



COUNCIL ORDINANCE NO. 20542

COUNCIL BILL 5128

**AN ORDINANCE CONCERNING PUBLIC CONTRACTS;
AMENDING SECTIONS 2.1400, 2.1405, 2.1410, 2.1415,
2.1420, 2.1425, 2.1430 AND 2.1445 OF THE EUGENE
CODE, 1971; REPEALING SECTIONS 2.1435, 2.1440
AND 2.1450 OF THAT CODE; AND ADDING SECTION
2.1451 TO THAT CODE.**

ADOPTED: October 27, 2014

SIGNED: October 30, 2014

PASSED: 8:0

REJECTED:

OPPOSED:

ABSENT:

EFFECTIVE: November 30, 2014



ORDINANCE NO. 20542

AN ORDINANCE CONCERNING PUBLIC CONTRACTS; AMENDING SECTIONS 2.1400, 2.1405, 2.1410, 2.1415, 2.1420, 2.1425, 2.1430 AND 2.1445 OF THE EUGENE CODE, 1971; REPEALING SECTIONS 2.1435, 2.1440 AND 2.1450 OF THAT CODE; AND ADDING SECTION 2.1451 TO THAT CODE.

THE CITY OF EUGENE DOES ORDAIN AS FOLLOWS:

Section 1. Sections 2.1400, 2.1405, 2.1410, 2.1415, 2.1420, 2.1425, 2.1430 and 2.1445 of the Eugene Code, 1971, are amended to provide as follows:

2.1400 Public Contracts – City Policy.

- (1) **Short Title.** The provisions of sections 2.1400 to 2.1451 of this code, and all administrative rules adopted thereunder may be cited as the City of Eugene Public Contracting Regulations.
- (2) **Purpose.** It is the policy of the city in adopting public contracting regulations to utilize public contracting practices and methods that maximize the efficient use of public resources and the purchasing power of public funds by:
 - (a) Promoting impartial and open competition;
 - (b) Using solicitation materials that are complete and contain a clear statement of contract specifications and requirements; and
 - (c) Taking full advantage of evolving procurement methods that suit the contracting needs of the city as they emerge within various industries.
- (3) **Interpretation.** In furtherance of the purpose of the objectives set forth in subsection (2), it is the city's intent that sections 2.1400 to 2.1451 be interpreted to authorize the full use of all contracting powers and authorities described in ORS Chapters 279A, 279B and 279C (the Oregon Public Contracting Code).

2.1405 Public Contracts – Exemption from Public Contracting Regulations.

The City of Eugene Public Contracting Regulations apply to all public contracts of the city except for the classes of contracts that are declared exempt from the Oregon Public Contracting Code, as set forth herein and as specifically described in the rules adopted by the purchasing agent.

2.1410 Public Contracts – Regulation by City Council. Except as expressly delegated under sections 2.1400 to 2.1451, the city council reserves to itself the exercise of all of the duties and authority of a contract review board under the Oregon Public Contracting Code.

2.1415 Public Contracts - Authority of Purchasing Agent.

- (1) General Authority.** The city manager shall be the purchasing agent for the city and is hereby authorized to award all city contracts for which there is an appropriation. Subject to the provisions of sections 2.1400 to 2.1451 of this code, the purchasing agent may adopt and amend all rules, regulations, procedures and forms required or permitted to be adopted by contracting agencies under the Oregon Public Contracting Code or otherwise convenient for the city's contracting needs. Without limiting the generality of the foregoing, the purchasing agent shall adopt public contracting rules for the award of personal services contracts and concession agreements and shall hear all solicitation and award protests.
- (2) Standards for Contracting Rules.** When adopting public contracting rules, the purchasing agent shall establish practices and procedures that:

 - (a) Do not encourage favoritism or substantially diminish competition;
 - (b) Allow the city to take advantage of the cost-saving benefits of alternative contracting methods and practices;
 - (c) Give preference to goods and services that have been manufactured or produced in the State of Oregon if price, fitness, availability and quality are otherwise equal;
 - (d) Give preference to goods that are certified to be made from recycled products when such goods are available, can be substituted for non-recycled products without a loss in quality, and the cost of goods made from recycled products is not significantly more than the cost of goods made from non-recycled products; and
 - (e) Establish purchasing practices that assure, to the maximum extent economically feasible, purchase of materials, goods and supplies that may be recycled or reused when discarded.
- (3) Delegation of Authority.** Any of the responsibilities or authorities of the purchasing agent under Sections 2.1400 to 2.1451 of this code may be delegated and sub-delegated by administrative order.

