

ORDINANCE NO. 1076-A

Introduced by All Commissioners

An Ordinance Establishing the City of Warrenton's
Public Contracting Regulations, and Declaring an Emergency

THE CITY OF WARRENTON ORDAINS AS FOLLOWS:

Section 1. Public Contracts – City of Warrenton Policy.

- A. **Short Title.** The provisions of this Ordinance and all rules adopted under this Ordinance may be cited as the City of Warrenton's Public Contracting Regulations.
- B. **Purpose of Public Contracting Regulations.** It is the policy of the City of Warrenton in adopting the 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:
- (1) Promoting impartial and open competition;
 - (2) Using solicitation materials that are complete and contain a clear statement of contract specifications and requirements; and
 - (3) Taking full advantage of evolving procurement methods that suit the contracting needs of the City of Warrenton as they emerge within various industries.
- C. **Interpretation of Public Contracting Rules.** In furtherance of the purpose of the objectives set forth in subsection B, it is the City of Warrenton's intent that the City of Warrenton's Public Contracting Regulations be interpreted to authorize the full use of all contracting powers and authorities described in ORS Chapters 279A, 279B, and 279C.

Section 2. Application of Public Contracting Regulations. In accordance with ORS 279A.025, the City of Warrenton's Public Contracting Regulations and the Oregon Public Contracting Code do not apply to the following classes of contracts:

- A. **Between Governments.** Contracts between the City of Warrenton and a public body or agency of the State of Oregon or its political subdivisions, or between the City of Warrenton and an agency of the federal government.
- B. **Grants.** A grant contract is an agreement under which the City of Warrenton is either a grantee or a grantor of moneys, property or other assistance, including loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, for the purpose of supporting or stimulating a program or activity of the

grantee and in which no substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with the grant conditions. The making or receiving of a grant is not a public contract subject to the Oregon Public Contracting Code; however, any grant made by City of Warrenton for the purpose of constructing a public improvement or public works project shall impose conditions on the grantee that ensure that expenditures of the grant to design or construct the public improvement or public works project are made in accordance with the Oregon Public Contracting Code and these regulations.

- C. **Legal Witnesses and Consultants.** Contracts for professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which the City of Warrenton is or may become interested.
- D. **Real Property.** Acquisitions or disposals of real property or interests in real property.
- E. **Textbooks.** Contracts for the procurement or distribution of textbooks.
- F. **Oregon Corrections Enterprises.** Procurements from an Oregon corrections enterprises program.
- G. **Finance.** Contracts, agreements or other documents entered into, issued or established in connection with:
 - (1) The incurring of debt by the City of Warrenton, including any associated contracts, agreements or other documents, regardless of whether the obligations that the contracts, agreements or other documents establish are general, special or limited;
 - (2) The making of program loans and similar extensions or advances of funds, aid or assistance by the City of Warrenton to a public or private person for the purpose of carrying out, promoting or sustaining activities or programs authorized by law other than for the construction of public works or public improvements;
 - (3) The investment of funds by the City of Warrenton as authorized by law, or
 - (4) Banking, money management or other predominantly financial transactions of the City of Warrenton that, by their character, cannot practically be established under the competitive contractor selection procedures, based upon the findings of the Purchasing Manager.
- H. **Employee Benefits.** Contracts for employee benefit plans as provided in ORS 243.105(1), 243.125 (4), 243.221, 243.275, 243.291, 243.303 and 243.565.
- I. **Exempt Under State Laws.** Any other public contracting specifically exempted from the Oregon Public Contracting Code by another provision of law.

- J. **Federal Law.** Except as otherwise expressly provided in ORS 279C.800 to 279C.870, applicable federal statutes and regulations govern when federal funds are involved and the federal statutes or regulations conflict with any provision of the Oregon Public Contracting Code or these regulations, or require additional conditions in public contracts not authorized by the Oregon Public Contracting Code or these regulations.

Section 3. Public Contracts – Regulation by City of Warrenton. Except as expressly delegated under these regulations, the Warrenton City Commission reserves to itself the exercise of all of the duties and authority of a contract review board and a contracting agency under state law, including, but not limited to, the power and authority to:

- A. **Solicitation Methods Applicable to Contracts.** Approve the use of contracting methods and exemptions from contracting methods for a specific contract or certain classes of contracts;
- B. **Brand Name Specifications.** Exempt the use of brand name specifications for public improvement contracts;
- C. **Waiver of Performance and Payment Bonds.** Approve the partial or complete waiver of the requirement for the delivery of a performance or payment bond for construction of a public improvement, other than in cases of emergencies;
- D. **Electronic Advertisement of Public Improvement Contracts.** Authorize the use of electronic advertisements for public improvement contracts in lieu of publication in a newspaper of general circulation;
- E. **Appeals of Debarment and Prequalification Decisions.** Hear properly filed appeals of the *Purchasing Manager's* determination of debarment, or concerning prequalification;
- F. **Rulemaking.** Adopt contracting rules under ORS 279A.065 and ORS 279A.070 including, without limitation, rules for the procurement, management, disposal and control of goods, services, personal services and public improvements; and
- G. **Award.** Award all contracts that exceed the authority of the *Purchasing Manager.*

Section 4. Public Contracts – Model Rules. The Model Rules adopted by the Attorney General under ORS 279A.065 (Model Rules) are hereby adopted as the public contracting rules for the City of Warrenton, to the extent that the Model Rules do not conflict with the provisions of this Ordinance including any amendments to this Ordinance.

Section 5. Public Contracts - Authority of Purchasing Manager.

