

KANE COUNTY PROCUREMENT ORDINANCE

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KANE COUNTY PURCHASING ORDINANCE

ARTICLE I – General Provisions

1.1 Purpose. Pursuant to Kane County's statutory obligation to provide for the purchase of commodities, equipment and services, the purpose of this Ordinance is to manage the Procurement process in compliance with all applicable laws and ensure that fair and equitable treatment is provided to all parties involved in Kane County's purchasing activities. The intent is to foster a competitive bidding environment to maximize public procurement funds, thereby increasing public confidence in the County's purchasing practices.

1.2 Applicability. This Ordinance applies to Procurement of Materials, Services, Supplies, Equipment, Construction, Construction related Services and Professional Services by Kane County. These provisions shall apply to all expenditures of public funds by a County Agency for purchasing regardless of its source, except as otherwise provided by Federal or State law, regulations, Kane County Ordinance or administrative policy. Procurements involving Federal or State funding will be subject to any applicable law, regulation or grant.

1.3 Severability. If any provision of this Ordinance or any application thereof to any Person or circumstances is held invalid, such invalidity shall not affect the validity of the remaining provisions or application of this Ordinance.

1.4 Property Rights. Receipt of a Solicitation or other Procurement document, or submission of any response thereto, or other offer, confers no right to receive an award or Contract, nor does it obligate Kane County in any manner.

1.5 Singular-Plural Gender Rules

1.5.1 Singular-Plural. Words in the singular number include the plural and those in the plural include the singular.

1.5.2 Gender. Words of a particular gender include any gender and the neuter, and when sense so indicates, words of the neuter gender may refer to any gender.

ARTICLE II – Definitions

2.1 Architectural, Engineering and Land Surveying Services. Those Professional Services within the fields of architecture, professional engineering, structural engineering or land surveying as defined by the Local Government Professional Services Selection Act, 50 ILCS 510/1 et seq.

2.2 Bid Security. A guarantee that the bidder will enter into a Contract, if an offer is presented within the specified period of time, otherwise failure on the bidder's part will result in forfeiture of the Bid Security.

2.3 Change Order. Written authorization directing the Contractor to modify or change an existing purchase order or Contract.

2.4 Competitive Proposals. Purchases over the Simplified Acquisition Threshold (SAT). Formal solicitation required as well as fixed price cost-reimbursement contracts and is used when sealed bids are not appropriate. The contract should be awarded to the responsible firm whose proposal is most advantageous to the program, with pricing being one of the factors.

2.5 Competitive Selection. A process whereby public Solicitation is used to select the most qualified and responsible provider of Materials, Equipment, Supplies, Services, Construction, and Construction related Services. Methods of Competitive Selection include Invitation for Bids, Requests for Proposals, Requests for Qualifications and Multiple Price Quotations.

2.6 Confidential Information. Any information which is available to an individual, solely due to his/her status as a County employee, and which is not a matter of public knowledge or accessible to the public on request.

2.7 Contract Modification. Any written alteration in the terms or conditions of any Contract accomplished by mutual action of the parties to the Contract.

2.8 Construction. The process of building, altering, repairing, improving, or demolishing any structure or building, or other improvements of any kind to any real property.

2.9 Contract. All types of County agreements, including purchase orders, whether oral or written and regardless of what they may be called, for the Procurement of Materials, Services, Equipment, Supplies, or Construction and Construction related Services that are legally binding promises enforceable by law.

2.10 Contract Renewal. Continuation of the Contract for an additional period of time, under the original terms and conditions, when allowed by provisions for renewal, which were included in the original bid document. If the bid document does not include provisions for renewal, any continuation of the Contract would be considered a new Contract and therefore must be re-bid.

2.11 Contract – Revenue Generating. Revenue generating contracts are agreements under which the County receives from a vendor either a commission or share in the profit generated from the sale of goods or services. Examples include vending machines, food service, and joint-purchasing agreements.

2.12 Contractor. Any Person or entity that is a party to a Contract with the County or a using County Agency thereof.

2.13 Cooperative Joint Purchasing. Procurement conducted by or on behalf of more than one governmental unit.

2.14 County Agency. A County officer, employee, department, division, office, official, commission, board, or agency whose purchasing authority is subject to the provisions of this Ordinance.

2.15 Debarment. Debarment is the process of determining that a contractor is ineligible to receive contract awards based upon a preponderance of evidence, usually a conviction. Debarment is usually three (3) years in length. The name of the debarred contractor may be published as ineligible on the System for Award Management (SAM), which is a website administered by the U.S. General Services Administration, or on the list of sanctioned providers maintained by the State of Illinois Office of Inspector General.

2.16 Discussions. Oral or written negotiations between the County or its agencies and an offeror during which information is exchanged about Specifications, scope of work, terms, conditions and price set forth in the initial proposal. Communication with an offeror for the sole purpose of clarification does not constitute Discussions.

2.17 Elected Official. For the purposes of this Ordinance, Elected Official includes; Clerk of the Circuit Court, County Auditor, County Board Chairman, County Board Members, County Clerk, County Coroner, County Treasurer, County Recorder of Deeds, Superintendent of the Regional Office of Education, County Sheriff and State's Attorney. For purposes of this ordinance, the Chief Judge of the 16th Circuit is deemed an Elected Official

2.18 Emergency Purchase. Procurements obtained in circumstances which include, but are not limited to; situations threatening public health or safety, where immediate repairs required to County property to protect or prevent against further loss or damage, where immediate action is needed to prevent or minimize disruption to County Services, where immediate action is required to ensure integrity of County records, or where immediate action is necessary to avoid a lapse or loss of federal, state or donated funds.

2.19 Equipment. Goods that are purchased or used by a County agency that are not Materials or Supplies that are not expendable except through depreciation or wear and tear, and do not lose their identity or become integral parts of other items or installations.

2.20 Fully Executed Contract. An agreement is fully executed when it bears the signatures of all parties obligated by the agreement, including the Department Head or County Board Chairman.

2.21 Governmental Unit. The State of Illinois, any public authority which has the power to tax, or any other public entity created by Federal or State statute.

2.22 Invitation for Bids. A formal request to prospective vendors soliciting price quotations or bids; contains, or incorporates by reference, the specifications or scope of work and all contractual terms and conditions.

2.23 Materials. Items or Supplies required in the performance of day-to-day operations.

2.24 Micro-Purchases. Purchases that are less than \$10,000 (\$2,000 for those construction projects subject to the Davis-Bacon Act).

2.25 Multiple Price Quotation. Where competitive selection is not required or cannot be utilized because of an emergency, a process of obtaining price information from at least three (3) sources or vendors prior to purchase.

2.26 Parent Committee. A standing or ad-hoc committee established by the Kane County Board with specific Using Agency jurisdiction and responsibilities.

2.27 Person. Any individual or group of individuals, business, union, firm, corporation, trust, sole proprietorship, joint stock company, partnership, association, joint venture, committee, club, or any entity.

2.28 Procurement. The purchasing, renting, leasing or otherwise acquiring of Materials, Supplies, Equipment, Services, Construction and Construction related Services. Includes all functions that pertain to obtaining any Material, Equipment, Supplies, Services, Construction or Construction related Services, including description of requirements, selection and Solicitation of sources, preparation and award of Contract, and all phases of Contract administration. Procurement shall include without limitation the entering into of all Contracts or agreements, whether the same are oral or written.

