

# Memorandum

**TO:** Federated City Employees Retirement  
Plan Board

**FROM:** Kevin Fisher, Assistant City  
Attorney

**SUBJECT: Proposed Amendment to 1975  
Federated City Employees Retirement  
Plan Relating to Procurement Process and  
Procedures for Contracts under Section 3.28.155**

**DATE:** March 13, 2024

## A. BACKGROUND

During the October 24, 2023, City Council meeting to discuss the City Auditor's [Interim Report on the Alignment of Controls Between the City and the Office of Retirement Services](#), the City Council unanimously approved the following action:

*“Direct the City Attorney and City Administration to bring forward Municipal Code changes to amend the Plans (SJMC 3.28.155 and SJMC 3.36.385, and any other applicable sections) with provisions stating the City’s procurement process in Part 4.12 of the Municipal Code and the City’s procurement policies apply to the Boards’ contracts and amend Section 7 in the Sunshine resolution to add its application to the Boards.”*

## B. 1975 FEDERATED CITY EMPLOYEES RETIREMENT PLAN BOARD’S REVIEW OF PROPOSED AMENDMENT

Pursuant to the 1975 Federated City Employees Retirement Plan (“Plan”), prior to the adoption of any ordinance amending the Plan, a copy of the proposed ordinance shall be provided to the Board of Administration for its review and recommendation. Specifically, the Plan provides in San Jose Municipal Code Section 3.28.275 as follows:

### **3.28.275 - Review of proposed amendments.**

A. Except as provided in subsection B., prior to the adoption of any ordinance amending the Federated City Employees Retirement System, a copy of the proposed ordinance shall be provided to the board for the board's review and recommendation.

1. The board may, but is not required to, submit a report or recommendation on the proposed amendment to the city council.

2. If the board declines or fails to submit a report or recommendation on a proposed amendment within sixty days of receipt of the proposed ordinance by the secretary to the board, the city council may proceed to adopt or not adopt the ordinance without first receiving a report or recommendation from the board.

3. Nothing in paragraph 2. shall be deemed to preclude the board from thereafter submitting a report or recommendation to the city council.

B. In any case where the city council finds that there is a need to adopt an ordinance amending the system within a time period which would not allow for a sixty-day review period, the council may act on the ordinance without first submitting it to the board, and the following procedures shall apply:

1. At the time the council passes the ordinance for publication of title or, in the case of an urgency ordinance, at the time the council adopts the ordinance, the council shall refer the ordinance to the board for study and consideration.

2. Following its study, the board may submit to the council a recommendation that the council take one or more of the following actions:

a. Repeal the ordinance.

b. Readopt the provisions of the ordinance with such amendments, additions or changes, if any, as the board may wish to recommend.

c. Make such other changes or provisions as the board may recommend.

3. Upon receipt of the board's recommendation, the council may implement or disapprove the recommendation.

## C. CITY COUNCIL DIRECTION TO AMEND THE PLAN

Pursuant to Section 3.28.275(A), the City is bringing forward an ordinance to amend Section 3.28.155 of the Plan to state that the City's procurement process in Part 4.12 of the Municipal Code applies to the Board of Administration's contracts under this Section. *See Attachment A.*<sup>1</sup> As set forth in the redline changes, the City intends to amend Section 3.28.155 of the Plan as follows:

### **3.28.155 Authority to Secure Other Contractual Services**

A. In addition to the authority to enter into contractual arrangements for medical services as provided in Section 3.28.150 and the authority to enter into contractual arrangements for investment related services as provided in Part 3 of this Chapter, the Board is authorized to select, enter into contractual arrangements with, and pay reasonable compensation to persons to perform the following services for the Board:

1. Actuarial services.
2. Auditing services.
3. Investment manager search services.
4. Investment performance evaluation services.
5. Proxy voting services.
6. Other consultant services which the Board deems necessary to carry out its duties and responsibilities under this Retirement Plan and which do not fall under

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<sup>1</sup> The ordinance in Attachment A also contains the proposed changes to the Police and Fire Department Retirement Plan.  
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the definition of Services as described in Section 4.12.055 of Chapter 4.12 as determined by the Director of Finance.

B. Chapter 4.12 of the San José Municipal Code shall govern the procurement process and procedures for contracts described in Subsection A.1. through A.6. All other goods and services as described in Section 4.12.055 of Chapter 4.12 shall be procured by the Director of Finance.

