

Memorandum

**TO: PUBLIC SAFETY, FINANCE
& STRATEGIC SUPPORT
COMMITTEE**

FROM: Scott P. Johnson

SUBJECT: SEE BELOW

DATE: March 4, 2010

Approved

Date

3/10/10

COUNCIL DISTRICT: Citywide

**SUBJECT: PROCUREMENT REPORT AND PROPOSED AMENDMENTS TO
SECTIONS 4.12 AND 4.16 OF THE MUNICIPAL CODE TO
STREAMLINE PROCUREMENTS AND THE DISPOSITION OF
SURPLUS PERSONAL PROPERTY**

RECOMMENDATION

1. Accept the report.
2. Recommend to the City Council to direct the City Attorney to draft an ordinance amending the San José Municipal Code provisions with respect to:
 - a. Council Appointees' contract authority:
 - i. include a Consumer Price Index for All Urban Consumers adjustment to automatically increase the contract approval authority limits every three years.
 - ii. include incidental services as part of the purchase of supplies, materials, and equipment.
 - b. The procurement of goods and services:
 - i. change the protest procedures for purchases under \$100,000.
 - ii. allow for an online formal bid procedure, including a reverse auction process to purchase goods and services.
 - iii. expand the conditions for cooperative purchases to include non-profit organizations that are made up of multiple public agencies in California or elsewhere.
 - iv. establish that the list of required award factors used in requests for quotes and requests for proposals is subject to revision by the Director of Finance, on a

case-by-case basis, if it is determined that it is in the best interest of the City to do so.

- v. in formal bidding, allow award of contract to more than one bidder when exact quantities and or delivery dates are unknown.
 - vi. for request for quotes (RFQ's) and formal request for proposals (RFP) allow award of contract to more than one proposer when such action is in the best interest of the City.
- c. Unclaimed and Surplus Personal Property:
- i. streamline the noticing requirements for bids of surplus personal property.
 - ii. raise the threshold requiring the sale of surplus personal property by sealed bid or auction from \$400 to \$1,000.

OUTCOME

Report on and propose changes to the Municipal Code regarding the streamlining of the procurement process for goods and services and the surplus disposition process.

EXECUTIVE SUMMARY

This Council Memorandum recommends that Council direct the City Attorney to draft an ordinance amending various sections in the Municipal Code related to the contract authority for Council Appointees, procurement of goods and services and disposition of surplus personal property. Recommendation #1 below is based on direction received from the Public Safety, Finance, and Strategic Support Committee at the May 15, 2008 meeting:

1. Authorize the adjustment of the contract approval authority for Council Appointees every three years based on Consumer Price Index (CPI) increases.
2. Include incidental services as part of contract approval authority for the lease or purchase of goods.
3. Amend the protest procedures for informal solicitations (less than \$100K)
4. Allow for an online bid procedure and reverse auction process.
5. Approve using cooperative purchases that include non-profit organizations that are made up of multiple public agencies in California or elsewhere.
6. Authorize the Director of Finance to amend the award criteria to be used in Requests for Quotes and Proposals, on a case-by-case basis, if it is determined that it is in the best interest of the City to do so.
7. Allow formal bids to be awarded to more than one bidder when the specification does not have specific quantity or delivery requirements.
8. Allow RFQ's and formal RFP's to be awarded to more than one proposer if it is determined through the evaluation process that it is more advantageous for the City to make multiple awards.
9. Streamline the noticing requirements for bids of surplus personal property.

10. Raise the threshold requiring the sale of surplus personal property by sealed bid or auction from \$400 to \$1,000.

The following two tables provide a chronological context for the recommendations identified in this report. Table I provides a summary of the recommendations related to the Municipal Code governing the procurement of goods and services. The first column of this table lists the affected procurement actions and how such actions have been modified with the 2007 Procurement Reforms and are recommended to be modified as outlined in this memorandum.

