

**KENDALL COUNTY PROCUREMENT ORDINANCE****ARTICLE I - GENERAL PROVISIONS****PART A - PURPOSE AND APPLICATION****1. PURPOSE**

- a. The underlying purpose and policies of this ordinance are to:
  1. manage the procurement process in accordance with the law;
  2. spend taxpayer's money wisely and fairly;
  3. make the most efficient use of taxpayer dollars;
  4. provide public confidence in the County's procurement process;
  5. obtain the greatest value in making purchases;
  6. protect against fraud and favoritism;
  7. allow for competitive pricing in the procurement of materials, supplies, equipment, services, construction and construction related services;
  8. encourage competitive selection and allow for all responsible bidders to receive proper consideration;
  9. maintain an atmosphere that encourages openness and transparency in purchasing, and;
  10. ensure that all purchases are done in accordance with applicable ethics laws and ordinances.
- b. To the extent permitted by law, Kendall County will promote economic development within the County by encouraging the participation of Kendall County businesses, by providing equal opportunity for minority and women-owned businesses, and for veterans, and by applying environmentally sound practices in the procurement process.
- c. This ordinance shall be constituted and applied to promote its underlying purpose and policies as articulated herein.

**2. APPLICATION**

- a. The Kendall County Purchasing Ordinance applies to contracts for procurement of Materials, Services, Supplies, Equipment, Construction, Construction related Services and Professional Services, which are entered into by Kendall County and its departments after the effective date of this Ordinance.
- b. The Ordinance shall apply to every expenditure of public funds by any and all Kendall County departments for public purchasing irrespective of its source, except as may otherwise be provided for by Federal or State law, Federal or State regulation, County of Kendall Ordinance or administrative policy.

- c. The following elected officials, pursuant to statute, shall control the internal operations of their office and procure equipment, materials and services necessary to perform the duties of their office, and are not subject to this purchasing Ordinance:
  - 1. The County Clerk (See 55 ILCS 5/3-2003.2)
  - 2. The State's Attorney (See 55 ILCS 5/3-9006)
  - 3. The County Treasurer (See 55 ILCS 5/3-10005.1)
  - 4. The County Recorder (See 55 ILCS 5/3-5005.2)
- d. When procurement involves the expenditure of State or Federal assistance or contract funds, the procurement shall be conducted in accordance with any applicable mandatory State and/or Federal laws.
- e. Nothing in this Ordinance shall prevent any County agency from complying with the terms and conditions of any grant, gift, bequest or cooperative purchasing agreement that is otherwise consistent with law.
- f. Nothing in this Ordinance shall be construed as to restrict purchasing by the Emergency Management Agency of Kendall County or other Kendall County departments during response to emergencies or disasters as outlined and authorized pursuant to Kendall County Ordinance 05-40 and the Illinois Emergency Management Agency Act (20 ILCS 3305/1 *et seq.*).
- g. The County may adopt administrative procedures to ensure compliance with all bidding requirements including procedures that may be more restrictive than required by State statute.
- h. This Ordinance does not apply to the procurement of legal services, with the exception of Article II (a) (7) below.

### **3. REQUIREMENT OF GOOD FAITH**

This Ordinance requires all parties involved in the procurement, negotiation, performance or administration of Kendall County contracts to act in good faith.

### **4. SEVERABILITY**

If any provisions of this Ordinance or application thereof to any person or circumstances are held invalid by a Court, such invalidity shall not affect the other provisions or application of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

### **5. SINGULAR – PLURAL AND GENDER RULES**

Words in the singular number include the plural, and those in the plural include the singular. Words of a particular gender include any gender and the neuter, and when the senses indicate, words of the neuter gender may refer to any gender.

## **6. 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 Kendall County in any manner.

## **PART B – DEFINITIONS**

- 1. 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. Contract:** Any and all types of County agreements regardless of what they may be called, which entail the procurement of materials, supplies, equipment, services, construction and construction related services. Such contracts include, but are not limited to, payment vouchers, purchase orders, task orders, maintenance contracts, service contracts, systems contracts, oral agreements, etc.
- 3. Contractor:** Any person or entity who is a party to or beneficiary of a contract with the County or through a using agency thereof.
- 4. Cooperative Purchasing:** Cooperative purchasing may include, but is not limited to, joint or multi-party contracts between government procurement units and open-ended state/national government procurement unit contracts, which are made available to other government procurement units after having been bid by another government procurement unit(s) where required. Where a bid by one using department has established a purchase price, other departments may enter into a contract based on that bid, but only to the extent that the combined purchases are within the limits of the original bid amount or the estimate provided in the original bid.
- 5. County Contracting Authority:** The person authorized, pursuant to this Ordinance or designation by vote of the Kendall County Board, to enter into a contract or agreement, which shall bind the County to the purchase of any materials, services, supplies, equipment, construction, construction related services and professional services.
- 6. County Department:** A County officer, employee, department, office, or agency whose purchasing authority is subject to the Kendall County Board.
- 7. Department Head:** The supervisor of a County Department, not including Elected Officials.
- 8. Elected Official:** For purposes of this ordinance, Elected Official may include: Clerk of the Circuit Court, County Board Members, County Clerk, County Coroner, County Treasurer, County Recorder, County Sheriff, and State's Attorney.

