



COUNCIL AGENDA: 3/14/2023

ITEM: 3.4

FILE NO: 23-364

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Toni J. Taber, CMC
City Clerk

SUBJECT: SEE BELOW

DATE: March 14, 2023

**SUBJECT: Amendments to Title 4 of the San José Municipal Code Chapter 4.04
Contract Authority and Chapter 4.12 Procurements of Goods and Services**

Recommendation

As recommended by the Public Safety, Finance and Strategic Support Committee on February 16, 2023:

(a) Accept the status report on amendments to Title 4 of the San José Municipal Code Chapter 4.04 Contract Authority and Chapter 4.12 Procurements of Goods and Services to help streamline the City's procurement process for goods and services.

(b) Direct the Administration to work with the City Attorney's Office to prepare the necessary ordinance to amend the San José Municipal Code and report back to City Council in fall 2023.

CEQA: Not a Project, File No. PP17-007, Preliminary direction to staff and eventual action requires approval from decision-making body. (Finance)

[Public Safety, Finance and Strategic Support Committee referral 2/16/2023 - Item (d)4]



Memorandum

TO: PUBLIC SAFETY, FINANCE, AND
STRATEGIC SUPPORT COMMITTEE

FROM: Julia H. Cooper

SUBJECT: SEE BELOW

DATE: February 1, 2023

Approved

Date

2/6/2023

**SUBJECT: AMENDMENTS TO TITLE 4 OF THE MUNICIPAL CODE RELATED TO
PROCUREMENT OF GOODS AND SERVICES STATUS REPORT**

RECOMMENDATION

- (1) Accept the status report on amendments to Title 4 of the San José Municipal Code Chapter 4.04 Contract Authority and Chapter 4.12 *Procurements of Goods and Services* to help streamline the City's procurement process for goods and services; and
- (2) Refer and cross-reference the status report on amendments to Title 4 of the San José Municipal Code Chapter 4.04 *Contract Authority* and Chapter 4.12 *Procurements of Goods and Services* to help streamline the City's procurement process for goods and services to the March 21, 2023, City Council Meeting for acceptance of the report.

SUMMARY AND OUTCOME

This memorandum presents a status report on proposed amendments to Title 4 of the San José Municipal Code, based on a comprehensive assessment of the City of San José (City) procurement and contracting processes for the acquisition of equipment, goods, and services. This memorandum includes an analysis of the City's current procurement thresholds and the City's ability to effectively leverage other public entity procurement process, as well as proposed changes to the San José Municipal Code given that analysis. Staff anticipates returning to the full City Council with a recommendation, subject to City Council direction, to approve an ordinance implementing the proposed changes to San José Municipal Code.

BACKGROUND

The City has three different procurement processes under its current decentralized procurement model:

- (1) The Public Works Department is responsible for procurements relating to public works projects, including the construction, improvement, or demolition of structures.
- (2) City Departments are responsible for procuring all consulting services for their own Departments.
- (3) The Purchasing Program (Purchasing) in the Finance Department Purchasing & Risk Management Division is responsible for procuring goods and services not covered by the other two procurement processes, along with administering the City procurement card (P-Card) program.

In February 2019, the Finance Department, in collaboration with the City Manager's Office of Civic Innovation, announced the launch of the "Procurement Improvement and Readiness Program," in response to a dramatic citywide increase in demand for procurement services to support the growing number of initiatives underway in the organization. One major component of that effort was securing funds through the City's Fiscal Year 2019-2020 budget process to procure consulting services for a comprehensive assessment of the City's procurement and contracting processes for the acquisition of equipment, goods, and services. The City completed a Request for Proposal (RFP) process for these consulting services and, as a result of the RFP process, contracted with Guidehouse, Inc. (Guidehouse). The engagement kicked off in February 2020 but was subsequently put on hold as the City pivoted to respond to the COVID-19 emergency.

