

**TRI-COUNTY METROPOLITAN TRANSPORTATION
DISTRICT OF OREGON (TRIMET)**

CONTRACT REVIEW BOARD RULES

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TRIMET CONTRACT REVIEW BOARD RULES

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TRIMET CONTRACT REVIEW BOARD RULES

I. DEFINITIONS

For purposes of these Rules, the following definitions apply:

- A. "Agency" means TriMet unless otherwise specified in these Rules.
- B. "Board of Directors" means the seven (7) member governing body of TriMet.
- C. "Competitive sealed bid(s) " means a bid(s) submitted in response to an Invitation to Bid issued under ORS 279B.055, or if for a public improvement issued under ORS Chapter 279C.
- D. "Competitive sealed proposal(s)" means a proposal(s) submitted in response to a Request for Proposals issued under ORS 279B.060, or if for a public improvement issued under ORS Chapter 279C.
- E. "Contracting agency" means TriMet and any other public body authorized by law to conduct a procurement, including but not limited to any person authorized by a contracting agency to conduct a procurement on the contracting agency's behalf.
- F. "Contracting Rules" means TriMet public contracting procedural rules adopted as provided under TCRB Rule III (A).
- G. "Emergency" means circumstances that: (1) could not have been reasonably foreseen; (2) create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and (3) require prompt execution of a contract to remedy the condition.
- H. "General Manager" means the General Manager of TriMet.
- I. "ORS" means the Oregon Revised Statutes.
- J. "President" means the presiding officer of the TriMet Contract Review Board.
- K. "Public contract" means a sale or other disposal, or a purchase, lease, rental or other acquisition, by a contracting agency of personal property, services, including personal services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement. "Public contract" does not include grants.
- L. "Public contracting" means procurement activities described in the Public Contracting Code relating to obtaining, modifying or administering public contracts or price agreements.
- M. "Public Contracting Code" or "Code" means ORS Chapters 279A, 279B and

279C.

- N. "Public improvement" means a project for construction, reconstruction, or major renovation on real property by or for TriMet. Public improvement does not include: (1) Projects for which no funds of TriMet are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or (2) Emergency work, minor alteration, ordinary repair or maintenance necessary in order to preserve a public improvement.
- O. "Rules" means the rules adopted by the TriMet Contract Review Board.
- P. "Services" means services other than personal services, and does not include public improvements unless specifically provided otherwise in these Rules.
- Q. "Special procurement" means, unless the context requires otherwise, a class special procurement, a contract-specific procurement or both as provided by ORS 279B.085.
- R. "TriMet Contract Review Board" or "TCRB" means the Board of Directors in its exercise of powers granted by the Public Contracting Code.
- S. "Transportation projects" as used in Rule VI (F)(2)(d) includes real and personal property, equipment and improvements of whatever nature and any interest therein, financed, owned, leased, used, constructed, maintained, controlled or operated to facilitate, support or provide mass transportation or provide for the movement of people.

Stat. Auth.: See ORS 279A.010; ORS 279A.060; ORS 279B.055; ORS 279B.060; ORS Chapter 279C.

II. POWERS; PRESIDING OFFICER; MEETINGS

- A. The TCRB shall consist of the members of the TriMet Board of Directors. The TCRB has all powers granted to it under the Public Contracting Code.
- B. The presiding officer of the Board of Directors shall serve as President of the TCRB and shall be its presiding officer. The President of the TCRB shall have the same powers as the President of the Board of Directors insofar as those powers are consistent with the Public Contracting Code and these Rules.
- C. TCRB meetings may be held at Board of Directors meetings, or at another time after public notice. The Board of Directors may sit as the TCRB during its meetings without formal adjournment, by announcing that it is sitting as the TCRB. TCRB notices may be published as part of Board of Directors notices when the actions that are the subject of the notices will occur on the same date and at the same place.

- D. TCRB proceedings shall be governed by the same rules that govern Board of Directors proceedings to the extent that those rules are applicable to the TCRB under the Public Contracting Code, and are consistent with these Rules.
- E. The TCRB shall adopt Rules by affirmative vote of a majority of a quorum.

Stat. Auth.: ORS 279A.060.

III. TCRB RULES; TRIMET CONTRACTING RULES

- A. These TCRB Rules and TriMet Contracting Rules shall apply to TriMet public contracts. The Model Rules of procedure adopted by the Attorney General under ORS 279A.065 do not apply to TriMet, except that to the extent required by ORS 279A.065(3)(b) and ORS 279C.337(1) procurements for construction manager/general contractor services shall be conducted in accordance with Model Rules adopted by the Attorney General under ORS 279A.065(3). The General Manager shall establish, promulgate and modify the TriMet Contracting Rules consistent with these TCRB Rules.
- B. Contracts exempted from the Public Contracting Code under ORS 279A.025 or otherwise by law are not subject to these TCRB Rules or TriMet Contracting Rules.

