potential savings and optimizing the overall efficiency of the project. This proactive approach maximizes potential savings by addressing key considerations before the final design is completed.

4. Specialized expertise required

The COF has inherent complexities and essential considerations crucial for its successful execution. These intricacies stem from the project's sites natural history, historical uses and location along the Columbia slough, adjacent a major arterial for nearby industry, business and residents. The complexity is compounded by concurrent initiatives such as the PBOT LID, various site preparation activities, and main gate access improvements. The site also features existing building infrastructure earmarked for deconstruction, an operational TriMet stores facility, sensitive environmental zones, subsurface conditions, and stormwater considerations.

Finding: In light of the intricate nature of this project, a non-low bid procurement process emerges as the optimal solution. This approach employs a best value selection methodology, allowing TriMet to consider specialized experience needed in addition to considering the proposed price. This nuanced evaluation positions the owner to select a CM/GC with specialized expertise required for the successful execution of the Project.

5. Reducing risks to the agency

The importance of strategically reducing risks to TriMet is a crucial initiative for ensuring the overall success and cost-effectiveness of the Project.

Finding: The CM/GC approach empowers the contractor to actively contribute insights on potential challenges that may surface during construction. Proactive issue resolution not only reduce the risk of costly delays to the Project but also extends the benefits to our broader transit services.

6. Public safety

The Project is located on a TriMet site with ongoing operations and adjacent public right of way and environmentally sensitive areas. The chosen contractor must navigate this dynamic landscape, working seamlessly around TriMet stores operations near public streets and

sidewalks. The safety of TriMet employees, contractors and the public and environment at large is paramount to the overall success of the project.

Finding: Engaging in a non-low bid procurement allows TriMet to conduct a comprehensive evaluation of the contractor's experience and safety performance in working safely and efficiently near the public and within our operating systems. This evaluation extends to scrutinizing the contractor's safety record on past projects.

7. Market conditions

The construction market continues to exhibit cost volatility, marked by workforce shortages, a surge in demand for construction services, and rapid fluctuations in commodity prices. These factors have led to significant swings in escalation rates and pricing, coupled with recent fluctuations in lead times for the procurement of specialized materials.

Finding: A non-low bid procurement methodology allows TriMet to address the inherent risks in the current market conditions through open discussions with the CM/GC. This collaborative approach facilitates the joint exploration and apportionment of market risks. Moreover, opting for a non-low bid approach ensures that long lead materials may be secured in advance if needed, mitigating the potential for construction delays caused by procurement challenges.

8. Technical complexity

The construction a full TriMet operations facility is complicated on its own and involves a complex array of components, including facilities for diesel and hydrogen fueling, paint shop, tire bays, bus wash facility, operations suite, maintenance bays, stores, training areas, bus and employee parking and many other elements. Each element is essential for the efficient operation and maintenance of the bus fleet, requiring careful planning and integration into the overall design of the facility. The inclusion of hydrogen fueling infrastructure for the first time at a TriMet facility adds several intricate technical challenges, reflecting the pioneering nature of hydrogen-based technology. These challenges stem from the unique properties of hydrogen and the specific requirements of a reliable and efficient fueling system.

Overcoming these technical difficulties in the development of hydrogen fueling infrastructure is crucial for realizing the full potential of hydrogen as a clean and sustainable zero emission fuel for TriMet buses.

Finding: Choosing a non-low bid approach allows TriMet to make a strategic and informed decision when selecting a contractor for the construction of hydrogen fueling infrastructure as just one part of a complex bus maintenance facilities. A non-low bid approach allows TriMet to include evaluation of past experience of project with similar technical complexity in its selection process in addition to price.

9. Funding sources

The Program relies on financial support primarily derived from grants and the TriMet general fund. It is crucial to acknowledge that both grants and the general fund have limitations, and these constraints stem from the broader budget challenges encountered by TriMet.

Finding: A non-low bid procurement approach enables TriMet to evaluate the contractor's past experience in managing projects with similar complexity, in addition to considering prices. This aligns with the goal of establishing financial stability early in the process, ensuring the project can navigate potential fiscal challenges with greater resilience.

10. Unlikely to Encourage Favoritism or Substantially Diminish Competition

The steps taken to ensure maximum competition and fair opportunity for this Program 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.

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 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 minority and women-owned businesses, which is not typical in traditional low bid procurement.

E. Exemption from Low-Bid Contracting and Preferred Construction Procurement Method: Request for Proposal Process

Granting an exemption from the low bid requirement would not lead to favoritism or significantly reduce competition. It is anticipated that the contract awarded through the exemption process will yield tangible cost savings and deliver other substantial benefits. By tailoring the selection process to the unique needs of the Project, it is envisioned that the resulting agreement will not only be cost-effective but also bring about additional advantages that might be challenging to attain through a rigid low bid framework.