

EXHIBIT B

FINDINGS IN SUPPORT OF EXEMPTIONS TO COMPETITIVE BIDDING OR PROPOSALS

The Local Contract Review Board of the City of Milwaukie adopts the following findings in support of exemptions to competitive bidding/proposal requirements.

Contracts Under Certain Dollar Amounts

1. The City incurs costs in awarding contracts under a formal competitive bidding or formal competitive proposal process.
2. While competitive bidding or competitive proposals can result in cost savings for large projects, the cost of the process can exceed the cost savings for smaller contracts.
3. State law creates exemptions for contracts under specified dollar amounts, and the City's exemption implements state law rather than creating a new or special exemption.
4. The rules require an informal competitive process (solicitation of quotes) in most situations, assuring competition. Even when a direct appointment is possible, the City cannot use a higher priced source if a lower priced source is known to be available. The rule against fragmentation of contracts prevents misuse of this exemption.
5. The requirement to obtain at least three quotes for intermediate contracts discourages favoritism by requiring the City to check with several sources.
6. It is unlikely that this exemption will encourage favoritism or diminish competition because it still provides for competition in most circumstances and requires the City to consider alternate sources.
7. The exemption will lead to cost savings by avoiding the cost of a formal process when that cost would outweigh any likely cost savings.
8. The exemption is in the public interest because it allows the City to reduce internal costs while controlling contract expenditures. This could not be achieved otherwise.

Price Regulated Items

9. If prices are regulated, a competitive process would not result in a lower-cost contract and the costs of the process would increase the City's overall costs.

10. Price-regulated items are typically available only from a single or limited number of sources, so exempting price-regulated items is unlikely to encourage favoritism.
11. The exemption is in the public interest because it results in cost savings for the City that could not be achieved without the exemption.

Library Periodicals

12. The purchase of most library periodicals is within the small contract dollar amount.
13. A substantial amount of market competition exists for periodicals, which results in competitive prices in the market.
14. The costs of a formal competitive process are greater than the amount of any likely savings from a competitive process.
15. The prohibition on use of higher priced sources when lower priced sources are known to be available discourages favoritism.

Advertising Contracts

16. Most entities that provide a forum for advertisers have set prices that cannot be negotiated.
17. The City has legal requirements for advertising public notices that can only be met by a small number of sources and all possible sources can be contacted without the need for an invitation to bid or request for proposals.
18. The correct advertising medium is important for the success of any advertising, so the specific medium needs to be selected based on considerations that are difficult to quantify. Therefore, selecting advertising media by bid is inappropriate and selecting by proposals may also result in a proliferation of proposals that do not meet the City's needs.
19. Advertising often must be placed on a short time schedule that does not permit the use of a formal competitive process.
20. The costs of a formal competitive process would likely be greater than the savings resulting from using that type of process to place advertising.
21. This exemption will not encourage favoritism because the City is still able to use informal processes to compare media and choose the best outcome for the City.

22. The exemption is in the public interest because it will result in cost savings to the City without encouraging favoritism and those purposes could not be met with existing rules.

Equipment Maintenance Repair and Overhaul

23. It is often impossible to determine the cost of equipment repair or overhaul without testing the equipment. It is not cost effective to have one contractor test the equipment and another perform the repairs.
24. Equipment repair often is needed to be performed without delay and in less time than a competitive process would take.
25. The only way to have a competitive process for equipment repair or overhaul, other than by creating price agreements, would be to have a separate entity test the equipment to determine what is wrong with the equipment.
26. Without knowing the extent of repairs needed, competition is not possible because different entities could quote only their hourly rates, with no prediction as to the amount of time the repairs would take.
27. The exemption is unlikely to encourage favoritism because it is to be used only in rare occasions where the City does not have established price agreements, reached by a competitive process without favoritism.
28. This exemption serves the public interest by providing a simple process for obtaining equipment repair when needed.
29. The exemption for maintenance does not apply to routine or scheduled maintenance, unless there is only one entity capable of providing the service.

Purchases Under Established Price Agreements

30. Purchases under existing price agreements are unlikely to encourage favoritism or diminish competition because they are based on price agreements entered into after an open competitive process.
31. This exemption furthers the public interest by ensuring that price agreements will function properly and the same results would not be achievable if this exemption were not granted.

Gasoline, Diesel Fuel, Heating Oil, Lubricants and Asphalt

32. The exemption encourages competition and discourages favoritism by requiring an informal competitive process and requiring the City to use the least expensive source of those providing quotes.

33. The purchases under this exemption are likely to be at levels that qualify as small or intermediate contracts and the process is similar to the process required for intermediate contracts. The exemption is provided because over a period of time the total dollar amount of goods purchased from a single source may exceed the dollar maximum for intermediate contracts. The exemption is justified because each individual contract will be entered into on a competitive basis.
34. This exception is in the public interest because it allows the City to reduce costs while maintaining competition. The same result could not be achieved within existing rules because a costly formal process might otherwise be required.

Investment Contracts

35. Investment of City funds is closely regulated by state statutes.
36. Protecting the City's financial resources is in the public interest and awarding investment contracts to low bidders creates a risk of the security of the City's funds. The City needs to have a relationship of trust with those
37. The exemption for investment contracts or contracts to borrow funds is not likely to restrict competition or encourage favoritism because the City will investigate a range of potential contractors to assure the security of the City's funds.
38. The exception is in the public interest because it protects the City's financial resources in a way that could not be achieved without the exception.

Insurance Contracts

39. This exception provides for a competitive process for appointing agents of record or obtaining specific insurance, although the process does not necessarily conform to the standard RFP or ITB process. The competitive nature of the process promotes competition and does not encourage favoritism. The public interest would not be served by reliance on other regulations because of the specific nature of insurance contracts.

