REGULAR

***8**

NUMBER: **23.12**

TITLE: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING CHAPTER 2 OF TITLE I OF THE MILPITAS MUNICIPAL CODE RELATING TO CLARIFYING THE PURCHASING ORDINANCE AND AMENDING THE LOCAL PURCHASING PREFERENCE AND OTHER PURCHASING PROCEDURES**

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of April 21, 2009, upon motion by Vice Mayor McHugh and was adopted (second reading) by the City Council at its meeting of _____, upon motion by _____. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

_____

_____
Mary Lavelle, City Clerk

APPROVED:

_____

Robert Livengood, Mayor

APPROVED AS TO FORM:

_____
Michael J. Ogaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, the City of Milpitas endeavors to secure equipment, materials, supplies, and services at a competitive cost commensurate with quality; and

WHEREAS, the City of Milpitas Municipal Code currently favors local bidders where a local bidder and non-local bidder tie for the lowest responsible bidder in the award of contracts for supplies, materials, equipment and other personal property; and

WHEREAS, as of February 1, 2009, the City of Milpitas is currently experiencing a twenty-four percent (24 %) vacancy rate in research and development, a twenty-two percent (22 %) vacancy rate in industrial, and a ten percent (10%) vacancy rate in warehouse businesses, and an unemployment rate of ten point two percent (10.2%); and

WHEREAS, the City Council has adopted a goal to maintain and encourage a dynamic local economy; and

WHEREAS, local businesses contribute to the City's economic and revenue base, provide employment opportunities for residents of the community and provide charitable and civic contributions to the community; and

WHEREAS, the "multiplier effect" is an economic effect in which an increase in spending produces an increase in income and consumption greater than the initial amount spent. On a local level, the multiplier effect can stimulate a local economy as locally spent dollars are re-circulated through the local economy on additional goods and services; and

WHEREAS, contracting locally allows goods and supplies to be delivered efficiently and timely, and promotes environmentally sustainable practices by avoiding transportation and fuel costs associated with shipping from distant locations; and

WHEREAS, the City Council desires to recognize the actual contributions that local businesses provide to the community and to encourage existing businesses to remain in Milpitas by amending the local purchasing preference; and

WHEREAS, altering the local purchasing preference section to offer local bidders that bid within ten percent (10%) of the lowest bidder the opportunity to lower their bid to the amount of the lowest bidder and be deemed the lowest bidder would not economically disadvantage the City; and

WHEREAS, the City finds that providing local bidders the opportunity to match the lowest bid can promote local businesses and assist in attracting new businesses, which in turn stimulates the local economy, increases job opportunities and provides non-monetary savings in reduced delivery times and avoidance of environmental impacts; and

WHEREAS, the City Council finds that it is in the public interest to encourage businesses to remain in and locate to Milpitas by granting local businesses the opportunity to provide goods and services in the amount of the lowest bidder when the local business' bid is within ten percent (10%) of the lowest bid; and

WHEREAS, the City Council finds the proposed amendments will not adversely affect the public health, safety and welfare in that the project contemplates amending the Purchasing Ordinance, in particular the local purchasing preference and other purchasing procedures and clarifies certain sections of the Purchasing Ordinance; and

WHEREAS, the City of Milpitas adopts the restriction on the use of its own funds as a participant in the marketplace as a self-imposed limitation on the City's power to contract and does so with the legitimate governmental purpose of stimulating the local economy by establishing a local preference for equipment, materials, supplies, and services; and

WHEREAS, the City Council finds that with the inclusion of the amendments, the Purchasing Ordinance remains internally consistent; and

WHEREAS, the City Council finds that this Ordinance is exempt from the California Environmental Quality Act because it can be seen with certainty that the Ordinance has no possibility of causing a significant adverse environmental impact.

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

SECTION 1. RECORD AND BASIS FOR ACTION

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

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

Chapter 2 of Title I of the Milpitas Municipal Code is hereby repealed in its entirety and replaced with the text below to read as follows:

Section 1 Purpose and Application: Definitions

I-2-1.01 Purpose

The purpose of this Purchasing Ordinance is to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity. (Ord. 23.10 (part), 1/3/06)

I-2-1.02 Application

Except as otherwise provided herein, this chapter applies to contracts for the procurement of supplies and services, entered into by the City. When the procurement involves the expenditure of federal assistance, contract, or grant funds, the procurement shall be conducted in accordance with mandatory applicable federal law and regulations. Nothing in this chapter shall prevent any public agency from complying with the terms and conditions of any grant, gift or bequest that is otherwise consistent with law. (Ord. 23.10 (part), 1/3/06)

I-2-1.03 Definitions

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

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

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

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

4. CITY. The City of Milpitas.

5. CONTRACT. All types of City contracts or agreements, regardless of what they may be called, for the procurement of supplies and services or the disposal of surplus supplies.