While the COVID-19 emergency persisted, Finance Department leadership and Guidehouse periodically checked in to assess an appropriate time to re-start the engagement, with meetings held on March 30, 2021, and September 2, 2021. The Finance Department provided a status update on these efforts to the Smart Cities and Services Improvements Committee on October 7, 2021¹. As a result of the September 2021 meeting, Guidehouse assembled a new project team for the effort, and a new kick-off meeting was held on October 15, 2021. At that meeting, staff was directed to return to the Committee and Council in April 2022 with the consultant's recommendations. Also in October 2021, having identified potential efficiencies in collaborative audit recommendations and needed process improvements, the Finance Department and the City Manager's Office of Administration, Policy, and Intergovernmental Relations collaborated and subsequently amended the contract with Guidehouse— under the City Manager's contract authority – to include Department-led consulting procurements in the Guidehouse assessment.

On April 7, 2022, staff presented the results of that comprehensive assessment – FY 2021-22 City Roadmap: Procurement Status Report – at the City Council Smart Cities and Service

¹ Smart Cities And Service Improvements Committee, *Procurement Improvement Status Report*
<https://sanjose.legistar.com/LegislationDetail.aspx?ID=5145020&GUID=0F8B342D-3943-40FE-8466-2B1B7908CA5D&Options=&Search=>

Improvements Committee². The item, which included the final report³ from Guidehouse, was cross-referenced and heard at the City Council May 10, 2022 meeting⁴, and included potential strategies for procurement innovations and reforms, along with an assessment and evaluation of the resources required to implement the recommended strategies. Actions adopted by the City Council at the May 10, 2022 City Council meeting included directing staff to return to City Council with “recommendations to update Chapter 4.04 Contract Authority and Chapter 4.12 Procurements of Goods and Services of Title 4 of the San José Municipal Code.”

The FY 2022-23 Adopted Operating Budget incorporated Manager’s Budget Addendum #14, the *Final 2022-23 City Initiatives Roadmap*⁵ and *Backlog*⁶, which included the *Procurement Improvement* and *Disparity Study* Initiatives (Initiatives) under the *Strategic Fiscal Positioning and Resource Deployment* Enterprise Priority (Foundational). These two Initiatives are led by the Purchasing & Risk Management Division in the Finance Department. The Deputy Director – Finance, Purchasing & Risk Management, who was a critical subject matter expert and the project manager for both these Initiatives, left City employment on September 30, 2022. While that position is under recruitment, the Assistant Director of Finance has assumed project management responsibilities for those two major Initiatives. Given the many activities planned for the Citywide Disparity Study during the October-December 2022 timeframe, the Finance Department requested to bring its recommendations to update certain procurement-related sections in the San José Municipal Code to the February 16, 2023 PSFSS Committee meeting⁷.

ANALYSIS

The City’s procurement challenges fall into five main categories – people, process, technology, policies, and backlog. While many challenges span the Purchasing-managed and Department-led processes, certain challenges are unique to a specific process (e.g., backlog).

² April 7, 2022 City Roadmap: Procurement Improvement Status Report

<https://sanjose.legistar.com/LegislationDetail.aspx?ID=5526271&GUID=E5ED8EA7-1B0B-4B32-B6A2-377FDBD74945&Options=&Search=>

³ May 10, 2022 City Roadmap: Procurement Improvement Status Report – Supplemental Memorandum

<https://sanjose.legistar.com/View.aspx?M=F&ID=10856469&GUID=8BCC48A2-70EA-4CE9-BD2C-42F238AB4B65>

⁴ May 10, 2022 City Roadmap: Procurement Improvement Status Report

<https://sanjose.legistar.com/LegislationDetail.aspx?ID=5567613&GUID=18B91667-1895-4905-ABAE-2E711A986346&Options=&Search=>

⁵ Printable PDF Version of the 2022-23 City Initiatives Roadmap is available at <https://www.sanjoseca.gov/home/showdocument?id=86061>

