



## CITY OF MILPITAS AGENDA REPORT (AR)

<b>Item Title:</b>	<b>Introduce Ordinance No. 23.15 for Updates to Milpitas Municipal Code on Purchasing</b>
<b>Category:</b>	Leadership and Support Services
<b>Meeting Date:</b>	11/10/2020
<b>Staff Contact:</b>	Walter C. Rossmann, Deputy City Manager, 408-586-3111
<b>Recommendations:</b>	<ol style="list-style-type: none"> <li>1. Receive presentation from staff.</li> <li>2. Following the City Attorney reading the title, move to waive the first reading beyond the title of Ordinance No. 23.15.</li> <li>3. Introduce Ordinance No. 23.15 to update the municipal code section on purchasing.</li> </ol>

### **Background:**

The City's Purchasing Division (Division), housed in the Finance Department, is responsible for the centralized purchasing of goods and services governed by City's Purchasing Ordinance (Ordinance) except for capital improvement related contracting which is handled by the Engineering Department as well as small dollar purchases which are delegated to City Departments consistent with the Municipal Code.

The Division is headed by the Purchasing Agent, who is responsible for implementing the Ordinance, and supported by 1.0 Buyer and 0.5 Temporary Buyer. Annually, the Purchasing Division develops and processes over 200 contracts in support of City operations consistent with the Ordinance.

In FY 2019-20, the City substantially completed the implementation of ProcureNow, its e-procurement and contract management system and underwent a procurement study involving stakeholders across all departments. The study identified 39 recommendations. During the last six months, staff completed 11 recommendations and has been working on addressing the remaining recommendations.

The County of Santa Clara Shelter-in-Place order in response to the COVID-19 Pandemic accelerated the implementation of identified recommendations and forced streamlining operations through online approval of contracts using DocuSign, implementation of the contract management database for Purchasing originated contracts including automatic notification for renewal of contracts and insurance, and online payment for Procurement Card (P-Card) purchases. Further streamlining while ensuring fair and open competition and competitive pricing is dependent on updating the Ordinance.

On September 1, 2020, the City Council approved the COVID-19 Fiscal Response Strategies and Guidelines to be implemented by the City Manager. These fiscal strategies and guidelines were designed 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. One of these fiscal strategies and guidelines directs the City Manager to identify and bring forward for the Council's consideration City policy and ordinance changes, as applicable, that would enable/facilitate service delivery improvements.

### **Analysis:**

The recommended changes to the Ordinance are based on a thorough review by the City Attorney, staff, and the consultant who studied the City's procurement function. The primary recommended changes include updates to Procurement Methods and Procedures, increased bidding thresholds and related contract

amendment authority, annual reporting requirements and deadlines for sole source purchases and standardization of equipment, changes of definitions, and alignment to existing practices.

### Procurement Methods and Procedures

This section of the Ordinance was primarily restructured for better understanding and transparency. For example, a new paragraph providing an overview of the section was added which outlines the various procurement methods and bidding thresholds, the public agency procurement paragraph was simplified, common procurement procedures of various solicitation methods were made consistent, and the requirements for bonds and insurance was expanded. Additionally, staff recommends adding the Request for Qualifications solicitation method, an "or equals" process, and criteria for standardization of supplies, material or equipment.

The current ordinance defines the Request for Quotes, the Invitation for Bids, and the Request for Proposals solicitation methods. Staff recommends adding the Request for Qualifications (RFQ) solicitation method which may be used only for competitively selecting professional services under one or more of the following considerations:

1. For establishing a pool of qualified bidders;
2. The ability of the firms to provide the service promptly, or within the time specified, without delay or interference;
3. The character, integrity, reputation, judgment, experience, and efficiency of the firm;
4. The quality of performance of previous services;
5. Quality, availability, or capability is overriding in relation to price in procurement of research, development, technical services;
6. The sufficiency of the financial resources and ability of the firm to provide the service;
7. 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;
8. The number and scope of conditions attached to the Solicitation.

With the RFQ method price is not a consideration initially. However, price will be determined through a competitive Best and Final Offer process and/or negotiations with finalists.

With the acquisition of supplies, material and equipment, staff may develop specifications. With the "or equals" process, staff may reference a product by its brand name in solicitation documents and add the words "or equals." Any reference to a specific brand name followed by the term "or equal" in specifications is illustrative only and describes a product best meeting the specific operational, design, performance, maintenance, quality, and reliability requirements of the City. 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. 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. If the City rejects a response or part of a response containing any "or equal," the Purchasing Agent shall determine the decision in writing.