**TABLE I: SUMMARY OF PROCUREMENT REFORMS
GOODS AND SERVICES**

Procurement Action	Prior to 2007 Procurement Reforms	2007 Procurement Reforms	Recommendation
City Manager Contract Approval Authority for Goods	\$100,000	\$1,000,000	Administrative CPI adjustment every three years
	Only applied to purchase of goods and delivery of such goods	Only applied to purchase of goods and delivery of such goods	Includes other incidental services such as installation, training, maintenance, etc. up to 25% of the contract price
Contract Approval Authority for Services	\$100,000	\$250,000	Administrative CPI Adjustment every three years
Protest Procedure for Informal Solicitations under \$100,000	Not applicable	Any interested party has ten days to protest the award recommendation.	Administrative procedure to be established by the Director of Finance
Ability to issue multiple awards in formal bidding.	Not applicable	Not applicable	Award of bids to multiple bidders when quantities and delivery are unknown.
Bid Opening	Public Opening	Public Opening	Allow for online Bid submission and online bid opening.
Reverse Auction Process	Not applicable	Not applicable	Recommend approval of reverse auction process
Cooperative Purchase	Purchase of supplies, materials and equipment from any public agency that followed a formal bidding process.	With any public agency which follows a substantially similar procurement process	Expand the definition of cooperative purchases to include those made through non-profits made up of multiple public agencies.
Minimum Award Criteria for Quotes and Proposals; Awarding to more than one proposer.	Award factors include mandatory list	Not applicable	Award factors are mandatory, but subject to revision as determined by the Director of Finance. Give City the flexibility to award to more than one supplier off a single quote or RFP.

Table II below provides a summary of the recommendations listed above related to the Municipal Code governing the disposition of surplus personal property.

**TABLE II: SUMMARY OF PROCUREMENT REFORMS
SURPLUS PROPERTY DISPOSITION**

Surplus Disposition Action	Current Provision	Recommendation
Noticing of Request for Bids for disposition of Personal Surplus Property	In a newspaper of general Circulation	Internet noticing
Threshold for Sealed Bid	\$400	\$1,000

BACKGROUND

In the past few years significant Council decisions and events have helped shape and form the recommendations presented in this report. These actions and events have also played a factor in Council adoption of the 2007 Procurement Reforms, the 2008 Procurement Report, outcomes of the City Manager's organizational transformation effort, and the existing ordinance for the disposition of surplus personal property.

2007 Procurement Reforms

In February 2007, the Mayor and City Council approved the 2007 Procurement Reforms. These procurement reforms addressed audit recommendations issued by the City's internal Auditor and the Civil Grand Jury of Santa Clara County as well as enhanced the transparency of and streamlining of the City's procurement processes. Specifically, Council adopted an ordinance that raised the City Manager's contract approval authority for the purchase of goods from \$100,000 to \$1 million and increased the Council Appointees' contract approval for the purchase of services from \$100,000 to \$250,000. This authority was granted in conjunction with increased transparency in the City's procurement process through the adoption of Council Policy 0-35, "Procurement and Contract Process Integrity and Conflict of Interest", and the implementation of protest and appeals processes.

Annual Procurement Report

On May 15, 2008, staff submitted a report (Item 6) titled, "Annual Procurement Report and Proposed Amendments to Sections 4.12 and 4.16 of the Municipal Code", to the Public Safety, Finance, and Strategic Support Committee .

The annual procurement report summarized significant Procurement Policy Actions and Procurement Reforms approved by the Council and implemented by the Finance Department, Purchasing Division between 2005 and 2008. The report also detailed staff's efforts to implement the Council approved procurement reforms and highlighted the streamlining of citywide procurement processes with the implementation of the City's E-Procurement System

and the expansion of the City's Procurement Card Program. The report concluded with various awards the City received that recognized the excellence of its procurement function.

In accepting the report, the Committee directed staff to present the report with a recommendation that Council implement an ordinance provision that sets forth an automatic increase for contract approval authority.

