

# FINDINGS FOR SPECIAL PROCUREMENTS

## PUBLIC IMPROVEMENT EXEMPTIONS




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Oregon's New Public Contracting  
Code From A to Z

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The other partner is  you



# Findings

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- Findings are the statements of fact that provide justification for a determination.



# Findings

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- Findings may include, but are not limited to, information regarding operation, budget and financial data; public benefits; cost savings; competition in public contracts; quality and aesthetic considerations, value engineering; specialized expertise needed; public safety; market conditions; technical complexity; availability, performance and funding sources.

# Standards - Public Improvement Exemption Under ORS 279C.335

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- Unlikely to encourage favoritism in the awarding of public contracts.
- Unlikely to substantially diminish competition.
- Substantial cost savings to agency.

# Standards – Special Procurements Under ORS 279B.085



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- Same as for Public Improvement
- PLUS
- Cost Savings to Agency OR savings to public OR promotion of the public interest that could not be realized using a standard solicitation.
- Allows Charitable Donation.



# Example of Findings

## Purchase of Advertising

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- **Alternate Award Process.** Solicitation agent's discretion.
- **Cost Savings and Other Benefits.** Size of and frequency of average advertisement including all notices required to be published 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.



## Example of Findings - Purchase of Advertising

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- **Effect on Competition.** Market small often sole source. Choice driven by circulation compared to 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.



# Informal Solicitation For \$50,000/\$100,000 Public Improvements - Savings

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## ➤ **Cost Savings.**

- Staff time and bidding costs.
- No bid bond = lower quotes.
- Fill-in projects = lower pricing from contractors.
- Project award during construction season = efficient use of staff and funds.



# Informal solicitation for \$50,000/\$100,000 Public Improvements – Competition

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- **Competition.** Requires competition by award based on price. Small project size means bidders will be local. No need for broad advertisement.
- **Favoritism.** Lowest quote prevents selection based on favoritism. Ability to obtain quote from any favored contractor during construction season will depend on the contractor's construction schedule.

# Informal Solicitation for Public Improvements – Other Factors

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

# Public Funding for Private Public Improvements – Cost Savings

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- No mobilization cost.
- Reduced engineering and design costs – ties into existing project.
- No solicitation expense.
- Take advantage of private funding and development activities to enhance public infrastructure. Partial projects that would otherwise wait for funding as part of a larger project.



# Public Participation (Funding) Of Privately-Constructed Public Improvements – Cost Savings

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- **Competition.** None. Contract awarded by private business owner who has personal motivation to minimize cost of improvements.
- **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.

# Use Of Request For Proposals (Not Bids) For Hybrid Contracts

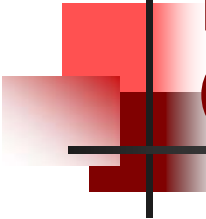
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- Design/Build, CM/GC, ESPC
- **Alternate Award Process.** Requires the use of advertised request for proposals.
- **Cost Savings.** The real question is NOT SOLICITATION. Cost savings question is TYPE OF CONTRACT- Not a public contracting question.

# Temporary Renewals Expiring, Or Recently Expired, Contract - Benefit

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- **Promotes Public Interest.** 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.



# Temporary Renewals. Extend Or Renew Contract - Competition

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- **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.



# Concession Agreements

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- **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.



# Concession Agreements

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- **Competition.** Responds to unique opportunities for which the number of competitors may range from none to many.
  
- **Favoritism.** No impact. Responds to unique opportunities.



# Concession Agreements

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- **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.



# Concession Agreements

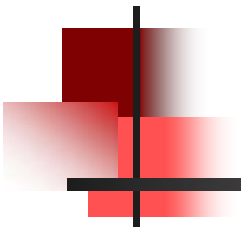
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- Statutory public contracting requirements may not apply. Findings may not be required.

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# Questions?



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