9. **Employee:** Individuals, including elected and appointed officials, providing services for the County and drawing a salary from the County.
10. **Equipment:** Goods that are purchased or used by a County department 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.
11. **Invitation For Bid:** The process by which the County requests information from bidders, including all documents, whether attached or incorporated by reference, used for soliciting bids.
12. **Multi-Year Contracts:** Procurement contracts extending more than one year.
13. **Parent committee:** The Committee established by the Kendall County Board and which is charged with the oversight of the requesting County Department.
14. **Person:** Any individual or group of individuals, business, union, firm, corporation, trustee, partnership association, joint venture, committee, or other entity.
15. **Procurement:** The purchasing, renting, leasing or otherwise acquiring of materials, supplies, equipment, services, construction and construction related services. This 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.
16. **Professional Services.** Those Services requiring special knowledge, education or skill whereby the qualifications of Persons rendering the Services are of primary importance.
17. **Public Works:** All fixed works constructed or demolished by any public body, or paid for wholly or in part out of public funds as defined in the Illinois Prevailing Wage Act. (820 ILCS 130/1 et seq.).
18. **Public Works Contract:** A contract for public works as defined in the Illinois Prevailing Wage Act. (820 ILCS 130/1 et seq.).
19. **Purchase Order:** A contract for the purchase of materials, supplies, equipment, services, construction and construction related services.
20. **Request for Proposals or "RFP":** All documents, whether attached or incorporated by reference, utilized for soliciting proposals.

21. **Responsible Bidder or Offeror:** A person (firm) who has the capability in all respects to perform fully the contract requirements, and the experience, personnel, integrity, reliability, facilities capacity, equipment, acceptable past performance and credit which will assure good faith performance.
22. **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.
23. **Shall:** Denotes the imperative. For purposes of this Ordinance it directs mandatory action.
24. **Specifications:** Any description of the physical or functional characteristics or of the nature of a good, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing goods, services or construction projects.
25. **String Purchasing:** For purposes of this ordinance, splitting or stringing purchases is the practice of issuing multiple purchase orders or requests for purchasing like items or services, with the willful intent to circumvent the procurement ordinance's rules and/or bidding requirements.
26. **Used Equipment:** Equipment that: a) Has been in service for at least one-half its commercially reasonable life, or if life is less than 24 months, is at least one year old; or b) Is a floor or demonstration model that is offered at a price at least 25% below current market price; or c) Is otherwise determined by the appropriate County department head on a case by case basis to be a bona fide used item.

## **PART C – BIDDING PROCESS**

### **1. COMMUNICATION WITH BIDDER/OFFERORS**

County Officers and employees shall take care to limit communication with bidders/offerors during the solicitation process so that the integrity of the competitive solicitation process is maintained. All representatives of the County shall avoid any activity that would constitute interference with contract submission and award under the Criminal Code, 720 ILCS 5/33E-6. If it is determined that a bidder/offeror received an unfair advantage from information obtained through prohibited sources or under prohibited circumstances, the solicitation may be canceled, or the bidder/offeror disqualified from participation in that solicitation request.

### **2. INVITATION FOR BID AND/OR REQUEST FOR PROPOSAL DOCUMENT ADDENDA AND QUESTIONS**

Once the invitation for bid/request for proposal has been issued, all questions regarding that document shall be submitted in writing to the Department Head who is responsible for seeking the services/materials. Any and all addenda shall be issued by the Department Head pursuant to any alterations required in the bid document and shall be

sent to all bidders. If it is determined that a bidder/offeror received an unfair advantage from information obtained through other departments or agencies, the invitation for bid or request for proposal may be canceled.

### **3. BID SECURITY/BONDING REQUIREMENTS**

Bid security and bonding shall conform to State law at all times and the following shall be applied unless state law dictates further/alternate bonding requirements:

- a. Requirement for Bid Security: Bid security may be required for contracts when provided by statute or when the appropriate County Contracting Authority determines it is in the County's best interests. Bid security shall be a bond provided by a surety company authorized to do business in the State of Illinois, or a certified bank instrument, or otherwise supplied in a form satisfactory to the County. A letter of credit, as defined by state statute, may also be accepted.
- b. Amount of Bid Security: Bid security shall be in an amount not to exceed ten percent (10%) of the amount of the bid. Terms of forfeiture shall be expressed in the bid document.
- c. Contract Performance and Payment Bonds: When a contract is awarded, the required bonds or security 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.
- d. Any Bid or RFP that requires a bid bond shall include a request for a bid bond in the ITB or RFP.

### **4. INSURANCE REQUIREMENTS**

For all contracts, the contractor and all sub-contractors shall be required to maintain adequate insurance coverage for the duration of the contract. The Department Head who is charged with oversight of the purchasing or bidding shall determine, in consultation with the States Attorney's Office & Administrative Services, the types and amounts of coverage that shall be required. The contractor, and all subcontractors, shall have Kendall County named as an additional insured and furnish the County with satisfactory evidence of said insurance. Further, each insurance policy shall not be cancelled or changed without thirty (30) days prior written notice, given by the insurance carrier to Kendall County and Kendall County shall be designated as the certificate holder.

