



TOWN OF  
**LOS GATOS**  
CALIFORNIA

## COUNCIL POLICY MANUAL

*Small Town Service*

*Community Stewardship*

*Future Focus*

**TITLE: Purchasing Policy**

**POLICY NUMBER:**

**EFFECTIVE DATE: August 4, 2008**

**PAGES:**

**ENABLING ACTIONS:**

**REVISED DATES:**

**APPROVED:**

### I. PURPOSE

The purpose of this Purchasing Policy is to define the policies and processes for the procurement of goods and services for the Town of Los Gatos in conformance with Federal and State codes and regulations and Town Code Sections 2.50.105 through 2.50.145. This policy establishes procurement authorization levels and provides uniform guidelines for procurement activities to ensure proper and efficient procurement activity.

### II. SCOPE

The provisions of this policy shall apply to elected and appointed officials, Town employees, volunteers, and vendors seeking to do business with the Town. It identifies those with the authority and responsibility to procure on behalf of the Town, and addresses policies on matters including, but not limited to, the purchase of goods and services, public works projects, emergency purchases, Town contracts for services, and the disposition of surplus property.

### III. CODE OF CONDUCT

All Town employees are responsible for impartially assuring fair and competitive access to Town procurement opportunities by responsible vendors. In addition, all employees shall conduct themselves in a manner that avoids any impropriety and that fosters the highest level of public confidence in the integrity of the Town's purchasing system.

1. **Conflict of Interest:** No employee shall participate in a procurement when the employee knows that their spouse, domestic partner, child, stepchild, parent, stepparent or other close family member or friend will either benefit from the procurement and/or has an employment arrangement contingent on or will be affected by the procurement.
2. **No Gifts or Gratuities:** No Town employee shall solicit, demand, accept or agree to accept a gift of goods or services, payment, loan, advance, deposit of money, or

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employment offer presented, promised in return for, or in anticipation of favorable consideration in a Town procurement.

3. **Conduct with Vendors:** Conduct with vendors who provide goods or services to the Town shall be fair, open, and transparent. Town employees shall refrain from showing favoritism to vendors or being unduly influenced, safeguard confidentiality when required to do so, and select vendors on the basis of meeting appropriate and fair criteria.
4. **Accountability.** Town employees shall abide by and be accountable for the codes of conduct established in this policy. Policy violations may result in disciplinary action and/or termination of employment.

#### **IV. EXCLUSIONS/EXCEPTIONS**

The provisions of this policy shall not apply to any of the following, with the exception of the requirements for a contract, as determined by the Town Attorney:

1. Employee benefits
2. Bond and trust account payments
3. Employee reimbursements
4. Escrow payments
5. Fuel (gasoline/diesel)
6. Insurance
7. Membership/dues
8. Media advertisements
9. Offsite training expenses
10. Pass-through payments
11. Postage
12. Refunds
13. Travel expenses
14. Utility payments
15. Contracts governed by any State or Federal law which prescribes a different procedure
16. Goods or services accepted in compliance with the terms and conditions of a grant, gift, or bequest to the Town

#### **V. DEFINITIONS**

For purposes of this policy, the following words and phrases shall be interpreted as follows:

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**Awarding Authority** – The governing body or staff person authorized to approve the purchase of goods and services on behalf of the Town based on level of review and/or predetermined monetary amounts established by this policy.

**Bid** – Formal written offer, in response to a solicitation, to furnish goods including supplies, equipment, and vehicles, and/or services in conformity with the specifications, delivery terms, and conditions required at a guaranteed maximum cost.

**Change Order** – A document signed and approved by an authorized Town employee and the Finance Department that modifies the terms of the original approved purchase order and/or agreement in scope, cost, schedule, account coding, and/or other similar factor.

**Contract or Agreement** – A written legal document between two or more parties, which documents agreed upon particulars, including some or all of the following: scope of work; deliverables; milestones or measures; time and insurance requirements; use of equipment or property; fees or payments.

**Cost** – As applied to a single transaction for the purchase of goods or services, means the total amount to be expended by the Town, inclusive of sales or use tax. Cost includes amounts expended for delivery, set-up, testing, and included maintenance services.

**Department Directors** – Means and includes the Assistant Town Manager, Community Development Director, Human Resources Director, Finance Director, Library Director, Police Chief, Information Technology Manager, Town Clerk, and Parks and Public Works Director. In the case of vacancy or absence, to mean the interim or acting Director.

**Department Purchasing Representative** – A Town employee designated by their Department Director as having the authority to solicit bids or proposals and place orders with vendors on behalf of their Department, subject to the limitations established in this Policy, Town Code Sections 2.50.105 through 2.50.145, and the approval of the appropriate awarding authority.

**Disposable Kitchen and Office Supplies** – Include, but are not limited to: coffee cups, plates, pens, binders, trash, and recycle liners.

**Emergency** – An emergency is a sudden, unexpected occurrence that poses a clear and imminent danger and requires immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services, as declared by the Director of Emergency Services/Town Manager.

**Employee** – An individual who performs services for the Town as an elected or appointed official or as a compensated employee of the Town or of a temporary services agency retained by the Town.

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**Goods** – Includes supplies, materials, and equipment to be furnished or used by any Town Department, including items purchased by the Town and furnished to contractors for use in public works projects.