"Beyond Budget Cuts"

In summer 2008, the City Manager initiated an organizational transformation effort titled "Beyond Budget Cuts" (BBC). This effort focuses on identifying areas where the City can increase its effectiveness, efficiency, adaptability, and capacity to innovate while continuously adapting to changing demands. The outcome of this effort is to identify ways to improve the City's organizational capacity to respond to the City Council's policies, service-delivery priorities and ongoing resource constraints.

To advance BBC, the City Manager formed several action teams. "Busting Bureaucracy", one of the action teams, organized a Procurement Workout in January 2009. At the 1 ½ day workout, over 40 employees, representing various City functions that contribute to the procurement and contracting of goods and services, participated in this workout. The goal of the workout was to identify streamlining opportunities in the acquisition process for goods and services.

Disposition of Surplus Personal Property

Aside from its procurement responsibilities, the Finance Department also administers the disposition of the City's surplus personal property. Section 4.16 of the San José Municipal Code titled, "Unclaimed and Surplus Personal Property," was adopted on December 6, 1994, and provides the legal framework for the disposition of unclaimed personal property, as confiscated by the Police Department, and of surplus personal property transferred to Finance by City Departments for final disposition. This Code section requires that City property with an estimated value exceeding \$400 must be disposed of by auction or sealed bid. As discussed below, the Department of Finance would like to take the opportunity to seek Council direction to amend certain provisions of the Municipal Code with regard to this responsibility.

ANALYSIS

This section discusses:

- Direction from the Public Safety, Finance, and Strategic Support Committee at the May 15, 2008 meeting regarding the City Manager's and Council Appointees' contract approval authority.
- Outcomes of the "Busting Bureaucracy" Action Team, including recommended amendments to the Municipal Code Section 4.12 titled, "Procurement of Goods and Services".

- Recommended amendments to Municipal Code Section 4.16 titled. “Unclaimed and Surplus Personal Property”.

Direction from May 15, 2008 Public Safety, Finance, and Strategic Support Committee

At the May 15, 2008 Public Safety, Finance, and Strategic Support Committee (PSF&SS), the Committee unanimously approved staff’s recommendation as outlined in the original memorandum and recommended Council consider a periodic adjustment of Council Appointees’ contract approval authority based on increases to a regularly used index.

Based on Committee direction, staff recommends that Council Appointees’ Contract Approval Authority for goods and services be automatically adjusted every three years based on the Consumer Price Index for All Urban Consumers for the San Francisco, Oakland, and San José Metro Area (CPI) as calculated by the Federal Bureau of Labor Statistics and be rounded to the nearest \$100,000. Further, Finance staff will be required to publish the adjusted contract approval authority limits on the City’s internet site.

Per the U.S. Department of Labor Federal Bureau of Labor Statistics, between 1999 and 2009 the average annual CPI increase was 3.0%. Assuming this average increase continues for the next three years, in 2013 the contract approval authority for Council Appointees for the purchase of supplies, materials, and equipment would be adjusted from \$1 million to \$1,100,000 and services would be adjusted from \$250,000 to \$300,000.

Outcomes of the “Busting Bureaucracy” Action Team and other discussions recommending amendments to Municipal Code Sections 4.12 titled, “Procurement of Goods and Services”

As mentioned in the Background section of this memorandum, the “Busting Bureaucracy Action Team” organized a Procurement Workout in January 2009. Based on the results of the workout and subsequent discussions, staff recommends the following changes to the Municipal Code governing the procurement of goods and services.

- Changes to the City Manager’s Contract Approval Authority for the purchase of supplies, materials and equipment

Section 4.04.020.A.3.b of the Municipal Code authorizes the City Manager to award contracts for the purchase supplies, material and equipment up to a maximum value of \$1 million, including the delivery costs. This authority does not include the purchase of incidental services, such as installation of equipment. For example, on November 18, 2008, Council approved an award of contract for the purchase of furniture for the 911 Call Center in the amount of \$572,477.50. Since the purchase of the furniture included approximately \$55,000 in installation costs of the new furniture and demolition service of the existing furniture, the award of bid was required to be placed on the Council agenda for approval.