- A. **General Authority.** The City Manager shall be the purchasing manager for the City of Warrenton and is hereby authorized to issue all solicitations and to award

all City of Warrenton contracts for which the contract price does not exceed \$10,000. Subject to the provisions of this Ordinance, the purchasing manager may adopt and amend all solicitation materials, contracts and forms required or permitted to be adopted by contracting agencies under the Oregon Public Contracting Code or otherwise convenient for the City of Warrenton's contracting needs. The purchasing manager shall hear all solicitation and award protests.

B. **Solicitation Preferences.** When possible, the purchasing manager shall use solicitation documents and evaluation criteria that:

- (1) 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; and
- (2) 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.

C. **Delegation of Purchasing Manager's Authority.** Any of the responsibilities or authorities of the purchasing manager under this Ordinance may be delegated and sub-delegated by written directive.

D. **Mandatory Review of Rules.** Whenever the Oregon State Legislative Assembly enacts laws that cause the attorney general to modify its Model Rules, the Purchasing Manager shall review the Public Contracting Regulations, other than the Model Rules, and recommend to the City of Warrenton Commission any modifications required to ensure compliance with statutory changes.

Section 6. Public Contracts – Definitions. The following terms used in these regulations shall have the meanings set forth below.

Award means the selection of a person to provide goods, services or public improvements under a public contract. The award of a contract is not binding on the City of Warrenton until the contract is executed and delivered by City of Warrenton.

Bid means a binding, sealed, written offer to provide goods, services or public improvements for a specified price or prices.

Concession agreement means 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 of Warrenton, and under which the concessionaire makes payments to the City of Warrenton 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.

Contract price means the total amount paid or to be paid under a contract, including any approved alternates, and any fully executed change orders or amendments.

Contract review board or local contract review board means the Warrenton City Commission.

Cooperative procurement means a procurement conducted by or on behalf of one or more contracting agencies.

Debarment means a declaration by the Purchasing Manager under ORS 279B.130 or ORS 279C.440 that prohibits a potential contractor from competing for the City of Warrenton's public contracts for a prescribed period of time.

Disposal means any arrangement for the transfer of property, or an interest therein, by the City of Warrenton under which the City of Warrenton relinquishes ownership or an interest therein.

Emergency means circumstances that 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.

Energy savings performance contract means a contract with a qualified energy service company for the identification, evaluation, recommendation, design and construction of energy conservation measures that guarantee energy savings or performance.

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

Goods means any item or combination of supplies, equipment, materials or other personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto.

Informal solicitation means a solicitation made in accordance with the City of Warrenton's Public Contracting Regulations to a limited number of potential contractors, in which the Solicitation Agent attempts to obtain at least three written quotes or proposals.

Invitation to bid means a publicly advertised request for competitive sealed bids.

Model Rules means the public contracting rules adopted by the Attorney General under ORS 279A.065.

Offeror means a person who submits a bid, quote or proposal to enter into a public contract with the City of Warrenton.

Oregon Public Contracting Code means ORS chapters 279A, 279B and 279C.

Person means a natural person or any other private or governmental entity, having the legal capacity to enter into a binding contract.

Proposal means 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 means 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, health care professionals, land use consultants, urban renewal consultants, landscape architects and other licensed professionals, artists, designers, computer programmers, performers, consultants, appraisers, realtors, geologists, hydrologists, and property managers. The Warrenton City Commission shall have discretion to determine whether additional types of services not specifically mentioned in this paragraph fit within the definition of personal services.

Public contract means a sale or other disposal, or a purchase, lease, rental or other acquisition, by the City of Warrenton of personal property, services, including personal services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement.

Public improvement means a project for construction, reconstruction or major renovation on real property by or for the City of Warrenton. "Public improvement" does not include:

- (1) Projects for which no funds of the City of Warrenton are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or
- (2) Emergency work, minor alteration, ordinary repair or maintenance necessary to preserve a public improvement.

Purchasing Manager means the City Manager, or designee appointed by the City Manager, to exercise the authority of the purchasing manager under these public contracting regulations.

Qualified pool means a pool of vendors who are pre-qualified to compete for the award of contracts for certain types of contracts or to provide certain types of services.

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

Request for proposals means a publicly advertised request for sealed competitive proposals.

Services means and includes all types of services (including construction labor) other than personal services.

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

Solicitation Agent means with respect to a particular solicitation, the City Manager, or person designated by the City Manager, to conduct the solicitation and make an award.

Solicitation documents means all informational materials issued by the City of Warrenton for a solicitation, including, but not limited to advertisements, instructions, submission requirements and schedules, award criteria, contract terms and specifications, and all laws, regulations and documents incorporated by reference.

Standards of responsibility means the qualifications of eligibility for award of a public contract. An offeror meets the standards of responsibility if the offeror has:

- (1) Available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to indicate the capability of the offeror to meet all contractual responsibilities;
- (2) A satisfactory record of performance. The Solicitation Agent shall document the record of performance of an offeror if the Solicitation Agent finds the offeror to be not responsible under this paragraph;
- (3) A satisfactory record of integrity. The Solicitation Agent shall document the record of integrity of an offeror if the Solicitation Agent finds the offeror to be not responsible under this paragraph;
- (4) Qualified legally to contract with the City of Warrenton;

- (5) Supplied all necessary information in connection with the inquiry concerning responsibility. If an offeror fails to promptly supply information requested by the Solicitation Agent concerning responsibility, the Solicitation Agent shall base the determination of responsibility upon any available information or may find the offeror non-responsible; and
- (6) Not been debarred by the City of Warrenton, and, in the case of public improvement contracts, has not been listed by the Construction Contractors Board as a contractor who is not qualified to hold a public improvement contract.

