


Date: July 26, 2023

To: Board of Directors

From: Sam Desue, Jr. 

Subject: **RESOLUTION NO. 23-07-37 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) AUTHORIZING A CONTRACT WITH L.B. FOSTER COMPANY FOR CONCRETE RAILROAD TIES**

1. **Purpose of Item**

This Resolution requests that the TriMet Board of Directors (Board) authorize the General Manager or his designee to execute a contract with L.B. Foster Company for the procurement of concrete railroad ties (Contract).

2. **Type of Agenda Item**

- Initial Contract
- Contract Modification
- Other _____

3. **Type of Contract Procurement**

- Low Bid / Invitation to Bid (ITB)
- Request for Proposals (RFP) (inc. CM/GC)
- Request for Qualifications (RFQ) (Personal Services)
- Other (inc. sole source):

4. **Reason for Board Action**

Board authorization is required for all contracts obligating TriMet to pay in excess of \$1,000,000.

5. **Type of Action**

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

6. **Background**

TriMet’s oldest and highest speed 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 rails in the Banfield corridor need to be replaced within the next few years. There is an opportunity to perform a significant portion of this work concurrent with the planned MAX shutdown for the Better Red Project.

Pursuant to the Board’s June 2023 approval of Resolution No. 23-06-29, a Request for Proposal (RFP) solicitation soon will be issued to hire a Construction Manager / General Contractor (CM/GC) for the Banfield railroad tie replacement project. While the replacement work will be

performed by the CM/GC, TriMet has decided to separately procure the concrete rail ties for the project, because of the long lead time associated with the tie design and manufacturing process.

7. **Description of Procurement Process**

TriMet issued an Invitation to Bid (ITB) on June 5, 2023, with bids due on June 20, 2023. The ITB was advertised to 35 potential vendors on TriMet's TriP\$ website. TriMet received one bid in response to the ITB from L.B. Foster, which was not unexpected due to the small number of vendors in the business.

A comparison of L.B. Foster's bid and TriMet's Independent Cost Estimate (ICE) is shown below:

<i>L.B. Foster Bid:</i>	<i>\$2,680,023</i>
<i>Independent Cost Estimate (ICE):</i>	<i>\$2,409,200</i>

TriMet determined that L.B. Foster's bid is fair and reasonable, based on comparison with TriMet's ICE \$2,409,200 and the Agency's recent past purchases of concrete ties. This Resolution would authorize the award of the Contract to L.B. Foster.

As is typical for this type of work, unforeseen circumstances could occur that may require changes to the tie design, the actual number of ties that need to be replaced, or the amount of items needed at particular times. Therefore, the attached Resolution includes authority for potential future modifications of the Contract amount of up to \$402,003, or 15 percent (15%).

The proposed Contract will be for a three-year term, with TriMet retaining the unilateral option to terminate for convenience for any reason during that period. Price adjustments will be permitted on an annual basis, at TriMet's discretion, and will be capped at the Consumer Price Index – All Urban Wage Earners and Clerical Workers (CPI-W) for the Portland-Salem area Western Region, Pacific Division – Class A. The applicable CPI-W will be the most recently published figure as of the anniversary date of the Contract. The total amount paid under the Contract will be based on TriMet's actual requirements for the goods and services needed during the Contract term.

TriMet staff contacted the other two likely potential bidders to determine whether the ITB was unduly restrictive of competition. One firm indicated that the cost of shipping the ties from its location would have resulted in a bid that was much higher than other vendors' bids. Another firm stated that it would need to order new forms for the ties, and would be unable to provide them until 2025 due to its current production schedule. TriMet staff has determined that the ITB allowed for full and open competition.

8. **Diversity**

L.B. Foster's total employee count is 968, and its workforce is 22.6% minority and 10.1% female. Although L.B. Foster primarily will use its own workforce to perform the work under this Contract, it has identified a firm, Blue Mountain Freight, which is certified by Oregon's Certification Office for Business Inclusion and Diversity (COBID) as a Disadvantaged Business Enterprise (DBE), Women Business Enterprise (WBE) and Emerging Small Business (ESB). L.B. Foster intends to use Blue Mountain Freight to ship the ties to Portland, accounting for approximately nine percent (9%) of the Contract's value.

9. **Financial/Budget Impact**

The costs of the concrete ties are accounted for in the Maintenance Operation Division's approved FY2024 operating budget.

10. **Impact if Not Approved**

The Banfield ties are in need of replacement and the planned MAX shutdown in 2024 for the Better Red Project presents a unique opportunity to accomplish this critically important but disruptive task. While TriMet could resolicit for these goods and services in an attempt to obtain additional bids, doing so would result in the ties not being available during the planned MAX shutdown. Further, L.B. Foster is a well-qualified firm, and resoliciting is unlikely to result in additional competition or lower costs.

RESOLUTION NO. 23-07-37

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TRANSPORTATION DISTRICT OF OREGON (TRIMET) AUTHORIZING A
CONTRACT WITH L.B. FOSTER COMPANY FOR CONCRETE RAILROAD
TIES**

WHEREAS, TriMet has authority under ORS 267.200 to enter into a contract with L.B. Foster Company (L.B. Foster) for the procurement of concrete railroad ties (Contract); and

WHEREAS, by Resolution No. 22-05-35, dated May 25, 2022, the TriMet Board of Directors (Board) adopted a Statement of Policies requiring the Board to authorize all contracts obligating TriMet to pay in excess of \$1,000,000; and

WHEREAS, the total amount of the Contract exceeds \$1,000,000;

NOW, THEREFORE, BE IT RESOLVED:

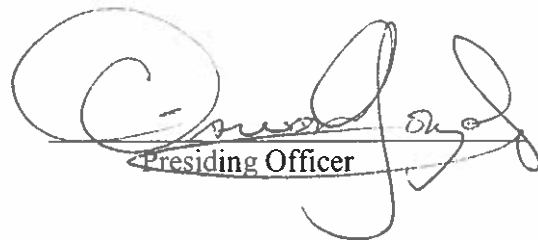
1. That the Contract shall conform with applicable law.
2. That the General Manager or his designee is authorized to execute the Contract in the amount of \$2,680,023, with the actual expenditure based on the cost of goods and services provided throughout the Contract's three-year term.
3. That the General Manager or his designee is authorized to execute modifications to the Contract to pay for unanticipated additional expenditures in an amount not to exceed fifteen percent (15%) of \$2,680,023, for a total additional authorized amount of \$402,003, over the Contract's three-year term.

Dated: July 26, 2023

Attest:



Recording Secretary



Presiding Officer

Approved as to Legal Sufficiency:



Legal Department