Staff does not believe that the inclusion of incidental services included in a bid for the purchase of supplies, materials or equipment should prevent the City Manager from awarding the contract under the \$1,000,000 bid award limit. Therefore, in order to streamline the acquisition of goods with a total value less than \$1 million dollars, staff recommends amending the contracting authority for supplies, material and equipments to include incidental services that do not exceed 25% of the contract value. Setting the value of incidental services at 25% ensures that the total amount of services will not exceed the contract approval authority authorized for Council Appointees (currently \$250,000). Examples of incidental services associated with a goods purchase include assembly, installation, implementation, configuration, training, maintenance, support, and delivery and transportation charges related to the contract project. This change in definition would only apply to the City Manager's authority to award. All purchases of goods in excess of \$100,000 would still be subject to the requirement to be awarded to the lowest responsible bidder.

- Informal Solicitations and Protest Period

Section 4.12.210 titled, "Selection of Procurement Method", states that the Request for Quotes process shall be used for purchases with an estimated value between \$10,000 and \$100,000. To facilitate a streamlined process, Section 4.12.260.C states that responses for Request for Quotes may be solicited by any reasonable means, including but not limited to: mail, telephone, fax, email, or posting on the City's website. Therefore, reasonably, staff can receive responses for a \$12,000 acquisition for audiovisual equipment by contacting a few suppliers over the phone. This informal procurement process is intended to quickly acquire goods and services while ensuring a competitive process.

As mentioned in the Background Section of this memorandum, with the adoption of the 2007 Procurement Reforms, the Mayor and City Council approved a higher contract approval authority for the purchase of goods and services and directed staff to implement a protest and appeals process. Staff originally recommended the Protest Procedures found in Sections 4.12.410 -460 of the Municipal Code that allow any interested party to protest staff's award recommendation in writing for all procurement decisions above \$10,000. If a written protest is received, staff is required to respond to the protest. If the protest is denied, the protesting party has the option to appeal staff's decision on awards above \$100,000 to the Council within ten days of the date of the protest response letter. For awards less than \$100,000, the Director of Finance's decision is final regarding the resolution of the protest.

Annually, Finance/Purchasing issues approximately 256 Request for Quotes (RFQ) for purchases under \$100,000. Over the past two fiscal years, less than two percent of the RFQ's were protested, and two protests were upheld. When a protest is upheld, the remedy is almost always to re-quote the requirement.

Based on this experience, staff recommends amending the formal protest procedure for purchases under \$100,000 and replacing it with a less formal and time-consuming

administrative process to be developed and implemented by the Director of Finance. This process will be designed to shorten the procurement cycle time while still allowing protests in order to provide an avenue for quality control.

- Online Bid Submission

Per Municipal Code Section 4.12, the formal bidding process shall be used to purchase supplies, materials, and equipment with an estimated value of more than \$100,000. Additionally, this process can also be utilized for the contracting of services, if the Director of Finance or designee determines that it is in the best interest of the City. Municipal Code section 4.12.270 titled, "Formal Bids Procedure", prescribes the process to receive bids in response to the City's issuance of a RFB. Specifically, sealed bids shall be submitted to the Finance Department prior to the due date as published. Then, at the time and place as published, the Director of Finance, or authorized representative, shall publicly open bids and declare the aggregate bid of each bidder.

In August 2007 the City implemented its E-Procurement System powered by BidSync. During its initial year of operation, Finance has successfully issued Request for Quotes (solicitations used for purchases with an estimated value between \$10,000 and \$100,000) and received electronic responses through the system. As a next step to streamline the RFB process and to take advantage of the system, Finance desires to receive bids online. When a bidder submits an online bid, BidSync warns that the pricing is binding and requires an additional password confirmation. Immediately, after the bid due date and time, the system releases the aggregate bid amount of each bidder electronically. Therefore, to streamline the bid submission process and public bid opening process, staff recommends that the City Attorney draft an ordinance amending the sealed bid requirements of the Code in order to facilitate an online bid submission and online or virtual public bid opening.

