

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

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# TRIMET CONTRACTING RULES

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## **1. SCOPE**

### **1.1 Statutory Authority**

These Rules are adopted in accordance with ORS 279A.050, 279A.065 and 279A.070 to establish the rules of public contracting procedure TriMet will use for its public contracts, and in accordance with 279A.070 and ORS 279C.105, to create procedures for the screening and selection of persons to perform personal services contracts as designated by the TriMet Contract Review Board (TCRB) under TCRB Rule VI (F).

### **1.2 Attorney General's Rules Inapplicable**

The Attorney General's Model Contract Rules adopted under ORS 279A.065 do not apply to TriMet, except the Model Contract Rules adopted under ORS 279A.065(3) for construction manager/general contractor services. The TriMet Contract Review Board Rules and these Rules apply to TriMet public contracts.

### **1.3 Statutory Requirements Not Reiterated**

TriMet is subject to public contracting requirements under the Public Contracting Code. Those requirements generally are not reiterated in these Rules but apply as if fully set forth herein unless otherwise provided.

### **1.4 Federal Requirements**

TriMet is subject to certain contracting requirements when a particular contract is supported with federal funds. Those requirements are not reiterated in these Rules. Conflicts between these Rules and a federal requirement imposed by a federal statute, rule, circular or grant agreement shall be resolved in favor of the federal requirement, in accordance with ORS 279A.030.

### **1.5 Procurement Guidelines**

TriMet's General Manager or the General Manager's designee may establish and modify from time to time written or unwritten procurement guidelines consistent with these Rules.

### **1.6 Effective Date and Effect**

These Rules take effect October 22, 2014 and supersede the Contracting Rules dated February 20, 2008, as amended August 9, 2010, and any conflicting applicable procedures or practices, including but not limited to TriMet's existing Personal Services Contracting Procedures.

## **2. DEFINITIONS**

The definitions in the Public Contracting Code as defined below apply to these rules. In addition, unless the context clearly requires a different meaning:

"Addendum" means a written document issued by TriMet to change an Invitation to Bid or a Request for Proposals, or other solicitation document if identified as such.

"Bid" means a competitive sealed bid submitted in response to a written Invitation to Bid in accordance with ORS Chapter 279B or Chapter 279C.

“Bidder” means a person that submits a bid in response to an Invitation to Bid.

“CM/GC Contract” means a contract for construction manager/general contractor services.

“Construction Manager/General Contractor Services” means construction-related services that a contracting agency procures by means of an alternative contracting method under ORS 279C.335 and that:

(A) Include a construction manager/general contractor’s:

(1) Functioning as a member of a project team that includes the contracting agency, the architect or engineer that designs the public improvement under a separate contract with the contracting agency and other contractors and consultants; and

(2) Reviewing and analyzing a design for a public improvement in order to:

(a) Suggest changes in the design that minimize potential errors, delays, unexpected costs and other problems during construction;

(b) Recommend means by which the contracting agency may achieve the functions of the public improvement or a component of the public improvement safely, reliably, efficiently and at the lowest overall cost;

(c) Improve the value and quality of the public improvement; and

(d) Reduce the time necessary to complete the public improvement; and

(B) May include, depending on the specific terms of the public improvement contract and on whether the contracting agency decides to proceed with construction, a construction manager/general contractor’s:

(1) Devising a schedule for constructing the public improvement;

(2) Estimating construction, materials, labor and other costs for the public improvement;

(3) Establishing a fixed price, a guaranteed maximum price or other maximum price;

(4) Constructing portions of the public improvement and subcontracting portions to other contractors;

(5) Coordinating and overseeing the construction process; or

(6) Performing other services related to constructing a public improvement in accordance with the terms of the public improvement contract.

(C) "Construction manager/general contractor services" does not include services related to constructing a public improvement under the terms of:

- (1) A public improvement contract that a contracting agency awards on the basis of a competitive bidding process that does not require an exemption under ORS 279C.335;
- (2) A public improvement contract that results from a design-build procurement, as defined in rules the Attorney General or a contracting agency adopts under ORS 279A.065, and that is exempt from the competitive bidding requirement under ORS 279C.335;
- (3) An energy savings performance contract;
- (4) A public improvement contract for a transportation project that:
  - (a) Is exempt from the competitive bidding requirement under ORS 279C.335;
  - (b) Requires the contractor to construct the project according to plans and specifications that a design professional provides under a separate contract with the contracting agency and without significant participation from the contractor; and
  - (c) The contracting agency awards on the basis of the contracting agency's evaluation of:
    - (i) The contractor's qualifications, the price to perform the work on the project and the amount of time the contractor will take to perform the work; or
    - (ii) The contractor's qualifications, past experience with similar projects, the price to perform the work on the project and the contractor's planned approach to the project; or
    - (iii) A public improvement contract that is otherwise exempt or excepted from the competitive bidding requirement under ORS 279C.335.

"Design-build contract" means a contract with a single entity for both the design and construction of a public improvement.

"Emergency" means circumstances that: (A) Could not have been reasonably foreseen; (B) Create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and (C) Require prompt execution of a contract to remedy the condition.

"Invitation to Bid" means all documents, whether attached or incorporated by reference, used for soliciting bids.

"Offer" means a response to a solicitation.

"Offeror" means a person submitting an offer.

"Personal services" means those services designated as personal services by the TriMet Contract Review Board at Rule VI (F) *Personal Services*.

"Proposal" means a written competitive sealed proposal submitted in response to a written Request for Proposals issued under ORS 279B.060 or ORS Chapter 279C.

"Proposer" means a person that submits a proposal in response to a Request for Proposals.

"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 Contracting Code" or "Code" means ORS Chapters 279A, 279B and 279C.

"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.

"Quotation" or "quote" means a small or intermediate procurement price quote or proposal.

"Request for Proposals" means all documents, whether attached or incorporated by reference, used for soliciting competitive sealed proposals.

"Solicitation" or "Solicitation Document" means an Invitation to Bid or a Request for Proposals, unless the terms are not capitalized in which case the terms "solicitation" or "solicitation document" shall refer to any document issued to invite offers.

"Technical proposal" means a written proposal, submitted in response to a request for technical proposals issued by TriMet, describing the proposer's qualifications and the specific goods the proposer would offer or the specific methodology the proposer would use to provide services to satisfy TriMet's needs.

### **3. PROCUREMENT METHODS**

#### **3.1 General Principles**

TriMet Contracting Rules are intended to fully implement the Public Contracting Code and to maximize TriMet's flexibility to utilize the most appropriate procurement procedures consistent with the policy stated at ORS 279A.015. Nothing in these Rules shall be deemed to limit TriMet's authority and powers permitted under the Code, including any limitation on TriMet's discretion and authority to utilize any solicitation process permitted or directly authorized by the Code.



### **3.2 Exempt Public Contracts**

If no procurement method is specified by the Code or by the TriMet Contract Review Board, a public contract may be awarded based upon any method permitted under the Code and by these Rules, including but not limited to competitive negotiation. An exempt public contract may be awarded based upon competitive bidding or competitive negotiation if TriMet determines that, notwithstanding the exemption, an award based upon competitive bidding or competitive negotiation would be in TriMet's best interests.

### **3.3 Emergency and Sole Source Procurements**

#### **3.3.1 Emergencies**

The General Manager or his or her designee may enter into or authorize others to enter into emergency procurements of goods or services, including construction work that is not defined as a public improvement under ORS 279A.010. The Procurement and Contracts Department shall document the nature of the emergency and describe the method used for the selection of the particular contractor.

An emergency procurement of construction services other than a public improvement shall be conducted in a manner to ensure competition that is reasonable and appropriate under the emergency circumstances. TriMet shall set a solicitation time period that TriMet determines to be reasonable under the emergency circumstances and may issue written or oral requests for offers or make direct appointments without competition in cases of extreme necessity. All other emergency contract awards may be made by any commercially reasonable means under the circumstances.

#### **3.3.2 Sole Source**

Determination of sole source applicability shall be made in writing by the Director of Procurement and Contracts or the Manager of Contracts, or his or her designee(s), in accordance with ORS 279B.075, unless the contract is exempted under the Code or by the TriMet Contract Review Board.