**Independent Contractor** – An individual or business with whom the Town contracts to provide services. An independent contractor differs from an employee in that the Town specifies the deliverable that is to result from the contracted work but does not have the right to direct or control the manner in which the work is performed.

**Insurance** – All vendors engaged in services on Town property, or whenever there may be an inherent risk of personal injury in the activity involved, regardless of the cost of the service, are required to maintain public liability insurance, property damage insurance, and workers compensation insurance, in accordance with State law, for each occurrence naming the Town of Los Gatos as additional insured. A Certificate of Insurance must be filed with the Town prior to engaging in any operation of activity set forth in the purchase order. If a vendor is providing a good such as equipment, insurance may be required if the purchase entails set-up, testing, and/or maintenance as part of the purchase or lease. Refer to the insurance requirements in effect at the time of procurement. Insurance requirements are maintained by the Town Clerk Department and Town Attorney. Exceptions to the standard insurance requirements must be authorized by the Town Attorney. The purchasing Department should request insurance from the vendor and ensure current insurance documents are on file with the Town.

**Maintenance Work** – As defined in Section 22002 of the Public Contract Code, and means duties that include any or all of the following: (a) routine, recurring and usual work for the preservation or protection of any publicly owned or operated facility, (b) minor repainting, (c) resurfacing of streets and highways at less than one inch, (d) landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems, or (e) work performed to keep, operate, and maintain publicly owned water, power, or waste disposal systems.

**Paper Products** – Include, but are not limited to: paper janitorial supplies, cartons, wrapping, packaging, file folders, hanging folders, corrugated boxes, tissue, and toweling, or as otherwise defined in 14 CCR Section 18982(a)(51).

**Printing and Writing Papers** – Include, but are not limited to: copy, xerographic, watermark, cotton fiber, offset, forms, computer printout paper, white wove envelopes, manila envelopes, book paper, note pads, writing tablets, newsprint, and other uncoated writing papers, posters, index cards, calendars, brochures, reports, magazines, and publications, or as otherwise defined in 14 CCR Section 18982(a)(54).

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**Professional Services** – Services which require the exercise of professional discretion and independent judgment, based on an advanced or specialized knowledge, expertise or training gained by formal studies or experience. Examples of professional service providers include appraisers, architects, attorneys, engineers, instructors, land surveyors, physicians, information technology services, graphic designers, construction inspectors, etc.

**Public Works Project** – As defined in Section 22002 of the Public Contract Code, and means any of the following, but does not include “maintenance work”:

1. Constructions, reconstruction, erection alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility; or
2. Painting or repainting of any publicly owned, leased, or operated facility.

**Purchase Order** – An approved purchase order represents a written agreement for the purchase of supplies or services, documenting specifications and costs. Purchase orders encumber funds in the accounting systems to ensure the availability of funds under the agreement. Purchase orders are required for purchases over \$3,000.

**Purchase Requisition** – A purchase requisition form is prepared by staff, electronically through the Town’s financial software system. A purchase requisition includes vendor information, business license and insurance information, and purchase specifications. After Departmental approval, the purchase requisition is submitted to the Finance Department for approval and conversion into a purchase order.

**Quote** – A written promise from a vendor or provider guaranteeing the cost of specific goods, including supplies, materials, equipment, or services.

**Recovered Organic Waste Products** – Products made in California, landfill-diverted recovered Organic Waste processed in a permitted or otherwise authorized facility, or as otherwise defined in 14 CCR Section 18982(a)(60).

**Recycled-Content Paper** – Paper products and printing and writing paper that consists of at least 30 percent, by fiber weight, postconsumer fiber, or as otherwise defined in 14 CCR Section 18982(a)(61).

**Senate Bill 1383 (SB 1383)** – Senate Bill approved by the Governor on September 19, 2016, which added Sections 39730.5, 39730.6, 39730.7, and 39730.8 to the Health and Safety Code, and added Chapter 13.1 (commencing with Section 42652) to Part 3 of Division 30 of the Public Resources Code, establishing methane admissions reduction targets in a Statewide effort to reduce emissions of short-lived climate pollutants as amended, supplemented, superseded, and replaced from time to time.

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**Senate Bill 1383 Regulations (SB 1383 Regulations)** – The Short-Lived Climate Pollutants: Organic Waste Reduction regulations developed by CalRecycle that created 14 CCR, Division 7, Chapter 12 and amended portions of the regulations of 14 CCR and 27 CCR.

**Services (*General*)** – Work performed or labor, time and effort expended by an independent contractor, including professional services and excluding contracts for public works projects. Examples include custodial services and building and equipment maintenance.

**Surplus Property** – Any Town property that is no longer needed or useable by the holding Department.

## **VI. DECENTRALIZED PURCHASING SYSTEM**

The Town has adopted a decentralized purchasing system pursuant to Town Code Section 2.50.110. This means that for most purchases, requesting Departments can directly implement the appropriate procurement process, subject to the limitations established in this policy and subject to the approval of the appropriate awarding authority. The Finance Department and Town Manager oversee this process. Nothing precludes staff from seeking procurement assistance from the Finance Department or Town Manager, especially to clarify policies, processes, and procedures.

## **VII. BUSINESS LICENSES**

Pursuant to Town Code Chapter 14, a Town business license is required for vendors located within Town limits, or if an agent of the business comes into Town to conduct business. The Department initiating the purchase or contract for services is responsible for ensuring that the vendor has a business license. Common carriers only delivering goods and other government entities less than two times per quarter are not subject to the business license certification requirement.

