

Date: June 28, 2023

To: Board of Directors

From: Sam Desue, Jr.



Subject: RESOLUTION NO. 23-06-29 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET), ACTING AS THE TRIMET CONTRACT REVIEW BOARD (TCRB), AUTHORIZING AN EXEMPTION FROM COMPETITIVE BIDDING FOR A CONTRACT FOR CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC) SERVICES FOR THE BANFIELD TRACK REHABILITATION PROJECT

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 process for a public improvement for the Banfield Track Rehabilitation project (Project).

2. Type of Agenda Item

- Initial Contract
- Contract Modification
- Other: Exemption of a Contract from Low Bid Requirements

3. Reason for Board Action

This exemption from the competitive low-bid approach and authorization for a competitive Request for Proposals (RFP) process must be approved by the TriMet Contract Review Board (TCRB) in accordance with state law and the TCRB Rules.

4. Type of Action

- Resolution
- Ordinance 1st Reading
- Ordinance 2nd Reading
- Other _____

5. Background

TriMet’s highest speed and oldest light rail corridor (the Banfield) is located on our MAX Blue Line between the Gateway and Lloyd Stations. Up to half of the 39-year-old timber ties and rail need to be replaced within the next few years, and TriMet now has an opportunity to perform approximately 25% of the Banfield corridor’s projected replacement work concurrent with the already planned Better Red project shutdown.

The Banfield track rehabilitation work will require a large, experienced, and specialized track contractor in order to accomplish as much of the Project as possible with minimal interruption to service. TriMet now is ready to procure the services of a Construction Manager/General Contractor (CM/GC) to plan and complete the work. Using a CM/GC contractor will provide preconstruction services, contribute to cost certainty, and establish

needed efficiencies and coordination among subcontractors to ensure a successful construction process.

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 low 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. The competitive RFP process allows TriMet to select contractors upon consideration of many factors, including price. Use of the competitive RFP process allows TriMet to consider such factors as experience in similar work, schedule performance, cost control, attention to safety, small business utilization, workforce diversity, and quality of workmanship, as well as price, when selecting the CM/GC.

This Project is complex and will require the selected contractor to manage extremely tight timelines and work within a strict budget. Consideration of factors other than price will allow TriMet to select a CM/GC contractor with the skill and experience to handle these complexities. TriMet has successfully utilized the RFP process to select CM/GC contractors for complex construction projects, including the Steel Bridge Transit Improvements project, and the Better Red project.

Pursuant to ORS 279C.335(5), TriMet must hold a public hearing to allow comment on draft Findings used to grant an exemption of a public improvement project. Notification of the public hearing on the draft Findings was published in the Daily Journal of Commerce, and the hearing was held on June 20, 2023. 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 RFP process will be used to select the CM/GC contractor that presents the best value to TriMet for the Project, based on the criteria included in the RFP.

7. Diversity

Use of the competitive RFP process will allow TriMet to consider the certified small business subcontracting utilization and plan, as well as workforce diversity when selecting the CM/GC contractor.

8. Financial/Budget Impact

The cost of the work is included in the approved FY2024 budget for Maintenance Operations.

9. Impact if Not Approved

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

RESOLUTION NO. 23-06-29

**RESOLUTION NO. 23-06-29 OF THE TRI-COUNTY METROPOLITAN
TRANSPORTATION DISTRICT OF OREGON (TRIMET), ACTING AS
THE TRIMET CONTRACT REVIEW BOARD (TCRB) AUTHORIZING
AN EXEMPTION FROM COMPETITIVE BIDDING FOR A CONTRACT
FOR CONSTRUCTION MANAGER GENERAL CONTRACTOR
(CM/GC) SERVICES FOR THE BANFIELD TRACK REHABILITATION
PROJECT**

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 duly noticed public hearing was held June 20, 2023 on the Agency's draft written Findings in support of an exemption from competitive bidding requirements for a public improvement contract for construction services, and no objections were heard; and

WHEREAS, TriMet has submitted to the TCRB the written Findings required by ORS 279C.335, attached hereto as Exhibit A, in support of an exemption from competitive bidding requirements for the public improvement contract; and

WHEREAS, ORS 279C.335(4) and TCRB Rule V(B) provide that in granting exemptions from competitive bidding requirements, the TCRB shall, where appropriate, direct the use of alternate contracting methods that take account of market realities and modern practices and are consistent with the public policy of encouraging competition;

NOW, THEREFORE, BE IT RESOLVED:

1. That the Findings stated at (a) and (b) below, and the Findings In Support of Low Bid Exemption attached as Exhibit A submitted in support of (a) and (b) below, to exempt from competitive bidding requirements the contract for specified construction project, are hereby approved and adopted.