2.29 Professional Services. Those Services requiring special knowledge, education or skill whereby the qualifications of Persons rendering the Services are of primary importance. Professional

Services shall include, but not be limited to, appraisers, attorneys, architects, engineers, accountants, land surveying services, psychologists, physicians and other health professionals and clergy. An essential element distinguishing Professional Services from other Services is confidence, trust, and belief in not only the ability, but also the judgment and talent, of the Person performing the service.

2.30 Purchasing Agent. The Director of Purchasing or any staff member of the Purchasing Department authorized to act as a Purchasing Agent for the county and shall be responsible for the procurement of materials, supplies, equipment, services, construction, construction related services and professional services, and processing contract and purchase orders.

2.31 Purchase Order. A written document signed and issued by the Purchasing Department to a vendor formalizing all terms and conditions of a proposed transaction, such as a description of requested item(s), delivery schedule, terms of payment, and transportation; and directing a business to provide materials, equipment, supplies, services, construction and construction related and professional services to the County.

2.32 Request for Information. All documents issued to vendors for the sole purpose of seeking information about the availability in the commercial marketplace of Materials, Equipment, Supplies, Services, Construction, and Construction related Services.

2.33 Request for Proposals. A formal request to prospective vendors soliciting proposals for professional services contains, or incorporates by reference, the specifications or scope of work and all contractual terms and conditions.

2.34 Request for Qualifications. All documents, whether attached or incorporated by reference, which are used for soliciting qualifications in accordance with procedures defined herein.

2.35 Responsible Bidder or Offeror. A Person who has the capability, in all respects, to fully perform the Contract requirements and who has the facilities, personnel, experience, integrity, reliability, equipment, acceptable past performance, financial strength, credit ranking which will assure good faith performance and is a Responsive Bidder.

2.36 Responsive Bidder. A Person who has submitted a bid that conforms, in all material respects, to the requirements set forth in the Invitation for Bid.

2.37 Reverse Auctions. A reverse auction is a real-time bidding process taking place at a scheduled time and Internet location, in which multiple suppliers, anonymous to each other, submit bids to provide the designated goods and services specified in the Invitation to Bid.

2.38 Sealed Bids. Purchases over the Simplified Acquisition Threshold (SAT). Formal solicitation required and the fixed price is awarded to the responsible bidder who conformed to all material terms and is the lowest in price.

2.39 Services. The furnishing of labor, time, or effort by a Contractor, not involving the delivery of a specific end product other than reports, which are merely incidental to the required performance. This definition shall not apply to employment agreements, collective bargaining agreements or to the definition of "Professional Services" as provided in subsection 2.30 of this section.

2.40 Simplified Acquisition Threshold. The acquisition of supplies and services including construction, research and development and commercial items, the aggregate amount of which does not exceed \$30,000 in any one year period.

2.41 Solicitation. An Invitation for Bids or Request for Proposals to provide Materials, Services, Equipment, Supplies or Construction and Construction related Services and Professional Services.

2.42 Small Purchase Threshold. The threshold established by the County at which public bids are not required.

2.43 Small Purchases. Purchases that are at least \$10,000 (\$2,000 for those construction projects subject to the Davis-Bacon Act) and less than \$30,000.

2.44 Sole Source Procurement. Award of contract when there is only one source for the required supply, service, or construction item as determined through a competitive selection process.

2.45 Specifications. Any description of the physical or functional characteristics or nature of Materials, Services, Equipment, Supplies or Construction and Construction related Services. It may include a description of any requirement for inspecting, testing or preparing Materials, Services, Supplies, Equipment, Construction and Construction related Services.

2.46 Stringing. Dividing or fragmenting Procurements in order to circumvent Competitive Selection processes and procedures. For purposes of this Ordinance, "Stringing" is the practice of issuing multiple purchase orders or requisitions for purchasing like items or Services, with the willful intent to circumvent purchasing policies.

2.47 Subcontractor. A Person who Contracts to perform work or render service to a Contractor or to another Subcontractor as a part of a Contract with the County.

2.48 Supplies. Materials or items used in day-to-day operations, which are usually stored and dispensed as required.

2.49 Surplus Property. Any tangible County owned property no longer having any use to the County. Surplus property includes obsolete supplies, scrap materials, vehicles, equipment and nonexpendable supplies that have completed their useful life cycle.

2.50 Suspension.

Suspension is the process of determining that a contractor is ineligible to receive contract awards based upon adequate evidence, usually an indictment. Suspension is a temporary measure having a 12 month limit. It is usually used pending completion of an investigation or legal proceedings. The name of the suspended contractor will be published as ineligible on the System for Award Management (SAM), which is a website administered by the U.S. General Services Administration, or on the list of sanctioned providers maintained by the State of Illinois Office of Inspector General.

2.51 Using Agency. Any County Agency which utilizes any Materials, Services, Supplies, Equipment or Construction and Construction Related Services procured under this Ordinance.

ARTICLE III - Procurement Organization

3.1 Principal Public Purchasing Official

The Director of Purchasing shall serve as the Purchasing Agent for the County and shall be responsible for the Procurement of Materials, Supplies, Equipment, Services, Construction, Construction related Services and Professional Services in accordance with this Ordinance.

3.2 Duties

In accordance with this Ordinance and subject to the direction of the Kane County Board, the Finance Committee, and the Director of Finance, the Director of Purchasing shall;

1. Procure or supervise the purchasing of Materials, Services, Supplies, Equipment, Construction, Construction related Services and Professional Services required by the County.
2. Process Contracts and purchase orders solicited through open competition for Materials, Equipment, Services, Supplies, Construction, and Construction related Services and Professional Services required by the County.
3. Create and maintain programs for Contract administration, specification preparation, inspection, testing and acceptance, in cooperation with the County agencies using the Materials, Supplies, Services, Equipment, Construction, Construction related Services and Professional Services.
4. Make written determinations as required by this Ordinance, specifying the facts supporting the determination, for retention in the permanent Contract file.
5. Sell, trade, transfer, or otherwise dispose of surplus County property.

3.3 Purchasing Regulations and Operational Procedures

Consistent with this Ordinance, in conjunction with the approval of the Finance Committee and Director of Finance, the Director of Purchasing may adopt purchasing regulations and procedures, which relate to the execution of his/her duties. All such regulations and procedures shall be made available for public inspection.

As a matter of accounting procedure to ensure the County has accurate real time accounting records, Department Heads are required to use the purchasing module of the County's finance system for requisitioning Materials, Supplies, Equipment, Services, Construction, Construction related Services and Professional Services, in order for the Purchasing Department to issue purchase orders for these transactions.

3.4 Public Access to Procurement Information

Procurement information is a public record but is subject to certain exemptions from disclosure under the Illinois Freedom of Information Act.

3.5 Delegation to Other County Officials

3.5.1 Authority

Pursuant to this Ordinance, the Director of Purchasing may delegate authority to a Using Agency to purchase certain Supplies, Equipment, Materials, Services or Construction and Construction related Services, if such delegation is determined to be the most effective means for Procurement of these items.

