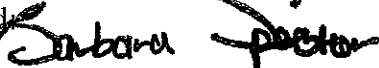


TOWN COUNCIL POLICY
TOWN OF LOS GATOS

Subject: Town Purchasing Policy and
Procedures Manual

Page: 1 of 14

Approved:



Effective Date:
8/04/2008

Revised Date:

PURPOSE

The purpose of the Purchasing Policy is to guide purchasing practices and provide an overview of purchasing objectives, policies and functions.

SCOPE

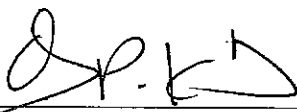
The provisions of this policy shall apply to elected and appointed officials, Town employees, volunteers and vendors seeking to do business with the Town. It identifies those with the authority and the responsibility to acquire goods and services on behalf of the Town, and addresses policies on matters including, but not limited to:

- The purchase of goods and services, leases of real property, or the sale or purchase of real property.
- All contracts funded by the Town of Los Gatos and the Los Gatos Redevelopment Agency for research and development, professional studies, design and engineering, construction and construction-related matters, to the extent allowed by applicable law.
- The disposition of surplus property.

POLICY & PROCEDURES

See attached policy document.

APPROVED AS TO FORM:



Town Attorney

Town of Los Gatos Purchasing Manual

1. POLICY PURPOSE

The purpose of the Purchasing Policy is to guide purchasing practices and provide an overview of purchasing objectives, policies and functions.

2. SCOPE OF POLICY

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- The disposition of surplus property.

3. OVERVIEW OF THE PURCHASING PROCESS

Section 2.50.110 of the Los Gatos Code establishes a Centralized Purchasing Division which has the authority to purchase equipment, materials and services. Centralized purchasing standardizes the bidding and evaluation procedures, achieves economy of scale benefits, provides consistency in dealing with vendors, and ensures an open, fair, and competitive procurement process.

4. PURCHASING AGENT

Section 2.50.115 of the Town Code establishes the Town Manager or his/her designee as the Purchasing Agent for the Town. When so acting the Town Manager shall:

- Give preference to merchants whose place of business is located within the Town limits, quality and price being equal.
- Establish and enforce specifications with respect to equipment, materials and services required by the Town.
- Inspect or supervise the inspection of all deliveries of equipment, materials and services, and determine their quality, quantity and conformity with specifications thereof.
- Have charge of such general storerooms and warehouses as the Town may establish.
- Transfer to, or between, offices, departments or agencies, equipment, materials or services and, on approval of the Town Council with such notice as may be required, sell to the highest bidder surplus, obsolete or unused equipment or materials.

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5. PURCHASING GUIDELINES

a) Standards of Purchasing Practice

The Town of Los Gatos adheres to the following Standards of Practice:

- 1) To regard public service as a sacred trust, giving primary consideration to the interests of the public agency that employs us.
- 2) To purchase without prejudice, seeking to obtain the maximum value for each dollar expended.
- 3) To avoid unfair practices, giving all qualified vendors equal opportunity.
- 4) To honor our obligations and require that obligations to our public agency be honored.
- 5) To accord vendor representatives courteous treatment, remembering that these representatives are important sources of information and assistance in solving our purchasing needs.
- 6) To refuse to accept any form of commercial bribery, and prevent any appearance of so doing.
- 7) To be receptive to counsel from our colleagues, and to cooperate with them to promote a spirit of teamwork and unity.
- 8) To conduct ourselves with fairness and dignity, and to demand honesty and truth in the purchasing process.
- 9) To strive for greater knowledge of purchasing methods and of the materials we purchase.
- 10) To cooperate with organizations and individuals involved in activities designed to enhance the development of the purchasing profession, remembering that our actions reflect on the entire purchasing profession.

