



**Kendall County Board Agenda**  
**Adjourned June Meeting**  
**Kendall County Office Building, 111 W. Fox Street**  
**County Board Room 209, Yorkville, IL 60560**  
**Wednesday August 7, at 6:00 PM**

1. Call to Order
2. Pledge of Allegiance
3. Invocation
4. Roll Call
5. Determination of a Quorum
6. Approval of Agenda
7. Special Recognition
  - A. Resolution of Renaming the Kendall County Public Safety Center to The Richard A Randall Public Safety Center (p.2)
8. Public Comment
9. Consent Agenda
  - A. Approval of County Board Minutes from June 4, 2024 (p.4)
  - B. Approval of Standing Committee Minutes
  - C. Approval of Claims in the amount of \$2,298,898.80 from July 31, 2024
  - D. Approval of Intergovernmental Agreement between Kendall County GIS and City of Yorkville (p.10)
  - E. Approval of Chicago HIDTA Security Officer and Facility Manager Service Contract with Kendall County as the Fiduciary Agent effective August 5, 2024, through August 4, 2025, and shall be paid an hourly rate of \$37.00 per hour
  - F. Approval of Resolution Adopting the Kendall County Federal Transit Administration (FTA) Procurement Policy for Kendall Area Transit (p.23)
10. Old Business
11. New Business
  - A. Presentation by the 2024 Kendall County Summer Internship Program
12. Standing Committee Reports
13. Special Committee Reports
14. Liaison Reports
15. Other Business
16. Chairman's Report
17. Public Comment
18. Questions from the press
19. Executive Session
20. Adjournment

*If special accommodations or arrangements are needed to attend this County meeting, please contact the Administration Office at 630-553-4171, a minimum of 24-hours prior to the meeting time*

**COUNTY OF KENDALL, ILLINOIS  
RESOLUTION 2024-\_\_\_\_\_**

**A RESOLUTION RENAMING THE KENDALL COUNTY PUBLIC SAFETY CENTER TO  
THE RICHARD A. RANDALL PUBLIC SAFETY CENTER**

**WHEREAS**, Richard A. Randall dedicated his life to serving the public for over fifty years; and

**WHEREAS**, Richard began his public service career as a Sergeant in the United States Air Force Tactical Air Command serving as a Jet Engine Mechanic from 1964 through 1968, at which time he was Honorably Discharged from the United States Air Force; and

**WHEREAS**, upon the completion of service to his country, Richard A. Randall dedicated the next forty-six years of his life to serving the residents of Kendall County; and

**WHEREAS**, Richard served forty-four years with the Bristol-Kendall Fire Department from 1968 until he retired as a Captain in 2012; and

**WHEREAS**, while serving with the Bristol-Kendall Fire Department, Richard also served as a Yorkville, Illinois Police Officer for eighteen years beginning in March 1968; being promoted to Sergeant in 1969; to Captain in 1975; and to Chief of Police in 1979, serving Yorkville, Illinois until November of 1986; and

**WHEREAS**, on December 1, 1986, Richard A. Randall took office as Sheriff of Kendall County and was re-elected an unprecedented seven times in 1990, 1994, 1998, 2002, 2006, and 2010; and

**WHEREAS**, Richard's academic achievements include attaining an AA degree in Law Enforcement at Waubensee Community College in 1973, A Law Enforcement Certificate in Management from Aurora University in 1977, graduated the FBI National Academy in 1984 and FBI Law Enforcement Executive Development course in 1995; and

**WHEREAS**, during his tenure as Sheriff of Kendall County, the Kendall County population he served grew from 37,527 residents to 121,385 residents; and

**WHEREAS**, during his tenure as Kendall County Sheriff, Richard made major contributions to Kendall County by updating an 1880's jail and business office to a modern facility, housing the Countywide 9-1-1 Communication Center, the Kendall County Emergency Management Agency, the Kendall County Jail, and administrative offices for the Kendall County Sheriff's Office; and

