

Findings in Support of Ordinance No. 17-1398

ORS 279B.085 provides that a Local Contract Review Board may approve “class special procurements” subject to different contracting procedures than those otherwise required by ORS 279B.055 (Competitive Sealed Bidding), ORS 279B.060 (Competitive Sealed Proposals), ORS 279B.065 (Small Procurements) and ORS 279B.070 (Intermediate Procurements). In order to approve a class special procurement the Local Contract Review Board must find that the use of a special procurement:

- (1) Is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts; and
- (2) (a) Is reasonably expected to result in substantial cost savings to the contracting agency or to the public; or
(b) Otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055, 279B.060, 279B.065 or 279B.070.

1. **Manufacturer Direct Supplies:** Metro may purchase Goods directly from a manufacturer if the cost from the manufacturer is the same or less than the cost the manufacturer charges to its distributor(s).
 - a. In large volume purchases, Goods are sometimes available directly from a manufacturer at the same or less than the cost the manufacturer charges to its distributors. In some cases, purchasing Goods directly from a manufacturer also provides opportunity to tailor and/or customize the Goods to a purchaser’s specific needs.
 - b. Purchasing Goods directly from a manufacturer, instead of through a distributor, is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts. Furthermore, use of this special procurement reasonably expected to result in substantial cost savings to Metro because it allows Metro to avoid the cost of an unnecessary solicitation process when such Goods are for sale directly from the manufacturer at a competitive price.
2. **Advertisements:** Metro may directly purchase media advertising, including print (e.g. newspaper), broadcast (e.g. television, radio), display (e.g. billboard), internet (e.g. web based publications) and other electronic media formats.
 - a. By their nature, media sources are generally unique. Advertisements are placed in a particular source because of the specific audience that source serves. Cost savings are difficult to quantify where the sources are unique and not interchangeable. Competition to furnish advertising space in daily newspapers of general, trade, or business circulation in Metro region is limited; 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 Metro’s target audience.
 - b. Due to limited competition and unique nature of media sources, use of this special procurement is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts. Furthermore, use of this special

procurement results in substantial cost savings to Metro because it avoids an unnecessary solicitation expense and otherwise substantially promotes the public interest.

3. **Intellectual Property (Periodicals, Books, Proprietary Software Licenses, Art, and Other Products of the Creative Process):** Metro may directly purchase intellectual property (including, but not be limited to, periodicals, books, proprietary software licenses, reference materials, audio and visual media, and other products of the creative process) when the product is protected under intellectual property law (e.g. copyright, patent). If there is more than one source of the intellectual property, and the product is not being purchased directly from the creator or other original source, every attempt should be made to establish a competitive selection process to achieve the greatest economy.
 - a. Intellectual property is regulated and protected under federal law. By design, intellectual property is controlled by the original creator or owner. Intellectual property may not be duplicated by others without the express permission or license of the original creator or owner. Often intellectual property is produced by only one supplier, who may be the owner of the copyright or the licensee.
 - b. Based on the foregoing, use of this special procurement is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts. Furthermore, use of this special procurement results in substantial cost savings to Metro because it avoids an unnecessary solicitation expense and otherwise substantially promotes the public interest.
4. **Financial Products:** Metro may directly purchase financial products such as bond insurance, surety bonds for Metro bond reserves and liquidity facilities such as letters of lines of credit. Metro may pay fees associated with such transactions, including, but not limited to, registrar, paying agent, and escrow agent fees and fees associated with outstanding debt issues.
 - a. Metro invests, borrows funds, and purchases other financial products in accordance with Metro policies and state law in order to achieve Metro's fiscal management goals. Metro's primary goals are to maximize investment performance, safely guard public funds, and minimize the cost of borrowings. Metro investment and borrowing activities are also regulated by various state laws and monitored by Metro Chief Financial Officer and Metro Auditor. Financial products do not lend themselves well to traditional methods of public sector competitive procurement processes. For example, rates of return on particular maturities and allowable types of investment instruments offered by any one financial institution may change within minutes or hours.
 - b. Based on the foregoing, use of this special procurement is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts. Furthermore, use of this special procurement is reasonably expected to substantially promote the public interest by ensuring that Metro's confidence in the financial institution and product is placed as the highest priority.
5. **Employee Benefits Contracts:** Metro may purchase employee benefit insurance, and other taxable employee benefits, without a competitive Solicitation process, regardless of dollar amount.
 - a. The nature, type, and specific services to be provided and timing and employee benefit insurance are dictated by labor contracts between Metro and represented labor groups. Metro must fulfill its contractual obligations to represented employee labor groups to

provide appropriate employee benefits. Metro acquires employee benefit insurance through third-party brokers whose personal services are selected through competitive means. Metro is able to obtain more favorable terms through such brokers who, because they represent groups of employers, have more leverage to negotiate better rates on Metro's behalf.

