

Date: June 28, 2023

To: Board of Directors

From: Sam Desue, Jr.

Subject: RESOLUTION NO. 23-06-28 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 PUBLIC IMPROVEMENT CONTRACT FOR CONSTRUCTION SERVICES FOR THE WILLAMETTE SHORE LINE TROLLEY TRESTLE REPAIR 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 contract for construction services for TriMet’s Willamette Shore Line Trolley Trestle Repair 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 of the 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

The existing Willamette Shore Line (WSL) railroad corridor extends from Portland’s South Waterfront to Lake Oswego, along the western bank of the Willamette River. The WSL corridor is owned by The Willamette Shore Line Consortium, which consists of four partners: Cities of Lake Oswego and Portland, TriMet, and Metro. Oregon Electric Railway Historical Society (OERHS) is the operator of the trolley service.

Within the Consortium, TriMet is responsible for providing routine inspections along the corridor and evaluating, among other things, the structural integrity of wooden trestles. When issues arise, TriMet oversees the implementation of solutions, which

may include design, permitting, repairs and construction. These efforts preserve and maintain the infrastructure to support continued rail operations between Lake Oswego and Portland's South Waterfront by self-powered trolleys, and these ongoing operations help preserve the railroad right-of-way (ROW) for potential future transit use.

The most recent repair of the ROW trestles occurred in 2016. In 2020, inspection of the trestles identified new repairs necessary to maintain safe operations. As a result, TriMet has suspended trolley operations that pass over the trestles of concern until the needed repairs are completed.

The ROW corridor also includes a number of automobile and pedestrian crossings. The South Nebraska Street crossing provides automobile access to Willamette Park and its many amenities, including river access and a public boat launch with day parking. Storm water runoff from South Macadam Avenue (Highway 43) drains to Nebraska, and the automobile crossing is located at the low point where the run-off water accumulates. The crossing itself is constructed of rail on wood ties capped with asphalt. The ties have rotted away due to water saturation, causing the tracks to "pump" or flex due to inadequate support. In addition to the failure of the track surface, the crossing's road surface is raveled with potholes that require regular repair.

This Project will repair the failings described above. Failed timbers from the three trestles will be replaced with new pressure treated timbers. On South Nebraska Street, catch basins will be constructed to intercept the run-off prior to saturating the ground, and the water will be carried in a culvert under the track. The process of track restoration will include replacement of the gravel subgrade, and the failed wood ties will be replaced with concrete crossing panels and heavier rails.

TCRB Rule V(A) and ORS 279C.335(2) provides 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 its contractor using a competitive RFP process. Under the traditional low bid procurement method, TriMet may consider only price in selecting a contractor. The competitive RFP process instead 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 and workforce diversity, and quality of workmanship, as well as price.

This Project is unique and will require the selected contractor to manage tight timelines and work within a strict budget. Consideration of factors other than price will allow TriMet to choose a contractor with the skill and experience to handle these complexities.

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 May 17, 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 contractor that presents the best value to the Agency, based on the criteria included in the RFP.

7. Diversity

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

8. Financial/Budget Impact

The cost of the work is included in the approved FY2024 budget for Engineering, Construction, and Planning.

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. 23-06-28

RESOLUTION NO. 23-06-28 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 PUBLIC IMPROVEMENT CONTRACT FOR CONSTRUCTION SERVICES FOR THE WILLAMETTE SHORE LINE TROLLEY TRESTLE REPAIR 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 May 17, 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 a 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.

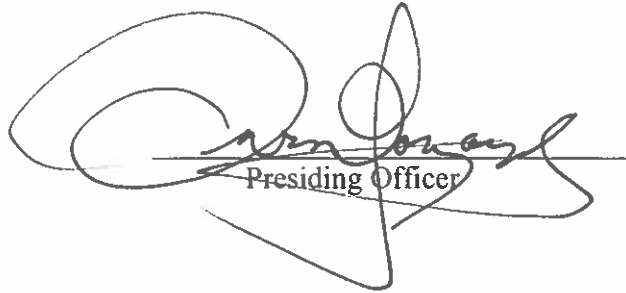
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3. That TriMet is authorized to initiate a Request for Proposal process and negotiate a Contract for the specified construction project, subject to final Board approval of the contract award.