- Reverse Auction

In addition to the online submission of bids, the City's E-Procurement System includes reverse auction functionality. In contrast to an auction process where the City attempts to sell personal property at the highest price, a reverse auction process allows the City to seek to purchase goods or services at the lowest possible price. The reverse auction process is an online process with a scheduled due date where bidders have knowledge of the other bids as they are submitted but are not aware of the identities of the bidders themselves. As bidders submit their pricing close to the scheduled due date, the system automatically extends the due date incrementally to allow for the continuation of pricing submission. After several iterations of the reverse auction process, bidders will have submitted a bid that reflects their respective break-even prices. Therefore, if there is no price submission activity for a preset period, the reverse auction process closes.

Public Agencies started working with reverse auctions about five years ago. In 2004 at the annual conference of the National Institute of Government Purchasing, several agencies

across the nation reported that reverse auctions resulted in up to 8 to 10% savings in the purchase of commodities.

Based on the potential savings, staff recommends that the City Attorney draft an ordinance amending Municipal Code section 4.12.270 titled, “Formal Bids Procedure”, to authorize the Director of Finance to utilize the reverse auction process for the purchase of goods and services.

- Cooperative Purchases

Section 4.12.225 titled, “Public Agency Purchases”, defines conditions when the City is allowed to use contracts let by other agencies to acquire goods and services, but they do not include other non-governmental organizations that might obtain volume pricing. For example, in 2004 libraries across the State of California founded the Califa Library Group, a non-profit corporation with federal Library Services and Technology Act funding issued by the California State Library. With over 220 members, including most of the public libraries, Califa is the largest library network in California dedicated to providing the best library products to its members at the best prices available.

Therefore, staff recommends changing the Municipal Code accordingly to allow staff the flexibility to leverage competitive procurements undertaken by non-profits made up of public agencies.

- Award Factors for Quotes and Proposals

Section 4.12.310 titled, “Award Factors”, stipulates that the award of contract shall be made to the bidder who has submitted the most advantageous proposal. The code further requires that the award criteria include, but not be limited to: cost, quality of proposal, capabilities and expertise of the bidder, adherence to applicable city council policies, and ability to provide ongoing maintenance and support.

Because all of the above criteria may not be appropriate for some requirements, staff recommends that the Municipal Code be amended to establish that the list of mandatory award factors used in the evaluation may be amended by the Director of Finance as he/she determines it is in the best interests of the City. For example, evaluating the ability of the bidder to provide future maintenance, repair, parts and service may not be required for a one year landscaping contract where ongoing service and support is not a requirement. Another example of where the list may not be appropriate is in a competitive pre-qualification or pre-selection process where it may not be appropriate to include cost in the evaluation.

This Municipal Code section further states that the City may only award to a single contractor. In the case of quotes and proposals, award shall be to the bidder submitting the most advantageous quote or proposal. For formal bids, award shall be made to the lowest responsive responsible bidder. For quotes and RFP’s, there have been instances where

requirements are broken down into discrete packages allowing proposers to bid on one or more package. This allows for greater competition because some companies may not provide a solution for every package, and the City greater flexibility in selecting a combination of suppliers that best meets the needs of the City.

In formal bidding where price or price related factors are the basis of award, there are instances where the specification is for indefinite quantities and/or indefinite delivery dates thus making the issuance of a single award impracticable. For example, a recent requirement for automotive parts to support the City's fleet requires the purchase of a variety of parts that will be required over the course of one year; \$200,000 is budgeted to purchase the automotive parts. The practice has been to issue multiple awards to the suppliers offering the greatest discounts. When a part is required; staff has the flexibility to contact one or more supplier for the best price and availability.

- Amendments to Municipal Code Section 4.16 "Unclaimed and Surplus Personal Property"

As discussed above, Municipal Code Section 4.16 sets forth the procedures for the disposition of unclaimed and surplus personal property. Similar to section 4.12, Finance recommends streamlining existing processes by proposing the adoption of changes as discussed in the following paragraphs.