### **5. INDEMNIFICATION REQUIREMENTS**

For all contracts, the contractor, and all sub-contractors, shall be required to indemnify, hold harmless and defend with counsel of Kendall County's own choosing, Kendall County, its past, present and future elected officials, department heads, employees, insurers, and agents from and against all liability, claims, suits, causes of action, demands, proceedings, set-offs, liens, attachments, debts, expenses, judgments, or other liabilities including costs, reasonable fees and expense of defense, arising from any loss, damage, injury, death, or loss or damage to property, of whatsoever kind or nature as

well as for any breach of any covenant in the contract or ancillary documents and any breach by the contractor or sub-contractor of any representations or warranties made within the contract documents (collectively, the "Claims"), to the extent such Claims result from any act or omission, neglect, willful acts, errors, or misconduct of the contractor or subcontractor in its performance under the contract.

For all contracts, the contractor and all sub-contractors shall agree that Kendall County shall not offer indemnification to private corporations, as a unit of local government cannot legally indemnify private third parties.

#### **6. CONTRACTOR RECORD RETENTION**

For all contracts, the contractor and all sub-contractors shall be required to maintain records for a minimum of three (3) years from final payment, unless otherwise specified in the solicitation, and to make such records available for inspection by the County upon reasonable terms consistent with state law. For all contracts subject to the Illinois Prevailing Wage Act (820 ILCS 130/0.01 *et seq.*), the contractor and all sub-contractors shall prepare certified payroll affidavits, retain records and make them available as dictated by the Act itself.

#### **7. CONFIDENTIAL INFORMATION**

Kendall County does not represent, warrant or guarantee that any information designated by a Person 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 be subject to disclosure under the Illinois Freedom of Information Act. Kendall County expressly disclaims all liability for such disclosure, regardless of whether such disclosure is required by the Illinois Freedom of Information Act.

#### **PART D – PARENT COMMITTEE & COUNTY BOARD AGENDAS**

The department head seeking that a purchase be made under this ordinance shall be responsible for ensuring that the details of the purchase are properly disclosed pursuant to the Open Meetings Act (5 ILCS 120/1 *et seq.*) for inclusion in the appropriate agenda prior to seeking approval by the respective Parent Committee and/or the County Board. Failure to properly post sufficient information to reasonably advise the public of what the public body will be voting upon (including the contracting parties, dollar amounts, time duration and products/services contracted for) in an agenda shall be grounds for denial of the purchase request until such a time as the Open Meetings Act is properly complied with.

#### **PART E – PUBLIC ACCESS TO PROCUREMENT INFORMATION**

Procurement information shall be public records subject to the exceptions to disclosure as provided for in the Illinois Freedom of Information Act (5 ILCS 140/1, *et seq.*). Such records shall be available to the public as provided for by Kendall County policies implementing said Act.

#### **PART F – UNAUTHORIZED PURCHASES**

An unauthorized purchase occurs when materials, supplies, equipment, services, construction and construction related services or any other expense is charged to Kendall

County by a person who has not been given such authority or under circumstances when this ordinance is applicable and not adhered to. Unauthorized purchases are void, and the County shall not be obligated to pay for unauthorized purchases. The individual making an unauthorized purchase may incur a personal obligation to the vendor or to the County for the expense incurred even though the materials or services are used for County business. In addition, the employee/person(s) responsible may be subject to disciplinary actions or civil/criminal penalties as dictated by law.

## **ARTICLE II –SOURCE SELECTION AND CONTRACT EXECUTION**

### **PART A – METHODS OF SOURCE SELECTION & PROCUREMENT PROCESS**

#### **1. DEPARTMENT LEVEL SMALL PROCUREMENTS (PURCHASES AT OR BELOW \$10,000.00)**

- a. A Department Level Procurement involves the purchase of materials, supplies, equipment, services, construction and construction related services in amount at or below \$10,000.00.
- b. Condition of Use: These purchases are limited in frequency related to individual commodities and services. Contract requirements shall not be artificially divided or done in a string purchasing manner so as to constitute a small procurement or evade the competitive procurement requirements for amounts in excess of \$10,000.00.
- c. Authority: The appropriate Department Head, the Coroner, or the Sheriff is authorized to purchase, when the Department Head, the Coroner, or the Sheriff determines it is in the best interest of the County, materials, supplies, equipment, services, construction and construction related services in amount at or below \$10,000.00.
- d. The appropriate Department Head, the Coroner, or the Sheriff is authorized to sign any contract or agreement regarding purchases at this procurement level after receipt of all the contractually required documentation.

#### **2. COUNTY ADMINISTRATOR & ENGINEER APPROVED PROCUREMENTS (PURCHASES BETWEEN \$10,001.00 AND \$29,999.99)**

- a. A County Administrator & Engineer Approved Procurement involves the purchase of materials, supplies, equipment, services, construction and construction related services in amount greater than \$10,000.00 but below \$30,000.00. Prior to submission to the County Administrator or Engineer, all such purchasing requests shall be in writing and signed by the appropriate department head or authorized signatory.
- b. Condition of Use: Any County Administrator & Engineer Approved procurement shall be made in accordance with the procedures authorized herein. String Purchasing is forbidden and purchases shall not be artificially

divided for purposes of evading the competitive sealed bidding requirement or avoiding the necessity to procure through a County Board Level procurement process.

