

ORDINANCE NO. 2050

AN ORDINANCE OF THE CITY OF SANTA CLARA, CALIFORNIA, REPEALING CHAPTER 2.105 (FINANCE DEPARTMENT) OF TITLE 2 (ADMINISTRATION AND PERSONNEL) AND ADDING A NEW CHAPTER 2.105 (FINANCE DEPARTMENT) OF TITLE 2 ("ADMINISTRATION AND PERSONNEL") OF "THE CODE OF THE CITY OF SANTA CLARA, CALIFORNIA TO IMPLEMENT NEW PURCHASING REQUIREMENTS AND UPDATE ADMINISTRATIVE LANGUAGE

BE IT ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, the City seeks to amend Santa Clara City Code Chapter 2.105 to update its purchasing system for supplies, materials, equipment and services and the disposal of surplus property to align it with Federal and state purchasing "best practices"; clarify certain Code sections for City Staff and the public; and update certain outdated administrative language;

WHEREAS, The City currently has certain provisions of "The Code of the City of Santa Clara, California" ("SCCC") devoted to purchasing at Chapter 2.105; and,

WHEREAS, the City desires to repeal SCCC Chapter 2.105 in its entirety and add a new SCCC Chapter 2.105.

NOW THEREFORE, BE IT FURTHER ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

SECTION 1: That the current Chapter 2.105 SCCC ("Finance Department") be repealed in its entirety.

SECTION 2: That a new Chapter 2.105 ("Finance Department") is added to Title 2 ("Administration and Personnel") of "The Code of the City of Santa Clara, California" ("SCCC") to read as follows:

"Chapter 2.105

FINANCE DEPARTMENT

Sections:

- 2.105.010 Definitions.
- 2.105.020 Organization generally – Director of Finance.
- 2.105.030 Accounting services division.
- 2.105.040 Municipal services division.

- 2.105.050 Budget division.
- 2.105.060 Financial management and treasury division.
- 2.105.070 Purchasing – Authority – Application.
- 2.105.080 Adoption of centralized purchasing system for Products and General Services.
- 2.105.090 Centralized purchasing – Exceptions.
- 2.105.100 Splitting of purchases or contracts for Products or General Services.
- 2.105.110 Appropriation balance necessary.
- 2.105.120 Purchasing Division Manager.
- 2.105.130 Additional quantities.
- 2.105.140 Competitive requirements for purchases.
- 2.105.150 Formal competitive bids or proposals; use of electronic media; reverse auctions.
- 2.105.160 Award of contracts.
- 2.105.170 Notice inviting bids.
- 2.105.180 Bidders' security.
- 2.105.190 Performance and payment bonds.
- 2.105.200 Rejection of bids or proposals.
- 2.105.210 Tie bids.
- 2.105.220 Procedure when no bids or proposals received.
- 2.105.230 Bid or Proposal irregularities or informalities.
- 2.105.240 Protest Procedures.
- 2.105.250 Procurements where competitive methods are not practicable.
- 2.105.260 Emergency purchases.
- 2.105.270 Purchases from other public agencies or through the utilization of Competitive bid processes of other public agencies.
- 2.105.280 Single and sole source procurements.
- 2.105.290 Idle act.
- 2.105.300 Purchase orders and contracts– Signature authority.
- 2.105.310 Surplus personal property.
- 2.105.320 Climate friendly purchasing.

2.105.010 Definitions.

As used in this chapter:

(a) "Brand name" means a specification limited to one or more items by manufacturers' names or catalog 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.

(b) "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other private legal entity.

(c) "City" means the City of Santa Clara and any of its affiliated agencies.

(d) "City Manager" means the City Manager or his/her designee.

(e) "General Services" means any work performed or services rendered by an independent contractor, with or without the furnishing of materials.

(1) "General Services" includes, but is not limited to the following:

(A) Maintenance, nonstructural repair, and improvements to City buildings and structures, which do not require engineering plans, specifications or design, such

as replacement of broken window panes, fire extinguisher maintenance, minor roof repairs, utility systems maintenance, elevator maintenance, custodial services and pest control;

(B) Repair, modification and maintenance of City equipment and software;

(C) Cleaning, analysis, testing, moving, removal and disposal (otherwise than by sale) of City materials, supplies and equipment;

(D) Replanting, care, and maintenance of public grounds, including, but not limited to, trees, shrubbery, flowers and lawns, which does not require engineering plans, specifications or design;

(E) Professional and non-professional services to facilitate City operations; and

(F) Repair, demolition and other work, required to abate nuisances pursuant to this Code.