2.1420 Public Contracts – Definitions. The following terms used in sections 2.1400 to 2.1451 shall have the meanings set forth below, and if not defined here, the meanings set forth in the Oregon Public Contracting Code.

Concession agreement. A contract that authorizes and requires a private entity or individual to promote or sell, for its own business purposes, specified types of goods or services from real property owned or managed by the city, and under which the concessionaire makes payments to the city based, at least in part, on the concessionaire's revenues or sales. The term "concession agreement" does not include a mere rental agreement, license or lease for the use of premises.

Disposal. Any arrangement for the transfer of property by the city under which the city relinquishes ownership.

Emergency. Circumstances that could not have been reasonably foreseen; create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and require prompt execution of a contract to remedy the condition.

Informal solicitation. A solicitation made in accordance with rules adopted by the purchasing agent to a limited number of potential contractors, in which the solicitation agent attempts to obtain at least three quotes or proposals.

Proposal. A binding offer to provide goods, services or public improvements with the understanding that acceptance will depend on the evaluation of factors other than, or in addition to price. A proposal may be made in response to a request for proposals or under an informal solicitation.

Personal services contract. A contract with an independent contractor predominantly for services that require special training or certification, skill, technical, creative, professional or communication skills or talents, unique and specialized knowledge, or the exercise of judgment skills, and for which the quality of the service depends on attributes that are unique to the service provider. Such services include, but are not limited to the services of architects, engineers, land surveyors, attorneys, auditors and other licensed professionals, artists, designers, computer programmers, performers, consultants and property managers. The purchasing agent shall have discretion to determine whether additional types of services not specifically mentioned in this paragraph fit within the definition of personal services.

Purchasing agent. The city manager or a designee appointed by the city manager to exercise the authority of the purchasing agent under the city's public contracting regulations.

Quote. A price offer made in response to an informal or qualified pool solicitation to provide goods, services or public improvements.

Solicitation. An invitation to one or more potential contractors to submit a bid, proposal, quote, statement of qualifications or letter of interest to the city with respect to a proposed project, procurement or other contracting opportunity. The word "solicitation" also refers to the process by which the city requests, receives and evaluates potential contractors and awards public contracts.

Solicitation agent. With respect to a particular solicitation or contract, the city manager or employee delegated responsibility for conducting the solicitation and awarding the contract.

Surplus property. Personal property owned by the city which is no longer needed for use by the department to which such property has been assigned.

Telecommunication services. Two way switched access and transport of voice communications but does not include: (a) services provided by radio common carrier, (b) one-way transmission of television signals, (c) surveying, (d) private telecommunication networks, or (e) communications of the city which take place on the city's side of on-premises equipment.

2.1425 Public Contracts - Process for Approval of Special Solicitation Methods and Exemptions.

- (1) **Special Procurements.** Special procurement requests, approvals, and protests shall be made in accordance with rules adopted by the purchasing agent and ORS 279B.085.
- (2) **Public Improvement Contract Exemptions.** Public improvement contract exemption shall be adopted in accordance with rules adopted by the purchasing agent and ORS 279C.335.
- (3) **Commencement of Public Improvement Solicitation Prior to Approval.** A solicitation may be issued prior to the approval of a public improvement contract exemption pursuant to ORS 279C.335(5)(e).

2.1430 Public Contracts - Solicitation Methods for Classes of Contracts. The following solicitation methods and exempt classes of contracts are hereby established by the city council.