3.5.2 Procurement Authority

When the Director of Purchasing has delegated Procurement authority to a County Agency, delegation of all duties and responsibilities of the Director of Purchasing under this Ordinance shall transfer to the County official to whom Procurement authority has been delegated.

3.5.3 Specific Delegation- Elected Officials

Elected Officials having “purchasing authority” pursuant to an internal control statute are encouraged to use the support services of the County’s Director of Purchasing wherever possible. In all cases where the County’s Purchasing Department is not a part of the purchasing transaction, and as a part of the County’s duty to provide timely financial information, the duty to follow the provisions of Section 3.3 of this ordinance and all other provisions regarding the requisition of goods and services is hereby delegated to each and every such Elected Official.

As a matter of accounting procedure to ensure the County has accurate real time accounting records, Elected Officials are required to use the purchasing module of the County’s finance system for requisitioning Materials, Supplies, Equipment, Services, Construction, Construction related Services and Professional Services.

3.5.4 Specific Delegation- Department of Transportation

The Procurements as set forth below by the County’s Department of Transportation need not be processed by the Director of Purchasing, but the Department shall be subject to the requirements of this Ordinance and the regulations promulgated hereunder in making these Procurements.

- Road and bridge Construction, Construction related Services, engineering Services, land acquisition, appraisal services and technical Services necessary to meet the operational requirements of the Kane County Engineer

3.5.5 Purchasing Records

All records relating to a purchase shall be maintained by the County Agency to which Procurement authority has been delegated and a copy of all such records shall be provided to the Purchasing Department upon selection of a vendor.

ARTICLE IV – Source Selection and Contract Formation

4.1 Purchases Below Simplified Acquisition Threshold

4.1.1 Simplified Acquisition Threshold (SAT)

The Simplified Acquisition Threshold (SAT) for the purpose of this Ordinance is established at the level of thirty thousand dollars (\$30,000).

4.1.2 Micro Purchases

Procurement of Materials, Services, Supplies, Equipment, Construction or Construction Related Services that are less than \$10,000 (\$2,000 for those construction projects subject to the Davis-Bacon Act). Micro-purchases may be awarded without soliciting competitive quotations if the price is considered to be reasonable. Efforts should be made to distribute purchases equitably among qualified providers.

4.1.3 Small Purchases

Procurement of Materials, Services, Supplies, Equipment, Construction or Construction Related Services that are at least \$10,000 (\$2,000 for those construction projects subject to the Davis-Bacon Act) and less than the Simplified Acquisition Threshold of \$30,000 may be awarded by

Department Heads and/or the Director of Purchasing where there has been a Competitive Price Quotation process and at least three quotations have been obtained prior to selection.

4.1.4 Artificial Division or Fragmentation Prohibited

Procurements shall not be artificially divided or fragmented (Stringing) so as to fall below the Simplified Acquisition Threshold (SAT) in order to circumvent any bidding or Competitive Selection process and procedures described in this Ordinance.

4.2 Competitive Bidding

4.2.1 Conditions for Use

All Procurements whose value equals or exceeds the Simplified Acquisition Threshold (SAT) of \$30,000 shall be awarded either by competitive sealed bidding or electronic reverse auction in accordance with section 4.29 (Electronic Reverse Auction), except as otherwise provided in section 4.4 (Request for Proposals), 4.5 (Professional Services), 4.6 (Emergency Procurements), 4.11 (Cooperative Joint Purchasing) or as provided by State statute.

4.2.2 Invitation for Bids

An Invitation for Bids shall be issued and include all Specifications, terms and conditions applicable to the Procurement.

4.2.3 Public Notice

Reasonable time for the required public notice of the Invitation for Bids shall be given of not less than ten (10) calendar days excluding County holidays prior to the date set forth therein for the submittal and opening of bids. For bids requiring a mandatory pre-bid conference, the public notice must be published at least five (5) calendar days prior to the conference date. Such notice shall include publication in a newspaper of general circulation within Kane County. The public notice shall state the project, place, submittal date and time of bid opening.

4.2.4 Bid Opening

Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the Invitation for Bids. The name of each bidder, bid amount and the relevant information the Director of Purchasing deems appropriate shall be read aloud and recorded on an abstract. The abstract shall be available to public inspection in accordance with Section 3.4 (Public Access to Procurement Information).

4.2.5 Late Bids

No bids received after the time specified in the Invitation for Bids will be considered, as it is the responsibility of the bidder to ensure the bid is delivered according to the requirements stated in the Solicitation. All bids received after the specified time will be returned unopened to the bidder.

4.2.6 Acceptance and Evaluation of Bids

Bids shall be unconditionally accepted without alteration or correction, except as authorized by this Ordinance. Bids shall be evaluated to determine which bidder offers the lowest cost to the County in accordance with the evaluation criteria set forth in the Solicitation. Only objectively measurable criteria set forth in the Invitation for Bids shall be applied in determining the lowest Responsive Bidder. Examples of such criteria include, but are not limited to, quality of the product supplied, the product's conformity with the Specifications, suitability of the product to the requirements of the County, availability of support services, uniqueness of the Service, Materials, Equipment or Supplies as it applies to networked integrated computer systems, compatibility to existing equipment, delivery terms, discounts, transportation costs, and total or life cycle costs. The Invitation for Bids shall set forth the evaluation criteria to be used and no other criteria, not stated in the Specifications, shall be used. Alternative bids may be considered and accepted,

only if provisions authorizing such offers are specifically stated in the Invitation for Bids and fulfill the required evaluation criteria set forth therein.

4.2.7 Award

Upon submittal and approval from the Using Agency's Parent Committee and Executive Committee or County Board, whichever is appropriate, the Contract shall be awarded by appropriate notice to the lowest Responsible Bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids. All contractually required documentation will be required prior to any notice to proceed.

4.3 Multi-Step Sealed Bids

4.3.1 Conditions for Use

The multi-step sealed bid method may be used if the Purchasing Director determines;

- Available Specifications or purchase descriptions are not sufficiently complete to permit full competition without technical evaluations and Discussions to ensure mutual understanding between the bidder and the County
- Definite criteria exists for evaluation of technical offers
- More than one technically qualified source is expected to be available
- A fixed-price Contract will be utilized

4.3.2 Invitation to Submit Technical Offers

In Phase One, multi-step bidding shall be initiated by the issuance of an Invitation to Submit Technical Offers and shall be prepared in a format approved by the Director of Purchasing. The Invitation to Submit Technical Offers shall contain the following information:

- Notice that the Procurement will be conducted in two phases and priced bids shall be considered only in the second phase from bidders whose un-priced technical offers are found acceptable in the first phase
- Instructions and information concerning submission requirements, due date and time, submittal address, time period the offer shall remain open and any other special information
- The best description of the Materials, Equipment or Services requested
- The requirements of the technical offers, such as drawings, descriptive literature, samples, technical data and inspection or testing of a product before award

4.3.3 Public Notice

Reasonable time for the required public notice of the Invitation to Submit Technical Offers shall be given of not less than ten (10) calendar days excluding County holidays prior to the date set forth therein for the submittal and opening of bids. For offers requiring a mandatory pre-proposal conference, the public notice must be published at least five (5) calendar days prior to the conference date. Such notice shall include publication in a newspaper of general circulation within Kane County. The public notice shall state the project, place, submittal date and time of bid opening.