Dated: June 28, 2023



Presiding Officer

Attest:



Recording Secretary

Approved as to Legal Sufficiency:



Legal Department

EXHIBIT A

RESOLUTION NO. 23-06-28

FINDINGS IN SUPPORT OF LOW BID EXEMPTION

Willamette Shore Trolley Trestle Repair

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. Market conditions and reducing risks to the agency.
6. Technical complexity and the retrofit (remodel) of existing structure.
7. Funding sources.
8. Unlikely to Encourage Favoritism or Substantially Diminish Competition.

B. Summary Description of the Willamette Shore Trolley Trestle Repair

The existing Willamette Shore Line (WSL) railroad corridor is owned by The Willamette Shore Line Consortium which consists of four partners: Cities of Lake Oswego and Portland, TriMet, and Metro. Oregon Electric Railway Historical Society (OERHS) is the operator of the trolley service. Within the consortium TriMet is responsible for providing routine inspections along the corridor and evaluating, among other things, the structural integrity of wooden trestles and other infrastructure elements that ensure safe operations. When issues arise TriMet oversees the implementation of solutions which may include design, permitting and construction. These efforts preserve and maintain the infrastructure to support continued rail operations from Lake Oswego to Portland South Waterfront by self-powered trolleys. Trolley operation is being used to help preserve the rail right-of-way for potential future transit use.

The most recent repair on the trestles occurred in 2016. In 2020, DOWL inspected the trestles and identified new repairs necessary for safe operations. Trolley operations have since been suspended over the trestles of concern until the needed repairs are completed.

The corridor also includes a number of automobile and pedestrian crossings. The South Nebraska Street crossing provides automobile access the Willamette Park and its many amenities, key of which is river access and a public boat launch with day parking. The crossing has decayed beyond repair, replacement is required.

This project will address the failings described above. On the three trestles failed timbers will be replaced with new pressure treated timbers. On South Nebraska Street catch basin will be constructed to intercept the run-off prior to saturating the ground. Water will be carried under the track in a culvert. Track restoration will replace the gravel subgrade, the failed wood ties will be replaced with concrete crossing panels and heavier rail in a restore-improve-modernize approach.

C. Critical Factors

This is a relatively small but complex project that requires management of the interdependencies between phases in order to minimize impacts to adjacent users.

The Willamette Shore Line is a continuous rail corridor connecting Lake Oswego with Portland. The grant application cites the property value as “\$100 Million” which clearly demonstrates the value in preserving the right-of-way for future transportation connection opportunities. It should be considered that the value of a continuous corridor with legal standing, real property, legal street crossings, and infrastructure is worth far more an assembly of square footage values; the difficulty to compile a corridor such as this in the present day make the replacement value for this unique corridor quite different from the land value.

Challenge-Opportunities on this project fall into three categories: Uncertain procurement durations for long lead materials (treated timbers), highly differentiated work zones, and the mixture of typical civil construction work disciplines with highly specialized remote timber structural work. The variety of work on this project presents the opportunity to bring in certified firms to work in parallel with specialized firms.

- Work locations and access;
- Work on Nebraska will be on and accessed by street.
- The Jones trestle is accessible by S Boundary St, material and machinery will likely be brought in by street but the work itself is anticipated to be done from the trestle.
- The Long and Short trestles are not directly accessible from the street network. Workers, materials and machinery will access the right-of-way from the nearest at grade crossing and use hi-rail equipped machinery.

Work on the Nebraska Street crossing is standard civil construction with the exception of the track construction which requires specialized equipment and skill set. The contractor will be required to develop a work plan that will accommodate Portland Parks and Recreation needs.

TriMet believes that selection of a contractor with experience and expertise in the construction of similar projects will help meet these challenges. To ensure the selection of such a contractor, and provide the necessary coordination prior to negotiating a final price, the use of an alternative delivery method (and exemption from low-bid) is being requested.

D. Findings

1. Operational, budget and financial data

TriMet is planning to utilize a competitive Request for Proposal (RFP) process. An RFP process will allow TriMet to select a contractor based upon qualifications in addition to price. The evaluation criteria will focus on selecting a contractor with the specialized skills, experience with this type of project, and ability to prioritize equity with a goal of maximizing opportunities for firms certified by the Certification Office for Business Inclusion & Diversity (COBID).

An RFP will allow TriMet to select a contractor based upon performance criteria in addition to price competition. This is a federally-funded project with environmental and contractual constraints. Best value will allow the selection of a contractor whose proven experience matches the nature of the required work. By selecting the most qualified contractor, TriMet will minimize the risk of delays, cost increases, and other impacts to the public, thereby increasing the likelihood of completing the Willamette Shore Line Trolley Trestle Repair within the construction budget. In TriMet's experience, the low bid contracting method for work of this nature is likely to result in contractor-initiated change orders, which often cause the overall cost of the project to increase beyond the initial contract price.