C. Any bidder may file a protest regarding the procurement decisions authorized under this Section. All protests must be filed in writing with the Chief Executive Officer in the Office of Retirement Services within ten (10) calendar days after the sending of the Notice of Intended Award. All protests shall be in writing and shall state the grounds for the protest as well as all of the facts relevant to the protest. All protests shall be filed in accordance with the instructions contained in the solicitation which is the subject of the protest. The Chief Executive Officer shall issue a written decision on the protest. The Chief Executive Officer may base the decision on the written protest alone or may informally gather evidence from the person filing the protest or any other person having relevant information. An appeal of the Chief Executive Officer's decision may be filed with the Board of Administration for the Police and Fire Department Retirement Plan. All such appeals must be in writing, and shall be filed with the Office of Retirement Services within ten (10) calendar days of sending the Chief Executive Officer's decision.

~~B.D.~~ The contracts described in subsection A. shall be entered into in the name of the Board of Administration for the Federated City Employees Retirement System.

The proposed amendment to the Plan does not include changes to contractual arrangements under Section 3.28.150, which relates to medical services, and Part 3 of the Plan, which relates to investments, like security lending services and real estate. The Board may create its own procedures for contractual arrangements under Section 3.28.150 and Part 3 of the Plan.

#### **D. PROPOSED AMENDMENTS TO CHAPTER 4.12 OF THE SAN JOSE MUNICIPAL CODE AND SUNSHINE RESOLUTION**

In light of the proposed amendment to Section 3.28.155 of the Plan, the City proposes corresponding changes to Chapter 4.12, Procurement of Goods and Services, of the San Jose Municipal Code. *See* Attachment B. Chapter 4.12 of the Municipal Code sets forth details of the City's procurement process to obtain services and supplies. *See* Chapter 4.12 at [https://library.municode.com/ca/san\\_jose/codes/code\\_of\\_ordinances?nodeId=TIT4REFIBUTA\\_CH4.12PRGOSE](https://library.municode.com/ca/san_jose/codes/code_of_ordinances?nodeId=TIT4REFIBUTA_CH4.12PRGOSE). The proposed amendments to Chapter 4.12 make most procurement provisions applicable to contracts under Section 3.28.155 of the Plan. The proposed amendments to Chapter 4.12 also carve out certain provisions from applicability to contracts under Section 3.28.155. For example, the proposed change to Section 4.12.410, Right to Protest, carves out contracts under Section 3.28.155 of the Plan because the proposed amendment to 3.28.155 contains a protest process that goes through the Office of Retirement Services and ultimately the Board.

As the City Council directed, the City also proposes an amendment to Section 7, Procurement and Contract Process Integrity and Conflict of Interest, of the Consolidated Open Government

and Ethics Resolution, which is often referred to as the Sunshine Resolution. *See* Attachment C.<sup>2</sup> Section 7 provides guidelines to ensure integrity for competitive procurement processes. The purpose of Section 7 is as follows:

1. to ensure integrity in the City's procurement and contract processes;
2. to educate City employees, consultants, uncompensated outside parties, and any person involved in the decision to award a contract about potential Conflicts of Interest; and
3. to establish guidelines for procedural screening of conflicts of interest.

The proposed changes to Section 7 include adding the Federated City Employees Retirement Plan Board of Administration to the communication protocols prior, during, and after a competitive bidding process in Section 7.3.1. The communication protocols set forth the characteristics of appropriate communication between respondents and the City during various phases of the solicitation process. The proposed changes to Section 7 include adding the Chief Executive Officer position to the conflict of interest in Section 7.3.4.

### **Conclusion**

As directed by the City Council, the City seeks to amend Section 3.28.155 of the Plan and is providing the changes to the Board of Administration of the Federated City Employees Retirement Plan for review and recommendation. The Board of Administration has sixty days to submit a report or recommendation on the proposed amendment to Plan to the City Council before it takes any action. During this period of time, City staff will be available to meet with staff from the Office of Retirement Services to answer any questions relating to the City's procurement process and the proposed changes. At this time, the City has not set a date for this item to be placed on an agenda for the City Council's consideration.

In addition to the amendment to the Plan, the Board may also provide comments on the proposed amendments to Chapter 4.12 of the San Jose Municipal Code and Section 7 of the Sunshine Resolution.

City representatives will be present during the March 21, 2024 meeting to answer any questions.

This memo was coordinated with the Office of Employee Relations.

