TRIMET

Memo

Date: December 11, 2024

To: Board of Directors

From: Sam Desue Jr.

Subject: **RESOLUTION NO. 24-12-70 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET), ACTING AS THE TRIMET CONTRACT REVIEW BOARD (TCRB), TO AUTHORIZE A CLASS EXEMPTION FOR MECHANIZED TRACK MAINTENANCE SUPPORT SERVICES**

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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 low bid contracting rules for a class of public improvement projects to allow a best value solicitation for mechanized track maintenance services in support of TriMet's Maintenance-of-Way (MOW) Department.

2. **Type of Agenda Item**

   ☐ Initial Contract
   ☐ Contract Modification
   ☒ Other: Exemption of Class of Contracts from Low Bid Requirements

3. **Reason for Board Action**

   This exemption from the low bid requirements and authorization for a best value Request for Proposals (RFP) solicitation must be approved by the 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 MOW Department is organized into five disciplines: 1) track, 2) substations, 3) signals, 4) overhead catenary system (OCS), and 5) communications. Track must be maintained to standards prescribed by the Federal Railroad Administration (FRA) for a Class 1-4 Railroad.

   The principal goal of MOW's track maintenance program is to ensure that the track is safe for passenger operations at designated speeds and to provide for passenger comfort. The condition of TriMet's track and rail is influenced by many factors, including: 1) drainage, 2) materials, 3) component age, 4) train trips, 5) tonnage, 6) environmental factors, 7) design standard at the time of installation, and 8) degree of preventative maintenance performed.

Because TriMet does not have the necessary equipment or staff, the MOW Department must rely on outside Mechanized Track Maintenance service contractors with specialized equipment and specialty wiring and programming expertise, in order to address significant problems and substandard track conditions. Such work may entail complete light rail track repair and replacement, or signals infrastructure upgrades and replacements, and may be needed anywhere along TriMet's 126 miles of light rail trackway. However, the MOW Department anticipates that the majority of the Mechanized Track Maintenance services will be required at embedded track locations along the oldest line segments of the MAX Blue Line.

Mechanized Track Maintenance services are often needed on an emergency basis, and are approved via the use of Task Orders. Task Orders may include, but are not limited to, the following:

A. Tie/Ballast Track Work

1. Surfacing and Lining
2. Ballast Dressing
3. Embankment Maintenance
4. Rail De-stressing
5. Tie Replacements/Rehabilitation
6. Track Drain Inspection and Cleaning
7. Highway-Railroad Grade Crossings
8. Rail Replacement and Welding

B. Embedded Track Work

1. Embedded Track Repair
2. Track Drain Inspection and Cleaning
3. Highway-Railroad Grade Crossings
4. Rail Replacement and Welding

C. Roadway Grade Crossing Repair and Replacement

TCRB Rule V(A) and ORS 279C.335(2) provide that the Board, acting in its capacity as the TCRB, may exempt a class of contracts 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 contractors using a best value process. Under the traditional low bid procurement method, TriMet may consider only price in selecting a contractor. The competitive Request For Proposals (RFP) process allows TriMet to select contractors upon consideration of many factors, including price. Use of the RFP process allows TriMet to consider such matters as experience in similar work, schedule performance, cost control, attention to safety, small business utilization, workforce diversity, and quality of workmanship, along with price.

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 a class of public improvement projects. Notification of the public hearing on TriMet's draft Findings was published in the Daily Journal of Commerce, and the hearing was held on December 4, 2024. There were no attendees, and no comments on the Findings were received.

TriMet'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 solicitation allowing for multiple awards will be used to select the contractors that present 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 potential contractors' certified small business subcontracting plans and their internal workforce diversity when selecting the most qualified contractors for the work.

8. Financial/Budget Impact

The cost of the work is included in the Maintenance Division's FY2025 Budget, with funding expected to continue on an annual basis. The estimated range of projects within the proposed class exemption will be from $20,000 to $2,000,000.

