

**Date:** April 24, 2024

**To:** Board of Directors

**From:** Sam Desue, Jr. 

**Subject:** **RESOLUTION NO. 24-04-30 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET), ACTING AS THE TRIMET CONTRACT REVIEW BOARD (TCRB), TO AUTHORIZE AN EXEMPTION FROM LOW BID REQUIREMENTS TO ALLOW A BEST VALUE SOLICITATION FOR A CONTRACT TO REPLACE VEHICLE WASH BUILDING EQUIPMENT**

**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 to allow a best value solicitation for a contract to replace the Bus and Light Rail Vehicle Wash Building Equipment at various TriMet Maintenance Facilities.

**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 competitive bidding 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**

TriMet has several maintenance facilities with aging bus and light rail vehicle (LRV) wash buildings and associated equipment, which have reached the end of their useful life and must be replaced. The initial facility that must be addressed by the proposed contract is the Center Street Bus Maintenance Facility (Center Street), located at 4400 SE 17th Avenue, in Portland. Center Street was constructed circa 1978, and consists of a two-story maintenance facility, a bus wash building, a fuel house building, and various ancillary storage buildings, all within a secured concrete paved site of approximately 9.5 acres (414,308 square feet).

Vacuum equipment was originally installed on the east side of the fuel house, but was removed and not replaced when repair and maintenance of the equipment no longer was cost effective or practical. Most of the machinery, support equipment and systems in the bus wash building are original, and have reached or exceeded their expected useful life.

The scope of work at Center Street will include the design, furnishing, and installation of new bus wash facilities, a water recovery/recycling system and associated equipment, as well as installation of two new vacuum systems.

As the project progresses, and as budget allows, TriMet may engage further with the selected contractor to replace equipment at similarly situated maintenance buildings throughout the District. Potential additional sites include the Elmonica Light Rail Maintenance Facility, constructed in 1997 and experiencing drainage issues, and the Merlo Bus Maintenance Facility, constructed in 1985 and experiencing similar issues to Center Street. Additionally, the selected contractor may be engaged to provide similar services at the new Columbia Operations Facility.

With this Resolution, TriMet seeks the Board's authorization, in its role as the TCRB, for an exemption from the low bid requirements of ORS Chapter 279C, so that TriMet may obtain a contractor to replace the bus wash equipment at Center Street initially, but possibly at the other maintenance facilities referenced above. Although the vehicle wash equipment remains in service at these maintenance facilities, it has become a constant source of excessive maintenance activity. Approval of this Resolution will allow TriMet to conduct a best value Request for Proposals (RFP) solicitation for these services.

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.

An exemption from low bidding is required to enable TriMet to select a contractor using a best value process. Under the traditional low bid procurement method, TriMet may consider only price in selecting a contractor. However, under the competitive, best value, RFP process, TriMet may 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.

Additionally, the RFP process will allow TriMet staff to more fully evaluate diversity criteria, including each bidder's subcontracting plan and status in regard to Oregon's Certification Office for Business Inclusion and Diversity (COBID). Because the nature of this work is complex and highly specialized, evaluation of these additional factors will help ensure the success of the project.

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 public improvement contract. Notification of the public hearing on TriMet's draft Findings was published in the Daily Journal of Commerce, and the hearing was held on April 10, 2024. 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.

**7. Diversity**

Use of the RFP process when selecting contractors will allow TriMet to consider each proposer's workforce diversity and proposed utilization of small business and COBID-certified subcontractors. Staff will conduct extensive outreach prior to releasing the RFP to ensure maximum participation of COBID firms.

**8. Financial/Budget Impact**

The cost of the work is included in the proposed FY2025 Facilities Management budget, and projected in the out years for budget programming. The estimated cost for each maintenance facility is approximately \$5,000,000.

**9. Impact if Not Approved**

If this exemption is not approved, TriMet will need to procure a contractor for these services via the traditional low bid procurement method. It 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 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 public hearing was held April 10, 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 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 and submitted in support of (a) and (b) below, to exempt from competitive bidding requirements the contract for construction services, 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 particular construction contract.

