TRIMET

Memo

Date: September 25, 2024

To: Board of Directors

From: Sam Desue, Jr.

Subject: **RESOLUTION NO. 24-09-57 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET), ACTING AS THE TRIMET CONTRACT REVIEW BOARD (TCRB), AUTHORIZING AN EXEMPTION FROM COMPETITIVE BIDDING REQUIREMENTS TO PROCURE CONSTRUCTION MANAGER/GENERAL CONTRACTOR SERVICES FOR THE TYPE 1 TRACTION POWER SUBSTATION REPLACEMENT 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 the "low bid" contract process to allow a "best value" solicitation for Construction Manager/General Contractor (CM/GC) services for the Type 1 Traction Power Substation (TPSS) Replacement 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**
   An exemption from competitive bidding for a public improvement project 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**
   TriMet operates eleven Type 1 Traction Power Substations (TPSS) that were installed in 1983 along the Banfield section of the MAX Blue Line. Of the eleven substations, nine are within the jurisdiction of the City of Portland, and two are within the jurisdiction of the City of Gresham. Those eleven substations are individual metal buildings along the Blue Line. They are nearly at the end of their normal expected service life and many of their components are obsolete. Building enclosure bottoms have rusted and the integrity of the substation floors is questionable. The working spaces inside the substation buildings are

too small and inadequate for ease of maintenance, and contain clearances that do not meet current National Electric Code (NEC) requirements.

In March 2024, pursuant to Resolution No. 24-03-21, TriMet established a single prime design contract for the design for these eleven TPSS. This common design approach ensures continuity and efficiency in design. As first step of this prime design contract, site specific challenges of all eleven sites are being reviewed to identify risk, challenges and commonalities, and to establish design groups to eliminate or reduce those risks, and maximize the economy of scale to reduce overall project costs.

As a result of this review, two design groups were established. The first design group includes the TPSS sites at NE 60th Avenue, Gateway Transit Center, E 122nd Avenue, E 148th Avenue, E 181st Avenue, and Gresham Central. Those six sites have similar physical site conditions and are independent from the influence of other TriMet or third-party projects. Therefore, the design and construction approach should be very similar.

This Project will replace the existing eleven substations, including their prefabricated metal buildings, but will reuse the existing foundations, ground grids, manholes, duct banks, etc. to control project costs and schedule. This complex construction Project requires the management of interdependent, multi-disciplinary construction stages and phases of multiple elements of work, at different sites along the Banfield Line. Potentially negative impacts on TriMet's ridership and neighboring communities must be limited, planned disruptions and the risks of unplanned disruptions to transit must be minimized, while the overall Project maintains an aggressive schedule to reach substantial completion as soon as practicable.

For this type of unique and complex construction Project, reliance on the services of a CM/GC is generally most efficient. The CM/GC is able to assist with the completion of design, perform constructability reviews, advise concerning construction staging, phasing and access requirements, contribute to cost certainty, and establish needed coordination in order to ensure a successful construction process, while minimizing the risk of unplanned impacts to transit operations.

Use of the Request for Proposals (RFP) "best value" process to procure CM/GC services for this Project is preferred, and TriMet has successfully utilized the RFP process for similarly complex construction projects, most recently for the Hollywood Transit Center. However, in order to use an RFP for this Project, an exemption from the "low bid" solicitation process ordinarily required by ORS Chapter 279C is necessary.

Under the traditional low bid procurement method, TriMet may consider only price in selecting a contractor. The competitive, best value RFP process allows TriMet to select contractors upon consideration of many factors, including price. Such additional factors include experience in similar work, schedule performance, cost control, attention to safety, and quality of workmanship, small business utilization, workforce diversity and state Certification Office for Business Inclusion and Diversity (COBID) certification, along with price.

To select the best value CM/GC contractor for this Project, TriMet intends to evaluate the proposals based on a possible 200 total points, scored on the following criteria:

1. Proposer Experience/Past Performance:	20 Points
2. Established manufacturing processes and business relations to key component suppliers:	15 Points
3. Proposed Project Team:	30 Points
4. Draft Project Approach, Work Plan & Schedule:	40 Points
5. Draft Contracting Plan and MBE/WBE/ESB/VBE Program:	40 Points
6. Project Management:	25 Points
7. Price:	30 Points

ORS 279C.335(2) and TCRB Rule V(A) 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.

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 public improvement projects. Notification of the public hearing on the draft Findings was published in the Daily Journal of Commerce, and the hearing was held on September 5, 2024. There were no attendees, and no comments were received.

The Agency's written Findings in support of the exemption, which are required by ORS 279C.335, are attached as Exhibit A to this Resolution.

6. Description of Procurement Process

Upon approval of this exemption, a competitive Request for Proposals (RFP) process will be used to select the CM/GC contractor that presents the best value to the Agency, based on the criteria described in the RFP.

