

PLEASE NOTE:

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REGULAR

NUMBER: 23.15

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING CHAPTERS 2 (PURCHASING) AND 310 (OPEN GOVERNMENT ORDINANCE) OF TITLE I (ADMINISTRATION) OF THE MILPITAS MUNICIPAL CODE RELATING TO PURCHASING

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of _____, upon motion by _____ and was adopted (second reading) by the City Council at its meeting of _____, upon motion by _____. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, the City’s Purchasing Division in the Finance Department supports all City Departments to procure and contract for goods and services while ensuring fair and open competition consistent with the Municipal Code; and

WHEREAS, the City studied its procurement function including process mapping to streamline procurement processes and reducing administrative costs while ensuring competitive pricing; and

WHEREAS, on March 16, 2020, the County of Santa Clara ordered residents to shelter-in-place (“Shelter-In-Place Order”) in response to the COVID-19 pandemic; and

WHEREAS, the Shelter-in-Place Order accelerated the streamlining of operations through online approval of contracts using DocuSign, implementation of the contract management database for contracts originating from the Purchasing Division including automatic notification for renewal of contracts and insurance, and online payment for Procurement Card (P-Card) purchases; and

WHEREAS, further streamlining while ensuring fair and open competition and competitive pricing is dependent on updating the Purchasing Ordinance; and

WHEREAS, on September 1, 2020, the City Council approved the COVID-19 Fiscal Response Strategies and Guidelines; and

WHEREAS, the City Manager was directed to follow these fiscal strategies and guidelines to ensure an effective response to the economic crisis and related impact on the City’s finances caused by COVID-19, while minimizing service cuts to our community; and

WHEREAS, one of these fiscal strategies and guidelines directs the City Manager to identify and bring forward for Council consideration City policy and ordinance changes, as applicable, that would enable/facilitate service delivery improvements; and

WHEREAS, the primary recommended changes to the City’s Purchasing Ordinance include updating procurement methods and procedures, increasing bidding thresholds and related contract amendment authority, establishing annual reporting requirements and deadlines for sole source purchases and standardization of equipment, changing definitions, and aligning the Purchasing Ordinance with existing practices.

NOW, THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. RECORD AND BASIS FOR ACTION

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE I, CHAPTER 310

Title I (Administration), Chapter 310 (Open Government Ordinance), Section 3.70 (Public Information that Must be Disclosed) of the Milpitas Municipal Code is hereby amended to read as follows:

I-310-3.70 - Public Information that Must be Disclosed

Notwithstanding a department's legal discretion to withhold certain information under the California Public Records Act, the following policies shall govern specific types of documents and information and shall provide enhanced rights of public access to information and records:

- (a) Drafts and Memoranda. No preliminary draft or memorandum shall be exempt from disclosure under Government Code section 6254, subdivision (a) if it is normally kept on file. Preliminary drafts and memoranda concerning contracts, memoranda of understanding, or other matters subject to negotiation or pending Council approval shall not be subject to disclosure to this provision until final action has been taken.
- (b) Litigation Material.
 - (1) Notwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure under this chapter:
 - (i) A pre-litigation claim against the City;
 - (ii) A record previously received or created by a department in the ordinary course of business that was not attorney/client privileged when it was previously received or created;
 - (iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any Milpitas governmental ethics code, or this [Chapter](#).
 - (2) Unless otherwise privileged under California law, when litigation is adjudicated or otherwise settled, records of all communications between the department and the adverse party shall be subject to disclosure, including the text and terms of any settlement.
- (c) Contracts, Bids and Proposals.
 - (1) All initial City Requests for Proposals ("RFP's") shall be kept in a central repository and shall be made available for public inspection. In addition, RFP's shall be placed on the City's website for a period from the date the RFP was issued to the date that the RFP is due.
 - (2) Contracts, contractors' bids, responses to requests for proposals and all other records of communication between the department and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit. All bidders and contractors shall be advised that information provided which is covered by this subdivision will be made available to the public upon request. Immediately after any review or evaluation or rating of responses to an RFP has been completed, evaluation forms and score sheets and any other documents used by persons in the RFP evaluation or contractor selection process shall be available for public inspection. The names of scorers, graders or evaluators, along with their individual ratings, comments, and score sheets or comments on related documents, shall be made immediately available after the review or evaluation of an RFP has been completed.
 - (3) During the course of negotiations for:
 - (i) Personal, professional, or other contractual services not subject to a competitive process or where such a process has arrived at a stage where there is only one qualified or responsive bidder;
 - (ii) Leases or permits having total anticipated revenue or expense to the City;
 - (iii) Any franchise agreements, all documents exchanged and related to the position of the parties, including draft contracts, shall be made available for public inspection and copying upon request. In the event that no records are prepared or exchanged during negotiations in the above-mentioned categories, or the records exchanged do not provide a meaningful representation of the respective positions, the City Attorney or city representative familiar with the negotiations shall, upon a written request by a member of the public, prepare written summaries of the respective positions within five (5) working days following the final day of negotiation of any given week. The summaries will be available for public inspection and copying. Upon completion of negotiations, the executed contract, including the dollar amount of said contract, shall be made available for inspection and copying.

~~(4) Not later than July 15th annually, each City department shall provide to the City Council a list of all sole source contracts entered into or renewed during the past fiscal year. This list shall be made available for inspection and copying as provided for elsewhere in this Section.~~

(d) Budgets and Other Financial Information. Budgets, whether tentative, proposed or adopted, for the City or any of its departments, programs, projects or other categories, and all bills, claims, invoices, vouchers or other records of payment obligations as well as records of actual disbursements showing the amount paid, the payee and the purpose for which payment is made, other than payments for social or other services whose records are confidential by law, shall not be exempt from disclosure under any circumstances.

(e) Appraisals, offers and counteroffers relating to the City's purchase of real property are exempt until an agreement is executed. If an agreement for purchase is not submitted to the Council for approval then this exemption expires 1 year after negotiations are terminated.

(f) ~~Reserved.~~

~~(g) Neither the City nor any officer, employee, or agent thereof may assert an exemption for withholding for any document or information based on a "deliberative process" exemption, either as provided by California Public Records Act Section 6255 or any other provision of law that does not prohibit disclosure.~~

~~(h) Reserved.~~

SECTION 3. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE I, CHAPTER 2

Title I (Administration), Chapter 2 (Purchasing) of the Milpitas Municipal Code is hereby amended to read as follows:

Chapter 2 - PURCHASING

Sections:

Section 1 - Purpose and Application: Definitions

I-2-1.01 - Purpose

The purpose of this Purchasing Ordinance is to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity.

I-2-1.02 - Application

Except as otherwise provided herein, this Chapter applies to contracts for the procurement of supplies and services entered into by the City. When the procurement involves the expenditure of federal assistance, contract, or grant funds, the procurement shall be conducted in accordance with mandatory applicable federal law and regulations. Nothing in this Chapter shall prevent the City and any public City affiliated agency from complying with the terms and conditions of any grant, gift or bequest that is otherwise consistent with law.

I-2-1.03 - Definitions

The words defined in this section shall have the meanings set forth below whenever they appear in the Purchasing Ordinance, unless the context in which they are used clearly requires a different meaning; or, a different definition is prescribed for a particular section or provision.

1. BIDDER. Any person who submits a response to a competitive City solicitation ~~—BRAND NAME OR EQUAL SPECIFICATION. A specification limited to one (1) or more items by manufacturers' names or catalogue numbers to describe the standard of quality, performance, and other salient characteristics needed to meet City requirements, and which provides for the submission of equivalent products.~~

~~2. BIDDER. Any person who submits a response to a competitive City solicitation.~~

