

**EXAMPLE OF FINDINGS**

**REQUIRED FOR**

**CLASS SPECIAL PROCUREMENTS**  
**UNDER ORS 279B.085**

**CLASSES OF EXEMPT PUBLIC IMPROVEMENT**  
**CONTRACTS UNDER ORS 279C.335**

**OREGON'S NEW PUBLIC CONTRACTING CODE FROM A TO Z**

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## EXHIBIT A

### FINDINGS IN SUPPORT OF ORDINANCE NO. \_\_\_\_\_ ADOPTING PUBLIC CONTRACTING CODE PROVISIONS

THE FOLLOWING IS GIVEN AS AN EXAMPLE OF FINDINGS THAT WOULD SUPPORT THE SPECIAL PROCUREMENTS AND EXEMPTIONS DESCRIBED BELOW FOR ONE CONTRACTING AGENCY. THESE FINDINGS WERE SUBMITTED BY STAFF AND INCLUDED IN THE INFORMATION PACKET THAT WAS PROVIDED TO THE GOVERNING BODY WITH THE DRAFT ORDINANCE. IF APPROVED BY THE GOVERNING BODY, THE FINDINGS WILL BE EXHIBIT A TO THE ORDINANCE. THE FINDINGS SET FORTH BELOW MAY NOT BE APPROPRIATE FOR USE BY ANY OTHER CONTRACTING AGENCY. EACH CONTRACT REVIEW BOARD MUST APPROVE ITS OWN FINDINGS THAT SUPPORT THE SPECIAL PROCUREMENT AND CLASSES OF EXEMPT CONTRACTS THAT IT CREATES.

ORS 279B.085 and 279C.335 authorize the City Council, upon adoption of appropriate findings, to establish special selection, evaluation and award procedures for, or exempt from competition, the award of a specific contract or classes of contracts.

Pursuant to that authority the City Council has, after a public hearing thereon, adopted Ordinance No. \_\_\_\_\_, which establishes classes of contracts and the solicitation methods for their award, as set forth in Section 2.1430 of the \_\_\_\_\_ together with the following specific findings in support thereof, or a determination that no findings are required.

#### **No Findings Required:**

The City Council is not required to adopt findings with respect to the solicitation methods and awards of the classes of contracts set forth in the following provisions of the \_\_\_\_\_ because these provisions are a restatement of state law:

- 30(1) -Purchases from Nonprofit Agencies for Disabled Individuals.;
- 30(2)(a) - Any public improvement.;
- 30(2)(d) - Public improvements up to \$5,000.;
- 30(3) – Personal Services Contracts.;
- 30(5) – Contracts for Goods and Services.;
- 30(6) – Contracts Subject to Award at Purchasing Agent’s Discretion.
  - (b) Amendments.
  - (d) Contracts up to \$5,000.
  - (i) Insurance.;
- 30(7) – Contracts Required by Emergency Circumstances.;
- 30(8) - Federal Purchasing Programs.;
- 30(9) – Cooperative Procurement Contracts.

In addition, no findings are required for 30(6)(k) – Renewals, as that section does not reflect an exemption.

### **Specific Findings for Public Improvement Exemptions**

The City Council approves the specific findings for the exemptions for each class of public improvements established in the provisions described below and also finds that the establishment of each class of contracts and the methods approved for their award:

1. Is unlikely to encourage favoritism in the awarding of public improvements contracts or substantially diminish competition for public improvement contracts; and
2. The awarding of public improvement contracts under each exemption will result in substantial cost savings to the city.

#### **30(2)(b) – Non-transportation public improvements up to \$100,000, and 30(2)(c) Transportation public improvements up to \$50,000.**

**Alternate Award Process.** The informal solicitation procedure for this class of contracts requires the solicitation agent to obtain at least 3 written price quotes. Contracts will be awarded based on price.

**Cost Savings and Other Benefits.** The informal solicitation process provides the following benefits:

1. Reduction in staff time.
2. Reduced bidding expenditure.
3. Elimination of bid bond requirement and small cost of quote preparation as compared to bid preparation will result in lower quotes.
4. Flexibility in timing of solicitations will allow solicitation to be made during construction season when projects can be used as fill-in projects for otherwise busy contractors. This should result in lower pricing from contractors.

**Effect on Competition.** Requires competition by award based on price. The size of the job makes is unlikely that contractors from outside the local area would submit bids if the job was advertised.