**WHEREAS**, during his tenure as Kendall County Sheriff, Richard A. Randall was active in the planning, designing, and building of the present-day Kendall County Public Safety Center located at 1102 Cornell Lane, Yorkville, which opened in April 1992; and

**WHEREAS**, during his tenure as Kendall County Sheriff, Richard A. Randall was also instrumental in overseeing the completion of a 121 bed expansion of the Kendall County Jail in 2003-2004; and

**WHEREAS**, after twenty-eight years of dedicated service as the Sheriff of Kendall County, Sheriff Richard A. Randall retired from service on November 30, 2014; and

**NOW, THEREFORE, BE IT RESOLVED**, by the Kendall County Board as follows:

**SECTION 1: Recitals.** The foregoing recitals are incorporated into and made a part of this Resolution as the findings of the Kendall County Board.

**SECTION 2: Renaming of the Kendall County Public Safety Center:** In honor of the significant contributions to Kendall County and its residents, the Kendall County Board hereby renames the Kendall County Public Safety Center located at 1102 Cornell Lane, Yorkville, Illinois to the Richard A. Randall Public Safety Center.

**SECTION 3: Effective Date.** This Resolution shall be in full force and effect on August 6, 2024.

Approved this 7th day of August, 2024

Attest:

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Matthew Kellogg, County Board Chairman

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Debbie Gillette, County Clerk and Recorder



**KENDALL COUNTY BOARD  
ADJOURNED SEPTEMBER MEETING  
June 4, 2024**

STATE OF ILLINOIS     )  
                                          ) SS  
COUNTY OF KENDALL    )

The Kendall County Board Meeting was held at the Kendall County Office Building, Rooms 209 & 210, in the City of Yorkville on Tuesday, June 4, 2024, at 6:00 p.m. The Clerk called the roll. Members present: Chairman Matt Kellogg, Zach Bachmann, Brian DeBolt, Elizabeth Flowers, Scott Gengler, Dan Koukol, Jason Peterson, Ruben Rodriguez, Brooke Shanley and Seth Wormley. Member(s) absent: None.

The Clerk reported to the Chairman that a quorum was present to conduct business.

**PLEDGE OF ALLEGIANCE**

Chairman Kellogg led the Pledge of Allegiance.

**INVOCATION**

Ruben Rodriguez gave the invocation.

**THE AGENDA**

Member Koukol moved to approve the agenda. Member Rodriguez seconded the motion. Chairman Kellogg asked for a voice vote on the motion. All members present voting aye. Motion carried.

**SPECIAL RECOGNITION**

**Historic Preservation Commission Award**

Lisa Wolancevich received the Kendall County Historic Preservation Commission Award for a lifetime of dedication to the field of historic preservation.

**PUBLIC COMMENT**

Jim Williams spoke about the building and zoning rules and recurrent violators in Boulder Hill. Mr. Williams commented on the confidentiality of claims that are being filed on violators in the area.

Cynthia Lucksinger spoke about an easement that Kendall County needs to maintain near her property. There is too much water coming through the property.

Todd Miliron spoke about FOIA and the information that is available through FOIA.

**CONSENT AGENDA**

Member Shanley moved to approve the consent agenda. Member DeBolt seconded the motion. Chairman Kellogg asked for a roll call vote on the motion. All members present voting aye. Motion Carried.

- A. Approval of County Board Meeting Minutes from May 7, 2024
- B. Approval of Standing Committee Meeting Minutes
- C. Approval of Claims in the amount of \$2,444,814.59 as of May 31, 2024
- D. Approval of Contingency Reduction 8A – CSN Electric Sound Inc - Expanding on the current Intrusion Panel that is supporting the Panic Pull Stations: \$6,545. New Contract Amount: \$1,005,178
- E. Approval of Resolution granting the Kendall County Circuit Clerk Authority to enter into agreements with Triedata on behalf of Kendall County Illinois