(2) "General Services" shall not include:

(A) Work performed by City employees, public agencies, or pursuant to City collective bargaining agreements;

(B) Public works projects as defined in this Chapter;

(C) Any purchase of materials, supplies or equipment;

(C) Services performed under a grant agreement between the City and a grantee of a City program;

(D) Services for the design, fabrication or installation of a work of art;

(E) Temporary staffing services; or

(F) Services performed under a concession agreement between the City and a licensee or permittee on City property.

(f) "Life-cycle costs" means the costs that the City reasonably should be expected to pay for the full life of a product, including the purchase amount, ancillary costs, and recycling and disposal costs at end-of-life.

(g) "Maintenance" means routine, recurring, and usual work for the preservation, protection, and keeping of any publicly owned or publicly operated facility for its intended purposes in a safe and continually usable condition for which it was designed, improved, constructed, altered, or repaired. This definition of "maintenance" expressly includes, but is not limited to carpentry, electrical, plumbing, glazing, and other craftwork that is consistent with the definition set forth above to preserve the facility in a safe, efficient, and continually usable condition for which it was intended, including repairs, cleaning, and other operations on machinery and other equipment permanently attached to the building or realty as fixtures. This definition does not include, among other types of work, janitorial or custodial services and protection of the sort provided by guards or other security forces. Upgrades to facilities may be considered maintenance only if they are necessary to preserve, protect and keep the public facility

operating for its intended purpose in a safe and continually usable condition for which it was designed, improved, constructed, altered, or repaired.

(h) "Person" means any business, individual, union, committee, club, organization or group of individuals.

(i) "Products" means supplies, materials, equipment, and software that are required for City operations.

(j) "Procurement" means the, sourcing, purchasing, renting, leasing or otherwise acquiring of any General Services or Products. "Procurement" also includes any function that pertains to obtaining Products or General Services, such as description of requirements, selection and solicitation of sources, preparation and awards of contracts, and contractual administration.

(k) "Procurement card" means a charge card issued to an employee of the City of Santa Clara for the purpose of making authorized purchases on the City's behalf.

(l) "Procurement Guide" is a user guide, promulgated by the Purchasing Division Manager, that addresses the practical application of the provisions of this Chapter.

(m) "Public works" means the erection, construction, alteration, repair or improvement of any public structure, building, road or other public improvement of any kind.

(n) "Responsible bidder" means a vendor or contractor with the capability in all respects to perform all contractual responsibilities, that presents a bid amount that is competitive and reasonable, and has attributes of trustworthiness, quality, fitness, capacity, and experience to satisfactorily perform under the contract.

(o) "Reverse auction" means an internet-based process in which vendors compete to obtain business, the identity of vendors submitting bids but not the amount of the bids remains sealed during the time allotted for the auction, and vendors may submit successively lower bids, with the goal that bids submitted by vendors will decrease over the time allotted for the auction.

(p) "Sole Source" means that there is only one supplier or contractor available for the required product or service.

(q) "Single Source" means that a particular supplier is purposefully chosen by the buying organization even when there are other suppliers with a functional equivalent of the product available.

(r) "Specification" means any description of the physical or functional characteristics or of the nature of a supply, service or construction item. It may include a description of any requirement for inspecting, testing, preparing a supply or service for delivery, or product to be used.

(s) "Surplus supplies" means personal property owned by the City that no longer has a useful purpose. Surplus supplies includes, but is not limited to, supplies that are worn out, obsolete or unsuitable for City use.

(t) "Total taxable amount" means total price for products or services exclusive of shipping, handling, and any other associated charges.

2.105.020 Organization generally – Director of Finance.

(a) The Finance Department shall be under the direct supervision of a Director of Finance, who shall be in the unclassified service. The Finance Department shall be organized into the divisions as provided in this chapter. The Director of Finance shall manage and direct the activities of the Finance Department.

(b) The Assistant Director of Finance, who shall be in the unclassified service, shall assist the Director of Finance and shall act in the capacity of Director of Finance in his/her absence. Additionally, the Assistant Director of Finance may be assigned the responsibility to oversee the operation of one or more of the divisions or may be assigned to directly supervise one of the divisions.

2.105.030 Accounting services division.

The accounting services division shall be under the immediate supervision of the Assistant Director of Finance or a division manager, accounting services, who shall be in the unclassified service. The duties of this division shall be as follows:

(a) Manage the general accounting system and accounting control for all the various offices, departments, and agencies of the City.