## **VIII. TYPES OF PURCHASES**

For the purpose of this policy, purchases fall into one of the following categories: general purchase of goods and/or services, public works projects, and emergency purchases.

As a general rule, purchases shall be based on a competitive procurement process. The rigor of the procurement process increases with the dollar value of the purchase. Although formal bidding can result in lower purchase prices, there are costs associated with the process in terms of time and effort and smaller value procurements may not attract vendor interest in a rigorous process. For that reason, the smaller the purchase, the lesser the requirements in procurement process and vice versa.

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## **IX. PURCHASE OF GOODS AND/OR SERVICES**

Under no circumstance can any purchase be split or separated into smaller components to determine the appropriate awarding authority or for any other purpose.

1. Goods and services costing up to and including **\$3,000** (including tax, shipping, and handling):
  - a. May be approved at the staff level by a Department Purchasing Representative as designated by Department Directors.
  - b. No Purchase Order is required prior to the purchase being made or work commencing.
  - c. For a service purchase, contract, insurance, and business license are required. See Section XIV of this policy for more information.
  - d. A Town-issued purchasing credit card may be used to pay, subject to purchasing limits and the rules set forth in the Town Procurement Card Procedure.
  
2. Good and services costing over **\$3,000** and up to and including **\$50,000** (including tax, shipping, and handling):
  - a. Department Director must approve purchase.
  - b. A purchase order is required prior to purchase being made or work commencing.
  - c. At least three quotes must be solicited from different vendors and supporting documentation must be submitted with the purchase requisition.
  - d. For purchase of goods that are standardized or of uniform quality, the award will be given to the vendor with the lowest quote. For purchase of services or goods that are not standardized or not of uniform quality or other factors in addition to cost must be taken into account, and the purchase is not awarded to the vendor with the lowest quote, an explanation of why and any documentation to support the decision must be submitted with the purchase requisition.
  - e. For a service purchase, contract, insurance, and business license are required. See Section XIV of this policy for more information.
  - f. For information regarding sole source or single source vendors, see Section XV of this policy.
  
3. Goods and services costing over **\$50,000** and up to and including **\$100,000** (including tax, shipping, and handling):
  - a. Town Manager, or Finance Department designee, must approve purchase.
  - b. A purchase order is required prior to purchase being made or work commencing.
  - c. For purchase of goods that are standardized or of uniform quality, a Formal Bid Procedure as outlined in Town Code Section 2.50.140 shall be followed. For purchase of services or goods that are not standardized or not of uniform quality or other factors in addition to cost must be taken into account, a Request for Proposal Process as outlined in Town Code Section 2.50.141 shall be followed (see Section XIII of this policy for more information). This excludes public works

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- projects - for bidding methods related to public works projects, see Section X of this policy.
  - d. Vendor evaluation and selection criteria must be clearly outlined and presented with the purchase requisition when applicable.
  - e. For a service purchase, contract, insurance, and business license are required. See Section XIV of this policy for more information.
  - f. For information regarding sole source or single source vendors, see Section XV of this policy.
4. Goods and services costing over **\$100,000**:
- a. Town Council must approve purchase.
  - b. A purchase order is required prior to the purchase being made or work commencing.
  - c. For purchase of goods that are standardized or of uniform quality, a Formal Bid Procedure as outlined in Town Code Section 2.50.140 shall be followed. For purchase of services or goods that are not standardized or not of uniform quality or other factors in addition to cost must be taken into account, a Request for Proposal Process as outlined in Town Code Section 2.50.141 shall be followed (see Section XIII of this policy for more information). This excludes public works projects - for bidding methods related to public works projects, see Section X of this policy.
  - d. Vendor evaluation and selection criteria must be clearly outlined and presented to the Town Council when applicable.
  - e. For a service purchase, contract, insurance, and business license are required. See Section XIV of this policy for more information.

## **X. PUBLIC WORKS PROJECTS**

For public works projects as defined in this policy and the Public Contract Code:

1. The Town has adopted the **California Uniform Public Construction Cost Accounting Act** (the Act), per Town Code Section 2.50.131. These procedures are intended to provide uniformity of cost accounting standards for construction work performed or contracted by public entities in the State and a method for the bidding of public works projects. This section is designed to provide a synopsis of the general provisions of the Act and adopt local administrative procedures to comply with the intent of the Act. The Act should be consulted for detailed information (see the California State Controller's website at: [https://sco.ca.gov/ard\\_cuccac.html](https://sco.ca.gov/ard_cuccac.html) and the Manual, currently at: [www.sco.ca.gov/Files-ARD-Local/CUCCAC\\_Manual.pdf](http://www.sco.ca.gov/Files-ARD-Local/CUCCAC_Manual.pdf)). Every five years, the Act Commission reviews the informal bid limits for inflation and other factors to determine whether adjustments should be made. If an adjustment is made, the State Controller notifies the affected public agencies.