The current ordinance provides guidance for standardizing supplies, material or equipment including technology products and services. However, such guidance is not based on quantifying cost savings. Standardization shall be considered if the Purchasing Agent has determined that it is required for the health, safety or welfare of the people or employees of the City, or that repair or maintenance costs would be minimized; training of user and/or repair and maintenance personnel would be simplified; supplies or spare parts would be readily available; modifications to existing equipment would not be necessary; or matching existing supplies, materials or equipment is required for proper operation of a particular piece of equipment or City program. The City Council currently approves standardizations for supplies, material or equipment including technology products and services.

In contrast, the recommended changes to the standardization section of the Ordinance outlines more detailed criteria requiring staff to quantify cost savings for the Purchasing Agent's review and approval of standardizing on supplies, material, equipment or technology products and services with a focus on cost savings. These criteria are as follows:

1. 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.
2. 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.
3. In order to achieve significant cost savings based upon consideration of the following cost factors:
  - a. Timeliness and quality of installation, repair and maintenance;
  - b. Quality of user training;
  - c. Supplies and replacement parts;
  - d. Modification of existing equipment, materials or systems;
  - e. Future upgrades and updates;
  - f. 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.
  - g. Administrative costs.

Based on the detailed criteria focusing on cost savings related to standardization, staff recommends that, consistent with sole source purchase approvals, the Purchasing Agent is authorized to review and approve standardizations and submit annually a report to the City Council listing all standardizations approved during the past fiscal year including the product, manufacturer, and reasons for the standardization as authorized in the Ordinance and detailed above.

#### Bidding thresholds and related contract amendment authority

Consistent with the Council approved COVID-19 Fiscal Response Strategies and Guidelines, staff recommends increasing the thresholds for informal to formal competition based on estimated pricing. As the table below shows, currently for purchases of \$5,000 or less, the Ordinance requires for staff to obtain three quotations whenever possible; for purchases over \$5,000 and less than \$20,000, the Ordinance requires staff to get at least three quotations in writing; and for purchases above \$20,000 to engage in a formal competitive process such as an Invitation for Bid or a Request for Proposals process.

Staff recommends increasing the solicitation method thresholds based on the estimated cost of purchase as outlined in the table below. For estimated purchases not to exceed \$10,000, the updated Ordinance would require staff to obtain three quotations whenever possible. Increasing this threshold from \$5,000 to \$10,000 is consistent with similar sized cities in Santa Clara County. The cities of Mountain View and Palo Alto require that quotes be obtained for estimated purchases of \$10,000 and higher. For the City of Santa Clara, the threshold is \$15,000 and for the City of Cupertino the threshold is \$60,000. Only the City of Sunnyvale requires quotes for estimated purchases of \$5,000 or higher.

For an estimated cost of purchase of more than \$10,000 and less than \$50,000, the Ordinance would require staff to 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 quotations. For an estimated cost of purchase of more than \$50,000, the updated ordinance requires formal solicitation methods such as Invitation for Bid, Request for Proposals, etc. unless exempted by the Ordinance. This change increases the requirement for a formal solicitation method from \$20,000 to \$50,000 which is consistent with similar sized cities in our county. For the cities of Mountain View and Palo Alto the formal solicitation threshold starts with estimated purchases of more than \$50,000. For the City of Santa Clara and Mountain View the threshold is \$100,000 and for the City of Cupertino the threshold is \$200,000.

Solicitation Method	Current Thresholds (Based on actual cost of purchase)	Recommended Thresholds (Based on estimated cost of purchase)
No mandatory competition	\$5,000 or less	Not to exceed \$10,000
Informal Solicitation Method - Request for Quotes (supplies and services)	Over \$5,000 and less than \$20,000	More than \$10,000 and no more than \$50,000
Formal Solicitation Method - Invitation for Bid (primarily for supplies, material and equipment) - Request for Proposal (primarily for services) - Request for Qualifications (professional services only)	\$20,000 or more	More than \$50,000

The City Manager is authorized to award contracts up to a contract amount of \$100,000 and any contract with a value greater than \$100,000 requires Council approval. This Ordinance clarifies that the City Manager is authorized to award California Uniform Public Construction Cost Accounting Act (CUPCCA) up to a contract amount of \$100,000.

Per the current Ordinance, the Purchasing Agent has certain contract amendment authority which is based on the previous City Manager contract approval authority of \$50,000 and to extend a contract without increase in compensation for up to six months. As shown in the table below, the Purchasing Agent may amend a contract based on certain conditions and up to a certain amount for individual amendments and cumulative contract amendments.