3. BUSINESS. Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

43. CITY. The City of Milpitas ~~— and City affiliated agency.~~

54. CONTRACT. All types of City contracts ~~or~~ agreements, or purchase orders with the exception of public works contracts ~~which shall be governed by I 2-3.20~~, for the procurement of supplies and services or the disposal of surplus supplies.
65. CONTRACT MODIFICATION. Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract ~~accomplished by mutual action of the parties to the contract.~~
76. CONTRACTOR. Any person having a contract with ~~a governmental body~~ the City.
87. DATA. Any recorded information, regardless of form or characteristic.
98. ELECTRONIC. Any electrical, digital, magnetic, optical, electromagnetic, or any other similar technology.
109. ELIGIBLE LOCAL PROVIDER. Any local provider who is an otherwise responsible bidder and otherwise responsive to ~~the~~ a City's ~~invitation for bids~~ competitive solicitation.
11. ~~10.~~ ENVIRONMENTALLY PREFERABLE PRODUCTS OR MATERIALS. Any products or materials contained in the products that have a reduced negative effect on human health and the environment when compared with competing products that serve the same purpose. This comparison may consider raw materials' acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance or disposal of the product.
1211. GENERAL SERVICES. The furnishing of goods and services by a vendor that does not typically require a license, certification or other professional criteria to perform the work. This includes services such as equipment maintenance, janitorial, printing, landscaping and refuse disposal. ~~This term shall not include employment agreements or collective bargaining agreements.~~
1312. GRANT. Any furnishing of funds by an outside agency or other organization to support a program authorized by law.
14. ~~INVITATION FOR BIDS. All documents, whether attached or incorporated by reference, utilized for soliciting bids.~~
1513. LOCAL PROVIDER. A supplier or provider of equipment, materials, supplies or services which has an established place of business within the City of Milpitas, which has a City of Milpitas business license, which has paid all currently due business license fees and taxes, and which began doing business within the City of Milpitas at least one (1) year prior to the City's inviting bids or quotations for the respective purchase.
1614. PERSON. Any business, individual, union, committee, club, other organization, or group of individuals.
1715. POST-CONSUMER MATERIAL OR PRODUCT. Any material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item, including any waste material and by-products which have been recovered or diverted from solid waste.
1816. PROCUREMENT. The buying, purchasing, renting, leasing, or otherwise acquiring of any supplies or services. It also includes all functions that pertain to the obtaining of any supply or service, including description of requirements, selection, and solicitation of sources, preparation and award of contract and contract administration.
1917. PROFESSIONAL SERVICES. ~~Those services~~ Services, generally of an intangible nature that typically require a license, certification, and/or other professional criteria to perform the work as defined by the laws of the State of California including, but not limited to, Architect, Engineer, Land Surveyor, Attorney, Public Accountant ~~— as well as information technology services such as installation and implementation of information technology projects, software licensing and maintenance, and Software as a Service (SaaS).~~
2018. PROVIDER. The terms bidder, supplier, contractor, vendor or provider, may be used interchangeably and shall refer to the person, company, or corporation from whom the City of Milpitas purchases supplies or services or with whom the City enters into a contract.
2119. PUBLIC AGENCY. A public agency is defined as any school district, ~~city~~ City, state, federal agency, U.S. Communities program or other nonprofit association or group consisting of governmental entities.
2220. PUBLIC NOTICE. The distribution or dissemination of information to interested parties using methods that are reasonably available. Such methods shall often include, but are not limited to, publication in newspapers of general circulation, posting in public places, electronic or paper notices to prospective bidders, and posting on web pages designated by the City for that purpose.
2321. PUBLIC WORKS CONTRACT. Any City contract for the performance of a "public project" as defined in Public Contract Code ~~Section~~ section 22002, as it may be amended from time to time.
24. ~~RECYCLED PRODUCT PREFERENCE. A price preference, equal to ten percent (10%) of the lowest cost bid, given to bidders offering recycled products over those offering nonrecycled products.~~

- ~~25.~~ 22. PURCHASING AGENT. The Purchasing Agent, the Director of Finance or his or her designee, or such position designated by the City Manager to administer this Chapter.
23. -REQUESTING DEPARTMENT. Any organizational unit of the City of Milpitas that utilizes any supplies or services procured under this Ordinance.
- ~~24.~~ 26. RESPONSE. means a bid, proposal, quote, statement of qualification or other communication offered in response to a competitive City solicitation.
25. RESPONSIBLE BIDDER. A bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the work.
- ~~27~~26. RESPONSIVE BIDDER. A bidder who has complied with the instructions and requirements established by the City and set forth in the ~~contract, purchase order or request for quotations~~ City's solicitation documents.
- ~~28~~27. SIGNATURE. Shall be defined as a manual signature affixed in ink, or provided through other acceptable means established by law. A faxed or scanned signature is acceptable ~~so long as it is followed up within ten (10) calendar days by the original document.~~
- ~~29~~28. SPECIFICATION. Any description of the physical or functional characteristics or of the nature of a supply or service. It may include a description of any requirement for inspecting, testing, or preparing a supply or service for delivery.
- ~~30~~29. SOLICITATION. An invitation for bids or request for proposals, qualifications, quotes, or other document including all documents, whether attached or incorporated by reference, utilized in furtherance of a City procurement of goods or services.
30. SUPPLIES. All property (including, but not limited to, equipment, goods and materials) except as otherwise provided herein.
31. SURPLUS SUPPLIES. Supplies which are worn out, obsolete or unsuitable for City use.
32. WRITING OR IN WRITING. The product of any method of forming characters on paper, or other materials, or viewable screens, which can be read, retrieved, and reproduced, including information that is electronically transmitted and stored.

Section 2 - Division of Purchasing

I-2-2.01 - Establishment

There is hereby established for the City a Division of Purchasing, headed by a Purchasing Agent, who shall report to the Director of the ~~Financial Services~~ Finance Department.

I-2-2.02 - Responsibilities

In accordance with this Cchapter, the Purchasing Agent shall:

1. Procure or supervise the procurement of all supplies and services needed by the City, except as otherwise provided herein;
- ~~2.~~ 2. ~~Exercise direct supervision over the City central stores and general supervision over all other inventories of supplies belonging to the City;~~ Award contracts for Fifty Thousand Dollars (\$50,000) or less;
- ~~3.~~ 3. Amend contracts or purchase orders awarded for amounts of Fifty Thousand Dollars (\$50,000) or less as necessary, as long as the total amount of the amended contract does not exceed Fifty Thousand Dollars (\$50,000).
4. Sell, trade or otherwise dispose of surplus supplies belonging to the City;
- ~~4~~5. Establish and maintain programs for specification development, contract administration and inspection and acceptance, in cooperation with the departments using the supplies and services;
- ~~5~~6. Provide ongoing training and support to the City departments pertaining to procurement of supplies or services ~~under Five Thousand Dollars (\$5,000);~~
- ~~6.~~ 7. ~~Execute and administer~~ Administer contracts with vendors for the purchase of citywide services and supplies such as paper, office supplies, janitorial services and office equipment;
- ~~7~~8. Establish and maintain a central vendor database categorized by goods and services;
- ~~8~~9. Provide management of the Procurement Card and Single Merchant Credit Card Programs;
- ~~9~~10. Adopt operational procedures relating to the execution of any of the above duties and responsibilities.

I-2-2.03 - Purchases made by Departments

Each Department has the authority to purchase supplies, materials, equipment and services not to exceed Ten Thousand Dollars (\$10,000) or less. For supplies, materials, and equipment, the department shall use a Procurement Card or submit a Purchase Requisition to Finance for issuance of a Purchase Order. For services with a value greater than One Thousand Dollars (\$1,000), the department shall submit a Purchase Requisition to Finance for issuance of a contract and ensure compliance with insurance requirements as promulgated by the Risk Manager.

I-2-2.04 - Delegation

The Purchasing Agent may delegate authority to purchase supplies, or services, and to dispose of surplus supplies, to other City officials, if such delegation is deemed necessary for the effective procurement or disposal of those items.

Section 3 - Procurement ~~Authority~~—Methods and Procedures

~~I-2-3.01 —Purchases—~~ Selection of Five Thousand Dollars (\$5,000) or Less Solicitation Method

~~Each Requesting Department has the authority to purchase supplies and services for Five Thousand Dollars (\$5,000) or less, but must obtain three (3) quotations whenever possible to determine the best value. The Purchasing Agent shall be available to provide ongoing training and support for purchases at the Five Thousand Dollars (\$5,000) or less dollar level.~~

~~I-2-3.02 —Purchases Over Five Thousand Dollars (\$5,000) and Less Than Twenty Thousand Dollars (\$20,000)~~

~~The purchase of supplies and services in an amount over Five Thousand Dollars (\$5,000) and less than Twenty Thousand Dollars (\$20,000) may be made by the Purchasing Agent through competitive bid, using the following procedures:~~

- ~~(a) —Whenever possible, competitive bid in the open market shall be based on at least three (3) quotations.~~
- ~~(b) —The Purchasing Agent may solicit quotations from prospective vendors both on and off the vendor database. Quotations must be written and may include facsimile and electronic mail.~~
- ~~(c) —The Purchasing Agent shall keep a record of all open market orders and quotes for a period of one (1) year after the submission of quotes or placing of orders.~~
- ~~(d) —The Purchasing Agent is authorized to award a contract for less than Twenty Thousand Dollars (\$20,000) to the lowest responsive and responsible bidder.~~
- ~~(e) —If no responsive bid is received after soliciting quotations, the Purchasing Agent may proceed to purchase the supplies, hire or have services performed in the open market.~~
- ~~(f) —The provisions of Section I-2-3.02 shall not apply to purchases that do not exceed Five Thousand Dollars (\$5,000).~~
- ~~(g) —The Purchasing Agent may amend contracts or purchase orders awarded for amounts under Twenty Thousand Dollars (\$20,000) as necessary, as long as the total amount of the amended contract does not exceed Twenty Thousand Dollars (\$20,000).~~