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2. Generally, the Act permits the Town to solicit bids and award contracts for public works projects as follows:
  - a. Public project work in the amount defined in the Act (currently \$60,000) or less may be performed by force account using the Town's own staff resources, or by negotiated contract, or by purchase order (Section 22032(a)) with no bid requirement.
  - b. Public projects in the amount defined in the Act (currently \$200,000) or less may use the informal bidding procedures set forth in Section 22032(b) of the Act.
  - c. Public projects at a cost defined in the Act (currently more than \$200,000) must use formal bidding procedures to let the contract pursuant to Public Contract Code Section 22032(c).
  - d. Contractors List: At least once per calendar year, the Town must establish a new list or update its existing list of qualified contractors by mailing, faxing, or emailing written notice to all construction trade journals designated for that Agency under Public Contract Code Section 22036. The notice must invite all licensed contractors to submit the name of their firms to the Town for inclusion on the Town's list of qualified bidders for the following 12 months. The Town can choose a specific date in which to renew the list of qualified contractors and may add a contractor to the list at any time during the year pursuant to the Act.
  - e. Maintenance work, as defined in this policy and the Public Contract Code, is separate and distinct from public works projects and does not fall under the Act.
  - f. All requirements of the Act, as amended from time to time, shall apply to this Policy.
  
3. Procedures
  - a. Development of Plans and Specifications
    - i. The Department will prepare plans and specifications that will permit the widest opportunity to prospective bidders to respond to the request for bids based on the specifications. Prior to the plans and specifications, the insurance requirements and legal aspects for the project must be reviewed and approved by the Town Attorney.
    - ii. Bid bonds, performance bonds, and payment bonds may be required in amounts stated in the specifications.
  - b. Solicitation of Bids and Proposals
    - i. **Informal Bids:** A notice inviting informal bids shall be prepared, describing the project in general terms, how to obtain more detailed information about the project, and state the time and place for the submission of bids. The notice shall be mailed, not less than 10 calendar days before bids are due, either to all Contractors on the Contractors List for the category of work to be bid, or to all construction trade journals as specified by the Act Commission in accordance with Section 22036 of the

Public Contract Code. Additional contractors and/or construction trade journals may be notified at the discretion of the Department soliciting bids, provided, however:

1. If there is no Contractors List maintained by the Town for the particular category or work to be performed, the notice shall be sent only to the construction trade journals specified by the California Uniform Construction Cost Accounting Commission.
  2. If the product or service is proprietary in nature such that it can only be obtained from a certain contractor or contractors, the notice may be sent exclusively to such contractor or contractors.
- ii. **Formal Bids:** Notices describing the project, stating where to obtain more information, the time and place for submitting sealed bids, and their opening shall be pursuant to Section 22037:
  1. Published at least 14 calendar days before the date of opening the bids in a newspaper of general circulation in the Town's jurisdiction;
  2. Sent electronically, if available, by either facsimile or e-mail to all construction trade journals specified in Section 22036 at least 15 days before the date of opening of bids;
  3. Other notice, if necessary or desired by the Town.
- iii. **Rejections of Bids:** In its discretion, the Town may reject any bids presented after re-evaluating its cost estimates of the project and furnishing written notice to an apparent low bidder. The Town shall have the option of either of the following:
  1. Abandoning the project;
  2. Re-advertising for bids in the manner described above; or
  3. The Council may override the requirement for bidding if it determines that the public project will be performed more economically by the Town without a contract, or that materials and supplies can be purchased at a lower price in the open market, or if no bids are received through the formal or informal procedure, the project may be performed by Town employees.
- iv. **Award of Contract**
  1. Contracts valued over \$100,000 shall be awarded by Town Council.
  2. Contracts valued up to and including \$100,000 may be awarded by the Town Manager or designee.
  3. If all bids received through an informal bidding process are in excess of the amount defined in the Act (currently \$200,000) as requiring a formal bid process, the Town Council may, by adoption of a resolution by a four-fifths vote, award the contract at the amount defined in the Act (currently \$212,500) or less, to the lowest responsible bidder, if it determines the cost estimate

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of the Town was reasonable pursuant to Section 22034. If the Council does not award the contract, but wants to proceed with the project, the specifications must be reviewed and formal bids solicited.

**v. Monitoring and Administration**

1. Public works projects must be bid in accordance with the California Uniform Public Construction Cost Accounting Act.
  - a. Public works projects must be awarded to the lowest responsible bidder.
  - b. Contracts over \$3,000 require a purchase order prior to purchase being made or work commencing unless otherwise authorized as an emergency purchase.
2. Anyone working on a public works project must be paid prevailing wages as determined by the California Department of Industrial Relations.
3. Contractors completing public works projects must be properly licensed by the State of California, provide a Tax Identification Number, and carry the required liability and workers' compensation insurance.

## **XI. EMERGENCY PURCHASES**

In a declared emergency, essential goods and services may need to be obtained outside the processes and authorities established in this Policy. A separate Emergency Procurement Policy identifies when the Town is able to acquire the goods and services required to address an immediate threat to life-safety, public health, and property. The Policy allows for the necessary flexibility during the immediate response phase of a disaster while still maintaining an effective purchasing process and complying with applicable local and state purchasing laws. Where the Town is included in a major disaster or emergency declared by the President of the United States, this Policy also assures that Town procurements comply with Federal regulations applicable to Federal disaster grant reimbursement as defined in Title 2 of the Code of Federal Regulations, Part 200 (2 CFR Part 200).