4.3.4 Public Opening

The name of each offeror and other information deemed appropriate by the Director of Purchasing shall be read aloud and recorded on an abstract, which will be available for public inspection. The abstract and each technical offer shall be open to public inspection in accordance with Section 3.4 (Public Access to Procurement Information).

4.3.5 Amendments to Technical Offers

The Invitation to Submit Technical Offers may be amended after the submission of the un-priced technical offers and shall only be distributed to bidders who submitted un-priced technical offers.

These bidders will be permitted to submit new un-priced technical offers or to amend the offers previously submitted. If an amendment materially changes the Procurement, the Invitation to Submit Technical Offers shall be cancelled in accordance with section 4.21.

4.3.6 Acceptance and Evaluation of Technical Offers

Un-priced technical offers shall be evaluated solely in accordance with the criteria set forth in the Invitation to Submit Technical Offers and shall be determined to be either acceptable or potentially acceptable for further consideration or unacceptable. A determination that an un-priced technical proposal is unacceptable shall be in writing, state the basis of the determination and be retained in the Procurement file. If the Director of Purchasing determines a bidder's un-priced technical offer is unacceptable, the Director of Purchasing shall notify the bidder of this determination and that the bidder shall not be afforded an opportunity to amend its technical offer.

4.3.7 Discussions with Vendors

The Director of Purchasing may hold Discussions with any bidder who submits an acceptable or potentially acceptable technical offer, before submission or at any time during the evaluation of the un-priced technical offers. During Discussions, the Director of Purchasing shall not disclose any information derived from one un-priced technical offer to any other bidder. After Discussions, the Director of Purchasing shall establish a closing date for receipt of final technical offers and shall notify, in writing, bidders submitting acceptable or potentially acceptable offers of the closing date. The Director of Purchasing shall keep a record of all Discussions.

4.3.8 Receipt of Final Technical Offers

After receipt of final technical offers, the Director of Purchasing shall determine whether the technical offers are acceptable for consideration in Phase Two or are unacceptable.

4.3.9 Withdrawal of Offers in Phase One

At any time during Phase One, offers may be withdrawn.

4.3.10 Public Access

Technical offers received shall be open to public inspection after the execution of a Contract except to the extent set forth in Section 3.4 (Public Access to Procurement Information).

4.3.11 Phase Two of Multi-step Sealed Bidding

Upon completion of Phase One, the Director of Purchasing shall conduct Phase Two by issuing an Invitation for Bids under Section 4.2 (Competitive Bidding), except that the Invitation for Bids shall be issued only to bidders whose technical offers were determined to be acceptable in Phase One.

4.4 Request for Proposals

4.4.1 Conditions for Use

In cases where the County seeks to contract for a project or service whose goals, tasks or results are known, but for which the procedure or method of accomplishing same either may not be specified or is otherwise undetermined, a Contract may be entered into by use of the Request for Proposal procedure. Reasons for using the Request for Proposal procedure shall be approved by the Director of Purchasing prior to the commencement of this procedure. Professional Service contracts that equal or exceed \$30,000 shall be subject to a request for proposal according to the selection process set forth in Section 4.5 of this Ordinance (Professional Services Selection Process).

4.4.2 Request for Proposals

A Request for Proposals shall be issued and include all Specifications, terms and conditions applicable to the Procurement.

4.4.3 Public Notice

Reasonable time for the required public notice of the Invitation to Submit Proposals shall be given of not less than ten (10) calendar days excluding County holidays prior to the date set forth therein for the submittal and opening of the proposals. For offers requiring a mandatory pre-proposal conference, the public notice must be published at least five (5) calendar days prior to the conference date. Such notice shall include publication in a newspaper of general circulation within Kane County. The public notice shall state the project, place, submittal date and time of bid opening.

4.4.4 Receipt of Proposals

Names of offerors will be read aloud in the presence of one or more witnesses and recorded on an abstract. Contents of the sealed proposals shall not be disclosed to any of the competition or offerors during the negotiation process. The abstract shall be open for public inspection only after the Contract is awarded in accordance with Section 3.4 (Public Access to Procurement Information).

4.4.5 Evaluation Factors

The Request for Proposals shall state the relative importance of price and other evaluation factors.

4.4.6 Discussions with Responsible Offerors and Revisions to Proposals

As provided in the Request for Proposals, Discussions may be conducted with the Responsible Offerors, who submitted proposals determined to be susceptible of being selected for award, for the purpose of clarification to assure full understanding and responsiveness to the Solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for Discussions and revision of proposals and such revision may be permitted after submissions and prior to award for the purpose of obtaining best and final offers.

4.4.7 Award

After submission and approval by the Using Agency's Parent Committee and Executive Committee or County Board, whichever is appropriate, award will be made to the Responsible Offeror whose proposal conforms to the Solicitation and is determined, in writing, to be in the best interests of the County based on the evaluation factors set forth in the Request for Proposals. The Contract file shall contain the basis on which the award is made.

4.5 Professional Services Selection Process

There will be circumstances where it will be necessary or advisable for Kane County to engage the services of independent professionals because of the County's requirement or need for such services determined on a project-specific basis. In such cases, it shall be the goal of the County to negotiate the lowest reasonable fees consistent with obtaining the highest possible quality of service and professional expertise from the service providers. Independent professional service providers shall be selected on the basis of their demonstrated competence and expertise relative to the services to be rendered, the cost of the services, and their demonstrated or perceived ability to work with County staff, elected officials, and, where applicable, other units of government and members of the public.

The services may require mandatory or essential technical skills as well as, in some cases, professional licenses or certifications and are provided by accredited professionals in connection with defined assignments, which may result in the preparation of a report, the review and analysis of

reports prepared by others, preparation of plans or specifications, recommendations of a particular course of action or policy, and include supervision of an activity (such as construction).

4.5.1 Requirements for Engagement of Independent Professionals

The need or requirement of the County for the engagement of independent professional services shall be based on a determination that one or more of the following circumstances exist:

- A. The project requires an independent professional as a condition of Federal, State or local law or regulation, or as a condition of a Federal, State or other grant or intergovernmental agreement;
- B. The project requires specialized expertise or multiple areas of expertise not available from existing staff;
- C. County staff is not available for the project due to present or anticipated workload or other time constraints;
- D. The project requires a limited engagement where it is not cost-effective to hire new full-time staff to provide the necessary services or expertise;
- E. An actual emergency exists where existing staff cannot effectively be deployed or mobilized due to the nature of the occurrence or time constraints.

4.5.2 Procedures for Selection of Independent Professionals Not Subject To The Local Government Professional Services Selection Act.

Contracts for professional services that are less than \$10,000 may be awarded by Department Heads pursuant to rules promulgated by the Director of Purchasing.

Contracts for professional services that are at least \$10,000 and less than \$30,000 may be awarded by Department Heads and/or the Director of Purchasing where there has been a Competitive Price Quotation process and at least three quotations for the services have been obtained prior to selection.