- (1) **Requests for Proposals for Public Improvement Contracts.** The city may utilize a formal request for proposal (RFP) solicitation method for public improvement projects, in accordance with rules adopted by the purchasing agent for the use of RFPs and contracts awarded thereunder.
- (2) **City funded privately-constructed public improvements.** The city may contribute funding to a privately constructed public improvement project (commonly known as a "PEPI") without subjecting the project to competitive solicitation requirements if all of the following conditions are met with respect to the entire public improvement project:
 - (a) The city's contribution to the project may not exceed 25% of the total cost of the project;
 - (b) The city must comply with all applicable laws concerning the reporting of the project to the Bureau of Labor and Industries as a public works project;
 - (c) The general contractor for the project must agree in writing to comply with all applicable laws concerning reporting and payment of prevailing wages for the project;
 - (d) The funds contributed to the project may not provide a pecuniary benefit to the owner of the development for which the project is

- being constructed, other than benefits that are shared by all members of the community;
- (e) The performance of the general contractor and the payment of labor for the project must be secured by performance and payment bonds or other cash-equivalent security that is acceptable to the purchasing agent to protect the city against defective performance and claims for payment, unless the city's obligation to make a payment is conditioned upon final completion of the public improvement and proof of, or security for payment that is acceptable to the purchasing agent; and,
 - (f) The contract for construction of the project must be amended, as necessary, to require the general contractor to maintain adequate workers compensation and liability insurance and to protect and provide indemnification to the city for all claims for payment, injury or property damage arising from or related to the construction of the project.
- (3) **Hybrid Contracts.** The following classes of contracts include elements of construction of public improvements as well as personal services and may be awarded as described below and subject to rules adopted by the purchasing agent.
- (a) Design/build contracts. Contracts for the construction of public improvements using a design/build construction method shall be awarded under a request for proposals. The determination to construct a project using a design/build construction method must be approved by the city manager or the city manager's designee, upon application of the solicitation agent, in which the solicitation agent submits facts that support a finding that the construction of the improvement under the proposed method is likely to result in cost savings, higher quality, reduced errors, or other benefits to the city.
 - (b) Energy savings performance contracts. Unless the contract qualifies for award under another classification in this section 2.1430, contractors for energy savings performance contracts shall be selected under a request for proposals.
 - (c) Construction Manager/General Contractor (CM/GC) contracts. Contracts for the construction of public improvements using a Construction Manager/General Contractor Construction Method shall be awarded pursuant to ORS 279C.337 and Attorney General Model Rules adopted thereunder.
- (4) **Special Procurement Class Exemptions.** Subject to regulation under rules adopted by the purchasing agent, the following classes of contracts may be awarded in any manner which the solicitation agent deems appropriate to the city's needs, including by direct appointment or purchase.
- (a) Advertising. Contracts for the placing of notice or advertisements in any medium.

- (b) Amendments. Contract amendments shall not be considered to be separate contracts if made in accordance with rules adopted by the purchasing agent.
- (c) Animals. Contracts for the purchase of animals.
- (d) Copyrighted and library materials. Contracts for the acquisition of materials entitled to copyright, including, but not limited to, works of art and design, literature, music and library lending materials.
- (e) Equipment repair. Contracts for equipment repair or overhauling, provided the service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing.
- (f) Fuel and oil. Contracts for gasoline, diesel fuel, heating oil, lubricants and asphalt, subject to an intermediate procurement process.
- (g) Goods for resale. Contracts for goods purchased for resale to consumers.
- (h) Government regulated items. Contracts for the purchase of items for which prices or selection of suppliers are regulated by a governmental authority.
- (i) Insurance. Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145, and liability insurance contracts.
- (j) Manufacturer direct supplies. Contracts for goods purchased directly from the manufacturer, subject to rules adopted by the purchasing agent.
- (k) Non-owned property. Contracts or arrangements for the sale or other disposal of used abandoned property or other personal property not owned by the city.
- (l) Renewals. Contracts that are being renewed in accordance with their terms are not considered to be newly issued contracts and are not subject to competitive procurement procedures.
- (m) Sole source contracts. Contracts for goods or services which are available from a single source may be awarded without competition. Pursuant to ORS 279B.075, the purchasing agent shall adopt rules under which a determination of sole source availability may be made.
- (n) Sponsorship agreements. Sponsorship agreements, under which the city receives a gift or donation in exchange for recognition of the donor.
- (o) Structures. Contracts for the disposal of structures located on city-owned property, other than structures suitable for residential use.
- (p) Temporary extensions or renewals. Contracts for a single period of one year or less, for the temporary extension or renewal of an expiring and non-renewable, or recently expired, contract, other than a contract for public improvements.