Stat. Auth.: ORS 279A.025; ORS 279A.050; ORS 279A.060; ORS 279A.065; ORS 279.070.

IV. SPECIAL PROCUREMENTS

A. Approval of Special Procurements

- (1) The TCRB may approve a contract-specific special procurement or a class special procurement in accordance with ORS 279B.085, if the TCRB finds that a written request submitted by the agency demonstrates that the use of a special procurement as described in the request, or an alternative procedure prescribed by the TCRB:
 - (a) Is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts; and
 - (b)
 - (1) Is reasonably expected to result in substantial cost savings to the agency or to the public; or
 - (2) Otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055, 279B.060, 279B.065 or 279B.070 or under any agency rules adopted thereunder.

- (2) If a contract is intended to be awarded through a special procurement that calls for competition among prospective contractors, the agency shall award the contract to the offeror the agency determines to be the most advantageous to the agency.

B. Class Special Procurement

- (1) Medicaid Transportation Service Provider Contracts:

Contracts for Medicaid Transportation services may be procured in accordance with the following procedure: TriMet may biannually publish a public notice containing a general statement of its requirements for Medicaid Transportation services. The notice shall contain information on how to apply for a Medicaid Transportation Service Provider contract with TriMet. TriMet, in its discretion, may enter into contracts for Medicaid Transportation services at any time.

- (2) Employee Benefits Contracts and Insurance

Contracts related to employee benefits and employee benefits insurance may be awarded as set forth in this Rule.

- (a) Contracts relating to employee benefits may be awarded directly to a contractor after TriMet obtains a consultant (pursuant to applicable TriMet Contracting Rules for selection of personal services contracts) to conduct a competitive process to acquire such contractors. Such contracts include administrator duties such as administrators of employee Flexible Spending Account Administration and Medical Claims Third Party Administrators. TriMet will hire a consultant to advise it on firms available to provide the required work. The consultant may be authorized to solicit proposals from firms as well as assist TriMet in providing appropriate notice of the solicitation in a manner likely to reach the attention of such contractors. TriMet, or the consultant on TriMet's behalf, may then negotiate, or TriMet may directly enter into the contract that appears most advantageous to TriMet without further advertisement or issuance of its own solicitation for proposals.
- (b) TriMet may award contracts for employee benefits insurance directly to an insurer after TriMet obtains proposals through an insurance consultant. The consultant shall be selected pursuant to applicable TriMet Contracting Rules for selection of personal services contracts. Among the services to be provided by the consultant is the securing of proposals from insurance carriers for employee benefits insurance, and advice to TriMet about the costs

and benefits of the various proposals. TriMet, or the consultant on TriMet's behalf, may then negotiate, or TriMet may directly enter into the employee benefits insurance contract that appears most advantageous to TriMet without advertisement or issuance of its own solicitation for proposals.

Stat. Auth.: ORS 279B.085.

V. PUBLIC IMPROVEMENT CONTRACT EXEMPTIONS

A. The TCRB may exempt a public improvement contract or class of public improvement contracts from competitive bidding requirements in accordance with ORS 279C.335, upon approval of the following written findings submitted by the agency:

- (1) The exemption is unlikely to encourage favoritism in awarding public improvement contracts or substantially diminish competition for public improvement contracts.
- (2) Awarding a public improvement contract under the exemption will likely result in substantial cost savings and other substantial benefits to the agency. In approving this finding, the TCRB shall consider the type, cost and amount of the contract, and to the extent applicable to the particular public improvement contract or class of public improvement contracts, the following:
 - (a) How many persons are available to bid;
 - (b) The construction budget and the projected operating costs for the completed public improvement;
 - (c) Public benefits that may result from granting the exemption;
 - (d) Whether value engineering techniques may decrease the cost of the public improvement;
 - (e) The cost and availability of specialized expertise that is necessary for the public improvement;
 - (f) Any likely increases in public safety;
 - (g) Whether granting the exemption may reduce risks to the agency or the public that are related to the public improvement;
 - (h) Whether granting the exemption will affect the sources of funding for the public improvement;