Contracts for professional services that equal or exceed \$30,000 shall be awarded after a competitive selection process that includes a Request for Proposal to provide the services, except in cases of actual emergency as set forth in Section 4.7 (Emergency Purchase) of this Ordinance. The County may require a uniform Request for Proposal process to be employed in the case of all contracts subject to the jurisdiction of the Kane County Board and such other cases where it can be made applicable.

Contracts for professional services shall include or be accompanied by documentation from the appropriate Department Head or Parent Committee referencing the specific provision(s) of Section 4.5.1 (Requirements for Engagement of Independent Professionals) of this Ordinance applicable to the particular project.

4.5.3 Procedures for Selection of Independent Professionals Subject To The Local Government Professional Services Selection Act, 50 ILCS 510/1 et seq.

Professional services of architects, engineers and land surveyors are governed by the requirements of the Local Government Professional Services Selection Act, 50 ILCS 510 et seq (the "Act"), and by local policy, rules and regulations, including where applicable, the Qualification Based Selection process of the Kane County Division of Transportation. All Professional Service

Contracts or agreements for professional services for architectural, engineering or land surveying purposes, which equal or exceed \$5,000, shall be subject to the Act.

4.5.4 Legal Services

Legal services are subject to the supervision and control of the Kane County State's Attorney.

4.5.5 Procedures for Purchase of Items Not Suitable for Competitive Bid, 50 ILCS 5/5-1022(c)

The purchase of used computer hardware, used computer hardware maintenance, and used computer hardware support services shall not be required to be competitively procured. Purchases over \$30,000 must be authorized for purchase by the County Board.

The purchase of computer software, computer hardware, and computer databases that have been competitively procured and that require additional proprietary licensing, software integrations, software development, software maintenance, computer hardware maintenance, database maintenance, software support services, database support services and computer hardware support services are not suitable for competitive procurement and may be authorized for purchase. Purchases over \$30,000 must be authorized by the County Board.

4.6. Sole Source Procurement

With the exception of Micro Purchases (Section 4.1.2), no contract may be awarded without complying with the competitive selection process appropriate for the type of procurement as determined by one of the following sections of this Ordinance: Small Purchases (Section 4.1.3), Competitive Bidding (Section 4.2), Multi-Step Sealed Bids (Section 4.3), Request for Proposals (Section 4.4), Professional Services (Section 4.5), Emergency Purchase (Section 4.7), Auction Purchases (Section 4.8), or Cooperative Joint Purchases (Section 4.11).

- Purchases below the Simplified Acquisition Threshold (\$30,000): If after conducting a good faith review of available sources, there is only one source for the required supply, service, or construction item, both the Purchasing Director and the Department Head must approve of the negotiated price, delivery and terms.
- Purchases at or above the Simplified Acquisition Threshold (\$30,000): If after complying with the appropriate competitive selection process only one responsive bid or offer is received, the procurement shall comply with the procedures stated in Section 4.18 (Only One Bid/Offer is Received) of this Ordinance.

4.7 Emergency Purchase

4.7.1 Conditions for Use

An Emergency purchase equaling or exceeding \$30,000 may be authorized without bidding in certain situations including, but not limited to, situations threatening public health or safety, where immediate repairs are required to County property to protect or prevent against further loss or damage, where immediate action is needed to prevent or minimize disruption to County Services, where immediate action is required to ensure integrity of County records and where immediate action is necessary to avoid the lapse or loss of federal, state or donated funds. An Emergency Purchase shall be limited to those Materials, Supplies, Equipment, Services, Construction and Construction related Services necessary to satisfy the emergency and these purchases shall be made with such competitive evaluation as is practicable under the circumstances.

4.7.2 Emergency Affidavit

A department seeking an Emergency Purchase shall prepare an emergency affidavit documenting both the existence of an emergency condition and the nature of the emergency. The Department Head shall sign the affidavit and submit to the County Board Chairman the

emergency affidavit requesting authorization to make the emergency purchase. If the County Board Chairman is unavailable, then the signature authorizing approval shall be obtained from the Board Vice Chairman. If the Board Vice Chairman is unavailable, then the signature authorizing approval shall be obtained from the Using Agency's Parent Committee Chairman and the Finance Committee Chairman.

4.7.3 Cost or Pricing Data

The Director of Purchasing may require from the requesting County Agency the submission of cost or pricing data in connection with an award under this section.

4.7.4 Negotiations

The Director of Purchasing shall negotiate with the supplier, to the extent practical, a Contract in the best interest of the County. The price being paid must be reasonable considering the circumstances.

4.7.5 Contract Documentation

The emergency affidavit must be submitted to the Director of Purchasing as soon as practicable and shall be included in the Contract file.

4.7.6 Board Ratification

Any Emergency Purchase equaling or exceeding \$30,000 under this section shall be placed on the agenda for ratification at the next regularly scheduled Parent Committee, Executive Committee and County Board meeting.

4.8 Auction Purchases

Purchases may be made at auction in accordance with the procedures and requirements applicable to that particular auction. Notice and Competitive Selection is not a requirement and the amount paid shall be the amount bid and accepted, plus any required buyer's premium. Prior to the auction, the County's Finance Director must authorize in writing an upper expenditure limit for the item(s) under consideration at auction. Auction purchases shall be treated as an Emergency Purchase and shall comply with the procedures stated in Sections 4.7.2 and 4.7.6 (Emergency Purchase) of this Ordinance.

4.9 Request for Information

The Director of Purchasing may issue a Request for Information to obtain data about Services, Equipment, Materials, Supplies, or Construction and Construction related Services to meet a specific County requirement. Sufficient public notice shall be provided in the same manner as stipulated in Section 4.2.3 (Competitive Bidding, Public Notice).

4.10 Change Order(s)

Change Orders for a Contract obtained pursuant to this Ordinance shall be processed under the following guidelines:

- A Change Order(s) where the cost equals or exceeds \$30,000, either singularly or in the aggregate requires approval from the authorized official of the Using Agency, the Parent Committee of the Using Agency and the County Board.
- In situations where the time required for processing approval of a Change Order necessitated by field conditions, whose total purchase cost exceeds \$30,000, would unreasonably interrupt project schedules to the financial detriment of the County, the Change Order may be processed by an authorized official of the County's Using Agency after written notification to the Using Agency's Parent Committee Chairman. Change Orders made under these conditions shall be placed on the agenda for ratification at the next regularly scheduled Executive Committee or County Board meeting, whichever is appropriate.

4.11 Cooperative Joint Purchasing

The Director of Purchasing may procure Materials, Services, Supplies, Equipment, Construction or Construction related Services, through any governmental agency without complying with the requirements of Section 4.2 (Competitive Sealed Bidding), provided;

- Such Procurements are made pursuant to a written agreement between the governmental agency and the Kane County Board.
- Competitive Selection procedures, similar to the requirements of Section 4.2 (Competitive Bidding), were used in the applicable Procurement
- This type of Procurement is not employed as a means for circumventing the general intent of this Ordinance
- The County is authorized by Illinois law or regulation to contract with such governmental agency

Prior to entering into any such written agreement, the Director of Purchasing shall obtain a written opinion from the Kane County State's Attorney that such agreement is authorized by law.