### **3.4 Two-Step Bidding**

TriMet may solicit technical proposals from prospective bidders, evaluate those proposals, and solicit bids only from those prospective bidders whose technical proposals demonstrate that the prospective bidder would be able to satisfy TriMet's minimum requirements for the goods or services in question. If technical proposals are solicited, the solicitation shall be advertised in the same manner as an Invitation to Bid; the advertisement of the solicitation of technical proposals shall be deemed to satisfy all advertisement requirements of ORS Chapter 279B and these Rules. Bids may be solicited, without further advertising, directly from those prospective bidders whose technical proposals demonstrate that they satisfy the minimum requirements established in TriMet's request for technical proposals. Bids received in a two-step bidding process shall be evaluated in the same manner as other bids.

### **3.5 Negotiation When All Bids Exceed Estimate**

Pursuant to ORS 279C.340, TriMet may negotiate with the lowest responsible bidder submitting a responsive bid if all responsive bids from responsible bidders exceed TriMet's cost estimate. This rule is applicable only to contracts for public improvements. If a written cost estimate was not prepared prior to bidding, the amount budgeted for the contract shall be deemed the cost estimate for the purposes of this Rule. TriMet may negotiate under this Rule only if TriMet has determined that it would not be in TriMet's best interest to cancel the procurement, revise the specifications, and solicit new bids based upon the revised specifications.

### **3.6 Design-Build Contracts**

If TriMet determines that contracting with a single entity for both design and construction of a public improvement is in TriMet's best interest, TriMet may award a design-build contract. Design-build contracts may be awarded through competitive negotiation or as otherwise authorized in accordance with applicable requirements.

Federally funded procurements involving design-build services shall include preparation of a written determination and findings for the contract file that details whether construction or design services are predominant. Based upon the findings, the appropriate procurement methodology (qualifications based or non-qualifications based) shall be used.

### **3.7 Construction Management/General Contractor (CM/GC) Contracts**

If TriMet determines that contracting with a single entity for both construction management and construction of a public improvement is in TriMet's best interest, TriMet may award a CM/GC contract. CM/GC contracts may be awarded through competitive negotiation or as otherwise authorized in accordance with applicable requirements.

### **3.8 Unsolicited Proposal Policy**

An unsolicited proposal is a written offer which may meet TriMet strategic goals and requirements and entail the performance of a proposed task, service, or effort, initiated and submitted to TriMet by a prospective offeror without solicitation by TriMet. The Unsolicited Proposal policy for Public-Private Partner Infrastructure Projects is contained at Appendix "A." The Unsolicited Proposal Policy for all other types of projects is contained at Appendix "B."

### **3.9 Cooperative Procurements**

TriMet may participate in, sponsor, conduct, or administer Cooperative Procurements as set forth in ORS 279A.200 through 279A.225.

## **4. PREQUALIFICATION OF BIDDERS/PROPOSERS**

### **4.1 Generally**

TriMet, in its sole discretion, may require bidders, proposers or other offerors to prequalify before being eligible to submit bids, proposals or other offers for a class of public contracts or for a particular public contract. All prequalifications under this section, of both bidders and proposers, shall be in accordance with the applicable sections of the Code and these Rules. If prequalification is required, the opportunity to prequalify shall be advertised in the same manner as a solicitation document for the class of public contracts or the particular public contract would be advertised under applicable statutes and these Rules.

#### **4.2 Disqualification**

Disqualification of a previously prequalified bidder, proposer or other offeror shall be in accordance with these Rules and applicable provisions of the Code regarding prequalification and disqualification.

#### **4.3 Additional Advertising Not Required**

Subject to Rule 4.4 below, bids, proposals or other offers may be solicited for a particular contract from bidders, proposers or other offerors prequalified for that particular contract, or for a class of contracts including that particular contract, without additional advertising.

#### **4.4 Qualification Periods**

For federally funded procurements, if the product or service for which a prequalification list has been established is advertised, TriMet will permit potential bidders or offerors to qualify during the solicitation period provided the potential bidder or offeror can do so during the solicitation period.

### **5. ADVERTISEMENT**

Advertisements of Invitations to Bid and Requests for Proposals shall be published when required by statute, and any other time TriMet concludes that advertisement is desirable. An advertisement, other than for a public improvement contract estimated to cost more than \$125,000, shall be deemed sufficient for the purposes of the applicable statutes and these Rules if it appears once in the Oregonian or the Daily Journal of Commerce, or if it appears electronically in a commercially reasonable manner. Nothing in this section shall be deemed to prevent TriMet from satisfying the advertisement requirements of applicable statutes and these Rules by publishing an advertisement once in any newspaper of general circulation in the Portland metropolitan area. An advertisement for a public improvement contract estimated to cost more than \$125,000 shall be deemed sufficient if it appears once in the Daily Journal of Commerce or a similar trade newspaper of general statewide circulation. TriMet may publish an advertisement more than once, and, in addition to publication designed to satisfy the requirements of applicable statutes and these Rules, may publish one or more advertisements in any local, regional, or national publication deemed by TriMet to be appropriate for the particular procurement. A notice of advertisement issued for an Invitation to Bid or Request for Proposals subject to ORS Chapter 279B shall be posted at least 7 days prior to the Solicitation closing date, unless the Director of Procurement and Contracts or the Manager of Contracts determines that a shorter time period is necessary in TriMet's best interests.

### **6. DISTRIBUTION OF SOLICITATION DOCUMENTS**

TriMet normally distributes solicitation documents by making them available for electronic downloading through its vendor/contractor registration system. TriMet may distribute solicitation documents by other means, including by handing them to individuals who appear at the office of TriMet's Procurement and Contracts Department or via U.S. Mail or by fax or express mail, if TriMet determines in its sole discretion that other means are appropriate under the circumstances. TriMet may, but is not obligated to, deliver a solicitation document by other means to a particular prospective offeror if that prospective offeror requests delivery by the other means and pays the additional cost of the other means of delivery.

## **7. PROSPECTIVE BIDDERS AND PROPOSERS LISTS**

Prospective offerors should register on-line in TriMet's Vendor/Contractor Registration system, which may be accessed through a link on the agency's internet website homepage at [www.TriMet.org](http://www.TriMet.org). Registration facilitates email notification to the vendor/contractor of contracting opportunities. Vendor/Contractor Registration is subject to the terms and conditions at [www.TriMet.org](http://www.TriMet.org). Vendors are responsible for entering and maintaining their correct email address in the system. E-mail notification services through the Vendor/Contractor Registration system are not guaranteed and users are ultimately responsible for reviewing postings to the site.

Prospective offerors who are interested in a particular procurement, but do not have computer access, may still receive a solicitation document by non-electronic means described in Contract Rule No. 6, above; however, TriMet does not maintain interested vendor listings outside of the Vendor/Contractor Registration system described above. A vendor who requests a solicitation document through non-electronic means is responsible for ensuring that TriMet's Procurement and Contracts Department has accurate address and contact information.

## **8. PREBID AND PREPROPOSAL CONFERENCES**

### **8.1 Generally**

TriMet may hold a prebid or preproposal conference to hear and respond to questions. Such a conference may include a site inspection, if relevant. If the time and place of a prebid or preproposal conference are not stated in the Invitation to Bid or Request for Proposals, all prospective bidders or proposers on the list maintained by TriMet's Procurement and Contracts Department shall be notified of the time and place. Notification may be by telephone, fax, e-mail, or in writing, at TriMet's option.

### **8.2 Mandatory**

TriMet may require attendance at a prebid or preproposal conference as a condition precedent to the submission of a bid or proposal. TriMet may refuse to open a bid from a bidder who failed to attend a mandatory prebid conference, and may refuse to open or decline to evaluate a proposal from a proposer who failed to attend a mandatory preproposal conference. TriMet may, but is not obligated to, arrange for a subsequent prebid or preproposal conference if requested by one or more prospective bidders or proposers who were unable to attend a scheduled, mandatory prebid or preproposal conference for a reason determined by TriMet to be commercially reasonable under the circumstances. If a subsequent prebid or preproposal conference is arranged, all prospective bidders or proposers on the Procurement and Contracts Department list shall be notified in advance and allowed to attend.