In a non-declared emergency, when purchases are immediately necessary for the preservation of life, property, public health, or continued operation of a Department, the Town Manager must approve the purchase. Once the Finance Department receives Town Manager approval, a purchase order will be issued. All requirements, including obtaining an executed agreement, business license, and insurance should be completed after the fact by the Department. Failure to complete necessary procedures before the good/service were needed does not constitute an emergency.

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## **XII. PREFERENCE FOR LOCAL AND MINORITY, DISABLED, AND WOMAN-OWNED BUSINESSES**

It is the intent of the Town to ensure full and equitable opportunities for minority business enterprises, women business enterprises, disabled business enterprises, and local businesses.

For the purchase of goods or services, when two or more proposals, bids, or quotes are the same, in unit, quality, service, and total cost, preference shall be given to local businesses who operate within the Town of Los Gatos limits, minority business enterprises, women business enterprises, and disabled business enterprises.

1. Preference shall be given if the quote for service or taxable good is:
  - a. Up to and including \$10,000 and is within 5% of the lowest quote
  - b. More than \$10,000 and up to \$500,000 and is within 3% of the lowest quote
  - c. More than \$500,000 and up to \$1,000,000 and within 2% of the lowest quote
  - d. More than \$1,000,000 and within 1% of the lowest quote
2. A local business shall be defined as a vendor or contractor who has a fixed place of business in Town limits and the point of sale occurs within Town limits, is current in the payment of their business license fee, is in compliance with Town laws, and does not owe any money to the Town.
3. The Town will take all necessary affirmative steps to assure that minority businesses, women business enterprises, disabled business enterprises, and labor surplus area firms are used when possible, including those identified in 2 CFR Section 200.321:
  - a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
  - b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
  - c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
  - d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
  - e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
  - f. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in this section.

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4. The preference does not prohibit the Town from basing purchasing decisions on the quality of goods/services.

### **XIII. FORMAL BIDDING PROCEDURES AND REQUEST FOR PROPOSAL (INCLUDING REQUEST FOR INFORMATION, REQUEST FOR STATEMENT OF QUALIFICATIONS, ETC.) PROCESS**

1. **Formal Bidding Procedures.** All purchases for goods of a standardized or uniform quality in excess of \$50,000, except public works projects, are subject to a Formal Bid Procedure as outlined in Town Code Section 2.50.140. When competitive bids are required:
  - a. Notice inviting bids shall be published at least 14 days before the opening of bids. Notice shall be published at least twice in a newspaper of general circulation in Town, posted on the Town bulletin boards and website, and solicited from all vendors on any relevant bidders' list. The notice should include the details of where to submit bids (Clerk Department) and the date, time, and location of the bid opening.
  - b. When deemed necessary by the purchasing Department, bidder's security may be prescribed. Bidders shall be entitled to return of bid security provided that a successful bidder shall forfeit bid security upon refusal or failure to execute the contract within 10 days after the notice of award of contract has been mailed, unless the Town is responsible for the delay. The awarding authority may, on refusal or failure of the successful bidder to execute the contract, award it to the next lowest bidder, the amount of the lowest bidder's security being applied by the Town to the difference between the low bid and the second lowest bid, and the surplus, if any, shall be returned to the lowest bidder.
  - c. Sealed bids shall be submitted to the Town Clerk and shall be identified as bids on the envelope. Bids shall be opened in public at the time and place stated in the public notices. A tabulation of all bids received shall be available for public inspection during regular business hours for at least 30 calendar days.
  - d. Contract shall be awarded by appropriate written notice to the lowest cost, responsible, and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids.
  - e. If two or more bids received are for the same total amount or unit price, quality and service being equal, and if the public interest will not permit the delay of re-advertising the bids, the awarding authority may accept the one it chooses or accept the lowest bid made by negotiation with the bidders at the time of the bid opening.
  - f. An invitation for bids may be cancelled, or any bids may be rejected in whole or in part at Town discretion with or without showing of good cause.
  - g. The awarding authority shall have authority to require a performance bond before entering into a contract in such amount as it shall find reasonably

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necessary to protect the best interests of the Town. If a performance bond is required, the form and amount of the bond shall be described in the notice inviting bids.

- h. Any participating bidder may file an appeal/protest of a contract award or proposed contract award. The protest or appeal must be made in writing within 10 days of award notification and contain at least the following information:
  - ii. The name, address, email, and phone number of the protester.
  - iii. The signature of the protester.
  - iv. The bid number and date of bid closing.
  - v. A statement of the legal grounds on which the appeal is based, including all information relevant to the bid.
- i. The awarding authority may advise against a formal bidding process due to a significant business purpose or disruption of services.

## **2. Requests for Proposals Process.**

- a. Purchases for services and goods not standardized or not of uniform quality or requiring other factors in addition to cost to be taken into account, in excess of \$50,000, except public works projects, are subject to a Request for Proposal Process as outlined in Town Code Section 2.50.141. When a Request for Proposal process is used:
  - i. The following information should be included in the Request when relevant: submittal deadline, contact information, introduction, background, scope of work, payment details, information to be submitted, timeline, evaluation criteria, insurance requirements, disqualifications, contract terms and conditions, and the public nature of materials submitted.
  - ii. Any dollar amount may be used.
  - iii. Proposals shall be submitted to the designated Town personnel electronically or in a sealed envelope prior to the deadline.
  - iv. The purchasing Department shall solicit, whenever possible, at least three competitive proposals.
  - v. The Town may utilize various other accepted requests for procurement in place of a Request for Proposal, including a Request for Information, Request for Statement of Qualifications, or others as deemed appropriate.
  - vi. The Request shall be posted online at least 10 days in advance, unless a shorter timeframe is warranted.
  - vii. Any interested vendors shall be treated fairly and given identical information and an equal opportunity to compete.
  - viii. Once responses are received, the proposals will be confidentially evaluated and scored in accordance with the established criteria.