4.12 Solicitation Amendments

4.12.1 Conditions for Use

If necessary, an amendment to a Solicitation shall be issued to:

- Make changes in the Solicitation
- Correct defects or ambiguities
- To furnish other bidders information provided one bidder if the information will assist the other bidders in submitting bids or the lack of information will prejudice the other bidders.

4.12.2 Distribution

Amendments to Solicitations will be identified as such and shall be sent to all Persons to whom the solicitation was originally sent.

4.12.3 Receipt Acknowledgement

Amendments shall require the bidder to acknowledge receipt of the amendment by signing and returning the Offer to Contract page with their bid response on or before the scheduled date and time of the opening.

4.12.4 Timeframe for Vendor Evaluation

Amendments shall be issued a reasonable period before the due date to allow prospective bidders sufficient time to consider the amendment in preparing their bids. If the due date does not allow the bidder sufficient time to review the amendment, the due date may be extended.

4.13 Pre-Bid Conferences

The County may conduct a pre-bid conference within a reasonable time, but not less than five (5) days before the scheduled bid opening date, to explain the Procurement requirements. Verbal statements made at the pre-bid conference which are not consistent with the written Solicitation shall not be binding upon the County unless a written amendment is issued.

4.14 Pre-Opening Modification or Withdrawal of Bids/Offers

4.14.1 Invitation for Bid Modification or Withdrawal

A bidder may modify or withdraw its bid at any time before the bid opening, if the sealed modification or withdrawal is received in writing before the due date. A bidder or the bidder's authorized representative may withdraw the bid in person if, before the scheduled opening date,

the identity of the individual requesting withdrawal is established and that person signs a receipt for the bid. A bid may not be withdrawn if the bid opening has begun.

4.14.2 Request for Proposal Withdrawal

A proposal may be withdrawn at any time before the scheduled opening date and time. An offeror or the offeror's authorized representative may withdraw the proposal in person if, before the scheduled opening date, the identity of the individual requesting withdrawal is established and that person signs a receipt for the proposal. A proposal may not be withdrawn if the offer opening has begun

4.14.3 Document Retention

All documents concerning a modification or withdrawal of a bid/offer shall be retained in the appropriate Procurement file.

4.15 Late Bids/Offers, Late Withdrawals and Late Modifications

4.15.1 Definition of Late Bid/Offer/Withdrawal/Modification

A bid, offer, withdrawal, or modification is considered late by the County if it is received after the date and time set for the submission of such bids/offers.

4.15.2 Conditions for Rejection

A late bid, late offer, late withdrawal, or late modification shall be rejected unless it would have been received on time but for the action or inaction of County personnel.

4.15.3 Vendor Notification

Bidders submitting late bids, late offers, late withdrawals, or late modifications shall be notified of the rejection as soon as practicable.

4.15.4 Document Retention

Documentation regarding a late bid, late offer, late withdrawal, or late modification shall be retained in the appropriate procurement file.

4.16 Unidentified Bids/Offers

An unmarked envelope that does not identify a bid or bidder may be opened for the purpose of identification. Record shall be made on the envelope regarding the reason for its opening, date and time it was opened, the Solicitation to which the bid applies and the signature of the individual who opened the envelope. The envelope shall then be resealed and retained in the Procurement file until the scheduled bid date

4.17 Mistakes in Bids/Offers

4.17.1 Mistake Discovered Prior to Bid/Offer Opening

A bidder/offeror may correct mistakes discovered before the scheduled date and time for the bid/offer opening by withdrawing or correcting the bid/offer as provided in Section 4.14 (Pre-Opening Modification or Withdrawal of Bids/Offers).

4.17.2 Mistake Discovered After Bid/Offer Opening

After bid/offer opening, a bid/offer mistake may not be corrected or withdrawn except in the following situations;

- In the case of a mathematical error, the unit cost shall prevail and any corrections required due to an error of this nature shall be done by the County

- The Director of Purchasing may waive any minor (non-price) informalities in a bid/offer or allow the bidder/offeror to correct them if the revision is in the best interests of the County
- Corrections to a bid/offer shall be permitted only to the extent the bidder/offeror can show by clear and convincing evidence that a mistake of nonjudgmental character was made, the nature of the mistake and the bid/offer price actually intended. The Director of Purchasing shall consult with the Using Agency and Parent Committee chairman prior to allowing the correction.
- In lieu of bid/offer correction, a bidder/offeror 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 but the intended correct bid is not similarly evident or:
 - The bidder submits evidence that clearly and convincingly demonstrates that a mistake was made.
 - The Director of Purchasing consults with the Using Agency and Parent Committee chairman prior to allowing the bid withdrawal.

4.17.3 Mistake Discovered After Award

Mistakes shall not be corrected after award of a Contract except in cases where the Director of Purchasing makes a written determination that it would be unconscionable in not allowing correction to the error and upon approval from the Using Agency, Parent Committee, and County Board.

4.17.4 Written Determination

If a correction or withdrawal of a bid/offer after bid/offer opening is permitted or denied under this section, the Director of Purchasing shall prepare a written determination indicating the basis of the decision to approve or deny the correction or withdrawal.

This section shall not preclude any offer modifications requested or allowed as part of a Request for Proposal process.

4.18 Only One Bid/Offer is received

If only one responsive bid/offer is received to a Solicitation, an award may be made to the single bidder/offeror if the Director of Purchasing determines in writing that the price submitted is fair and reasonable and that other prospective bidders/offerors had reasonable opportunity to respond or that there is not sufficient time for initiating another Solicitation. Otherwise the Director of Purchasing may exercise the option to reject the bid/offer and seek bids/offers through a new Solicitation.

4.19 Tie Bids

4.19.1 Conditions for Tie Bids

Tie bids are the lowest cost bids from Responsive and Responsible Bidders that are identical in price.

4.19.2 Award Determination

Award of tie bids will be determined as follows:

- If the bids are equal in all respects, the award shall be made by a coin toss by the Director of Purchasing with one or more witnesses upon three days written notice to the bidders. Tie bidders will be afforded the opportunity to witness the coin toss, however, attendance is voluntary.

4.20 Confidential Information

If a Person believes a bid, proposal, offer, specification or protest submitted to the County contains either trade secrets or proprietary property, a statement should be included in the submission, which describes and supports their claim. The trade secrets or proprietary property must be specifically identified as the information considered confidential. Entire bid submissions shall not be eligible for consideration as confidential material. Trade secrets or proprietary property are exempt from inspection and copying under the Illinois Freedom of Information Act (the "Act").

The County does not represent, warrant or guarantee that any information designated as trade secrets or proprietary property will in fact be so deemed by any Court, and all bidders assume the risk that any and all information contained in a bid or proposal may not be exempt from disclosure under the Act. The County expressly disclaims all liability for such disclosure.

4.21 Cancellation of a Solicitation

A Solicitation may be cancelled or submitted bids or proposals may be rejected in whole or part as may be specified in the Solicitation if it is in the best interests of the County. The reasons for such cancellation or rejection shall be included in the procurement file. Every Solicitation issued by the County shall contain language stating the County's right to cancel the Solicitation and to reject submitted bids or proposals.

