

**TRI-COUNTY METROPOLITAN TRANSPORTATION  
DISTRICT OF OREGON (TRIMET)**

**CONTRACT REVIEW BOARD RULES**

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## **TABLE OF CONTENTS**

I. PURPOSE AND AUTHORITY FOR TRIMET CONTRACT REVIEW BOARD (TCRB) .....	3
II. DEFINITIONS.....	4
III. POWERS; PRESIDING OFFICER; MEETINGS.....	6
IV. TCRB RULES; TRIMET CONTRACTING RULES .....	6
V. SPECIAL PROCUREMENTS. ....	8
VI. SOLE SOURCE CONTRACTS.....	13
VII. EMERGENCY CONTRACTS.....	15
VIII PUBLIC IMPROVEMENT CONTRACT EXEMPTIONS .....	15
XI. PERSONAL SERVICES CONTRACTS .....	18
X. DISQUALIFICATION AND DEBARMENT APPEALS.....	18

## **I. PURPOSE AND AUTHORITY FOR TRIMET CONTRACT REVIEW BOARD (TCRB)**

The Oregon Public Contracting Code (ORS Chapters 279A, 279B and 279C), referred to herein as “the Code,” applies to most Oregon contracts and sets out requirements for obtaining, modifying and administering public contracts. Under ORS 279C.335, the Code ordinarily requires a local public contracting agency like TriMet to procure public improvement and related contracts by competitive bid.

Under ORS 279A.060, the Code allows an agency to establish a Local Contract Review Board in order to review public improvement contracts, or classes of public improvement contracts, and exempt them from the Code’s competitive bidding requirements, as well as establish public contracting procedures. In accordance with that statute, TriMet’s Board of Directors has established itself as the TriMet Contract Review Board (TCRB) and hereby implements the following rules to govern the procurement practices of the agency. Notwithstanding the TCRB’s authority to grant exemptions from competitive bidding, the Code mandates that the TCRB adopt the Attorney General’s Model Rules when granting an exemption from competitive bidding to procure a contract for Construction Manager/General Contractor (CM/GC) services. ORS 279C.335(4)(c). Therefore, these TCRB Rules adopt the Attorney General’s Model Rules in their entirety for procuring CM/GC services.

## II. DEFINITIONS

For purposes of these Rules, the following definitions apply:

- A. “Agency” means TriMet unless otherwise specified in these Rules.
- B. “Appeal” means a Person’s right to apply to the TCRB for a reversal or modification of a disqualification or a debarment decision.
- C. “Bid” means an offer submitted in response to an Invitation to Bid issued under ORS 279B.055, or if for a public improvement issued under ORS Chapter 279C.
- D. “Board of Directors” means the seven (7) member governing body of TriMet.
- E. “Contract” as set forth in OAR 125-246-0110(32), means an agreement between two or more persons which creates an obligation to do or not to do a particular thing. A Contract requires competent parties, subject matter, a legal consideration, mutuality of agreement, and mutuality of obligation. A Contract does not include grants.
- F. “Contracting agency” means TriMet and any other public body authorized by law to conduct a procurement, including but not limited to any person authorized by a contracting agency to conduct a procurement on the contracting agency's behalf.
- G. “Emergency” means circumstances that: (1) could not have been reasonably foreseen; (2) create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and (3) require prompt execution of a contract to remedy the condition.
- H. “Executive Director” means a person/position in the TriMet organization who has the primary responsibility and authority over the division subject to the Executive Director’s authority. This also includes the Chief Operating Officer, General Counsel, Chief Strategy Officer, and Chief Financial Officer and equivalent executive positions.
- I. “General Manager” means the General Manager of TriMet.
- J. “Goods” means supplies, equipment, or materials, and any personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto.
- K. “ORS” means the Oregon Revised Statutes.
- L. “Person” means an individual, corporation, business trust, estate, trust, partnership, Limited Liability Company, association, joint venture, governmental agency, public corporation, supplier or any other legal commercial entity.
- M. “Proposal” means an offer submitted in response to a Request for Proposals issued under ORS 279B.060, or if for a public improvement issued under ORS Chapter

279C.