### **8.3 Limited Effect**

Statements and other information from TriMet employees at a prebid or preproposal conference do not effect any change in the Invitation to Bid or the Request for Proposals, or the contracts that may arise from them. Changes in the Invitation to Bid or the Request for Proposals may be effected only by a written addendum issued by TriMet. Bidders and proposers may rely only upon the Invitation to Bid or the Request for Proposals, with any changes made by addendum, to establish all of the procurement requirements and all contract provisions other than those established by the bid or proposal

## **8.4 Change Requests**

A prospective bidder or proposer who wants to propose a change to the Invitation to Bid or the Request for Proposals should submit a written request, even if the change was requested during a prebid or preproposal conference. The request should be submitted in accordance with any instructions in the Invitation to Bid or the Request for Proposals. If TriMet fails to respond to a change request made during a prebid or preproposal conference, or to a written change request, the request shall be deemed denied. If TriMet responds to a change request, the response may be in the form of an addendum issued to all prospective bidders or proposers, with no specific response to the requestor.

## **9. SPECIFICATION OF PARTICULAR PRODUCTS**

**9.1** TriMet may utilize a brand name or equal specification when use of the brand name or equal describes the standard of quality, performance, functionality and other characteristics of the product needed by TriMet, in which case offerors may substitute equivalent products. The Invitation to Bid or Request for Proposals may require substitutions to be approved by TriMet prior to the submission of offers. TriMet shall approve a substitution if the substitute product has all of the salient features of the expressly or implicitly required product. This provision does not apply to products or classes of products that are exempt under ORS 279B.215(2) or 279C.345(2).

**9.2** For public contracts subject to ORS 279B.215, TriMet may expressly or implicitly require a particular product by brand name and disallow any substitution of the specified product when a written determination has been made by the Director of Procurement and Contracts or the Manager of Contracts that doing so meets the requirements of ORS 279B.215(2).

**9.3** For public contracts subject to ORS Chapter 279C.345, TriMet may expressly or implicitly require a particular product by brand name and disallow any substitution of the specified product when exempted by the TriMet Contract Review Board Rule under ORS 279C.345(2).

## **10. ADDENDA**

### **10.1 Requirement**

A solicitation document may be changed only by a written addendum issued by TriMet.

### **10.2 Acknowledgment Required**

An offeror must timely acknowledge in writing receipt of all addenda issued by TriMet. Failure to acknowledge receipt of an addendum may cause a bid to be rejected as nonresponsive or may cause a proposal to be rejected, depending upon the nature and content of addenda which were not acknowledged. Acknowledgment of receipt of an addendum most often will be part of the bid or proposal, but may be separate from the bid or proposal, and need not be sealed. TriMet shall accept a written acknowledgment of receipt of an addendum by any commercially reasonable means, including but not limited to fax and email. Acknowledgment of receipt of an addendum to an Invitation to Bid is timely only if it is received in a manner and at a time that would make it timely if it were a bid.

### **10.3 Distribution and Receipt**

Addenda may be distributed by U.S. mail, fax, hand delivery, electronic or other commercially reasonable means. Failure to receive an addendum to a solicitation does not excuse

failure to acknowledge receipt of the addendum, even if the failure to receive was through no fault of the prospective bidder or proposer, and even if the failure to receive was the fault of TriMet. TriMet, in its sole discretion, may extend the deadline set for receipt of bids or proposals to allow a bidder or proposer time to acknowledge receipt of an addendum.

## **11. METHOD OF SUBMITTING OFFERS**

### **11.1 Bids/ Proposals**

Unless otherwise specifically provided by the Solicitation Document bids must be submitted in writing on the form(s) provided by TriMet or a reasonable facsimile which does not in any way alter the content of the form issued by TriMet. Proposals must be submitted in the format prescribed by TriMet. Bids, proposals or other offers may be submitted electronically if expressly authorized as a means of submission in the solicitation document. A bid or proposal shall be considered timely submitted if it is delivered to the Director of Procurement and Contracts, the Manager of Contracts, or the Director's designee by the deadline stated in the solicitation document.

### **11.2 Small and Intermediate Procurement Quotes/Informal Proposals**

Small and Intermediate procurement quotes/informal proposals permitted under the Code may be submitted by any commercially reasonable method, including but not limited to fax, unless TriMet has specified in the solicitation document that only certain methods of submission may be used, or that certain methods of submission may not be used. Electronic data interchange and email shall be considered a commercially reasonable method of submission only if it is expressly authorized in the solicitation document.

TriMet may follow the procedures set forth at ORS 279B.065 (Small Procurements not exceeding \$10,000), at ORS 279B.070 (Intermediate Procurements exceeding \$10,000 but not exceeding \$150,000) and at ORS 279C.412 (public improvement contracts estimated not to exceed \$100,000), and procedures established by the Director of Procurement and Contracts or the Manager of Contracts. However, all federally funded contracts exceeding \$100,000 must be procured utilizing formal procurement procedures conforming to Federal Transit Administration (FTA) Circular 4220.1F, and in such cases the informal procedures authorized by ORS 279B.070 do not apply.

### **11.3 Timeliness**

Offerors are responsible for ensuring their offers are timely. TriMet may decline to consider a late offer, even if the offer is late because of a delay in TriMet's internal handling of mail or documents or because TriMet's receiving equipment was unavailable. If TriMet declines to consider an offer because it was not timely, the offer will be returned unopened to the offeror.

### **11.4 Completeness**

Offerors are responsible for ensuring TriMet receives their offers in a complete, legible, ungarbled form. TriMet may decline to consider an offer that is incomplete, illegible, or garbled, even if the problem is caused by TriMet's hardware or software.

### **11.5 Electronic Submission**

Offers submitted electronically must bear a facsimile signature, provided that the requirement for a facsimile signature is excused when the solicitation document expressly

authorizes electronic data interchange, e-mail, or another electronic submission method by which facsimile signatures generally cannot be transmitted. A solicitation document expressly authorizing electronic submission of offers may specify methods for establishing the authenticity of offers.

## **12. BID/ WITHDRAWAL/MODIFICATION**

At any time before the deadline for receipt of bids, a bidder may withdraw its bid without consequence. The withdrawal must be by someone with the necessary authority, and must be a signed writing. TriMet may release the unopened bid to the bidder or an authorized representative of such bidder, after voiding any date and time stamp. TriMet shall make a written record of the bid withdrawal.

At any time before the deadline for receipt of bids a bidder may modify its bid in writing. A bidder shall prepare and submit any modification to its bid to TriMet as provided in Rule 11, unless otherwise specified in the Invitation to Bid. Any modification must include the bidders' statement that the modification amends and supersedes the prior bid in accordance with instructions in the Invitation to Bid.

## **13. BID OPENING**

### **13.1 Generally**

Bids shall be opened at the time and place designated in the Invitation to Bid, subject to any changes made by addendum. The TriMet employee who will open bids shall confirm at or shortly after the specified deadline for receipt of bids, and before opening the first bid, whether any additional bids have been timely received at the location stated in the Invitation to Bid. If no additional timely bids have been received, the TriMet employee shall promptly proceed to open the first bid. If additional timely bids have been received, the TriMet employee shall delay the bid opening until those bids can be delivered to the place bids are to be opened. Subject to any exemptions under Oregon public records statutes, bids shall be available for public inspection only after TriMet has finished evaluating them for responsiveness.

### **13.2 Postponement**

The time for opening bids may be postponed at any time for TriMet's convenience or if TriMet determines that postponement would be in TriMet's best interest. Bids shall be opened in a place designated by TriMet that is open to the public at the time bids are opened. TriMet may change the place bids will be opened at any time. A bid opening postponement or relocation shall be communicated orally or by a posted sign to anyone who appears at the previously designated time and place for the bid opening. If time permits, a bid opening postponement or relocation shall be communicated to all prospective bidders on the list maintained by TriMet's Procurement and Contracts Department by mail, fax, email, or any other commercially reasonable means.

## **14. PROPOSAL OPENING**

TriMet may open proposals at any time after the exact date and time set forth in the Request for Proposals. There is no requirement for proposals to be opened in public.

## **15. BID EVALUATION**

### **15.1 Generally**

Opened bids shall be evaluated in accordance with the Invitation to Bid, applicable statutes and these Rules. When a bid is determined to be nonresponsive to the Invitation to Bid, it

will not be evaluated further. The bidder submitting the lowest responsive bid shall be evaluated for responsibility under applicable statutes, these Rules, and the Invitation to Bid.