Surplus property means personal property owned by the City of Warrenton which is no longer needed for use by the department to which such property has been assigned.

Section 7. Public Contracts - Process for Approval of Special Solicitation Methods and Exemptions.

A. **Authority of City of Warrenton.** In its capacity as contract review board for the City of Warrenton, the City Commission, upon its own initiative, or upon request of the purchasing manager, may create special selection, evaluation and award procedures for, or may exempt from competition, the award of a specific contract or class of contracts as provided in this section 7.

B. **Basis for Approval.** The approval of a special solicitation method or exemption from competition must be based upon a record before the City of Warrenton that contains the following:

- (1) The nature of the contract or class of contracts for which the special solicitation or exemption is requested;
- (2) The estimated contract price or cost of the project, if relevant;
- (3) Findings to support the substantial cost savings, enhancement in quality or performance or other public benefit anticipated by the proposed selection method or exemption from competitive solicitation;
- (4) Findings to support the reason that approval of the request would be unlikely to encourage favoritism or diminish competition for the public contract or class of public contracts, or would otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with the solicitation requirements that would otherwise be applicable under these regulations;
- (5) A description of the proposed alternative contracting methods to be employed; and
- (6) The estimated date by which it would be necessary to let the contract(s).

In making a determination regarding a special selection method, the Warrenton City Commission may consider the type, cost, amount of the contract or class of contracts, number of persons available to make offers, and such other factors as it may deem appropriate.

C. Hearing.

- (1) The City of Warrenton shall approve the special solicitation or exemption after a public hearing before the Warrenton City Commission following notice by publication in at least one newspaper of general circulation in the City of Warrenton area.
- (2) At the public hearing, the City of Warrenton shall offer an opportunity for any interested party to appear and present comment.
- (3) The Warrenton City Commission will consider the findings and may approve the exemption as proposed or as modified by the Warrenton City Commission after providing an opportunity for public comment.

D. Special Requirements for Public Improvement Contracts.

- (1) Notification of the public hearing for exemption of a public improvement contract, or class of public improvement contracts, shall be published in a trade newspaper of general statewide circulation at least 14 days prior to the hearing.
- (2) The notice shall state that the public hearing is for the purpose of taking comments on the City of Warrenton's draft findings for an exemption from the standard solicitation method. At the time of the notice, copies of the draft findings shall be made available to the public.

- E. Commencement of Solicitation Prior to Approval.** A solicitation may be issued prior to the approval of a special exemption under this section 7, provided that the closing of the solicitation may not be earlier than five days after the date of the hearing at which the Warrenton City Commission approves the exemption. If the Warrenton City Commission fails to approve a requested exemption, or requires the use of a solicitation procedure other than the procedures described in the issued solicitation documents, the issued solicitation may either be modified by addendum, or cancelled.

Section 8. Public Contracts - Solicitation Methods for Classes of Contracts. The following classes of public contracts and the method(s) that are approved for the award of each of the classes are hereby established by the Warrenton City Commission.

- A. Purchases from Nonprofit Agencies for Disabled Individuals.** The City of Warrenton shall give a preference to goods, services, and public improvements available from qualified nonprofit agencies for disabled individuals in accordance with the provisions of ORS 279.835 through 279.850.

B. Public Improvement Contracts.

- (1) **Any Public Improvement.** Unless otherwise provided in these regulations or approved for a special exemption, public improvement contracts in any amount may be issued only under an invitation to bid.
- (2) **Non-Transportation Public Improvements Up to \$50,000.** Public improvement contracts other than contracts for a highway, bridge or other transportation project for which the estimated contract price does not exceed \$50,000 may be awarded using an informal solicitation for quotes.
- (3) **Transportation Public Improvements Up to \$50,000.** Contracts for which the estimated contract price does not exceed \$50,000 for highways, bridges or other transportation projects may be awarded using an informal solicitation for quotes.
- (4) **City of Warrenton-Funded Privately-Constructed Public Improvements.** The City of Warrenton may contribute funding to a privately-constructed public improvement project 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 of Warrenton's contribution to the project may not exceed 25% of the total cost of the project;
 - (b) The City of Warrenton must comply with all applicable laws, if any, 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, if any, 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 Manager to protect the City of Warrenton against defective performance and claims for payment; 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 of Warrenton for all claims for

payment, injury or property damage arising from or related to the construction of the project.

C. **Personal Services Contracts.** Except as otherwise provided in these regulations, personal services contracts may be awarded in the same manner as contracts for services under ORS 279B.050, and 279B.060 to 279B.085.

- (1) **Any Personal Services Contract.** Personal services contracts in any amount may be awarded under a publicly advertised request for competitive sealed proposals. The solicitation for all professional service agreements expected to exceed \$10,000 shall be authorized by the City Commission.
- (2) **Personal Service Contracts Not Exceeding \$100,000.** Contracts for personal services for which the estimated contract price does not exceed \$100,000 may be awarded using an informal solicitation for proposals.
- (3) **\$50,000 Award from Qualified Pool.** Contracts for personal services for which the estimated contract price does not exceed \$50,000 may be awarded by direct appointment without competition from a Qualified Pool.
- (4) **Personal Service Contracts Not Exceeding \$20,000 Per Year.** Contracts for which the Solicitation Agent estimates that payments will not exceed \$20,000 in any fiscal year or \$150,000 over the full term, including optional renewals, may be awarded under any method deemed in the City of Warrenton's best interest by the Solicitation Agent, including by direct appointment.
- (5) **Personal Service Contracts for Continuation of Work.** Contracts of not more than \$150,000 for the continuation of work by a contractor who performed preliminary studies, analysis or planning for the work under a prior contract may be awarded without competition if the prior contract was awarded under a competitive process and the City Commission determines that use of the original contractor will significantly reduce the costs of, or risks associated with, the work.
- (6) **Criteria for Selection of Personal Service Contractors.** In the selection of a personal services contractor under this section, the following criteria shall be used in evaluation and selection:
 - (1) Specialized experiences in the type of work to be performed.
 - (2) Capacity and capability to perform the work, including any specialized services within the time limitations for the work.
 - (3) Education and professional record, including past record of performance on contracts with governmental agencies and private parties with respect to cost control, quality of work, ability to meet