- N. “President” means the presiding officer of the TriMet Contract Review Board.
- O. “Public contract” means a sale or other disposal, or a purchase, lease, rental or other acquisition, by a contracting agency of personal property, services, including personal services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement. A “Public contract” does not include a grant.
- P. “Public contracting” means procurement activities described in the Public Contracting Code relating to obtaining, modifying or administering public contracts or price agreements.
- Q. “Public Contracting Code” or “Code” means ORS Chapters 279A, 279B and 279C.
- R. “Public improvement” means a project for construction, reconstruction, or major renovation on real property by or for TriMet. Public improvement does not include: (1) Projects for which no funds of TriMet are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or (2) Emergency work, minor alteration, ordinary repair or maintenance necessary in order to preserve a public improvement.
- S. “Rules” means the rules adopted by the TriMet Contract Review Board.
- T. “Services” means services other than personal services, and does not include public improvements unless specifically provided otherwise in these Rules.
- U. “Special procurement” means, unless the context requires otherwise, a class special procurement, a contract-specific procurement, or both, as provided by ORS 279B.085.
- V. “TriMet Contracting Rules” mean TriMet’s public contracting procedural rules adopted under the authority of the General Manager, which are distinct from these TCRB Rules.
- W. “TriMet Contract Review Board” or “TCRB” means the Board of Directors acting under the authority and powers granted by the Code.

*Stat. Auth.: See ORS 279A.010; ORS 279A.060; ORS 279B.055; ORS 279B.060; ORS Chapter 279C.*

### **III. POWERS; PRESIDING OFFICER; MEETINGS**

- A. The TCRB shall consist of the members of the TriMet Board of Directors. The TCRB has all powers granted to it under the Code.
- B. The presiding officer of the Board of Directors shall serve as President of the TCRB and shall be its presiding officer. The President shall have the same powers as the President of the Board of Directors insofar as those powers are consistent with the Code and these Rules.
- C. TCRB meetings may be held at Board of Directors meetings, or at another time after public notice. The Board of Directors may sit as the TCRB during its meetings without formal adjournment, by announcing that it is sitting as the TCRB. TCRB notices may be published as part of Board of Directors notices when the actions that are the subject of the notices occur on the same date and at the same place.
- D. TCRB proceedings shall be governed by the same rules that govern Board of Directors proceedings to the extent that those rules are applicable to the TCRB under the Code, and are consistent with the TCRB Rules.
- E. The TCRB shall adopt these Rules by affirmative vote of a majority of a quorum.

*Stat. Auth.: ORS 279A.060.*

### **IV. TCRB RULES; TRIMET CONTRACTING RULES**

- A. These TCRB Rules and TriMet Contracting Rules shall apply to TriMet public contracts.
- B. The Model Rules of procedure adopted by the Attorney General under ORS 279A.065 do not apply to TriMet, except that procurements for Construction Manager/General Contractor (CM/GC) services shall be conducted in accordance with Model Rules adopted by the Attorney General under ORS 279A.065(3).

*Stat. Auth.: ORS 279A.065(3)(b); ORS 279C.337(1).*

- C. The General Manager shall establish, promulgate, modify and maintain the TriMet Contracting Rules consistent with the Public Contracting Code.
- D. Contracts exempted from the Code under ORS 279A.025 or otherwise by law are

not subject to these TCRB Rules or the TriMet Contracting Rules.