- (q) Temporary use of city-owned property. The city may negotiate and enter into a license, permit or other contract for the temporary use of city-owned property without using a competitive selection process if:
 1. The contract results from an unsolicited proposal to the city based on the unique attributes of the property or the unique needs of the proposer;
 2. The proposed use of the property is consistent with the city's use of the property and the public interest; and
 3. The city reserves the right to terminate the contract without penalty, in the event that the city determines that the contract is no longer consistent with the city's present or planned use of the property or the public interest.
- (r) Used property. A solicitation agent, for procurements up to \$20,000, and the purchasing agent, for procurements in excess of \$20,000 may contract for the purchase of used property by negotiation if such property is suitable for the city's needs and can be purchased for a lower cost than substantially similar new property. For this purpose the cost of used property shall be based upon the life-cycle cost of the property over the period for which the property will be used by the city. A record shall be made of the findings that support any purchase over \$10,000.
- (s) Utilities. Contracts for the purchase of steam, power, heat, water, telecommunications services, and other utilities, including in-kind telecommunications services pursuant to EC 3.415(6).
- (5) Contracts Required by Emergency Circumstances.** The purchasing agent may declare that an emergency exists pursuant to ORS 279B.080. The purchasing agent shall notify the city council of the declaration of emergency for contract awards over the applicable intermediate procurement threshold.
- (6) Surplus Property.** The purchasing agent shall adopt rules for the disposal of all surplus property. The purchasing agent's rules shall include rules under which nonprofit corporations may lease or purchase structures suitable for use as residential buildings that are declared surplus property and must be removed from city-owned property. The rules shall give preferences to nonprofit corporations who will use the structure to provide housing for persons of low income, or who are otherwise disadvantaged.
- (7) Concession Agreements.** The purchasing agent shall adopt rules for the award of concession agreements.

Section 2. Sections 2.1435 and 2.1440 of the Eugene Code, 1971, are repealed.

Section 3. Section 2.1445 of the Eugene Code, 1971, is amended to provide as

follows:

2.1445 **Public Contracts - Electronic Advertisement of Public Contracts.** The purchasing agent is authorized to adopt rules allowing electronic publication of public contracts instead of publication in a newspaper of general circulation, if electronic advertisement is likely to be cost effective and will encourage meaningful competition.

Section 4. Section 2.1450 of the Eugene Code, 1971, is repealed.

Section 5. Section 2.1451 of the Eugene Code, 1971 is added to provide as

follows:

2.1451 **Model Cost Accounting Guidelines.** The model cost accounting guidelines developed by the Oregon Department of Administrative Services, pursuant to Section 3, Chapter 869, Oregon Laws, 1979, are hereby adopted as the city's cost accounting system to apply to public improvement projects exceeding \$5,000 and constructed with city's own equipment or personnel. ORS 279C.310. For such public improvement projects estimated to cost more than \$125,000, city shall also comply with the requirements of ORS 279C.305(3).

Section 6. The findings set forth in Exhibit A attached hereto are adopted as findings in support of this Ordinance.

Section 7. The City Recorder, at the request of, or with the consent of the City Attorney, is authorized to administratively correct any reference errors contained herein, or in other provisions of the Eugene Code, 1971, to the provisions added, amended or repealed herein.