(b) Prepare and submit for the City Council a monthly statement of all receipts and disbursements in sufficient detail to show the City's current financial position.

(c) Maintain cemetery and miscellaneous accounts receivable and deposit ledgers.

(d) Maintain an accounts payable ledger and manage the proper disbursement of all moneys in accordance with the City budget.

(e) Develop and implement expenditure control procedures over each office, department, or agency of the City.

(f) Prepare and record the biweekly payroll, voucher all claims against the City, and prepare the necessary warrants and checks for payment therefor.

(g) Maintain records correctly showing all the capital assets and liabilities of the City.

(h) Prepare annual audited financial statements for the City and its agencies and other periodic financial statements and reports as required and requested.

(i) Prepare for publication all required governmental reports having to do with the financial condition of the City.

(j) Compile data and statistics and develop financial analysis as required and requested.

(k) Manage special projects as assigned.

(l) Manage production of the City's annual financial reports, general-purpose financial statements, and annual comprehensive financial report.

(m) Manage the following ongoing projects:

(1) Reimbursement claims against the state;

(2) Governmental Accounting Standards Board (GASB) updates;

(3) Legislative review and updates;

(4) Internal audit of fixed assets for insurance reporting.

(n) Perform internal control of Finance Department functions.

2.105.040 Municipal services division.

The municipal services division shall be under the immediate supervision of the Assistant Director of Finance or a division manager, municipal services, who shall be in the unclassified service. The duties and responsibilities of this division shall be as follows:

(a) Manage field and office customer service staff who provide counter and telephone assistance regarding utilities, business tax, process and receipt all monetary transactions (e.g., request for turn-on and turn-off of utilities, meter testing, payment arrangements and referrals for financial assistance).

(b) Manage a complex on-line computerized utility billing system which tracks meter and payment history, consumption, charges, allocations and generates monthly billings.

(c) Research, prepare findings, and resolve customer concerns, suggestions and/or complaints.

(d) Maintain a comprehensive computerized hand-held meter reading system which stores monthly meter reads and interfaces with the utility billing system to generate monthly utility billings.

(e) Receive and have custody of all cash and checks received over the counter or in the mail by the City from any source and issue receipts therefor.

(f) Administer a computerized cash receipting system which tracks all payments received by the City. This system provides for real time verification of payments, encoding and endorsing of all checks and automatic posting of all transactions to the utility billing and business tax systems.

(g) Deposit or keep safe all moneys received in such depositories as may be designated by the City Council, in compliance with the provisions of the State law governing the handling, depositing, and securing of public funds.

(h) Administer the business tax policies and related enforcement, as directed, including the billing therefor.

(i) Maintain and process all bankruptcy claims; and prepare and file various State and Federal reports.

(j) Coordinate and process numerous service contracts and equipment maintenance contracts.

(k) Act as City's representative for the receipt and evaluation of solicitation requests from charitable organizations.

(l) Manage special projects as assigned.

(m) Perform such other related administrative duties as may be assigned by the Director of Finance.

(n) Receive credit and debit card transactions.

(o) Adoption and Amendment of Municipal Services Division, Utility Services Rules and Regulations.

(1) Adoption of Rules and Regulations by Resolution. The City Council may, from time to time, by resolution, as it deems necessary for the administration or implementation of the intent of this Code, review, revise, adopt and/or promulgate new or amended rules and regulations concerning the operation or administration of the following:

(A) Finance Department's Municipal Services Division, Utility Services Rules and Regulations [SCCC 2.105.040];

(B) Electric Department's Silicon Valley Power Rules and Regulations [SCCC 13.05.040];

(C) Water Department's Rules and Regulations for Water Service and Use [SCCC 13.15.080]; and

(D) Street Department's Rules and Regulations for Garbage, Refuse, Recycling, Household Hazardous Waste, and/or Clean Green Service [SCCC 8.25.290].

(2) Amendment of Municipal Services Division, Utility Services Rules and Regulations. The City Council may subsequently adopt or amend the Municipal Services Division, Utility Services Rules and Regulations from time to time by resolution of the City Council. Such amendments may be adopted as the City Council deems necessary or expedient for the administration or implementation of this Code, or to review, revise, adopt and/or promulgate new or amended rules and regulations concerning the operation or administration of the electric, water, sewer and/or street departments to govern the municipal and utility services furnished by the City. Such amendments may be in response to changing facts and circumstances which affect the operation of the City's electric, water, sewer and/or street departments, or as a result of any applicable law(s) and/or regulation(s) implemented by the Federal or State government, their respective regulatory agency(ies), or local ordinance. Any new or amended rules and regulations subsequently adopted by the City Council by resolution shall be incorporated by reference into this Code.