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Interviews, presentations, site visits, etc. may be conducted depending on the nature of the procurement.

- ix. When a top-rated proposer is identified, good faith negotiations will commence. If an agreement cannot be reached in consideration of cost and/or scope, the next highest-rated proposer will be engaged and so on, until a mutually acceptable agreement is reached.

#### **XIV. CONTRACTS**

Contracts are required for the purchase of services.

1. A contract may be entered into for any period of time deemed to be in the best interest of the Town, provided that the term of the contract and renewal provisions are included in the original solicitation process. Contracts committing the Town over five fiscal years are not recommended and should be reviewed and approved by the awarding authority on a case-by-case basis.
2. Contracts in excess of one year shall include a provision automatically terminating the contract in the event that the Town Council does not budget funds to pay the contract in future years.
3. Insurance, as defined in this policy, is required for any vendor in connection with a contract that involves service performed on Town property.
4. If a vendor is providing a good such as equipment, a contract may be required if the purchase also entails a service such as set-up, testing, and/or maintenance as part of the purchase or lease.
5. All contracts must be approved as to form by the Town Attorney and routed through the Town's standard contract routing process, registered by the Town Clerk and reviewed, at a minimum, by the Finance Department and Town Manager's Office. The Town Manager will sign all contracts on behalf of the Town.
6. Departments will use a standard Town template contract. The master template is created and edited by the Town Attorney and maintained by the Clerk Department. Any changes must be approved by the Town Attorney.
7. Contracts may not be split or separated into smaller components.

#### **XV. SOLE SOURCE/SINGLE SOURCE VENDORS**

Sole Source is defined as the selection of a good or service that can only be obtained from one vendor because of its specialized, proprietary, or unique character.

Single source is defined as the selection of a good or service that may be available from two or more vendors, but there is a compelling reason to select one particular vendor.

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The requesting Department is responsible for supplying concise written justification, in the form of a memorandum, to be approved by the Department Director and Town Attorney, for the sole or single source purchase.

## **XVI. PROFESSIONAL SERVICES**

Departments may seek the advice and assistance of professional service providers when there is a need for a specific expertise that is otherwise unavailable or the workload is such that additional assistance is required and the critical nature of the need justifies the cost.

1. In those cases where a professional service provider is sought due to workload issues, care shall be taken to structure services such that the professional service provider is clearly performing as an independent contractor and not as a temporary employee.
2. Reasonable alternatives, such as borrowing staff with the required expertise from another Department or establishing a full- or part-time Town position shall be considered before determining that the use of a professional service provider is cost effective and necessary.
3. Professional service providers are ordinarily selected based upon a number of criteria in addition to price. Examples include qualifications and relevant experience, understanding of the Town's needs, proposed methodology and approach, etc.
4. Professional services are legally exempt from selection solely based on cost. However, the complexity of the professional service provider selection process should be commensurate with the value of the proposed contract. For example, seeking a proposal from a single provider might be appropriate for a \$3,000 contract, but the issuance of a written Request for Proposals may be more appropriate for a \$50,000 contract. The Town Attorney may advise if a Request for Proposal process should be initiated.
5. The awarding authority, based on the cost of the service, shall be empowered to engage a professional service provider without the necessity of providing multiple quotes, a formal bid process, or a Request for Proposal process. This does not preclude any of these processes from occurring if desired by the awarding authority.
6. When services are required on a frequent or routine basis, a list of qualified "on-call" vendors may be established through a Request for Proposal (or Request for Information, Request for Statement of Qualifications, etc.) process. Following establishment of the list, vendors may be utilized without further selection process based on availability, cost, expertise, or other criteria. The list shall remain active for no more than five years. After

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five years, the Department shall utilize another Request for Proposal (or Request for Information, Request for Statement of Qualifications, etc.) process in order to update the list.

## **XVII. COOPERATIVE PURCHASING AGREEMENTS**

When it is in the Town's best interest, Departments may purchase goods or services through cooperative purchasing agreements of other governmental or public agencies. Use of cooperative purchasing agreements is encouraged as a way of obtaining goods and services by aggregating volume, securing value pricing, and reducing administrative overhead. Measured use of cooperative purchasing agreements can significantly reduce the time and resources needed to competitively bid goods and service contracts.

1. Purchases through cooperative purchasing agreements may be accomplished without soliciting competitive quotes.
2. Departments wanting to utilize a cooperative purchasing agreement must submit all information regarding the cooperative purchasing agreement with the purchase requisition.

## **XVIII. ADDITIONAL PURCHASING GUIDELINES**

1. **Alternate Vendor**
  - b. In the event that a vendor with the lowest quote is unable to provide the product(s), alternate vendors will be utilized in sequence of lowest responsible quote meeting requirements.
2. **Standardization**
  - a. Standardization is an organized process to adopt one product or group of products to be used by the Town, such as a particular computer hardware or software. Product standardization may be utilized to create efficiencies, enhance safety, increase productivity, promote brand consistency, or to foster interoperability.
  - b. Product standardization decisions are made by consensus of the Town Manager, Town Attorney, and Finance Director after careful consideration and review of recommendations from staff.
3. **Purchase Requisitions**
  - a. A purchase requisition is required to be submitted for a purchase order to be issued when necessary.