- (i) Whether granting the exemption will better enable the agency to control the impact that market conditions may have on the cost of and time necessary to complete the public improvement;
 - (j) Whether granting the exemption will better enable the agency to address the size and technical complexity of the public improvement;
 - (k) Whether the public improvement involves new construction or renovates or remodels an existing structure;
 - (l) Whether the public improvement will be occupied or unoccupied during construction;
 - (m) Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions; and
 - (n) Whether the agency has, or has retained under contract, and will use agency personnel, consultants and legal counsel that have necessary expertise and substantial experience in alternative contracting methods to assist in developing the alternative contracting method that the agency will use to award the public improvement contract and to help negotiate, administer and enforce the terms of the public improvement contract.
- (3) As an alternative to the finding described in paragraph (2) above, when the agency seeks an exemption that would allow the use of an alternative contracting method that the agency has not previously used, the agency may make a finding that identifies the project as a pilot project for which the agency intends to determine whether the use of the alternative contracting method actually results in substantial cost savings to the agency. For an exemption granted under this subparagraph (3) the agency shall include an analysis and conclusion regarding actual cost savings, if any, in the evaluation required upon project completion and final payment pursuant to ORS 279C.355.

B. In granting exemptions under this Rule, the TCRB shall:

- (1) If appropriate, direct the use of alternative contracting methods that take account of market realities and modern practices and are consistent with the public policy of encouraging competition.
- (2) Require and approve or disapprove written findings by the agency that support awarding a particular public improvement contract or class of public improvement contracts, without the competitive bidding requirements of ORS 279C.335 (1). The findings must show that the

exemption of a contract or class of contracts complies with the requirements of Paragraph (A) above.

- (3) Require the agency to conduct a construction manager/general contractor services procurement in accordance with Model Rules adopted by the Attorney General under ORS 279A.065(3).

Stat. Auth.: ORS 279C.335.

VI. OTHER RULES

A. Sole Source Contracts

A contract for goods or services may be awarded without competition if the General Manager, or his or her designee, determines in writing in accordance with applicable provisions of the Contracting Rules and Public Contracting Code that the goods or services, or class of goods or services, are available from only one source.

Stat. Auth.: ORS 279B.075.

B. Emergency Contracts

The General Manager, or his or her designee, may enter into or authorize others to enter into an emergency procurement of goods or services, including public improvements, in accordance with applicable provisions of the Contracting Rules and Public Contracting Code.

Stat. Auth.: ORS 279B.080.

C. Product Specifications

- (1) Except as otherwise provided by these Rules, specifications for public improvement contracts shall not expressly or implicitly require any product by any brand name or mark, nor the product of any particular manufacturer or seller unless the product is exempt under paragraph (2) below.
- (2) The TCRB may exempt certain products or classes of products from the requirement set forth in (1) above, upon any of the following findings:
 - (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;
 - (b) The specification of a product by brand name or mark, or the product of a particular manufacturer or seller, would result in

substantial cost savings to TriMet;

- (c) There is only one manufacturer or seller of the product of the quality required; or
 - (d) Efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment or supplies.
- (3) "Findings" means the justification for an agency conclusion that includes, but is not limited to, information regarding:
- (a) Operational, budget and financial data.
 - (b) Public benefits.
 - (c) Value engineering.
 - (d) Specialized expertise required.
 - (e) Public safety.
 - (f) Market conditions.
 - (g) Technical complexity.
 - (h) Funding sources.
- (4) Paragraph (1) of this Rule does not prohibit the specification of a brand name product in conjunction with the designation "or equal" or "or approved equal."

Stat. Auth.: ORS 279C.330; ORS 279C.345.

D. Disqualification and Debarment Appeal Hearings Procedure

- (1) The TCRB is authorized to hear appeals from any person:
- (A) who is debarred by the agency under ORS 279B.130, pursuant to ORS 279B.425;
 - (B) who is disqualified by the agency under ORS 279C.440, pursuant to ORS 279C.450;
 - (C) whose prequalification is denied, revoked or revised by the agency under ORS 279B.125, pursuant to ORS 279B.425; or
 - (D) whose prequalification is denied, revoked or revised by the agency under ORS 279C.430, pursuant to ORS 279C.445 and ORS 279C.450.
- (2) Any person who wishes to appeal to the TCRB shall, within three (3) business days after receipt of notice of debarment, disqualification or denial, revocation or revision of a prequalification, notify in writing the General Manager of the appeal. The General Manager shall immediately notify the TCRB of the appeal by providing notice to the President of the TCRB or his or her designee.
- (3) Promptly upon receipt of notice of the appeal, the TCRB President or his

designee shall notify the appellant and the General Manager of the time and place of the appeal hearing.