6. CONTRACT MODIFICATION. Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

7. CONTRACTOR. Any person having a contract with a governmental body.

8. DATA. Any recorded information, regardless of form or characteristic.

9. ELECTRONIC. Any electrical, digital, magnetic, optical, electromagnetic, or any other similar technology.

10. ELIGIBLE LOCAL PROVIDER. Any local provider who is an otherwise responsible bidder and otherwise responsive to the City's invitation for bids.

11. ENVIRONMENTALLY PREFERABLE PRODUCTS OR MATERIALS. Any products or materials contained in the products that have a reduced negative effect on human health and the environment when compared with competing products that serve the same purpose. This comparison may consider raw materials' acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance or disposal of the product.

12. GENERAL SERVICES. The furnishing of goods and services by a vendor that does not typically require a license, certification or other professional criteria to perform the work. This includes services such as equipment maintenance, janitorial, printing, landscaping and refuse disposal. This term shall not include employment agreements or collective bargaining agreements.

13. GRANT. Any furnishing of funds by an outside agency or other organization to support a program authorized by law.

14. INVITATION FOR BIDS. All documents, whether attached or incorporated by reference, utilized for soliciting bids.

15. LOCAL PROVIDER. A supplier or provider of equipment, materials, supplies or services which has an established place of business within the City of Milpitas, which has a City of Milpitas business license, which has paid all currently due business license fees and taxes, and which began doing business within the City of Milpitas at least one (1) year prior to the City's inviting bids or quotations for the respective purchase.

16. PERSON. Any business, individual, union, committee, club, other organization, or group of individuals.

17. POST-CONSUMER MATERIAL OR PRODUCT. Any material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item, including any waste material and by-products which have been recovered or diverted from solid waste.

18. PROCUREMENT. The buying, purchasing, renting, leasing, or otherwise acquiring of any supplies or services. It also includes all functions that pertain to the obtaining of any supply or service, including description of requirements, selection, and solicitation of sources, preparation and award of contract and contract administration.

19. PROFESSIONAL SERVICES. Those services, generally of an intangible nature that typically require a license, certification, and/or other professional criteria to perform the work as defined by the laws of the State of California including, but not limited to, Architect, Engineer, Land Surveyor, Attorney, Public Accountant.

20. PROVIDER. The terms bidder, supplier, contractor, vendor or provider, may be used interchangeably and shall refer to the person, company, or corporation from whom the City of Milpitas purchases supplies or services or with whom the City enters into a contract.

21. PUBLIC AGENCY. A public agency is defined as any school district, city, state, federal agency, U.S. Communities program or other nonprofit association or group consisting of governmental entities.

22. PUBLIC NOTICE. The distribution or dissemination of information to interested parties using methods that are reasonably available. Such methods shall often include, but are not limited to, publication in newspapers of general circulation, posting in public places, electronic or paper notices to prospective bidders, and posting on web pages designated by the City for that purpose.

23. RECYCLED PRODUCT PREFERENCE. A price preference, equal to ten percent (10%) of the lowest cost bid, given to bidders offering recycled products over those offering nonrecycled products.

24. REQUESTING DEPARTMENT. Any organizational unit of the City of Milpitas that utilizes any supplies or services procured under this Ordinance.

25. RESPONSIBLE BIDDER. A bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the work.

26. RESPONSIVE BIDDER. A bidder who has complied with the instructions and requirements established by the City and set forth in the contract, purchase order or request for quotations.

27. SIGNATURE. Shall be defined as a manual signature affixed in ink. A faxed signature is acceptable so long as it is followed up within ten (10) calendar days by the original document.

28. SPECIFICATION. Any description of the physical or functional characteristics or of the nature of a supply or service. It may include a description of any requirement for inspecting, testing, or preparing a supply or service for delivery.