b) Gifts and Unauthorized Purchases

- 1) **Gifts:** Consistent with existing Town policy, Town employees, officers or officials are not entitled to any special consideration from vendors and merchants in their personal affairs nor are such Town employees, officers, or officials to attempt to procure materials for the personal use of any other person. Town employees, officers or officials shall not solicit or accept gifts except for those items that can be shared by all staff such as food and flowers.
- 2) **Unauthorized Purchases:** Except for emergencies or other authorized exemption, no purchases shall be made without specific authorization as outlined in this policy. Purchase transactions that are either entered into by an individual that is not authorized to contract on behalf of the Town or entered into by an individual normally authorized to contract, but who uses an unauthorized procurement method, or exceeds their delegated authority may be held personally liable for the cost of the purchase or contract and/or result in disciplinary action and up to and including

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termination of employment. If a department accepts responsibility for payment of incurred charges from an unauthorized purchase, the department must submit the following:

- i) A purchase requisition containing all required information.
- ii) Evidence of the purchase and receipt of item(s), i.e invoices, packing slips etc.
- iii) A written statement explaining the circumstances that led to the unauthorized purchase, and the steps taken to prevent its reoccurrence.

c) Green Procurement

Whenever possible, goods and services that are proven to be ecologically sound, healthy, energy-efficient, renewable, reusable, highly durable, or have recyclable content should be considered for purchase to support environmental friendly or "green" initiatives. Examples of such products may include, but are not limited to: alternative fuel vehicles, recyclable, and/or biodegradable products, or products made out of recycled materials, and low-emission paints, and native plants for landscaping purposes.

d) Purchasing Authority

The Town Manager or designee is authorized to enter into and sign on behalf of the Town contracts for goods, services, including professional services less than \$50,000. All contracts over \$50,000 must be approved by the Town Council.

e) Purchase Orders

- 1) Purchase orders (PO) represent a commitment related to unperformed contracts for goods or services between a Town Department and vendor. When a PO is executed, an "encumbrance" against the program account identified in the PO is created.
- 2) Purchase orders are required for purchases over \$1,000. Prior to purchase, a requisition should be generated, followed by a PO. When an invoice is received, it is processed against the PO and the payment will be deducted from the outstanding encumbrance associated with the PO.
- 3) Change Orders: Overpayment of purchase orders cannot exceed more than 10% of the original authorized amount. In instances where, due to unforeseen developments the cost of goods or services exceeds 10% of the original amount plus contingencies, a change order must be processed. Approval of change orders is subject to authorization limits provided in this policy.

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f) Insurance and Indemnity

Insurance is required in connection with a purchase or contract that involves service performed on Town property, a professional services contract, or whenever there may be an inherent risk of personal injury in the activity involved. When insurance and indemnity are required, the contractor shall hold the Town harmless, agree to defend, and maintain insurance for property damage, general liability and workers' compensation in the form and amounts determined by the Town Attorney. Exceptions to these requirements must be approved by the Town Attorney.

1) *General Liability and Bodily Injury Insurance*

Commercial general liability insurance for at least \$1,000,000 combined limit for bodily injury and property damage that provides that the Town, its officers, employees and agents are additional insured under the policy. The policy shall state in writing either on the Certificate of Insurance or attached rider thereof that the insurance will operate as primary insurance for work performed, and that no other insurance affected by Town or other named insured will be called on to cover a loss covered thereunder.

2) *Automobile Liability Insurance*

Automobile liability insurance in an amount not less than \$1,000,000 per person/per occurrence.

3) *Workers' Compensation Insurance*

Workers' Compensation Insurance for all employees, all in strict Compliance with State laws, and to protect the Town from any and all claims thereunder, including a waiver of subrogation.

4) *Professional Liability Insurance*

In addition, engineering related services, auditors and other certain professional service contracts may need professional liability insurance in an amount not less than \$1,000,000.

5) *Certificate of Insurance*

A Certificate of Insurance must be filed with the Town prior to engaging in any operation or activity set forth in the purchase order/service contract.

g) Business License

Vendors providing services within Town limits, or delivering goods to the Town must have a Town of Los Gatos Business License. The department initiating a purchase or contract for services is responsible for insuring that the vendor or contractor has a business license.