- (4) The TCRB shall conduct the appeal hearing and decide the appeal within 30 days after receiving notification of the appeal from the General Manager. The TCRB shall set forth in writing the reasons for the decision.

(5) Appeal Hearing Procedure

- (a) The President of the TCRB shall preside over the appeal proceeding.

- (b) The general order shall be as follows:

1. Presentation by TriMet of documentation and testimony supporting the debarment, disqualification or prequalification decision.
2. Presentation by the appellant of documentation and testimony opposing the debarment, disqualification or prequalification decision.
3. Members of the TCRB shall have the right to ask both TriMet and the appellant questions and to review documentation referred to and presented by the parties.
4. Formal court rules of evidence shall not apply.
5. The TCRB shall consider de novo the notice of debarment, disqualification or the prequalification decision; the: (a) standards of responsibility listed in ORS 279B.110(2) on which the agency based the prequalification decision; (b) the reasons listed in ORS 279B.130(2) on which the agency based the debarment; (c) the reasons listed in ORS 279C.440(2) on which the agency based the disqualification; or (d) the standards of responsibility listed in ORS 279C.375 on which the agency based the prequalification decision, as applicable according to the basis of the appeal, and any evidence provided by TriMet and the appellant prior to or at the appeal proceeding. There shall be no continuance or reopening of the appeal hearing to offer additional evidence unless the appellant can demonstrate to the President of the TCRB or his/her designee that the additional evidence was not known to the appellant at the time of the hearing or that with reasonable diligence the appellant would not have discovered the

evidence prior to the appeal hearing.

6. A tape recording will be made of the appeal hearing which shall be made available to the appellant upon payment of costs to TriMet of making the tape.
- (6) The decision of the TCRB may be reviewed only upon petition in the Circuit Court of Multnomah County as provided in ORS 279B.425 for appeals conducted under ORS Chapter 279B, and as provided in ORS 279C.450 for appeals conducted under ORS Chapter 279C.
- (7) TriMet may reconsider its determination with regard to the debarment, disqualification or prequalification decision at any time prior to the appeal hearing.
- (8) Nothing in this Rule shall affect or limit TriMet's ability to elect to petition the Construction Contractors Board to disqualify persons for public improvement contracts as provided in ORS 279C.440, in lieu of the above procedure.

Stat. Auth.: ORS 279B.425; ORS 279C.440; ORS 279C.445; ORS 279C.450.

E. Electronic Advertisements for Bids and Proposals

Advertisements for bids and proposals may be published electronically instead of in a newspaper of general circulation, except that an advertisement for a public improvement contract with an estimated cost in excess of \$125,000 must be published in at least one trade newspaper of general statewide circulation.

Stat. Auth.: ORS 279B.055; ORS 279C.360(1).

F. Personal Services Contracts

- (1) Personal services shall be procured in accordance with TriMet Contracting Rules procedures established for selection of personal services contracts.
- (2) "Personal services" means services where the skill, ability, resources, knowledge or expertise of an independent contractor are of paramount importance. Personal service contracts include but are not limited to the following:
 - (a) Contracts for services performed in a professional capacity including but not limited to services of an accountant; attorney; physician; dentist; information technology consultant; broadcaster; or architectural, engineering, photogrammetric mapping, transportation planning or land surveying and related services

(related services means personal services other than architectural, engineering, photogrammetric mapping, transportation planning or land surveying services, that are related to planning, designing, engineering or overseeing public improvement projects or components thereof, including but not limited to landscape architectural services, facilities planning services, energy planning services, space planning services, hazardous substances or hazardous waste or toxic substances testing services, cost estimating services, appraising services, material testing services, mechanical system balancing services, commissioning services, project management services, construction management services and owner's representative services or land-use planning services, and any other services defined as "related services" under the Public Contracting Code).

- (b) Contracts for services as an artist in the performing or fine arts.
- (c) Contracts for services as a consultant.
- (d) Contracts for services where the primary purpose is:
 - 1. Provision of revenues, cost reductions, or financing of transportation projects, including the procurement, planning, design, management or operation of such projects; or
 - 2. Efficiencies in the utilization or development of existing assets;and the work to be performed will require management, provision or utilization of public or private resources, in the exercise of management discretion or judgment.
- (e) Contracts for services that are specialized, creative or research-oriented.
- (f) Contracts for educational services.

Stat. Auth.: ORS 279A.055(2); ORS 279A.070; ORS 279C.100; ORS 279C.105(2).

G. Federal Funds

Notwithstanding any provision of these Rules, TriMet shall comply with applicable federal statutes and regulations for contracts funded with federal funds in accordance with applicable law.

Stat. Auth.: ORS 279A.030.