Contract Amount	Individual Contract Amendment Authority	Cumulative Contract Amendment Authority
No more than \$50,000	10% of Award or \$5,000 whichever is less	15% of Award or \$7,500 whichever is less
More than \$50,000	10% of Award or \$10,000 whichever is less	15% of Award or \$20,000 whichever is less

Staff recommends aligning the contract amounts from \$50,000 to \$100,000 with the City Manager contract authority with similar conditions as shown in the table below. Additionally, staff recommends changing the Purchasing Agent's authority to extend a contract without increase in compensation from up to six months to up to 12 months. These changes in authority will streamline City operations.

Contract Amount	Individual Contract Amendment Authority	Cumulative Contract Amendment Authority
No more than \$100,000	10% of Award or \$10,000 whichever is less	15% of Award or \$15,000 whichever is less
More than \$100,000	10% of Award or \$20,000 whichever is less	15% of Award or \$40,000 whichever is less

Annual reporting requirements and deadlines for sole source purchases and standardization of supplies, material or equipment

Currently, Municipal Code section I-310-3.70 (c) (4) requires that 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. In praxis, this reporting requirement has been assumed by the Purchasing Agent because the Purchasing Agent per the Ordinance (Section I-2-3.09, titled "Sole Source Procurement"), prior to award of a sole source contract, is required to determine 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. Since the deadline for reporting all sole source purchases occurs during the annual Council recess, staff is required to submit the report twice. First, the report is provided as an Information Memorandum to the City Council by July 15 and then as a staff report after the recess on an August Council agenda so that the public can review the information as well.

With this ordinance change, staff recommends moving the reporting requirement from the current Chapter to the Ordinance, requiring the Purchasing Agent to submit the annual report, and extending the reporting deadline to August 31 to provide additional time to compile the data after the end of the fiscal year and avoid having to submit the report twice.

Additionally, with the annual sole source report, staff recommends adding the requirement to report on approved standardizations of supplies, material or equipment by August 31 for prior fiscal year actions.

#### Changes of definitions

Changes of definitions include clarifying additions such as including Purchase Orders (POs) in the definition of contracts. A PO has potentially two functions. It serves as a payment vehicle and as a contract. Unlike an agreement, a PO does not have to be signed by a vendor. Therefore, purchases of goods, supplies, and equipment, governmental agencies can be expedited by attaching standard terms and conditions to a PO.

The definition for professional services is recommended to be expanded to include information technology services such as installation and implementation of information technology projects, software licensing and maintenance, and Software as a Service (SaaS). Currently, contracts for information technology are not addressed in the ordinance. With this change, the exception for not issuing Purchase Orders related to technology services is recommended to be removed.

The definition of Purchasing Agent is clarified to include the Purchasing Agent, the Director of Finance or his or her designee, or such position designated by the City Manager to administer this Chapter. This change provides clarity in the absence of the Purchasing Agent.

The definition of Signature is aligned with electronic signatures as established by law and current practice of accepting scanned signatures.

The overarching term of Solicitation is introduced which includes 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.

#### Alignment to existing practices

In addition to aligning the sole source reporting requirement, staff recommends authorizing the disposition of firearms in the Municipal Code consistent with the current Memorandum of Understanding (MOU) with the Milpitas Police Officer Association. Per MOU, a sworn officer who has served satisfactorily in the Department for at least five years may purchase a service weapon based on its depreciated value upon satisfactory separation from City service. Further upon retirement, the City shall give an officer his/her service weapon and holsters without charge under certain conditions.

Other alignments to existing practices include adding contract management to the Department Heads' list of responsibilities.

#### Policy Alternative:

**Alternative:** Do not approve the Ordinance changes.

**Pros:** Staff will continue procuring goods and services within the existing framework of rules and regulations.

**Cons:** The Ordinance changes are modernizing the existing Ordinance consistent with best practices.

Reason not recommended: Our City would not streamline the City's purchasing system to reduce the administrative burden and cost while ensuring open and fair competition and competitive pricing.

**Fiscal Impact:**

With Council approval of the recommended Ordinance amendments, the citywide purchasing system will be streamlined freeing up staff time to work on other high priority projects.

**California Environmental Quality Act:**

Not applicable

**Recommendations:**

1. Receive presentation from staff.
2. Following the City Attorney reading the title, move to waive the first reading beyond the title of Ordinance No. 23.15.
3. Introduce Ordinance No. 23.15 to update the municipal code section on purchasing.

**Attachment:**

Draft Ordinance No. 23.15