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h) Multi-Year Contracts

A contract for supplies or services may be entered into for any period of time deemed to be in the best interest of the Town, provided that the term of the contract and renewal provisions are included in the original solicitation process. Contracts committing the Town over five fiscal years are not recommended and shall be allowed only under special circumstance as approved by the Town Council. Contracts in excess of one (1) year shall include a provision automatically terminating the contract in the event that the Town Council does not budget funds to pay the contract in future year.

i) Independent Contractors

In compliance with Public Code 31000, Town may contract with an "outside" source personal services when:

- Special skills, knowledge and resources are unavailable within the Town.
- Town employees cannot complete the work in a reasonable time.
- A situation requires independent, impartial evaluation by a consultant with recognizable professional expertise and stature.
- It will be less expensive to contract for the work.
- Another branch of government (county/state/fed) dictates that the Town contract with a specified vendor.
- Circumstances may require special skills for a limited time. Those skills may be unavailable from current employees or prospective temporary employees.

6. PURCHASING AUTHORIZATION LIMITS

The following authorization limits apply to all purchases except Public Works Projects. Public Works Projects purchasing authorizations and information are discussed later in this document.

a) *Formal Bid – Purchases more than \$50,000*

- Authority to award – Town Council.
- Formal bid or Request for Proposal process is required, unless the purchase is for personal property (equipment) or professional/personal services.
- Award to the lowest cost, responsive, responsible bidder.

b) *Formal Bid – Purchases more than \$25,000 - \$49,999*

- Authority to award – Town Manager.
- Formal bid or Request for Proposal process is required, unless the purchase is for personal property (equipment) or professional/personal services.
- Award to the lowest cost, responsive, responsible bidder.

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- c) *Informal Bid – Purchases more than \$5,000 and up to \$25,000*
 - Authority to award – Town Manager.
 - Quotes must be received from three competitive sources.
 - Award to the lowest cost, responsive, responsible bidder.

- d) *Small Purchases – Purchases more than \$1,000 and up to \$5,000*
 - Authority to award – Department Director or authorized designee.
 - Seek competitive quotations when feasible.
 - Award to the lowest cost, responsive, responsible bidder.
 - Require a purchase order.

- e) Purchases under \$1,000 do not require a purchase order or competitive quotations, but must be authorized by Department Director or authorized designee.

7. SPECIAL TYPES OF PURCHASES

a) **Purchases Requiring Competitive Bids**

All contracts greater than \$50,000 shall be awarded by competitive sealed bidding. The Town Manager is authorized to award contracts up to \$50,000. Town Council approval is required for awards greater than \$50,000. Contracts shall not be knowingly staged or separated into smaller units or segments solely for the purpose of evading competitive bidding requirements.

1) Competitive Sealed Bidding Process:

- i) **Invitation and Notice:** An invitation for bids shall be issued and shall include specifications and all contractual terms and conditions applicable to the procurement. Reasonable public notice of the invitation for bids shall be given not less than ten (10) calendar days prior to the date of the opening of bids. Notice shall be published at least twice in a newspaper of general circulation, printed and published in the Town, or if there is none, it shall be posted in at least three (3) public places in the Town, including the Town website. The Purchasing Agent shall also advertise pending purchases by a notice posted on the public bulletin board in the Town Hall.

- ii) **Bid Opening:** Bids shall be opened publicly in the presence of one or more witnesses at the place and not earlier than the time designated in the invitation for bids. The amount of each bid and such other relevant

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information as the Town deems appropriate, together with the name of each bidder shall be open to public inspection in accordance with the policy.

- iii) **Bid Evaluation and Acceptance:** Bids received at or prior to the time set for bid opening shall be unconditionally accepted without alteration or correction, except as authorized in this policy. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluations that are not set forth in the invitation for bids.