29. SUPPLIES. All property (including, but not limited to, equipment and materials) except as otherwise provided herein.

30. SURPLUS SUPPLIES. Supplies which are worn out, obsolete or unsuitable for City use.

31. WRITING OR IN WRITING. The product of any method of forming characters on paper, or other materials, or viewable screens, which can be read, retrieved, and reproduced, including information that is electronically transmitted and stored. (Ord. 23.10 (part), 1/3/06)

Section 2 Division of Purchasing

I-2-2.01 Establishment

There is hereby established for the City a Division of Purchasing, headed by a Purchasing Agent, who shall report to the Director of the Financial Services Department. (Ord. 23.10 (part), 1/3/06)

I-2-2.02 Responsibilities

In accordance with this chapter, the Purchasing Agent shall:

1. Procure or supervise the procurement of all supplies and services needed by the City, except as otherwise provided herein;

2. Exercise direct supervision over the City central stores and general supervision over all other inventories of supplies belonging to the City;

3. Sell, trade or otherwise dispose of surplus supplies belonging to the City;

4. Establish and maintain programs for specification development, contract administration and inspection and acceptance, in cooperation with the departments using the supplies and services;

5. Provide ongoing training and support to the City departments pertaining to procurement of supplies or services under Five Thousand Dollars ($5,000);

6. Execute and administer contracts with vendors for the purchase of citywide services and supplies such as paper, office supplies, janitorial services and office equipment;

7. Establish and maintain a central vendor database categorized by goods and services;

8. Provide management of the Procurement Card and Single Merchant Credit Card Programs;

9. Adopt operational procedures relating to the execution of any of the above duties and responsibilities. (Ord. 23.10 (part), 1/3/06)

I-2-2.03 Delegation

The Purchasing Agent may delegate authority to purchase supplies or services, and to dispose of surplus supplies, to other City officials, if such delegation is deemed necessary for the effective procurement or disposal of those items. (Ord. 23.10 (part), 1/3/06)

Section 3 Procurement Authority - Methods and Procedures

I-2-3.01 Purchases of Five Thousand Dollars ($5,000) or Less

Each Requesting Department has the authority to purchase supplies and services for Five Thousand Dollars ($5,000) or less, but must obtain three (3) quotations whenever possible to determine the best value. The Purchasing Agent shall be available to provide ongoing training and support for purchases at the Five Thousand Dollars ($5,000) or less dollar level. (Ord. 23.10 (part), 1/3/06)

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

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

(a) Whenever possible, competitive bid in the open market shall be based on at least three (3) quotations.

(b) The Purchasing Agent may solicit quotations from prospective vendors both on and off the vendor database. Quotations must be written and may include facsimile and electronic mail.

(c) The Purchasing Agent shall keep a record of all open-market orders and quotes for a period of one (1) year after the submission of quotes or placing of orders.

(d) The Purchasing Agent is authorized to award a contract for Twenty Thousand Dollars ($20,000) or less to the lowest responsive and responsible bidder.

(e) If no responsive bid is received after soliciting quotations, the Purchasing Agent may proceed to purchase the supplies, hire or have services performed in the open market.

(f) The provisions of Section I-2-3.02 shall not apply to purchases that do not exceed Five Thousand Dollars ($5,000).

(g) The Purchasing Agent may amend contracts or purchase orders awarded for amounts under Twenty Thousand Dollars ($20,000) as necessary, as long as the total amount of the amended contract does not exceed Twenty Thousand Dollars ($20,000). (Ord. 23.10 (part), 1/3/06)

I-2-3.03 Purchases of Twenty Thousand Dollars ($20,000) or More

3.03-1 Formal Bid Procedures. The purchase of supplies or services for Twenty Thousand Dollars ($20,000) or more must be approved by the City Council. The Purchasing Agent shall purchase supplies and services of a value of Twenty Thousand Dollars ($20,000) or more using the following formal sealed bid procedures.

(a) An Invitation for Bids which includes a general description of the articles or general services to be purchased shall be given on at least one (1) occasion five (5) or more days prior to the date set for final receipt of bids. The Purchasing Agent may also solicit sealed bids from responsible prospective suppliers whose names are not in the Vendor database.

(b) Bidders shall submit sealed bids to the Purchasing Agent, and shall identify them as bids on the envelope. Bids shall be opened publicly at the time, date, and location indicated in the Invitation for Bid. A tabulation of all bids received shall be posted on the City's website for a period of not less than thirty (30) calendar days after the bid opening.