- c. **Minimum Quotation Requirements:** The requesting Department shall work with the County Administrator or Engineer to validate/create the specifications for quotations and the method appropriate for quote solicitation. The Department Head shall obtain quotations/proposals from at least three (3) vendors. If it is not feasible to obtain 3 quotes, or a sole source procurement is necessitated, a memorandum must be drafted by the requesting department's head explaining the reasoning and then submitted to the County Administrator or Engineer for review.
- d. **Evaluation Factors:** Evaluation factors which may justify an award to a vendor who has not provided the lowest quotation include, but are not limited to delivery, quantity, and quality requirements and past vendor performance.
- e. **Award:** Except as otherwise provided herein, the County Administrator and Engineer are both authorized to award a contract to the vendor offering the quotation/proposal that meets the specifications and that the County Administrator/Engineer determines is in the best interest of the County. Whenever it is determined that it is in the County's best interest to award a purchase contract to a vendor who did not submit the lowest responsible quotation/proposal, the reason for the determination shall be indicated in a memorandum and retained with the contract. The memorandum must document the appropriateness of the requested procurement process and approval given. Adequate records to document the competition solicited and the award determination made shall be retained with every contract awarded.
- f. The County Administrator or Engineer is authorized to sign any contract or agreement at this procurement level, after receipt of all the contractually required documentation.
- g. Department Heads shall submit a monthly report to their Parent Committee that includes all procurements between \$10,000 and \$30,000.
- h. The Sheriff and the Coroner may approve procurements in amounts greater than \$10,000 but below \$30,000 for their own offices without the prior approval of the County Administrator or Engineer and are authorized to sign any contract or agreement at this procurement level, after receipt of all the contractually required documentation.

**3. COUNTY BOARD LEVEL PROCUREMENTS - COMPETITIVE SEALED BIDDING (PURCHASES \$30,000.00 AND ABOVE)**

- a. A County Board Level Procurement involves the purchase of any materials, supplies, equipment, services, construction and construction related services in an amount at or in excess of \$30,000.00. All such procurements shall be submitted to the appropriate Parent Committee for review prior to approval by the Committee and it shall then be presented for any other approvals as defined in the County Board Rules. Thereafter, it shall be submitted to the County Board Chair to seek County Board approval. Prior to submission to the County Board, all purchasing requests shall be signed by the appropriate department head or authorized signatory. Appropriate bidding or memorandum procedures must also be followed.
- b. Conditions of Use: Any County Board level procurements (except where otherwise allowed by statute) shall be awarded by competitive sealed bidding except as otherwise provided in Section II(A)(4) through II(A)(10) below, or as provided by State law. String Purchasing is forbidden and purchases shall not be artificially divided for purposes of evading the competitive sealed bidding requirement.
- c. Invitation for Bids: An Invitation for Bids shall be issued and include bid instructions, specifications or general descriptions, required contractual terms, and conditions applicable to the procurement.
- d. Public Notice: Adequate public notice of the Invitation for Bids shall be given, by the appropriate department head or Administrative Services, within a reasonable time, no less than fourteen (14) calendar days prior to the date set forth therein for the submittal and opening of bids. For bids with a mandatory pre-bid meeting, the public notice must be published at least seven (7) calendar days prior to the meeting date. Such public notice shall be given via the County website and by advertising for bids in a newspaper published within the county or, if no newspaper is published within the county, then a newspaper having general circulation within the county, or as otherwise statutorily required.

The public notice shall state the project, submittal date, time and location of the bid opening and any other statutory requirements.

- e. 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 amount of each bid, and such other relevant information as the solicitor of the bid deems appropriate, together with the name of each bidder shall be recorded.
- f. Bid Acceptance and Bid Evaluation: Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Ordinance. The

department head, County Engineer, or County Administrator shall evaluate bids for responsiveness based on the requirements set forth in the Invitation for Bids. 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 Bid shall set forth the evaluation criteria to be used. No evaluation criteria, other than those necessary to determine a Responsible Bidder, may be used unless set forth in the Invitation for Bid. Alternative bids may be considered and accepted only if they are specifically provided for in the Invitation for Bids and meet the evaluation criteria set forth.

- g. **Correction or Withdrawal of Bids:**
  - 1. **Bids Withdrawn Prior to Opening:** Bids may be withdrawn prior to the bid opening upon written request of the bidder and in accordance with the terms and conditions contained in the Invitation for Bid.
  - 2. **Correcting/Modifying Bid prior to opening:** A bidder may modify its bid at any time before the bid opening, if the sealed modification is received in writing before the due date.
  - 3. **Clarifications:** The Parent Committee Chair or appropriate department head may obtain clarification and request additional information from any bidder, after opening, if deemed necessary to fully evaluate the bid.
  - 4. **Bid Withdrawal after Bid Opening:** No bid may be withdrawn or modified after opening.
  
- h. **Tie Bids:** Should tie bids between equally responsible bidders be received, the award will be made by a coin toss by the appropriate department head, County Administrator, County Engineer or the County Board Chair. The subject tie bidders shall be given the opportunity to witness the coin toss.
  
- i. **Right of Rejection:** Kendall County reserves the right to accept or reject any or all bids/proposals and to waive any technicalities in the document.
  