9. Impact if Not Approved

If this exemption is not approved, TriMet will have to procure every Mechanized Track Maintenance project via the traditional low bid procurement method, which will significantly increase the amount of work for both the MOW and Procurement departments. In addition, the anticipated work is often needed on an emergency basis, and the low bid procurement method is not TriMet's preferred option for the reasons outlined above and presented in the Findings.

RESOLUTION NO. 24-12-70

RESOLUTION NO. 24-12-70 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET), ACTING AS THE TRIMET CONTRACT REVIEW BOARD (TCRB), TO AUTHORIZE A CLASS EXEMPTION FOR MECHANIZED TRACK MAINTENANCE SUPPORT SERVICES

WHEREAS, the TriMet Contract Review Board (TCRB) has authority under ORS 279C.335 and TCRB Rule V to exempt a class of contracts 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 December 4, 2024 on the Agency's draft written Findings in support of an exemption from competitive bidding requirements for a class of public improvement contracts 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 class of public improvement contracts; 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 class of contracts for construction projects, 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 Contracts are exempt from the competitive bidding requirements of ORS Chapter 279C.

3. That TriMet is authorized to initiate a Request for Proposal process and negotiate Contracts within the specified class for particular construction projects, subject to final Board approval of the contract(s) award.

Dated: December 11, 2024

Presiding Officer

Attest:

Recording Secretary

Approved as to Legal Sufficiency:

Legal Department

EXHIBIT A

RESOLUTION NO. 24-12-70
FINDINGS IN SUPPORT OF LOW BID EXEMPTION

Mechanized Track Maintenance Support Services

The Projects under these Findings include, but may not be limited to, construction efforts including physical improvement and/or upgrades to TriMet-owned tie/ballast track, embedded track, and/or roadway grade crossing repair and replacement.

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.

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:

- Operational, budget and financial data
- Public benefits
- Value engineering
- Specialized expertise required
- Public safety
- Market conditions
- Technical complexity
- Funding sources

B. Summary Description of the Mechanized Track Maintenance Work

TriMet's MOW department is organized into five disciplines: 1) track, 2) substations, 3) signals, 4) overhead catenary system (OCS), and 5) communications; track is maintained to standards prescribed by the Federal Railroad Administration (FRA) for a Class 1-4 Railroad.

The principal goal of MOW's track maintenance program is to ensure that the track is safe for passenger operations at designed speeds and to provide for passenger comfort. The condition of TriMet's track and rail is influenced by many factors including: 1) drainage, 2) materials, 3) component age, 4) train trips, 5) tonnage, 6) environmental factors, 7) design standard at the time of installation, 8) and the degree of preventative maintenance performed.

Mechanized track maintenance support services work is often needed on an emergency basis and is approved via the use of Task Orders. Task Orders include, but are not limited to the following:

1. Tie/Ballast Track Work

    a. Surfacing and Lining
    b. Ballast Dressing
    c. Embankment Maintenance
    d. Rail De-stressing
    e. Tie Replacements/Rehabilitation
    f. Track Drain Inspection and Cleaning
    g. Highway-Railroad Grade Crossings
    h. Rail Replacement and Welding

2. Embedded Track Work

    a. Embedded Track Repair
    b. Track Drain Inspection and Cleaning
    c. Highway-Railroad Grade Crossings
    d. Rail Replacement and Welding

3. Roadway Grade Crossing Repair and Replacement

C. Critical Factors

Work within and adjacent to the operating TriMet light rail system must be conducted with extreme attention to public safety. Task Orders must take into consideration specific work means and methods in order to allow advanced planning of the work sequence and limits of the work activities. Furthermore, portions of the light rail alignment are extremely active, serve multiple rail lines, and/or in tight and busy urban environments. It is critical that disruption to public transit be minimized during work. Also, work site access and staging alternatives must be developed and evaluated to limit impacts due to mobilization and staging. In order to minimize impacts, work activities must be completed within the shortest possible schedule windows to minimize impacts to customers and TriMet's operations personnel.