4.22 Cancellation of a Solicitation Before The Due Date and Time

4.22.1 Authority for Determining Cancellation

The Director of Purchasing has the authority to cancel a Solicitation, in whole or part, before the due date and time if a determination is made that cancellation is in the best interests of the County.

4.22.2 Notification of Cancellation

If a Solicitation is cancelled before the required submittal date and time, notice of the cancellation shall be sent to all Persons to whom the Solicitation had been distributed. The notice shall identify the Solicitation and the reason for cancellation.

4.22.3 Handling of Received Bids/Proposals

Any received bids/proposals shall be returned unopened to the vendors.

4.23 Cancellation of a Solicitation After Receipt of Bids or Proposals

4.23.1 Authority for Determining Cancellation

The Director of Purchasing has the authority to cancel a Solicitation after receipt of bids or proposals, but before award, if a determination is made that cancellation is in the best interests of the County.

4.23.2 Notification of Cancellation

A notice of cancellation shall be sent to all bidders or offerors submitting bids or proposals.

4.23.3 Document Retention and Public Inspection

Bids or proposals received for the cancelled Solicitation shall be retained in the appropriate procurement file. If, within a reasonable time, the Director of Purchasing intends to issue a new Solicitation for the same Materials, Services, Equipment, Supplies, Construction or Construction related Services the proposals submitted under the cancelled Solicitation may be withheld from public inspection upon written determination that this action is in the County's best interest. After award of the second Solicitation, bids or proposals submitted in response to both Solicitations

shall be open for public inspection to the extent set forth in Section 3.4 (Public Access to Procurement Information).

4.24 Rejection of Individual Bids or Proposals

4.24.1 Conditions for Rejection

A bid or proposal may be rejected if:

- The bidder is determined to be non-responsible in accordance with Section 4.25
- The bid is non-responsive pursuant to Section 2.36
- The proposed price is unreasonable
- The bid or proposal is not in the best interests of the County

4.24.2 Notification of Rejection

Bidders or offerors will be notified in writing of the rejection of their bids or proposals with a copy retained in the appropriate procurement file.

4.24.3 Document Retention and Public Inspection

The determination for rejection will be retained in the Procurement file and shall be available for public inspection to the extent set forth in Section 3.4 (Public Access to Procurement Information).

4.25 Responsibility of Bidders and Offerors

4.25.1 Determination of Vendor Responsibility

Before awarding a Contract to a bidder or offeror, the Director of Purchasing will determine whether that bidder or offeror is responsible. The signature of the appropriate official authorized to execute the Contract award signifies the bidder or offeror is responsible.

4.25.2 Factors in Determining Responsibility

Factors considered in determining whether a bidder or offeror is responsible are:

- The bidder's or offeror's resources in terms of financial, physical and personnel
- The bidder's or offeror's record in terms of past performance and integrity, such as a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; a violation of the County's Ethics Ordinance; a debt owed by the contractor to the County; or suspension or debarment by another governmental entity
- Whether the bidder or offeror is legally qualified to do business with the County
- Whether the bidder or offeror complied with requirements for submitting information regarding their responsibility
- Whether the bidder or offeror met specific responsibility criteria established within the Solicitation for a particular Procurement
- Where a bidder or offeror fails to promptly supply information in connection with any inquiries concerning responsibility
- The qualities of the products supplied, their conformity with the Specifications and their suitability to the requirements of the County
- Availability of support services
- Uniqueness of the Services, Materials, Equipment or Supplies as it applies to networked, integrated computer systems
- Compatibility to existing Equipment
- Delivery terms

4.25.3 Determination of a Non-Responsible Bidder/Offeror

A determination of a non-Responsible Bidder or Offeror shall be in writing by the Director of Purchasing outlining the basis of the determination and a copy shall be included in the procurement file.

4.25.4 Notification to Non-Responsible Bidder/Offeror

A notice shall be sent to the non-Responsible Bidder or Offeror stating the basis of the determination. The decision may be appealed as provided in Article Six of this Ordinance.

4.25.5 Dissemination of Bidder/Offeror Information

Information furnished by a bidder or offeror pursuant to this section shall not be disclosed outside of the Purchasing Department without the prior written consent by the bidder or offeror except in accordance with Section 3.4 (Public Access to Procurement Information).

4.25.6 Bidder/Offeror Rights

A finding of non-responsibility shall not be construed as a violation of the rights of any Person.

4.26 Bid Security and Performance/Payment Bonds

Bid Security may be required for Contracts when provided by statute or when the Director of Purchasing determines it is in the best interests of the County.

Acceptable forms of security which may be submitted are: an executed surety bond issued by a firm licensed and registered to transact such business with the State of Illinois; cash, certified check or cashier's check payable to Kane County (personal or company checks are not acceptable); an irrevocable letter of credit; or any other form of deposit issued by a financial institution and acceptable to the County.

Bid Security shall be in an amount not to exceed ten (10) percent of the amount of the bid/offer.

Contract Performance and Payment Bonds: When a Contract is awarded the required performance bonds or payment bonds, in the amount stated in the bid document, shall be delivered to the County and shall become binding on the parties upon the execution of the Contract. Bid Security, performance bonds or payment bonds shall not serve as a substitute for determining bidder responsibility.

4.27 Multi-year Contracts

The County's policy on multi-year Contracts includes the following:

- All multi-year Contracts presented for approval shall contain the total value of the award for the multi-year period.
- Multi-year Contracts shall not be presented to a Parent Committee or County Board where the terms of the contract exceeds two (2) years without prior approval by the Director of Purchasing and Director of Finance.
- All Multi-year contracts will include a non-appropriations clause stating that continuation of the contract is based on the appropriation of funding approved by the County Board.
- The Resolution authorizing the Chairman to execute the multi-year contract shall include the following, or substantially similar language: "Whereas, the Contract calls for the use of funds beyond the present budget year and the County of Kane acknowledges the necessity of the appropriation of such funds"

4.28 Extension of Bid/Offer Acceptance Time

After opening of bids or offers, the Director of Purchasing may request, in writing, an extension of time during which the County may accept the bids or offers only from bidders or offerors meeting the stipulated submission date and time requirements of the Solicitation.

Subsequent to receipt of the County's extension request the bidder or offeror may withdraw their bid or offer, without penalty, through written notification to the Director of Purchasing. No other modifications shall be allowed.

4.29 Electronic Reverse Auction Bidding

The Purchasing Director may procure materials, services supplies, equipment, construction, construction related services and professional services with an electronic reverse auction company, in accordance with the Illinois Procurement Code, when deemed to provide the best value or all purchasing methods provide equal value to the County.

4.29.1 Soliciting Reverse Auction Bids

Reverse auction bids will be solicited in the same manner as other Invitation for Bids in section 4.2 (Competitive Bidding) with the exception that the bids will be done electronically with an Internet company. During the auction, a bidder's price shall be disclosed to other bidders. Bidders shall have an opportunity to reduce their bid prices during the auction. At the conclusion of the auction, the record of bid prices received and the name of each bidder shall be open to public inspection.