- b. Given the nature of the services provided, and Metro's use of third-party brokers to negotiate contracts on Metro's behalf through a competitive process used in the industry, use of this special procurement is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts. Metro's practice will be to continue to use procurement methods that foster competition among sufficient number of potential providers that will provide the best overall value to Metro given the requirement specified by Metro's agreement with represented labor groups. Use of this special procurement is reasonably expected to result in substantial cost savings to Metro because Metro is able to obtain better rates and terms by joining a pool of employers represented by a shared broker.

- 6. **Insurance Contracts:** Contracts for insurance may be awarded directly to an insurer after Metro obtains Proposals from an insurance consultant. The insurance consultant will be selected in accordance with the applicable procedures set forth in the Personal Services Contracting Rules. Among the services to be provided by the consultant is the securing of competitive Proposals from insurance carriers for all coverages for which the insurance consultant is given responsibility and advice to Metro about the costs and benefits of the various Proposals. Metro may then negotiate or enter into the insurance Contract that appears most Advantageous to Metro without advertisement or issuance of its own Request for Proposals.

- a. Similar to employee benefit insurance, the insurance market is a specialized industry where brokers often obtain more favorable terms using their expertise and knowledge to negotiate rates on Metro's behalf.
- b. Due to nature of the insurance market, use of this special procurement is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts. Furthermore, use of this special procurement is reasonably expected to result in substantial cost savings to Metro because Metro is able to obtain better rates and terms by using a broker with specialized knowledge and expertise to negotiate in Metro's best interest.

- 7. **Used Personal Property or Equipment:** Metro may directly purchase used personal property and equipment. Used property and used equipment is property or equipment that has been placed in use by a previous owner or user for a period of time, and which is recognized in the relevant trade or industry, if there is one, as qualifying the personal property or equipment as "used".

- a. Used equipment and personal property becomes available sporadically and sometimes with little notice. Used equipment and property is often sold on a first come, first served basis. The sale of used personal property or equipment often occurs through an auction or other spot sales, where it is impractical to utilize competitive procurement procedures. The cost of used equipment or property is generally substantially less than the costs of new equipment/personal property. When a used item is available, there is often little competition available.
- b. Given that the sale of used property or equipment often occurs through an inconsistent, sporadic market, use of this special procurement is unlikely to encourage favoritism in the

awarding of public contracts or to substantially diminish competition for public contracts. Furthermore, use of this special procurement is reasonably expected to result in substantial cost savings to Metro because allowing Metro to access and participate in the used good market may save costs that would otherwise be incurred as a result of only acquiring new equipment/goods.

8. **Hazardous Material Removal and Oil Clean-up:** Metro may enter into a Public Contract without competitive Solicitation when ordered to clean up oil or other hazardous waste pursuant to the authority granted the Oregon Department of Environmental Quality under ORS Chapter 466, and such DEQ order necessitates the prompt establishment and performance of the Contract in order to comply with the statutes regarding spill or release of oil or hazardous materials. Metro shall not contract pursuant to this section in the absence of an order from DEQ to clean up a site with a time limitation that would not permit hiring a Contractor under the usual, required Procurement processes.
 - a. When DEQ orders a public agency to remove or clean up hazardous material or oil, the public agency must respond within a very short time, which is typically stated in the DEQ order. This time period does not generally allow the agency to take the time necessary to solicit written bids or proposals for the work to be performed. Any delay in responding to DEQ orders to perform hazardous material removal or clean up would be borne by Metro.
 - b. Use of this special procurement is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts. If Metro is under DEQ order to act immediately, the situation would likely be considered an emergency situation, exempt from otherwise requirement competitive processes. Furthermore, use of this special procurement is reasonably expected to result in substantial cost savings given that failure to immediately begin cleanup work could result in additional penalties and fines imposed upon Metro. Furthermore, responding immediately to DEQ's order would avoid additional potential risk to persons and property, thus otherwise substantially promoting the public interest.
9. **Rating Agency Contracts:** Metro may purchase the services of Moody's Investors Service, Standard and Poors, or similar rating agencies without competitive Solicitation.
 - a. The services of rating agencies are only available from a small, limited number of vendors who charge standardized fees for their services.
 - b. Given the limited market, use of this special procurement is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts. Furthermore, use of this special procurement is reasonably expected to result in substantial cost savings to Metro, avoiding the costs of competitively soliciting bids and proposals when such a process is unlikely to result in responses.
10. **Information Technology (Software and Hardware Maintenance, Licenses, Subscriptions and Upgrades):** Metro may directly enter into a Contract or renew existing Contracts for information technology (including hardware or software maintenance, licenses, subscriptions, and upgrades) where the maintenance, upgrades, subscriptions and licenses are either available from only one source or, if available from more than one source, are obtained from Metro's current provider in order to utilize the pre-existing knowledge of the provider regarding the specifics of Metro's information technology system. Metro shall document in the Procurement file the facts that justify either that maintenance, license(s), subscriptions and upgrades were available from only one source