**C. COMBINED CLAIMS:** ADMIN \$219.52; ANML CNTRL WRDN \$1,818.02; CIR CLK \$11,078.85; CIR CRT JDG \$4,307.04; CRNR \$534.81; CORR \$4,805.56; CNTY BRD \$1,919,083.73; CNTY CLK \$2,415.60; HIGHWY \$145,221.31; CNTY TRSR \$23,643.96; ELCTN \$5,725.44; EMA DIR \$18,544.53; EMA \$185.37; FCLT MGMT \$7,629.48; GIS COORD \$258.18; HLTH & HMN SRV \$80,119.39; HR \$42.26; JRY COM \$411.41; MRT COMM \$930.50; PBZ \$31.00; PRSDNG JDG \$28,458.92; PROB SPVSR \$25,415.45; PUB DEF \$227.48; ROE \$707.48; SHRF \$26,535.97; ST ATTY \$6,840.48; TECH \$8,896.41; TRSR \$52.28; UTIL \$33,423.06; VET \$1,928.67; FP \$11,686.90; SHF \$12,851.71; SHF \$40,735.09; CVL \$31,735.63;

E) A complete copy of Resolution 24-18 is available in the Office of the County Clerk.

**Chairman's Report**

Chairman Kellogg stated that the ceremony for the new building will be on June 18, 2024, at 11:00am.

## EXECUTIVE SESSION

Member DeBolt made a motion to go into Executive Session for (11) litigation, when an action against, affecting or on behalf of the particular public body has been filed and is pending before a court or administrative tribunal, or when the public body finds that an action is probable or imminent, in which case the basis for the finding shall be recorded and entered into the minutes of the closed meeting. Member Peterson seconded the motion. Chairman Kellogg asked for a roll call vote on the motion. All members present voting aye. **Motion carried.**

## ADJOURNMENT

Member Gengler moved to adjourn the County Board Meeting until the next scheduled meeting. Member DeBolt seconded the motion. Chairman Kellogg asked for a voice vote on the motion. All members present voting aye. **Motion carried.**

Approved and submitted this 8th day of June 2024.

Respectfully submitted by,  
Debbie Gillette  
Kendall County Clerk

**COUNTY OF KENDALL, ILLINOIS**  
**ECONOMIC DEVELOPMENT & ADMINISTRATION COMMITTEE**  
**Meeting Minutes for Tuesday, June 25, 2024, at 5:30 p.m.**

**Call to Order:** The meeting was called to order by Chairman Elizabeth Flowers at 5:30 p.m.

**Roll Call**

<b>Attendee</b>	<b>Status</b>	<b>Arrived</b>	<b>Left Meeting</b>
Elizabeth Flowers	Here		
Scott Gengler	Here		
Dan Koukol	Here		
Brooke Shanley	Absent		
Seth Wormley	Absent		

**With three (3) members present a quorum was established.**

**Staff Present:** Christina Burns, Latreese Caldwell, Taylor Cosgrove, Brianna Falk, Roger Bonuchi, Todd Volker, Matt Asselmeier,

**Approval of Agenda** – Member Koukol made a motion to approve the agenda, second by Member Gengler. **With 3 members voting aye, the motion was carried by a vote of 3 - 0.**

**Approval of Minutes** – Member Gengler made a motion to approve the May 15, 2024, Committee Meeting minutes, second by Member Koukol **With 3 members voting aye, the motion was carried by a vote of 3- 0.**

**Committee Reports and Updates**

- A. Animal Control Department Update** – Director of Animal Control Taylor Cosgrove spoke to the committee on Animal Controls report for the month of May. Bite reports are low for the month of May, but the number of stray dogs was higher, most of those dogs were reclaimed. Ms. Cosgrove also reported that Kendall County Animal Control has received recognition as a No-Kill Shelter from The Best Friends Network. They received a plaque this week in recognition. To qualify, more than 90% of animals leaving the shelter must leave the shelter alive., Animal Control has exceeded this benchmark.  
 Ms. Cosgrove would like to add that there were 2 level 5 bites that were reported in June. A level 5 bite is more severe than a regular bite. Bites are graded on 6 levels, level 1-2 being minor and 5-6 being more aggressive behavior including death. The first bite was from a dog. An investigation is currently in progress with the owner, Animal Control Director and Dr. Schlapp along with the help of the States Attorney’s office. The second bite was from a wild raccoon that was reported by the Kendall County Health Department. Raccoon bites are usually not handled by Animal Control but because this incident was reported by the Health Department, staff will move forward with the report. Staff received lots of donations for food and treats for the animals from the community after posting a Facebook post when the department ran out of food.
  