Additionally, work in certain locations along the alignment may require significant coordination with adjacent agencies and UPRR, as well as any concurrent TriMet work in the area. Access to neighborhoods, businesses, trails, and transportation facilities must be coordinated and maintained.

D. Findings

1. Operational, Budget, and Financial Data

    The budget for the projects contemplated under this class exemption will be determined on a case by case basis. Because of the complex interactions between the work and TriMet's operations and customers, TriMet seeks to minimize cost impact, construction delays, and contractor misunderstandings inherent in the traditional design-bid-build process in order to control project budgets. This exemption seeks to award contracts to 2-3 general contractors, in order to complete selected projects. Projects will be allocated on a rotational or capacity based system, via the use of Task Orders. There may also be times when TriMet staff will want to engage one of the contractors for a project during project design to provide some constructability advice or to obtain market-based pricing to assist in decision- making for budgetary purposes.

Finding: For the reasons stated above, a best value procurement process that allows for multiple awards will allow TriMet to better control costs and protect operations requirements. Low bid does not allow for multiple awards nor does it allow for multiple construction projects to be executed under one solicitation. 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 also benefit directly from this approach by having a more expeditious manner in which to execute projects than with the low-bid procurement method. As stated above, the objective is to award multiple contracts to a pool of contractors so that projects can be completed in a more timely fashion. It is also expected to be a benefit for TriMet staff to engage with the contractors awarded these contracts on topics such as market-based pricing, schedule, constructability, and project budgeting. This will help to ensure realistic solutions to schedule, cost, and transit service during construction, as well as public safety concerns.

The public will benefit directly from a procurement that considers contractor means, experience, equipment, methods, and contractor involvement early to develop specific staging and access plans for temporary public and construction access. This is especially beneficial for areas needing work done along the 4-mile corridor sandwiched between I-84 and the UPRR railroad, which has limited access. It is critical for any Task Ordered work to maintain temporary transit service during the work, and minimize disruption to service while doing so. TriMet will engage the contractors' advice on means and method options and implications, as well as staging and access plans during the work. This will help to ensure owner input and control over solutions, increasing the predictability of schedule, cost, and transit service during the work.

Finding: Low bid offers no opportunity for multiple awards nor for the ability to execute multiple projects resulting from one solicitation. This class exemption allows for that and will also allow for the opportunity of awarded contractors to be engaged and help project execution in a way that is not possible from a low bid. This will result in fewer and shorter disruptions to service and a smoother transition between existing conditions to temporary public access during construction and finally to the completed project.

3. Value engineering

Staff does not foresee a lot of opportunity for value engineering on the projects covered under this exemption. However, there may be instances when early involvement by the contractor will be helpful. The procurement and project delivery approach proposed by this exemption is flexible and allows for early engagement or not. 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.

Finding: The Task Order based contracts awarded as a result of this exemption will creates a more collaborative process between TriMet staff and the contractors, and is expected to result in less Change Orders on projects because of the way the pricing will be established and the process in which projects are executed.

4. Specialized expertise required

   These contracts require that the contractors have expertise in the high-production, mechanized demolition and construction of crossties, rail, and ballast for an electrified light rail system. The contractors will have to complete the required scope of work with higher productions than TriMet's ever seen on their property. Any project delay will impact TriMet's ability to provide reliable transit service and may result in additional costs to TriMet for temporary service. The contractors must have expertise in construction of mechanized track replacement and be capable of successfully performing throughout TriMet's 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 their proposed rates (as these contracts will be capped at $20,000,000 each. It puts TriMet in the best position to select the contractors who are proven performers for the specific, specialized work required. Low bid entails more risk that the needed special expertise may not be obtained.

5. Public safety

   TriMet seeks to reduce public safety risk as much as practical. A best value procurement that results in multiple awards allows TriMet to evaluate the contractors' experience and record in working safely and effectively near the public and its operating system, and therefore to select the most qualified.