schedules, and contract administration, where applicable; and
(4) Availability to perform the assignment and familiarity with the area in which the specific work is located, including knowledge of design or techniques peculiar to it, where applicable.

(5) Any other factors relevant to the particular contract.

(7) **Appointive Officers Under City Charter.** Pursuant to the City of Warrenton Charter, Chapter III, Section 10, the City Commission appoints the city officers of Manager, Auditor, Municipal Judge, and other officers as the Commission deems necessary. The appointment of those officers and method of selection may be by any method deemed suitable by the City Commission, including direct appointment.

D. **Hybrid Contracts.** The following classes of contracts include elements of construction of public improvements as well as personal services and may be awarded under a request for proposals, unless exempt from competitive solicitation.

(1) **Design/Build and CM/GC Contracts.** Contracts for the construction of public improvements using a design/build or construction manager/general contractor construction method shall be awarded under a request for proposals. The determination to construct a project using a design/build or construction manager/general contractor construction method must be approved by the Warrenton City Commission or 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 of Warrenton.

(2) **Energy Savings Performance Contracts.** Unless the contract qualifies for award under another classification in this section, contractors for energy savings performance contracts shall be selected under a request for proposals in accordance with the City of Warrenton's Public Contracting Regulations.

E. **Contracts for Goods and Services.**

(1) **Any Procurement.** The procurement of goods or services, or goods and services in any amount may be made under either an invitation to bid or a request for proposals.

(2) **Procurements Up to \$150,000.** The procurement of goods or services, or goods and services, for which the estimated contract price does not exceed \$150,000 may be made under an informal solicitation for either quotes or proposals.

F. **Contracts Subject to Award at Solicitation Agent's Discretion.** The following classes of contracts may be awarded in any manner which the Solicitation Agent deems appropriate to the City of Warrenton's needs, including by direct appointment or purchase. Except where otherwise provided the Solicitation Agent shall make a record of the method of award.

- (1) **Advertising.** Contracts for the placing of notice or advertisements in any medium.
- (2) **Amendments.** Contract amendments shall not be considered to be separate contracts if made in accordance with the Public Contracting Regulations.
- (3) **Animals.** Contracts for the purchase of animals.
- (4) **Contracts Up to \$500.** Contracts of any type for which the contract price does not exceed \$500. without a record of the method of award.
- (5) **Copyrighted Materials; Library Materials.** Contracts for the acquisition of materials entitled to copyright, including, but not limited to works of art and design, literature and music, or materials even if not entitled to copyright, purchased for use as library lending materials.
- (6) **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.
- (7) **Government Regulated Items.** Contracts for the purchase of items for which prices or selection of suppliers are regulated by a governmental authority.
- (8) **Insurance.** Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145.
- (9) **Non-Owned Property.** Contracts or arrangements for the sale or other disposal of abandoned property or other personal property not owned by the City of Warrenton.
- (10) **Sole Source Contracts.** Under ORS 279B.075(2)(d), Contracts for goods or services which are available from a single source may be awarded without competition. The Purchasing Manager is authorized to determine which goods or services are available only from a single source.
- (11) **Specialty Goods for Resale.** Contracts for the purchase of specialty goods by City of Warrenton for resale to consumers.
- (12) **Sponsor Agreements.** Sponsorship agreements, under which the City of Warrenton receives a gift or donation in exchange for recognition of the donor.

- (13) **Structures.** Contracts for the disposal of structures located on City of Warrenton owned property.
- (14) **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.
- (15) **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.
- (16) **Temporary Use of City of Warrenton Owned Property.** The City of Warrenton may negotiate and enter into a license, permit or other contract for the temporary use of City of Warrenton owned property without using a competitive selection process if:
 - (a) The contract results from an unsolicited proposal to the City of Warrenton based on the unique attributes of the property or the unique needs of the proposer;
 - (b) The proposed use of the property is consistent with the City of Warrenton's use of the property and the public interest; and
 - (c) The City of Warrenton reserves the right to terminate the contract without penalty, in the event that the City of Warrenton determines that the contract is no longer consistent with the City of Warrenton's present or planned use of the property or the public interest.
- (17) **Used Property.** A Solicitation Agent, for procurements up to \$20,000, and the Purchasing Manager, 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 of Warrenton's needs and can be purchased for a lower cost than substantially similarly 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 of Warrenton. The Purchasing Manager shall record the findings that support the purchase.
- (18) **Utilities.** Contracts for the purchase of steam, power, heat, water, telecommunications services, and other utilities.

G. Contracts Required by Emergency Circumstances.

- (1) **In General.** When an official with authority to enter into a contract on behalf of City of Warrenton determines that immediate execution of a contract within the official's authority is necessary to prevent substantial

damage or injury to persons or property, the official may execute the contract without competitive selection and award or City of Warrenton approval, but, where time permits, the official shall attempt to use competitive price and quality evaluation before selecting an emergency contractor.