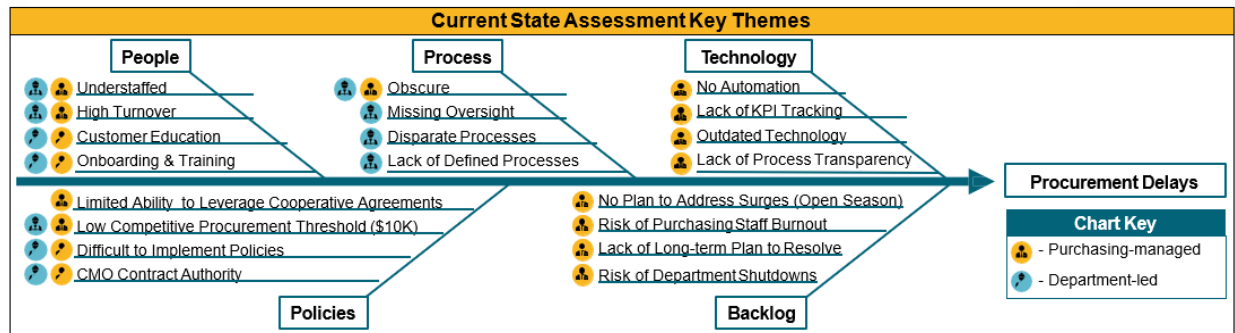
⁶ MBA #14 – Final 2022-23 City Initiatives Roadmap and Backlog

<https://www.sanjoseca.gov/home/showpublisheddocument/86081/637889820001870000>

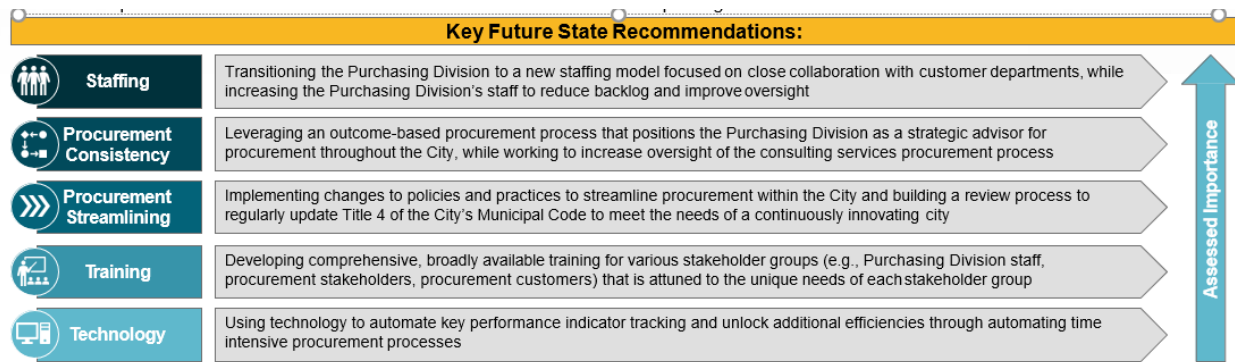
⁷ Rules and Open Government Committee, *Update to the August – December 2022 Public Safety, Finance, and Strategic Support Committee Work Plan*, <https://sanjose.legistar.com/LegislationDetail.aspx?ID=5923349&GUID=CB62C6C2-EA2A-41AE-AA67-AD8ED8D7C7F9&Options=&Search=>

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The May 10, 2022 City of San José Procurement Future State Assessment Report Guidehouse Report (Report) presented a modernized vision of procurement within the City. The goal was and remains to create an agile procurement process responsive to the needs of its clients, compliant with all City policies, and furthering San José's goal of being the most innovative city in the United States. Driven by input from over seventy City staff members, direction from City leadership, a comprehensive current state assessment, and visioning sessions, the future state vision aims to be actionable and implementable, and advances a set of Key Future State Recommendations.



The Procurement Key Future State Recommendations are centered around five elements, with each element representing a strategic component of developing and refining the City's procurement processes. The City already has invested in a number of procurement process improvements since February 2019:

City Investments	Staffing	Procurement Consistency	Procurement Streamlining	Training	Technology
Procurement Prioritization Board formed September 2019		✓	✓		
Reorganize Purchasing workgroups into "work teams" and enhance cross-training	✓			✓	
FY2019-20: Add one permanent Senior Analyst position	✓				
FY2020-21: Add one Overstrength Analyst position	✓				
FY2022-23: Add two Analyst I/II and one Senior Analyst positions	✓				