(3) Responsible Parties. Customers of the electric, water, and/or street departments shall be considered as having given express consent to be bound by this Code and any City departmental Rules and Regulations subsequently enacted pursuant to this Code.

(4) Responsibility for Enforcement. The primary responsibility for enforcement of the departmental rules and regulations shall be with the City Manager.

(p) Enforcement of the Rules and Regulations. Except when more specific provisions pertaining to departmental rules and regulations are intended to supersede the provisions of SCCC 1.05.070, the following shall apply:

(1) Pursuant to SCCC 1.05.070, the City, in its prosecutorial discretion, may enforce violation(s) of the departmental rules and regulation as a criminal, civil, and/or administrative action.

2.105.050 Budget division.

The budget division shall be under the immediate supervision of the Assistant Director of Finance or a division manager, who shall be in the unclassified service. The duties and responsibilities of this division shall be as follows:

- (a) Compile and produce the City's biennial operating and capital improvement budgets.
- (b) Produce annual updates to the City's ten-year financial study.
- (c) Prepare and monitor long-range financial plans for the City and its agencies, including periodic updates as required.
- (d) Prepare periodic and annual revenue forecasts.
- (e) Analyze and prepare estimated revenue and expenditure updates.
- (f) Monitor and report the City's Proposition 4 appropriations limit and general contingency reserves.
- (g) Manage sales and property tax audits.
- (h) Analyze and recommend options for budget balancing to the City Manager.
- (i) Monitor operating and capital improvement budgets, with regular reporting to the City Council.
- (j) Coordinate the forecasting of general liability, earthquake, property and casualty, and other miscellaneous insurance costs and coverages (commercial or self-insurance) with the City's Risk Manager. (k) Manage special projects as assigned.

2.105.060 Financial management and treasury division.

The financial management and treasury division shall be under the immediate supervision of the Assistant Director of Finance or a division manager, financial management, who shall be in the unclassified service. The duties of this division shall be as follows:

- (a) Monitor the financing needs of the City and its agencies and manage negotiated and public-bid bond issues.
- (b) Manage cash flow and invest idle cash in accordance with established policies and procedures and prepare monthly reports for the City and its agencies.
- (c) Manage the outstanding debt of the City and its agencies in compliance with established policies and various bond covenants and prepare periodic reports.
- (d) Compile data and statistics and develop financial analysis and forecasts as required and requested.
- (e) Administer contracts between the City and its agencies and outside contractors for compliance with financial and insurance terms and conditions of these agreements, consistent with City policy.
- (f) Manage special projects as required.

2.105.070 Purchasing – Authority – Application.

- (a) This purchasing system shall apply to all purchases of Products and General Services, in whatever amount.

(b) The establishment of a centralized purchasing system is authorized and directed by "The Charter of the City of Santa Clara, California" Section 1318 and Government Code Sections 54201 through 54205.

(c) When a purchase involves the expenditure of Federal assistance and/or contract funds, the purchase shall be conducted in accordance with mandatory Federal law and regulations.

(d) Nothing in this chapter shall prevent the City from complying with the terms and conditions of any grant, gift or bequest that is otherwise consistent with law.

2.105.080 Adoption of centralized purchasing system for Products and General Services.

(a) A purchasing system is hereby adopted in order to: establish uniform procedures for the purchase of Products and General Services at the lowest possible cost while ensuring quality, quantity and availability; exercise proactive financial control over purchases; and clearly define authority for the purchasing function.

(b) There is also hereby created a centralized purchasing division, under the direct supervision of the City Manager or her/his designee, in whom is vested authority for the purchase of Products and General Services.

(c) The purchasing system may allow for the decentralization of certain purchasing functions as appropriate while ensuring appropriate internal controls.

(d) The purchasing system shall require the Purchasing Division Manager to promulgate and maintain a Procurement Guide to serve as a user guide that addresses the practical application of the provisions of the Chapter.

(e) All purchases of Products and General Services shall require a City purchase order or signed agreement. Exceptions to this requirement include:

(1) Procurement card purchases made in accordance with the City procurement card policy; and

(2) Payments made for ongoing City operations as described in the City's Procurement Guide.