- j. **Award:** The contract shall be awarded with reasonable promptness by appropriate written notice to the lowest responsible bidder whose bid meets the requirements and criteria set forth in the Invitation to Bid. After the bid is awarded, the requesting County Administrator or Department Head shall issue all notices of awards and notices to proceed. All contractually necessary documentation will be required prior to any notice to proceed.
  
- k. **Contract execution:** All purchases made at this procurement level must be approved in accordance with the Kendall County Board procedures and such contracts must be signed by the Kendall County Board Chair.

**4. BOARD LEVEL PROCUREMENTS - REQUEST FOR PROPOSAL**

- a. **Condition 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 are 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 Parent Committee prior to the commencement of the procedure.
- b. **Origination of Request for Proposal:** Proposals shall be solicited through the appropriate Parent Committee with the assistance of the requesting Department and shall include specifications or general descriptions of goals, tasks or results, and any material non-negotiable contractual terms and conditions applicable to the procurement.
- c. **Public Notice:** Adequate public notice of the request for proposal shall be given in the same manner as Public Notice for Invitation for Bids.
- d. **Evaluation Criteria:** Criteria, including the weight to be given to each factor, must be developed for evaluation of the proposal prior to notice and included in the Request for Proposal.
- e. **Receipt of Proposals:** Names of offerors will be acknowledged in the presence of one or more witnesses at the time and place designated in the public notice. Contents of the proposals shall not be disclosed to any of the competition or offerors during the selection or negotiation process. A register of the proposals shall be prepared containing the name of each offeror, and a description sufficient to identify the item offered. The register of proposals shall be open for public inspection only after the contract is awarded subject to exemptions from disclosure under the Freedom of Information Act.
- f. **Discussions with Responsible Vendor/Offeror and Revisions to Proposals:** As provided in the Request for Proposals, discussions may be conducted with the responsible vendors/offerors who submitted proposals determined to be reasonably susceptible of being selected for award, for the purpose of clarification to ensure there is full understanding and responsiveness to the solicitation requirements. Vendors/Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revision may be permitted after submission and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.
- g. **Award:** The County Board shall make the award to the responsible vendor/offeror whose proposal conforms to the solicitation and is

determined, in writing, to be the most advantageous to the County taking into consideration price and the evaluation factors set forth in the Request for Proposal. The contract file shall contain the basis on which the award is made.

- h. Contract execution: All purchases made at this procurement level must be made in accordance with the Kendall County Board procedures and such contracts must be signed by the Kendall County Board Chair.

## **5. SOLE SOURCE PROCUREMENT**

Notwithstanding the above, a contract that would otherwise be subject to County Administrator and Engineer Approved Procurements as set forth in Article II 2 above or to County Board Level Procurements as set forth in Article II 3 above may be awarded where the County considers only one supplier because that supplier is a sole source. A sole source may exist in situations when materials, supplies, equipment, or services are available from only a single supplier/contractor or when only one supplier/contractor is deemed economically feasible.

If it is determined that sole source procurement must be utilized for a purchase greater than \$10,000.00 but no more than \$30,000.00, the Department Head shall prepare supporting documentation for review by the County Administrator or Engineer for approval. Whenever the County Administrator or Engineer determines that a purchase must be made through sole source procurement, the basis for this determination shall be detailed in writing and retained with the contract.

If it is determined that sole source procurement must be utilized for a purchase greater than \$30,000.00, the Department Head shall prepare supporting documentation for review by the Parent Committee, who shall upon committee approval present the documentation to the County Board for approval. Whenever the County Board determines that a purchase must be made through sole source procurement, the basis for this determination shall be detailed in writing and retained with the contract.

When sole source procurement has been determined to be appropriate, the requesting Department Head shall be tasked with the negotiation of price, delivery and other terms as is appropriate. The contract shall be approved by the County Administrator or Engineer, for purchases greater than \$10,000.00 but no more than \$30,000.00, or by the County Board, for purchases greater than \$30,000.00.

Each Department Head shall maintain a list of all contracts approved by it and then later awarded based upon a sole source determination. Such list shall be submitted to the County Board annually for review.

## **6. PROCUREMENTS NOT SUITABLE FOR BID**

The following types of procurements are not suitable for competitive bidding as defined in *55 ILCS 5/5-1022(c)*: purchases of used equipment; purchases at auction; purchases

from the Federal Government; and purchases of regulated utility services or other services for which a tariff or set rates are published.

Any contracts awarded under this section shall be awarded by the County Board exclusively and shall have no more than a one-year term, without an automatic renewal clause, but must be reviewed annually by the Parent Committee for permissive renewal which may then be approved by the County Board.

#### **7. CONTRACTS FOR LEGAL SERVICES**

The Kendall County State's Attorney is statutorily empowered to provide legal services on behalf of the County pursuant to 55 ILCS 5/3-9005. No contract for legal services shall be made without the approval of the Kendall County State's Attorney.

#### **8. CONTRACTS FOR CERTAIN DATA/TELECOMMUNICATION EQUIPMENT**

Pursuant to 55 ILCS 5/5-1022(d), the County may let without advertising for bids in the case of purchases and contracts, when individual orders do not exceed \$35,000, for the use, purchase, delivery, movement, or installation of data processing equipment, software, or services and telecommunications and inter-connect equipment, software, and services. Department level and County Administrator and Engineer level purchases of such equipment and services shall be processed as set forth in Article 2 Section 2, but the upper limit for County Administrator and Engineer Level Procurement shall be \$35,000.00. County Board level purchases of such equipment and services shall be processed as set forth in Article 2 Section 3, but the lower threshold for County Board level procurement shall be \$35,000.00.