### **15.2 Correction of Certain Errors**

Arithmetic errors apparent on the face of a bid shall be corrected by TriMet before comparing bid prices. Discrepancies between a unit price and an extended total price for a bid item shall be resolved in favor of the unit price unless there is evidence apparent on the face of the bid establishing that the extended price is correct.

### **15.3 Clarification of Bids**

After bid opening, TriMet, in its sole discretion, may conduct discussions with apparent responsive bidders solely for the purpose of clarification to assure full understanding of the bid. TriMet shall document clarification of any bidder's bid in the procurement file.

## **16. BID ERRORS**

### **16.1 Errors of Judgment**

A bid may not be corrected or withdrawn for an error in judgment. If a bidder is awarded a public contract and refuses to promptly and properly execute the public contract because of an error in judgment, the bidder's bid security must be forfeited under ORS 279B.055(3)(c) or ORS 279C.385 as applicable.

### **16.2 Minor Informalities**

TriMet may waive or permit a bidder to correct a minor informality. A minor informality is either a matter of form rather than substance that is evident on the face of the bid, or an insignificant mistake that can be waived without prejudice to other bidders. For example, failure to sign the bid in the designated block on the bid form is a minor informality if a signature appears on the bid bond or somewhere else in the bid evidencing intent to be bound by the bid.

### **16.3 Clerical Errors**

A clerical error is an error in transcribing the bid, and may include without limitation typographical errors, arithmetic errors, and transposition and other errors in transferring numbers from work sheets to the bid form. If a clerical error is apparent on the face of the bid and the correction also is apparent on the face of the bid, TriMet shall correct the error before evaluating bids. A discrepancy between a unit price and an extended bid item price is a clerical error and shall be corrected by giving precedence to the unit price.

If an error not apparent on the face of the bid is brought to TriMet's attention, the bidder may submit evidence to establish that the error is a clerical error. If it is clear and convincing from the face of the bid or from evidence submitted by the bidder that an error is a clerical error, rather than an error in judgment, but the correction of the error is not apparent on the face of the bid, the bidder may either withdraw its bid without forfeiting its bid security under ORS 279B.055(3)(c) or 279C.385 as applicable, or agree to proceed with the public contract as bid, without correcting the error. If the bidder takes neither of those actions, TriMet shall reject the bid as nonresponsive. A bidder may not correct a clerical error if the correction is not apparent on the face of the bid.



## **17. PROPOSAL METHODS/ADDENDA/COMPETITIVE RANGE/EVALUATION**

**17.1** TriMet shall have discretion in the method used to select the most advantageous proposal, including but not necessarily limited to an award based solely on ranking of proposals, negotiations with the highest ranked proposer, competitive negotiations, multiple-tiered competition designed to identify a class of proposers that fall within a competitive range or to otherwise eliminate from consideration a class of lower ranked proposers, multi-step selection methods or any combination of methods.

**17.2** If TriMet issues an addendum after proposals are opened, TriMet shall provide sufficient time for proposers to supplement their proposals, if necessary, based on the changes provided in the addendum. Less than five days may be allowed for proposal supplementation if the changes made by the addendum do not require extensive analysis or action on the part of the affected proposers.

**17.3** TriMet shall have discretion in the manner in which a competitive range is defined for a specific procurement. The number of proposers to be included within a competitive range may not be determined prior to evaluation of proposals.

**17.4** Proposals shall be evaluated based upon the evaluation criteria established by the Request for Proposals. Changes in evaluation criteria shall be communicated by addendum. If evaluation criteria are changed after proposals have been submitted, all proposers shall have an opportunity to supplement their proposals or submit best and final offers after receipt of the addendum changing the evaluation criteria.

## **18. PROPOSAL ERRORS/PROPOSAL MODIFICATION**

Unless there is limiting language in the Request for Proposals, errors in proposals may be corrected at any time prior to the deadline for TriMet's receipt of best and final offers, or, if best and final offers are not invited or allowed, the beginning of TriMet's final evaluation of proposals.

## **19. IRREVOCABILITY OF OFFERS**

### **19.1 Bids**

All bids received by TriMet for a particular public contract become binding offers when the deadline for receipt of bids passes, and remain irrevocable for 60 calendar days after opening unless a different period is specified in the Invitation to Bid. Each bidder agrees that after the deadline for receipt of bids, its bid constitutes a valid firm offer that shall not be withdrawn sooner than 60 calendar days after bid opening, unless a different period is specified in the Invitation to Bid.

### **19.2 Proposals**

All proposals received by TriMet for a particular contract shall become binding offers on the last date for the receipt of best and final offers or, if best and final offers are not invited or permitted, from the date proposals are due, and shall remain irrevocable for 90 calendar days thereafter unless a different period is specified in the Request for Proposals. TriMet reserves the rights to analyze, examine, and interpret any proposal for a period of not more than 90 days, commencing from the proposal due date and time, unless a different period is specified in the Request for Proposals. Proposals shall not be conditioned to allow for an acceptance period less than the period specified in the Request for Proposals. If no acceptance period is specified in the

Request for Proposals, proposals shall not be conditioned to allow for an acceptance period of less than 90 days.

### **19.3 Extensions and Reinstatements**

An offeror may extend the period of irrevocability of its offer by giving TriMet a written extension specifying a new period of irrevocability. An offeror may reinstate an offer (unchanged) after the expiration of the period of irrevocability by giving TriMet a written reinstatement specifying a new period of irrevocability. An offeror may not "extend" or "reinstate" an offer that differs in any material respect from the original; a purported extension or reinstatement of a materially differing offer amounts to a new offer.

## **20. TIED LOW BIDS OR QUOTATIONS**

### **20.1 Generally**

If (1) low bids or quotations are tied, (2) the price, fitness, availability, and quality of the goods or services offered by the tied offerors are otherwise equal, and (3) one of the tied offerors offers goods or services manufactured or produced in Oregon, the contract shall be awarded to that offeror in accordance with ORS 279A.120. If two or more of the tied offerors offer goods or services manufactured or produced in Oregon, the contract shall be awarded to one with principal offices or headquarters in Oregon. If two or more of the tied offerors offer goods or services manufactured or produced in Oregon, and none has principal offices or headquarters in Oregon, or if two or more of them have principal offices or headquarters in Oregon, the contract shall be awarded by drawing lots or another random selection process determined by TriMet. If none of the tied offerors offer goods or services manufactured or produced in Oregon, the contract shall be awarded by drawing lots or another random selection process determined by TriMet. The tied offerors shall be given notice and an opportunity to be present when the random selection process occurs.

### **20.2 Unequal Quality**

If the fitness, availability, and quality of the goods or services offered by tied offerors are not otherwise equal, the contract shall be awarded to the offeror determined by TriMet to offer the superior goods or services.

## **21. REJECTION OF BIDS OR PROPOSALS/CANCELLATION**

**21.1** TriMet may reject any or all bids, proposals or other offers or cancel any solicitation or procurement solicited under ORS Chapter 279B in accordance with 279B.100.

**21.2** TriMet may reject any or all bids or proposals solicited under ORS Chapter 279C in accordance with ORS 279C.395. TriMet may reject all bids or proposals for good cause upon a finding that rejection is in the public interest. Situations where good cause is sufficient to warrant rejection of all bids or proposals include but are not limited to: (1) competition is unnecessarily restricted because of the content of or an error in the solicitation document or the solicitation process; (2) all offered prices are too high or all offered performance is insufficient to meet TriMet's needs; (3) ambiguous or misleading provisions in the solicitation document, or misconduct or error, threaten the fairness and integrity of the competitive process; (4) events other than legitimate market forces threaten the integrity of the competitive procurement process.

**21.2** TriMet may cancel a solicitation for good cause under ORS Chapter 279C if TriMet determines that cancellation is in the public interest, which shall be documented in the solicitation file.