(a) It is unlikely that the exemption will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts; and

(b) The awarding of a public improvement contract pursuant to the exemption will likely result in substantial cost savings and other substantial benefits to the Agency.

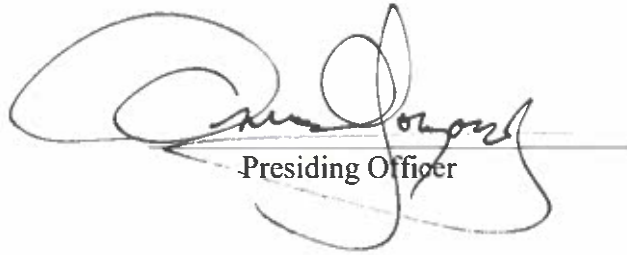
2. That the Contract is exempt from the competitive bidding requirements of ORS Chapter 279C.

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3. That TriMet is authorized to initiate a Request for Proposal process and negotiate a Contract for the specified construction project, subject to final Board approval of the contract award.

Dated: June 28, 2023



Presiding Officer

Attest:



Recording Secretary

Approved as to Legal Sufficiency:



Legal Department

EXHIBIT A

RESOLUTION NO. 23-06-29

FINDINGS IN SUPPORT OF LOW BID EXEMPTION

Banfield Track Rehabilitation Project

A. Competitive Bid Exemption under Oregon Statute

Oregon law requires all local contracting agency public improvement contracts to be procured by competitive bid unless an exemption is granted by the agency's contract review board or the contract is otherwise exempt from competitive bidding requirements. For a contract review board exemption, ORS 279C.335(2) requires the agency to develop findings that (1) the alternative procurement process is unlikely to encourage favoritism or substantially diminish competition, and that (2) the award of the contract under the exemption will likely result in substantial cost savings to the agency and other substantial benefits to the agency.

In making these findings, the agency must consider the type, cost and amount of the contract and, to the extent applicable to the particular public improvement contract, certain factors defined by ORS 279C.335(2)(b). These include, but are not limited to, the following:

1. Operational, budget and financial data;
2. Public benefits;
3. Value engineering;
4. Specialized expertise required;
5. Reducing risks to the agency;
6. Public safety;
7. Market conditions; and
8. Technical complexity; and
9. Funding sources.

B. Summary Description of the Banfield Track Rehabilitation Project

The Banfield Track Rehabilitation Project (the Project) consists of the replacement of thousands of degraded timber crossties with new concrete crossties and the replacement of thousands of feet of old, worn rail with new rail. The new track structure will minimize increasing preventative maintenance work along the Banfield and will utilize an existing, already planned shutdown for other work to minimize service disruptions.

C. Critical Factors

This is a complex project that requires the management of interdependencies between phases of multiple parts of this project, limited access, limited available construction duration, negotiating impacts to adjacent agencies and UPRR, and maintaining the Better Red Shutdown work throughout the duration of construction.

D. Findings

1. Operational, budget and financial data

The budget for the Project is fixed and has limited contingency. Because of the complex interactions between the construction work and TriMet's operations and customers, extremely short construction durations, variable existing material conditions, and contractor assumptions about means and methods inherent in the traditional design-bid-build process an alternative approach is desired in order to control and predict the project 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 design 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. Additionally, contractor selection based on experience, resources, and specialized equipment ensures the work can be performed as expeditiously as possible and with maximum return on investment.