E. Neither the Code, these TCRB Rules, nor the TriMet Contracting Rules apply to the following Contracts or the classes of Contracts:

1. Contracts for purchases of law enforcement equipment suitable for counter-drug activities and computer equipment pursuant to the e-government Act of 2002 as described in ORS 279A.180, provided that the process described therein is followed;
2. Grants as defined in ORS 279A.010;
3. Acquisitions or disposals of real property or interest in real property;
4. Transfer, sale or disposal of personal property;
5. Procurements from an Oregon Corrections Enterprises program;
6. Contracts between TriMet and other governmental entities including the federal government;
7. Contracts, agreements or other documents entered into, issued or established in connection with:
  - (a) The incurring of debt by a public body, including but not limited to the issuance of bonds, certificates of participation and other debt repayment obligations, and any associated Contracts, agreements or other documents, regardless of whether the obligations that the Contracts, agreements or other documents establish are general, special, or limited;
  - (b) The making of program loans and similar extensions or advance of funds, aid or assistance by a public body to a public or private body for the purpose of carrying out, promoting or sustaining activities or programs authorized by law; or
  - (c) The investment of funds by a public body as authorized by law, and other financial transactions or a public body that, by their character cannot practically be established under the competitive selection procedures of ORS 279B.050 to 279B.085;
8. Contracts for Goods or Services with non-profit agencies providing employment opportunities for disabled individuals pursuant to ORS 279.835 to 279.855; and

*Stat. Auth.: ORS 279A.025; ORS 279A.050; ORS 279A.060; ORS 279A.065.*

F. Electronic Advertisements for Bids and Proposals

Advertisements for Bids and Proposals may be published electronically instead of in a newspaper of general circulation, except that an advertisement for a public improvement contract with an estimated cost in excess of \$125,000 must be published in at least one trade newspaper of general statewide circulation.

*Stat. Auth.: ORS 279B.055; ORS 279C.360(1).*

G. Federally Funded Contracts

Notwithstanding any provision of these Rules, TriMet shall comply with applicable federal statutes and regulations for contracts funded with federal funds in accordance with applicable law.

*Stat. Auth.: ORS 279A.030.*

**V. SPECIAL PROCUREMENTS.**

The TCRB hereby exempts the following types of contracts from competitive bidding requirements and authorizes TriMet to conduct Special Procurements for them, as specified herein:

- A. Special Procurements may be exempted from the Code's competitive bidding requirements under the following conditions:
1. The General Manager, or a designee, may approve a contract-specific or Class Special Procurement if the resulting Contract(s) value is less than \$250,000 for a one-time expenditure, or over the course of a five-year period.
  2. The TCRB may approve a contract-specific or a Class Special Procurement in accordance with ORS 279B.085, if the resulting Contract(s) value is more than \$250,000, and if the TCRB finds that a written request submitted by TriMet demonstrates that the use of a Special Procurement as described in the request, or an alternative procedure prescribed by the TCRB:
    - (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, 279B.060, 279B.065 or 279B.070 or under any TriMet rules adopted thereunder.

3. If a Contract is intended to be awarded through a Special Procurement that calls for competition among prospective contractors, TriMet shall make the award to the offeror who TriMet determines will be most advantageous to TriMet.
4. When a Class Special Procurement under this section is approved, TriMet may award Contracts to acquire Goods or Services within the class of Goods or Services in accordance with the terms of the General Manager's or the Board's approval without making a subsequent request for a Special Procurement.

*Stat. Auth.: ORS 279B.075.*

B. Brand Names or Products, "or Equal," and Single Seller

1. Authorization - TriMet is authorized to procure products in accordance with the following procedure:
2. Definitions - Procurement of "Brand Name or Equal" products means the Procurement of a product after specifying the registered Brand Name of the product or requiring the same specifications of the Brand Name product.
3. Requirements
  - (a) Specifications - Solicitation specifications for Public Contracts shall not expressly or implicitly require any product of any particular manufacturer or seller, except as expressly authorized in subsections (V)(A)(3)(a)(i) and (ii) of this Rule.
    - (i) "Or Equal" Specification (No limit) - TriMet may specify a particular Brand Name, make or product suffixed by "or equal", "or approved equal", "or equivalent", "or approved equivalent", or similar language if there is no other practical method of specification.
    - (ii) Specifying a Particular Make or Product (2 years) – TriMet may specify a brand name, make, or product without an "or equal" or equivalent suffix if there is no other practical method of specification except for public improvement contracts, after documenting the contract file, with the following:
      - (aa) It is unlikely that specification of the Brand Name, mark or product will encourage favoritism in the award of the public contracts or substantially diminish competition; or

- (bb) Specification of the Brand Name, mark or product would result in substantial cost savings to TriMet;  
or
- (cc) Efficient and safe utilization of existing equipment or supplies requires the acquisition of compatible equipment or supplies.