~~I-2-3.03 —Purchases of \$20,000.00 or More~~

~~3.03-1 Formal Bid Procedures. The Purchasing Agent shall solicit bids for supplies, equipment or services of a value of \$20,000.00 or more using the following formal sealed bid procedures. The purchase of supplies, equipment or services for a value less than or equal to \$100,000.00 may be approved by the City Manager. The purchase of supplies, equipment or services for a value in excess of \$100,000.00 must be approved by the City Council.~~

- ~~(a) —A notice of invitation for bid shall include a general description of the supplies, equipment or services to be purchased, state where the bid forms and specifications may be secured, and state the final deadline and method for submitting bids. Notice shall be given as provided in Section I-2-3.05. The Purchasing Agent may also solicit sealed bids from responsible prospective suppliers and contractors whose names are not in the vendor database.~~
- ~~(b) —Bidders shall submit electronic bids through the City's eProcurement System per the instructions in the bid documents.~~

~~The Bids shall be opened at the time and date indicated in the bid document. A tabulation of all bids received shall be delivered by electronic mail to all registered bidders via the eProcurement System within 72 hours after the bid opening. A tabulation of all bids received shall be posted on the City's website for a period of not less than 30 calendar days after the bid opening.~~

~~(c) — The Purchasing Agent or City Council shall have the discretion to reject any and all bids presented, and readvertise for bids.~~

~~(d) — The bid shall be awarded to the lowest responsive and responsible bidder.~~

~~(e) — If no responsive bid is received after soliciting bids under this section, the Purchasing Agent may proceed to purchase the supplies, equipment hire or have services performed in the open market.~~

~~3.03-2 Exceptions. The bidding procedures under Sections I-2-3.02 and I-2-3.03 may be dispensed with:~~

~~(a) — In an emergency as defined in Section I-2-3.10;~~

~~(b) — Where it is determined that the supply or service is available from only one source, as defined in Section I-2-3.09, Sole source procurement. The basis upon which this determination is made shall be in writing;~~

~~(c) — Where supplies and services are purchased through a piggyback arrangement pursuant to Section I-2-3.07 or a cooperative purchasing arrangement pursuant to Section I-2-3.08;~~

~~(d) — Where, in the best interests of the City, supplies and services are purchased through the Request for Sealed Proposals method pursuant to Section I-2-3.06.~~

~~3.03-3 City shall where practicable engage in competitive procurement. The Purchasing Agent shall use the following solicitation methods under the circumstances described below:~~

~~(a) Purchases which are estimated not to exceed ten thousand dollars may be made without a competitive procurement method.~~

~~(b) Request for quotes process shall be used for purchases with an estimated value of more than ten thousand dollars and no more than fifty thousand dollars.~~

~~(c) Request for proposals process shall be used for purchases of services with an estimated value of more than fifty thousand dollars and for supplies, materials and equipment when the Purchasing Agent determines that it is in the best interest of the City to do so.~~

~~(d) Request for qualifications process may only be used for purchases of professional services with an estimated value of more than fifty thousand dollars.~~

~~(e) Formal bidding process shall be used for purchases of supplies, materials and equipment with an estimated value of more than fifty thousand dollars or for services when the Purchasing Agent determines that it is in the best interest of the City to do so.~~

I-2-3.02 - Split Orders-

It is a violation of the Ordinance to divide the purchase of supplies or general services ~~in the amount of \$20,000.00 or more~~ into smaller orders for the purpose of evading the competitive ~~bidding~~ solicitation requirements of this ~~section~~ Chapter.

~~I-2-3.04 — Competitive Bids~~

~~Where~~

I-2-3.03 - Procurements where competitive methods are not practicable-

The City is not required to engage in competitive procurement under the following circumstances:

(a) Emergency authority of Purchasing Agent pursuant to Section I-2-3.04

(b) Public agency purchases pursuant to Section I-2-3.05

(c) Sole source procurements pursuant to Section I-2-3.06

(d) As authorized by the City Council to be in the best interest of the City

I-2-3.04 - Emergency Authority of Purchasing Agent

3.04-1 Precluding action by the City Council, the Purchasing Agent may authorize emergency purchases without observing the bidding procedures set forth in this Chapter upon a finding that such purchases are required to prevent or mitigate the loss or impairment of life, health, property, or essential public services and that there is sudden, unexpected occurrence that poses a clear and imminent danger. The Purchasing Agent may purchase supplies or services, even though the amount thereof may exceed Fifty Thousand Dollars (\$50,000), without competitive bids upon notice.

3.04-2 Not later than seven (7) days after the emergency action, or at the next succeeding City Council meeting if that meeting will occur not later than 14 days after the action, the Purchasing Agent shall submit to the City Council a written statement of the circumstances of such emergency purchase over Fifty Thousand Dollars (\$50,000), a description of the supplies or services purchased, and the prices thereof.

3.04-3 The City Council shall continue to review the emergency action at every subsequent regularly scheduled meeting thereafter until the action is terminated, to determine, by a four-fifths vote, that there is a need to continue the action, unless the Purchasing Agent has terminated the action prior to the City Council reviewing the emergency action.

I-2-3.05 – Public Agency Purchases

The Purchasing Agent may without observing the competitive procurement requirements prescribed by this Chapter:

- (a) Purchase or acquire any supplies, materials or equipment or services from any public or governmental body or agency; or
- (b) Joint purchasing agreements entered into by the City and one or more public agencies wherein the City is included as a potential purchaser under a competitive procurement process engaged in pursuant to the joint agreement; or
- (c) The Purchasing Agent may arrange for the City to enter into purchase contracts with a supplier or contractor for the purchase of supplies or general services, the pricing and terms of which have been previously established by another public agency or improved pricing and terms, provided that the Purchasing Agent determines that such purchase contracts are in the City's best interest; or
- (d) The Purchasing Agent may purchase supplies and services without complying with the quotation or bidding requirements of this Chapter, if such purchases are based on an agreement or entered into by any public agency or cooperative purchasing program utilizing public agency procurements as the basis for contracts offered, regardless of whether the City is a named party to the agreement or an actual participant in such a program, provided that:
 - i. The underlying purchase was made using competitive negotiation or procurement procedures, and may include a nationally bid cooperative contract; and
 - ii. The public agency is a "public agency" as defined in Government Code section 6500.

I-2-3.06 - Sole Source Procurement

A contract may be awarded without competition when the Purchasing Agent determines in writing, after conducting a good faith review of available sources, that only one viable source exists for the required supplies, material, equipment, or general service, or that there is a compelling reason for using only one source. The Purchasing Agent shall conduct negotiations, as appropriate, as to price, delivery and terms. A written statement of the basis for the sole source determination and the period of the sole source approval shall be placed in the contract file.

Not later than August 31st annually, the Purchasing Agent shall provide to the City Council a list of all sole source contracts entered into or renewed during the past fiscal year including the name of the department, description of the product or general service, vendor, and dollar amount.

~~are required, they shall be submitted electronically~~

I-2-3.07 – Request for Quotes (RFQ) Procedure

- (a) The Purchasing Agent shall issue a Request for Quotes indicating the basis of award through the City's e-procurement system and vendors known to be able to provide the supplies and services and base the award of the contract, whenever possible, on at least three (3) quotations.
- (b) Responses must be in writing as instructed in the Request for Quotes.
- (c) If no responsive quote is received after issuance of a Request for Quotes, the Purchasing Agent may proceed to purchase the supplies, hire or have services performed in the open market provided that negotiations are conducted as appropriate as to price, terms and conditions of contract award.

I-2-3.08 - Formal Bid Procedures:

- (a) A notice of invitation for bid shall include a general description of the supplies, equipment or services to be purchased, state where the bid forms and specifications may be secured and state the final deadline and method for submitting bids. Notice shall be given as provided in Section I-2-3.10.
 - (b) Bidders shall submit electronic bids through the City's eProcurement System per the instructions in the bid documents. Any bid may be withdrawn by a written request signed by the bidder and received by the Purchasing Agent prior to the final time and date for the receipt of bids. ~~City's eProcurement System per the instructions in the bid documents.~~
 - (c) Bids shall be opened at the time and date indicated in the bid document. A tabulation of all bids received shall be delivered ~~by electronic mail~~ to all registered bidders via the eProcurement System within 72 business hours after the bid opening. A tabulation of all bids received shall be made available on the City's eProcurement System or website for a period of not less than 30 calendar days after the award of the bid.
- ~~Where competitive bids are required, the purchase or disposal shall be made on the basis of three or more of said bids, unless the Purchasing Agent shall certify in writing that less than three prospective bidders have submitted bids or that, to the best of the Agent's knowledge, there are less than three prospective vendors from whom the supplies or services are available and that bids were invited from all of said vendors. Any bid may be withdrawn by a written request signed by the bidder and received by the Purchasing Agent prior to the final time and date for the receipt of bids.~~
- (d) The Purchasing Agent or City Council shall have the discretion to reject any and all bids presented and re-advertise for bids.
 - (e) The bid shall be awarded to the lowest responsive and responsible bidder.
 - (f) If no responsive bid is received after soliciting bids under this section, the Purchasing Agent may proceed to purchase the supplies, hire, or have services performed in the open market provided that negotiations are conducted as appropriate as to price, terms and conditions of contract award.