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

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

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

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

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

(b) Where it is determined that the supply or service is available from only one (1) source, as defined in Section I-2-3.09, Sole Source Procurement. The basis upon which this determination is made shall be in writing;

(c) Where supplies and services are purchased through a Piggyback arrangement pursuant to Section I-2-3.07 or a Cooperative purchasing arrangement pursuant to Section I-2-3.08;

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

3.03-3 Split Orders. It is a violation of the Ordinance to divide the purchase of supplies or general services in the amount of Twenty Thousand Dollars ($20,000) or more into smaller orders for the purpose of evading the competitive bidding requirements of this section. (Ord. 23.10 (part), 1/3/06)

I-2-3.04 Competitive Bids

Where competitive bids are required, they shall be submitted in writing in a sealed envelope at the office of the Purchasing Agent no later than the final time and date for the receipt of bids as set forth in the Invitation for Bid and opened publicly. Where competitive bids are required, the purchase or disposal shall be made on the basis of three (3) or more of said bids, unless the Purchasing Agent shall certify in writing that less than three (3) prospective bidders have submitted bids or that, to the best of the Agent's knowledge, there are less than three (3) prospective vendors from whom the supplies or services are available and that bids were invited from all of said vendors. Any bid may be withdrawn by a written request signed by the bidder and received by the Purchasing Agent prior to the final time and date for the receipt of bids. (Ord. 23.10 (part), 1/3/06)

I-2-3.05 Competitive Bids (Notice)

For purchases under Sections I-2-3.03, Purchases of Twenty Thousand Dollars ($20,000) or More and I-2-3.06, Request for Sealed Proposals (RFP), where notice is required, notice shall be given as follows:

(1) Publishing notice in a newspaper of general circulation within the City on at least one (1) occasion at least five (5) days prior to the date set for the final receipt of bids. Provided, that publication may be made in any newspaper of general circulation in Santa Clara County which the Purchasing Agent shall select if the publication schedule of all newspapers of general circulation in the City are such that notice by publication cannot be given in time.

(2) Posting on the City of Milpitas website at least five (5) days prior to the date set for the final receipt of bids.

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

(4) The notice shall give such information as to the proposed purchase or disposal as the Purchasing Agent deems sufficient to comply with relevant State law, regulation or City ordinance.

(5) The notice shall include a general description of the supplies or services to be purchased or City property to be disposed; date, time and place of bid opening; and whether bonds will be required. (Ord. 23.10 (part), 1/3/06)

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

3.06-1 The Purchasing Agent shall be authorized to utilize the request for sealed proposal method for purchase of supplies or services upon a determination by the Purchasing Agent that the use of competitive bidding is not practical or advantageous to the City because of one (1) or more of the following considerations:

(a) Price is not a primary consideration;

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

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

(d) The quality of performance of previous contracts or services;

(e) Quality, availability, or capability is overriding in relation to price in procurement of research, development, technical supplies or services;

(f) Delivery and installation, post-sale service or maintenance, reliability, warranties or availability of replacements, are overriding in relation to price or need to be evaluated in relation to prices;

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

(h) The need to evaluate the utilization of a fixed-price or cost-type contract;

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

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

3.06-2 Receipt of Proposals. No proposals shall be handled so as to permit disclosure of the identity of any bidder or the contents of any proposal to competing bidders during the process of negotiation. A register of proposals

shall be prepared containing the name of each bidder and a description sufficient to identify the item offered. The register of proposals shall be open for public inspection only after contract award.

3.06-3 Evaluation Factors. The request for proposals shall state evaluation factors, which shall be considered the primary basis for evaluating the proposals.

3.06-4 Discussion with Responsible Bidders and Revisions to Proposals. Discussions may be conducted with responsible bidders who submit proposals determined to be reasonably possible of being selected for award, for the purpose of clarification to assure full understanding of, and conformance to, the solicitation requirements. All bidders shall be accorded equal treatment. Revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of the identity of the bidder or any information contained in competing offers.

3.06-5 Award. Award shall be made to the responsible bidder whose proposal is determined in writing to be the most advantageous to the City, taking into consideration, price and the evaluation factors set forth in the request for proposals.

3.06-6 Rejection. Without limitation to the applicability of any other provisions of this chapter, the Purchasing Agent or City Council may reject any and all proposals. (Ord. 23.10 (part), 1/3/06)

I-2-3.07 Piggyback Procurement

The Purchasing Agent may arrange for the City to enter into purchase contracts with a supplier or contractor for the purchase of supplies or general services, the pricing and terms of which have been previously established by another public agency, provided that the Purchasing Agent determines that a “piggyback” purchase is in the City’s best interest. The Purchasing Agent is required to determine and apply all of the following, prior to entering into the purchase:

(1) There are no local suppliers or contractors who could provide the product or service at competitive rates;

(2) A copy of the solicitation has been obtained from the originating agency and reviewed for compliance with the City’s Purchasing Ordinance;

(3) The specifications of the item or service required by the City are not materially different from those specified in the originating agency’s solicitation;

(4) The price of the purchase is lower than that estimated for the purchase if made directly by the City pursuant to this Ordinance;