**No Favoritism.** Award to lowest of 3 or more quotes, prevents selection based on favoritism. Willingness of any particular contractor to submit a quote will depend on the contractor's schedule at the time of the solicitation. It is unlikely that the same contractor will be able to submit a quote for every solicitation. The ability of the city to obtain quotes for projects with short lead times will depend on the schedules of contractors and therefore the city will not be able to obtain quotes from the same contractors over and over again.

**Other Factors.** Section 132 of Chapter 794, Oregon Laws, 2003 created this class of contracts as a special award class under the Oregon Public Contracting Code; however, the class expires on June 30, 2009. By adopting this classification as a contract review board exemption, the statutory classification will be protected from automatic repeal.

**30(2)(e) – City funded privately-constructed public improvements.**

**Alternate Award Process.** Not applicable. City does not award contract.

**Cost Savings and Other Benefits.**

1. No mobilization cost.
2. Reduced engineering and design costs – ties into existing project.
3. No solicitation expense.
4. Allows city to take advantage of private funding and development activities to enhance public infrastructure.

**Effect on Competition.** None. The contract is awarded by private business owner who has personal motivation to minimize cost of improvements.

**No Favoritism.** City does not select general contractor. General contractor is selected by developer.

**Other Factors.** Initiated by private entities rather than city. City responds to opportunity.

**30(4)(a) Hybrid Contracts – Design/build and CM/GC contracts.**

**Alternate Award Process.** Requires the use of formal, advertised request for proposals.

**Cost Savings and Other Benefits.** Award of Design/Build or CM/GC contract to the lowest bidder under an invitation to bid would dramatically increase the risk of unsuccessful projects, waste and improper expenditure of public funds. Use of the RFP process is necessary to allow staff to evaluate the unique qualifications of the Design/Build team which will include personal service providers as well as construction experts. In the case of CM/GC contracts, the construction manager must provide design advice and the experience, management skills and efficiency of the construction manager are essential qualities than cannot be evaluated on a price basis.

**Effect on Competition.** Requires complete and open competition to the same pool of potential contractors that would be qualified to respond to an invitation to bid.

**No Favoritism.** Requires complete and open competition to the same pool of potential contractors that would be qualified to respond to an invitation to bid.

**Other Factors.** The city has never awarded a design/build or CM/GC contract under an invitation to bid. The city is not aware of any other state or federal agency that awards design/build or CM/GC contracts under an invitation to bid.

**30(4)(b) – Hybrid Contracts – Energy savings performance contracts.**

**Alternate Award Process.** Requires the use of formal, advertised request for proposals.

**Cost Savings and Other Benefits.** Energy savings performance contracts will include scientific analysis, engineering and design services, cost-benefit analysis, construction services and subsequent scientific testing and monitoring services. ESP projects may be phased in over several years. Award of ESPCs to the lowest bidder under an invitation to bid would impair the city’s ability to evaluate the skill, experience and educational qualifications of the contractor’s team and dramatically increase the risk of unsuccessful projects, waste and improper expenditure of public funds.

**Effect on Competition.** Requires complete and open competition to the same pool of potential contractors that would be qualified to respond to an invitation to bid.

**No Favoritism.** Requires complete and open competition to the same pool of potential contractors that would be qualified to respond to an invitation to bid.

**Other Factors.** The model rules adopted by the Attorney General for this class of contracts require evaluation under a request for proposals due to the heavy scientific analysis and design requirements for this class of contracts.

**Specific Finding for Special Classes and Methods of Award for Contracts Other than Public Improvements.**

The City Council approves the specific findings for the establishment of special solicitation methods for the classes of public contracts described below and also finds that the establishment of each class of contracts and the methods approved for their award:

1. Is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts; and
2. The awarding of public contracts under the exemption will result in substantial cost savings to the city.

**30(6)(a) – Contracts Subject to Award at Purchasing Agent’s Discretion. – (a) Advertising.**

**Alternate Award Process.** Solicitation agent’s discretion. The process selected may be competitive or non-competitive.

**Cost Savings and Other Benefits.** Size of and frequency of average advertisement (including all notices required to be published by city) does not justify the cost of solicitation. Period of time from recognition of need to advertise until advertising date is too short to issue solicitation.

**Effect on Competition.** The potential market is limited because not all advertisers work in every market. Choice of advertising medium is somewhat price sensitive, but primarily driven by location and size of circulation compared to city's target audience.