2.105.090 Centralized purchasing – Exceptions.

The following are exceptions to the centralized purchasing system:

(a) The City Manager may authorize in writing any City department to purchase, contract for, or specify General Services or Products independently of the centralized purchasing system, but it shall be required that such purchases or contracts be made in conformity with this Chapter and the City's Procurement Guide.

(b) Any contract for the purchase or sale of water, electrical power, fuels for the generation of electrical power, wastewater and recycled water.

(c) Any contract for a public work as defined by applicable State and local law, including, but not limited to, City Charter Section 1310 and Public Contracts Code Section 5100 *et seq.*

2.105.100 Splitting of purchase orders or contracts for Products or General Services.

No officer or employee of the City shall split or separate a purchase of Products or a contract for General Services for the purpose of evading the provisions of this Chapter. The acquisition of Products should normally be made as a single purchase when the need has been identified for

multiples of items, related items, or similar items, which are ordinarily available from the same vendor or manufacturer.

2.105.110 Appropriation balance necessary.

(a) Except for emergency purchases made pursuant to this Chapter, no officer or employee of the City shall requisition or order any Products or General Services unless there exists an unencumbered balance of an appropriation or appropriations available for such purchase, against which the requisition or purchase may be charged.

(b) When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year, the purchase shall be cancelled and the contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Products or General Services delivered under the contract.

2.105.120 Purchasing Division Manager.

The Purchasing Division Manager shall be in the unclassified service and shall be the head of and have general responsibility for the purchasing division. The Purchasing Division Manager shall, subject to the delegation and approval of the City Manager, have authority to or provide support thereof to:

(a) Purchase and contract for General Services and Products required by any City department in accordance with prescribed bidding procedures set forth in this Chapter;

(b) Negotiate and recommend execution of contracts or purchase orders for the purchase of General Services and Products;

(c) Act to procure for the City the needed quality and quantity of General Services and Products at the least expense or best value to the City;

(d) Endeavor to obtain as full and open competition as possible;

(e) Prepare and recommend to the City Manager a Procurement Guide for the purchase of General Services and Products for the City;

(f) Keep informed of current developments in the field of purchasing, prices, market conditions and new products;

(g) Prescribe and maintain such forms as are reasonably necessary to the operation of the purchasing system and other rules and regulations;

(h) Facilitate the reuse of surplus personal property between City departments and the sale of all personal property that cannot be re-purposed by any City Department; and

(i) Maintain a central warehouse.

2.105.130 Additional quantities.

At the discretion of the Purchasing Division Manager, additional quantities may be purchased after the initial award of a contract or purchase order for General Services or Products. If the purchase of additional quantities or services increases the maximum compensation that exceeds the City Manager's signature authority set forth in this Chapter, or an amount previously approved by Council, then Council approval is required.

2.105.140 Competitive requirements for purchases.

The City shall when practicable engage in competitive procurement. The Purchasing Division Manager shall use the following procurement methods under the circumstances described below:

- (a) Purchase orders and agreements when the total taxable amount, exclusive of freight and shipping cost, is estimated not to exceed fifteen thousand dollars (\$15,000) may be made without a competitive procurement method.
- (b) Informal request for quotes shall be used for purchases of Products or General Services with a total taxable amount estimated to be greater than fifteen thousand dollars (\$15,000) and up to and including two hundred fifty thousand dollars (\$250,000). Award factors may be based on either the lowest responsible and responsive quote, or quote which offers the best value for the City, as specified in Section 2.105.160(b) and Section 2.105.160(c), respectively.
- (c) Formal request for proposals shall be used for purchases of General Services when the total taxable amount is estimated to be more than two hundred fifty thousand dollars (\$250,000). Award factors shall be based on the proposal which offers the best value for the City, as specified in Section 2.105.160(c).
- (d) Formal request for bids shall be used for purchase of Products when the total taxable amount is estimated to be greater than two hundred fifty thousand dollars (\$250,000), or for General Services when the Purchasing Division Manager determines that it is appropriate to do so. Award factor shall be based on lowest responsible and responsive bid as specified in Section 2.105.160(b).