NORA FRIMANN, City Attorney

By: *Kevin Fisher*

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KEVIN FISHER  
Assistant City Attorney

Attachment A – Municipal Code Changes to Chapters 3.28 and 3.36

Attachment B – Municipal Code Changes to Chapter 4.12

Attachment C – Sunshine Resolution Section 7 Changes

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<sup>2</sup> The complete Sunshine Resolution can be found at:

<https://www.sanjoseca.gov/home/showpublisheddocument/33306/636776498223330000>

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING  
SECTION 3.28.155 OF CHAPTER 3.28 OF TITLE 3 AND  
SECTION 3.36.385 OF CHAPTER 3.36 OF TITLE 3 OF THE  
SAN JOSE MUNICIPAL CODE**

**WHEREAS**, the Board of Administration for the 1975 Federated Employees' Retirement Plan is authorized under Section 3.28.155 of the San José Municipal Code to procure and execute contracts; and

**WHEREAS**, the Board of Administration for the Police and Fire Department Retirement Plan is authorized under Section 3.36.385 of the San José Municipal Code to procure and execute contracts; and

**WHEREAS**, on October 24, 2023, the City Council directed the City Attorney and City Administration to bring forward changes to amend San José Municipal Code Sections 3.28.155 and 3.36.385, and any other applicable Sections, with provisions stating the City of San José's procurement process in Part 4.12 of the San José Municipal Code apply to the boards' contracts; and

**WHEREAS**, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), the Director of Planning, Building and Code Enforcement has determined that the provisions of this Ordinance do not constitute a project, under File No. PP17-008 (General Procedure & Policy Making resulting in no changes to the physical environment); and

**WHEREAS**, the City Council of the City of San José is the decision-making body for this Ordinance; and



**WHEREAS**, this Council has reviewed and considered the "not a project" determination under CEQA prior to taking any approval actions on this Ordinance;

**NOW, THEREFORE**, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

**SECTION 1.** Section 3.28.155 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended to read as follows:

**3.28.155 Authority to Secure Other Contractual Services**

A. In addition to the authority to enter into contractual arrangements for medical services as provided in Section 3.28.150 and the authority to enter into contractual arrangements for investment related services as provided in Part 3 of this Chapter, the Board is authorized to select, enter into contractual arrangements with, and pay reasonable compensation to persons to perform the following services for the Board:

1. Actuarial services.
2. Auditing services.
3. Investment manager search services.
4. Investment performance evaluation services.
5. Proxy voting services.

6. Other consultant services which the Board deems necessary to carry out its duties and responsibilities under this Retirement Plan and which do not fall under the definition of Services as described in Section 4.12.055 of Chapter 4.12 as determined by the Director of Finance.

B. Chapter 4.12 of the San José Municipal Code shall govern the procurement process and procedures for contracts described in Subsection A.1. through A.6. All other goods and services as described in Section 4.12.055 of Chapter 4.12 shall be procured by the Director of Finance.

C. Any bidder may file a protest regarding the procurement decisions authorized under this Section. All protests must be filed in writing with the Chief Executive Officer in the Office of Retirement Services within ten (10) calendar days after the sending of the Notice of Intended Award. All protests shall be in writing and shall state the grounds for the protest as well as all of the facts relevant to the protest. All protests shall be filed in accordance with the instructions contained in the solicitation which is the subject of the protest. The Chief Executive Officer shall issue a written decision on the protest. The Chief Executive Officer may base the decision on the written protest alone or may informally gather evidence from the person filing the protest or any other person having relevant information. An appeal of the Chief Executive Officer's decision may be filed with the Board of Administration for the Federated City Employees Retirement System. All such appeals must be in writing, and shall be filed with the Office of Retirement Services within ten (10) calendar days of sending the Chief Executive Officer's decision.

DB. The contracts described in subsection A shall be entered into in the name of the Board of Administration for the Federated City Employees Retirement System.

SECTION 2. Section 3.36.385 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

**3.36.385 Authority to Secure Other Contractual Services**

A. In addition to the authority to enter into contractual arrangements for medical services as provided in Section 3.36.380 and the authority to enter into contractual arrangements for investment related services as provided in Part 4 of this Chapter, the Board is authorized to select, enter into contractual arrangements with, and pay reasonable compensation to persons to perform the following services for the Board:

1. Actuarial services.
2. Auditing services.
3. Investment manager search services.
4. Investment performance evaluation services.
5. Proxy voting services.
6. Other consultant services which the Board deems necessary to carry out its duties and responsibilities under this Retirement Plan and which do not fall under the definition of Services as described in Section 4.12.055 of Chapter 4.12 as determined by the Director of Finance.