## **22. NOTICE OF INTENT TO AWARD; BIDS AND PROPOSALS**

A notice of intent to award a contract after receipt of bids or proposals will be issued at least seven days prior to award, by posting on the Vendor/Contractor Registration website system described in Rule 7 above, or alternatively, via mail, email, fax or other electronic means to all bidders or proposers, unless TriMet determines that seven days is impractical in that circumstances require prompt execution of the contract in which case a shorter notice period may be provided. Such circumstances may include, but are not limited to, where failure to more promptly execute the contract may result in a substantial risk of economic or other type of loss or damage, interruption of services or operations, public inconvenience or substantial threat to property, health or safety. Until the notice of intent to award has been posted, bidders or proposers shall not have the opportunity to protest the award in accordance with ORS 279B.410 provisions and with these Rules.

## **23. TRIMET SURPLUS PROPERTY**

TriMet may sell personal property no longer required for TriMet purposes. If TriMet elects to sell personal property, it may be by public sale, including but not limited to: internet auctions, oral auctions, sealed bid sales, and fixed retail sales, separately or in any combination thereof. TriMet may also utilize the services of the Department of Administrative Services (DAS) for disposal of TriMet surplus property. TriMet may otherwise transfer or dispose of personal property in accordance with applicable laws and regulations.

## **24. AMENDMENTS**

TriMet may amend a public contract in accordance with the provisions of the original contract, or as determined appropriate by TriMet upon consideration of factors which may include but are not limited to: the type and nature of the contract; whether the additional work is within the scope of the original contract (factors may include but are not limited to whether the additional work is logically related to the contract work; if prudent contract management, engineering or construction practices dictate that the additional work ought to be performed in conjunction with the original contract work; if the additional work is located at the same site as the contract work; and if the contract objectively establishes the price, or the method of arriving at the price, for the additional work); whether the additional work can be performed by the contractor at a cost below what TriMet estimates it would cost if the additional work were awarded through a competitive solicitation process; and other factors as determined by TriMet in accordance with applicable contracting requirements.

## **25. PERSONAL SERVICES CONTRACT SELECTION PROCEDURES**

These procedures constitute TriMet's procedures for the screening and selection of personal services contracts. For purposes of these personal services contract procedures, "proposal" shall mean an offer to provide personal services whether formal or informal as designated below. TriMet may follow the selection procedures established by ORS 279C.110 for contracts for architectural, engineering, land surveying or related services if TriMet determines that selection procedure would be in TriMet's best interest under the circumstances.

### **25.1 Sufficient Quality and Fair and Reasonable Price**

Regardless of the specific method of selection used, the individual in charge of selecting a personal services contractor on behalf of TriMet shall ensure that the quality of the service offered by the personal services contractor is sufficient for TriMet's particular needs under the circumstances, and that the cost to TriMet for the services is fair and reasonable under the circumstances

### **25.2 Personal Services Contract of \$3,000 or Less**

A personal services contractor may be selected without soliciting informal proposals from more than one qualified proposer if the total cost of the personal services contract is estimated to be \$3,000 or less, the quality of service offered by the personal services contractor is sufficient for TriMet's particular needs under the circumstances, the cost to TriMet is fair and reasonable under the circumstances, the award does not reflect favoritism, and the award is in all other respects in TriMet's best interests.

### **25.3 Personal Services Contracts Over \$3,000 But Not Over \$25,000**

If the total cost of a personal services contract is estimated to be more than \$3,000 but not more than \$25,000, informal proposals may be solicited. If it is practicable, informal proposals shall be solicited from a sufficient number of qualified prospective proposers to ensure no fewer than three qualified proposers submit proposals. If fewer than two qualified proposers submit proposals, the efforts made to solicit proposals shall be documented in TriMet's files.

### **25.4 Personal Services Contracts Over \$25,000 But Not Over \$100,000**

If the total cost of a personal services contract is estimated to be more than \$25,000 but not more than \$100,000, informal proposals may be solicited. Informal proposals shall be solicited from a sufficient number of qualified prospective proposers to ensure no fewer than three qualified proposers submit proposals. If fewer than two qualified proposers submit proposals, the efforts made to solicit proposals shall be documented in TriMet's files.

### **25.5 Personal Services Contracts Over \$100,000**

When a nonexempt personal services contract is estimated to exceed \$100,000, formal sealed proposals shall be solicited by a formal Request for Proposals, and a contract may be awarded based upon competitive negotiation using any method permitted for solicitation of proposals in these Rules as determined in TriMet's best interests. The Request for Proposals for a personal services contract shall include at least the following elements:

- A description of the criteria upon which proposals will be evaluated;
- The contractual terms and conditions required by TriMet;
- A description of the work;
- The requirements that must be satisfied by written proposals; and
- A protest procedure.

Proposals shall be evaluated based upon evaluation criteria described in the Request for Proposals. The evaluation criteria shall be presumed to have equal importance unless the Request for Proposals indicates otherwise. The evaluation criteria may be changed only by written addendum to the Request for Proposals.

Although not exclusive as methods, TriMet may solicit proposals by public advertisement, or may solicit without advertisement directly to a pool or limited number of members of a pool of prospective proposers as described below, provided that the pool, or segment of the pool solicited, has at least three members, and the method of selecting the limited number of proposers solicited is either random or qualifications based.

A pool of prospective proposers may be established for a particular type of personal services contract by soliciting statements of qualification from individuals or firms that may be qualified to perform those particular personal services. Statements of qualification must be solicited from all such individuals or firms known to TriMet within the area from which TriMet normally would solicit proposals for the particular type of contract by advertising as provided by these Rules for the advertisement of Requests for Proposals. The solicitation must state the evaluation criteria that will be used in determining which prospective proposers will be admitted to the pool, and may describe how proposals for particular contracts will be solicited and evaluated from limited numbers of pool members. After a pool is established, a prospective proposer who is not a member of the initial pool may apply for admission to the pool by submitting a statement of qualification, and shall be added to the pool if TriMet determines the prospective proposer is qualified based upon the evaluation criteria established in the original solicitation. TriMet may remove a prospective proposer from the pool upon determining that the prospective proposer is no longer qualified based upon the evaluation criteria established in the original solicitation. Removal of a prospective proposer from a pool is not subject to review in the same manner as the disqualification of a bidder.

## **25.6 Exemptions**

### **25.6.1 Sole Source**

If only one firm is qualified and available to perform a personal services contract, a contract may be awarded to that firm without competition.

### **25.6.2 Unique or Specialized Knowledge or Expertise**

A personal services contract may be awarded without competition if the contractor has unique or specialized knowledge or expertise required by TriMet, and the individual approving the contract on behalf of TriMet has determined that soliciting informal or formal proposals from others would not be in TriMet's best interests.

### **25.6.3 Emergency**

A personal services contract may be awarded without competition if prompt execution of a contract is necessary in an emergency.

### **25.6.4 Unsolicited Proposals**

Unsolicited Proposals for personal services may be submitted in accordance with the Unsolicited Proposal Procedures set forth at Appendices A and B. TriMet shall comply with applicable contracting laws relating to public improvements if applicable to the Unsolicited Proposal.

## **25.7 Cancellation/Rejection of Proposals**

Any solicitation for personal services may be canceled, or any or all informal or formal proposals may be rejected in whole or in part, when the cancellation or rejection is in the best interest TriMet as determined by TriMet. The reasons for the cancellation or rejection must be made part of the solicitation file. TriMet is not liable to any proposer for any loss or expense caused by or resulting from the cancellation of a solicitation or award, or rejection of an informal or formal proposal.

## **26. PROTESTS**

### **26.1 Written Protest Required**

If a bidder/proposer or prospective bidder/proposer, (hereinafter referred to as "protester"), wishes to object to any aspect of a TriMet procurement, the protester may file a written protest with TriMet's General Manager in accordance with these procedures and the Code. The protest must include all factual and legal grounds for the protest, and all supporting evidence, in the form of physical evidence, documents, or affidavits, and the relief requested.

### **26.2 Timeliness**

A protest must be filed promptly as soon as the protester knows of the grounds for the protest.

If the grounds for a protest were apparent on the face of the Solicitation Document, TriMet may decline to consider a protest filed later than five business days before the date by which bids or proposals must be submitted.

If the grounds for a protest were not apparent on the face of the Solicitation Document, TriMet may decline to consider a protest filed later than five business days after the protester knew or should have known of TriMet's intent to award the contract.