 - iv) **Correction or Withdrawal of Bids:** Subject to any provisions of federal or state granting authorities to the contrary, correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such bid mistakes, shall be in accordance with this section. Mistakes discovered before bid opening may be modified or withdrawn by written notice received in the office designated in the invitation for bids prior to the time set for bid opening. After bid opening, no corrections to bid or provisions shall be permitted but, in lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:
 - The mistake is clearly evident on the face of the bid document; or
 - The bidder submits evidence that clearly and convincingly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids shall be supported by a written determination made by the Town.

 - v) **Award:** The contract shall be awarded by appropriate written notice to the lowest cost, responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids.
- 2) **Tie bids:** If two (2) or more bids received are for the same total amount or unit price, quality and service being equal, and if the public interest will not permit the delay of re-advertising for bids, the Town Council may accept the one it chooses or accept the lowest bid made by negotiation with the tie bidders at the time of the bid opening.

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- 3) **Cancellation of Invitations:** An invitation for bids, a request for proposals, or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation. Each solicitation issued by the Town shall state that the solicitation may be cancelled and that any bid or proposal may be rejected in whole or in part at the Town discretion with or without a showing of good cause.
- 4) **Determination of Non-responsibility:** If a bidder or offeror who otherwise would have been awarded a contract is found non-responsible, a written determination of non-responsibility, setting forth the basis of the finding, shall be prepared by the Town Manager or his or her delegate. The unreasonable failure of a bidder or offeror to supply promptly information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such bidder or offeror. A copy of the determination shall be sent promptly to the non-responsible bidder or offeror. The final determination shall be made part of the contract file and be made a public record.
- 5) **Right of Nondisclosure:** Information furnished by a bidder or offeror in reliance upon a written offer of confidentiality by the Town pursuant to this section shall not be disclosed by the Town outside of the office of the purchasing agent or using agency without prior written consent by the bidder.
- 6) **Performance Bonds:** The Town Council shall have authority to require a performance bond before entering a contract in such amount as it shall find reasonably necessary to protect the best interests of the Town. If the Town Council requires a performance bond, the form and amount of the bond shall be described in the notice inviting bids.
- 7) **Protests:** Any participating bidder may file a protest of a contract award or proposed contract award. The protest or appeal must be made in writing within 10 days of award notification and contain at least the following information:
 - The name, address and telephone number of the protester.
 - The signature of the protester.
 - The bid number and date of bid closing.
 - A statement of the legal and/or factual ground on which the protest or appeal is based, including copies of information relevant to the bid.

b) Contracting for Professional/Personal Services

For the purpose of procuring of professional/personal services, the Town department or agency using such a professional/person may award a contract for service in accordance with the purchasing authorizations and limitations of this policy.

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- 1) Selection Procedure.
 - i) **Request for Qualifications and Notice:** Adequate notice of the need for the desired professional services shall be given by the Town through a request for qualifications. The request for qualifications shall describe the services required, list the types of information and data required of each offeror, and state the relative importance of particular qualifications.
 - ii) **Statement of Qualifications:** Persons engaged in providing the designated types of professional services may submit statements of qualifications and expressions of interest in providing such professional services. The Town may specify a uniform format for statements of qualifications.
 - iii) **Interviews:** The head of the Town department or agency or his or her designee using the professional services may conduct interviews with any offeror who has submitted a statement of qualifications for the purpose of ranking the qualifications of the offerors, based on the evaluation factors set forth in the request for qualifications. Interviews shall not disclose any information derived from statements submitted by other offerors.
 - iv) **Award:** Award shall be made to the offeror determined to be the best qualified based on evaluation factors set forth in the request for qualifications. If terms cannot be agreed upon with the best-qualified offeror, then negotiations will be formally terminated with the selected offeror. If statements were submitted by one or more offerors determined to be qualified, negotiations may be conducted with such other offeror or offerors, in order of their respective qualification ranking, and the contract may be awarded to the offeror then ranked best qualified if the amount of compensation is determined to be fair and reasonable.
- 2) Tie Bids: See "Competitive Sealed Bids" (2).
- 3) Cancellation of Invitations: See "Competitive Sealed Bids" (3).
- 3) Determination of Non-responsibility: See "Competitive Sealed Bids" (4).
- 4) Right of Nondisclosure: See "Competitive Sealed Bids" (5).
- 5) Bid and Performance Bonds: See "Competitive Sealed Bids" (6).
- 6) Protests: See "Competitive Sealed Bids" (7).