- (2) **Reporting.** An official who enters into an emergency contract shall, as soon as possible, in light of the emergency circumstances, (1) document the nature of the emergency; the method used for selection of the particular contractor and the reason why the selection method was deemed in the best interest of the City of Warrenton and the public, and (2) notify the Warrenton City Commission of the facts and circumstances surrounding the emergency execution of the contract.
- (3) **Emergency Public Improvement Contracts.** A public improvement contract may only be awarded under emergency circumstances if the Warrenton City Commission has made a written declaration of emergency. Any Public Improvement Contract award under emergency conditions must be awarded within 60 Days following the declaration of an emergency unless the Warrenton City Commission grants an extension of the emergency period. Where the time delay needed to obtain a payment or performance bond for the contract could result in injury or substantial property damage, the Warrenton City Commission may waive the requirement for all or a portion of required performance and payment bonds.

H. **Federal Purchasing Programs.** Goods and services may be purchased without competitive procedures under a local government purchasing program administered by the United States General Services Administration ("GSA") as provided in this subsection.

- (1) The procurement must be made in accordance with procedures established by GSA for procurements by local governments, and under purchase orders or contracts submitted to and approved by the Purchasing Manager. The Solicitation Agent shall provide the Purchasing Manager with a copy of the letter, memorandum, or other documentation from GSA establishing permission to the City of Warrenton to purchase under the federal program.
- (2) The price of the goods or services must be established under price agreements between the federally approved vendor and GSA.
- (3) The price of the goods or services must be less than the price at which such goods or services are available under state or local cooperative purchasing programs that are available to the City of Warrenton.
- (4) If a single purchase of goods or services exceeds **\$150,000**, the Solicitation Agent must obtain informal written quotes or proposals from at least two additional vendors (if reasonably available) and find, in

writing, that the goods or services offered by GSA represent the best value for the City of Warrenton. This paragraph does not apply to the purchase of equipment manufactured or sold solely for military or law enforcement purposes.

I. **Cooperative Procurement Contracts.** Cooperative procurements may be made without competitive solicitation as provided in the Oregon Public Contracting Code.

J. **Surplus Property.**

(1) **General Methods.** Surplus property may be disposed of by any of the following methods upon a determination by the City Commission that the method of disposal is in the best interest of the City of Warrenton. Factors that may be considered by the Solicitation Agent include costs of sale, administrative costs, and public benefits to the City of Warrenton. The Solicitation Agent shall maintain a record of the reason for the disposal method selected, and the manner of disposal, including the name of the person to whom the surplus property was transferred.

(a) **Governments.** Without competition, by transfer or sale to another City of Warrenton department or public agency.

(b) **Auction.** By publicly advertised auction to the highest bidder.

(c) **Bids.** By public advertised invitation to bid.

(d) **Liquidation Sale.** By liquidation sale using a commercially recognized third-party liquidator selected in accordance with rules for the award of personal services contracts.

(e) **Fixed Price Sale.** The Solicitation Agent may establish a selling price based upon an independent appraisal or published schedule of values generally accepted by the insurance industry, schedule and advertise a sale date, and sell to the first buyer meeting the sales terms.

(f) **Trade-In.** By trade-in, in conjunction with acquisition of other price-based items under a competitive solicitation. The solicitation shall require the offer to state the total value assigned to the surplus property to be traded.

(g) **Donation.** By donation to any organization operating within or providing a service to residents of the City of Warrenton which is recognized by the Internal Revenue Service as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

- (2) **Disposal of Property with Minimal Value.** Surplus property which has a value of less than \$500, or for which the costs of sale are likely to exceed sale proceeds may be disposed of by any means determined to be cost-effective, including by disposal as waste, upon such determination by the Solicitation Agent. The official making the disposal shall make a record of the value of the item and the manner of disposal.
- (3) **Personal-Use Items.** An item (or indivisible set) of specialized and personal use, other than police officer's handguns, with a current value of less than \$100 may be sold to the employee or retired or terminated employee for whose use it was purchased. These items may be sold for fair market value without bid and by a process deemed most efficient by the Purchasing Manager.
- (4) **Police Officers' Handguns.** Upon honorable retirement from service with the City of Warrenton, a police officer may purchase the handgun that she or he was using at the time of retirement. The purchase price shall be the fair market value of the handgun as determined by an independent appraisal performed by a qualified weapons appraiser. An officer electing to exercise this option shall notify the City of Warrenton at least 30 days prior to his or her expected retirement date and request an appraisal of the handgun. Upon receipt of the appraisal fee from the officer the City of Warrenton shall arrange for the appraisal. A copy of the completed appraisal shall be provided to the officer, who shall have up to 30 days from the date of retirement to purchase the handgun for the appraised fair market value.
- (5) **Restriction on Sale to City of Warrenton Employees.** City of Warrenton employees shall not be restricted from competing, as members of the public, for the purchase of publicly sold surplus property, but shall not be permitted to offer to purchase property to be sold to the first qualifying bidder until at least three days after the first date on which notice of the sale is first publicly advertised.
- (6) **Conveyance to Purchaser.** Upon the consummation of a sale of surplus personal property, the City of Warrenton shall make, execute and deliver, a bill of sale signed on behalf of the City of Warrenton, conveying the property in question to the purchaser and delivering possession, or the right to take possession, of the property to the purchaser.