C. Advertising Contracts (5 years)

Authorization – TriMet is authorized to contract for advertising from newspapers, magazines and other related print media and from radio and television stations, social media and related media without a competitive solicitation. The term of such contracts shall not exceed five years.

D. Reverse Auctions (per occurrence)

1. Process - A Reverse Auction means a process for the purchase of Goods and Services from the lowest bidder. TriMet shall conduct Reverse Auctions by first publishing a solicitation that describes its requirements, contract terms and conditions. TriMet shall then solicit online Bids from all interested bidders through an internet-based program. The solicitation shall set forth a start and end time for Bids and specify the following type of information to be disclosed to bidders during the Reverse Auction:
  - (a) The prices of the other bidders or the price of the most competitive bidder;
  - (b) The rank of each bidder (e.g., (i) “winning” or “not winning” or (ii) “1st, 2nd, or higher”);
  - (c) The scores of the bidders if staff chooses to use a scoring model that weighs non-price factors in addition to price; or
  - (d) Any combination of subsections (a), (b) and (c) above.
  - (e) Before the Reverse Auction commences, bidders shall be required to consent to the contract terms and conditions, either in writing or by an internet “click” agreement. The bidders must then compete for the award of a contract by offering successively lower prices, informed by the price(s), ranks, and scores, separately or in any combination thereof, disclosed by staff. The identity of the bidders shall not be revealed during this process. Only the successively lower price(s), ranks, scores and related details, separately or in any combination thereof, will be revealed to the participants. TriMet may cancel this solicitation if it is in TriMet’s best interest.
  - (f) At the end of the bidding process, the contract shall be awarded to the lowest responsible bidder or in the case of multiple awards,

lowest responsible bidders. This process allows TriMet to test and determine the suitability of the Goods and Services before making the award.

2. Public Notice - Staff shall disclose the Reverse Auction process in the solicitation documents and shall give notices of the price(s) offered, rank(s), score(s) and related details to the initial bidders as described in the solicitation document. If the purchase exceeds \$250,000, staff shall issue a notice of intent to award, which shall be issued at least seven days prior to making the award.

E. Rating Agency Contracts (5 years)

Authorization - TriMet may purchase the services of Moody's Investors Service, Standard and Poors, or similar rating agencies without competitive solicitation. The term of such contracts shall not exceed five years.

F. Periodicals (5 years)

Authorization - TriMet may purchase subscriptions for periodicals, including journals, magazines, streaming services, on-line publications and similar publications without competitive solicitation. The term of such subscriptions shall not exceed five years.

G. Copyrighted Materials (3 years)

1. Authorization – TriMet may purchase copyrighted materials without competitive solicitation if there is only one supplier available for such Goods. Examples of copyrighted materials that may be subject to this subsection are textbooks, workbooks, curriculum kits, reference materials, audio and visual media, and software which is available only from the manufacturer or developer.
2. Process and Criteria - Staff shall state in the contract file the subsection of this Rule that authorizes the contract. The term of such contracts shall not exceed three years.

H. Direct Purchase from Manufacturer (5 years)

1. Authorization - TriMet may purchase Goods directly from the manufacturer without competitive solicitation if the price from the manufacturer is less than that offered by distributors.
2. Process and Criteria – TriMet shall set forth in writing the findings supporting the determination of lowest cost and cite the subsection of this Rule which authorizes this contract in the contract file. The term of such contracts shall not exceed five years.