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c) Cooperative Purchasing

The Town Manager is authorized to enter into cooperative purchasing arrangements with other governmental entities without separate competitive bidding by the Town if a governmental agency has solicited bids and awarded a contract for services or materials which the Town desires to obtain, and participation in such a purchase is agreeable to the bidder awarded the contract and the Town Manager finds that participation in such group purchasing agreement is for the benefit of the Town.

d) Sole Source Purchasing

- 1) A contract may be awarded without competition when the Town determines in writing, after conducting a good faith review of available sources, that there is only one source for the required supply, service or construction item. Purchases of less than \$50,000 must be approved by the Town Attorney. Town Council approval is required to purchase any items or service valued over \$50,000.
- 2) The Town Manager or his or her designee shall conduct negotiations, as appropriate, as to price, delivery and terms. A statement of the basis for the sole source determination shall be placed in the contract file.

e) Open (Blanket) Purchases

Open procurement can be used when very similar goods or services are purchased frequently during the year. Generally, the individual purchases are small in relation to the total amount authorized. Bids and approvals must be obtained annually using the same criteria as for a single item purchase order.

f) Petty Cash Reimbursement

The Petty Cash Fund is used to reimburse purchases which were originally paid out-of-pocket by a Town official or employee. Petty Cash reimbursements will either be paid in cash or by check, depending on the amount.

g) Credit Card Purchases

- 1) Credit card purchases are limited to small purchases of up to \$5,000. Guidelines and conditions for small purchases as set forth in this policy will be followed.
- 2) Credit cards are issued to individual employees and are to be used for official Town business only. Credit cards belong to the Town and can be cancelled or revoked at any time at the discretion of the Town Manager. Should any employee lose or have his/her credit card stolen, it is their responsibility to contact the credit card company immediately. Also, they must notify their supervisor in writing one (1) working day after discovery. The supervisor must notify the Purchasing Agent as soon as possible.
- 3) It is the responsibility of the employee to furnish receipts for all credit card purchases. Payment for purchases without receipts may become the responsibility of the employee.

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h) Emergency Purchases

- 1) The Town may make emergency purchases of supplies, services, or construction items when there is a threat to public health, welfare, or safety; provided that such emergency purchases shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The Town Manager or designee has the authority to deem a situation as an emergency.
- 2) **Operational Necessities:** After normal working hours, departments may make emergency purchases to meet statutory deadlines and/or immediate unforeseen emergencies of all types, when the Purchasing Agent or designee is not available. Such purchases shall be for statutory or emergency needs only and reported to the Purchasing Agent or their designee during the next scheduled work period. A requisition must be generated by the next business day.

i) Contract Renewals

Annual renewals for personal/professional services require an amended contract signature page indicating all changes, including but not limited to: pay rate, period of performance, change in service performance or terms.

8. PUBLIC WORKS PROJECTS

a) Bidding Requirements

Public works projects over \$5,000 are subject to bidding and other requirements set forth by statutes. A public project of more than twenty-five thousand dollars (\$25,000.00) and not more than one hundred thousand dollars (\$100,000.00) may be let to contract by informal procedures as set forth in Section 22032 et seq., of the Public Contract Code.

b) Scope of Public Work Contracts

"Public works contracts" include contracts for a project for the erection, improvement, painting, or repair of public buildings and works; work in or about streams, bays, waterfronts, embankments, or other work for protection against overflow; street or sewer work, except maintenance or repair; and furnishing supplies or materials for any such project, including maintenance or repair of streets or sewers.