(5) The contract resulting from the original solicitation is current or the solicitation is within two (2) years from the date of the City’s order, or written justification is provided justifying use of an older solicitation;

(6) No more than a ten percent (10%) variation is allowed for customizing the order or for desirable options. In addition, a cost of living adjustment (using San Francisco-Oakland-San Jose Consumer Price Index—All Urban Consumers) can be added for up to two (2) years; and

(7) The City enters into a separate contract with the vendor selected by the originating agency, and incorporates by reference the original solicitation, terms, conditions and prices. (Ord. 23.10 (part), 1/3/06)

I-2-3.08 Cooperative Procurement

3.08-1 The Purchasing Agent may purchase supplies and general services without complying with the quotation or bidding requirements of this chapter, if such purchases are based on an agreement or cooperative purchasing program entered into by any of the following public agencies, regardless of whether the City is a named party to the agreement or an actual participant in such a program:

(a) Any public agency situated within the state, if the underlying purchase was made using competitive negotiation, or bidding procedures at least as restrictive as the City's, including the California Multiple Award Schedules (CMAS), the U.S. Communities Government Purchasing Alliance, National Joint Powers Alliance (NJPA), Western States Contracting Alliance (WSCA) or any California County contract;

(b) The Federal GSA Contracts.

3.08-2 In all such cases, the supplies or general services purchased must be the same and be offered at the same price as the supplies and general services subject to the agreement or program. (Ord. 23.10 (part), 1/3/06)

I-2-3.09 Sole Source Procurement

A contract may be awarded without competition when the Purchasing Agent determines in writing, after conducting a good faith review of available sources, that there is only one (1) source for the required supply or service. The Purchasing Agent shall conduct negotiations, as appropriate, as to price, delivery and terms. A written statement of the basis for the sole source determination shall be placed in the contract file. The sole source designation shall remain effective for five (5) years unless the Purchasing Agent determines the classification is no longer warranted. (Ord. 23.10 (part), 1/3/06)

I-2-3.10 Emergency Authority of Purchasing Agent

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

3.10-2 At the next succeeding City Council meeting, the Purchasing Agent shall submit to the City Council a written statement of the circumstances of such emergency purchase over Twenty Thousand Dollars ($20,000), a description of the supplies or services purchased, and the prices thereof. (Ord. 23.10 (part), 1/3/06)

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

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

(1) To extend the term of the contract, at the recommendation of the Requesting Department, for a period not to exceed six (6) consecutive months from the last Council-approved expiration date;

(2) To make minor revisions to the scope of services or schedule;

(3) To make clerical corrections; or

(4) The Purchasing Agent may also approve and sign assignments of contracts previously approved by the City Council when he or she has determined that the proposed assignee has the ability, capacity, experience and skill and is otherwise qualified to perform the contract.

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

Contract Amount	Individual Change Order	Cumulative Change Order

	Authority	Authority
Under $50,000	10% of Award or $5,000 whichever is less	15% of Award or $7,500 whichever is less
Over $50,000	10% of Award or $10,000 whichever is less	15% of Award or $20,000 whichever is less

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

(5) This subsection does not apply to contracts for professional services. (Ord. 23.10 (part), 1/3/06)

I-2-3.12 Contracting for Consultants

3.12-1 The City Council finds and declares that the competitive bid process is ill-suited for the selection of consultants. Consultants are required for professional or technical expertise and for matters requiring specialized abilities or a high degree of skill. Their numbers (in relation to a particular skill or expertise required) are comparatively limited. Where consultants are involved, the bidding process is not likely to result in a lower price to the City or eliminate unnecessary expense or delay.

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

(a) Without City Council approval if the consultant's total fee for materials and services under the contract by which the consultant is engaged does not exceed Twenty Thousand Dollars ($20,000).

(b) With City Council approval if the consultant's total fee for materials and services under the contract by which the consultant is engaged exceeds Twenty Thousand Dollars ($20,000).

3.12-3 Architects, Engineers and Land Surveyors. In addition to the provisions of paragraphs 3.12-1 and 3.12-2 of this subsection, the following requirements shall be applicable to the selection of architects, engineers and land surveyors.

(a) The Requesting Department or Division Head shall negotiate a contract with the best qualified firm for architectural, engineering and land-surveying services.

(b) Should the Requesting Department or Division Head be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price determined to be fair and reasonable, negotiations with that firm shall be formally terminated. The Requesting Department or Division Head shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the Requesting Department or Division Head shall formally terminate negotiations. The Requesting Department or Division Head shall then undertake negotiations with the third most qualified firm.

