


Date: January 24, 2024

To: Board of Directors

From: Sam Desue, Jr. 

Subject: **RESOLUTION NO. 24-01-07 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET), ACTING AS THE TRIMET CONTRACT REVIEW BOARD (TCRB), AUTHORIZING AN EXEMPTION FROM LOW BID REQUIREMENTS TO PROCURE CONSTRUCTION MANAGER/GENERAL CONTRACTOR SERVICES FOR THE PIONEER COURTHOUSE SQUARE (PSQ) TYPE 1 TRACTION POWER SUBSTATION (TPSS) REPLACEMENT 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 low bid requirements in order to procure Construction Manager/General Contractor (CM/GC) services for the Pioneer Courthouse Square (PSQ) Type 1 Traction Power Substation (TPSS) Replacement 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

An exemption from low bid requirements for a public improvement contract 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 twelve Banfield Type 1 Traction Power Substations (TPSS) were installed along the Blue Line in approximately 1983, and have reached the end of their normal expected service life. Many electrical and other critical components are obsolete and no longer supported by the manufacturer. Therefore, all of these substations must be upgraded and/or replaced.

The PSQ substation is located in downtown Portland in an underground vault at the southwest corner of Pioneer Courthouse Square. TriMet's service and repair access to the vault is controlled through a lease agreement with the Pioneer Courthouse Square management, and TriMet's current access schedule must accommodate the Courthouse's complex public event schedule. The primary access for TriMet maintenance personnel and equipment is through the mechanical room of the Courthouse facility, but recently added mechanical equipment and seismic stabilization measures partially block access to the vault. Although there is limited access to the substation vault for maintenance personnel from an overhead hatch in the sidewalk, it is not satisfactory.

This Project will reconfigure the vault to improve TriMet's regular service access, improve the ventilation, and allow for the installation of new and upgraded electrical substation equipment. This is a complex Project that requires the management of interdependent, multi-disciplinary phases of multiple elements of work. Potentially negative impacts to all users of the shared Courthouse Square facility must be limited, planned disruptions and the risks of unplanned disruptions to public transit must be minimized, while the Project maintains an aggressive schedule to reach substantial completion as soon as practicable.

For this type of unique and complex Project, reliance on the services of a CM/GC is generally most efficient. The CM/GC is able to assist with the completion of design, perform constructability reviews, advise concerning construction staging, phasing and access requirements, contribute to cost certainty, and establish needed coordination, in order to ensure a successful construction process while minimizing the risk of unplanned impacts to transit operations.

Use of the Request for Proposals (RFP) "best value" process to procure CM/GC services for this Project is preferred, and TriMet has successfully utilized the RFP process for similarly complex construction projects, most recently for the Hollywood Transit Center. However, in order to use an RFP for this Project, an exemption from the low bid approach ordinarily required by ORS Chapter 279C is required.

An exemption from low bidding is required to enable TriMet to select its contractors using a competitive best value solicitation process. Under the traditional low bid procurement method, TriMet may consider only price in selecting a contractor. The competitive, best value Request For Proposals (RFP) process allows TriMet to select contractors upon consideration of many factors, including price. Such additional factors include experience in similar work, schedule performance, cost control, attention to safety, quality of workmanship, small business utilization, workforce diversity and state Certification Office for Business Inclusion and Diversity (COBID) certification, along with price.

ORS 279C.335(2) and TCRB Rule V(A) provide 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.

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 the draft Findings was published in the Daily Journal of Commerce, and the hearing was held on January 3, 2024. 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 Request for Proposals (RFP) process will be used to select the CM/GC contractor that presents the best value to the Agency, based on the criteria described in the RFP.

7. Diversity

Use of the RFP process will allow TriMet to consider the proposer's workforce diversity and its proposed utilization of small business and COBID-certified subcontractors when selecting the CM/GC Contractor.

8. Financial/Budget Impact

The budget for these services is included in TriMet's five-year Engineering, Construction and Planning Capital Improvement Plan (CIP) forecast.

9. Impact if Not Approved

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

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RESOLUTION NO. 24-01-07 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET), ACTING AS THE TRIMET CONTRACT REVIEW BOARD (TCRB), AUTHORIZING AN EXEMPTION FROM LOW BID REQUIREMENTS TO PROCURE CONSTRUCTION MANAGER/GENERAL CONTRACTOR SERVICES FOR THE PIONEER COURTHOUSE SQUARE (PSQ) TYPE 1 TRACTION POWER SUBSTATION (TPSS) REPLACEMENT PROJECT

WHEREAS, the TriMet Contract Review Board (TCRB) has authority under ORS 279C.335 and TCRB Rule V to exempt a public improvement contract (Contract) for Construction Manager/General Contractor (CM/GC) services for the Pioneer Courthouse Square (PSQ) Type 1 Traction Power Substation (TPSS) Replacement Project (Project) 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 January 3, 2024 on the Agency's draft written Findings in support of an exemption from competitive bidding requirements for the Contract, 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 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 the specified Project, are hereby approved and adopted.

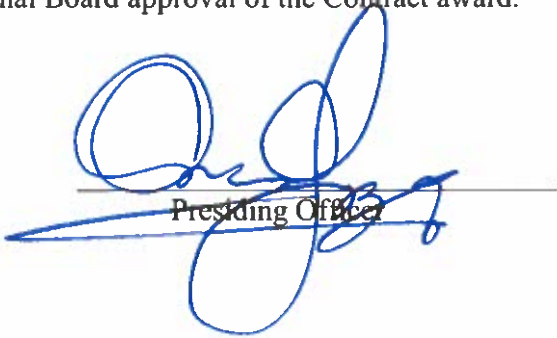
(a) It is unlikely that the exemption will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts; and

(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.