### **26.3 Written Decision**

TriMet's General Manager shall issue a written decision in response to a protest.

### **26.4 Discretionary Meeting**

TriMet's General Manager or his designee may, but is not required to, schedule a meeting with the protester prior to issuing a written decision. TriMet's General Manager or his designee may invite other TriMet staff to the meeting, and, in the case of a procurement involving a TriMet evaluation team, may invite one or more members of the evaluation team to the meeting.

### **26.5 Appeal and Final Administrative Action**

If the protester disagrees with the written decision issued by TriMet's General Manager, the protester may request the General Manager's reconsideration of a decision if (a) information becomes available that was not previously known, or reasonably could have become known (b) the General Manager's decision contains an error of law. The request must be submitted in writing to the General Manager within five business days of the date of issuance of the initial decision. The request must include a detailed explanation of the basis for reconsideration, all legal arguments and all evidence, in the form of physical evidence, documents and affidavits, and

state the course of action the protesting party desires that TriMet take. Within 10 business days of receipt of the request for reconsideration the General Manager shall issue a written decision that shall be final upon issuance.

#### **26.6 Role of Federal Transit Administration**

Where Federal Transit Administration (FTA) funds will be utilized to fund the contract which is the subject of a protest, TriMet Procurement staff and management will notify the FTA Regional Office that a formal protest has been received. While a protesting party may file an appeal with the FTA where federal funds are involved if it is not satisfied with TriMet's disposition of the protest, FTA will only entertain such an appeal after the protesting party has exhausted all of the above described procedures.

#### **27. ROLE OF THE GENERAL MANAGER**

TriMet's General Manager shall have full authority over TriMet's source selection and decision to award the contract, subject to applicable law and Board of Directors policy. The General Manager may issue and publish modifications to these procedures.

## APPENDIX "A"

### POLICY AND RULES CONCERNING THE RECEIPT OF AND AWARD OF CONTRACTS PURSUANT TO UNSOLICITED PROPOSALS FOR PUBLIC-PRIVATE PARTNERSHIP INFRASTRUCTURE PROJECTS

#### I. Background & General Guidance

- A. Public-private partnerships create opportunities for both the public and private sectors. Agreements between public and private sector entities to jointly plan, design, finance, develop, construct, reconstruct, replace, improve, maintain, manage, repair, operate and take whatever actions authorized by TriMet's enabling legislation that may be necessary or convenient to provide transportation and transit projects ("infrastructure projects") are herein referred to as public-private partnerships ("partnerships"). Recognizing that the structure of these partnerships will be dependent upon the project scope and the opportunities the project offers, the involved entities play varying roles and assume varying degrees of responsibility in identifying, financing, designing, building, operating, and maintaining projects. Partnerships are designed to benefit both the public and private partners.

The primary difference between public-private partnerships and the way transportation projects are usually structured is the degree to which the private sector can be involved. Typically, the private sector plays an important role in many transportation projects by providing engineering, construction, and other services, but does not initiate projects or assume any ownership of them. In public-private partnerships contemplated by the Policy and Rules contained herein, the private sector can initiate projects by submitting unsolicited proposals and can assume some ownership of or direct responsibility for the public system, ranging from none to complete.

By assuming this additional responsibility, the private sector also assumes risk, creating an opportunity for a market-based return on investment. As the degree of responsibility increases, so does the risk, but also the opportunity for higher return. The public sector benefits by gaining access, through the private sector, to financing sources and arrangements traditionally not available to the public sector and to innovative methods that can shorten the time required for project design and construction.

When they are properly conceived and implemented, including having the support of the community and local jurisdictions, public-private partnerships can offer significant advantages to both sectors. The core concepts that are woven through TriMet's belief in and commitment to public-private partnerships in developing infrastructure are the desirability of and need for: (1) Innovation; (2) A streamlined and expedited selection and contract award process; (3) Competition; (4) Quality; (5) Utilization of private and governmental expertise; (6) Fair and consistent standards, consistent messages, and trust; (7) Cost effective use of increasingly scarce public funds; (8) Informed risk taking and resilience to the occurrence of unforeseen and significant problems; (9) Public confidence, accountability, and transparency, and; (10) Continuous monitoring, evaluation, and learning.

#### B. Summary

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In summary, public-private partnerships have the following characteristics:

- Leveraging the expertise and resources of the private and public sectors to effectively deliver a high quality project, reduce the use of public funds, and enhance confidence and public trust in the performance of government and its ability to spend taxpayer money wisely;
- Allowing private sector firms the ability to submit innovative, creative, and proprietary approaches, plans, processes, procedures, and mechanisms that have commercial value to private sector firms and can be tailored to fit TriMet's needs and requirements;
- Meeting the public need for infrastructure projects that cannot be wholly or as effectively satisfied by existing methods of procurement and financing;
- Delivering critically needed transportation projects quickly, thereby reducing costs, traffic and other disruptions;
- Providing access to innovative project development and financing sources and arrangements;
- Providing cost certainty earlier in the procurement process;
- Encouraging and promoting business and employment opportunities; and,
- Attracting a larger number of and increasing competition among highly qualified firms by providing a sound investment opportunity for the private sector.

## **II. Definition Of Unsolicited Proposal For Public Partnership Infrastructure Projects**

Recognizing that TriMet can build its infrastructure in the traditional manner, unsolicited proposals provide another means to encourage and facilitate highly qualified private sector firms to propose innovative financing, development and operational approaches and methods for infrastructure projects. The unsolicited proposal Policy and Rules contained herein also implement and facilitate federal funding agency objectives and requirements that federal funds be utilized in a manner that provides for maximum return on federal investment in infrastructure projects.

An unsolicited proposal is a written offer that may meet TriMet's strategic goals and requirements with respect to the creation of light rail or other infrastructure projects and it is initiated and submitted to TriMet by a prospective offeror without solicitation by TriMet. A valid unsolicited proposal must be: (1) Innovative and unique; (2) Independently originated and developed by the offeror; and (3) Prepared without TriMet's supervision, endorsement, direction, or direct involvement. The proposal is submitted by the prospective offeror with the objective of obtaining a contract with TriMet.

An unsolicited proposal should be distinguished from the following:

1. **Advertising or Promotional Material**  
Material designed to acquaint TriMet with prospective offeror's current products or potential capabilities, or designed to determine TriMet's interest in procuring such products or services; and
2. **Contributions**  
Concepts, suggestions, or mere ideas presented to TriMet for its use, with no indication on the part of the offeror that it will continue in its efforts with regard to such concepts, suggestions, or ideas on behalf of TriMet; and

3. Technical Correspondence

Written inquiries regarding TriMet's interest in developing infrastructure projects, pre-proposal explorations, technical inquiries and research proposals.

**III. Advance Guidance**

Organizations or individuals interested in submitting an unsolicited proposal are encouraged to first contact TriMet to make preliminary inquiries as to the general need for the type of effort contemplated.

Prior contact with TriMet technical personnel is permissible and is encouraged with the limited objective of conveying to the prospective offeror an understanding of TriMet's needs relative to the type of effort contemplated. Personal contacts by a prospective offeror shall be conducted in a manner that (1) avoids seeking TriMet commitment regarding acceptance of an unsolicited proposal; and (2) avoids attempting to obtain a competitive advantage in any planned competitive solicitation.

**IV. Process And Evaluation Description**

TriMet will follow a four step evaluation process in determining whether to accept an unsolicited proposal. A favorable comprehensive evaluation will not, in itself, result in the awarding of a contract to the offeror. A summary of the evaluation process is set forth in the following paragraphs.

**V. Initial Review And Evaluation Of The Proposal - STEP 1**

An initial evaluation shall be conducted by the appropriate TriMet staff to determine that the proposal contains sufficient information and detail to permit a meaningful evaluation (See Section IX). If the proposal does not meet the requirements of this paragraph, the offeror may be given the opportunity to provide the required information.

**A. Initial Review**

Upon initial review, TriMet may deem an unsolicited proposal unacceptable for the following threshold reasons. The unsolicited proposal:

1. Does not contain any unique approaches to financing or capital investment and would be available to TriMet without restriction from other sources, or is otherwise not sufficiently innovative or unique to justify acceptance, or
2. Closely resembles that of a pending competitive solicitation, or
3. Is not within TriMet's interests or is not useful to TriMet at the present time, or
4. Is otherwise determined to be not meritorious.

