

## EXHIBIT A

### RESOLUTION NO. 23-12-69

#### FINDINGS IN SUPPORT OF LOW BID EXEMPTION

##### **On-Call Building and Site Maintenance, Repairs, and Improvement Services**

These Projects include:

- Construction efforts including physical improvement and/or upgrades to TriMet owned or leased facilities

##### **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.

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. Public safety;
6. Market conditions;
7. Technical complexity; and
8. Funding sources.

##### **B. Summary Description of the Projects**

The work will be for on-call building and site maintenance, repairs, and improvement services and may include, but not be limited to the following:

- Site preparation;
- Removal of debris;
- Carpentry;
- Drywall installation;
- Flooring installation and repair;

- Painting;
- Wall coverings;
- Concrete/masonry work;
- Fencing repair and installation;
- Plumbing;
- Asphalt pavement; and
- Gazing

The estimated range for the projects under this class exemption shall be from \$5,000 to \$1,000,000.

### **C. Findings**

#### **1. Operational, budget, and financial data**

The budget for the projects contemplated under this class exemption will be determined on a case by case basis. Because of the complex interactions between the construction work and TriMet's operations and customers, TriMet seeks to minimize cost impact, construction delays, and contractor misunderstandings inherent in the traditional design-bid-build process in order to control project budgets. This exemption seeks to award a pool of 2-3 general contractors to complete the selected projects. Projects will be allocated on a rotational or capacity based system. There may be times when TriMet staff will want to engage one of the contractors for a project during project design to provide some constructability advice or to obtain market-based pricing to assist in decision-making for budgetary purposes.

Finding: For the reasons stated above, a best value procurement process that allows for multiple awards and allows the involvement of a construction contractor during design will allow TriMet to better control costs and protect operations requirements. Low bid does not allow for multiple awards nor does it allow for multiple construction projects to be executed under one solicitation. The class exemption and proposed procurement process would allow for both and allow TriMet to engage with a contractor earlier than normal to assist with budget, schedule and, in some instances, design of the project.

## 2. Public benefits

TriMet has a core goal and objective to increase opportunities for COBID certified firms. This class exemption aligns with this goal and results in a significant public benefit because all of the work resulting from this exemption and the resulting solicitation will be performed by COBID certified firms, thus helping the awarded firms increase their capacity and develop strong working relationships with TriMet. It also provides the awarded firms experience working on TriMet projects that they may not have had the opportunity to work on, if this exemption isn't approved.

The public will also benefit directly from this approach by having a more expeditious manner in which to execute projects than with the low-bid procurement method. As stated above, the objective is to award multiple contracts to contractors so that projects can be completed in a more timely fashion. It is also expected to be a benefit for TriMet staff to engage with the contractors awarded these contracts on topics such as market-based pricing, schedule, constructability, and project budgeting. This will help to ensure realistic solutions to schedule, cost, and transit service during construction, as well as public safety concerns.

Finding: Low bid offers no opportunity for multiple awards nor for the ability to execute multiple projects resulting from one solicitation. This class exemption allows for that and will also allow for the opportunity of awarded contractors to be engaged and help project execution in a way that is not possible from a low-bid.

## 3. Value engineering

Staff do not foresee a lot of opportunity for value engineering on the projects covered under this exemption, however, there may be instances when early involvement by the contractor will be helpful. The procurement and project delivery approach proposed by this exemption is flexible and allows for early engagement or not. Although low bid allows for value engineering during construction, it is less likely to occur and is often more difficult to implement because of construction schedule pressures, the cost of evaluation or redesign efforts, and the time required for additional stakeholder processes.

Finding: The task order based contracts awarded as a result of this exemption will be a more collaborative process between TriMet staff and contractors and is expected to result in less change orders on projects because of the way the pricing will be established and the process in which projects are executed.

4. Specialized expertise required

We are piloting this approach on a small subset of public improvement projects that TriMet has forecasted in the future. The projects completed under this exemption will not require specialized expertise.

Finding: The procurement process proposed will employ a best value selection methodology, which allows TriMet to evaluate and rank the expertise of contractors in addition to their proposed pricing. It puts the owner in the best position to select construction contractors who will be able to complete the projects.

5. Public safety

TriMet seeks to reduce public safety risk as much as practical. A best value procurement that results in multiple awards allows TriMet to evaluate the experience and record in working safely and effectively near the public and its operating system of the contractors, and to select the most qualified.

Finding: An RFP procurement 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.

6. Market conditions

Construction market conditions continue to be highly volatile. Workforce shortages and rapidly changing commodity prices have continued to cause significant swings in escalation rates and pricing. This exemption will allow TriMet to award multiple contracts and work with those contractors to mitigate these risks for the projects more effectively than the low bid approach.

Finding: The proposed procurement and project delivery approach will provide a benefit for fiscal and resource planning because TriMet staff will have the ability to communicate to the awarded contractors about market conditions. Also, the awarded contractors will have the potential to work on projects for the five year term, so they may be able to mitigate some market conditions knowing that if, they continue to perform well, they will continue to receive work for the term of the contract. A low bid does not allow for this.

7. Technical complexity

The projects contemplated under this exemption are not complex in nature, however, budget and schedule certainty will be critical to minimizing the disruption to TriMet operations.

Finding: A best value procurement allows TriMet to select contractors with due consideration given to their past technical performance in similar work.

8. Funding sources

Funding for the projects is ongoing and provided through TriMet's Maintenance Operations Budget.

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.

9. Unlikely to encourage favoritism or substantially diminish competition

Staff requests that the Board limit the pool of competition for this class exemption to firms that are certified with the State Certification Office of Business Inclusion and Diversity (COBID) as one or more of the following: disadvantaged business enterprise; minority-owned business enterprise; women-owned business enterprise, emerging small business; and service-disabled veteran business enterprise (D/M/W/ESB/SDVBE). TriMet Staff have conducted outreach to various contractor associations that support COBID certified firms to notify and inform potential contractors that TriMet is in the process of implementing this model. The list of interested firms continues to grow and staff will continue to conduct outreach to ensure that interested COBID certified contractors are comfortable responding to the solicitation and administering the contract, if awarded.

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.

10. Cost savings

The alternative procurement and contracting methodology being proposed is a form of task order based contracting. This delivery method will result in contracts with multiple contractors. The solicitation will be a best value, Request for Proposals where experience and qualifications will be evaluated in addition to pricing. Once contracts are awarded, the Maintenance Operations Team will use them to complete routine projects without having to go through a solicitation and contract for every project. This model is transparent, auditable and encourages high quality of work and collaboration between TriMet staff and the awarded contractors. A benefit to the contractors is that, as long as they perform quality work, they can reasonably expect to continue to perform work throughout the life of the contract. Being able to plan ahead and forecast work through this model will allow the contractors to develop relationships with TriMet and understand the intricacies of administering a TriMet contract. It should also

allow them the ability to forecast resource planning and grow their capacity throughout the life of the contract.

Finding: Consolidation of a number of smaller projects in this approach will increase the interest of contractors and reduce bidding premiums likely with solicitations too small to attract competitive interest if this exemption is not approved.

**E. Class 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 contracts under the exemption will likely result in substantial cost savings and other substantial benefits to the Agency.