~~I-2-3.05 Competitive Bids (Notice)~~

~~For purchases under Sections I 2 3.03, Purchases of \$20,000.00 or More, and I 2 3.06,09 - Request for Sealed-Proposals (RFP), where notice is required, notice shall be given by one or more of the following methods:~~

- ~~(1) Publishing notice in a newspaper of general circulation within the City on at least one occasion at least five days prior to the date set for the final receipt of bids. Provided, that publication may be made in any newspaper of general circulation in Santa Clara County which the Purchasing Agent shall select if the publication schedule of all newspapers of general circulation in the City are such that notice by publication cannot be given in time.~~
- ~~(2) Posting on the City of Milpitas website at least five days prior to the date set for the final receipt of bids.~~
- ~~(3) Through direct electronic notification via the City's eProcurement System.~~
- ~~(4) Any other manner of notice required by law for the particular goods or services to be purchased.~~

~~Nothing in this subsection shall prohibit the City from notifying suppliers and contractors of solicitations by electronic means, and nothing in this subsection shall prohibit the City from notifying suppliers and contractors who are not in the City's Vendor Database.~~

~~The notice shall include a general description of the supplies or services to be purchased or City property to be disposed; date, time and place of bid opening; and whether bonds will be required. The notice shall also include such information as to the proposed purchase or disposal as the Purchasing Agent deems sufficient to comply with relevant State law, regulation or City ordinance.~~

~~(Ord. No. 289.1, § 2, 11/7/17; Ord. No. 23.12, § 2, 5/5/09; Ord. 23.10 (part), 1/3/06)~~

~~I 2 3.06 Request for Sealed Proposals (RFP)~~

3.06) Procedure

3.09-1 The Purchasing Agent shall be authorized to utilize the request for ~~sealed~~ proposal method for purchase of supplies or services upon a determination by the Purchasing Agent that the use of competitive bidding is not practical or advantageous to the City because of one (1) or more of the following considerations:

- (a) Price is not a primary consideration;
- (b) The ability of the bidder to perform the contract or provide the service promptly, or within the time specified, without delay or interference;
- (c) The character, integrity, reputation, judgment, experience, and efficiency of the bidder;
- (d) The quality of performance of previous contracts or services;
- (e) Quality, availability, or capability is overriding in relation to price in procurement of research, development, technical supplies or services;

- (f) Delivery and installation, post-sale service or maintenance, reliability, warranties or availability of replacements, are overriding in relation to price or need to be evaluated in relation to prices;
- (g) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;
- (h) The need to evaluate the utilization of a fixed-price or cost-type contract;
- (i) The need to evaluate whether the ~~market place~~ marketplace will respond better to a solicitation permitting a range of alternative proposals or evaluation and discussions of them before entering the contract;
- (j) The number and scope of conditions attached to the Solicitation.

3.0609-2 Receipt of Proposals.

No proposals shall be handled so as to permit disclosure of ~~the identity of any bidder or~~ the contents of any proposal to competing bidders during the process of negotiation. A register of proposals shall be prepared containing the name of each bidder ~~and a description sufficient to identify the item offered.~~ The register of proposals shall be open for public inspection only after contract award.

3.0609-3 Evaluation Factors.

The request for proposals shall state evaluation factors, which shall be considered the primary basis for evaluating the proposals.

3.0609-4 Discussion with Responsible Bidders and Revisions to Proposals.

Discussions may be conducted with responsible bidders who submit proposals determined to be reasonably possible of being selected for award, for the purpose of clarification to assure full understanding of, and conformance to, the solicitation requirements. All bidders shall be accorded equal treatment. Revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of the identity of the bidder or any information contained in competing offers.

3.0609-5 Award.

Award shall be made to the responsible bidder whose proposal is determined in writing to be the most advantageous to the City, taking into consideration, price, value and the evaluation factors set forth in the request for proposals.

3.0609-6 Rejection.

Without limitation to the applicability of any other provisions of this Chapter, the Purchasing Agent or City Council may reject any and all proposals.

I-2-3.07 ~~Piggyback Procurement~~ 10 - Request for Qualifications (RFQa) Procedure

3.10-1 The Purchasing Agent ~~may arrange for the City to enter into purchase contracts with a supplier or contractor; shall be authorized to utilize the request for the qualification method for purchase of supplies or general professional services; the pricing and terms of which have been previously established upon a determination by another public agency, provided that the~~ Purchasing Agent determines that a "piggyback" purchase is in the City's best interest. ~~The Purchasing Agent is required to determine and apply all of the following, prior to entering into the purchase:~~

- (1) ~~There are no local suppliers or contractors who could provide the product or service at that the use of competitive rates;~~
- (2) ~~A copy of the solicitation has been obtained from the originating agency and reviewed for compliance with the City's Purchasing Ordinance;~~
- (3) ~~The specifications of the item or service required by the City are not materially different from those specified in the originating agency's solicitation;~~
- (4) ~~The price of the purchase is lower than that estimated for the purchase if made directly by the City pursuant to this Ordinance;~~
- (5) ~~The contract resulting from the original solicitation is current or the solicitation is within two (2) years from the date of the City's order, or written justification is provided justifying use of an older solicitation;~~

- (6) ~~No more than a ten percent (10%) variation is allowed for customizing the order or for desirable options. In addition, a cost of living adjustment (using San Francisco Oakland San Jose Consumer Price Index All Urban Consumers) can be added for up to two (2) years; and~~
- (7) ~~The City enters into a separate contract with the vendor selected by the originating agency, and incorporates by reference the original solicitation, terms, conditions and prices.~~

~~I-2 3.08 Cooperative Procurement~~

~~3.08-1 The Purchasing Agent may purchase supplies and general services without complying with the quotation or bidding requirements of this Chapter, if such purchases are based on an agreement or cooperative purchasing program entered into by any public agency, regardless of whether the City is a named party to the agreement or an actual participant in such a program, provided that is not practical or advantageous to the City because of one (1) or more of the following considerations:~~

- (a) ~~The underlying purchase was made using competitive negotiation or bidding procedures at least as restrictive as the City's, and may include a nationally bid cooperative contract; and~~
- (b) ~~The public agency is a "public agency" as defined in Government Code section 6500.~~

~~3.08-2 In all such cases, the supplies or general~~ (a) Price is not part of the scoring criteria;

(b) For establishing a pool of qualified bidders;

(c) The ability of the bidder to provide the service promptly, or within the time specified, without delay or interference;

(d) The character, integrity, reputation, judgment, experience, and efficiency of the bidder;

(e) The quality of performance of previous services;

(f) Quality, availability, or capability is overriding in relation to price in procurement of research, development, technical services ~~purchased must~~;

(g) The sufficiency of the financial resources and ability of the bidder to provide the service;

(h) The need to evaluate whether the marketplace will respond better to a solicitation permitting a range of alternative proposals or evaluation and discussions of them before entering the contract;

(j) The number and scope of conditions attached to the Solicitation.

3.10-2 Receipt of Statements of Qualifications.

No statements of qualifications ("SOQs") shall be ~~the same~~ handled so as to permit disclosure of the contents of any SOQs to competing bidders during the process of negotiation. A register of SOQs shall be prepared containing the name of each bidder. The register of SOQs shall be open for public inspection only after contract award.

3.10-3 Evaluation Factors.

The request for qualifications shall state evaluation factors, which shall be considered the primary basis for evaluating the SOQs.

3.10-4 Discussion with Responsible Bidders and Revisions to SOQs.

Discussions may be conducted with responsible bidders who submit SOQs determined to be reasonably possible of being selected for award, for the purpose of cost, clarification to assure full understanding of, and conformance to, the solicitation requirements. All bidders shall be accorded equal treatment. Revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of the identity of the bidder or any information contained in competing offers.

3.10-5 Award.

Award shall be made to the responsible bidder whose SOQ is determined in writing to be the most advantageous to the City, taking into consideration value and the evaluation factors set forth in the request for qualifications.

3.10-6 Rejection.

Without limitation to the applicability of any other provisions of this Chapter, the Purchasing Agent or City Council may reject any and all SOQs.

I-2-3.11 – Noticing of Solicitations for estimated Purchase of more than \$50,000

For purchases with an estimated value of more than \$50,000, where notice is required, notice shall be given by one or more of the following methods:

- (1) Publishing notice in a newspaper of general circulation within the City on at least one occasion at least five days prior to the date set for the final receipt of bids. Provided, that publication may be made in any newspaper of general circulation in Santa Clara County which the Purchasing Agent shall select if the publication schedule of all newspapers of general circulation in the City are such that notice by publication cannot be given in time.
- (2) Posting on the City of Milpitas website at least five days prior to the date set for the final receipt of bids.
- (3) Through direct electronic notification via the City's eProcurement System.
- (4) Any other manner of notice required by law for the particular goods or services to be purchased.