**No Favoritism.** Not applicable due to the lack of competitors and specialized contracting needs.

**Other Factors.** This exemption was in the city's prior contracting code.

**30(6)(c) – Contracts Subject to Award at Purchasing Agent's Discretion. – (c) Animals.**

**Alternate Award Process.** Solicitation agent's discretion.

**Cost Savings and Other Benefits.** Each animal is unique. An officer's life may depend on the inherent personality traits as well as training of the animal. Price is not the most important factor.

**Effect on Competition.** The extremely personal nature of the relationship between the animals and staff assure that animals will be carefully evaluated for the city's needs.

**No Favoritism.** Not applicable due to the lack of competitors and specialized contracting needs.

**Other Factors.** This exemption was in the city's prior contracting code.

**30(6)(e) – Contracts Subject to Award at Purchasing Agent's Discretion. (e) Copyrighted and library materials.**

**Alternate Award Process.** Solicitation agent's discretion.

**Cost Savings and Other Benefits.** Necessary to allow city to acquire special needs products that are unique.

**Effect on Competition.** None. There is no competitive market for a unique product. Library products are generally acquired from a sole-source copyright holder or as used property or by donation.

**No Favoritism.** Not applicable due to the lack of competitors and specialized contracting needs.

**Other Factors.** This exemption was in the city's prior contracting code.

**30(6)(f) – Contracts Subject to Award at Purchasing Agent’s Discretion. (f) Equipment Repair.** The procedures established in this subsection are based on:

**Alternate Award Process.** Solicitation agent’s discretion.

**Cost Savings and Other Benefits.**

1. Pre-contract pricing is impossible.
2. Solicitation agent has discretion to decide whether costs of solicitation are justified in relationship to size of contract and availability of skilled technicians to repair the specific equipment.
3. Delay required for solicitation would impair city’s ability to respond to equipment breakdown and be injurious to the public interest.
4. Experience with contractor is crucial because reliability over the course of several projects is important.

**Effect on Competition.** Allows contractor to be selected based on ability to provide accurate, reliable and fast service.

**Effect on Favoritism.** Favoritism will not be greater than if statutory request for proposals process is used.

**Other Factors.** This exemption was in the city’s prior contracting code.

**30(6)(g) – Contracts Subject to Award at Purchasing Agent’s Discretion. (g) Goods for resale.** Contracts for goods purchased for resale to consumers. The procedures established in this subsection are based on:

**Alternate Award Process.** Solicitation agent’s discretion.

**Cost Savings and Other Benefits.** Allows unique goods to be purchased for City-operated specialty concessions. Generates revenues that would not be available using standard competitive processes that are successful when goods are fungible.

**Effect on Competition.** Enhances competition by stimulating development of unique goods.

**No Favoritism.** Too much variation in selection to allow favoritism.

**Other Factors.** This exemption was in the city’s prior contracting code. It is intended to allow a buyer for a City-operated souvenir or gift shop (e.g., Hult Center or library or other consumer-oriented enterprise) to make purchases of items for resale based on highly subjective decisions. Product innovation, fashion trends and spot-market availability, such as trade-show purchasing, is crucial to the success of resale operation.

**30(6)(h) – Contracts Subject to Award at Purchasing Agent’s Discretion. (h) Government regulated items.**

**Alternate Award Process.** Solicitation agent’s discretion.

**Cost Savings and Other Benefits.** Expense of solicitation would be wasted.

**Effect on Competition.** No competitive market exists.

**Effect on Favoritism.** None. Choice is limited by governmental authority.

**Other Factors.** This exemption was in the city’s prior contracting code.

**30(6)(j) – Contracts Subject to Award at Purchasing Agent’s Discretion. (j) Non-owned property.** The procedures established in this subsection are based on:

**Alternate Award Process.** Other state laws govern disposal process in most cases.

**Cost Savings and Other Benefits.** Solicitation would be unnecessary expense.

**Effect on Competition.** None.

**Effect on Favoritism.** None

**Other Factors.** This exemption was in the city’s prior contracting code.

**30(6)(l) – Contracts Subject to Award at Purchasing Agent’s Discretion. (l) Sole source contracts.** The procedures established in this subsection are based on:

**Alternate Award Process.** Solicitation agent’s discretion.

**Cost Savings and Other Benefits.** Avoids unnecessary expenditure.

**Effect on Competition.** No competitive market exists.

**Effect on Favoritism.** Not applicable where there is only one source.

**Other Factors.** This exemption was in the city’s prior contracting code.

**30(6)(m) – Contracts Subject to Award at Purchasing Agent’s Discretion. (m) Sponsorship agreements.**

**Alternate Award Process.** Solicitation agent’s discretion.

**Cost Savings and Other Benefits.** This exemption allows the city to respond to unsolicited proposals for revenue opportunities that would otherwise be unknown, or unavailable.