or, if from more than one source, that obtaining such Goods and Services from the current vendor is most Advantageous to Metro.

- a. Information technology is often protected by intellectual property laws that prohibit others from duplicating or selling such products without the express permission or license of the original creator or owner. There are also times when Metro needs to purchase specific information technology that is compatible with current equipment or to utilize certain vendors who provide the best and most efficient goods and services based on the existing familiarity with Metro's information technology systems. Information technology is often proprietary and upgrades and maintenance are not available except from the original provider.
- b. Use of this special procurement is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts. Competition will be encouraged at all dollar levels of purchase of information technology. Use of this special procurement also otherwise substantially promotes the public interest by giving Metro flexibility to select the method of procurement most Advantageous to Metro on a case by case basis, while still requiring justifications be made if competition not used.

11. **Equipment Maintenance, Repair and Overhaul:** Metro may directly award a Contract for equipment maintenance, repair and/or overhaul if:

- Service and/or parts required are unknown, and the cost cannot be determined without extensive preliminary dismantling or testing;
 - Service and/or parts required are for sophisticated equipment for which specially trained personnel are required and such personnel are available from only one source; or
 - Services and/or parts must be acquired from the provider of the equipment and/or software being maintained in order to be valid, preserve warranties, provide the best possible service, or conform to other similar agreements being provided by the same provider for maximizing economy and/or servicing functions.
- a. The need for equipment repair or overhaul cannot always be anticipated by Metro staff and pre-contract pricing is often impossible. If a piece of equipment is broken or not working properly, Metro may incur cost of downtime, possible replacement equipment rental fees, staff time and other inconveniences or liabilities to its programs. Generally, there are a limited number of vendors able to perform repair or overhaul on a particular piece of equipment because of its make or manufacture. Sophisticated equipment may require specially trained personnel available from only one source.
 - b. Based on the foregoing, use of this special procurement is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts. Furthermore, use of this special procurement is reasonably expected to result in substantial cost savings in that allowing Metro to proceed quickly and commence with repair limits the direct and indirect costs that begin to incur the moment equipment breaks down or becomes unusable.

12. **Price-regulated Goods and Services, utilities and utility related services:** Metro may directly purchase, without a competitive Solicitation process, goods, 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.