~~be offered at the same price as the supplies~~Nothing in this section shall prohibit the City from notifying prospective firms of solicitations by electronic means, and nothing in this section shall prohibit the City from notifying prospective firms who are not in the City's Vendor Database.

The notice shall include a general description of the goods or services to be purchased or City property to be disposed; date, time and place of bid opening; and whether bonds will be required. The notice shall also include such information as to the proposed purchase or disposal as the Purchasing Agent deems sufficient to comply with relevant State law, regulation or City ordinance.

~~services subject to the agreement or program.~~

I-2-3.12 – Use of "or equals" in specifications and testing of "equals:"

- (a) Any reference to a specific brand name followed by the term "or equal" in specifications is illustrative only. A reference to a brand name or equal describes a component best meeting the specific operational, design, performance, maintenance, quality, and reliability requirements of the City.
- (b) A bidder may offer an equivalent ("or equal") in response to a brand name or equal reference. When an "or equal" is offered, the City may test and evaluate the product prior to award of the contract and the City determines if "an equal" offered meets the specification.
- (c) At bidder's expense, bidder bears sole responsibility for providing any information, test data or document required by the City to fully evaluate the acceptability of the "or equal:" at bidder's expense, this full evaluation may require independent testing, including destructive testing, at qualified test facilities.
- (d) If the City rejects a response or part of a response containing any "or equal," the Purchasing Agent shall determine the decision in writing.

~~I-2-3.09 – Sole Source Procurement~~

~~A contract may be awarded without competition when the Purchasing Agent determines in writing, after conducting a good faith review of available sources, that there is only one (1) source for the required supply or service. The Purchasing Agent shall conduct negotiations, as appropriate, as to price, delivery and terms. A written statement of the basis for the sole source determination shall be placed in the contract file. The sole source designation shall remain effective for five (5) years unless the Purchasing Agent determines the classification is no longer warranted.~~

~~I-2-3.10 – Emergency Authority of Purchasing Agent~~

~~3.10-1 Precluding action by the City Council, the Purchasing Agent may authorize emergency purchases without observing the bidding procedures set forth in this chapter upon a finding that such purchases are required for the immediate preservation of the public health, safety, or welfare and that there is an immediate or imminent emergency. The Purchasing Agent may purchase supplies or services, even though the amount thereof may exceed Twenty Thousand Dollars (\$20,000), without competitive bids upon notice.~~

~~3.10-2 At the next succeeding City Council meeting, the Purchasing Agent shall submit to the City Council a written statement of the circumstances of such emergency purchase over Twenty Thousand Dollars (\$20,000), a description of the supplies or services purchased, and the prices thereof.~~

~~I-2-3.11 – Authority to Modify Contracts Awarded by City Council~~

~~The Purchasing Agent is authorized to enter into and execute for and on behalf of the City, without the prior approval of the City Council, any amendment or change order to a supply or general service contract previously approved by the Council within the following guidelines:~~

- ~~(1) To extend the term of the contract, at the recommendation of the Requesting Department, for a period not to exceed six (6) consecutive months from the last Council approved expiration date;~~
- ~~(a) (2) To make minor revisions to the scope of services or schedule;~~
- ~~(b) (3) To make clerical corrections; or~~
- ~~(c) (4) The Purchasing Agent may also approve and sign assignments of contracts previously approved by the City Council when he or she has determined that the proposed assignee has the ability, capacity, experience and skill and is otherwise qualified to perform the contract.~~

~~All modifications to contracts, including, but not limited to, changes to the scope of the work, quantity of goods, price or term shall be made in writing and approved by the Requesting Department. Amendments or change orders are permitted only if the modification would not cause the contract to exceed the monetary limits defined below:~~

Individual Change Order Authority	Cumulative Change Order Authority
10% of Award or \$5,000 whichever is less	15% of Award or \$7,500 whichever is less
10% of Award or \$10,000 whichever is less	15% of Award or \$20,000 whichever is less

~~All contract changes must be reflected on the Purchase Order and/or contract amendment. All other changes outside the parameters defined in this section must be approved by the City Council.~~

- ~~(5) This subsection does not apply to contracts for professional services.~~

I-2-3.12 - Contracting for Consultants

~~3.12-1 The City Council finds and declares that the competitive bid process is ill suited for the selection of consultants.~~ 3.12-1 Consultants are required for professional or technical expertise and for matters requiring specialized abilities or a high degree of skill. Their numbers (in relation to a particular skill or expertise required) are comparatively limited. Where consultants are involved, the bidding process is not likely to result in a lower price to the City or eliminate unnecessary expense or delay. However, the request for proposals (RFP) process established in I-2-3.08, the request for qualifications (RFQa) process established in I-2-3.09, or a similar process based on evaluating consultant qualifications, is better suited.

~~3.12-2 The requesting department shall be empowered to engage a consultant (including, but not limited to, material testing services and construction inspection services) without the necessity of competitive bidding or notice thereof:~~

- ~~(a) Without City Council approval if the consultant's total fee for materials and services under the contract by which the consultant is engaged does not exceed \$100,000.00.~~
- ~~(b) With City Council approval if the consultant's total fee for materials and services under the contract by which the consultant is engaged exceeds \$100,000.00.~~

~~3.12-3~~ Architects, Engineers and Land Surveyors.

In addition to the provisions of ~~paragraphs~~paragraph 3.12-1 ~~and 3.12-2~~ of this ~~subsection~~section, the following requirements shall be applicable to the selection of architects, engineers and land surveyors.

- (a) The requesting department or division head shall negotiate a contract with the best qualified firm for firm that possesses the demonstrated competence and professional qualifications for the required architectural, engineering and land-surveying services.
- (b) Should the requesting department or division head be unable to negotiate a satisfactory contract with the firm considered to be ~~the most~~competent and qualified, at a price determined to be fair and reasonable, negotiations with that firm shall be formally terminated. The requesting department or division head shall then undertake negotiations with the second most qualified firm. Failing accord with the second

most qualified firm, the requesting department or division head shall formally terminate negotiations. The requesting department or division head shall then undertake negotiations with the third most qualified firm.

- (c) Should the requesting department or division head be unable to negotiate a satisfactory contract with any of the selected firms, the requesting department or division head shall select additional firms in order of their competence and ~~qualification~~, qualifications and continue negotiation until an agreement is reached.

I-2-3.13 - Standardization

3.13-1 Where the Purchasing Agent has determined that it is required for the health, safety or welfare of the people or employees of the ~~city~~ City, or that ~~significant~~ cost savings have been demonstrated, standardization of supplies, materials or equipment, including information and communication technology products and services, for purchase or to be used in a public works project, shall be considered. The specifications may stipulate a single brand or trade name. Among the factors that may be considered in determining to standardize on a single brand or trade name are that:

- i. ~~(a) — Repair or maintenance costs would be minimized;~~
- (a) ~~(b) — Training of user~~ In order to acquire a specific product(s) for the purpose of conducting a field test or experiment to determine the product's suitability for use by the City.
- (b) When it is required for proper operation or function to match other products with respect to the repair or expansion or completion of a system or program already in use by the City, including, but not limited to, technology purchases required to achieve interoperability with existing hardware, software, systems or programs.
- (c) In order to achieve significant cost savings based upon consideration of the following cost factors:
1. Timeliness and ~~or~~ quality of installation, repair and maintenance ~~personnel would be simplified;~~;
 2. ~~(e) —~~ Quality of user training;
 - 2.3. Supplies or spare and replacement parts ~~would be readily available;~~;
 4. ~~(d) — Modifications to~~ Modification of existing equipment ~~would not~~ , materials or systems;
 5. Future upgrades and updates;
 6. Estimated amount and cost of reasonably foreseeable future purchases of equipment that would be required to be compatible or functional with the product which is the subject of the standardization determination.
 7. Administrative costs.

3.13-2 The Purchasing Agent's written decision shall state the facts reviewed in arriving at the decision, the reasons for the decision, the period of time for which it is valid for making purchases and under what conditions it must be reviewed for possible revision. A copy of the Purchasing Agent's decision shall be ~~necessary;~~ attached to any report to the City council seeking approval of a purchase under this section.

- ~~(e) — Matching existing supplies, materials or equipment is required for proper operation of a particular piece of equipment or City program.~~

3.13-~~23~~ Available Competition.

When there is more than one (1) source for the standardized supply or service, competitive bidding procurement in accordance with Sections I-2-3.02 ~~Purchases of Over Five Thousand Dollars (\$5,000) and Less than Twenty Thousand Dollars (\$20,000) and~~ 06, I-2-3.03 ~~Purchases of Twenty Thousand Dollars (\$20,000) or More~~ 07 and I-2-3.08 is required.