c) Informal Bid Process

When using informal bidding procedures for a public project, a notice inviting informal bids will be mailed to all contractors for the category of work to be bid, as shown on the list developed in accordance with Town Code Section 2.50.132, and to all construction trade journals as specified by the California

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Uniform Construction Cost Accounting Commission in accordance with Section 22036 of the Public Contract Code. Additional contractors or construction trade journals may be notified at the discretion of the department soliciting bids; provided however:

- If there is no list of qualified contractors maintained by the Town for the particular category of work to be performed, the notice inviting bids shall be sent only to the construction trade journals specified by the Commission.
- If the product or service is proprietary in nature such that it can be obtained only from a certain contractor or contractors, the notice inviting informal bids may be sent exclusively to that contractor or contractors.

d) Prevailing Wage

Public works projects over \$999.99 are subject to prevailing wage law. "Public works contracts" for the purpose of prevailing wage law are defined as the construction, alteration, demolition, or repair work done under contract and paid for in whole or in part out of public funds.

e) Town Contractual Requirements

Contractors must meet the following requirements to enter into a contract with the Town of Los Gatos to complete public works projects:

- Be selected through the proper bid process.
- Properly licensed by the State of California.
- Provide a copy of Tax Identification Number.
- If project exceeds \$999.99, contractor must pay its employees the Prevailing Wage Rate.
- Must carry Workers' Compensation and Liability Insurance.
- Must testify that the contractor will adhere to all of the requirements listed above.
- May be required to provide Payment and Performance Bonds.

9. SURPLUS SUPPLIES AND EQUIPMENT

a) Assessing Value of Surplus Property

Surplus property is used to generically describe any Town property that is no longer needed or useable by the holding department. The Purchasing Agent

or designee has the authority to declare item(s) with a market value of less than \$10,000 surplus. Items with a market value greater than \$10,000 will be formally declared surplus by the Council. Each department shall periodically review its equipment, material, and inventory, and shall promptly notify the Purchasing Agent of any surplus property.

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b) Surplus Disposal

The Purchasing Agent or designee shall determine or approve one of the following methods of disposition that is most appropriate and in the best interest of the Town:

- 1) **Transfer to Another Department:** Surplus property may be transferred between Town departments.
- 2) **Trade-In:** Property declared as surplus may be offered as a trade-in credit toward the acquisition of new property. All trade-in offers will be submitted to the Purchasing Agent for review and approval.
- 3) **Disposal:** The Purchasing Agent may offer surplus property for sale. All surplus property is for sale "as is", with no warranty, guarantee, or representation of any kind, expressed or implied, as to the condition, utility or usability of the property offered for sale.

c) Methods of Disposal

- 1) **Public Auction:** Surplus property may be sold at public auction. Town staff may conduct Public Auctions, use internet auction sites, or the Town may contract with a professional auctioneer.
- 2) **Sealed Bids:** Sealed bids may be solicited for the sale of surplus property. Surplus property disposed of in this manner shall be sold to the highest responsible bidder.
- 3) **Selling for Scrap:** Surplus property may be sold as scrap if the Purchasing Agent deems that the value of the raw material exceeds the value of the property as a whole.
- 4) **Negotiated Sale:** Surplus property may be sold outright if the Purchasing Agent determines that only one known buyer is available or interested in acquiring the property.
- 5) **No Value Item:** Where the Purchasing Agent determines that specific supplies or equipment are surplus and of minimal value to the Town due to spoilage, obsolescence of other cause or where the Purchasing Agent determines that cost of disposal of such supplies or equipment would exceed the recovery value, the Purchasing Agent shall dispose of the same in such manner as he or she deems appropriate and in the best interest of the Town.

d) Proceeds from Surplus Sale/Trade-In

Proceeds from the sale or trade-in of surplus property shall be returned to the appropriate fund.