- B. Emergency Management Agency Update** – Director of Emergency Management Roger Bonuchi gave a monthly report update. (Page 14 in packet). Mr. Bonuchi spoke about the Youth Academy’s upcoming class. The attendees will be learning how to carry people who are not ambulatory. They will also learn how to search and rescue partially collapsed buildings, search in buildings with no lights along with learning to determine whether a building is safe to enter. The Youth Academy class will also learn disaster psychology, meaning learn how to manage themselves when they see someone who is severely injured or a fatality. Volunteers will be in attendance and assist with the training.

The Command bus is being prepared to attend the Plainfield Festival this weekend. The next event will be on the Fourth of July in Yorkville. A new member will be sworn in during the next meeting.

- C. **Revolving Loan Status Update** - Deputy Administrator Latreese Caldwell directed the committee to page 15 of the packet for the Economic Development Commission loan status ending April 30, 2024. Ms. Caldwell spoke about four outstanding loans now. Three of the four are current and one is on a payment plan.
- D. **Economic Development Update**- Economic Development Coordinator Todd Volker briefed the committee on last month's Economic Development updates. He spoke about the Environmental Summary. Business succession workshops are going well. Chamber directors seem to enjoy them as well. Mr. Volker is looking to set up a farm succession workshop.
- E. **KAT Update** - Deputy Administrator Latreese Caldwell gave a brief update on a new financial report that Kendall County Area Transit sent to Administration (pg. 18).

### **New Committee Business**

#### **A.\*MOTION (Forward to County Board):** Approval of Kendall Area Transit Vehicle Lease

This lease is an agreement between Kendall and VAC for VAC to utilize our buses. Finance budget analyst, Jennifer Breault, has reached out IDOT to verify the liability is enough coverage for the vehicles. Staff is currently waiting for a response to finalize the agreement.

Member Gengler made a motion for Approval of Kendall Area Transit Vehicle Lease to be forwarded to County Board meeting, second by Member Koukol.

After further discussion Member Gengler made a motion to amend his original motion and made a new motion to forward the Approval of Kendall Area Transit Vehicle Lease to County Board meeting after receiving IDOT recommendations, seconded by Member Koukol. **With 3 members voting aye, the motion was carried by a vote of 3 - 0.**

#### **B.\*MOTION (Forward to County Board):** Approval of Kendall Area Transit Pass Through Agreement for Public Transportation Financial Assistance Under Section 5310, Section 5311 and Downstate Operating Assistance Program (DOAP)

This agreement is between Kendall County and Voluntary Action Center of Northern Illinois (VAC). The main change to the agreement is that VAC will be receiving 60K a year, and it will be a 3-year term to the agreement

Member Gengler made a motion for Approval of Kendall Area Transit Pass Through Agreement for Public Transportation Financial Assistance Under Section 5310, Section 5311 and Downstate Operating Assistance Program (DOAP) to be forwarded to County Board meeting, second by Member Koukol. **With three (3) members voting aye, the motion was carried by a vote of 3 - 0.**

#### **C.\*MOTION (Forward to County Board):** Approval of Agreement between Voluntary Action Center and County of Kendall

This grant informs our main source of funds, Section 5310, Section 5311 and DOAP, that VAC will be our operator and notify them of the general requirements they will follow.

Member Gengler made a motion for Approval of Agreement between Voluntary Action Center and County of Kendall to be forwarded to County Board meeting, second by Member Koukol. **With 3 members voting aye, the motion was carried by a vote of 3-0.**

**D. \*MOTION (Forward to County Board)** : Approval of Animal Control Fee Ordinance Review

Ms. Cosgrove spoke about the changes in the fee schedule for impound fees, relinquishing fees and adoption fees. The fee changes round up to an even number.