Employee Benefit Insurance

40. The Public Contracting Code creates an exemption for employee benefits contracts and the City's regulations implement that exemption.

Office Copier Purchases

41. This exemption requires a comparison of products and prices and so is a competitive process.
42. The exception is not likely to discourage competition or encourage favoritism because it does require the City to compare and choose the best combination of

goods and price. It also results in a cost savings by being a less costly process than a formal competitive bidding or proposal process.

43. The exemption is in the public interest because it allows the City to reduce procedural costs while maintaining competition, and other regulations do not provide the same combination of cost savings and competitive process.

Single Seller of Product or Service

44. In some cases, there is only one possible supplier of the goods or services needed by the City. If there is only one supplied, a competitive process would be both unnecessary and costly.
45. This exception does not discourage competition, it simply recognizes that in some situations competition does not exist and that having a competitive process would not result in competition. It also does not encourage favoritism because no one would be disfavored by choosing the only possible source. The regulation contains sufficient safeguards to assure that it will be used only when other sources are not available.
46. The exception is in the public interest because it results in cost savings that would not be possible if the exception did not exist.

Contract Amendments

47. At times the City's needs change during the course of a contract and more goods, services, or work is needed to meet the City's needs. It would not be cost-effective to require a new contracting process for additional work closely related to an existing contract.
48. This exemption contains limitations to prevent abuse and to limit the extent of contract amendments. These limitations discourage favoritism by requiring a new competitive process for major amendments.
49. The exemption does not discourage competition because it applies only when the existing contract was awarded by a competitive process.
50. The exemption is in the public interest because it saves the cost of a competitive process to make minor amendments to an existing contract.

Affirmative Action Contracts

51. This exemption implements an exemption created by the Public Contracting Code.

Purchases of Contract by Other Public Agencies

52. Contracts by public agencies often allow other public agencies to make purchases on the same terms.
53. This exemption promotes competition and does not encourage favoritism because it may be used only if the original contract was awarded after a competitive process.
54. The exemption is in the public interest because it allows the City to take advantage of other competitive processes and avoid duplication of costly processes.
55. The exemption is in the public interest because it results in cost savings while maintaining competition. The same results could not be achieved without this exemption.

Oil or Hazardous Material Removal

56. This exemption is limited to situations in which the City must comply with a DEQ order. The exemption is needed to ensure compliance with environmental laws and protection of the environment in a timely manner and applies only if a competitive process cannot be completed in time to comply with the DEQ order.
57. The exception promotes competition by requiring the City to use an informal competitive process by obtaining informal solicitations or quotes from potential suppliers.
58. This exemption is in the public interest and the public interest in environmental cleanup would not be served if this exemption were not adopted.

Contracts With Qualified Non-Profit Agencies

59. This exemption implements an exemption required by state law.

Ammunition

60. The City uses specialized ammunition, including special training ammunition. The ammunition meeting the City's requirements is often available only for short time periods, insufficient to allow a competitive process.
61. The general requirement to attempt to find the lowest price goods or services will ensure that the City does not add to the City's costs. Providing this exemption will give the City the flexibility to purchase ammunition when available and needed. Not providing this exemption could endanger public safety.

62. The public interest is served by this exemption because it allows the City to ensure that its police officers are adequately armed and trained.

Public Improvement Contracts Involving Design or Construction Management

63. This exemption allows a competitive proposal process to be used rather than a competitive bid process for public improvements under some circumstances.
64. The exemption promotes competition and discourages favoritism by requiring a competitive process.
65. The exemption recognizes that under some circumstances, the public interest is served by considering quality as well as cost in contracting for public improvements.
66. The use of the design/build and construction manager/general contractor types of contracts should result in cost savings to the City by allowing various means of controlling costs and coordinating design and construction to reduce costs.
67. The public interest is served by this exemption. The public interest would not be served by requiring competitive bidding on all public improvement contracts because doing so would limit the City's ability to use cost-saving techniques and would prevent the City from considering differences in quality among potential contractors when quality is a legitimate issue. Under the competitive bidding process, the City is required to award the contract to the lowest bidder, even if there is only a one-cent difference in cost and a substantial difference in quality, providing that the low bidder meets minimum specifications.

Emergencies

68. In emergencies, the City is often required to take action in less time than it would take to complete a formal competitive process.
69. The exemption promotes competition and discourages favoritism by requiring the City to use an informal competitive process and by limiting the exemption to those contracts needed to avoid a substantial risk of loss, damage or interruption of services.
70. The exemption promotes the public interest by allowing the City to respond quickly to emergencies that threaten loss, damage or interruption of services. The public interest would not be served by requiring a formal competitive process to respond to an emergency.

CONCLUSION

As to each of the exemptions provided in the City's public contracting rules:

71. It is unlikely that any of the exemptions will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts. It is unlikely that the rules as a whole, including all exemptions, will encourage favoritism in the awarding of public contracting or substantially diminish competition for public contracts.
72. The awarding of public contracts pursuant to any of the exemptions will result in substantial cost savings to the City. The exemptions have been prepared to allow less expensive selection processes to be used when a more expensive process would not result in sufficient contract cost reduction to justify a more expensive process.
73. For those provisions allowing public improvement contracts to be awarded by a means other than formal competitive sealed bids, the exemptions will result in cost savings by allowing the use of cost control measures throughout the development process.
74. Each exemption supports the public interest and each exemption is needed to provide a comprehensive approach to public contracting that would not be achieved if any of the exemptions were not provided.