3.13-~~3~~ Approval. ~~The 4 Annual Report.~~

Not later than August 31st annually, the Purchasing Agent shall provide to the City Council ~~has the final authority to approve~~ a list of all standardizations approved during the past fiscal year including the product, manufacturer, and reasons for the standardization of supplies or services based on the recommendation of staff. The standardization shall be valid for no more than ten (10) years, but may be revised sooner if the Purchasing Agent or requesting department can show substantial justification for an earlier revision. (Ord. 23.10 (part), 1/3/06) as authorized in this section.

I-2-3.14 - Local Purchasing Preference

3.14-1 Application of Local Preference.

The provisions of this section and the local preference established pursuant to this section shall be applicable to the following types of purchases or contracts executed in excess of ~~Five~~Ten Thousand Dollars (\$~~5~~10,000) and pursuant to either a formal or an informal bid:

- (a) Purchases or contracts for the purchase of supplies, materials and equipment; and
- (b) Purchases or contracts for ~~nonprofessional~~ services that are not otherwise of the kind contemplated by Section I-2-3.~~12~~11.

3.14-2 Exceptions to the Application of Local Preference.

The provisions of this section and the local preference established pursuant to this section shall not be applicable to the following types of purchases or contracts:

- (a) Purchases or contracts for professional services of the kind contemplated by Section I-2-3.~~12~~11;
- (b) Public works contracts;
- (c) Emergency purchases made pursuant to Section I-2-3.~~10~~03;
- (d) Sole source purchases made by the Purchasing Agent pursuant to Section I-2-3.~~09~~05;
- (e) ~~Piggyback~~Public Agency purchases made by the Purchasing Agent pursuant to Section I-2-3.~~07~~04;
- ~~(f) Cooperative purchases made by the Purchasing Agent pursuant to Section I-2-3.08;~~
- ~~(g)~~ Purchases or contracts where legal constraints on the expenditure of funds prohibit the application of the local preference or those contracts funded by the federal or state government, including federal or state grant funding, when such funding would be jeopardized by application of the local preference.

3.14-3 Reduction of Bid by Eligible Local Provider; Procedure for Applying the Local Preference.

In contracting for ~~equipment, materials~~, supplies or services as specifically set forth in this section, the City shall grant preference to a local provider who submits a bid within ten percent (10%) of the lowest responsible bidder and who is otherwise responsive and responsible to the invitation for bids, which preference shall allow the local provider the opportunity to reduce its bid to an amount equal to the amount of the lowest responsible bid, if the lowest responsible bid is submitted by other than an Eligible Local Provider. In the event an Eligible Local Provider reduces its bid to the amount of the lowest responsible bid, the Eligible Local Provider shall be deemed to have provided the lowest responsible bid and shall be awarded the contract.

- (a) The preference and opportunity to reduce the amount of the bid shall be provided first to the lowest Eligible Local Provider and, if not accepted by such Eligible Local Provider within five (5) business days of the opening of the bids, then to each successive Eligible Local Provider who is within ten percent (10%) of the lowest responsible bid, in ascending order of the amount of the bids.
- (b) The local provider shall certify under penalty of perjury, as a part of its bid and in a form and manner as required by the City, that the bidder qualifies as a local provider. The preference established in this section shall be waived if the certification does not appear on the respective bid.

3.14-4 No Exemption from Local Sales Tax.

The application of a local preference as set forth in this section shall not exempt any Eligible Local Provider to which a contract is executed or awarded from having to pay all applicable federal, state or local sales tax.

I-2-3.15 - Recycled Product Procurement

3.15-1 The City of Milpitas is committed to the conservation and protection of state and local resources; therefore, bidders able to supply recycled products and products containing recycled and environmentally preferable materials that meet performance requirements are encouraged to offer them in bids and proposals. The Purchasing Agent shall purchase recycled products whenever they are available at the same total cost and the fitness and quality are equal to or better than that of ~~nonrecycled~~non-recycled products.

- ~~(a) The City shall require all businesses doing business with the City to certify in writing the minimum, if not exact, percentage of postconsumer materials in the products or supplies offered or sold to the City. All contract provisions impeding the consideration of recycled products shall be deleted in favor of performance standards.~~

~~(b) With respect to printer or duplication cartridges, a certification from the vendor is required to specify that the cartridges are remanufactured and are in compliance with the requirements of Section 12156 (e) of the Public Contract Code.~~

~~(e)(a)~~ The City shall require contractors and consultants to use environmentally preferable products, and use products manufactured with the maximum practicable amount of post-consumer material, whenever cost effective and to the extent practicable.

~~(d) The City shall ensure that they and their contractors use recycled paper in printed material that bears an imprint identifying the recycled content of the paper, whenever practicable.~~

~~(e)(b)~~ The City shall ensure that they and their contractors use both sides of paper sheets whenever practicable.

~~(f)(c)~~ To the extent possible, the recycled product preference cost shall apply to the bids where the City has made multiple awards, so as to maximize the dollar participation of firms offering recycled products.

~~(b)(d) (g) All~~ To the extent possible, all printing contracts made by the City shall specify that the paper used shall meet the recycled content requirement of thirty percent (30%) postconsumer fiber ~~as specified in Section 12209 of the Public Contract Code.~~

~~(h)(e)~~ The City may specify recycled content at levels higher than the minimum content standards.

3.15-2 ~~The~~ Where the use of recycled products is designated, the Purchasing Agent ~~s~~ Shall:

(a) Maintain a list of designated recycled products that contain ~~the maximum~~ a practicable amount of recovered material and are consistent with State and Federal guidelines and ~~shall~~ coordinate with all departments to purchase environmentally preferable products whenever practicable.

(b) ~~Grant~~ Where the contract is competitively solicited, grant the supplier of recycled products with a minimum of 10% recycled content in its product(s) a preference of ten percent (10%) based on the bid or price quoted by supplier of recycled products when determining the lowest responsive and responsible ~~bidder~~ or highest ranked bidder depending upon procurement process used.

~~(e)(b)~~ Inform Departments of processes and procedures that are environmentally preferable in order to facilitate their evaluation and use by the Departments whenever practicable.

~~(e)(c)~~ Monitor contracting procedures to ensure that they do not discriminate against recycled products without justification, and that they maximize the specification of designated recycled products whenever practicable.

I-2-3.15 – Testing and Inspection of Samples

3.15-1 The Purchasing Agent may require vendors to provide samples to be tested and inspected as part of the applicable procurement process. The Purchasing Agent shall have the authority to require chemical, physical, or other tests of samples submitted with bids which are necessary to determine quality and conformance to the specifications. In the performance of such tests, the Purchasing Agent shall have the authority to make use of laboratory facilities of any department of the City or any outside laboratory at the bidder's expense.

~~I-2-3.16 - Brand Names or Equal Specification~~

~~3.16-1 Purpose and Use. Brand name or equal specifications may be used when the Purchasing Agent determines that:~~

~~(a) No other design or performance specification or qualified products list is available;~~

~~(b) Time does not permit the preparation of another form of purchase description, not including a brand name specification;~~

~~(c) The nature of the product or the nature of the City's requirements makes use of a brand name or equal specification suitable for the procurement; or~~

~~(d) Use of a brand name or equal specification is in the City's best interests.~~

~~3.16-2 Designation of Brand Names.~~

~~(a) Brand name or equal specifications shall state that substantially equivalent products to those designated will be considered for award.~~

~~(b) Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance and characteristics desired and is not intended to limit or restrict competition.~~

~~I-2-3.17~~ Waiver of Informalities: Rejection of Bids Responses

Where the Purchasing Agent or City Council are required to make purchases upon competitive ~~bid~~solicitations, said Purchasing Agent or City Council may waive any informalities or minor irregularities related to the procurement process, solicitation documents or responses or may reject any and all ~~bid~~sresponses (anything herein contained to the contrary notwithstanding) if said Purchasing Agent or City Council deems said rejection to be in the best interests of the City. Said rejection shall be at the sole discretion of the Purchasing Agent or City Council, as the case may be. Upon rejection of ~~bid~~sresponses, the Purchasing Agent or the City Council, as the case may be, may:

- (1) Give subsequent notice for a new competitive ~~bid~~solicitation;
- (2) Postpone said purchase or disposal definitely or indefinitely; or
- (3) Elect to make the purchase without competitive ~~bid~~solicitation, upon notice (and as if a competitive ~~bid~~solicitation, upon notice, had not been required in the first instance) in accordance with the authority granted by the various subsections of this ~~s~~Section.