Member Gengler made a motion for Approval of Animal Control Fee Ordinance to be forwarded to County Board meeting, second by Member Koukol. **With 3 members voting aye, the motion was carried by a vote of 3-0.**

**E. \*Discussion:** Economic Development Priorities

County Administrator, Christina Burns spoke to the committee on Economic Development Priorities. Included in the packet is one of the programs Kendall County is currently working with. The Kendall County Summer Internship Program connects enrolled or recently graduated students seeking career experience to a variety of employers in Kendall County.

**F. \*Discussion:** Revolving Loan Fund Program

Kendall County received funds for a Revolving Loan Fund from the Department of Commerce and Economic Opportunity's Community Development Assistance Program, which was funded from the US Department of Housing and Urban Development Community Development Block Grant. The original RLF funds were restricted to purposes outlined through DCEO and HUD requirements, designed to support businesses. In 2004, DCEO dissolved the program, permitting communities to use their funds as deemed appropriate by the community. The County adopted its current Revolving Loan Fund program in 2019. The fund currently has four small business loans with a total outstanding principal balance of \$210,341.63. One small business loan is currently in default. A fifth RLF loan was given to the City of Minooka for a water main extension for \$750,000, to be paid back as properties connect to the water main. The program's priorities and objectives are to stimulate economic growth in the County through business retention and growth, supporting equity for new businesses, incentivizing businesses to relocate, create and retain jobs, increase the property and sales tax base, and to leverage other sources of capital to support businesses. Staff is in the process of reviewing the application process to ensure we are gathering adequate financial information from applicants, and to better understand their business plans to help reduce the chance of making loans that go into default. Committee members discussed expanding funds for job growth and road studies for development of underutilized land and updating the LRP plan along with small business loans. Mrs. Burns presented ideas for the Committee to consider. The committee would like to further discuss this topic in upcoming meetings.

**Old Committee Business** – None

**Chairman's Report** – Member Gengler thanked Todd Volker, Matt Asselmeier and Christina Burns for hosting GCEP at the Pickerell house.

**Public Comment** – None

**Executive Session** – None

**Items for the Committee of the Whole Meeting** – None



**Action Items for County Board -**

- Approval of Kendall Area Transit Vehicle Lease
- Approval of Kendall Area Transit Pass Through Agreement for Public Transportation Financial Assistance Under Section 5310, Section 5311 and Downstate Operating Assistance Program (DOAP)
- Approval of Agreement between Voluntary Action Center and County of Kendall
- Approval of Animal Control Fee Ordinance Review

**Adjournment** – Member Gengler made a motion to adjourn, second by Member Koukol.

**With 3 members present in agreement; the meeting was adjourned at 6:38p.m.**

Respectfully submitted,  
Nancy Villa  
Administrative Assistant



# Kendall County Agenda Briefing

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**Meeting Type:** County Board Meeting  
**Meeting Date:** 8/7/2024  
**Subject:** Approval of GIS IGA between Kendall County and Yorkville  
**Prepared by:** Meagan Briganti  
**Department:** GIS

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**Action Requested:**

Approval of IGA

**Board/Committee Review:**

Previous GIS IGAs have been approved by the County Board

**Fiscal impact:**

The GIS IGA has potential to add revenue to the GIS Fund if the partner requests for staff time.

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**Background and Discussion:**

Current GIS IGAs include Village of Oswego, Oswegoland Park District, and Village of Newark. The goal of the IGA is to share services, consolidate efforts, and expand resources available to everyone.

**Staff Recommendation:**

Staff recommends approval of the GIS IGA with Yorkville

**Attachments:**



## United City of Yorkville

651 Prairie Pointe Dr.

Yorkville, Illinois 60560

Telephone: 630-553-4350

[www.yorkville.il.us](http://www.yorkville.il.us)

July 16, 2024

Meagan Briganti  
Kendall County  
GIS Department

Subject: IGA – GIS Services

Dear Ms. Briganti,

I have enclosed two executed copies of the Intergovernmental Cooperative Agreement regarding Geographic Information Systems Services between the County and the United City of Yorkville. Once the County signs the agreement, please let me know, and we can arrange for someone to pick up our original copy.

