

Date: December 12, 2018**To:** Board of Directors**From:** Doug Kelsey**Subject:** RESOLUTION 18-12-81 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) AUTHORIZING A MODIFICATION TO A CONTRACT WITH CUMMINS, INC. (CUMMINS) FOR THE PURCHASE OF CUMMINS ENGINE PARTS AND FLEETGUARD FILTRATION PRODUCTS FOR TRIMET BUS MAINTENANCE**1. Purpose of Item**

The purpose of this item is to request that the TriMet Board of Directors (Board) authorize a contract modification for additional funding for the contracts with Cummins, Inc for the purchase of Cummins engine parts and Fleetguard filtration products (the Goods).

2. Type of Agenda Item

- Initial Contract
 Contract Modification
 Other _____

3. Reason for Board Action

Board authorization is required to add additional funds beyond the amount previously authorized by the Board.

4. Type of Action

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

5. Background

Cummins engine parts and Fleetguard (a division of Cummins) filtration products are used on TriMet's entire fleet of 700 revenue-service fixed route buses, all of which are equipped with Cummins engines. The Goods can only be purchased through Cummins or authorized Cummins dealers. Prior to 2011, TriMet purchasing staff was limited to obtaining competitive quotes from Cummins dealers only. Direct purchases from Cummins were not possible as Cummins maintained a corporate practice of protecting the local dealer network. At the time, the typical dealer network mark-up price was 3-5% over and above the Cummins dealer price.

In 2011, Cummins determined that for large customers such as TriMet, the dealer network could not provide the level of support required in terms of timely delivery and technical support. To better serve TriMet, Cummins began allowing TriMet to purchase directly at “dealer net” pricing, the same pricing quoted to all local Cummins dealers. The catalyst behind this offer was that Cummins was essentially handling all customer service aspects of our account directly, despite the fact that local dealers were processing and delivering the orders.

This new purchasing model was advantageous because it immediately lowered TriMet's cost for the Goods by 3% and eliminated the need for emergency orders that cost more to process. Additional administrative savings were obtained as returned parts credits and warranty claims were now processed directly through Cummins, saving valuable staff time by dealing with one contact. The new direct factory pricing agreement has worked quite well and it is TriMet's intent to continue this relationship with Cummins.

The Board originally authorized a five year contract amount of \$6,573,738.38. A little more than two years into the Contract, TriMet has spent \$5,106,372.55 on the Goods. TriMet's increased spending on the Goods is due to four major factors. First, exhaust related items have had to be replaced more frequently due to TriMet's aging New Flyer buses. Roughly half of these vehicles will remain in service throughout the life of this Contract. Second, since the Contract was originally signed, TriMet's fleet size has increased by 7.7%, from 648 to 698 buses. Next, due to service expansions, buses are being operated more miles and hours per day, resulting in more frequent maintenance intervals. Finally, several vehicle models in the fleet are no longer covered under warranties that were in effect when the contract was executed. This has resulted in TriMet having to pay for parts that would have otherwise been covered under warranty replacement. Throughout the remainder of the Contract, warranties on additional existing buses will expire.

Given these factors, as well as a fleet expansion of 64 buses in early 2019, TriMet requests that the Board approve a modification to the Cummins contract in the amount of \$5,946,668.12, bringing the new contract total to \$12,520,406.50.

6. Procurement Process

This Contract was originally awarded as a sole source. While Cummins authorized dealers could submit pricing via a competitive bid process, they would have to do so at a negative margin of at least 3% to obtain TriMet's business. Therefore, it would not be in TriMet's best interest nor the local dealers best interest to enter into a contractual agreement where the business is selling at a loss. Additionally, the Federal Transit Administration (FTA) discourages entering into contracts where the price is not fair and reasonable for both parties.

7. Diversity

Cummins Northwest, which is wholly owned by Cummins, Inc. and is located on Portland's Swan Island, will handle all aspects of this contract. The Cummins Northwest territory includes branches in Washington, Alaska, Idaho and Montana with a total of 622 employees and a 43% minority group utilization. On a national basis, Cummins workforce reflects 28% minority group utilization and at least 5% of Cummins subcontracted work includes small disadvantaged business concerns owned and controlled by Disadvantaged Business Enterprise (DBE) firms.

8. Financial/Budget Impact

Funding for this contract is a materials and services expense under the Bus Maintenance department budget.

9. Impact if Not Approved

If this or a similar contract is not approved, TriMet's current contract with Cummins will expire and TriMet will be forced to issue numerous individual quotations to purchase Cummins and Fleetguard parts at a minimum increase of 3-5%.

RESOLUTION 18-12-81

RESOLUTION OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) AUTHORIZING A MODIFICATION TO A CONTRACT WITH CUMMINS, INC. (CUMMINS) FOR THE PURCHASE OF CUMMINS ENGINE PARTS AND FLEETGUARD FILTRATION PRODUCTS FOR TRIMET BUS MAINTENANCE

WHEREAS, on May 25, 2016, the TriMet Board of Directors (Board) approved Resolution 16-05-30 authorizing a contract with Cummins Inc. for Cummins engine parts and Fleetguard filtration products (Contract); and

WHEREAS, TriMet has authority under ORS 267.000 to enter into a modification of the Contract with Cummins Inc. for the purchase of Cummins engine parts and Fleetguard filtration products (Contract Modification); and

WHEREAS, the total amount of the additional funds in the Contract Modification shall exceed the contract amount previously authorized by the TriMet Board; and

WHEREAS, the Board, by Resolution dated October 25, 2017, adopted a Statement of Policies requiring the Board to approve modifications to contracts that exceed the amount previously authorized by the Board;

NOW, THEREFORE, BE IT RESOLVED:

1. That the Contract Modification shall be in conformance with applicable laws.
2. That the General Manager or his designee is authorized to execute the Contract Modification in an amount not-to-exceed \$5,946,668.12. The new contract total is \$12,520,406.50.

Dated: December 12, 2018

Presiding Officer

Attest:

Recording Secretary

Approved as to Legal Sufficiency:



Legal Department