Passed by the City Council this


27th day of October, 2014



Deputy City Recorder

Approved by the Mayor this

30 day of October, 2014



Mayor

EXHIBIT A

FINDINGS IN SUPPORT OF ORDINANCE NO. 20542 ADOPTING PUBLIC CONTRACTING CODE PROVISIONS

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. 20542, which establishes classes of contracts and the solicitation methods for their award, as set forth in Section 2.1430 of the Eugene Code, 1971, 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 following classes of contracts identified in Section 2.1430 of the Eugene Code, 1971 ("EC"):

EC 2.1430(4) – Special Procurement Class Exemptions;
(b) Amendments;
(i) Insurance; and
(l) Renewals.

EC 2.1430(5) – Contracts Required by Emergency Circumstances.

The above Rules govern subjects specifically authorized by state law and therefore require no local 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 improvement 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.

These conclusions are based on the following general findings:

- A. Operational, budget, and financial data. Where various criteria, which may or may not include cost, must be weighed in order to select an appropriate contractor for the desired project, the formal competitive bidding process costs of up to \$7,000 are a significant budgetary waste in that the most qualified contractor for the project may not be the lowest responsible bidder;
- B. Public benefits. Exempting contracts from competitive bidding requirements and instead utilizing statutory competitive proposal procedures will protect and preserve public funds, enable greater competition between the most qualified contractors, and result in a better product which meets the public's and city's needs;
- C. Value engineering, specialized expertise required, Technical expertise. Only through a competitive proposal process can the city weigh, evaluate and select the type of expertise and determine which contractor may best provide these services. These are qualities not reflected in cost, where a determination on cost alone could forfeit these valuable and essential attributes;
- D. Public safety. Utilizing a competitive proposal process as opposed to competitive bidding can ensure high quality, more safely constructed facilities through the construction period, and after completion. Capitalizing upon design and construction planning and compatibility can also allow earlier use of public facilities even while construction continues; and
- E. Market conditions. The increased availability of and need for technical expertise, value engineering, or other types of specialized expertise, as well as a need to investigate the compatibility, experience and availability of contractors require that certain public improvement contracts be awarded based upon an evaluation of a number of criteria, rather than simply cost.

Specifically, the Council finds the following:

EC 2.1430(1) – Request for Proposals for Public Improvement Contracts.

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

Cost Savings and Other Benefits. Certain public improvement projects require the evaluation of multiple factors, including cost, which avoids serial solicitations, costs savings during the construction process, and also increases the useful life of the completed public improvement.

Effect on Competition. None. Requires complete and open competition within the same pool of potential contractors that would be qualified to respond to an invitation to bid.

No Favoritism. Requires complete and open competition within the same pool of potential contractors that would be qualified to respond to an invitation to bid, while identifying discrete, weighted criteria on which submitted proposals must be evaluated.

Other Factors. ORS 279C.400 authorizes the use of a formal competitive proposal solicitation subject to an adopted exemption. This exemption ensures this method is available for use as deemed appropriate by the purchasing agent and solicitation agents.

EC 2.1430(2) – 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.

EC 2.1430(3)(a) Hybrid Contracts – Design/build contracts.

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

Cost Savings and Other Benefits. Award of Design/Build 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.

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 contract under an invitation to bid. The city is not aware of any other state or federal agency that awards Design/Build contracts under an invitation to bid.

EC 2.1430(3)(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.

EC 2.1430(3)(c) – Hybrid Contracts - Construction Manager/General Contractor (CM/GC) contracts.

Alternate Award Process. Process set by ORS 279C.337.

Cost Savings and Other Benefits. Award of 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 per ORS 279C.337 is necessary to allow staff to evaluate the unique qualifications of the CM/GC team which will include personal service providers as well as construction experts.

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 CM/GC contract under an invitation to bid. The city is not aware of any other state or federal agency that awards CM/GC contracts under an invitation to bid. Allowed by state law, subject to compliance with ORS 279C.337.