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- b. The requesting Department prepares the requisition using the Town's financial software for the entire amount of the purchase, including tax, shipping and handling, etc. and includes the appropriate account codes.
- c. Prior to submitting the purchase requisition for approval, all documents verifying compliance with this policy must be attached. These documents may include:
  - a. Written quotes including product specifications and tabulation, if appropriate or required;
  - b. First page of the staff report, if Council approval required or received;
  - c. Executed contract or amendment to contract for services;
  - d. Insurance and endorsements if required by contract, or alternatively, waiver of these documents approved by Town Attorney;
  - e. Verification of valid business license if required; and/or
  - f. Sole or single source memorandum for approval by Town Attorney.
- d. Upon receipt of a purchase requisition, the Finance Department reviews the document for accuracy and completeness. If the purchase requisition is not complete and/or accurate, a purchase order will not be issued, and the requesting Department will be notified of any necessary corrections. If the purchase requisition is complete and accurate, a purchase order will be issued in accordance with the guidelines of this policy.
- e. Approval of the purchase requisition represents that the Department has sufficient funds available to pay for the purchase, all necessary documents are attached and acceptable, and the guidelines of this policy have been followed.
- f. A purchase order is required prior to the purchase being made or work commencing unless otherwise noted in this policy.
- g. Purchases under \$3,000 do not require a purchase order, but must be authorized by the purchasing Department per Section IX of this policy.

#### **4. Purchase Orders**

- a. A purchase order is the principle document used to obtain goods and services for the Town.
- b. Purchase orders are required for all goods or services costing over \$3,000.
- c. A purchase order establishes an encumbrance against a program account.
- d. The Finance Department will issue a purchase order only after Town staff at all approval levels have first reviewed and approved the purchase requisition. Approval levels are as follows:
  - a. Department Director or designee
  - b. Insurance verification by the Clerk Department if applicable
  - c. Business License verification by Finance Department staff if applicable
  - d. Approval for compliance with this policy by Finance Department
  - e. Confirmation that the appropriate awarding authority has approved the purchase by Finance Department (i.e., Town Council).

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## **5. Change Orders**

- a. Where the actual cost of goods exceeds 10% of the original purchase order, a change order must be requested from Finance by the responsible Department.
- b. Where the actual cost of goods is within 10% of the original purchase order amount, payment may be made subject to verification of the amount(s) by the responsible Department.
- c. Where the actual cost of services differs from the original purchase order amount specified in the service contract, a contract amendment must be submitted by the Department with the change order request.
- d. Change orders that increase any purchase order of goods or services over \$100,000 will require prior approval from Town Council.
- e. Documents outlining compliance with this policy must be submitted to Finance with the change order (i.e., a Council staff report).

## **6. Blanket Purchase Orders**

- a. Blanket purchase orders can be utilized for goods or services that are used by the Town for ongoing operations. For a blanket purchase order, vendors agree to honor a price for a given period of time, and the Town may not specifically know how much of the product will be consumed or where or when it will be consumed.
- b. A blanket purchase order provides for obtaining pricing for anticipated but unidentified goods or services.
- c. Blanket purchase orders have the same requirements for goods and services as outlined in this policy.

# **XIX. RECYCLED PRODUCTS AND MATERIALS**

It is the Town's intent to minimize negative environmental impacts of the Town's activities by ensuring the procurement of services and products that reduce toxicity, maximize recyclability and recycled content, and conserve natural resources, material, and energy.

In 2016, Governor Brown signed into law Senate Bill 1383 (SB 1383), in a state-wide effort to reduce emissions of short-lived climate pollutants (SLCP). Beginning January 1, 2022, SB 1383 requires cities and counties to procure annually a quantity of recovered organic waste products. As there is so much paper present in the solid waste disposal stream, the procurement of recycled content and recyclable paper will grow demand for these products and support recycling to help meet the organic waste diversion goals of SB 1383.

Town Departments and direct service providers to the Town, as applicable, must comply with the Town's Organic Waste Product Procurement Procedure for purchasing and mandatory recordkeeping for paper products, printing and writing paper, and disposable kitchen and office supplies.

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Requirements for purchasing paper products, printing and writing paper, and disposable kitchen and office supplies are as follows:

1. All purchases must contain 30 percent postconsumer recycled content, when available at no greater cost than nonrecycled products.
2. Products must be recyclable as defined by FTC “Green Guides.”
3. Departments must require vendors to certify postconsumer content and recyclability claims.
4. Departments/employees must provide records to the recordkeeping designee, as outlined in the Town Organic Waste Product Procurement Procedure, of all paper products, printing and writing paper, and disposable kitchen and office supplies purchased from a vendor within thirty days of the purchase (both recycled content and non-recycled content, if any is purchased). Records shall include a copy of the invoice or other documentation of purchase, written certifications for recycled-content purchases, purchaser name, quantity purchased, date purchased, and recycled content (including products that contain none), and if non-recycled content paper products and/or non-recycled content printing and writing paper are provided, include a description of why recycled-content paper products and/or recycled content printing and writing paper were not provided.