TriMet seeks to reduce risk of claims and change orders which may arise from the unpredictability/ lack of alignment of multiple permit approvals, and material procurement may not align for a ready set go project start. Where a low-bid contract would have the reasonable expectation be able to start and complete construction in a continuous series of events this project will have period between NTP and alignment permits and materials

Finding: Best value RFP process that will allow TriMet to better address uncertainty in the procurement and delivery process.

2. Public benefits

The Willamette Shore Trolley Trestle Repair and Nebraska Crossing replacement impacts a small but engaged portion of the Public. The right of way abuts residences, in some cases bisecting their property. The project impacts access to the river, a park and the Willamette Greenway Trail.

A RFP method will allow TriMet and the contractor to collaborate on means and methods to evaluate the impact. The community and TriMet will 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.

In addition, an RFP procurement will provide greater potential for DBE participation through coordination of the sub-contractor utilization plan.

Finding: A competitive RFP process will allow for the alignment of priorities between the contractor and TriMet. An RFP approach will also provide an opportunity to identify a contractor who has a proven track record of working with stakeholders to minimize public impacts related to construction and schedule.

3. Value Engineering

A competitive RFP will allow for the contractor to weigh in on the proposed design, and suggest changes that may result in time or cost savings. While the design scope is relatively defined, the advance coordination that is possible with an alternative delivery method often results in better, more efficient outcomes.

Finding: An RFP method will accommodate contractor input before finalizing of the contract cost. This delivery method provides the opportunity to inform design, intent, and construction approach, with the potential for arriving at more economical solutions.

4. Specialized expertise required

The skill and equipment for the trestle retrofit and track replacement is not fungible with general road or highway civil construction projects. Because it allows TriMet to evaluate and rank the expertise and approach of each contractor in advance of selection an RFP is the best method for TriMet to identify a contractor team with the special expertise required.

This Program involves many unique aspects that require special expertise:

- The work is typically not road accessible
- Working is performed directly from the structure being repaired,
- The skill and knowledge required is not typical civil construction work, and necessitates the use of special tools and approaches specific to these applications.
- Specialty equipment is required to access the Long and Short Trestles (including hi-rail vehicles).

Finding: The RFP process employs a best value selection methodology, which allows TriMet to evaluate and rank the expertise of each contractor beyond the 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. Market conditions and reducing risks to the agency

Quotes for the procurement of the treated timbers have a wide range of delivery times. TriMet has experienced an increase in claims due to supply chain logistics coupled with price escalation. These are rationally contractor risk items, however, issues with multiple delays have compounded to the point of hardship on the contractor. TriMet will leverage the RFP format to acknowledge known fluidity in material procurement to manage the known risk.

Finding: A RFP will allow the TriMet and the Contractor to navigate risks that are anticipated to arise during construction, heading off costly overage during construction.

6. Technical complexity and the retrofit (remodel) of existing structure

Constructed in the 1930's the trestles subject to this project are located away from surface streets and are accessible only by hi-rail vehicle. The Work of removal and replacement of structural members will be performed using the subject as the working platform.

The use of federal funding from the Federal Transit Administration brings with it certain requirements related to payroll, schedule, as well as tight budget control. Completing the Willamette Shore Trolley Trestle Repair within these constraints will require the selection of an experienced and efficient contractor, which can only be guaranteed through the use of a RFP process.

Finding: RFP allow more detailed ranking of the bidder technical beyond basic qualification as a bidder. A RFP approach allows TriMet to select a contractor with due consideration given to the contractor's past performance on similar projects.

7. Funding sources

Funding for the Project is through earmarked funding in the FTA (FAIN 1728 – 2022 – 7) and the TriMet general fund.

Funding comes to this project courtesy of two - \$2 million earmarks plus an additional \$800,000 local match. This budget is defined as a “not to exceed” amount, and is limited to only these funds.

Finding: Early and continued cost certainty and budget management in a best value procurement will allow time to negotiate cost and materials/ methodologies that fit the budget.

8. 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. Initial pricing will play a factor in the selection criteria, but there will also be other criteria that allow for a broader range of competition.

Finding: By marketing this opportunity, notifying a broad range of potential respondents, and providing multiple scored criteria, TriMet will implement a process that does not encourage favoritism or substantially diminish competition.

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.