(c) Should the Requesting Department or Division Head be unable to negotiate a satisfactory contract with any of the selected firms, the Requesting Department or Division Head shall select additional firms in order of their competence and qualification, and continue negotiation until an agreement is reached. (Ord. 23.10 (part), 1/3/06)

I-2-3.13 Standardization

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

(a) Repair or maintenance costs would be minimized;

(b) Training of user and/or repair and maintenance personnel would be simplified;

(c) Supplies or spare parts would be readily available;

(d) Modifications to existing equipment would not be necessary;

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

3.13-2 Available Competition. When there is more than one (1) source for the standardized supply or service, competitive bidding in accordance with Sections I-2-3.02 Purchases of Over Five Thousand Dollars ($5,000) and Less than Twenty Thousand Dollars ($20,000) and I-2-3.03 Purchases of Twenty Thousand Dollars ($20,000) or More is required.

3.13-3 Approval. The City Council has the final authority to approve standardization of supplies or services based on the recommendation of staff. The standardization shall be valid for no more than ten (10) years, but may be revised sooner if the Purchasing Agent or requesting department can show substantial justification for an earlier revision. (Ord. 23.10 (part), 1/3/06)

I-2-3.14 Local Purchasing Preference

3.14-1 Application of Local Preference. The provisions of this section and the local preference established pursuant to this section shall be applicable to the following types of purchases or contracts executed in excess of Five Thousand Dollars ($5,000) and pursuant to either a formal or an informal bid:

(a) Purchases or contracts for the purchase of supplies, materials and equipment; and

(b) Purchases or contracts for nonprofessional services that are not otherwise of the kind contemplated by Section I-2-3.12.

3.14-2 Exceptions to the Application of Local Preference. The provisions of this section and the local preference established pursuant to this section shall not be applicable to the following types of purchases or contracts:

(a) Purchases or contracts for professional services of the kind contemplated by Section I-2-3.12;

(b) Public works contracts;

(c) Emergency purchases made pursuant to Section I-2-3.10;

(d) Sole source purchases made by the Purchasing Agent pursuant to Section I-2-3.09;

(e) Piggyback purchases made by the Purchasing Agent pursuant to Section I-2-3.07;

(f) Cooperative purchases made by the Purchasing Agent pursuant to Section I-2-3.08;

(g) Purchases or contracts where legal constraints on the expenditure of funds prohibit the application of the local preference or those contracts funded by the federal or state government, including federal or state grant funding, when such funding would be jeopardized by application of the local preference.

3.14-3 Reduction of Bid by Eligible Local Provider; Procedure for Applying the Local Preference. In contracting for equipment, materials, supplies or services as specifically set forth in this section, the City shall grant preference to a local provider who submits a bid within ten percent (10%) of the lowest responsible bidder and who is otherwise responsive and responsible to the invitation for bids, which preference shall allow the local provider the opportunity to reduce its bid to an amount equal to the amount of the lowest responsible bid, if the lowest responsible bid is submitted by other than an Eligible Local Provider. In the event an Eligible Local Provider reduces its bid to the amount of the lowest responsible bid, the Eligible Local Provider shall be deemed to have provided the lowest responsible bid and shall be awarded the contract.

(a) The preference and opportunity to reduce the amount of the bid shall be provided first to the lowest Eligible Local Provider and, if not accepted by such Eligible Local Provider within five (5) business days of the opening of the bids, then to each successive Eligible Local Provider who is within ten percent (10%) of the lowest responsible bid, in ascending order of the amount of the bids.

(b) The local provider shall certify under penalty of perjury, as a part of its bid and in a form and manner as required by the City, that the bidder qualifies as a local provider. The preference established in this section shall be waived if the certification does not appear on the respective bid.

3.14-4 No Exemption from Local Sales Tax. The application of a local preference as set forth in this section shall not exempt any Eligible Local Provider to which a contract is executed or awarded from having to pay all applicable federal, state or local sales tax.

I-2-3.15 Recycled Product Procurement

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

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

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

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

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

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

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

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

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

3.15-2 The Purchasing Agent Shall:

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

(b) Grant the supplier of recycled products a preference of ten percent (10%) based on the bid or price quoted by supplier of recycled products when determining the lowest responsive and responsible bidder.

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

(d) Monitor contracting procedures to ensure that they do not discriminate against recycled products without justification, and that they maximize the specification of designated recycled products whenever practicable. (Ord. 23.10 (part), 1/3/06)

I-2-3.16 Brand Names or Equal Specification

3.16-1 Purpose and Use.