7. Diversity

Use of the RFP process to select the CM/GC Contractor will allow TriMet to consider the proposer's workforce diversity and its proposed utilization of small business and COBID-certified subcontractors.

8. Financial/Budget Impact

The budget for these services is included in TriMet's five-year Engineering and Construction Capital Improvement Plan (CIP) forecast.

9. Impact if Not Approved

If this exemption is not approved, TriMet would have to procure the construction services for this Project via the traditional low-bid procurement method. This is not the preferred option for the reasons outlined above and presented in the Findings.

RESOLUTION NO. 24-09-57

RESOLUTION NO. 24-09-57 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET), ACTING AS THE TRIMET CONTRACT REVIEW BOARD, AUTHORIZING AN EXEMPTION FROM COMPETITIVE BIDDING REQUIREMENTS TO PROCURE CONSTRUCTION MANAGER/GENERAL CONTRACTOR SERVICES FOR THE TYPE 1 TRACTION POWER SUBSTATION REPLACEMENT PROJECT

WHEREAS, the TriMet Contract Review Board (TCRB) has authority under ORS 279C.335 and TCRB Rule V to exempt a public improvement contract for Construction Manager/General Contractor (CM/GC) services for certain Type 1 Traction Power Substation (TPSS) Replacement Project sites, located at NE 60th Avenue, the Gateway Transit Center, E 122nd Avenue, E 148th Avenue, E 181st Avenue, and Gresham Central, 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 on September 5, 2024 on the Agency's draft written Findings in support of an exemption from competitive bidding requirements for the CM/GC 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 procurement of the CM/GC services; 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 the procurement of the CM/GC services for the specified Project from competitive bidding requirements, 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 procurement of the CM/GC services 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 CM/GC services for the specified Project, subject to final Board approval of the award.

Dated: September 25, 2024

Presiding Officer

Attest:

Recording Secretary

Approved as to Legal Sufficiency:

Legal Department

EXHIBIT A

RESOLUTION NO. 24-09-57

FINDINGS AND EVALUATION CRITERIA
IN SUPPORT OF LOW BID EXEMPTION

The Type 1 Traction Power Substation (TPSS) Replacement 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 (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 60th Avenue, Gateway, 122nd Avenue, 148th Avenue, 181st Avenue & Gresham Central element of the Type 1 Traction Power Substation (TPSS) Replacement project

TriMet operates eleven Type 1 Traction Power Substations (TPSS) along the Banfield section of the MAX Blue Line, which were installed in 1983. These TPSS are nearly at the end of their normal expected service life and many of their components are obsolete. The working spaces inside the substation buildings are too small and inadequate for ease of maintenance, and contain clearances that do not meet current National Electric Code (NEC) requirements. Those eleven substations are individual metal buildings along the Banfield Line. Building enclosure bottoms have rusted and the integrity of the substation floors are in question.

C. Critical Factors

This is a complex construction Project that requires the management of interdependencies between multi-disciplinary phases of multiple parts of the overall construction Project simultaneously on several sites along the Banfield Line, while minimizing disruption and risk of unplanned disruption to public transit, all while maintaining an aggressive schedule to reach substantial completion as soon as practicable.

D. Findings

1. Operational, budget and financial data

The budget for the Project Element is fixed and has limited contingency. Due to the complex interactions between the construction work, and TriMet's operations and customers simultaneously on multiple sites along the Banfield Line TriMet seeks to minimize the cost impact of design changes, construction delays, and contractor assumptions concerning means and methods inherent in the traditional design-bid-build process, in order to control and predict the budget. Involving the construction contractor during design is a proven approach for containing costs through implementation of more constructible designs that are reflective of realistic construction means and methods. Early construction contractor involvement also allows the owner to obtain market-based pricing that assists in decision-making and budget adherence during final design. Delays in or inefficient performance of this work would lead to increased operational costs to TriMet due to service disruptions.

Finding: For the reasons stated above, a procurement process that allows involvement of the construction contractor during the design phase will allow TriMet to better control costs and protect operations requirements. Low bid provides insufficient opportunity to involve the construction contractor during design, while a non-low bid selection process enables this interaction.

2. Public benefits

The public will benefit directly from a final design that considers contractor input, means and methods, and from involving the contractor early to assist in complex phasing, staging and development of an aggressive but realistic construction schedule, in order to reduce risk of extended and/or unplanned service disruptions and construction impacts to pedestrians, commuters and vehicles along the Banfield Line. It is critical to maintain transit service to the degree possible during construction and minimize disruption to service while doing so. This is particularly critical at this section of the TriMet MAX light rail systems, since up to three lines are using this section of the Banfield Line to provide public transit options for the neighboring communities. TriMet will engage the contractor to advise on means and methods options and implications, as well as staging and access plans during the design work to minimize the public impact during construction. This will help to ensure owner input and control over solutions increasing the predictability of schedule, cost, and transit service during construction. The community and TriMet will also benefit from a selection process that includes the opportunity to evaluate contractor experience and track record with minimizing public impacts through thorough advanced construction planning work.