Departments should meet the following guidelines for non-paper products, provided the goods are available within a reasonable timeframe, meet reasonable performance standards, and are available at a reasonable cost:

1. All computer products purchased by the Town should be in compliance with the Federal Energy Star program.
2. All pesticides purchased by the Town shall be of the least toxic available.
3. Whenever possible, goods and services procured by the Town shall be from businesses that are certified green businesses by the Bay Area Green Business Program.

## **XX. HEALTHY FOOD AND BEVERAGE GUIDELINES**

The Town of Los Gatos is committed to promoting and encouraging ways for Town staff, residents, and visitors to improve their overall health and wellness. One way to achieve the goal of supporting healthy living is to offer, purchase, and serve food and beverages of the

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greatest nutritional value and in appropriate serving sizes. The following guidelines help the Town promote a healthy work environment leading to greater job satisfaction, higher morale, and reduced health care costs and absenteeism. These guidelines are applicable when Town funds are being used and are not directed at individuals' meals, snacks, or beverages purchased or brought from home using non-Town funds. The guidelines apply to Town-sponsored meetings, celebrations, events, and in vending machines on Town property.

## **2. Beverages**

- a. Water is presented as an attractive and appealing option.
- b. Sparkling water may be offered as an alternative to soda.
- c. Decaffeinated beverages are offered.
- d. Coffee and tea may be served unsweetened.
- e. Juices that provide more beneficial nutrients, like orange and grapefruit, are preferred.
- f. Recommended beverages include water, fat-free or skim milk, non-dairy milk alternatives (i.e., soy, almond, or oat), 100% fruit or vegetable juices, diet beverages, calorie-free sports drinks, and low-calorie sparkling water products.

## **3. Food and Desserts**

- a. Healthy options are attractively presented and appealing.
- b. Reasonable portions are provided by cutting food in halves or quarters (i.e., cookies, sandwiches, or bagels are sliced in half).
- c. Either a fully plant-based offering or an attractive plant-based alternative is offered.
- d. A gluten-free option is offered.
- e. Foods are prepared using healthy cooking techniques such as baking, roasting, grilling, or steaming.
- f. Desserts are served in small portion sizes and healthier food options such as fresh fruit are also provided.
- g. Recommended foods include fruits, vegetable, whole grains, lean protein (i.e., skinless chicken breast, turkey, beans, tofu), and lower fat condiments such as vinaigrette, hummus, mustard, or salsa.

## **4. Food vending**

- a. Contents of package must be a single serving size.
- b. No more than 35% calories from fat, with the exception of packages of nuts or seeds.
- c. At least one snack food item offered should meet the Food and Drug Administration's definition of "low sodium."
- d. At least one snack item offered should contain at least two grams of dietary fiber per serving.

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## **XXI. UNAUTHORIZED PURCHASES**

Unauthorized purchases are required to be ratified by the appropriate awarding authority.

1. The employee making the unauthorized purchase must provide a written explanation of why the purchase was made.
2. The written explanation must be reviewed and approved by the appropriate awarding authority.
3. In the event that a vendor has been paid and the unauthorized purchase is not subsequently ratified, the employee may be held responsible for reimbursing the Town.

## **XXII. SURPLUS GOODS AND EQUIPMENT**

The Town Manager or their designee has the authority to declare items with a market value of less than \$100,000 surplus. Items with a market value greater than \$100,000 will be formally declared surplus by the Town Council. Each Department shall periodically review its inventory and promptly notify the Town Manager of any surplus property. Proceeds from the sale or trade-in of surplus property shall be returned to the appropriate fund.

1. **Surplus Disposal:** The declaring authority shall determine or approve one of the following methods of disposition that is most appropriate and in the best interest of the Town:
  - a. Transfer to another Department: Surplus property may be transferred between Town Departments.
  - b. Trade-In: Surplus property may be offered as a trade-in credit toward the acquisition of new property.
  - c. Disposal: The surplus property may be offered for sale. All surplus property is for sale "as is," with no warranty, guarantee, or representation of any kind, expressed or implied, as to the condition, utility, or usability of the property offered for sale.
2. **Methods of Disposal:**
  - a. Public Auction: Surplus property may be sold at public auction. Town staff may conduct public auctions, use online auction sites, or the Town may contract with a professional auctioneer.
  - b. Sealed Bids: Sealed bids may be solicited for the sale of surplus property. Surplus property disposed of in this manner should be sold to the highest responsible bidder.

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- c. Selling for Scrap: Surplus property may be sold as scrap if the declaring authority deems that the value of the raw material exceeds the value of the property as a whole.
- d. Negotiated Sale: Surplus property may be sold outright if the declaring authority determines that only one known buyer is available or interested in acquiring the property.
- e. Donation: Surplus property unlikely to generate significant revenue may be donated to other public agencies or to non-profit organizations. Any non-profit must be qualified under section 501(c)(3) of the Internal Revenue Code in order to receive a donation.
- f. No Value Item: Where the Town Manager determines that specific supplies or equipment are surplus and of minimal value to the Town due to spoilage, obsolescence, or other cause; or where the Town Manager determines that cost of disposal of such supplies or equipment would exceed the recovery value, the Town Manager shall dispose of the supplies in such manner as he or she deems appropriate and in the best interest of the Town.

APPROVED AS TO FORM:

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Robert Schultz, Town Attorney