2.105.150 Formal competitive bids or proposals; use of electronic media; reverse auctions.

- (a) Sealed bids or proposals shall be submitted to the purchasing division at the time and place specified in the procurement notice. At the time and place prescribed in said notice, the bids shall be publicly open and declare the aggregate bid of each bidder. The Purchasing Division Manager shall examine the bids and prepare a written report and recommendation.
- (b) The use of electronic media is authorized for the formal competitive process, including without limitation submission, opening and reporting of bids or proposals electronically, provided that such use shall be governed by the Procurement Guide as defined in this Chapter. The administrative procedure shall include measures as the Purchasing Division Manager deems appropriate for security of the competitive process, approval and award processes, and the accurate retrieval or conversion of electronic information into a medium which permits inspection and copying.
- (c) When the Purchasing Division Manager finds it to be in the best interest of the City based on the circumstances of the particular procurement, the Purchasing Division Manager in his or her discretion may procure by reverse auction purchases of Products requiring formal bidding, which goods are readily available in the marketplace, highly standardized, and can be supplied by a reasonable number of qualified competitors.

2.105.160 Award of contracts.

- (a) Award factors generally:

(1) The Purchasing Division Manager shall award the contract in accordance with the award factors and respective weights outlined in the solicitation. The award decision shall be documented and available for public inspection.

(b) Award factors for informal quotes and formal bids.

(1) Purchases for which informal quotes or formal bids are being used shall be awarded to the bidder who submits the lowest responsible and responsive quote or bid in accordance with this Section. The low quote or bidder shall be determined based on the lowest total cost to the City including, but not limited to:

- (A) Purchase price;
- (B) Trade discounts;
- (C) Shipping costs;
- (D) Life cycle costs;
- (E) Operating efficiency; and
- (F) Maintenance costs.

(c) Award factors for informal quotes and formal request for proposals.

(1) Purchases for which informal quotes or formal requests for proposals are used shall be awarded to the bidder whose quote or proposal offers the best value for the City in accordance with the applicable provisions of this Chapter. In addition to the factors set forth in 2.107.170(b)(1), the best value quote or proposal shall be determined based on but not limited to:

- (A) Quality;
- (B) Capabilities, expertise, and experience of the bidder;
- (C) Adherence to applicable Council policies; and
- (D) Ability of the bidder to provide future maintenance, repair parts, and service;

(2) At the discretion of the Purchasing Division Manager, any one or more of the award factors set forth above may be excluded from a procurement if the factor or factors are not applicable or prohibited by law.

(d) If the Purchasing Division Manager determines that it is in the best interest of the City to issue a solicitation for the procurement of goods or services of indefinite quantities and/or with indefinite delivery dates that requires formal or informal bidding, or the most advantageous quotes or proposals, the solicitation may allow for the award to multiple bidders in order of the lowest bids or best value. When multiple awards have been made under such circumstances, then at the time that actual purchases are made, the choice between or among the selected bidders shall be based on a consideration of factors, including but not limited to the following:

- (A) Lowest total cost to the City;
- (B) Availability;
- (C) Quality; and
- (D) Capabilities and/or expertise.

2.105.170 Notice inviting bids.

(a) The notice inviting bids shall be published in at least one of the following manners:

- (1) In a newspaper of general circulation in the City, at least once, not less than ten days before the date set for opening bids;
- (2) As a posting on the City's website or City designated website for such postings; or
- (3) At City Hall for a period of not less than ten days before the date set for opening bids.

2.105.180 Bidders' security.

The Purchasing Division Manager may require, at his or her discretion, a bidders' security as required by the bid documents that shall be presented under sealed cover or other appropriate means. 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 Purchasing Division Manager or his/her designee may declare that the successful bidder has forfeited its bidders' security 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 the return of their bidders' security. The form and amount of such security shall be described in the notice inviting bids or in the specifications referred to therein.

2.105.190 Performance and payment bonds.

To secure faithful performance of the contract, the Purchasing Division Manager or his/her designee is authorized to require security in the form of cash, cashier's check, certified checks, or corporate faithful performance and payment bonds, in such amount as he/she deems reasonably necessary to protect the best interests of the City. If the Purchasing Division Manager or his/her designee requires such security, the form and amount thereof shall be described in the notice inviting bids or in the specifications referred to therein.

2.105.200 Rejection of bids or proposals.

The Purchasing Division Manager or designee may reject any or all bids or proposals. If all bids or proposals are rejected, the Purchasing Division Manager or designee may re-notice the solicitation, or award without further complying with the provisions of this Chapter if re-advertising is determined to be an idle act.

2.105.210 Tie bids.

If two or more bids are for the same amount and are the lowest bids, the Purchasing Division Manager may select the winning bidder at his or her discretion.

2.105.220 Procedure when no bids or proposals received.

If no bids or proposals are received, the Purchasing Division Manager or designee may re-advertise or may otherwise acquire in the open market without further complying with the provisions of this Chapter.