   Finding: An RFP procurement offers TriMet the best opportunity to carefully evaluate the contractors' prior safety performance and mitigate safety risk in a collaborative way through the contractors' work plans.

6. Market conditions

   Construction market conditions continue to be highly volatile. Workforce shortages and rapidly changing commodity prices have continued to cause significant swings in escalation rates and pricing. This exemption will allow TriMet to award multiple contracts and work with those contractors to mitigate these risks for the projects more effectively than the low bid approach.

   Finding: The proposed procurement and project delivery approach will provide a benefit for fiscal and resource planning because TriMet staff will have the ability to communicate to the awarded contractors about market conditions. Also, the awarded contractors will have the potential to work on projects for the five year term, so they may be able to mitigate some market conditions knowing that if, they continue to perform well, they will continue to receive work for the term of the contract. A low bid does not allow for this.

7. Technical complexity

   Mechanized light rail track maintenance/repair is complex and specialized. It requires understanding at a detailed and highly technical level regarding how the trains are safely powered, and familiarity with the design of TriMet's Signals, OCS, and Substations. Additionally, some work may be trackway within a long, constrained site. This requires

complex planning and coordination with multiple disciplines of construction contractors and TriMet operations and maintenance personnel.

Finding: The technical complexity involved in the work requires contractors who have been successful with construction and/or trackway work adjacent to functioning rail lines, while minimizing disruption to transit service. Low bid procurement does not allow for evaluation and scoring of bidder's technical qualifications in these areas. Failure to perform the work in accordance with agreed-upon objectives would result in adverse impacts to the public and TriMet operations personnel, as well as significant cost impacts to TriMet. A non-low bid approach allows TriMet to select contractors with due consideration given to the contractors' past performance on similar projects.

8. Funding sources

   Funding for the projects is ongoing and provided through TriMet's Maintenance Operations Budget.

   Finding: Early and continued budget certainty is highly desired. A best value procurement is a better method than low bid to achieve earlier budget certainty.

9. Unlikely to encourage favoritism or substantially diminish competition

   The steps taken to ensure maximum competition and fair opportunity for this work will include advertisement in the Daily Journal of Commerce and on TriMet's public procurement system, TriP$, which is available on TriMet's website. Further steps will include scheduling a pre-proposal conference, as well as the appointment of 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.

   By allowing contractors to develop their proposed work plans and to incorporate their experience, certifications, etc. into their proposals, will in fact encourage competition for this work by contractors with accomplished performance records, as well as competitive pricing.

   A best value procurement process will also allow TriMet to evaluate the contractor's program for utilizing opportunities for participation by minority and women-owned businesses, which would not be possible in a traditional low-bid procurement.

10. Cost savings

    The alternative procurement and contracting methodology being proposed is a form of Task Order based contracting. This delivery method will result in contracts with multiple contractors. The solicitation will be a best value, Request for Proposals where experience and qualifications will be evaluated in addition to pricing. Once contracts are awarded, the Maintenance-of-Way (MOW) department Team will use them to complete routine projects without having to go through a solicitation and contract for every project. This model is transparent, auditable, and encourages high quality of work and collaboration between TriMet staff and the awarded contractors. A benefit to the contractors is that, as long as they perform quality work, they can reasonably expect to continue to perform work throughout the life of the Contract. Being able to plan ahead and forecast work through this model will allow

the contractors to develop relationships with TriMet and understand the intricacies of administering a TriMet contract. It should also allow them the ability to forecast resource planning and grow their capacity throughout the life of their contracts.

Finding: Consolidation of a number of smaller projects in this approach will increase the interest of contractors and reduce bidding premiums likely with solicitations too small to attract competitive interest if this exemption is not approved.

E. Class 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 contracts under the exemption will likely result in substantial cost savings and other substantial benefits to the Agency.