B. Chapter 4.12 of the San José Municipal Code shall govern the procurement process and procedures for contracts described in Subsection A.1. through A.6.



All other goods and services as described in Section 4.12.055 of Chapter 4.12 shall be procured by the Director of Finance.

C. Any bidder may file a protest regarding the procurement decisions authorized under this Section. All protests must be filed in writing with the Chief Executive Officer in the Office of Retirement Services within ten (10) calendar days after the sending of the Notice of Intended Award. All protests shall be in writing and shall state the grounds for the protest as well as all of the facts relevant to the protest. All protests shall be filed in accordance with the instructions contained in the solicitation which is the subject of the protest. The Chief Executive Officer shall issue a written decision on the protest. The Chief Executive Officer may base the decision on the written protest alone or may informally gather evidence from the person filing the protest or any other person having relevant information. An appeal of the Chief Executive Officer's decision may be filed with the Board of Administration for the Police and Fire Department Retirement Plan. All such appeals must be in writing, and shall be filed with the Office of Retirement Services within ten (10) calendar days of sending the Chief Executive Officer's decision.

DB. The contracts described in subsection A. shall be entered into in the name of the Board of Administration for the Police and Fire Department Retirement Plan.

PASSED FOR PUBLICATION of title this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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MATT MAHAN  
Mayor

ATTEST:

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TONI J. TABER, CMC  
City Clerk

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING SECTIONS 4.12.010, 4.12.035, 4.12.055, 4.12.350, AND 4.12.410 OF CHAPTER 4.12 OF TITLE 4 OF THE SAN JOSE MUNICIPAL CODE TO PROVIDE THAT THE PROCUREMENT PROCESS APPLIES TO CONTRACTS UNDER SECTION 3.28.155 OF THE 1975 FEDERATED EMPLOYEES' RETIREMENT PLAN AND SECTION 3.36.385 OF THE 1961 POLICE AND FIRE DEPARTMENT RETIREMENT PLAN IN THE SAN JOSE MUNICIPAL CODE**

**WHEREAS**, the Board of Administration for the 1975 Federated Employees' Retirement Plan is authorized under Section 3.28.155 of the San José Municipal Code to procure and execute contracts; and

**WHEREAS**, the Board of Administration for the Police and Fire Department Retirement Plan is authorized under Section 3.36.385 of the San José Municipal Code to procure and execute contracts; and

**WHEREAS**, on October 24, 2023, the City Council directed the City Attorney and City Administration to bring forward changes to amend San José Municipal Code Sections 3.28.155 and 3.36.385, and any other applicable Sections, with provisions stating the City of San José's procurement process in Part 4.12 of the San José Municipal Code apply to the boards' contracts; and

**WHEREAS**, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), the Director of Planning, Building and Code Enforcement has determined that the provisions of this Ordinance do not constitute a project, under File No. PP17-008 (General Procedure & Policy Making resulting in no changes to the physical environment); and



**WHEREAS**, the City Council of the City of San José is the decision-making body for this Ordinance; and

**WHEREAS**, this Council has reviewed and considered the "not a project" determination under CEQA prior to taking any approval actions on this Ordinance;

**NOW, THEREFORE**, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 4.12.010 of Chapter 4.12 of Title 4 of the San José Municipal Code is amended to read as follows:

**4.12.010 City**

"City" means the City of San José acting through the City Council, the City Manager, the Director of Finance or such other person who is authorized under this Code or duly designated to procure and execute contracts on behalf of the City, which includes the Board of Administration for the Federated City Employees Retirement System for contracts under Section 3.28.155 and the Board of Administration for the Police and Fire Department Retirement Plan for contracts under Section 3.36.385 of this Code.

SECTION 2. Section 4.12.035 of Chapter 4.12 of Title 4 of the San José Municipal Code is amended to read as follows:

**4.12.035 Procurement Authority**

"Procurement Authority" means the City Manager, Council Appointee, Director of Finance, Chief Executive Officer in the Office of Retirement Services for purposes of contracts under Sections 3.28.155 and 3.36.385 of this Code, or such other person who



has been duly authorized to procure a contract in accordance with the provisions of this Title.