Brand name or equal specifications may be used when the Purchasing Agent determines that:

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

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

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

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

3.16-2 Designation of Brand Names.

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

(b) Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance and characteristics desired and is not intended to limit or restrict competition. (Ord. 23.10 (part), 1/3/06)

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

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

(1) Give subsequent notice for new competitive bids;

(2) Postpone said purchase or disposal definitely or indefinitely; or

(3) Elect to make the purchase without competitive bids, upon notice (and as if competitive bids, upon notice, had not been required in the first instance) in accordance with the authority granted by the various subsections of this Section. (Ord. 23.10 (part), 1/3/06)

I-2-3.18 Bonds

When deemed necessary by the Purchasing Agent or City Attorney, any person entering into a contract with the City may be required to furnish bid, labor and materials, and/or performance bonds for supply or service contracts as required by law or as deemed advisable to protect the City's interests. All bond requirements shall be set forth in the solicitation. Bonds shall not be used as a substitute for a determination of a bidder's responsibility. Said person (and his surety, if a bond is furnished) shall be liable for any damages upon said bidder's failure to faithfully perform the terms of his contract. (Ord. 23.10 (part), 1/3/06)

I-2-3.19 Bid Protest

3.19-1 Any interested party may file a protest to an award of bid in an amount over Five Thousand Dollars ($5,000). The protest shall be filed with the Purchasing Agent in writing no later than ten (10) calendar days after the award and shall set forth the basis for the protest and any proposed remedy. The time to file a protest shall commence when the award is posted on the City's website.

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

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

3.19-4 The Purchasing Agent shall hear such evidence as the Purchasing Agent deems relevant. The protest hearing shall be voice recorded. The decision of the Purchasing Agent shall be made as soon as possible. Notice of the decision shall be provided in any manner that the original notice of hearing may be given. The Purchasing Agent's decision on a bid protest for a procurement in an amount less than Twenty Thousand Dollars ($20,000) shall be final.

3.19-5 For procurements having a value of Twenty Thousand Dollars ($20,000) or more, an appeal of the Purchasing Agent's decision may be filed with the City Council. All such appeals must be in writing, and shall be filed with the City Clerk within ten (10) calendar days of serving the Purchasing Agent's decision.

Section 4 Purchase Orders

I-2-4.01 Purchases Over Five Thousand Dollars ($5,000) Must Be in Writing

No award for supplies or services or the disposal of City property where the total expenditure or value is over Five Thousand Dollars ($5,000) shall be deemed to be an acceptance of any offer or bid unless and until the same is reduced to writing and signed by the Purchasing Agent and dispatched to the vendor or purchaser. It is a violation of the ordinance to divide the purchase of supplies or general services or the disposal of City property in an amount over Five Thousand Dollars ($5,000) into smaller orders for the purpose of evading the purchase order requirements of this section. (Ord. 23.10 (part), 1/3/06)

I-2-4.02 Preparation of Purchase Orders

Upon ascertaining the price to be paid for supplies or services, the Purchasing Agent shall prepare a purchase order. The Purchasing Agent shall forward the original purchase order to the vendor, retaining one (1) copy for his purchase order file. He shall likewise forward one (1) copy of the purchase order to the requesting department to be used as a receiving report. (Ord. 23.10 (part), 1/3/06)

I-2-4.03 Sufficient Funds Must be Available

No purchase order shall be issued until it has been ascertained that there is to the credit of the requesting department a sufficient unencumbered appropriated balance in excess of all unpaid obligations to defray the amount of such order. (Ord. 23.10 (part), 1/3/06)

I-2-4.04 Exceptions to Purchase Orders

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

Section 5 Receipt of Goods

I-2-5.01 Department Head Responsible for Checking Quality

Upon receipt by any Department of supplies or services, the Department head or designee, shall be responsible for the making of a careful check of the quality, condition, and quantity received against a copy of the purchase order and the packing list when applicable. (Ord. 23.10 (part), 1/3/06)

I-2-5.02 Department Head Responsible for Checking Invoice

The Department head or designee, upon receipt of a vendor's invoice, shall check the invoice for correctness of quantities, unit prices, price extensions, discounts, transportation, allowances, etc. When applicable, the Department head or designee shall compare the same with the purchase order and packing list. Approved invoices shall be forwarded to Accounts Payable for payment processing. (Ord. 23.10 (part), 1/3/06)

