

Date: March 26, 2025

To: Board of Directors

From: Sam Desue, Jr.

Subject: **RESOLUTION NO. 25-03-16 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET), ACTING AS THE TRIMET CONTRACT REVIEW BOARD (TCRB), AUTHORIZING AN EXEMPTION FROM COMPETITIVE BIDDING REQUIREMENTS FOR CONSTRUCTION MANAGER/GENERAL CONTRACTOR SERVICES FOR THE 82nd AVENUE TRANSIT 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 to obtain a Construction Manager/General Contractor (CM/GC) services contract for the 82nd Avenue Transit Project. The exemption authorizes the use of a competitive Request for Proposals (RFP) process to select the most highly qualified proposer to perform these services.

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 low-bid solicitation requirements to allow the use of a competitive Request for Proposals (RFP) approach 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

Portland's 82nd Avenue, also known as State Highway 213, runs north-south and generally parallel to Interstate 205 (I-205). The 82nd Avenue corridor serves one of the most diverse populations in the TriMet service district and many rely on it as an alternative transportation route to I-205. The roadway has the highest bus line ridership in the region, and provides access to the MAX Blue, Red and Green lines.

The 82nd Avenue Transit Project (Project) will be a Bus Rapid Transit line similar to TriMet's recently completed FX2 Division. As envisioned, it will carry passengers to and

from stops between the southern terminus at Clackamas Town Center, and the northern terminus in the Cully neighborhood near NE Killingsworth and NE Lombard. The Project is included in the 2024-2027 Statewide Transportation Improvement Program adopted by the Oregon Department of Transportation (ODOT) on July 13, 2023.

To date, TriMet's regional partners, including the City of Portland, Metro, ODOT, Clackamas County and Multnomah County have collaborated on initial phases of the Project, developing transit elements of the Project to a conceptual design level. As the Project moves into the 30% design stage, TriMet intends to post a Request for Proposals (RFP) to hire a Construction Manager/General Contractor (CM/GC). The selected CM/GC will contribute to establishing design constructability and greater cost certainty between the 60% design stage and the final Issue for Construction set (100% design), as well as providing construction services.

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

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 allows TriMet to select contractors upon consideration of many factors, including price.

TriMet staff anticipate using the following criteria (or similar) to select the contractor: Proposer Experience/Past Performance (10 points); Proposed Project Team (35 points); Draft Project Approach, Work Plan & Schedule (50 points); Draft Contracting Plan and DBE Program (40 points); Project Management (25 points); Price (40 points).

This Project is complex in nature, and will require that the contractor manage tight timelines within a strict budget. Consideration of factors other than price will allow TriMet to select a CM/GC contractor with the skill and experience to handle these complexities. TriMet has successfully utilized the RFP process to select CM/GC contractors on multiple construction projects, including the Division Transit Project, Powell Garage Replacement Project, Portland Milwaukie Light Rail Project, the Portland Mall and I-205 Light Rail Projects.

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 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 March 7, 2025. There was one attendee, but 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 each proposer's Disadvantaged Business Enterprise (DBE) utilization and subcontracting plan, as well as workforce diversity when selecting the contractor.

8. **Financial/Budget Impact**

The initial cost of the work is included in the proposed FY2026 Budget for the Engineering and Construction Division.

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.

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RESOLUTION NO. 25-03-16 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET), ACTING AS THE TRIMET CONTRACT REVIEW BOARD (TCRB), AUTHORIZING AN EXEMPTION FROM COMPETITIVE BIDDING REQUIREMENTS FOR CONSTRUCTION MANAGER/GENERAL CONTRACTOR SERVICES FOR THE 82nd AVENUE TRANSIT 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 public hearing was held March 7, 2025 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.

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: March 26, 2025



Presiding Officer

Attest:



Recording Secretary

Approved as to Legal Sufficiency:



Legal Department