I-2-3.17 – Insurance and Bonds

- (a) The Purchasing Agent is authorized to require vendors to provide insurance and surety bonds for contracts. Where required, the bidder shall submit insurance or surety bonds, or both, acceptable to the City.
- (b) Where required by the Purchasing Agent, all responses to solicitations shall include such bidders' security as is required by the solicitation documents and shall be presented under sealed cover. If the successful bidder fails to execute the contract within the time specified in the notice inviting bids or in the specifications referred to therein, the bidders' security may be declared forfeited by the Purchasing Agent to the City, and any bonds so forfeited may be prosecuted and collected and the amount of the security paid into the general fund. Unsuccessful bidders shall be entitled to return of their bidders' security. The form and amount of such security shall be described in the notice inviting responses or in the specifications referred to therein.
- (c) To secure faithful performance of the contract, the Purchasing Agent is authorized to require security in the form of cash, cashier's check, certified checks, or corporate faithful performance bonds, in such amount as the Purchasing Agent shall deem reasonably necessary to protect the best interests of the City. If the Purchasing Agent requires such security, the form and amount thereof shall be described in the notice inviting responses or in the specifications referred to therein. Unless otherwise required by law or the funding source, the Purchasing Agent need not require such security if the Purchasing Agent does not deem such to be reasonably necessary to protect the best interest of the City, or if the Purchasing Agent believes the interests of the City are best served by not requiring the same.

~~I-2-3.18 – Bonds~~

~~When deemed necessary by the Purchasing Agent or City Attorney, any person entering into a contract with the City may be required to furnish bid, labor and materials, and/or performance bonds for supply or service contracts as required by law or as deemed advisable to protect the City's interests. All bond requirements shall be set forth in the solicitation. Bonds shall not be used as a substitute for a determination of a bidder's responsibility. Said person (and his surety, if a bond is furnished) shall be liable for any damages upon said bidder's failure to faithfully perform the terms of his contract.~~

~~I-2-3.19 – Bid – Protest Procedure~~

~~3.1918-1 Any interested party may file a protest to ~~an~~ ama proposed award of ~~bid~~a contract in an amount over ~~Five~~Ten Thousand Dollars (\$~~5~~10,000). The protest shall be filed with the Purchasing Agent in writing no later than ~~ten~~(10~~seven~~ 7) calendar days after the posting of the intent to award and shall set forth the basis for the protest and any proposed remedy. ~~The time to file a protest shall commence when the award is posted on the City's website.~~~~

~~3.19 2 If a protest is filed, the award shall be suspended until the Purchasing Agent determines the validity of the protest, unless the Purchasing Agent determines that the purchase or services of the award must proceed prior to the protest hearing in order to protect the public health, safety and welfare.~~

~~3.19-3 The Purchasing Agent shall hear~~3.21-2 The Purchasing Agent will review the protest as soon as possible and ~~shall notify interested parties of the date, time and place for the protest hearing. Notice may be provided in writing by fax, email, or mail.~~

~~3.19-4 The Purchasing Agent shall hear such evidence as the Purchasing Agent deems relevant. The protest hearing shall be voice recorded. The decision of the Purchasing Agent shall be made as soon as possible. Notice of the decision shall be provided in any manner that the original notice of hearing may be given.~~will provide a written response to the protestor. The Purchasing Agent's decision on a bid protest for a procurement in an amount ~~less no more~~ than ~~Twenty~~Fifty Thousand Dollars (\$~~20~~50,000) shall be final.

~~3.19-5~~18-3 For procurements having a value of ~~Twenty~~more than Fifty Thousand Dollars (\$~~20~~50,000) ~~or more, an appeal of the Purchasing Agent's decision may be filed with~~, the City Council. ~~All such appeals must be in writing, and shall be filed with the City Clerk within ten (10) calendar days of serving the Purchasing Agent's decision~~ will consider the protest and take action thereupon, which action shall be final.

I-2-3.2019 - Public Works Contract Purchasing Procedures

3.2019-1 Definitions.

For the purposes of this Section I-2-3.2019 the following words and phrases shall have the following meanings:

1. Act means the Uniform Public Construction Cost Accounting Act (California Public Contracts Code ~~Section~~section 22000 et seq.).
2. Commission means the California Uniform Construction Cost Accounting Commission.
3. Facility means any plant, building, structure, ground facility, utility system, subject to the limitation of subsection 4 of the definition for public project below, real property, streets and highways, or other public works improvement.
4. Public project has the meaning assigned to it under Public Contract Code ~~Section~~section 22002, as it may be amended from time to time.

3.2019-2 Public Project Contracting Procedures.

The City shall follow the contracting procedures set forth in Article 3 of Act (Public Contract Code ~~Section~~section 22030 et seq.). The City shall procure public projects by force account, negotiated contract, purchase order, informal bidding or formal bidding as required in accordance with the applicable dollar amount limitations under Section 22032 of the Act, as it may be amended from time to time.

3.2019-3 Contractors List.

The Directors of Engineering and Public Works, in coordination with the City's Purchasing Agent, shall compile and maintain a list of qualified contractors identified according to categories of work. This list shall comply with the requirements of Section 22034 of the Act and the criteria promulgated, from time to time, by the Commission.

3.2019-4 Informal Bidding - Notice.

- (a) When a public project is to be performed which qualifies for informal bidding, notice of such project shall be given as follows unless an exception to competitive bidding applies:
 - (1) Mailed notice shall be sent to all contractors on the contractors list for the category of work being bid; and
 - (2) Mailed notice shall be given to all construction trade journals specified by the Commission for the receipt of such notice for Santa Clara County; and
 - (3) Additional notice to other contractors and/or trade journals may, in the discretion of the City, be given.
- (b) If the product or service to be acquired is proprietary in nature such that it can only be obtained from a certain contractor or contractors, notice inviting bids may be sent only to such contractor or contractors.

- (c) All mailing of notices to contractors and construction trade journals shall be completed not less than ten days before bids are due.
- (d) The notice shall describe the project in general terms, how to obtain more detailed information about the project and shall state the time and place for submission of bids.

3.2019-5 Formal Bidding—Notice.

- (a) When a public project is to be performed that requires formal bidding, notice of such project shall be given as follows unless an exception to competitive bidding applies:
 - (1) The notice shall state the time and place for the receiving and opening of sealed bids and distinctly describe the project.
 - (2) The notice shall be published at least 14 calendar days before the date of opening the bids in a newspaper of general circulation, printed and published in the City; or, if there is no newspaper printed and published within the jurisdiction of the City, in a newspaper of general circulation which is circulated within the City.
 - (3) The notice inviting formal bids shall also be mailed to all construction trade journals specified by the Commission for the receipt of such notice for Santa Clara County. The notice shall be mailed at least 15 calendar days before the date of opening the bids.

3.2019-6 Award of Contracts.

The City Manager is authorized to award contracts for public projects ~~consistent with the contract authority under I-4-2.00:~~ of less than or equal to one-hundred thousand dollars.

3.2019-7 Rejection of Bids.

The City Manager or the City Council, as the case may be, may, in the Manager's or Council's discretion, reject all bids and proceed as authorized by the Act.

3.2019-8 Approval of Plans and Designs.

The City Engineer, or designee, is authorized to approve plans and designs, and all amendments and addenda thereto, for performance of a public project of the City.

I-2-3.20 - Authority to Modify Contracts Awarded by City Council

The Purchasing Agent is authorized to enter into and execute for and on behalf of the City, without the prior approval of the City Council, any amendment or change order to a supply or service contract previously approved by the Council within the following guidelines:

- (a) To extend the term of the contract, at the recommendation of the Requesting Department, for a period not to exceed twelve (12) consecutive months from the last Council-approved expiration date;
- (b) To make minor revisions to the scope of services or schedule;
- (c) To make clerical corrections; or
- (d) The Purchasing Agent may also approve and sign assignments of contracts previously approved by the City Council when he or she has determined that the proposed assignee has the ability, capacity, experience and skill and is otherwise qualified to perform the contract.

All modifications to contracts, including, but not limited to, changes to the scope of the work, quantity of goods, price or term shall be made in writing and approved by the Requesting Department. Amendments or change orders are permitted only if the modification would not cause the contract to exceed the monetary limits defined below:

<u>Contract Amount</u>	<u>Individual Change Order Authority</u>	<u>Cumulative Change Order Authority</u>
<u>Under \$100,000</u>	<u>10% of Award or \$10,000 whichever is less</u>	<u>15% of Award or \$15,000 whichever is less</u>
<u>Over \$100,000</u>	<u>10% of Award or \$20,000 whichever is less</u>	<u>15% of Award or \$40,000 whichever is less</u>

All contract changes must be reflected on the Purchase Order and/or contract amendment. All other changes outside the parameters defined in this section must be approved by the City Council.

Section 4 - Purchase Orders

~~I-2-4.01 - Purchases Over Five Thousand Dollars (\$5,000) Must Be in Writing~~ I-2-4.01 - Purchase Order Requirement.