City Investments	Staffing	Procurement Consistency	Procurement Streamlining	Training	Technology
FY2022-23: One-time non-personal/equipment funding of \$61,000, and ongoing non-personal/equipment funding of \$50,000 for technology enhancements					✓

Competitive Procurement Threshold and Informal Procurement Threshold

Per Section 4.12.210 of the San José Municipal Code (SJMC), purchases which are estimated not to exceed \$10,000 may be made without a competitive procurement method, only requiring one quote. SJMC 4.12.215 allows for four exceptions to Section 4.12.210 where competitive procurement methods are not practicable – emergency purchases⁸, public agencies purchases⁹, sole source purchases¹⁰ and unique services purchases¹¹. All other purchases made by the City must comply with the \$10,000 procurement threshold.

Adjustments to this \$10,000 threshold are governed by SJMC Section 4.04.085 and tied to increases in the Consumer Price Index (CPI), rounded to the nearest \$10,000. These threshold adjustments may be made administratively every three years. The City of San José \$10,000 Competitive Procurement Threshold (CPT) has not changed since at least 2005.

The \$10,000 CPT was identified as a Current State Assessment Key Theme in the Report as being too “low”. Staff performed an analysis to determine whether to recommend an increase in the CPT by (1) comparing the current City CPT to peer municipalities, (2) evaluating the effect increasing the CPT would have on Purchasing and Department workloads and (3) assessing any associated risks with an increased CPT. The analysis also included a comparison of the City Informal Procurement Threshold (IPT, \$140,000) to its peers. The result of that analysis follows.

Competitive Procurement Thresholds for the City of San José are Aligned with Peer Cities

The Guidehouse team benchmarked the City to various peer municipalities using the following four factors:

Peer Municipalities	Similar Population	Large Technology Sector	In California	City of San José Recommendation
San Diego, CA	✓		✓	
San Francisco, CA		✓	✓	
Santa Clara County, CA		✓	✓	✓
Oakland, CA			✓	✓
Sacramento, CA			✓	✓
Dallas, TX	✓	✓		✓
San Antonio, TX	✓	✓		
Austin, TX	✓	✓		

The benchmarking process examined not only the respective municipality CPT, but also the Informal Bid Threshold¹² and Chief Executive Officer Signature Authority. The Chief

⁸ SJMC Section 4.12.220 Emergency purchases.

⁹ SJMC Section 4.12.225 Public agencies purchases.

¹⁰ SJMC Section 4.12.230 Sole source purchases.

¹¹ SJMC Section 4.12.235 Unique services purchase.

¹² SJMC Section 4.12.210 (B)

Executive Officer Signature Authority authorizes the municipality's chief executive to approve any purchase below this amount without the respective governing body approval. As is evidenced by the table below, procurement thresholds for the City are generally aligned with its peer municipalities.

Peer Municipalities ¹³	Competitive Threshold	Informal Bid Threshold	Chief Executive Officer Signature Authority
San José	\$10,000	\$140,000	\$350,000 ¹⁴ or \$1,430,000 ¹⁵
San Diego, CA	\$25,000	\$150,000	\$3,000,000 ^{14,15} or \$250,000 ¹⁶
San Francisco, CA	\$10,000	\$129,000 ¹⁷ or \$706,000 ¹⁸	\$100,000
Santa Clara County, CA	\$5,000	\$100,000 ^{14,15} or \$300,000 ¹⁶	\$200,000
Oakland, CA	\$15,000	\$50,000	\$250,000
Sacramento, CA	\$5,000	\$25,000	\$250,000
Dallas, TX	\$3,000	\$50,000	\$100,000
San Antonio, TX	\$3,000	\$50,000	Less than the budgeted amount
Austin, TX	\$3,000	\$50,000	\$66,000 ¹⁹
Federal Entities (Uniform Guidance)	\$10,000 ²⁰	\$250,000 ²¹	Not Applicable

Increasing the CPT May Reduce Competitive Procurements but Introduces Additional Risk

The Purchasing team examined Citywide historical purchase order data from FY2020-21 and FY2021-22 (2,693 purchase orders totaling \$348,618,925), and estimated the potential annual reduction in competitive procurements of certain CPT thresholds. Based on this historical data, a CPT increase from \$10,000 to \$15,000 may decrease future competitive procurements by an estimated 5%, with nominal reductions at each step, culminating in an estimated 6.5% reduction in new competitive procurements with a \$20,000 CPT increase to \$30,000. The reduction in new competitive procurements primarily would affect industry categories, such as software, laboratory, and temporary services, along with information technology technical and professional services.