Dated: April 24, 2024



Presiding Officer

Attest:



Recording Secretary

Approved as to Legal Sufficiency:



Legal Department

## EXHIBIT A

### RESOLUTION NO. 24-04-30

#### FINDINGS IN SUPPORT OF LOW BID EXEMPTION

##### **Bus Wash Building Equipment Replacement Projects**

###### 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 Center Bus Wash Building Equipment Replacement Project

The work will be for the Bus Wash Building Equipment Replacement Projects at TriMet's Center Street and Elmonica facilities including, but not be limited to the following:

Site preparation;

Demolition of existing equipment;

Removal of debris;

Hazardous material abatement;

Utility modification/decommissioning;

Excavation

Design

Fabrication

Modification of existing Wash Building and Fuel Building as needed

Fabrication/Manufacture of new wash and vacuum systems and related equipment

C. Critical Factors

The overall work, design, manufacture and construction present varying degrees of complexity. There are several elements that may require specific experience. Enabling the Agency to advance to full construction quickly is a key part of this Project.

D. Findings

1. Operational, budget and financial data

The overall budget of the Projects is limited. Controlling costs at all stages of the Projects will help preserve budget. Selecting an innovative, well qualified firm for the Design/Build work will be key to controlling these costs. Additionally, delays in or inefficient performance of this work could lead to increased operational costs and/or equipment failure(s) 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 partner with an experienced equipment manufacturer/supplier to perform support functions related to construction work activities. While the pool of eligible contractors and subcontractors 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. Evaluating proposers' approaches to the Design/Build process, as well as utilizing subcontractors for construction, installation and other build activities, 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 that will construct the Project prior to completion of final design, thereby maximizing potential savings.

### 4. Specialized expertise required

These Projects 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 manufacturer/supplier able to deliver a Design/Build product and process who is a proven performer for the specific, specialized work required.

### 5. Reducing risks to the agency

Due to the limited budget, TriMet has a substantial interest in the success and cost effectiveness of the Projects.

Finding: A best-value procurement will allow the contractor to weigh in on any issues that they anticipate may arise during the Projects, heading off costly delays.

### 6. Public safety

The Project scopes includes potential 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 mix of higher as well as a modest amount of complexity. The sites are home to existing bus and light rail facilities which must operate throughout the work without interruption.

The technical complexities associated with the project extend beyond the Center Bus Maintenance Facility to include other critical locations within TriMet's infrastructure.

The Center Street Maintenance Facility is a critical part of TriMet's operations, serving as a vital maintenance hub for bus services. Constructed circa 1978, this facility comprises a two-story maintenance facility, a wash building, a fuel house building, and various ancillary storage buildings, all situated within a secured concrete paved site spanning approximately 9.5 acres (414,308 square feet).

Challenges at the Center facility stem from aging infrastructure, particularly evident in the original vacuum equipment installed on the east side of the Fuel Building. These systems have been removed due to cost and practicality concerns, while much of the machinery and support equipment/systems in the Wash Building are original and have exceeded their expected useful life. The proposed scope of work at Center involves the design, furnishing, and installation of new bus wash facilities, water recovery/recycling systems, and associated equipment, including two new vacuum systems.

Another critical location within TriMet's network is the Elmonica Light Rail Vehicle (LRV) Maintenance facility, constructed in 1997. Specifically the LRV wash facility faces its own set of challenges, including but not limited to: control systems, water drainage within the wash bay, the lack of water recovery and recycling issues. Addressing these concerns requires careful planning and innovative solutions to ensure optimal operational efficiency and compliance with regulatory standards.

As the project progresses, and subject to budgetary considerations, TriMet may extend engagement with the selected contractor to address similarly situated buildings throughout the district. Potential additional sites include the Merlo Bus Maintenance Facility, constructed in 1985, which shares similar challenges to the Center Street Maintenance Facility, and the new Columbia Bus Facility, where similar services may be required.

Navigating the technical complexities across these seemingly similar yet diverse sites requires a comprehensive understanding of each facility's unique requirements and challenges. By selecting a contractor with demonstrated expertise in managing complex projects within the transportation infrastructure sector, TriMet aims to ensure successful project outcomes and the continued reliability of its services

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 funds. 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 will conduct additional outreach to ensure maximum competition on the project.

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.