If TriMet determines following initial review that it will not further evaluate a proposal, the proposal shall be returned to the offeror together with the reasons for the return.

B. Evaluation.

If, after initial review, TriMet elects to evaluate an unsolicited proposal, the following criteria will be considered in addition to any other criteria TriMet deems relevant:

1. Unique, innovative, or meritorious methods, approaches, or ideas that have originated with or are assembled together by the offeror that are contained in the proposed effort or activity.
2. Overall merits of the proposed project effort.
3. Potential contribution that the proposed effort is expected to make to TriMet's specific goal, if pursued at this time
4. Capabilities related to experience, facilities, or techniques, or unique combinations thereof that the offeror possesses and offers, and which are considered to be integral factors for achieving the objective(s) of the proposal,
5. Qualifications, capabilities, and experience of the proposed principal, team leader, or key personnel who are considered to be critical in achieving the objectives of the proposal.
6. The financial benefit to TriMet in implementing the proposal, including but not limited to access to and level of the capital contribution or assumption/allocation of risk proposed,
7. Timing considerations of any proposed effort

C. At this stage of evaluation of the unsolicited proposal, TriMet may determine that additional information is required and give the offeror the opportunity to provide such information.

D. Upon completion of this initial evaluation, TriMet staff performing the evaluation shall prepare a memo stating that the proposal is either unacceptable or potentially acceptable, and setting forth the reasons for the result. The memo shall also recommend further action if any. The offeror shall be promptly notified of the result.

**VI. Publication To Determine Sole Source - STEP 2**

A. Prior to performing a secondary evaluation or negotiation regarding an unsolicited proposal initially deemed as potentially acceptable, TriMet will publicize its "Intent to Negotiate for Contract Offered by Unsolicited Proposal." The purpose of such publication is to ascertain whether other parties desire and are able to accomplish the same infrastructure project that is similar to that contemplated within the original unsolicited proposal. TriMet's publication will give notice of the basic business elements of the original offer and inform that other interested parties may inquire about or provide comment, by a date certain (30 days from publication). The publication will not disclose proprietary information as such information is defined in Section XII. If interest, in written form, is expressed by third parties who also desire an opportunity to submit a proposal for a contract whose elements are similar to those publicized, then TriMet will allow and consider written submittals as long as it conforms to the same requirements outlined in this policy and required of the original unsolicited proposal.

B. If, based on review of other proposals submitted in response to publication, TriMet determines that it is in TriMet's interest to conduct a competitive solicitation, all proposals received under this policy may be rejected and returned to the submitting parties and TriMet shall inform all offerors of its intentions regarding a subsequent competitive solicitation process.

#### **VII. Secondary Evaluation Of Proposal, Required Supplemental Material – STEP 3**

Upon a finding that the original unsolicited proposal is potentially acceptable and that there is a sole source justification for the contract to be awarded in accordance with the services proposed, TriMet will conduct a secondary evaluation of the proposal. TriMet reserves the right to require the submission of supplemental material that will assist TriMet in negotiating a final contract and in determining that the offeror has the technical capability and financial resources to perform the contract as contemplated. In the event TriMet elects to recommend a contract award to its Board of Directors, TriMet staff will insure that the unsolicited proposal and tentative agreement undergo a comprehensive review and analysis, including an independent cost estimate on all phases of the unsolicited proposal.

#### **VIII. Board Of Director Review – STEP 4**

An unsolicited proposal that results in a recommendation of TriMet staff that a contract be awarded is subject to review and approval of the TriMet Board of Directors. The terms and conditions of any contract awarding a public private partnership for infrastructure shall be reviewed at a public meeting of the TriMet Board of Directors. The public will have an opportunity to make comments to the TriMet Board of Directors on the proposed agreement.

#### **IX. Content Of Unsolicited Proposals**

Unsolicited proposals should contain the following information in order to permit consideration in an objective and timely manner.

##### **1. Basic Information**

This includes the name and address of the offeror (if an organization, indicate type: e.g., profit, nonprofit, educational, small business); names and telephone numbers of the offeror's technical and business personnel whom TriMet may contact for evaluation or negotiation purposes; identification of any proprietary data which the offeror intends to be used by TriMet only for evaluation purposes and which the offeror intends to remain confidential; names of any other federal, state, or local agencies or other parties receiving the proposal and/or funding the proposed effort or activity; date of submission; and signature of a responsible official or representative of the organization, or a person authorized to contractually obligate the organization. If the offeror is a joint venture, partnership, consortium or otherwise involves more than one legal entity, the same information should be provided for all entities.

##### **2. Technical Information**

This includes a concise abstract (approximately 800 words) of the proposed infrastructure project effort; a reasonably complete discussion stating the objectives of the effort or activity, the method of approach and extent of effort to be employed, the method of financing the project,

the nature and extent of the anticipated results, and the manner in which the work will help to support accomplishment of TriMet's goal; the names and brief biographical information of the offeror's key personnel who would be involved, and the type of support, if any, the offeror requests of TriMet, e.g., facilities, equipment, materials or personnel resources.

### 3. Supporting Information

This includes a proposed cost and risk allocation structure for the proposed effort sufficiently detailed so that there can be meaningful evaluation; the type of contract preferred; the period of time for which the proposal is valid (a minimum of 6 months is suggested); the proposed duration of effort; statements, if applicable, regarding cost sharing and the level of investment to be made by the offeror; organizational conflicts of interest; environmental impacts; and brief descriptions of the organization, previous work or experience in the field of the proposal, and facilities to be utilized for the work, where appropriate for understanding the proposal.

## X. Time For Submission

Unsolicited proposals should be submitted well in advance of the offeror's desired beginning of the proposed effort or activity in order to allow TriMet sufficient time to evaluate the proposal and negotiate a contract if the proposal is accepted.

## XI. Submission Of Proposal

Proposals shall be submitted to the Director of Procurement and Contracts, TriMet 1800 SW 1<sup>st</sup> Avenue, Ste. 300, Portland, Oregon 97201. Offeror shall submit three (3) copies of the proposal with cover letter. The Director of Procurement and Contracts shall acknowledge receipt of unsolicited proposals as soon as possible.

## XII. Use Of Information

**All proposals submitted to TriMet are subject to the applicable public records laws. Offerors are advised to familiarize themselves with the provisions of these laws. If the offeror has special concerns about proprietary information that it wants to make available to TriMet, the offeror may wish to suggest for TriMet's consideration, prior to submission of its proposal, methods for safeguarding such information from disclosure consistent with applicable public records laws.**

Nothing herein precludes TriMet from using any data, concept or idea that it may have intended to use had the unsolicited proposal not been submitted. Subject to this Policy, any information submitted to TriMet shall be held in confidence until such time that TriMet accepts the unsolicited proposal and it becomes necessary to commence the contract award process.

## APPENDIX "B"

### POLICY AND RULES CONCERNING THE RECEIPT OF AND AWARD OF CONTRACTS PURSUANT TO UNSOLICITED PROPOSALS (NON-PUBLIC/PRIVATE PARTNERSHIP INFRASTRUCTURE PROJECTS)

#### I. DEFINITION OF UNSOLICITED PROPOSAL

An unsolicited proposal is a written offer which may meet TriMet strategic goals and requirements and entail the performance of a proposed task, service, or effort, initiated and submitted to TriMet by a prospective offeror without solicitation by TriMet. A valid unsolicited proposal must be: (1) Innovative and unique; (2) Independently originated and developed by the offeror, and; (3) Prepared without TriMet supervision, endorsement, direction, or direct involvement. The proposal is submitted by the prospective offeror with the objective of obtaining a contract with TriMet. This procedure does not apply to public improvements as defined in ORS 279A.010(1)(cc).

An unsolicited proposal should be distinguished from the following:

1. Advertising or Promotional Material

Material designed to acquaint TriMet with prospective offeror's current off-the-shelf products or potential capabilities, or designed to determine TriMet's interest in procuring such products; and

2. Commercial Products Offerings

Offers of standard commercial products usually sold in substantial quantities to government agencies or the general public which the offeror desires TriMet to procure as an alternate or replacement for existing supplies; and

3. Contributions

Concepts, suggestions, or mere ideas presented to TriMet for its use, with no indication on the part of the offeror that it will continue in his efforts with regard to such concepts, suggestions, or ideas on behalf of TriMet; and

4. Technical Correspondence

Written inquiries regarding TriMet's interest in research areas, pre-proposal explorations, technical inquiries and research proposals.

