

**Date:** October 22, 2014

**To:** Board of Directors

**From:** Neil McFarlane

**Subject:** **RESOLUTION 14-10-48 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) BOARD OF DIRECTORS, ACTING IN ITS CAPACITY AS THE TRIMET CONTRACT REVIEW BOARD, ADOPTING UPDATED CONTRACT REVIEW BOARD RULES**

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**1. Purpose of Item**

Resolution 14-10-48 is a housekeeping item to update the TriMet Contract Review Board (“TCRB”) Rules to incorporate legislative changes to various provisions of the Oregon Public Contracting Code (“Code”). The legislative changes, which became effective July 1, 2014, changed in part the criteria to be applied by the TCRB in exempting public improvement contracts from statutory procurement procedures, and require the agency to follow the State Attorney General Model Rules for procurement of any construction manager/general contractor (“CM/GC”) contracts exempted from the straight low-bid process by the TCRB.

**2. Type of Agenda Item**

- Initial Contract
- Contract Modification
- Other: TCRB Rule Updates

**3. Reason for Board Action**

The TriMet Board of Directors (“Board”), acting in its capacity as the TCRB, must adopt Rules by resolution.

**4. Type of Action:**

- Resolution
- Ordinance 1<sup>st</sup> Reading
- Ordinance 2<sup>nd</sup> Reading
- Other \_\_\_\_\_

**5. Background**

The Code applies to most public agencies within the State of Oregon, including TriMet. TriMet’s Board of Directors serves as TriMet’s statutorily required contract review board, which exercises its authority through the adoption of Rules implementing applicable Code requirements. The TCRB most recently amended its Rules in September 2012.

In 2013, the Oregon legislature passed Senate Bill 254 which, among other provisions, contained various changes to the Code regarding the criteria to be considered by state agencies and local contract review boards in exempting public improvement contracts from competitive bidding requirements. This exemption process is required before TriMet can procure a public improvement contract through a competitive request for proposal (RFP) process or other alternative contracting method, as opposed to a straight low-bid process. The operative provisions of the Bill will apply to TCRB exemptions granted after July 1, 2014.

Senate Bill 254 requires updates to two TCRB Rules, which are shown on Exhibit A to Resolution 14-10-48:

- *TCRB Rule III: TCRB Rules; TriMet Contracting Rules.* Under the Code, a local contracting agency may use its own contracting rules rather than the State Attorney General Model Rules. To do so, the agency must adopt a rule affirmatively “opting out” of the Attorney General Model Rules. TriMet has historically chosen to “opt out” and adopt its own rules tailored to the specific needs of TriMet, as set forth in TCRB Rule III. Senate Bill 254 created a specific exception to the “opt out,” which will now require TriMet to follow the Attorney General Model Rule procedures for any CM/GC services procurement exempted from competitive low bidding by the TCRB. TCRB Rule III has been updated to reflect this new statutory requirement.
- *TCRB Rule V: Public Improvement Contract Exemptions.* The Code permits an agency to procure a public improvement contract by an RFP or other alternative contracting process if the agency’s contract review board approves certain findings specified in the Code. Senate Bill 254 amended the Code (ORS 279C.335) to increase the number and scope of factors that the TCRB must consider when determining whether to approve the agency’s findings submitted in an exemption request. In addition, in granting an exemption for CM/GC services, the TCRB shall require that the agency conduct the procurement in accordance with the Attorney General Model Rules. TCRB Rule V has been updated to reflect these statutory changes.

As part of implementation of Senate Bill 254, the State Attorney General’s office convened a Rules Advisory Committee to help draft the new CM/GC Model Rules that were mandated by the legislature. The committee consisted of experts in the field of public contracting, including Dan Blocher, TriMet’s Executive Director of Capital Projects. Therefore, TriMet had the opportunity to participate in drafting the new Rules, which are generally consistent with how TriMet has conducted its CM/GC procurement and contracting process in the past, but which make some changes and create some additional requirements; for example, certain selection criteria in the RFP process are recommended, and certain clauses are now required to be included in CM/GC contracts, such as a clause establishing whether the agency must approve subcontracts, a clause setting out the extent to which the agency will be involved in the resolution of subcontractor protests, and a clause setting out a process for “non-competitive” subcontractor selection. TriMet is comfortable that the new Rules will allow it to continue to successfully utilize the CM/GC contracting method for appropriate projects.

In addition to the changes noted above, other housekeeping changes were made to conform the TCRB Rules to current statutory references, and Rule VI (F) *Personal Services*, has been updated to include current statutory definitions, as shown on Exhibit A to Resolution 14-10-48.

**6. Financial/Budget Impact**

TriMet does not expect that the changes to the TCRB Rules will have a financial impact on the agency.

**7. Impact if Not Approved**

The TCRB Rules should be updated to reflect legislative changes in the Oregon Code. Therefore, adoption of this Resolution is the only recommended option.

**RESOLUTION 14-10-48**

**RESOLUTION OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) BOARD OF DIRECTORS, ACTING IN ITS CAPACITY AS THE TRIMET CONTRACT REVIEW BOARD, ADOPTING UPDATED CONTRACT REVIEW BOARD RULES**

**WHEREAS**, the TriMet Board of Directors (Board) constitute the TriMet Contract Review Board (TCRB); and

**WHEREAS**, the TriMet Board acting in its capacity as the TCRB wishes to adopt updated Rules as set forth in this Resolution;

**NOW, THEREFORE BE IT RESOLVED:**

That the TCRB hereby adopts updated Rules as set forth in the attached and incorporated Exhibit A, which shall be effective upon adoption.

Dated: October 22, 2014

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Presiding Officer

Attest:

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Recording Secretary

Approved as to Legal Sufficiency:

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Legal Department