- a. Competition is not generally a relevant issue in the procurement of goods or services where the provider's rate or price of the goods or services being purchased is established by federal, state, or local regulatory authority, and the goods or services are provided through a sole source. Examples include: Postage, Sewer/Water Service, Garbage Service, Electricity, etc.
 - b. Due to the limited competition available within these price regulated items, use of this special procurement is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts. Furthermore, use of this special procurement may otherwise substantially promote the public interest.
- 13. **Goods, Services or Equipment Required by a Federal or State Grant Agreement:** Metro may directly purchase, without a competitive Solicitation process, Goods, Services or equipment when they are required in the federal or state grant agreement to be purchased from a specific source or when a specific brand name is required and no competition is otherwise available.
 - a. Federal and State contracts for Goods and/or Services are established by agencies with private vendors through competitive processes, which meet the standards of the State Contracting Code. These processes include open competitive bidding, to which all interested vendors are invited to participate.
 - b. Use of this special procurement is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts given that competitive procurement processes have often already been used prior to Metro's receipt of the grant funding. Furthermore, use of this special procurement is reasonably expected to result in substantial cost savings to Metro because Metro benefits from the efficiencies that result from not having to duplicate a solicitation process followed by its federal and state partners.
- 14. **Membership Dues:** Metro may directly purchase, without a competitive Solicitation process, dues or memberships in professional or community organizations for the benefit of Metro.
 - a. Membership dues are often unique to the organization in which membership is maintained and there is usually only one organization focused on such membership. Competition is not relevant when membership in a given organization is determined by factors such as an employee's individual trade or profession (examples include membership in the Oregon Bar Association for lawyers, membership in the Society of Human Resource Management for HR professionals, among others). Furthermore, membership decisions are sometimes made to meet and further develop Metro's organizational goals, program needs, and values, which should not be decided or evaluated through a procurement filter. In many respects, membership dues are essentially "sole source" procurements in that there is often only one option if Metro wishes to belong to a particular organization.
 - b. Due to the unique nature of professional and community organizations and the limited number of professional and community organizations that operate in one market, use of this special procurement is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts. Furthermore, use of this special procurement is reasonably expected to result in substantial cost savings to Metro because given the limited/nonexistent competition, Metro will save costs by directly contracting with such organizations without having to advertise for bids and proposals. Use of this special procurement also substantially promotes the public interest in that Metro staff

may continue to maintain high professional standards established by industry organizations, many of which are accrediting bodies.

15. **Services Related to Legal Advice:** Metro may directly enter into a Contract, without a competitive Solicitation process, Services related to the provision of legal advice to Metro.
 - a. When Metro is involved in litigation, certain services related to legal advice may be necessary (e.g. court reporter or copy service). Sometimes the contractor providing the services will be selected by another party and Metro must bear a portion of the cost in order to receive the benefit of the contractor's work (e.g. deposition transcripts or photocopies). Sometimes the contractor (e.g. a mediator, arbitrator, referee or court-appointed individual) is selected either by a court, or by joint agreement between Metro and another person, in an effort to resolve a claim or dispute that has been or will be asserted by or against Metro, regardless of whether litigation has been filed. Timing and the control asserted by the other parties involved make it difficult to apply normal competitive procurement processes.
 - b. Due to limitations often imposed upon Metro during litigation, use of this special procurement is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts. Furthermore, use of this special procurement substantially promotes the public interest by allowing Metro to comply with decisions imposed upon Metro through a court process, select contractors by mutual agreement, which can save costs and can provide for good will in an otherwise adversarial process, and otherwise resolve disputes through normal litigation processes.
16. **Seminar, Training Registration and Conference Fees:** Metro 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.
 - a. Seminars, training, and conferences are often unique in their content, are proprietary by nature, and often are organized, produced and controlled by a sole provider.
 - b. Due to limited competition and unique nature of seminars, trainings, and conferences, use of this special procurement is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts. Furthermore, use of this special procurement is reasonably expected to result in substantial cost savings to Metro because given the limited/nonexistent competition, Metro will save costs by directly contracting with provider organizations without having to advertise for bids and proposals.
17. **Event Sponsorship Agreements:** Metro may directly pay to sponsor an event, whether or not Metro receives Goods or Services in return for its payment.
 - a. Metro occasionally elects to support events of various organizations when it aligns with Metro's mission, and/or advance work program goals. Such events and/or activities typically engage a diverse cross-section of the public, and inspire inclusive and innovative solutions to the challenges of making Metro region a great place. Sponsorships are unique and are only available from the organization or the organizer of the event. Metro may receive publicity as an acknowledged sponsor of an event and may receive certain tangible benefits as a result of its sponsorship. Metro reviews and approves sponsorship requests in accordance with an agency-wide policy adopted by the Chief Operating Officer. This process requires applicants to explain how the event helps Metro connect with a specific

audience, educates stakeholders on a key issue of importance to Metro or provides the public with an opportunity to learn about and engage with Metro.

- b. Based on the foregoing, use of this special procurement is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts. Furthermore, use of this special procurement is reasonably expected to otherwise substantially promote the public interest by allowing Metro to build partnerships and synergies with entities that directly or indirectly advance Metro's mission, work and goals.

18. **Sponsorship Agreements:** Sponsorship Agreements, under which Metro receives a gift or donation in exchange for recognition of the donor, may be awarded in any manner which Metro deems appropriate to meet its needs, including by direct award.