2.105.230 Bid or Proposal irregularities or informalities

The Purchasing Division Manager shall have the right to waive any informalities or minor irregularities in bids or proposals.

2.105.240 Protest Procedures

The Purchasing Division Manager shall, in the Procurement Guide, establish a process for reviewing and responding to award protests.

2.105.250 Procurements where competitive methods are not practicable.

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

- (a) Emergency purchases pursuant to Section 2.105.260 of this Chapter.
- (b) Public agency purchases pursuant to Section 2.105.270 of this Chapter.
- (c) Single or Sole Source purchases pursuant to 2.105.280 of this Chapter.
- (d) Idle act pursuant to Section 2.105.290 of this Chapter.

2.105.260 Emergency purchases.

- (a) In the case of an emergency involving the threatening of lives, property or welfare of the people of the City or the property of the City, the City Manager and/or his/her designee may purchase supplies, materials or equipment without formal bidding, as formal bids would be an "idle act" in such an emergency and may contract for General Services which the City Manager and/or his/her designee deems necessary for the purpose of meeting such emergency.
- (b) For the purpose of meeting such emergency, the City Manager and/or his/her designee may expend unencumbered moneys in any City reserve fund, notwithstanding the fact that such moneys may not have been appropriated for such purpose, to the extent that other moneys have not been appropriated or are otherwise unavailable therefor.
- (c) The City Manager and/or his/her designee shall provide a post-emergency report to the City Council on the use of any reserve amounts expended for the above purposes.

2.105.270 Purchases from other public agencies or through the utilization of Competitive bid processes of other public agencies.

The City, through the City Manager and/or the Purchasing Division Manager, may, without observing the competitive procurement requirements prescribed by this Chapter acquire Products or General Services as follows:

- (a) Contract directly with any public agency for Products or General Services;
- (b) Contract, directly or indirectly, with a vendor based on an agreement negotiated by a joint powers agency, or non-profit organization that provide resources to public agencies and which the City is a member;
- (c) Contract, either directly or indirectly, with a vendor under a contract awarded using pre-established cooperative purchasing agreements, when such agreements resulted from a competitive bid process that meets or exceeds the competitive bidding process of the City, as determined by the Purchasing Division Manager; or
- (d) Contract directly with a vendor at a price and on terms obtained through a competitive bidding process of another public agency, even if the City has not joined with the public agency

in such competitive process or purchase. Any such competitive process shall meet or exceed the competitive bidding process of the City, as determined by the Purchasing Division Manager.

For the purpose of this section, the term "public agency" shall also include, without limitation, any nonprofit organization made up of at least one or more public agencies, which nonprofit organization has been approved by the Purchasing Division Manager for the conduct of competitive procurements.

2.105.280 Single and sole source procurements.

(a) Except as provided in subsection (b) of this section, no specifications for the procurement of Products or General Services shall be written in a manner that limits the purchase to a single manufacturer or brand name product. A specification may reference a brand name if it is followed by the words "or equal" under circumstances where it is reasonably possible for equivalency to be demonstrated.

(b) A procurement shall be exempted from the requirements of subsection (a) of this section if the Purchasing Division Manager has determined that a particular Product or General Service may be specifically designated by reason of one or more of the following purposes:

- (1) To acquire a specific product or performance for the purpose of conducting a field test or experiment to determine the product's suitability for use;
- (2) When required to ensure operation or function to match other products with respect to the repair, expansion or completion of a system, existing structure or program currently in use by the City, including but not limited to, utility and technology purchases required to achieve interoperability with existing systems or programs;
- (3) When the purchase of an item is only available from one source (sole source);
- (4) When a service is considered unique or unusual such that requirements for competitive procurement are contrary to public interest; and
- (5) In order to make an emergency purchase pursuant to this chapter.

(c) Nothing in this section shall prohibit the inclusion in specifications of an industry standard with regard to performance that can be met by more than one product or manufacturer.

(d) Purchases of General Services or Products shall not be segregated or conducted in any manner for the purpose of avoiding the requirements of this section.

(e) The Purchasing Division Manager shall establish written administrative procedures to carry out the provisions of this section.

2.105.290 Idle act.

Idle act shall mean that a competitive procurement process would not be useful or produce any advantage for the City. Idle acts include but are not limited to the following situations where:

- (1) Specifications cannot be drawn in a way that would enable more than one bidder to meet them.
- (2) It is impossible, as a practical matter, to obtain Products or General Services required and observe the competitive procurement requirements.