K. Concession Agreements.

- (1) **General.** No part of a Concession Agreement shall contain or constitute a waiver of any generally applicable rules, code provisions or requirements of the City of Warrenton concerning regulation, registration, licensing, inspection, or permit requirements for any construction, rental or business activity.

- (2) **Classes of Contracts Eligible for Award Without Competition.** The following concession agreements may be awarded by any method deemed appropriate by the Solicitation Agent, including without limitation, by direct appointment, private negotiation, from a qualified pool, or using a competitive process.
 - (a) **Contracts Under \$5,000.** Contracts under which the Solicitation Agent estimates that receipts by the City of Warrenton will not exceed \$5,000 in any fiscal year and \$50,000 in the aggregate.
 - (b) **Single Event Concessions.** Concessions to sell or promote food, beverages, merchandise or services at a single public event shall be awarded based on any method determined by the Purchasing Manager to provide a fair opportunity to all persons desiring to operate a concession, but in which the promotion of the public interest and success of the event shall be of predominant importance.
- (3) **Competitive Award.** Concession agreements solicited by the City of Warrenton for the use of designated public premises for a term greater than a single event shall be awarded as follows:
 - (a) **Small Concessions.** For Concession Agreements for which the concessionaire's projected annual gross revenues are estimated to be \$500,000 or less, the Purchasing Manager has discretion to use either an informal solicitation or formal request for proposals process applicable to contracts for personal services. If the proposals received indicate a probability that the concessionaire's annual gross revenues will exceed \$500,000, the Solicitation Agent may, but shall not be required to, reissue the solicitation as a request for proposals.
 - (b) **Major Concessions.** Concession agreements for which the concessionaire's projected annual gross revenues under the contract are estimated to exceed \$500,000 annually shall be awarded using a request for proposals.

Section 9. Public Contracts -Informal Solicitation Procedures. The City of Warrenton may use the following procedure for informal solicitations in lieu of the procedures set forth in the Model Rules.

A. Informally Solicited Quotes and Proposals.

- (1) **Solicitation of Offers.** When authorized by these regulations, an informal solicitation may be made by general or limited advertisement to a certain group of vendors, by direct inquiry to persons selected by the Solicitation Agent, or in any other manner which the Solicitation Agent deems suitable for obtaining competitive quotes or proposals. The Solicitation Agent shall deliver or otherwise make available to potential offerors, a written

scope of work, a description of how quotes or proposals are to be submitted and description of the criteria for award.

- (2) **Award.** The Solicitation Agent shall attempt to obtain a minimum of three written quotes or proposals before making an award. If the award is made solely on the basis of price, the Solicitation Agent shall award the contract to the responsible offeror that submits the lowest responsive quote. If the award is based on criteria other than, or in addition to, price, the Solicitation Agent shall award the contract to the responsible offeror that will best serve the interest of the City of Warrenton, based on the criteria for award.
- (3) **Records.** A written record of all persons solicited and offers received shall be maintained. If three offers cannot be obtained, a lesser number will suffice, provided that a written record is made of the effort to obtain the quotes.

B. Qualified Pools.

- (1) **General.** To create a qualified pool, the Purchasing Manager may invite prospective contractors to submit their qualifications to the City of Warrenton for inclusion as participants in a pool of contractors qualified to provide certain types of goods, services, or projects including personal services, and public improvements. The City Commission shall approve the use of a qualified pool appointment and will approve the qualified pool membership on an annual basis.
- (2) **Advertisement.** The invitation to participate in a qualified pool shall be advertised in the manner provided for advertisements of invitations to bid and requests for proposals by publication in at least one newspaper of general statewide circulation. If qualification will be for a term that exceeds one year or allows open entry on a continuous basis, the invitation to participate in the pool must be re-published at least once per year and shall be posted at the City of Warrenton's main office and on its website.
- (3) **Contents of Solicitation.** Requests for participation in a qualified pool shall describe the scope of goods or services or projects for which the pool will be maintained, and the minimum qualifications for participation in the pool, which may include, but shall not be limited to qualifications related to financial stability, contracts with manufacturers or distributors, certification as an emerging small business, insurance, licensure, education, training, experience and demonstrated skills of key personnel, access to equipment, and other relevant qualifications that are important to the contracting needs of the City of Warrenton.
- (4) **Contract.** The operation of each qualified pool may be governed by the provisions of a pool contract to which the City of Warrenton and all pool participants are parties. The Contract shall contain all terms required by the City of Warrenton, including, without limitation, terms related to

price, performance, business registration or licensure, continuing education, insurance, and requirements for the submission, on an annual or other periodic basis, of evidence of continuing qualification. The qualified pool contract shall describe the selection procedures that the City of Warrenton may use to issue contract job orders. The selection procedures shall be objective and open to all pool participants and afford all participants the opportunity to compete for or receive job awards. Unless expressly provided in the contract, participation in a qualified pool will not entitle a participant to the award of any City of Warrenton contract.

- (5) **Use of Qualified Pools.** Subject to the provisions of these regulations concerning methods of solicitation for classes of contracts, the Warrenton City Commission shall award all contracts for goods or services of the type for which a qualified pool is created from among the pool's participants, unless the Solicitation Agent determines that best interests of the City of Warrenton require solicitation by public advertisement, in which case, pool participants shall be notified of the solicitation and invited to submit competitive proposals.
- (6) **Amendment and Termination.** The Purchasing Manager may discontinue a qualified pool at any time, or may change the requirements for eligibility as a participant in the pool at any time, by giving notice to all participants in the qualified pool.
- (7) **Protest of Failure to Qualify.** The Purchasing Manager shall notify any applicant who fails to qualify for participation in a pool that it may appeal a qualified pool decision to the Warrenton City Commission in the manner described in section 13.