Please feel free to reach out if you have any questions.

Sincerely,

Jori Behland

[jbehland@yorkville.il.us](mailto:jbehland@yorkville.il.us)

City Clerk

**UNITED CITY OF YORKVILLE  
KENDALL COUNTY, ILLINOIS**

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**ORDINANCE NO. 2024-32**

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AN ORDINANCE OF THE UNITED CITY OF YORKVILLE, KENDALL COUNTY,  
ILLINOIS, APPROVING AN INTERGOVERNMENTAL COOPERATIVE  
AGREEMENT BETWEEN THE UNITED CITY OF YORKVILLE AND KENDALL  
COUNTY, ILLINOIS FOR GEOGRAPHIC INFORMATION SYSTEMS SERVICES

Passed by the City Council of the  
United City of Yorkville, Kendall County, Illinois  
This 9<sup>th</sup> day of July, 2024

Published in pamphlet form by the  
authority of the Mayor and City Council  
of the United City of Yorkville, Kendall  
County, Illinois on July 11, 2024.

**Ordinance No. 2024-32**

**AN ORDINANCE OF THE UNITED CITY OF YORKVILLE, KENDALL COUNTY, ILLINOIS, APPROVING AN INTERGOVERNMENTAL COOPERATIVE AGREEMENT BETWEEN THE UNITED CITY OF YORKVILLE AND KENDALL COUNTY, ILLINOIS FOR GEOGRAPHIC INFORMATION SYSTEMS SERVICES**

**WHEREAS**, the United City of Yorkville, Kendall County, Illinois (the “*City*”) and Kendall County, Illinois (the “*County*”) are units of local government; and

**WHEREAS**, the Constitution of the State of Illinois of 1970, Article VII, Section 10, and the Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq., (collectively, the “*Authority*”) authorize units of local government to contract or otherwise associate amongst themselves to obtain or share services and to exercise, combine, or transfer any power or function in any manner not prohibited by law; and

**WHEREAS**, the County provides Geographical Information Systems (“*GIS*”) data services for municipalities located within the County, such services including access to the County’s GIS portal, maintenance of municipal GIS data, and updating municipal GIS data (the “*GIS Services*”); and

**WHEREAS**, the GIS Services are provided at a reasonable cost with efficient project completion times; and

**WHEREAS**, the City is located within Kendall County and desires to take advantage of the County’s GIS Services and therefore to enter into an Intergovernmental Agreement for the County to provide GIS Services to the City, attached hereto as Exhibit “A”, in furtherance of the stated goals and desires set forth above.

**NOW, THEREFORE, BE IT ORDAINED**, by the Mayor and City Council of the United City of Yorkville, Kendall County, Illinois, as follows:

**Section 1.** The above recitals are incorporated herein by reference as though fully set forth.

**Section 2.** That the *Intergovernmental Agreement for Geographic Information Systems (GIS) Services*, attached hereto and made a part hereof by reference, is hereby approved.

**Section 3.** This ordinance shall be in full force and effect upon its passage, approval, and publication as provided by law.

Passed by the City Council of the United City of Yorkville, Kendall County, Illinois this 9<sup>th</sup> day of July, A.D. 2024.

  
CITY CLERK

KEN KOCH	AYE	DAN TRANSIER	AYE
ARDEN JOE PLOCHER	AYE	CRAIG SOLING	AYE
CHRIS FUNKHOUSER	AYE	MATT MAREK	AYE
SEAVER TARULIS	ABSENT	RUSTY CORNEILS	AYE

**APPROVED** by me, as Mayor of the United City of Yorkville, Kendall County, Illinois this 12<sup>th</sup> day of July, A.D. 2024.