Except as otherwise approved by the Purchasing Agent or pursuant to Section I-2-2.03, no contract award for supplies or services ~~or the disposal of City property where the total expenditure or value is over Five Thousand Dollars (\$5,000)~~ shall be deemed to be an ~~acceptance of any offer or bid unless and until the same is reduced to writing and signed by the Purchasing Agent and dispatched~~authorization to the vendor or purchaser. ~~It is a violation of the ordinance to divide the purchase of~~ proceed with provision of the supplies or ~~general services or the disposal of City property in an amount over Five Thousand Dollars (\$5,000) into smaller orders for the purpose of evading the~~ until a purchase order requirements of this section is appropriately authorized and issued.

~~I-2-4.02 - Preparation - Issuance~~ of Purchase Orders.

Upon ascertaining the price to be paid for supplies or services, the Purchasing Agent shall ~~prepare~~issue a purchase order. The Purchasing Agent shall forward the original purchase order to the vendor, retaining one (1) copy for his purchase order file. He shall likewise forward one (1) copy of the purchase order to the requesting department to be used as a receiving report.

~~I-2-4.03 - Sufficient Funds Must be Available.~~

No purchase order shall be issued until it has been ascertained that there is to the credit of the requesting department a sufficient unencumbered appropriated balance in excess of all unpaid obligations to defray the amount of such order.

~~I-2-4.04 - Exceptions to Purchase Orders~~

~~Payments for annual maintenance, upgrades or subscriptions for computer hardware and/or software that has already been purchased pursuant to this chapter shall not require a purchase order for the payment to be issued.~~

Section 5 - Receipt of Goods and Services

~~I-2-5.01 - Department Head Responsible for Checking Quality~~ and Contract Management.

Upon receipt by any Department of supplies or services, the Department head or designee, shall be responsible for the making of a careful check of the quality, condition, and quantity of goods received against a copy of the purchase order and the packing list, when applicable, or services rendered as specified in the contract.

~~I-2-5.02 - Department Head Responsible for Checking Invoice.~~

The Department head or designee, upon receipt of a vendor's invoice, shall check the invoice for correctness of quantities, unit prices, price extensions, discounts, transportation, allowances, ~~etc.~~services rendered, hourly rates etc. When applicable, the Department head or designee shall compare the same with the purchase order and packing list. Approved invoices shall be forwarded to Accounts Payable for payment processing.

Section 6 - Inspections

~~I-2-6.01 - Department Head's Inspection.~~

The Department head or designee shall inspect, or cause to be inspected, all deliveries of supplies or services to determine their conformance to specifications. The Department head or designee shall have the authority to require chemical, physical, or other tests of samples ~~submitted with bids and samples~~ of deliveries which are necessary to determine quality and conformance to the specifications. In the performance of such tests, the Department head or designee shall have the authority to make use of laboratory facilities of any department of the City or any outside laboratory at the vendor's expense.

Section 7 - ~~Storing of Materials~~

~~I-2-7.01— Storerooms and Warehouses~~

~~The Purchasing Agent shall control and supervise the Purchasing warehouses of the City of Milpitas. The Purchasing Agent shall be responsible and accountable for all supplies in his or her custody and shall maintain a suitable inventory record thereof. (Ord. 23.10 (part), 1/3/06)~~

~~Section 8—~~Disposal of City Property

~~I-2-87.01 - Disposal of Property with an Estimated Value of Five Thousand Dollars (\$5,000) or Less.~~

~~Except as otherwise provided by State law or City ordinance, the Purchasing Agent or designee shall be empowered to dispose of property of the City, including abandoned property, which cannot be used by any department of the City, at public or private sale or by renting or destroying the same, (all with or without notice, competitive bid or necessity of posting bid bonds, at the Purchasing ~~Agent's~~Agent or designee's discretion, and upon such terms as he or she deems best) provided any single item of property involved does not exceed Five Thousand Dollars (\$5,000) in estimated current market value.~~

~~I-2-87.02 —~~ Deposit.

~~The Purchasing Agent or designee may, in his or her discretion, require that a deposit in the amount of the bid or any fraction thereof accompany each bid upon the disposal of City property.~~

~~I-2-87.03 - Disposal of Property with an Estimated Value of More Than Five Thousand Dollars \$5,000.~~

~~In the event that the estimated value of any single item of property exceeds Five Thousand Dollars (\$5,000) in current market value, the City Council may, upon notice, empower the Purchasing Agent to dispose of it (in accordance with the same terms and conditions and subject to the same discretion and limitations as if it were estimated at Five Thousand Dollars (\$5,000) or less in value). Alternatively, the City Council may elect to sell, rent or destroy the same in accordance with whatever provisions, terms and conditions the City Council may elect.~~

~~I-2-87.04 - Retired K-9 Units and Firearms.~~

~~Council finds that retired police dogs of the Police Department's K-9 unit have no value to the City of Milpitas and are a financial liability and detriment. Accordingly, said police dogs may be returned to the original supplier, the animal's handler or former handler without compensation. This subsection constitutes an exception to this Section.~~

~~Notwithstanding the other provisions of this Chapter, the City Manager or designee is authorized to determine the disposition of:~~

~~(a) police service dogs including:~~

- ~~(1) sale or donation of the police service dog to the assigned police officer when the officer leaves the canine unit or if the police service dog can no longer perform its required duties;~~
- ~~(2) the original supplier; or~~
- ~~(3) any other method that best serves the interests of the City; and~~

~~(b) surplus firearms including:~~

- ~~(1) sale or donation to a law enforcement agency;~~
- ~~(2) sale to an authorized firearms retailer;~~
- ~~(3) sale or donation to an active or retired sworn member of the police department consistent with the Memorandum of Understanding between the City and the Milpitas Police Officers Association; or~~
- ~~(4) destruction if no safe alternative is available.~~

Section 98 – Claims

~~I-2-98.01 - Filing of Claims.~~

~~Claims for loss, damage, breakage, shortage or otherwise, claims for refund, claims for adjustment, and claims for insurance or other indemnity shall be made promptly by the Purchasing Agent.~~

Section ~~109~~ - Ethics in Public Purchasing

I-2-~~109~~.01 - Ethics in Public Purchasing

Every employee participating in the procurement, management, storage, and use of supplies or services purchased by the City for its benefit shall adhere to the following principles:

- (1) ~~1~~—City employees shall not obligate the City, financially or otherwise, by any means, including, but not limited to, purchase orders and contracts, when the employee has a personal, material, financial, or other interest in the obligation.
- (2) ~~2~~—City employees shall not accept any form of gratuities.
- (3) ~~3~~—City employees may not accept discounts, reward points, sales, reduced prices, or other benefits offered for personal purchases by suppliers because of employee's relationship with the City.
- (4) ~~4~~—City employees shall be personally liable for any unauthorized procurements.

Section ~~110~~ - Severability

I-2-~~110~~.01 ~~—~~ Severability.

If any provisions of this Chapter or any application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of this Chapter that can be given effect without the invalid provisions or application, and to this end, the provisions of this Chapter are declared to be severable.

Section ~~1211~~ - Exclusions from Chapter

I-2-~~1211~~.01 - Exclusions from Chapter

The provisions of this Chapter shall not apply to items that typically cannot be bid or that the City Council has chosen to exclude from bidding. The following list is exemplary of these types of items and/or services, but is not intended to be all inclusive.

~~12.01-1 To public projects (separately governed by the provisions of the California Public Contract Code);~~

~~12.01-2~~11.01-1 To franchises governed by the provisions of the California Public Utilities Code or other statute of the State of California;

~~12.11.01-3~~2 Where State or Federal law requires a different procedure;

~~12.11.01-4~~3 To franchises, rights, privileges, licenses and permits granted by the City of Milpitas (including, but not limited to, franchises, rights and privileges granted for refuse disposal under Title V, Chapter 200 of the Milpitas Municipal Code and the Cable Franchise under Title III, Chapter 22 of the Milpitas Municipal Code;

~~12.11.01-5~~4 To the purchase of insurance;

11.01-5 To the purchase of ~~insurance~~art;

~~12.11.01-6~~6 To the ~~purchase of art~~;

~~12.01-7~~7 To the leasing, purchase or sale of land or any interest therein;

~~12.11.01-8~~7 To the hiring of or contracting for personnel (whether as temporary, seasonal or permanent employees, agents or independent contractors);

~~12.11.01-9~~8 To the purchase of utilities, including, but not limited to telephone service, gas, electricity or water;

~~12.11.01-10~~9 To the purchase of securities for the City's investment portfolio subject to the City's investment policy.

~~1211.01-1110~~ To the payments of debt service and bond indebtedness; arbitrage compliance; refunds of deposits; payments and/or pass through of collections on behalf of other governmental agencies; budget approved memberships and dues; authorized Community Development Block Grants (CDBG); memorandum of understanding obligations; budget approved contributions to not-for-profit organizations; United States Postal Service postage; City Council approved ~~recreation grants~~grant programs; employee travel expenses.

SECTION 4. EFFECTIVE DATE AND POSTING

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.