CPT Increase	New CPT Range	Annual Reduction in New Competitive Procurements	% Reduction in New Competitive Procurements
\$0	\$0.01 to \$10,000	0	0.0%
\$2,000	\$0.01 to \$12,000 ²²	127 (+127 from prior step)	4.7%
\$5,000	\$0.01 to \$15,000	134 (+7 from prior step)	5.0%
\$10,000	\$0.01 to \$20,000	146 (+12 from prior step)	5.4%
\$15,000	\$0.01 to \$25,000	158 (+12 from prior step)	5.9%
\$20,000	\$0.01 to \$30,000	175 (+17 from prior step)	6.5%

However, to truly reduce the Purchasing and Department workloads, all purchases in the new CPT would need to be paid via a City P-Card, which would require modifying existing P-Card policy, introducing additional risk. Current P-Card limits allow purchases of up to \$1,000 for

¹³ For Peer Municipalities and Federal Entities, as of May 10, 2022

¹⁴ For Goods

¹⁵ For Services

¹⁶ For Professional Services

¹⁷ For Commodities and Professional Services

¹⁸ For General Services

¹⁹ Threshold is adjusted yearly based on CPI.

²⁰ Known as the Federal Micro-Purchase Threshold

²¹ Known as the Federal Simplified Acquisition Threshold

²² Guidance Report recommendation

non-recurring services and/or without a contract, and limits purchases of goods to \$10,000. P-Card purchases are not bound by the usual standard terms and conditions incorporated in the City purchase order and contracting processes which mitigate City risk, such as cyber liability concerns and prevailing wage compliance. Increased P-Card usage may cause bid splitting (violation of current P-Card Policy) resulting in less competition and more “sole-sourcing”. And, while moving more spending to the P-Card program may result in increased rebates, this move to greater P-Card spending may result in increased City costs, as vendors adjust their pricing to compensate for any merchant services fees incurred for allowing P-Card purchases of their goods and services.

City purchases that do not use a P-Card go through the Department requisition and Purchasing purchase order process²³. Purchases using the City purchase order process are governed by terms and conditions that lower the City’s risk, and include reviews for cyber liability and prevailing wage compliance, as well as compliance with State of California performance bond requirements for minor Public Works projects over \$25,000. Also, any increase to the City CPT would cause San José to be out of alignment with Federal Uniform Guidance, requiring different procurement processes for City goods and services funded with either federal or state pass-through dollars.

Staff recommends the City maintain its current Competitive Procurement Threshold at \$10,000, and remain aligned with Federal Uniform Guidance (Federal Micro-Purchase Threshold) in the future. Staff also proposes the P-Card services threshold remain at \$1,000 to control and mitigate risk.

The City Informal Procurement Threshold Does Not Align with the Federal Government

The City Informal Procurement Threshold (IPT) is governed by SJMC Section 4.12.210, and establishes when a streamlined Request for Quotes (three quotes) procurement process may be used. In 2010, the City Council approved procurement changes that included periodic automatic adjustments to contract authority limitations and related figures. Pursuant to SJMC Section 4.04.085, these adjustments may be made administratively every three years, and are tied to CPI increases and rounded to the nearest \$10,000. The most recent contract authority limitations were effective July 1, 2022²⁴, and established the IPT at \$140,000. The federal equivalent of the City IPT is the Federal Simplified Acquisition Threshold, and currently is set at \$250,000.

Staff recommends the City increase its current Informal Procurement Threshold to \$250,000, and remain aligned with Federal Uniform Guidance (Federal Simplified Acquisition Threshold) in the future.