Section 9. Public Contracts - Use of Brand Name Specifications for Public Improvements.

- A. **In General.** Specifications for contracts shall not expressly or implicitly require any product by one brand name or mark, nor the product of one particular manufacturer or seller, except for the following reasons:
 - (1) It is unlikely that such exemption will encourage favoritism in the awarding of Public improvement Contracts or substantially diminish competition for Public improvement Contracts; or
 - (2) The specification of a product by brand name or mark, or the product of a particular manufacturer or seller, would result in substantial cost savings to the City of Warrenton or
 - (3) There is only one manufacturer or seller of the product of the quality required; or
 - (4) Efficient utilization of existing equipment, systems or supplies requires the acquisition of compatible equipment or supplies.

- B. **Authority to Determine Brand Name Exemption.** The Warrenton City Commission shall have authority to determine whether an exemption for the use of a specific brand name specification should be granted by recording findings that support the exemption based on the provisions of subsection A.
- C. **Brand Name or Equivalent.** Nothing in this section prohibits the use of a "brand name or equivalent" specification, from specifying one or more comparable products as examples of the quality, performance, functionality or other characteristics of the product needed by the City of Warrenton, or from establishing a qualified product list.

Section 10. Public Contracts -Bid, Performance and Payment Bonds.

- A. **Solicitation Agent May Require Bonds.** The Solicitation Agent may require bid security and a good and sufficient performance and payment bond even though the contract is of a class that is exempt from the requirement.
- B. **Bid Security.** Except as otherwise exempted, the solicitations for all contracts that include the construction of a public improvement and for which the estimated contract price will exceed \$50,000 shall require bid security. Bid security for a request for proposal may be based on the City of Warrenton's estimated contract price.
- C. **Performance Bonds.**
 - (1) **General.** Except as provided in these regulations, all public contracts are exempt from the requirement for the furnishing of a performance bond.
 - (2) **Contracts Involving Public Improvements.** Prior to executing a contract for more than \$50,000 that includes the construction of a public improvement, the contractor must deliver a performance bond in an amount equal to the full contract price conditioned on the faithful performance of the contract in accordance with the plans, specifications and conditions of the contract. The performance bond must be solely for the protection of the City of Warrenton and any public agency that is providing funding for the project for which the contract was awarded.
 - (3) **Cash-in-Lieu.** The City of Warrenton may permit the successful offeror to submit a cashier's check in lieu of all or a portion of the required performance bond.
- D. **Payment Bonds.**
 - (1) **General.** Except as provided in these regulations, all public contracts are exempt from the requirement for the furnishing of a payment bond.
 - (2) **Contracts Involving Public Improvements.** Prior to executing a contract for more than \$50,000 that includes the construction of a public

improvement, the contractor must deliver a payment bond equal to the full contract price, solely for the protection of claimants under ORS 279C.600.

- E. **Design/Build Contracts.** If the public improvement contract is with a single person to provide both design and construction of a public improvement, the obligation of the performance bond for the faithful performance of the contract must also be for the preparation and completion of the design and related services covered under the contract. Notwithstanding when a cause of action, claim or demand accrues or arises, the surety is not liable after final completion of the contract, or longer if provided for in the contract, for damages of any nature, economic or otherwise and including corrective work, attributable to the design aspect of a design-build project, or for the costs of design revisions needed to implement corrective work.
- F. **Construction Manager/General Contractor Contracts.** If the public improvement contract is with a single person to provide construction manager and general contractor services, in which a guaranteed maximum price may be established by an amendment authorizing construction period services following preconstruction period services, the contractor shall provide the bonds required by subsection A. of this section upon execution of an amendment establishing the guaranteed maximum price. The City of Warrenton shall also require the contractor to provide bonds equal to the value of construction services authorized by any early work amendment in advance of the guaranteed maximum price amendment. Such bonds must be provided before construction starts.
- G. **Surety; Obligation.** Each performance bond and each payment bond must be executed solely by a surety company or companies holding a certificate of authority to transact surety business in Oregon. The bonds may not constitute the surety obligation of an individual or individuals. The performance and payment bonds must be payable to the City of Warrenton or to the public agency or agencies for whose benefit the bond is issued, as specified in the solicitation documents, and shall be in a form approved by the Purchasing Manager.
- H. **Emergencies.** In cases of emergency, or when the interest or property of the City of Warrenton probably would suffer material injury by delay or other cause, the requirement of furnishing a good and sufficient performance bond and a good and sufficient payment bond for the faithful performance of any public improvement contract may be excused, if a declaration of such emergency is made in accordance with the provisions of section 8.G, unless the Warrenton City Commission requires otherwise.

Section 11. Public Contracts - Electronic Advertisement of Public Improvement Contracts.

In lieu of publication in a newspaper of general circulation in the City of Warrenton metropolitan area, the advertisement for an invitation to bid or request for proposals for a contract involving a public improvement may be published electronically by posting on the City of Warrenton's website, provided that the following conditions are met:

- A. The placement of the advertisement is on a location within the website that is maintained on a regular basis for the posting of information concerning solicitations for projects of the type for which the invitation to bid or request for proposals is issued; and
- B. The Solicitation Agent determines that the use of electronic publication will be at least as effective in encouraging meaningful competition as publication in a newspaper of general circulation in the City of Warrenton metropolitan area and will provide costs savings for the City of Warrenton, or that the use of electronic publication will be more effective than publication in a newspaper of general circulation in the City of Warrenton metropolitan area in encouraging meaningful competition.