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

Dated: January 24, 2024



Presiding Officer

Attest:



Recording Secretary

Approved as to Legal Sufficiency:



Legal Department

EXHIBIT A

RESOLUTION NO. 24-01-07

FINDINGS IN SUPPORT OF LOW BID EXEMPTION

The Pioneer Courthouse Square (PSQ) Type 1 Traction Power Substation (TPSS) Replacement 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 (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 Pioneer Courthouse Square (PSQ) element of the Type 1 Traction Power Substation (TPSS) Replacement project

The twelve Type 1 Traction Power Substations (TPSS) were installed in approximately 1983 and have reached the end of their normal expected service life. Many components are obsolete and no longer supported by the manufacturer. The Pioneer Courthouse Square substation is unique within the twelve substations of the overall Banfield Line Type 1 Substation Replacement project. While the electrical equipment is identical to the other twelve substations, its location and layout are different. The existing vault will be reconfigured and reused for the new electrical substation equipment. Access to the vault will be improved, as well as the vaults ventilation system.

C. Critical Factors

This is a complex Project that requires the management of interdependencies between multi-disciplinary phases of multiple parts of the Project, reducing impacts to all users of the shared Pioneer Courthouse Square facility and minimizing disruption and risk of unplanned disruption to public transit, all while maintaining an aggressive schedule to reach substantial completion as soon as practicable.

D. Findings

1. Operational, budget and financial data

The budget for the Project Element is fixed and has limited contingency. Because of the complex interactions between the construction work and TriMet's operations and customers, as well as the need to consider the public event schedule of the Pioneer Courthouse Square facility, TriMet seeks to minimize the cost impact of design changes, construction delays, and contractor assumptions concerning means and methods inherent in the traditional design-bid-build process, in order to control and predict the 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 the design phase 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.

2. Public benefits

The public will benefit directly from a final design that considers contractor input, means and methods, and from involving the contractor early to assist in complex phasing, staging and development of an aggressive but realistic construction schedule, in order to reduce risk of extended and/or unplanned service disruptions and construction impacts to pedestrians, commuters and vehicles in Downtown Portland. It is critical to maintain transit service to the degree possible during construction and minimize disruption to service while doing so. This is particularly critical at this site because all TriMet MAX light rail lines intersect at this location. TriMet will engage the contractor to advise on means and methods options and implications, as well as staging and access plans during the design work to minimize the public impact during construction. 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 budget. 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, if needed at all, as well as smooth any necessary transitions between active and temporary use during construction.

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 final 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 and construction schedule saving ideas in line with the design schedule.

One of the key opportunities for value engineering includes enhanced collaboration on work zone impacts to the public and other users of the shared Pioneer Courthouse facility, siting of staging areas, scheduling of the MAX shutdown timeframe, and reducing schedule and cost-risk of long-lead, specialized, electrical substation equipment to be incorporated into the Project.

By bringing the Contractor on board near the 60% design milestone, the team will be able to collaborate on both Contractor-procured and TriMet-procured long lead items for electrical substation equipment, which would increase cost and schedule certainty where design-bid-build could not.

Finding: A non-low bid procurement method allows the use of a value engineering approach supported by the participation of the contractor prior to completion of final design, thereby maximizing potential savings.

Specifically, reducing the risk associated with staging, temporary works and early material procurement of long-lead items is paramount. A negotiated procurement will allow the contractor to weigh in on these items so as to reduce the risk of delay during construction.

4. Specialized expertise required

Specialized expertise is required for commissioning and integration of electrical substation equipment at an existing facility within an established and operational light rail system in a constrained urban environment. Coordination of schedules and access will also be required considering the complex Pioneer Courthouse Square public event schedule. The contractor will have to complete the required scope of work with the shortest possible interruption of MAX light rail service. The contractor must have expertise in construction of new and modifications to existing complex high voltage facilities that need to come online rapidly with minimal delay.

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

Without proper preparation and coordination, there would be increased risk of an unplanned shutdown during construction that would have a significant impact on TriMet's service, since all MAX light rail lines intersect at Pioneer Courthouse Square.

Finding: A negotiated procurement will allow the contractor to thoroughly plan construction to reduce the risk of an unplanned transit shutdown.

6. Public safety

The site is in a dense urban area with high vehicle and pedestrian activity within the heart of Downtown Portland. TriMet requires a contractor with a successful performance record for safety and protection of the public during this type of work. A non-low bid procurement allows TriMet to evaluate the contractor's experience and record on past similar 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.

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 specialized electrical substation equipment have increased rapidly. A non-low bid approach will allow TriMet to mitigate market risk by allowing proposers and TriMet to discuss and apportion this risk, as well as to ensure materials are secured as soon as practical and 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 cost certainty.

8. Technical complexity

Replacing existing electrical substation equipment at an operational light rail system is complex and specialized. It requires understanding at a detailed and highly technical level of how the trains are safely powered and, ideally, familiarity with the design of TriMet infrastructure, or the nearest equivalent. The replacement of existing electrical substation equipment will occur within a densely populated urban space, which will require complex planning and coordination with multiple construction subcontractors, Pioneer Courthouse Square, Inc. management, PBOT and TriMet operations personnel.

Finding: A non-low bid approach allows TriMet to select a contractor with due consideration given to the contractor's past performance on projects with similar technical complexity.

9. Funding sources

Funding 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 Project Element 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.

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 benefits to the Agency.