**Effect on Competition.**

1. Mandatory open competition likely to discourage creative proposals from sponsors.
2. Sponsorship often results from the match between a unique attribute of a city event or asset and unique characteristics of the sponsor for which no competitive market exists.

**Effect on Favoritism.** Minimal.

**30(6)(n) – Contracts Subject to Award at Purchasing Agent’s Discretion. (n) Structures.**

**Alternate Award Process.** Solicitation agent’s discretion.

**Cost Savings and Other Benefits.**

1. Cost of demolition of structure often exceeds value of structure.
2. Destruction is often least costly method of disposal.
3. Fast removal of structure often required to prepare site for public improvement project. Time required to conduct solicitation could result in costly delays in public improvement project.
4. Most efficient method of disposal may be incorporation of demolition into public improvement project.
5. Allowing solicitation agent discretion to solicit sale or removal necessary to avoid unnecessary solicitation expenditures and project delays.

**Effect on Competition.** Competitive market may not exist.

**Effect on Favoritism.** Unique, non-repetitive nature of transaction does not provide framework for favoritism.

**Other Factors.** A similar exemption was in the city’s prior contracting code.

**30(6)(o) – Contracts Subject to Award at Purchasing Agent’s Discretion. (o) Temporary extensions or renewals.**

**Alternate Award Process.** Renewal. No selection.

**Cost Savings and Other Benefits.** Gives staff time to prepare for competitive solicitation when existing contracts expire without notice by staff. Deals with administrative errors. Protects the public interest against employee error.

**Effect on Competition.** Delays competition by not more than one year.

**Effect on Favoritism.** No impact. At expiration of temporary period, standard competitive procedure will apply.

**30(6)(p) – Contracts Subject to Award at Purchasing Agent’s Discretion. (p) Temporary use of city-owned property.**

**Alternate Award Process.** Solicitation agent’s discretion.

**Cost Savings and Other Benefits.** Allows city to respond to unsolicited proposals for unique revenue opportunities.

**Effect on Competition.** None. No competitive market..

**Effect on Favoritism.** No impact. Responds to unique opportunities.

**30(6)(q) – Contracts Subject to Award at Purchasing Agent’s Discretion. (q) Used property.**

**Alternate Award Process.** Renewal. No selection.

**Cost Savings and Other Benefits.** Allows city to take advantage of unique opportunity to require needed good and services for discounted prices.

**Effect on Competition.** No impact. Responds to unique opportunities.

**Effect on Favoritism.** No impact. Responds to unique opportunities.

**30(6)(r) – Contracts Subject to Award at Purchasing Agent’s Discretion. (r) Utilities.**

**Alternate Award Process.** Solicitation agent’s discretion.

**Cost Savings and Other Benefits.** Avoids unnecessary solicitation costs.

**Effect on Competition.** No impact. Very narrow market. Subject to governmental and price regulation.

**Effect on Favoritism.** No impact. Very narrow market.

**30(10) – Surplus Property.**

**Alternate Award Process.** Solicitation agent’s discretion.

**Cost Savings and Other Benefits.**

1. Avoids unnecessary solicitation expense by allowing solicitation agent to determine whether cost of solicitation is justified by value of surplus property.
2. Allows purchasing agent to establish programs for donation to charitable organizations.
3. Allows purchasing agent to develop rules to enhance opportunities to provide needed low-income housing.

**Effect on Competition.** No impact. Responds to unique opportunities.

**Effect on Favoritism.** No impact. Responds to unique opportunities.

**Other Factors.** Variations in the type, quantity, quality and opportunities for recycling of surplus property are too large to have this class of contracts governed by a single solicitation method

**30(11) – Concession Agreements.** The procedures established in this section are based on:

**Alternate Award Process.** Purchasing agent to adopt rules for award, as in the case of personal service contracts.

**Cost Savings and Other Benefits.** Allows city to take advantage of unique revenue opportunities.

**Effect on Competition.** Responds to unique opportunities for which the number of competitors may range from none to many.

**Effect on Favoritism.** No impact. Responds to unique opportunities.

**Other Factors.** Not a contract for the acquisition or disposal of good, or services or public improvements. Most similar to personal services contract because the quality of the concession may be more important than price factors. Variation in types and sizes of concession opportunities is too great to provide a single method of solicitation.

Statutory public contracting requirements may not apply. May not be a public contract. Most similar to personal services contract. Findings may not be required.