Section 6 Inspections

I-2-6.01 Department Head's Inspection

The Department head or designee shall inspect, or cause to be inspected, all deliveries of supplies or services to determine their conformance to specifications. The Department head or designee shall have the authority to require chemical, physical, or other tests of samples submitted with bids and samples of deliveries which are necessary to determine quality and conformance to the specifications. In the performance of such tests, the Department head or designee shall have the authority to make use of laboratory facilities of any department of the City or any outside laboratory. (Ord. 23.10 (part), 1/3/06)

Section 7 Storing of Materials

I-2-7.01 Storerooms and Warehouses
The Purchasing Agent shall control and supervise the Purchasing warehouses of the City of Milpitas. The Purchasing Agent shall be responsible and accountable for all supplies in his or her custody and shall maintain a suitable inventory record thereof. (Ord. 23.10 (part), 1/3/06)

Section 8 Disposal of City Property

I-2-8.01 Disposal of Five Thousand Dollars ($5,000) or Less

Except as otherwise provided by State law or City ordinance, the Purchasing Agent shall be empowered to dispose of property of the City, including abandoned property, which cannot be used by any department of the City, at public or private sale or by renting or destroying the same, (all with or without notice, competitive bid or necessity of posting bid bonds, at the Purchasing Agent's discretion, and upon such terms as he or she deems best) provided any single item of property involved does not exceed Five Thousand Dollars ($5,000) in current market value. (Ord. 23.10 (part), 1/3/06)

I-2-8.02 Deposit

The Purchasing Agent may, in his or her discretion, require that a deposit in the amount of the bid or any fraction thereof accompany each bid upon the disposal of City property. (Ord. 23.10 (part), 1/3/06)

I-2-8.03 Disposal of More Than Five Thousand Dollars $5,000

In the event any single item of property exceeds Five Thousand Dollars ($5,000) current market value, the City Council may, upon notice, empower the Purchasing Agent to dispose of it (in accordance with the same terms and conditions and subject to the same discretion and limitations as if it were Five Thousand Dollars ($5,000) or less in value). Alternatively, the City Council may elect to sell, rent or destroy the same in accordance with whatever provisions, terms and conditions the City Council may elect. (Ord. 23.10 (part), 1/3/06)

Section 9 Claims

I-2-9.01 Filing of Claims

Claims for loss, damage, breakage, shortage or otherwise, claims for refund, claims for adjustment, and claims for insurance or other indemnity shall be made promptly by the Purchasing Agent. (Ord. 23.10 (part), 1/3/06)

Section 10 Ethics in Public Purchasing

I-2-10.01

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

(1) City employees shall not obligate the City, financially or otherwise, by any means, including, but not limited to, purchase orders and contracts, when the employee has a personal, material, financial, or other interest in the obligation.

(2) City employees shall not accept any form of gratuities.

(3) City employees may not accept discounts, reward points, sales, reduced prices, or other benefits offered for personal purchases by suppliers because of employee's relationship with the City.

(4) City employees shall be personally liable for any unauthorized procurements. (Ord. 23.10 (part), 1/3/06)

Section 11 Severability

I-2-11.01 Severability

If any provisions of this chapter or any application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of this chapter that can be given effect without the invalid provisions or application, and to this end, the provisions of this chapter are declared to be severable. (Ord. 23.10 (part), 1/3/06)

Section 12 Exclusions from Chapter

I-2-12.01 Exclusions from Chapter

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

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

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

12.01-3 Where State or Federal law requires a different procedure;

12.01-4 To franchises, rights, privileges, licenses and permits granted by the City of Milpitas (including, but not limited to, franchises, rights and privileges granted for refuse disposal under Title V, Chapter 200 of the Milpitas Municipal Code and the Cable Franchise under Title III, Chapter 22 of the Milpitas Municipal Code;

12.01-5 To the purchase of insurance;

12.01-6 To the purchase of art;

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

12.01-8 To the hiring of or contracting for personnel (whether as temporary, seasonal or permanent employees, agents or independent contractors);

12.01-9 To the purchase of utilities, including, but not limited to telephone service, gas, electricity or water;

12.01-10 To the purchase of securities for the City's investment portfolio subject to the City's investment policy.

12.01-11 To the payments of debt service and bond indebtedness; arbitrage compliance; refunds of deposits; payments and/or pass through of collections on behalf of other governmental agencies; budget approved memberships and dues; authorized Community Development Block Grants (CDBG); memorandum of understanding obligations; budget approved contributions to not-for-profit organizations; United States Postal Service postage; City Council approved recreation grants; employee travel expenses. (Ord. 23.10 (part), 1/3/06

SECTION 3. SEVERABILITY

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

SECTION 4. EFFECTIVE DATE AND POSTING

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