Currently, the Director of Finance, or designee, disposes of personal property with an estimated value of \$400 or less through the most cost-efficient manner; such as directly selling to an interested party, including recyclers, or donating the item(s) to a non-profit organization. For personal property identified for sale with an estimated value greater than \$400, the Director of Finance, or his designee, issues a sealed bid or transfers the personal property for sale to the City's auctioneer. Since the last adjustment for this threshold was adopted by Council in 1994, Finance recommends increasing the threshold to \$1,000.

For the noticing of sealed bids, the Municipal Code currently prescribes that any notice of sealed bids be published in a newspaper of general circulation, such as the *San Jose Mercury News* and in any other manner as the Director of Finance deems appropriate. Staff recommends that the requirement for noticing in a newspaper of general circulation be replaced with the requirement to notice sealed bids on the City's website.

Summary

While maintaining an open, competitive, and transparent process through these various recommended changes in the Municipal Code, staff anticipates streamlining the procurement of goods and services and the surplus disposition process; resulting in cycle time reduction, staff time savings, and better pricing.

EVALUATION AND FOLLOW-UP

Staff recommends that the PSF&SS Committee forward this recommendation to Council for Council's direction to the City Attorney, to draft the appropriate changes to the applicable Municipal Code changes for adoption by the Council.

POLICY ALTERNATIVES

Not applicable.

PUBLIC OUTREACH/INTEREST

Criterion 1: Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**

Criterion 2: Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**

Criterion 3: Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

On July 15, 2009, staff discussed substantive portions of these recommendations relating to streamlining the City's procurement processes at a scheduled public hearing convened as part of the Public/Private Competition Policy roundtable meetings with stakeholders representing the non-profit, business, and labor community and the City Labor Alliance. Representatives from the Silicon Valley Chamber of Commerce supported the recommendations' including the amendments to the protest process, the indexing of the contract approval authority thresholds, and the amendments to allow for a reverse auction process and online bid submission.

This item does not meet any of the Criteria listed above. However, the memorandum is scheduled to be posted on the City's website for the March 18, 2010 PSFSS Committee and the March 30, 2010 City Council meeting.

COORDINATION

This memorandum was coordinated with the City Manager's Office, the "Busting Bureaucracy" Action Team, and the City Attorney's Office.

PSFSS COMMITTEE

03/04/10

Subject: –Procurement Report and Proposed Amendments to Sections 4.12 and 4.16 of the Municipal Code to Streamline Procurement and Disposition of Surplus Personal Property.

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FISCAL/POLICY ALIGNMENT

This memorandum is consistent with the general budget principle’ “We must continue to streamline, innovate, and simplify our operations so that we can deliver services at a higher level, with better flexibility, at a lower cost.”

COST SUMMARY/IMPLICATIONS

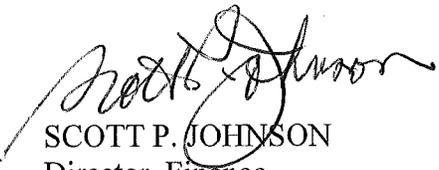
Not applicable.

BUDGET REFERENCE

Not applicable.

CEQA

Not a project.


SCOTT P. JOHNSON
Director, Finance

For questions, please contact Mark Giovannetti, Purchasing Division Manager, at (408) 535-7052.

Soto, Eileen

From: Demers, Juliana
Sent: Friday, March 05, 2010 10:19 AM
To: Soto, Eileen
Subject: Procurement reforms Memo
Importance: High

Hi Eileen,

Here is the item approved by Rules – The Memo has a different Subject.

RULES AND OPEN GOVERNMENT COMMITTEE AGENDA

February 17, 2010 Page 3

I. Review of additions to Council Committee Agendas-Con't

4. Public Safety, Finance and Strategic Support (PSFSS) Committee

Add to the PSFSS Committee Workplan: Annual Procurement Report and Proposed Amendments to Sections 4.12 and 4.16 of the Municipal Code to Streamline Procurements and the Disposition of Surplus Personal Property. (Finance)

Juliana Granieri Demers

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