- a. Sponsorships often result from the match between a unique attribute of Metro and equally unique characteristics of the sponsor, for which no competitive market exists. Sponsorship agreements allow Metro to create revenue opportunities that would otherwise be unknown or unavailable.
- b. Due to their unique nature, use of this special procurement is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts. Furthermore, use of this special procurement is reasonably expected to result in substantial cost savings and otherwise substantially promotes the public interest by allowing Metro to cultivate revenue opportunities that would not otherwise be procured through competitive solicitation methods.

19. **Contractor Provided Funding:** Metro may directly award contracts for Goods or Services to a Contractor who provides substantial materials or a substantial portion of the funding for a project.

- a. Individuals and community groups from time to time offer to donate all or a portion of their skilled services or materials to help Metro meet its facility needs or otherwise support Metro programs. The ability to take advantage of such donated services enables Metro to use its funds in other areas and frequently results in improvements or services that Metro would not otherwise be able to afford.
- b. Given the limited use of this special procurement category, use of this special procurement is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts. Due to the budgetary, operational and public benefits related to accepting charitable donations set forth above, use of this special procurement is reasonably expected to result in substantial cost savings to Metro and will otherwise substantially promote the public interest.

20. **Maintenance and Training Services from the Contractor Supplying Goods:** Metro may directly purchase, without a competitive Solicitation process, maintenance or training services directly from a Contractor from whom Metro has previously acquired Goods and the services or training is directly related to such Goods.

- a. A Contractor that has supplied Goods is often the expert in such Goods, with in-depth knowledge of how they operate and their benefits and limitations. Especially when such Goods have been tailored or customized for a user's particular use, the supplying Contractor is sometimes the only vendor to efficiently provide maintenance or training services. On occasion, using a Contractor from whom Metro acquired Goods is necessary to preserve warranties.

- b. Use of this special procurement is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts. Furthermore, use of this special procurement is reasonably expected to result in substantial cost savings to Metro and otherwise substantially promotes the public interest.
- 21. **Nonprofit Partnerships:** Metro may directly award Contracts for Goods and Services when the Contractor is a not-for-profit organization and where both parties share in the decision-making process work together to define a scope of work, contribute resources, share responsibilities, and accept risk and benefits according to a mutually agreed upon arrangement.
 - a. This special procurement category is designed to facilitate Metro's work with nonprofit organizations, particularly in the areas of equity and community outreach. In identifying partner-nonprofit organizations, a typical competitive procurement process is not effective, in part because the contract scope of work is often crafted collaboratively by Metro and the participating nonprofit.
 - b. For the reasons stated above, use of this special procurement is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts. Use of this special procurement is reasonably expected to result in substantial cost savings to Metro and otherwise substantially promote the public interest.
- 22. **Zoos and Animal Conservation Organizations:** Metro may directly award Contracts for Goods and Services when the contractor is (a) a not-for-profit entity and (b) a zoo or other organization dedicated to the study, conservation, or care of zoo animals.
 - a. This special procurement category is designed to support and facilitate Metro's local, national and international cooperative relationships with nonprofit organizations dedicated to the study, conservation and care of zoo animals. There is also not a competitive market for the Goods or Services offered by these organizations dedicated to the study, conservation and care of zoo animals, and when such organizations offer Goods or Services a typical competitive procurement process is not effective.
 - b. Due to unique nature of the Goods or Services provided by nonprofit organizations working in this area and the lack of a competitive market, use of this special procurement is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts. Use of this special procurement is reasonably expected to result in substantial cost savings to Metro and may otherwise substantially promote the public interest by promoting and enhancing cooperation, synergy and a free exchange of information, techniques and protocols among zoos and conservation organizations.
- 23. **Concession Services Agreements:**
 - Small Concessions. Small Concessions are Concession Services Agreements to sell or promote food, beverages, merchandise or Services, including but not limited to performances and entertainment, to the public for which the concessionaire's projected annual gross revenues are estimated to be \$500,000 or less. Small Concessions shall be awarded based on any method determined by Metro to provide an opportunity to all persons desiring to operate a concession, including without limitation, by direct award, private negotiation, or using a competitive process.