(3) Due to circumstances beyond the control of the City, the time necessary to use the competitive procurement procedure would result in substantial economic loss to the City or substantial interference with a critical City operation.

2.105.300 Purchase orders and contracts— Signature authority.

Pursuant to Section 400 of the City Charter, authority to execute contracts with third parties for General Services and Products provided to the City shall be granted to certain City officials as follows:

(a) The City Manager, or his/her designee, is authorized to execute purchase orders and agreements on behalf of the City in amounts up to and including two hundred fifty thousand dollars (\$250,000). Contracts with a value above these dollar limits require approval by the City Council. To determine the City Manager's signature authority threshold, the estimated total taxable amount over a five-year period, inclusive of any option years, shall be used.

(b) The City Manager is authorized to delegate all or a portion of such authority to execute contracts to specified City employees at his/her discretion. Such delegation of authority shall be made in writing and filed with the City Clerk.

(c) The City Attorney shall approve the form of all contracts made by the City.

(d) A contract in the form of a Purchase Order signed only by the City may be issued by the Finance Director who may delegate such authority to the Purchasing Division Manager at his/her discretion.

2.105.310 Surplus personal property.

The purpose of this section is to maximize for the City the benefits of the prompt and efficient sale, auction or disposal of the City's surplus personal property pursuant to Charter Section 1318, as follows:

(a) All City departments shall submit to the Purchasing Division Manager or designee at such times and on such forms as the City Manager shall prescribe, reports showing all personal property that is no longer used, that has become obsolete or worn out, or that has been acquired by the City as unclaimed property.

(b) The Purchasing Division Manager or designee is hereby delegated and shall have the authority to dispose of all surplus personal property that cannot be used by any City department or that has become unsuitable for City use as follows:

(1) When the estimated value is two thousand five hundred Dollars (\$2,500) or less, by any method as determined by the Purchasing Division Manager or designee.

(2) When the estimated value is greater than two thousand five hundred dollars (\$2,500), at a virtual or physical auction conducted by an independent third-party auction house that is under contract for this purpose, or by posting the item(s) on the City's website or City designated website designated for such postings.

(c) The Purchasing Division Manager or his/her designee shall have the authority to exchange surplus personal property for, or trade in the same on new personal property without publishing a notice of intent to do so.

(d) City employees may bid upon or purchase any item for sale as follows:

(1) The Chief of Police may, without City Council approval, determine the disposition of a police service dog by means of sale of the police service dog to its assigned handler.

(2) The Chief of Police may, without City Council approval, determine the disposition of a police service firearm, as defined in Penal Code Section 16520, by sale of the firearm in an amount equal to its depreciated value, to a sworn officer who is eligible for a retirement identification card endorsed for carrying a concealed firearm, in accordance with all applicable State and Federal laws.

(3) City employees, except for Finance Department employees or any other employee with administrative access to bidding software, may without City Council approval bid upon any item up for public auction.

(e) If State or Federal law, or public safety concerns, renders inappropriate the disposition of an item of surplus property in the manner set forth in this section, such item may be disposed of as required by law, or by any other method deemed appropriate by the Purchasing Division Manager or his/her designee, regardless of the value of the item.

2.105.320 Climate friendly purchasing

The City's Sustainable Purchasing Policy should be followed to the extent possible. In particular, City staff should strive to purchase products that minimizes environmental impacts, toxins, pollution, and hazards to workers and the community to the greatest extent practicable, purchase products with recycled content, conserve energy and water, reduce greenhouse gas emissions, use unbleached or chlorine-free manufacturing processes, are lead and mercury free, and use wood from sustainable harvested forests."

SECTION 3: Ordinances Repealed. With exception of the provisions protected by the savings clause, all ordinances (or parts of ordinances) in conflict with or inconsistent with this ordinance are hereby repealed.

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SECTION 4: Savings clause. The changes provided for in this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this ordinance; nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the effective date of this ordinance. All fee schedules shall remain in force until superseded by the fee schedules adopted by the City Council.

SECTION 5: Effective date. This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirements of Section 808 and 812 of "The Charter of the City of Santa Clara, California."

PASSED FOR THE PURPOSE OF PUBLICATION this 30TH day of August, 2022, by the following vote:

AYES: COUNCILORS: Becker, Hardy, Jain, Park, and Watanabe
and Mayor Gillmor

NOES: COUNCILORS: None

ABSENT: COUNCILORS: Chahal

ABSTAINED: COUNCILORS: None

ATTEST:



NORA PIMENTEL, MMC
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference: None