#### **9. EMERGENCY PROCUREMENTS**

An emergency, allowing for an emergency procurement, shall be defined as an imminent disruption of essential operations or conditions adversely affecting the safety, health or security of persons or property, where it is impractical to remedy such disruption or conditions through the use of normal competitive bidding procedures.

As has been authorized by 55 ILCS 5/5-1022, in emergency situations, the County Board Chair shall have the authority to waive the bidding and advertising requirements/procedures otherwise set forth in this Ordinance and to effect procurements in excess of the amount otherwise provided in this section and state statutes, pursuant to the following procedures:

- a. For purchasing emergencies in excess of \$10,000.00, the Department Head requiring such purchase shall submit a written and signed request to the County Board Chair and County Administrator in a timely manner, and detail the basis to declare that an emergency purchase is necessary.
- b. Emergency purchases shall be limited to those materials, supplies, equipment, services, construction and construction related services necessary to satisfy the emergency.

- c. The County Board Chair's determination of an emergency existing and the basis relied upon shall be memorialized in writing.
- d. In such emergency situations, the County Board Chair shall be empowered to negotiate and execute contracts without prior approval of the County Board.
- e. Following the negotiating and entry of a contract or other means of emergency purchase, the County Board Chair shall submit the documentation to the Finance Committee and then to the County Board for ratification.
- f. Should the County Board Chair not be available at the time of the emergency, then the County Board Vice Chair shall be authorized to perform the above described functions in his/her place.

#### **10. COOPERATIVE JOINT PURCHASING AUTHORIZED**

Subject to applicable state statutes, such as the Governmental Joint Purchasing Act (30 ILCS 525/1 *et seq.*), Kendall County may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of goods, services, or construction with one or more governmental procurement units in accordance with an agreement entered into between the participants. Such cooperative purchasing may include, but is not limited to, joint or multi-party contracts between such government units and open-ended state procurement contracts, which are made available to other government procurement units after having been bid by another government procurement unit where required.

When Joint Purchasing is being utilized, Article II (A)(1)-(4) requirements of this Ordinance shall not be applicable. Instead, the requesting department shall follow the statutory requirements of 30 ILCS 525/1 *et seq.*, as well as any other applicable statutes. Such purchases must be approved by the County Board.

#### **11. PROFESSIONAL SERVICES SELECTION PROCESS**

There will be circumstances where it will be necessary or advisable for Kendall County to engage the services of independent professionals because of the County's need for such services as 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 expertise from the professional service providers. To effect this, the following shall apply:

- a. Types of professional services to be covered include: Engineering, Architects and Land Surveyors. These services require mandatory or essential technical skills provided by accredited professionals or quasi-professionals in connection with a defined assignment, which result in the preparation of a report, specifications or recommendation of a particular

course of action, and may include supervision of an activity (such as construction).

- b. Whenever a project requiring architectural, engineering or land surveying services is proposed for the County, it shall proceed to obtain such services in accordance with the Local Government Professional Services Selection Act (50 ILCS 510/1 *et seq.*), unless it already has an existing satisfactory relationship for such services with one or more firms. The selection of these services is excluded from the standard competitive bidding selection process and shall instead comply with 50 ILCS 510/1 *et seq.*
- c. Providers of these services shall be selected in accordance with the Local Government Professional Services Selection Act (50 ILCS 510/1 *et seq.*) as it may be amended from time to time. As such, professional service providers shall be selected on the basis of their demonstrated competence and expertise relative to the services to be rendered, their qualifications, their willingness to meet time requirements, their firm's workload, their demonstrated or perceived ability to work with County staff and elected officials and/or the reasonableness of the cost of their services.
- d. The engagement of an independent professional service shall be based on a determination by the requesting department head that it is necessary for at least one of the following reasons:
  - 1. 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;
  - 2. The project requires specialized expertise or multiple areas of expertise not available from existing staff;
  - 3. County staff is not available for the project due to present or anticipated workload or other time constraints;
  - 4. 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;
  - 5. An actual emergency exists where existing staff cannot effectively be deployed or mobilized due to the nature of the occurrence or time constraints.

Such determination by the appropriate department head shall be in writing and kept with the subsequent contracting documents.

- e. Professional Services agreements not expected to exceed \$9,999.99 may be entered into by the requesting Department Head. Professional Services agreements at or above \$10,000.00 and not expected to exceed \$30,000.00 may be entered into by the County Administrator and Engineer. All professional services agreements for amounts over \$30,000.00 shall only be entered into by the Kendall County Board.
- f. The Kendall County Board may enter into Master Agreements for professional services with those firms with which it has a satisfactory relationship. Following the creation and approval of such Master Agreements, any Task Orders to be issued for services covered by the agreement may be entered into as directed by Article II(A)(11)(e) above.
- g. Performance Criteria: Upon completion of each contract over \$25,000, the department involved shall prepare a written evaluation of the consultant's performance. The details of the evaluation shall be consistent with the cost and complexity of such assignments. Administrative Services will maintain a record of such evaluations for the use of all departments when selecting future professional service/consultants. No consultant shall be awarded subsequent contracts unless the using department has submitted a satisfactory evaluation to Administrative Services.