SECTION 3. Section 4.12.055 of Chapter 4.12 of Title 4 of the San José Municipal Code is amended to read as follows:

**4.12.055 Services**

A. "Services" means:

1. Any work performed or services rendered by an independent contractor, with or without the furnishing of materials, to do the following:
  - a. Maintenance or nonstructural repair of City buildings, structures or improvements, which does not require engineering plans, specifications or design, including but not limited to unscheduled replacement of broken window panes, fire extinguisher maintenance, minor roof repairs, elevator maintenance, custodial services and pest control;
  - b. Repair, modification, and maintenance of City equipment and software;
  - c. Cleaning, analysis, testing, moving, removal or disposal (otherwise than by sale) of City materials, supplies and equipment;
  - d. Replanting, care, or maintenance of public grounds, including but not limited to trees, shrubbery, flowers and lawns, which does not require engineering plans, specifications or designs;

- e. Provide temporary personnel services;
  - f. Provide other miscellaneous services to facilitate department operations;
  - g. Perform repair, demolition or other work required to abate nuisances pursuant to this Code;
  - h. Install and implement information technology projects; or
  - i. Perform technical or professional services.
- 2. Software licensing and maintenance.
  - 3. Leasing or rental of personal property for use by the City.
- B. "Services" shall not include:
- 1. Any Public Works Project as defined in Section 1217(a)(1) of the San José City Charter, or any purchases of materials, supplies or equipment;
  - 2. Services performed under a grant agreement between the City and a grantee of a City program;
  - 3. Services for the design, fabrication or installation of a work of art; or
  - 4. Services performed under a concession agreement between the City and a licensee or permittee on City property;

5. Medical services and advice, including independent medical examiners, under an agreement pursuant to Section 3.28.150 or Section 3.36.380 of this Code; or

6. Investment related services under an agreement pursuant to Part 3 of Chapter 3.28 or Part 4 of Chapter 3.36 of this Code.

C. Consistent with the definition of Public Works Project in Section 1217(a)(1) of the San José City Charter, Services involving maintenance can include repairs, construction, erection, improvement or demolition incidental to such maintenance. To be "incidental" to such maintenance, the procurement must demonstrate that the repairs, construction, erection, improvement or demolition are:

1. Absolutely necessary to the proper completion of the maintenance; and
2. A minor component of the maintenance considering factors such as the cost and complexity of the maintenance, and the cost and complexity of the repairs, construction, erection, improvement or demolition.

SECTION 4. Section 4.12.350 of Chapter 4.12 of Title 4 of the San José Municipal Code is amended to read as follows:

#### **4.12.350 Rejection of Responses**

The Procurement Authority may reject any or all responses received. If all responses are rejected, the Procurement Authority may in his or her discretion:

- A. Re-notice the solicitation; or
- B. Negotiate and execute with a vendor for the goods or services without further solicitation under the following circumstances:
  - 1. For solicitations for contracts with a value greater than the Informal Procurement Threshold, upon approval of the City Council, or upon approval by the Board of Administration for the Federated City Employees Retirement System for contracts under Section 3.28.155 and the Board of Administration for the Police and Fire Department Retirement Plan for contracts under Section 3.36.385 of this Code; or
  - 2. For solicitations for contracts with a value less than or equal to the Informal Procurement Threshold, upon documentation of the reasons for such a decision and notice to all person(s) who submitted responses to the solicitation.

SECTION 5. Section 4.12.410 of Chapter 4.12 of Title 4 of the San José Municipal Code is amended to read as follows:

**4.12.410 Right to Protest**

Any interested party may file a protest regarding the procurement decisions authorized under this Chapter. The protest procedures in this Part 5 shall not apply to procurement decisions relating to contracts under Sections 3.28.155 and 3.36.385 of this Code. The protest procedures for procurement decisions relating to contracts under Sections 3.28.155 and 3.36.385 of this Code shall be set forth in those Sections.



PASSED FOR PUBLICATION of title this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

\_\_\_\_\_  
MATT MAHAN  
Mayor

ATTEST:

\_\_\_\_\_  
TONI J. TABER, CMC  
City Clerk

## **SECTION 7. PROCUREMENT AND CONTRACT PROCESS INTEGRITY AND CONFLICT OF INTEREST**

### **7.0 LEGISLATIVE HISTORY**

On December 13, 2005, Council directed the City Manager and City Attorney as part of the Mayor's Biennial Ethics Review to develop a Council Policy which included all elements of the Procurement Process Integrity Guidelines adopted by Council on November 9, 2004 and apply these provisions to all competitive processes. These provisions were originally adopted as City Council Policy 0-35, entitled "Procurement and Contract Process Integrity and Conflict of Interest," on February 6, 2007 by the adoption of Resolution No. 73634, which policy is repealed by, revised and incorporated into this Consolidated Open Government and Ethics Resolution.

