

DRAFT FINDINGS IN SUPPORT OF CLASS SPECIAL PROCUREMENTS

A. Price-Regulated Goods and Services, Utilities and Utility Related Services - 5.33.220.D.14

1. The City is able to purchase price-regulated goods and services or utilities and utility related services when the rate or price for such is established by federal, state, or local regulatory authority or when the services can be provided only by a specific utility without advertisement and competitive solicitations.

2. Competition for price-regulated goods and services and utilities and utility related services is limited in the City. Depending upon the proximity of the project location, the sale of goods and services for that project would only be produced or controlled by a single supplier or utility. This is only one utility and that utility is used by the governmental agencies within that area.

3. This Class Special Procurement will not encourage favoritism or substantially diminish competition in the awarding of City contracts, as required by ORS 279B. The distribution of price-regulated or utility related goods and services is controlled by the regulation agency and may only be available through that single source. The City has no control over this process and must be able to acquire the goods and services for completion or furtherance of the City's projects.

4. The purchase of price-regulated or utilities related services will result in substantial cost saving to the City. When only one known supplier of an item exists, there is no true competition and the competitive bidding process will not lower the price of the item. In such case, the competitive bidding process adds to the City's acquisition costs without any offset in price that competition would normally provide. Competition for such contracts would not product better pricing.

B. Goods, Services or Equipment Required by a Federal Grant Agreements - 5.33.220.D.15

1. The City frequently enters into grant agreements in which the other party provides the City with financial and other assistance.

2. As a condition of receiving a grant, the City may be contractually bound to purchase specific goods and services, including, but not limited to, goods identified by brand name. If the City does not comply with grant terms and conditions, including the purchase of specific goods and services, the City may lose the funding or assistance provided by the grant. .

3. Purchasing specific items required by a grant will not encourage favoritism or substantially diminish competition in the awarding of City contracts, as required by ORS 279B because the City is not the entity that determines what items to procure. In addition, this will result in substantial cost savings to the City because the City will not incur the cost of

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advertising and competitive bidding in a situation where the City has no real option as to what to purchase.

C. Membership Dues - 5.33.220.D.16

1. On occasion the City may directly pay membership dues or memberships in professional or community organizations for the benefit of the City without a competitive solicitation process.
2. Membership dues are most often unique to the organization in which membership is maintained and there is usually only one organization focused on such a membership.
3. This Class Special Procurement will not encourage favoritism or substantially diminish competition in the awarding of City contracts, as required by ORS 279B because of the unique nature of the professional organizations. In many respects these are "sole source" procurements where there is only one option if the City wishes to belong to a particular organization. .
4. Because competition is limited or nonexistent, the City will incur substantial cost savings by directly contracting with the organization rather than incurring the cost of advertising for bids or proposals when the price would be the same as if the City directly contracted.

D. US Postal Service - 5.33.220.17

1. The City may directly purchase without a competitive solicitation process, permits and postage meters, pre-stamped postcards, establish on-going postage accounts, and other similar items from the US Postal Service.
2. By their very nature, postal service products and materials are protected for the use by the US Postal Service. Most products are established and regulated under federal law.
3. This Class Special Procurement will not encourage favoritism or substantially diminish competition in the awarding of City contracts, as required by ORS 279B. With the owner of the products and materials being a branch of the US government, there is no true competition and the competitive bidding process will not lower the price of the products and materials as the production and distribution of such materials is controlled by the US Postal Service and may only be used through that source.
4. Since the City has no control over the type of products and materials used and they can only be used with the US Postal Service, the acquisition of such contracts cannot practicably be realized by using other purchasing methods.

E. Services Related to Legal Advice - 5.33.220.D18

1. The City may directly purchase, without a competitive solicitation process, services related to the provision of legal advice to the City.
2. Services such as those provided by a court reporter, or copy service are often selected by another person. In order to receive the benefit of the contractor's work, such as deposition transcripts or photocopies the City has no choice but to purchase from that same vendor. A

similar situation arises when a mediator, referee or court appointed individual is selected either by a court or by joint agreement between the City and another party, in an effort to resolve a claim or dispute asserted by or against the City, regardless of whether litigation has been filed. In such a situation the City has either no choice in the selection of the person when it is mandated by the court, an arbitrator or other person with similar authority. Similarly, there are situations where the City and another party must mutually agree to hire a specific individual, such as a mediator in order to resolve an ongoing legal issue. In the absence of mutual agreement, the proposed mediation, arbitration or other proceeding will likely not occur. As a result, the City will be unable to use such informal methods to resolve a dispute and will be required to use more formal, and more expensive, legal proceedings

3. This Class Special Procurement will not encourage favoritism and competition will not be substantially diminished. The selection of a person by the court or person with similar authority means the City had no say in the selection process. The selection of a person by mutual agreement also means the City does not have unfettered control of the selection process. Similarly, the City will enjoy substantial cost savings by proceeding in this fashion because it permits the City to resolve disputes informally without resort to a more expensive and more formal legal process.

F. Seminar, Training Registration and Conference Fees - 5.33.220.D.19

1. The City is able to directly purchase seminar registrations, training sessions and conference fees from a single source for attendance by City staff.