## **12. COST PLUS PERCENTAGE CONTRACTS**

Cost plus percentage of cost (CPPC) contracting shall not be used.

### **PART B – RESPONSIBILITY OF BIDDERS AND OFFERORS**

#### **1. CONSIDERATIONS IN DETERMINING RESPONSIBLE BIDDER/OFFEROR**

In determining responsibility of any bidder/offeree, the County may take into account:

- bidder/offeree's financial responsibility;
- experience of the bidder/offeree;
- adequacy of equipment and ability to complete performance within a specific time;
- whether the bidder/offeree is legally qualified to do business with the County;
- the qualities of the articles supplied, their conformity with the specifications, and their suitability to the requirements of the county;
- the availability of support services;
- the uniqueness of the service, materials, equipment, or supplies as it applies to networked, integrated computer systems;
- compatibility to existing equipment; and
- the delivery terms.

#### **2. DECISION TO DECLARE NON RESPONSIBLE**

If the County determines a bid is non-responsible, the basis for that determination shall be made in writing and be made part of the contract file.

## **PART C - CONTRACT ADMINISTRATION**

### **1. CONTRACT ADMINISTRATION**

A contract administration system is designed to insure that the contractor is performing in accordance with the terms and conditions of the contract. Contract administration results may be utilized by the Parent Committee Chair(s), Administrative Services and County Board for vendor evaluation. To that end:

- a. It is the using department's responsibility to match contract terms and prices with invoices, and to otherwise monitor compliance with the contract terms. The using department is also responsible to determine the imminent need for, and to begin processing, a change order where appropriate.
- b. Payment must be identified to an existing contract, task order or purchase order.

### **2. COUNTY PROCUREMENT RECORDS**

All determinations and other written records, notes of telephone conversations and notes of other oral conversations pertaining to the solicitation, award and performance of a contract shall be maintained for the County in the procurement records of the respective Department for which the procurement is made.

## **PART D – AUTHORIZATION, REVIEW AND APPROVAL PROCESS**

### **1. AUTHORIZATION TO INITIATE BIDS OR OTHER SOLICITATIONS**

Each Department Head, the Sheriff, the Coroner, and a Parent Committee may initiate bids or other solicitations for any materials, supplies, equipment, services, construction and construction related services for which they deem are necessary.

### **2. FISCAL RESPONSIBILITY**

Prior to the issuance of any purchase order, contract, task order, change order or contract modification, the Department Head shall certify that sufficient budgeted funds are available.

### **3. LEGAL REVIEW OF CONTRACTS**

Prior to award, the Department Head, County Administrator, County Engineer, or County Board Chair may request the State's Attorney's Office to review a contract. This review shall not be required when the form and content of the contract documents have previously been approved by the State's Attorney's Office.

### **4. MULTI-YEAR CONTRACTS**

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

- a. All multi-year contracts presented for approval shall contain the total value of the award for the multi-year period in order to determine whether the contract is subject to competitive bidding requirements.
- b. Only the current fiscal year portion shall be encumbered.
- c. All multi-year contracts that exceed a total term of two (2) years must be presented to and approved by the County Board.

## **5. CONTRACT RENEWALS**

Contract Renewal may occur to effectuate a continuation for an additional period under the original terms and conditions of a contract, where the renewal clause is included in the solicitation and the original contract. If the original contract does not include the terms and conditions of a renewal, any continuation of the contract is considered a new contract, which must be re-bid or otherwise newly approved pursuant to the conditions of this ordinance.

The following rules, as well as those that may arise by statute, govern contract renewals:

- a. All contracts that contain an optional renewal clause shall be presented to the appropriate purchasing authority, based on the total dollar value for the initial period of award, as outlined above for approval.
- b. All subsequent requests for contract renewals shall originate from the using department in the form of a written request indicating the desire for the renewal, the subsequent renewal term, and the total dollar value for the renewal period.
- c. The request shall be submitted to the appropriate purchasing authority at least sixty (60) days prior to the expiration date of the current period or sooner if an earlier renewal notice is required by the contract.
- d. The appropriate purchasing authority will submit the necessary correspondence to the contractor in order to execute the renewal.
- e. All renewals shall be for the time period specified in the original contract document or shorter.
- f. All contracts containing renewal clauses that exceed a total term of two (2) years must be presented to and approved by the County Board.

## **6. CHANGE ORDERS AND CONTRACT MODIFICATIONS**

- a. All change orders and contract modifications will be presented in advance to the appropriate County Contracting Authority who authorized the initial contract.
- b. For a contract originally approved through the Department Level Procurement process, if the total purchase amount, including any proposed changes, does not exceed \$10,000.00, the appropriate Department head is authorized to approve the change order/modification. If the total purchase amount, including any proposed changes, will exceed \$10,000.00, the County Administrator or Engineer must approve the change order/modification.
- c. For contract originally approved through the County Administrator or Engineer Level Procurement process, if the total purchase amount, including any proposed changes, does not exceed \$30,000.00, the County Administrator or Engineer is authorized to approve the change order/modification.