2. Public benefits

The public will benefit directly from a design that considers contractor means and methods, and from involving the contractor early to develop specific staging and access plans for temporary public and construction access, specifically along this 4 mile corridor sandwiched between I-84 and UPRR railroad with very limited access. It is critical for this Project to maintain temporary transit service during construction and minimize disruption to service while doing so. TriMet will engage the contractor to advice on means and methods options and implications, as well as staging and access plans during the design work. 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 Program budgets. 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, and smoother transitions between the existing conditions to temporary public access during construction and finally to the completed project.

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 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 ideas in line with the design schedule.

One of the key opportunities for value engineering includes (but is not limited to) reducing the risk to temporary access. This project will likely require temporary access either from the UPRR or ODOT ROW. Planning and designing temporary access requires insight into the contractor's means and methods.

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.

Specifically, reducing the risk associated with temporarily impacting the existing configuration between UPRR and ODOT for improved construction access is paramount. A negotiated procurement will allow the contractor to weigh in on demolition, turn radii, slopes, materials, and operating constraints so as to reduce the risk of delay during construction.

4. Specialized expertise required

This Program will require expertise in the high-production, mechanized demolition and construction of crossties, rail, and ballast for an electrified light rail system. The contractor will have to complete the required scope of work with higher productions than we've ever seen on TriMet property. Any construction delay will impact TriMet's ability to provide reliable transit service and may result in additional costs to TriMet for temporary service. The contractor must have expertise in construction of high-production, mechanized track replacement and be capable of successfully performing throughout our narrow corridor and under OCS wire.

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

This project is being constructed in coordination with the Better Red Project during partial MAX shutdown and limited temporary service plan. Planning for the construction of this Banfield Track Rehabilitation work must occur simultaneously with construction planning for Better Red

that is already underway. TriMet has a substantial interest in the success and cost effectiveness of the Better Red project.

Finding: A negotiated procurement will allow the contractor to weigh in on any issues that they anticipate may arise during construction, heading off costly delays to this Project during construction. By extension, avoiding delays to this Project will avoid delays to the Red Line project.

6. Public safety

The project site includes traction power and signals wayside materials and equipment. Additionally, the Contractor will need to work around and throughout a transit center and public streets and sidewalks. Working safely around these related systems and the public is critical to project success. TriMet requires a contractor with a successful performance record for safety and protection of the public and safety critical equipment during this type of work. A non-low bid procurement allows TriMet to evaluate the contractor's experience and record in working safely and effectively near the public and its operating system, and allows TriMet to evaluate the contractor's safety record on past 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. A non-low bid approach provides the best opportunity to develop and evaluate public safety plans for all phases of construction with the construction contractor prior to implementation. A non-low bid approach allows TriMet to consider the best contractor to safely work around our safety critical equipment and minimize damage to this equipment which has both safety and schedule implications.

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 some specialized materials, such as concrete crossties, has fluctuated recently. A non-low bid procurement will increase cost and schedule certainty for portions of the work. A non-low bid approach will allow the TriMet to mitigate market risk by allowing proposers and TriMet to discuss and apportion this risk, as well as to ensure materials are secured 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 material procurement schedule certainty.

8. Technical complexity

Electrified light rail track construction is complex and specialized. It requires understanding at a detailed and highly technical level how the trains are safely powered, and ideally familiarity with the design of TriMet Signals, OCS, and Substations specifically, or the nearest equivalent. The demolition and construction of track will occur within a long, constrained construction site, which will require complex planning and coordination with multiple work gangs and crews and TriMet operations and maintenance personnel.

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 Program 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 Program will include advertisement in the Daily Journal of Commerce and TriMet's public procurement system (TriP\$), as well as scheduling a pre-proposal conference and appointing an unbiased evaluation committee.

Finding: By marketing this opportunity and attempting to notify all known potential respondents, TriMet will implement a process that does not encourage favoritism or substantially diminish competition.

TriMet has found that by allowing contractors to develop their proposed work plan and to incorporate their value engineering and design ideas into the design and construction of the Program, a non-low bid procurement process generally encourages significant competition between contractors with reasonable performance records.

A non-low bid procurement will also allow TriMet to evaluate the contractor's program for utilizing opportunities for participation by minority and women-owned businesses, which is not 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 be