I. Warranty Services Contracts (5 years)

Authorization – Staff may enter into a warranty services contract with the original provider of goods or services without conducting a competitive solicitation per ORS 279B.055, 279B.060, and 279B.070, if such a contract is necessary to preserve a warranty.

J. Memberships and Professional Associations (1 year or minimum membership term)

Authorization - Staff may join professional associations and organizations when such membership will enhance professionalism, encourage networking with other professionals, or otherwise provide access to valuable and necessary information to accomplish their jobs or maintain their professional standing. The term of each such membership shall not exceed one year or the minimum term of the membership.

K. Artist Contracts (5 years)

1. Authorization – Staff may enter into Public Contracts for the services of an artist without conducting a competitive solicitation per ORS 279B.055, 279B.060, and 279B.070. The term of any such contract shall not exceed five years.
2. Process and Criteria – Staff shall cite in the contract file the subsection of this Rule which authorizes the contract and document the nature of the work to be performed. Staff shall use competitive methods wherever possible to achieve best value and shall state in the contract file the reasons why a competitive process was deemed impractical.

L. Medicaid Transportation Service Provider Contracts:

Contracts for Medicaid Transportation services may be procured in accordance with the following procedure: TriMet may biannually publish a public notice containing a general statement of its requirements for Medicaid Transportation services. The notice shall contain information on how to apply for a Medicaid Transportation Service Provider contract with TriMet. In its sole discretion, TriMet may enter into contracts for Medicaid Transportation services at any time.

M. Employee Benefits Contracts and Insurance

Contracts related to employee benefits and employee benefits insurance may be awarded as set forth in this Rule.

1. Contracts relating to employee benefits may be awarded directly to a contractor after TriMet obtains a consultant (pursuant to applicable TriMet Contracting Rules for selection of personal services contracts) to conduct a competitive process to acquire such contractors. Such contracts include

such administrator duties as employee Flexible Spending Account Administration and Medical Claims Third Party Administrators. TriMet will hire a consultant to advise it on firms available to provide the required work. The consultant may be authorized to solicit Proposals from firms, as well as assist TriMet in providing appropriate notice of the solicitation in a manner likely to reach the attention of such contractors. TriMet, or the consultant on TriMet's behalf, may then negotiate, or TriMet may directly enter into the contract that appears most advantageous to TriMet without further advertisement or issuance of its own solicitation for Proposals.

2. TriMet may award contracts for employee benefits insurance directly to an insurer after TriMet obtains Proposals through an insurance consultant. The consultant shall be selected pursuant to applicable TriMet Contracting Rules for selection of personal services contracts. Among the services to be provided by the consultant is the securing of Proposals from insurance carriers for employee benefits insurance, and advice to TriMet about the costs and benefits of the various Proposals. TriMet, or the consultant on TriMet's behalf, may then negotiate, or TriMet may directly enter into the employee benefits insurance contract that appears most advantageous to TriMet without advertisement or issuance of its own solicitation for Proposals.

*Stat. Auth.: ORS 279B.085.*

N. Public Notice of Award.

Except for contracts specifically exempted by these Rules, at least seven days prior to award of the contract, TriMet shall give public notice and notice to any identified affected person of the approval of any Special Procurement, with a value in excess of \$250,000. Notice shall be given in a manner similar to public notice of competitive sealed Bids. The public notice shall describe the Goods or Services or class of Goods or Services to be acquired through the Special Procurement, identify the prospective contractor and include the date, time and place that protests are due.

O. Protest of Special Procurement Approval.

An affected person may only protest the approval of a Special Procurement in excess of \$250,000. Protests shall be made in accordance with TriMet's Contracting Rules.

## **VI. SOLE SOURCE CONTRACTS**

1. TriMet may award a Contract for Goods, Services, or Personal Services without competition when it is determined that the Goods or Services, or class of Goods or Services, are available from only one source. These include contracts pertaining to Equipment Maintenance, Repair and Overhaul; Software, Digital Subscriptions and Hardware Maintenance and Upgrades; and Utility and other Service Monopolies.