  
MAYOR

*Attest:*

  
CITY CLERK

**INTERGOVERNMENTAL AGREEMENT FOR  
GEOGRAPHIC INFORMATION SYSTEMS (GIS) SERVICES**

**THIS INTERGOVERNMENTAL AGREEMENT FOR GEOGRAPHIC INFORMATION SYSTEMS (GIS) SERVICES** (*“the Agreement”*) is by and between the County of Kendall, a unit of local government of the State of Illinois (*“Kendall County”*) and the United City of Yorkville.

**WITNESSETH:**

**WHEREAS**, the Constitution of the State of Illinois of 1970, Article VII, Section 10, provides that units of local government may contract or otherwise associate among themselves to obtain or share services and to exercise, combine, or transfer any power or function in any manner not prohibited by law or by ordinance and may use their credit, revenues, and other resources to pay costs related to intergovernmental activities; and

**WHEREAS**, Kendall County and United City of Yorkville (the *“parties”*) are units of local government within the meaning of Article VII, Section 1 of the Illinois Constitution of 1970 who are authorized to enter into intergovernmental agreements pursuant to the Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*; and

**WHEREAS**, the Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*, provides that any county may participate in an intergovernmental agreement under this Act notwithstanding the absence of specific authority under the State law to perform the service involved, provided that the unit of local government contracting with Kendall County has authority to perform the service; and

**WHEREAS**, in an effort to reduce costs to the taxpayers of Kendall County, the parties hereby enter into this intergovernmental agreement wherein Kendall County agrees to provide certain GIS support services for the United City of Yorkville; and

**NOW, THEREFORE,** in consideration of the premises and the mutual covenants hereafter set forth, the parties agree as follows:

1. The foregoing preambles are hereby incorporated into this Agreement as if fully restated in this paragraph 1.

2. Kendall County agrees to provide the following GIS support services to the United City of Yorkville pursuant to the terms of this Agreement, including:

- a. To provide access to GIS portal,
- b. To provide GIS data maintenance to the United City of Yorkville's data,
- c. To update the United City of Yorkville's GIS data throughout the United City of Yorkville's Service Area,
- d. To permit Kendall County GIS staff to attend training for GIS systems, provided the United City of Yorkville and Kendall County pre-approve the training, the training schedule, and all training and related travel expenses.
- e. To provide GIS services outlined in Paragraphs 2a-d above for the United City of Yorkville's special service projects, when requested by the United City of Yorkville, and upon receiving at least 60 calendar days prior notice of the need for Kendall County staff to support any non-emergency special service project.
- f. To track time spent performing services outlined above in Paragraph's 2-a-e and to generate a quarterly invoice for all the United City of Yorkville approved GIS services.

3. As consideration for the services to be performed pursuant to the terms of this Agreement, the United City of Yorkville agrees to the following:



- a. Any GIS support services provided by Kendall County must be pre-approved by the United City of Yorkville and shall be billed to the United City of Yorkville at a rate of \$60 per hour. Municipality shall make payments on quarterly invoices prepared by Kendall County staff.
- b. To pay for all training and associated travel expenses for Kendall County's employees to attend training about GIS systems, provided the training and associated travel expenses are pre-approved by the United City of Yorkville and Kendall County, the United City of Yorkville agrees to reimburse Kendall County for such expenses.
- c. To promptly reimburse Kendall County for all other expenses that Kendall County incurs on the United City of Yorkville's behalf while performing the GIS support services set forth above in this intergovernmental agreement the United City of Yorkville agrees to reimburse Kendall County for such expenses. Kendall County agrees to notify the United City of Yorkville prior to incurring any billable expense, except in the event of an emergency in which case Kendall County agrees to notify the United City of Yorkville about the billable expense as soon as practicable.
- d. To make all payment in accordance with the Illinois Local Government Prompt Payment Act, as amended (50 ILCS 505/1 et seq.) except as expressly set forth in Paragraphs 3(a) through 3(c) of this this Agreement, the parties agree that the United City of Yorkville shall not be responsible for labor costs and County resources (i.e., computers, networks, telephones, etc.) incurred by the County's

employees while the County employees perform the services set forth in this Agreement.