Leveraging Other Public Entity Procurements

San José Municipal Code Restricts the Ability to Leverage Other Public Entity Procurements

Under SJMC Section 4.12.225 (B)3, in order for the City to utilize another public entity’s competitive procurement process which substantially complies with City procurement

²³ The City utilizes various request for proposals, request for bids, etc., processes. Those processes were not included in the historical data as those are evaluative vs. price-determinative.

²⁴ Adjustments to Contract Authority Limitations <http://www.sjcity.net/DocumentCenter/view/2774>.

procedures, the procurement documents must name the City of San José either specifically or categorically as a third party beneficiary of the competitive procurement process.

This is a non-standard requirement, as most other public entities simply require the executed contract resulting from the procurement to include language allowing other entities to use said contract. Leveraging other public entity procurements may be advantageous in terms of pricing and gaining economies of scale not otherwise be available to the City, while saving City Department and Purchasing staff time and effort to perform an equivalent procurement.

In leveraging other public entity procurements, City staff are still required to ensure the other public entity's competitive procurement process substantially complies with City procurement processes and procedures, that the goods and services meet City requirements, were procured through a competitive process, have acceptable contractual terms and conditions, and beneficial pricing.

Staff recommends the San José Municipal Code be modified to allow City procurements to leverage other public entities procurement processes which substantially comply with City procurement procedure by simply requiring the executed contract resulting from the procurement to include language allowing other entities to use said contract.

PROPOSED CHANGES TO SAN JOSÉ MUNICIPAL CODE

Staff recommends the following changes to the San José Municipal Code:

Municipal Code Section	Section Title	Description	Current	Proposed Change
4.04.080(A)	Quarterly Reports	Minimum Contract Value for "Sunshine" Reports	\$140,000	\$250,000
4.12.210(B)	Selection of Procurement Method	Request for Quotes	\$10,000 – \$140,000	\$ 10,000 – \$250,000
4.12.210(C, D)	Selection of Procurement Method	Request for Proposals Formal Bids	>\$140,000	>\$250,000
4.12.350(B1, B2)	Rejection of Responses	Rejection of Bids and Proposals	\$140,000	\$250,000
4.12.415	Formal and Informal Protest Procedures	Formal and Informal Protest Procedures	\$140,000	\$250,000
4.12.420	Notice of Decision	Notice of Intended Award	\$140,000	\$250,000
4.12.225 (B)3	Public agencies purchases	Utilizing Other Public Agencies Procurement	Requires City to be a third-party beneficiary of the procurement process	Require executed contract to include language allowing other entities to use said contract

In drafting the ordinance to implement the above proposed changes to the San José Municipal , staff may identify other San José Municipal Codes that are affected based on these recommended changes. Any modifications to these additional San José Municipal Code will be incorporated into the ordinance.

EVALUATION AND FOLLOW-UP

Staff anticipates returning to the full City Council with a recommendation, subject to City Council direction, to approve the proposed Municipal Code changes and direct the Administration and the Office of the City Attorney to prepare an ordinance implementing the recommended changes to San José Municipal Code by June 2023 so the Municipal Code modifications are effective as of July 1, 2023. The Finance Department also will continue to review the key future state recommendations from the City of San José Procurement Future State Assessment Report to evaluate the feasibility and timing of implementing additional recommendations, advancing components as appropriate.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office.

PUBLIC OUTREACH

This memorandum will be posted on the City website for the February 16, 2023 PSFSS Committee meeting and cross-referenced to the March 21, 2023 City Council agenda for full City Council review and consideration.

COMMISSION RECOMMENDATION AND INPUT

No commission recommendation or input is associated with this action.

CEQA

Not a project, Public Project number PP17-007, Preliminary direction to staff and eventual action requires approval from decision-making body.

PUBLIC SUBSIDY REPORTING

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

PUBLIC SAFETY, FINANCE, AND STRATEGIC SUPPORT COMMITTEE

February 1, 2023

Subject: Amendments to Title 4 of the Municipal Code Related to Procurement of Goods and Services Status Report

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/s/

JULIA H. COOPER

Director of Finance

For questions, please contact Luz Cofresí-Howe, Assistant Director of Finance at luz.cofresi-howe@sanjoseca.gov or (408) 535-7041.