Section 12. Appeal of Debarment or Prequalification Decision.

- A. **Right to Hearing.** Any person who has been debarred from competing for City of Warrenton contracts or for whom prequalification has been denied, revoked or revised may appeal the City of Warrenton's decision to the Warrenton City Commission as provided in this section 1.972.
- B. **Filing of Appeal.** The person must file a written notice of appeal with the City of Warrenton's Purchasing Manager within three business days after the prospective contractor's receipt of notice of the determination of debarment, or denial of prequalification.
- C. **Notification of Warrenton City Commission.** Immediately upon receipt of such notice of appeal, the Purchasing Manager shall notify the Warrenton City Commission of the appeal.
- D. **Hearing.** The procedure for appeal from a debarment or denial, revocation or revision of prequalification shall be as follows:
 - (1) Promptly upon receipt of notice of appeal, the City of Warrenton shall notify the appellant of the time and place of the hearing;
 - (2) The Warrenton City Commission shall conduct the hearing and decide the appeal within 30 days after receiving notice of the appeal from the Purchasing Manager; and
 - (3) At the hearing, the Warrenton City Commission shall consider de novo the notice of debarment, or the notice of denial, revocation or revision of prequalification, the standards of responsibility upon which the decision on prequalification was based, or the reasons listed for debarment, and any evidence provided by the parties.
- E. **Decision.** The Warrenton City Commission shall set forth in writing the reasons for the decision.

F. **Costs.** The Warrenton City Commission may allocate the Warrenton City Commission's costs for the hearing between the appellant and the City of Warrenton. The allocation shall be based upon facts found by the Warrenton City Commission and stated in the Warrenton City Commission's decision that, in the Warrenton City Commission's opinion, warrant such allocation of costs. If the City of Warrenton does not allocate costs, the costs shall be paid as by the appellant, if the decision is upheld, or by the City of Warrenton, if the decision is overturned.

G. **Judicial Review.** The decision of the Warrenton City Commission may be reviewed only upon a petition in the circuit court of Clatsop County filed within 15 days after the date of the Warrenton City Commission's decision."

Section 13. Emergency. The City Commission of the City of Warrenton declares it is necessary for the preservation of the public health, welfare and safety of the residents of Warrenton for this Ordinance to have immediate effect. Therefore, this Ordinance shall become effective immediately upon its passage.

ADOPTED BY THE CITY COMMISSION THIS 12th DAY OF April, 2005.

APPROVED BY THE MAYOR THIS 12th DAY OF April, 2005.



Mayor

ATTEST:



City Recorder

EXHIBIT A

FINDINGS IN SUPPORT OF ORDINANCE NO. 1076-A

ADOPTING PUBLIC CONTRACTING CODE PROVISIONS

ORS 279B.085 and 279C.335 authorize the City Commission, 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 Commission has, after a public hearing thereon, adopted Ordinance No. ____, which establishes classes of contracts and the solicitation methods for their award, together with the following specific findings in support thereof, or a determination that no findings are required.

No Findings Required:

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

- 1) Purchases from Non profit Agencies for Disabled Individuals;
- 2) Any public improvement;
- 3) Public improvements up to \$5,000;
- 4) Personal Services Contracts;
- 5) Contracts for Goods and Services;
- 6) Contracts Subject to Award at Purchasing Agent's Discretion.
 - (a) Amendments
 - (b) Contracts up to \$10,000
 - (c) Insurance;
- 7) Contracts Required by Emergency Circumstances;
- 8) Federal Purchasing Programs; and
- 9) Cooperative Procurement Contracts.

In addition, no findings are required for renewals of contracts, as that section does not reflect an exemption.

Specific Findings for Public Improvement Exemptions

The City Commission 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.

Non-transportation public improvements up to \$100,000, and 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 expenditures.
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 it 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.

City funded privately-constructed public improvements.

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

Cost Savings and Other Benefits.

- 1) No mobilization costs.
- 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.

Hybrid Contracts - Design/build and CM/CG contracts.

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

Cost Savings and Other Benefits. Award of Design/Build or CM/CG 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/CG contracts, the construction manager must provide design advice and the experience, management skills and efficiency of the construction manager are essential qualities that 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/CG contracts under an invitation to bid.

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.

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 Findings for Special Classes and Methods of Award for Contracts Other than Public Improvements.

The City Commission 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 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.

**Contracts Subject to Award at Purchasing Agent's Discretion.
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.

**Contracts Subject to Award at Purchasing Agent's Discretion.
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.

**Contracts Subject to Award at Purchasing Agent's Discretion.
Equipment.**

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 project 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.

Contracts Subject to Award at Purchasing Agent's Discretion.

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.

Effect on Favoritism. Too much variation in selection to allow favoritism.

Contracts Subject to Award at Purchasing Agent's Discretion.

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.

Contracts Subject to Award at purchasing Agent's Discretion.

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.

**Contracts Subject to Award at Purchasing Agent's Discretion.
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.

**Contracts Subject to Award at Purchasing Agent's Discretion.
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.

**Contracts Subject to Award at Purchasing Agent's Discretion.
Structures.**

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.

**Contracts Subject to Award at Purchasing Agent's Discretion.
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.

**Contracts Subject to Award at Purchasing Agent's Discretion.
Used property.**

Alternate Award process. Renewal. No selection.

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.

**Contracts Subject to Award at Purchasing Agent's Discretion.
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.

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.

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 goods or services or public improvements. Most similar to personal services contract because the quality of the 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.