Finding: Low bid offers no opportunity for the construction contractor to work with TriMet and its designer during design, and no opportunity to work with the contractor to develop and select staging and access alternatives that are minimally disruptive to transit service and the public, in balance with established budget. A non-low bid approach provides the opportunity to identify a contractor who has proven experience in working with all the affected stakeholders to create the least disruptive design and construction plans. This will result in fewer and shorter disruptions to service, if needed at all, as well as smooth any necessary transitions between active and temporary use during construction.

3. Value Engineering

TriMet's experience is that the greatest savings through value engineering are achieved during the design phase, before design decisions are finalized and before money is spent to develop the final design used for the construction procurement. 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.

Construction contractor input during final design enhances the value engineering opportunities during design. Options can be considered while the design is being finalized, without issuance of change orders during construction. Options can also be considered in terms of their implications to constructability, temporary facilities, and construction access. A non-low bid procurement method allows the construction contractor to work with the design team and incorporate value engineering and construction schedule saving ideas in line with the design schedule.

One of the key opportunities for value engineering includes enhanced collaboration on work zone impacts to the public, siting of staging areas, scheduling of the MAX shutdown timeframe, and reducing schedule and cost-risk of long-lead, specialized, electrical substation equipment to be incorporated into the Project.

By bringing the Contractor on board near the 60% design milestone, the team will be able to collaborate on both Contractor-procured and TriMet-procured long lead items for electrical substation equipment, which would increase cost and schedule certainty where design-bid-build could not.

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

Specifically, reducing the risk associated with staging, temporary works and early material procurement of long-lead items is paramount. A negotiated procurement will allow the contractor to weigh in on these items so as to reduce the risk of delay during construction.

4. Specialized expertise required

Specialized expertise is required for the civil and electrical construction, as well as functional TPSS commissioning and integration in an established and operational light rail system in a constrained urban environment. Coordination of schedules and access will also be required considering TriMet's current maintenance and service schedules. The contractor will have to complete the required scope of work with the shortest possible interruption of MAX light rail service. The contractor must have expertise in construction of new and modifications to exiting complex high voltage facilities that need to come online rapidly with minimal delay.

Finding: A non-low bid procurement process employs a best value selection methodology, which allows TriMet to evaluate and rank the expertise of each contractor in addition to the contractor's proposed price. It puts the owner in the best position to select a construction contractor who is a proven performer for the specific, specialized work required.

5. Reducing risks to the agency

Without proper preparation and coordination, there would be increased risk of an unplanned shutdown during simultaneous construction activities that would have a significant impact on TriMet's service, since up to three MAX light rail lines are using the Banfield Line.

Finding: A negotiated procurement will allow the contractor to thoroughly plan construction to reduce the risk of an unplanned transit shutdown.

6. Public safety

The site is in a dense urban area with high vehicle and pedestrian activity within the heart of Downtown Portland. TriMet requires a contractor with a successful performance record for safety and protection of the public during this type of work. A non-low bid procurement allows TriMet to evaluate the contractor's experience and record on past similar projects

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.

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. Lead times for procurement of specialized electrical substation equipment have increased rapidly. A non-low bid approach will allow TriMet to mitigate market risk by allowing proposers and TriMet to discuss and apportion this risk, as well as to ensure materials are secured as soon as practical and with enough lead time to avoid construction delays.

Finding: A non-low bid procurement will provide a benefit for fiscal planning and opportunity to increase cost certainty.

8. Technical complexity

Replacing existing electrical substation equipment at an operational light rail system is complex and specialized. It requires understanding at a detailed and highly technical level of how the trains are safely powered and, ideally, familiarity with the design of TriMet infrastructure, or the nearest equivalent. The replacement of existing traction power substations will occur within a densely populated urban space, which will require complex planning and coordination with multiple construction subcontractors, PBOT and TriMet operations personnel.

Finding: A non-low bid approach allows TriMet to select a contractor with due consideration given to the contractor's past performance on projects with similar technical complexity.

9. Funding sources

Funding is through the TriMet general fund. General funds are limited due to agency budget pressures.

Finding: Early and continued budget certainty is highly desired. A negotiated 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 Element 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.

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 possible in traditional low bid procurement.

E. Evaluation Criteria

For selecting the best value CM/GC contractor, TriMet would evaluate the proposals based on a possible 200 total points. TriMet would score the proposals based on the following criteria:

1. Proposer Experience/Past Performance:	20 Points
2. Established manufacturing processes and business relations to key component suppliers:	15 Points
3. Proposed Project Team:	30 Points
4. Draft Project Approach, Work Plan & Schedule:	40 Points
5. Draft Contracting Plan and MBE/WBE/ESB/VBE Program:	40 Points
6. Project Management:2	25 Points
7. Price:	30 Points

F. 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.