- d. For a contract originally approved by the County Board, all change orders/modification shall be approved by the County Board unless the County Board approved a specific process for change orders at the time it approved the original contract.
- e. For any contract originally approved through the Department Level Procurement process or through the County Administrator or Engineer Level Procurement Process, no change order/modification is permitted if the total purchase amount, including any proposed changes, will exceed \$30,000.00.
- f. In accordance with Public Works Contract Change Order Act (50 ILCS 525/5), in the case of Public Works contracts, no change order, including a field condition change order can be made where the total contract value (or subcontract value) is increased to 50% or more of the initial contract price. In such case, the portion contract covered by the change order shall be rebid in the same manner as original contract.
- g. Approval by the County Board is required where County Administrator/Engineer approval was required for the initial contract and the change order materially alters the scope of work to be performed.
- h. In accordance with 720 ILCS 5/33E-9, should a change order, or a series of change orders to any public contract, result in an increase or decrease in contract cost by a total of more than \$10,000.00 or increase or decrease the time of completion by a total of thirty (30) days or more, then prior to the authorization of such change order(s), the appropriate Department Head or Committee Chair must provide a determination in writing that (1) the circumstances said to necessitate the change in performance were not reasonably foreseeable at the time the contract was signed, or (2) the change is germane to the original contract as signed, or (3) the change order is in the best interest of the County and authorized by law. Such written determination and the resulting change order(s) shall then be kept in the contract's file.

## **ARTICLE III – SPECIFICATIONS**

### **PART A – RESPONSIBILITY FOR SPECIFICATIONS**

The Department Head or designee (in general the head of the department utilizing such goods or services) shall prepare, revise, maintain, and monitor specifications for materials, supplies, equipment, services and construction required by the County except that specifications for any public work involving professional engineering shall be prepared by a professional engineer. The Highway Department may prepare specifications for construction and maintenance of highways, bridges, and culverts in accordance with IDOT standards.

Specifications for grant-funded contracts shall include all terms and conditions required by the grant, and it shall be the responsibility of the using department to furnish such terms and conditions to the purchasing authority (whether it be Department Head/Parent Committee/County Board).

**PART B - 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 needs, and shall not be unduly restrictive. The policy applies to all specifications including but not limited to, those prepared for the County by architects, engineers, designers and draftsmen.

To that end, when specifications refer to one or more brand name products followed by the words "or equal", submissions will be accepted that contain products with minor differences in design, construction or features, which do not affect the suitability of the product for its intended use.

**ARTICLE IV – ETHICS, PROHIBITED INTERESTS, REQUIRED DISCLOSURES & VIOLATIONS**

**PART A – ETHICS**

Any or all actions related to this Purchasing Ordinance shall comply with the Kendall County Ethics Ordinance (Kendall County Ordinance No. 12-18, including any future amendments).

**PART B – REQUIRED DISCLOSURES OF CONTRACTORS AND VENDORS**

In furtherance of this procurement ordinance's purpose to protect against fraud and favoritism, the following disclosures must be made:

1. Prior to award, every person that is seeking a contractor two (2) or more individual contracts with the county resulting in an aggregate amount at, or in excess of, the amount required for a board level procurement, shall provide to the Finance Committee a written disclosure of all political campaign contributions made by such Person within the current and previous calendar year to any incumbent County Board member or countywide elected official whose office the contract to be awarded will benefit or to any political action committee supporting said Board member or countywide elected official. The Person shall update such disclosure annually during the term of a multi-year contract and prior to any change order or renewal requiring approval by the County Board.
2. All Persons who have obtained or are seeking contracts with the county shall disclose the names and contact information of their lobbyists, agents, representatives, and all other individuals who are or will be having contact with county officers or employees in relation to the contract or bid and shall update such disclosure with any changes that may occur.

3. Any Person that knowingly violates the disclosure requirements set forth in this Section is subject to penalties which may include, but are not limited to, the immediate cancellation of the contract and possible disbarment from future county contracts.

**PART C - PROHIBITED INTEREST IN CONTRACTS**

Prior to award, every contractor, union, or vendor that is seeking a contract with the County shall affirm that no Kendall County officer or elected official has a direct or indirect pecuniary interest in the subject company or the subject contract, or, if any Kendall County officer or elected official does have a direct or indirect pecuniary interest in the company or the contract, that interest, and the procedure followed to effectuate the contract has and will comply with 50 ILCS 105/3.

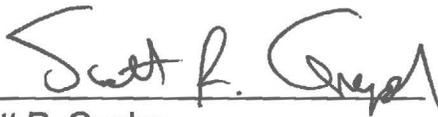
**PART D - VIOLATIONS**

Non-conformance with this Ordinance may violate County rules and State of Illinois civil and criminal laws and may result in appropriate legal action, contract cancellation, discipline and/or sanctions.

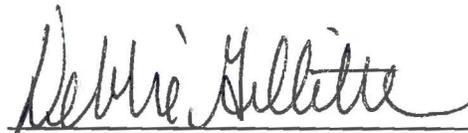
ADOPTED and APPROVED this 2<sup>nd</sup> day of <sup>March</sup> ~~February~~ 2021.

Approved:

Attest:



Scott R. Gryder  
Kendall County Board Chairman



Debbie Gillette  
Kendall County Clerk