2. The determination shall be made based on written findings that shall address, where applicable, the following criteria:
  - (a) A brief description of the Contract or Contracts to be covered including volume of contemplated future purchases; and
  - (b) A description of the Goods or Services to be purchased; and
  - (c) The current market research that supports the determination that the Goods or Services are available from only one seller or source;
  - (d) Efficient and safe utilization of existing Goods or Services requires the acquisition of compatible Goods or Services;
  - (e) The Goods or Services required for the exchange of software or data with other public or private agencies are available from only one source;
  - (f) The required product is data processing equipment which will be used for research where there are requirements for exchange of software and data with other research establishments;
  - (g) The Goods or Services are for use in a pilot or an experimental project; or
  - (h) Other findings that support the conclusion that the Goods or Services are available from only one source.
3. Except for Contracts specifically exempted by these Rules, TriMet shall give public notice on all sole source Contracts in excess of \$25,000. The public notice shall describe the Goods or Services to be acquired by a sole source, identify the prospective Contractor and include the date, time and place that protests are due. The notice shall be given at least seven days before the award of the Contract to allow for protests.
4. An affected Person may protest, in accordance with TriMet's Contracting Rules, the determination that the Goods or Services or class of Goods or Services are available from only one source.
5. Unless unusual circumstances warrant a longer contractual period, this type of contract will not be approved for more than two years.
6. TriMet staff shall not select a Sole-Source Procurement to avoid a Competitive Procurement.

## **VII. EMERGENCY CONTRACTS**

1. Pursuant to these Rules, TriMet may enter into a contract for any amount without competitive solicitation if an Emergency exists. “Emergency” means circumstances that could not have been reasonably foreseen that create a substantial risk of loss, damage, interruption of services or threat to public health or safety that requires prompt execution of a public contract to remedy the condition.
2. If seeking authority to enter into an Emergency Contract, TriMet shall:
  - (a) Make a written declaration of Emergency, signed by the General Manager or relevant Executive Director, which includes findings describing the emergency circumstances that require the prompt performance of the Emergency Contract, stating the anticipated harm from failure to enter into the contract on an expedited basis; and
  - (b) Seek competition to the extent reasonable and appropriate under the circumstances, and document the method used for selection of the particular contractor. If conducting a procurement for construction services that are not public improvements, TriMet shall set a solicitation time period that is reasonable under the Emergency circumstances, and may issue written and oral requests for offers; and
  - (c) Record in the contract file the measures taken under subsection (2)(b) of this section to encourage competition, the amounts of the Bids, quotes or Proposals obtained, and the reason for selecting the contractor.

*Stat. Auth.: ORS 279B.080*

## **VIII PUBLIC IMPROVEMENT CONTRACT EXEMPTIONS**

A. The TCRB may exempt a public improvement contract or class of public improvement contracts from competitive bidding requirements in accordance with ORS 279C.335, upon approval of the following written findings submitted by the agency:

1. The exemption is unlikely to encourage favoritism in awarding public improvement contracts or substantially diminish competition for public improvement contracts.
2. Awarding a public improvement contract under the exemption will likely result in substantial cost savings and other substantial benefits to the agency. In approving this finding, the TCRB shall consider the type, cost and amount of the contract, and to the extent applicable to the particular public improvement contract or class of public improvement contracts, the following:
  - (a) How many persons are available to bid;