Specific Findings 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 methods approved for their award:

1. Is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts because such exemptions still require alternative contracting procedures, ensuring: (1) reasonable competition; (2) the best contract price for the public; and (3) a cost-effective process for both contractors and the city;
2. The awarding of public contracts under the exemption will result in substantial cost savings to the city because the city will avoid costs associated with unnecessary documentation and procedures, where it is unmerited by the type and/or relatively low cost of the project; and
3. The awarding of public contracts pursuant to any of the requested exemptions also substantially promotes the public interest in a manner that could not practicably be realized by formal competitive solicitation procedures, given the fact that such exemptions facilitate smooth operation of city's administration and operations, include procedures and mechanisms to ensure the best product, service or outcome is obtained at the least cost to the public and city, and identified classes address areas of public contracting left unresolved by state statute which are essential for city operations, such as the purchase of used personal property, and the disposition of surplus personal property.

Specifically, the Council finds:

**EC 2.1430(4)(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.

**EC 2.1430(4)(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.

**EC 2.1430(4)(d) – Contracts Subject to Award at Purchasing Agent’s Discretion.
(d) 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.

**EC 2.1430(4)(e) – Contracts Subject to Award at Purchasing Agent's Discretion.
(e) Equipment repair.**

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.

**EC 2.1430(4)(f) – Contracts Subject to Award at Purchasing Agent's Discretion.
(f) Fuel and oil.**

Alternate Award Process. Intermediate procurement process.

Cost Savings and Other Benefits. Frequency and amount of exempt item purchases do not justify the cost of solicitation. Period of time from recognition of need through contract award too long for needed purchases of exempt fungible goods.

Effect on Competition. Minimal. Intermediate procurement process surveys market and ensures level of competition appropriate for these frequently purchased goods.

Effect on Favoritism. Purchase based on cost. Intermediate procurement process sufficiently avoids any favoritism.

**EC 2.1430(4)(g) – Contracts Subject to Award at Purchasing Agent’s Discretion.
(g) Goods for resale.** Contracts for goods purchased for resale to consumers.

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.

**EC 2.1430(4)(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.

**EC 2.1430(4)(j) – Contracts Subject to Award at Purchasing Agent’s Discretion.
(j) Manufacturer direct supplies.**

Alternate Award Process. Subject to purchasing agent rules.

Cost Savings and Other Benefits. Allowed only after a formal solicitation is completed and manufacturer's price is less than offers received. Cost of formal solicitation, therefore not merited.

Effect on Competition. None. Allowed only after complete and open competition within the same pool of potential contractors that would be qualified to respond to an invitation to bid.

Effect on Favoritism. None. Allowed only after complete and open competition within the same pool of potential contractors that would be qualified to respond to an invitation to bid.

Other Factors. Allowed on a contract-by-contract basis and shall not result in an ongoing price agreement, further fostering competition.

**EC 2.1430(4)(k) – Contracts Subject to Award at Purchasing Agent's Discretion.
(k) Non-owned property.**

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.

**EC 2.1430(4)(m) – Contracts Subject to Award at Purchasing Agent's Discretion.
(m) Sole source contracts.**

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.

**EC 2.1430(4)(n) – Contracts Subject to Award at Purchasing Agent's Discretion.
(n) 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.

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

**EC 2.1430(4)(o) – Contracts Subject to Award at Purchasing Agent's Discretion.
(o) 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.

No 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.

**EC 2.1430(4)(p) – Contracts Subject to Award at Purchasing Agent's Discretion.
(p) 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.

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

**EC 2.1430(4)(q) – Contracts Subject to Award at Purchasing Agent's Discretion.
(q) 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.

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

**EC 2.1430(4)(r) – Contracts Subject to Award at Purchasing Agent's Discretion.
(r) Used property.**

Alternate Award Process. Renewal. No selection.

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

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

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

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

**EC 2.1430(4)(s) – Contracts Subject to Award at Purchasing Agent's Discretion.
(s) 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.

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

EC 2.1430(6) – 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.

EC 2.1430(7) – Concession Agreements.

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 goods, 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.