### **7.1 PURPOSE**

The purpose of this Section 7 of this Consolidated Open Government and Ethics Resolution is:

1. to ensure integrity in the City's procurement and contract processes;
2. to educate City employees, consultants, uncompensated outside parties, and any person involved in the decision to award a contract about potential Conflicts of Interest; and
3. to establish guidelines for procedural screening of Conflicts of Interest.

The City desires to provide a fair opportunity to participants in competitive processes for the award of City contracts by promulgating integrity and removal of Conflicts of Interest through the inclusion of the components specified in Section 7.3 in all competitive solicitations.

### **7.2 DEFINITIONS**

#### **7.2.1 Definitions**

The definitions set forth in this Section 7.2 shall govern the application and interpretation of this Section 7 of this Consolidated Open Government and Ethics Resolution, entitled "Procurement and Contract Process Integrity and Conflict Of Interest."

#### **7.2.2 Chief Purchasing Officer**

"Chief Purchasing Officer" means that City employee designated by the City Manager to be responsible for the City's procurement process.

### **7.2.3 Council Appointees**

“Council Appointees” means the City Manager, City Attorney, City Clerk, City Auditor, and Independent Police Auditor.

### **7.2.4 Solicitation**

“Solicitation” means, but is not limited to, specification development, preparation and issuance of requests for proposals, quotes, qualifications or bids, evaluation of responses and submissions, and other evaluations which lead to an award of a City contract, [including a contract with the Federated City Employees Retirement System or the Police and Fire Department Retirement Plan](#).

## **7.3 GENERAL PROVISIONS**

### **7.3.1 Communication Protocol**

This Section describes the characteristics of appropriate communication between respondents and the City during various phases of a Solicitation.

- A. Prior to Issuance of Solicitations. Prior to the issuance of Solicitations, contact between prospective respondents and City staff, [board members of Federated City Employees Retirement System](#), [board members of the Police and Fire Department Retirement Plan](#), elected officials, or consultants is permissible.
- B. After Issuance of Solicitations and prior to Submission deadline for Solicitations. After issuance of Solicitations, all contact between prospective respondents and the City must be directed to the procurement contact designated in the Solicitation. City staff, [board members of Federated City Employees Retirement System](#), [board members of the Police and Fire Department Retirement Plan](#), elected officials, and consultants will refer all inquiries to the procurement contact.

All requests for clarification, objections to the structure, content, or distribution of a Solicitation, or other inquiries must be made in writing and the City shall answer to these clarifications, objections, and inquiries in writing via addenda to the Solicitation.

- C. After Submission Deadline of Solicitations and prior to Issuance of a Notice of Intended Award. After the submission deadline of Solicitations, all contact regarding the procurement between respondents and the City and participants in the evaluation process, who are not City employees, must be directed to the procurement contact designated in the Solicitation. City staff, [board members of](#)



Federated City Employees Retirement System, board members of the Police and Fire Department Retirement Plan, elected officials, and consultants will refer all inquiries to the procurement contact.

- D. After Issuance of a Notice of Intended Award. The City will issue a notice of intended award to all respondents including the basis for selection and instructions for filing a protest. All respondents shall follow the procedures for protest as indicated in the Solicitation document. During the protest period, City staff, board members of Federated City Employees Retirement System, board members of the Police and Fire Department Retirement Plan, elected officials, and consultants will refer all inquiries to the protest hearing officer identified in the Solicitation document.
- E. After Completion of Protest Period. After completion of the protest period, contact between prospective respondents and City staff, board members of Federated City Employees Retirement System, board members of the Police and Fire Department Retirement Plan, elected officials, or consultants is permissible.

### **7.3.2 Respondent's Code of Conduct**

By submitting a response to a City Solicitation, respondents agree to adhere to this Section 7 of this Consolidated Open Government and Ethics Resolution and are individually and solely responsible for ensuring compliance with this Section 7 of this Consolidated Open Government and Ethics Resolution on behalf of the respondent's employees, agents, consultants, lobbyists, or other parties or individuals engaged for purposes of developing or supporting a response.