- (b) The construction budget and the projected operating costs for the completed public improvement;
- (c) Public benefits that may result from granting the exemption;
- (d) Whether value engineering techniques may decrease the cost of the public improvement;
- (e) The cost and availability of specialized expertise that is necessary for the public improvement;
- (f) Any likely increases in public safety;
- (g) Whether granting the exemption may reduce risks to the agency or the public that are related to the public improvement;
- (h) Whether granting the exemption will affect the sources of funding for the public improvement;
- (i) Whether granting the exemption will better enable the agency to control the impact that market conditions may have on the cost of and time necessary to complete the public improvement;
- (j) Whether granting the exemption will better enable the agency to address the size and technical complexity of the public improvement;
- (k) Whether the public improvement involves new construction or renovates or remodels an existing structure;
- (l) Whether the public improvement will be occupied or unoccupied during construction;
- (m) Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions; and
- (n) Whether the agency has, or has retained under contract, and will use agency personnel, consultants and legal counsel that have necessary expertise and substantial experience in alternative contracting methods to assist in developing the alternative contracting method that the agency will use to award the public improvement contract and to help negotiate, administer and enforce the terms of the public improvement contract.

3. As an alternative to the finding described in paragraph (2) above, when TriMet

seeks an exemption that would allow the use of an alternative contracting method that the agency has not previously used, TriMet may make a finding that identifies the project as a pilot project for which it intends to determine whether the use of the alternative contracting method actually results in substantial cost savings to the agency. For an exemption granted under this subparagraph (3), TriMet shall include an analysis and conclusion regarding actual cost savings, if any, in the evaluation required upon project completion and final payment pursuant to ORS 279C.355.

B. In granting exemptions under this Rule, the TCRB shall:

1. If appropriate, direct the use of alternative contracting methods that take account of market realities and modern practices and are consistent with the public policy of encouraging competition.
2. Require and approve or disapprove written findings by the agency that support awarding a particular public improvement contract or class of public improvement contracts, without the competitive bidding requirements of ORS 279C.335 (1). The findings must show that the exemption of a contract or class of contracts complies with the requirements of Paragraph A. above.
3. Require the agency to conduct a construction manager/general contractor services procurement in accordance with Model Rules adopted by the Attorney General under ORS 279A.065(3).

C. Product Specifications

1. Except as otherwise provided by these Rules, specifications for public improvement contracts shall not expressly or implicitly require any product by any brand name or mark, nor the product of any particular manufacturer or seller, unless the product is exempt under paragraph (2) below.
2. The TCRB may exempt certain products or classes of products from the requirement set forth in (1) above, upon making any of the following findings:
  - (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;
  - (b) The specification of a product by brand name or mark, or the product of a particular manufacturer or seller, would result in substantial cost savings to TriMet;
  - (c) There is only one manufacturer or seller of the product of the quality required; or
  - (d) Efficient and safe utilization of existing equipment or supplies requires the acquisition of compatible equipment or supplies.
3. "Findings" means the justification for an agency conclusion that includes, but is not limited to, information regarding:

- (a) Operational, budget and financial data,
- (b) Public benefits,
- (c) Value engineering,
- (d) Specialized expertise required,
- (e) Public safety,
- (f) Market conditions,
- (g) Technical complexity, and
- (h) Funding sources.

4. Paragraph (1) of this Rule does not prohibit the specification of a brand name product in conjunction with the designation “or equal” or “or approved equal.”

*Stat. Auth.: ORS 279C.330; ORS 279C.345.*

## **XI. PERSONAL SERVICES CONTRACTS**

A. Personal services shall be procured in accordance with TriMet Contracting Rules and procedures established for selection of personal services contracts.

B. “Personal services” means services where the skill, ability, resources, knowledge or expertise of an independent contractor are of paramount importance. Personal service contracts include but are not limited to the following:

1. Contracts for services performed in a professional capacity including but not limited to services of an accountant; attorney; physician; dentist; or architectural, engineering, photogrammetric mapping, transportation planning or land surveying and “related services.”

2. As used in subparagraph (a) above, “related services” means personal services other than architectural, engineering, photogrammetric mapping, transportation planning or land surveying services, that are related to planning, designing, engineering or overseeing public improvement projects or components thereof, including but not limited to landscape architectural services, facilities planning services, energy planning services, space planning services, hazardous substances or hazardous waste or toxic substances testing services, cost estimating services, appraising services, material testing services, mechanical system balancing services, commissioning services, project management services, construction management services and owner's representative services or land-use planning services, and any other services defined as “related services” under the Public Contracting Code.