- **Major Concessions.** Major Concessions are Concessions Services Agreements to sell or promote food, beverages, merchandise or Services, including but not limited to performances and entertainment, to the public for which the concessionaire's projected annual gross revenues under the Contract are estimated to exceed \$500,000 annually. Major Concessions shall be awarded using a Request for Proposals under these Rules.
 - a. This special procurement allows Metro to take advantage of unique revenue opportunities. Concession agreements are opportunities for which the number of competitors may range from zero to many. As a revenue generating contract, Concession Services Agreements are technically not within the ORS 279A definition of a "public contract" thus the competitive procurement requirements likely are not applicable. Because most concessions are offered at Metro venues, much like "items for resale", Metro must equally consider venue customer trends, wants, tastes and desires in addition to price. Given the fluctuating nature of these considerations, this special procurement category imposes a more traditional solicitation method on larger sized Concession Services Contracts.
 - b. Due to the unique nature of concessions and the changing consumer market they are designed to serve, use of this special procurement is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts. Furthermore, use of this special procurement substantially promotes the public interest by allowing Metro to take advantage of unique revenue opportunities while at the same time meeting the needs of its customers and visitors and promoting the financial well-being of its venues.
24. **Animals and Animal Transportation:** Contracts for the acquisition or transport of animals may be awarded in any manner which Metro deems appropriate to meet Metro's needs, including by direct award.
- a. Each animal and transport system is unique and when making an animal acquisition or selecting a transportation provider, price is not the most important factor. Especially when considering the threatened or endangered nature of many zoo animals, traditional competitive processes will not meet Metro's needs. Furthermore, Metro does not want to adopt procurement methods that essentially encourage the development of a competitive market for threatened and endangered species. The market for zoo animals and zoo animal transport is essentially nonexistent and animal care and well-being are the primary factors when making contracting decisions. Often, the animal acquisition agreement will require Metro to use a transportation agent selected by the transferring institution.
 - b. Due to lack of market and uniqueness of each individual animal, use of this special procurement is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts. Furthermore, use of this special procurement is reasonably expected to substantially promote the public interest because it prioritizes the health and well-being of the animal over all other factors.
25. **Perishables (e.g. Medication, Food, Plants, Chemicals and Laboratory Supplies):** Metro may directly purchase, without a competitive Solicitation process, perishables, including (without limitation) animal medication, animal food, human food, plants, chemicals and laboratory supplies upon the department's determination that the quality of the desired perishable item is of greater importance than the cost. However, if longevity is not an issue and multiple sources exist of equivalent quality, standard Procurement practices shall be utilized to the extent possible.

- a. Purchases for perishable items are often made on an immediate, as-needed basis. To require a competitive process for such purchases would increase costs and could delay the purchase when time is typically of the essence. The quality of such perishable items, as well as the timeliness of delivery, can vary greatly from vendor to vendor independent of cost. Perishables also have definitive shelf lives, which make it difficult to compare associated attributes such as quality and longevity. Often, perishables are made with proprietary formulas which uniquely meet Metro's needs. This special procurement will enable Metro to decide on a source based upon time since manufactured, remaining shelf life, and interim quality, since various states of decay can affect the product being acquired.
 - b. For the reasons stated above, use of this special procurement is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts. Use of this special procurement is reasonably expected to result in substantial cost savings to Metro and otherwise substantially promotes the public interest.
- 26. **Items for Resale:** Metro may directly purchase, without a competitive Solicitation process, Goods and Services being purchased for resale (including, without limitation, Zoo gift shop retail inventory and food for resale). This Special Procurement category applies to Goods and Services that are specifically for resale as opposed to internal use or consumption.
 - a. Metro venues, including but not limited to the Oregon Zoo, compete in the open market for guests and need to be able to purchase products or services for resale without undue restrictions. In order to compete in the open market, these venue operations must be knowledgeable, proactive, and stay abreast of current trends, consumer wants, tastes and desires, and be able to meet those needs in their offerings. The venues must be free to purchase particular products for resale that are uniquely attractive to consumers and stimulate sales, even if it means having a limiting factor such as brand, functionality, price, or quality. These operations must work as efficiently as possible to hold down their own costs as well as to present the goods or services to the public at a price that reflects the quality, attractiveness, and revenue-generating ability of the goods and services.
 - b. For the reasons stated above, use of this special procurement is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts. Furthermore, use of this special procurement is reasonably expected to result in substantial cost savings to Metro and otherwise substantially promote the public interest by recognizing that the attractiveness and desirability of the venue offerings has a direct impact of venue revenues.