In addition to adhering to the various sections of this Section 7 of this Consolidated Open Government and Ethics Resolution, respondents may not:

- collude, directly or indirectly, among themselves in regard to the amount, terms or conditions of a Solicitation;
- influence any City staff member or evaluation team member throughout the solicitation process, including the development of specifications; and
- submit incorrect information in the response to a Solicitation or misrepresent or fail to disclose material facts during the evaluation process.

Any evidence that indicates that a respondent has failed to adhere with any section of this Section 7 of this Consolidated Open Government and Ethics Resolution may result in the respondent's disqualification from the procurement as well as possible debarment.



### **7.3.3 Confidentiality During Evaluation Process**

City staff, consultants, and outside evaluators, who are participants in the evaluation process, are required to sign a confidentiality agreement, which binds the participants not to share any information about responses received and the evaluation process until the City issues a notice of intended award.

### **7.3.4 Conflict of Interest**

Per the General Rule with Respect to Conflicts of Interest, as outlined in the City Council Policy 0-15, "Code of Ethics for Officials and Employees of the City of San José", City elected officials, appointed officials, their staffs, and City employees are expected to avoid any conflicts of interest. Further, employees should avoid the appearance of conflicts of interest in order to ensure that City decisions are made in an independent and impartial manner.

In general, Council Appointees [and the Chief Executive Officer of the Office of Retirement Services](#) shall take measures to ensure that the City avoid any conflict of interests in procurement processes of City contracts. Specifically, these measures include that:

- A. Professional procurement and contracting staff, including buyers, managers, department heads, members of the City Attorney's Office and others who regularly participate in the making of contracts on behalf of the City disclose relevant financial interest as required by state law and by City policy, and annually review those statements in conjunction with this Section 7 of this Consolidated Open Government and Ethics Resolution and other ethical standards.
- B. Persons who may not be regularly involved in City procurements review this Section 7 of this Consolidated Open Government and Ethics Resolution and other ethical standards and elicit such information from them to enable the City to determine if the person's participation would create a conflict of interest. Such persons shall include, but are not limited to:
  - 1. authors of specifications
  - 2. paid and unpaid evaluators
  - 3. paid and unpaid consultants who assist in the procurement process
- C. The person managing the procurement shall discuss any potential conflict of interest identified with the City Attorney's Office and document the resulting determination, and take appropriate action including, but not limited to, removal

of an employee, consultant, or outside uncompensated party from the procurement activity or cancellation of a Solicitation.

- D. The City Manager, in consultation with the City Auditor and City Attorney, has published an administrative policy outlining the procedural elements of this Section 7 of this Consolidated Open Government and Ethics Resolution.
- E. This Section 7 of this Consolidated Open Government and Ethics Resolution is intended to set a balance between careful adherence to good procurement and contracting principles together with thorough examination of potential conflicts of interest against an undue burden on the participants in procurement and contracting processes. By establishing the following exceptions to the procedures to be administered by the City Manager, it is not intended to suggest that there is a lesser requirement with regard to ethical standards, but rather a need to have a less burdensome process with regard to certain procurements and contracting activities. The following competitive processes are not subject to procedural requirements as administered by the City Manager:
  - 1. Any contracting activity with an estimated value less than \$100,000.
  - 2. Disposition of goods as described in the Municipal Code Chapter 4.16.
  - 3. Award of grants by the City with a value below \$10,000.

### **7.3.5 Allegations of Conflict of Interest**

Prior to the Solicitation release up to award of contract, any allegations of conflict of interest by a City employee, consultant, or other participant in the pre-Solicitation and Solicitation process shall be reported to the procurement contact. The procurement contact shall investigate the alleged conflict of interest in consultation with the City Attorney's Office and document the resulting determination.

### **7.3.6 Allegations of Misconduct**

At any time during a Solicitation process, any misconduct by a City employee, consultant, or other participant in the pre-Solicitation and Solicitation process, shall be reported to the City's Chief Purchasing Officer. The Chief Purchasing Officer shall investigate the alleged misconduct, in consultation with the City Attorney's Office and others as appropriate. Nothing in this Section 7 of this Consolidated Open Government and Ethics Resolution is intended to prohibit anyone from communicating with the City Manager's Office, the City Attorney's Office, the City Auditor's Office, or the Mayor or any City Council Member about any alleged misconduct.

# Memo re Proposed Amendment

Final Audit Report

2024-03-13

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