2. Such seminars, training and conferences are often unique in their content, are proprietary by nature, and organized, produced, or controlled by a sole provider.

3. Due to the limited competition and unique nature of these seminars, training and conference fees, it is unlikely that this Class Special Procurement will encourage favoritism or substantially diminish competition in the awarding of City contracts, as required by ORS 279B.

4. Because competition is limited or nonexistent for seminar, training registrations and conference fees, the City will incur substantial cost savings by directly contracting with the organization rather than incurring the cost of advertising for bids or proposals when the price would be the same as if the City directly contracted.

G. Event Sponsorship Agreements - 5.33.220.D.20

1. The City occasionally needs to support the events of various organizations when doing so is in the public interest.

2. These sponsorships are unique and are only available from the organization or the organizer of the event. The City may receive publicity as an acknowledged sponsor of an event and may receive certain tangible benefits as a result of its sponsorship.

3. There is no practical way for the City to sponsor events through competitive purchasing methods. Therefore the City may directly pay the organization or event organizer in order to

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participate as a sponsor of the event when it meets the City's needs and is cost effective, whether or not the City receives goods or services in return for its payment. Under this Class Special Procurement, the City may purchase event sponsorship directly from an organization or event organizer when the price is reasonable and competition for the items is essentially nonexistent.

4. It is unlikely that this Class Special Procurement will encourage favoritism in the award of City contracts or substantially diminish competition for City contracts. The purchase of such sponsorships depends upon an inconsistent, sporadic market and are in the nature of a "sole source" procurement. In these situations, the City is not directing a purchase toward a particular vendor, but rather taking advantage of the marketplace in the same way a private individual would. In addition, there will be substantial cost savings as the City will avoid the cost of a competitive procurement, which would be ineffective to acquire the sponsorships in any event.

H. Stormwater Improvements - 5.33.22.D.21

1. The City may enter into a Contract for stormwater improvements or watershed restoration, or both, without obtaining competitive solicitations if all or a significant portion of the improvements or restoration that the City is funding will be performed (1) on private property; and (2) by the property owner or a contractor hired by the property owner.

2. The City encourages private property owners to make stormwater management improvements to their properties before it enters the public sewer system. Stormwater management improvements are a key part of the City of Portland's Grey to Green Initiative.

3. In key instances, private property owners have expressed a willingness to make improvements to their property for the purposes of stormwater management and watershed restoration. In addition, the City may identify projects on specific properties necessary for managing stormwater to protect our storm and sanitary system and improve watershed health. In these instances public monies are used to support and facilitate specific private improvements.

4. Any such program requires the cooperation of private property owners and requires that contracts be executed with those owners.

5. It is unlikely that this Class Special Procurement will encourage favoritism in the award of City contracts or substantially diminish competition. The property owner is the only entity reasonably available to enter into a contract for partial funding of stormwater management improvements on their property. Because the private property owner will be selecting the contractor or self-performing the work, the City is not involved in the selection process and therefore will not be encouraging favoritism among contractors nor substantially diminishing competition. In addition, the City will enjoy substantial cost savings by avoiding a competitive procurement process that would not be effective because the property owner will not agree to the work unless it is able to select a contractor with whom the property owner is comfortable. .

EXHIBIT B

Add Subsections 5.33.220 D.14. – 21 as follows:

14. Price-regulated goods and services, utilities and utility related_services. The City may directly purchase, without a competitive solicitation process, utility services, repair, equipment and/or maintenance work, where the rate or price for such goods and services is established by federal, state, or local regulatory authority or when the services can be provided only by a specific utility.
15. Goods, Services or Equipment Required by a Federal Grant Agreements. The City may directly purchase, without a competitive solicitation process, goods, services or equipment when they are required to be purchased from a specific source or when a specific brand name is required and no competition is otherwise available.
16. Membership Dues. The City may directly purchase, without a competitive solicitation process, dues or memberships in professional or community organizations for the benefit of the City.
17. US Postal Service. The City may directly purchase without a competitive solicitation process, permits and postage meters, pre-stamped postcards, establish on-going postage accounts, etc. from the US Postal Service.
18. Services related to Legal Advice. The City may directly purchase, without a competitive solicitation process, services related to the provision of legal advice to the City:
 - a. When a contractor, such as a court reporter or copy service, has been selected by another person and the City must bear a portion of the cost in order to receive the benefit of the contractor's work, such as deposition transcripts or photocopies; or
 - b. When the contractor, including, but not limited to a mediator, arbitrator, referee or court appointed individual, is selected either by a court, or by joint agreement between the City and another person or persons, in an effort to resolve a claim or dispute that has been or will be asserted by or against the City, regardless of whether litigation has been filed.
19. Seminar, Training Registration and Conference Fees. The City may directly purchase, without a competitive solicitation process, seminar registrations and training session fees for attendance at seminars, conferences and training courses hosted by outside entities.

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20. Event Sponsorship Agreements. The City may directly pay to sponsor an event, whether or not the City receives goods or services in return for its payment.
21. Stormwater Improvements. The City may enter into a Contract for stormwater improvements or watershed restoration, or both, without obtaining competitive solicitations if all or a significant portion of the improvements or restoration that the City is funding will be performed
 - a. on private property; and
 - b. by the property owner or a contractor hired by the property owner.