4.30 Communication During the Procurement Process

In an effort to create a more competitive and unbiased procurement process, the County desires to establish a single point of contact throughout the solicitation process. Therefore, from the issue date of any solicitation until the due date of the solicitation, all requests for clarification or additional information regarding the solicitation, or contact with County personnel concerning this solicitation or the evaluation process must only be through the Purchasing Department staff. Inquiries will be collected by Purchasing Department staff who will then submit the inquiries to the Department Head responsible for the procurement. Responses by the Department Head to the inquiries will be submitted to the Purchasing Department staff who will then distribute the responses to all vendors responding to the solicitation. In this way it will be assured that all vendors participating in the process will be receiving the same information. No contact regarding this solicitation with other County employees, agents of the County or elected officials is permitted unless expressly authorized by the Purchasing Director. A violation of this provision is cause for the County to reject the Bidder's proposal. If it is later discovered that a violation has occurred, the County may reject any proposal or terminate any contract awarded pursuant to this solicitation.

4.31 Revenue Generating Contracts

Revenue generating contracts are agreements under which the County receives a commission from a vendor or other public entity for goods or services sold, such as a joint-purchasing agreement or vending contract. Departments should ensure that an agreement has been fully executed between the County and the vendor or public entity. The Purchasing Director and/or State's Attorney's Office is required to be notified of any revenue generating agreements that are executed by Department Heads or Elected Officials.

ARTICLE V – Specifications

5.1 Responsibility for Specifications

The Director of Purchasing or delegated Using Agency shall prepare, revise, maintain and monitor Specifications for Materials, Supplies, Services, Equipment and Construction or Construction related Services required by the County.

5.2 Relationship with Using Agencies

The Director of Purchasing shall obtain expert advice and assistance from personnel of Using Agencies in the development of Specifications and may delegate in writing to a Using Agency the authority to submit its own Specifications. The Director of Purchasing shall retain authority to approve or disapprove all Specifications.

5.3 Maximum Practicable Competition

All Specifications shall be drafted so as to promote overall economy for the purposes intended and encourage competition in satisfying the County's requirements and shall not be unduly restrictive. This policy applies to all Specifications including but not limited to, those prepared for the County by architects, engineers, designers, and draftsmen.

5.4 Contractors Engaged for Specification Development

In order to ensure objective contractor performance and eliminate unfair competitive advantage when procuring property and services under a Federal award, contractors that develop or draft specifications, requirements, statements of work, and invitations for bids or requests for proposals must be excluded from competing for such procurements.

ARTICLE VI – Appeals and Remedies

6.1 Bid Protests

6.1.1 Right to Protest

Any actual or prospective bidder, offeror, or Contractor who is aggrieved in connection with any Solicitation or award of a Contract may protest to the Director of Purchasing. Any protest must be submitted in writing within seven (7) calendar days from the issuance of the Solicitation, addendum, notice of award, or other decision by the Director of Purchasing or authorized official of the Using Agency.

6.1.2 Stay of Procurement During Protest

In the event of a timely protest under section 6.1.1, the Director of Purchasing or the authorized official of the Using Agency or the Using Agency's Parent Committee, after consulting with the State's Attorney, shall determine whether it is in the best interests of the County to proceed with the Solicitation or award of the Contract.

6.2 Claims By Contractor After Contract is Awarded

Unless otherwise provided by the terms of the Contract, all claims by a Contractor against the County relating to a Contract shall be submitted in writing to the Director of Purchasing. The Contractor may request a conference with the Director of Purchasing on the claim. Claims include, without limitation, disputes arising under a Contract and based upon breach of Contract, mistake, or misrepresentation. In the case of a contract-based dispute, the provisions of this ordinance shall prevail over any inconsistent provision in the contract, unless the County Board has expressly waived such protection.

6.3 Authority of the Director of Purchasing to Settle Bid Protests and Contract Claims, Subject to Statutory Provisions

6.3.1 Authority

The Director of Purchasing is authorized to settle any procedural protest regarding the Solicitation or award of a County Contract prior to an appeal to the appropriate Parent Committee thereof so long as all affected or interested parties are in agreement. The Director of Purchasing, after consulting with the State's Attorney, shall make recommendations on the resolution of any unresolved protest or claim to the appropriate Parent Committee of the Kane County Board for their consideration.

6.3.2 Notice of the Director of Purchasing's Decision

If the protest or claim is not resolved by mutual agreement, the Director of Purchasing shall issue a decision in writing within seven (7) business days of receipt of the protest or claim, and such decision shall be mailed or otherwise furnished to the aggrieved party. The decision shall state the reasons for the decision reached and shall inform the aggrieved party of its appeal rights under section 6.4.

6.3.3 Finality of the Director of Purchasing's Decision and Right to Appeal

The Director of Purchasing's decision shall be final and conclusive unless, within seven (7) business days from the date of receipt of the decision, the Chairman of the Using Agency's Parent Committee receives a written appeal from the aggrieved party.

6.3.4 Failure to Render Timely Decision

If the Director of Purchasing does not issue a written decision regarding any protest or claim within seven (7) business days of receipt of such protest or claim, or within such longer period as may be agreed upon between the parties, then the aggrieved party may proceed as if an adverse decision had been received.

6.4 Access to Administrative Forum, Subject to Statutory Provisions

6.4.1 Appeal Process

Any actual or prospective bidder, offeror, or Contractor may appeal a decision by the Director of Purchasing regarding bid protests or Contract claims to the Chairman of the Using Agency's Parent Committee. Said appeal shall be made in writing within seven (7) business days from the date of receipt of the decision by the Director of Purchasing. The protestor shall be notified of the time and date when the appeal shall be considered and afforded a reasonable opportunity to state its position. Any party whose interests may be adversely affected by a protest or appeal shall also be notified and have the right to appear for the purpose of protecting those interests.

6.4.2 Decision

The Using Agency's Parent Committee shall issue a decision:

- Prior to award, said decision shall be referred with the Resolution for award of the Contract for consideration by the County Board.
- After award, the decision of the Using Agency's Parent Committee shall be scheduled for discussion and decision at the next regularly scheduled Executive Committee or County Board meeting, whichever is appropriate.
- The decision of the County Board is final.

6.4.3 Elected Officials

Decisions and determinations made under this Section and Section 6.3 (Authority of the Director of Purchasing to Settle Bid Protests and Contract Claims, Subject to Statutory Provisions) are

subject to the review and prior approval of the appropriate Elected County Official as provided by the internal control statues or as otherwise provided by law.

ARTICLE VII – Debarment and Suspension

7.1 Prohibition to Award Contracts to Parties Debarred or Suspended

No contract may be awarded to parties listed on the federal governments Excluded Parties List System in the System for Award Management (SAM), on the state of Illinois' list of sanctioned persons maintained by the Agency's Office of Inspector General, or on the County's own list of parties suspended or debarred from doing business with the County.

7.2 Certification Language to be Included in Solicitations and Contracts

All solicitations and related contracts that may be paid in whole or in part by federal funds shall include the following, or substantially similar certification language:

“Vendor certifies that during the last five (5) years no order, judgment or decree of any Federal authority has been issued debarring, suspending or otherwise limiting its right to contract with any governmental entity, including school districts, or to engage in any business practice or activity. Vendor further certifies that it will include this certification within every subcontract related to performance of this contract.”