*Stat. Auth.: ORS 279A.055(2); ORS 279A.070; ORS 279C.100; ORS 279C.105(2).*

## **X. DISQUALIFICATION AND DEBARMENT APPEALS**

A. The TCRB is authorized to hear Appeals from any person:

- 1. Who is debarred by the agency under ORS 279B.130, pursuant to ORS

279B.425;

2. Who is disqualified by the agency under ORS 279C.440, pursuant to ORS 279C.450;
3. Whose prequalification is denied, revoked or revised by the agency under ORS 279B.125, pursuant to ORS 279B.425; or
4. Whose prequalification is denied, revoked or revised by the agency under ORS 279C.430, pursuant to ORS 279C.445 and ORS 279C.450.

B. Any person who wishes to Appeal to the TCRB shall, within three (3) business days after receipt of notice of debarment, disqualification or denial, revocation or revision of a prequalification, notify in writing the General Manager of the Appeal. The General Manager shall immediately notify the TCRB of the appeal by providing notice to the President or his or her designee.

C. Promptly upon receipt of notice of the Appeal, the President or his designee shall notify the appellant and the General Manager of the time and place of the Appeal hearing.

D. The TCRB shall conduct the Appeal hearing and decide the Appeal within 30 days after receiving notification of the Appeal from the General Manager. The TCRB shall set forth in writing the reasons for the decision.

E. Appeal Hearing Procedure.

1. The President shall preside over the Appeal proceeding.
2. The general order shall be as follows:
  - (a) Presentation by TriMet of documentation and testimony supporting the debarment, disqualification or prequalification decision.
  - (b) Presentation by the appellant of documentation and testimony opposing the debarment, disqualification or prequalification decision.
  - (c) Members of the TCRB shall have the right to ask both TriMet and the appellant questions and to review documentation referred to and presented by the parties.
  - (d) Formal court rules of evidence shall not apply.
3. The TCRB shall consider de novo:
  - (a) the notice of debarment, disqualification or the prequalification decision;
  - (b) standards of responsibility listed in ORS 279B.110(2) on which the agency based the prequalification decision;
  - (c) the reasons listed in ORS 279B.130(2) on which the agency based the debarment;
  - (d) the reasons listed in ORS 279C.440(2) on which the agency based the

disqualification; or

(e) the standards of responsibility listed in ORS 279C.375 on which the agency based the prequalification decision, as applicable according to the basis of the Appeal, and

(f) any evidence provided by TriMet and the appellant prior to or at the Appeal proceeding.

4. There shall be no continuance or reopening of the Appeal hearing to offer additional evidence unless the appellant can demonstrate to the President or designee that the additional evidence was not known to the appellant at the time of the hearing, or that with reasonable diligence the appellant would not have discovered the evidence prior to the Appeal hearing.

5. An electronic record will be made of the Appeal hearing which shall be made available to the appellant upon payment of costs to TriMet of making the record.

F. The decision of the TCRB may be reviewed only upon petition in the Circuit Court of Multnomah County as provided in ORS 279B.425 for Appeals conducted under ORS Chapter 279B, and as provided in ORS 279C.450 for Appeals conducted under ORS Chapter 279C. In any review or appeal of a TCRB decision, each party shall bear its own attorney fees and costs at all stages of review or appeal.

G. TriMet may reconsider its determination with regard to the debarment, disqualification or prequalification decision at any time prior to the Appeal hearing.

H. Nothing in this Rule shall affect or limit TriMet's ability to elect to petition the Construction Contractors Board to disqualify persons for public improvement contracts as provided in ORS 279C.440, in lieu of the above procedure.

*Stat. Auth.: ORS 279B.425; ORS 279C.440; ORS 279C.445; ORS 279C.450.*