#### II. ADVANCE GUIDANCE

Organizations or individuals interested in submitting an unsolicited proposal are encouraged to first contact TriMet to make preliminary inquiries as to the general need for the type of effort contemplated.

Prior contract with TriMet technical personnel is permissible and is encouraged with the limited objective of conveying to the prospective offeror an understanding of TriMet's needs relative to the type of effort contemplated. Personal contacts by a prospective offeror shall be conducted in a manner that (1) avoids seeking TriMet commitment regarding acceptance of an unsolicited proposal; and (2) avoids attempting to obtain a competitive advantage in any planned competitive solicitation.

### **III. PROCESS AND EVALUATION DESCRIPTION**

TriMet will follow a three step evaluation process in determining whether to accept an unsolicited proposal. A favorable comprehensive evaluation will not, in itself, result in the awarding of a contract to the offeror. A summary of the three step evaluation process is set forth in the following paragraphs.

### **IV. INITIAL REVIEW AND EVALUATION OF THE PROPOSAL – STEP 1**

An initial evaluation shall be conducted by the appropriate TriMet staff to determine that the proposal contains sufficient information and detail to permit a meaningful evaluation. If the proposal does not meet the requirements of this paragraph, the offeror may be given the opportunity to provide the required information.

#### **A. Initial Review.**

Upon initial review, TriMet may deem an unsolicited proposal unacceptable for the following threshold reasons. The unsolicited proposal:

1. Is available to TriMet without restriction from another source, or is otherwise not sufficiently innovative or unique to justify acceptance, or
2. Closely resembles that of a pending competitive solicitation, or
3. Is not within TriMet's interests or is not useful to TriMet at the present time, or
4. Is otherwise determined to be not meritorious.

If TriMet determines following initial review that a proposal is unacceptable, the proposal shall be returned to the offeror together with the reasons for the return.

#### **B. Evaluation.**

If, after initial review, TriMet elects to evaluate a proposal, the following criteria will be considered in addition to any other criteria TriMet deems relevant:

1. Unique, innovative, or meritorious methods, approaches, or ideas that have originated with or are assembled together by the offeror that are contained in the proposed effort or activity.
2. Overall merits of the proposed effort or activity.
3. Potential contribution that the proposed effort is expected to make to TriMet's specific goal, if pursued at this time.
4. Capabilities related experience, facilities, or techniques, or unique combinations thereof, which the offeror possesses and offers and which are considered to be integral factors for achieving the objective(s) of the proposal.
5. Qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel who are considered to be critical in achieving the objectives of the proposal.
6. The financial benefit to TriMet in implementing the proposal.
7. Timing considerations of any proposed effort.

C. At this stage of evaluation of the unsolicited proposal, TriMet may determine that additional information is required and give the offeror the opportunity to provide such information.

D. Upon completion of this initial evaluation, TriMet staff performing the evaluation shall prepare a memo stating that the proposal is either unacceptable or potentially acceptable, and setting forth the reasons for the result. The memo shall also recommend further action if any. The offeror shall be promptly notified of the result.

## **V. PUBLICATION TO DETERMINE SOLE SOURCE – STEP 2**

A. Prior to performing a secondary evaluation or negotiation regarding an unsolicited proposal initially deemed as potentially acceptable, TriMet will publicize its “Intent to Negotiate for Contract Offered by Unsolicited Proposal.” The purpose of such publication is to ascertain whether other parties may desire and be able to offer goods or services within a scope that is similar to that contemplated within the original unsolicited proposal. TriMet's publication will give notice of the basic business elements of the original offer and inform that other interested parties may inquire about or provide comment, by a date certain (30 days from publication). The publication will not disclose proprietary information as such information is defined in Section XII. If, based on TriMet's publication, interest is expressed by third parties who also desire an opportunity to submit a proposal for a contract whose elements are similar to those publicized, then TriMet will allow and consider such submittal as long as it conforms to the same requirements outlined in this policy and required of the original unsolicited proposal.

B. If, based on review of other proposals submitted in response to publication, TriMet determines that it is in TriMet's interest to conduct a competitive negotiation, all proposals received under this policy may be rejected and returned to the submitting parties and TriMet shall inform all offerors of its intentions regarding a subsequent competitive solicitation process.

## **VI. SECONDARY EVALUATION OF PROPOSAL REQUIRED SUPPLEMENTAL MATERIAL - STEP 3**

Upon a finding that the original unsolicited proposal is potentially acceptable and that there is a sole source justification for the contract to be awarded for the goods or services contemplated by the proposal, TriMet will conduct a secondary evaluation of the proposal. TriMet reserves the right to require the submission of supplemental material that will assist TriMet in negotiating a final contract and in determining that the offeror has the technical capability and financial resources to perform the contract as contemplated.

An unsolicited proposal that results in a recommendation by TriMet staff that a contract be awarded is subject to all other applicable contract award and approval requirements.

## **VII. CONTENT OF UNSOLICITED PROPOSALS**

Unsolicited proposals should contain the following information in order to permit consideration in an objective and timely manner.

### **1. Basic Information**

This includes the name and address of the offeror (if an organization, indicate type: e.g., profit, nonprofit, educational, small business); names and telephone numbers of the offeror's technical and business personnel whom the agency may contact for evaluation or negotiation purposes; identification of any proprietary data which the offeror intends to be used by the



agency only for evaluation purposes and which the offeror intends to remain confidential; names of any other federal, state, or local agencies or other parties receiving the proposal and/or funding the proposed effort or activity; date of submission; and signature of a responsible official or representative of the organization, or a person authorized to contractually obligate the organization.

2. Technical Information

This includes a concise title and an abstract (approximately 200 words) of the proposed efforts; a reasonably complete discussion stating the objectives of the effort or activity, the method of approach and extent of effort to be employed, the nature and extent or the anticipated results, and the manner in which the work will help to support accomplishment of TriMet's goal; the names and brief biographical information of the offeror's key personnel who would be involved, and the type of support, if any, the offeror requests of the agency, e.g., facilities, equipment, materials or personnel resources.

3. Supporting Information

This includes a proposed price or total estimated cost; a cost estimate for the proposed effort sufficiently detailed by elements of cost for the proposed effort sufficiently detailed by elements of cost for meaningful evaluation; the type of contract preferred; the period of time for which the proposal is valid (a minimum of 6 months is suggested); the proposed duration of effort; statements, if applicable, regarding cost sharing and the level of investment to be made by the offeror; organizational conflicts of interest; environmental impacts; and brief descriptions of the organization, previous work or experience in the field of the proposal, and facilities to be utilized for the work, where appropriate for understanding the proposal.

## VIII. TIME FOR SUBMISSION

Unsolicited proposals should be submitted well in advance of the offeror's desired beginning of the proposed effort or activity in order to allow TriMet sufficient time to evaluate the proposal and negotiate a contract if the proposal is accepted.

## IX. SUBMISSION OF PROPOSAL

Proposals shall be submitted to the Director of Procurement and Contracts, TriMet, 1800 SW 1<sup>st</sup> Avenue, Portland, Oregon 97201. Offeror shall submit three (3) copies of the proposal with cover letter. The Director of Procurement and Contracts shall acknowledge receipt of unsolicited proposals as soon as possible.

## X. USE OF INFORMATION

**All proposals submitted to TriMet are subject to the applicable public records laws. Offerors are advised to familiarize themselves with the provisions of these laws. If the offeror has special concerns about proprietary information that it wants to make available to TriMet, such offeror may wish to suggest for TriMet's consideration, prior to submission of its proposal, methods for safeguarding such information from disclosure consistent with applicable public records laws.**

Nothing herein precludes TriMet from using any data, concept or idea which it may have intended to use had the unsolicited proposal not been submitted. Subject to this Policy, any information submitted to TriMet shall be held in confidence until such time that TriMet accepts the unsolicited proposal and it becomes necessary to commence the contract award process.