4. The United City of Yorkville understands and agrees that Kendall County maintains sole and absolute discretion whether to provide to the United City of Yorkville the GIS support services listed in Paragraph 2. the United City of Yorkville understands and agrees that Kendall County's ability to provide the GIS services listed in Paragraph 2 is contingent on Kendall County's maintaining sufficient software, hardware, employees, licenses, subscriptions, services, and equipment. If Kendall County, in its sole discretion, determines it lacks sufficient software, hardware, employees, licenses, subscriptions, services, or equipment to provide any of the GIS services, Kendall County shall not be under any obligation to provide the GIS services nor shall Kendall County be obligated to maintain sufficient software, hardware, employees, license, subscriptions, services, and equipment. Kendall County shall make all decisions regarding the acquisition or hiring of all software, hardware, employees, licenses, subscriptions, services, and equipment.

5. Kendall County does not guarantee the accuracy of any of the GIS support services it may provide to the United City of Yorkville. To the fullest extent permitted by law, Kendall County disclaims all express or implied warranties, including without limitation all implied warranties of merchantability or fitness for a particular purpose.

6. The parties agree to the following terms in order to maintain the security and confidentiality of Kendall County's and the United City of Yorkville's records defined as "confidential information":

- a. To the extent permitted by law, if a party to this Agreement is granted access to another party's records (and the data contained in these

records) in order to perform the GIS services set forth in this Agreement, either party shall not duplicate and/or disseminate (by publication or otherwise) said records (and the data contained therein) to any other individual, business or entity without the prior written approval of either party.

- b. In the event a party to this Agreement receives a request for the records of another party to this Agreement (whether by FOIA request, subpoena, court order, etc.), the party receiving the request shall respond to the request in accordance with the law and shall notify the other party so that it may assert whatever rights it may possess. To the extent permitted by law, a party to this Agreement shall not release any of either party's records to a third party without the prior written approval of the party or as required pursuant to court order.
- c. The parties agree to implement all measures deemed reasonably necessary by agreement of the parties to safeguard the confidentiality of either party's records.

7. This Agreement shall continue for a period of two (2) years after the parties' execution of this Agreement and will automatically renew for successive additional one (1) year terms. Any party may terminate this intergovernmental agreement by providing at least one hundred eighty (180) calendar days advance written notice to all other parties of the then current term.

8. To the extent permitted by law, the United City of Yorkville shall defend, with counsel of Kendall County's own choosing, indemnify and hold harmless Kendall County,

including Kendall County's past, present and future board members, elected officials, insurers, employees, and agents (the "Releasees") from and against any and all claims, liabilities, obligations, losses, penalties, fines, damages, and expenses and costs relating thereto, including but not limited to attorneys' fees and other legal expenses, which the Releasees may hereafter sustain, incur or be required to pay relating to, or arising in any manner out of the GIS support services Kendall County provides to the United City of Yorkville. Pursuant to 55 ILCS 5/3-9005, no attorney may be assigned to represent the Releasees pursuant to this section of the Agreement unless the Kendall County State's Attorney has pre-approved the appointment of the attorney to represent the Releasees. Releasees' participation in their defense shall not remove the United City of Yorkville's duty to indemnify, defend, and hold Releasees harmless, as set forth above. Releasees do not waive their defenses or immunities under the Local Government and Governmental Employees Tort Immunity Act (745 ILCS 10/1 et seq.) by reason of this indemnification provision. Indemnification shall survive the termination of this Agreement.

9. This Agreement and the rights of the parties hereunder may not be assigned (except by operation of law), and the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto. Nothing in this Agreement, express or implied, is intended to confer upon any party, other than the parties and their respective successors and assigns, any rights, remedies, obligations or liabilities under or by reason of such agreements.

10. Any notice required or permitted to be given pursuant to this Agreement shall be duly given if sent by certified mail, or courier service and received. As such, all notices required or permitted hereunder shall be in writing and may be given by depositing the same in the United

States mail, addressed to the party to be notified, postage prepaid and certified with the return receipt requested.

*If to the County:* Chairman of the Kendall County Board  
111 W. Fox Street  
Yorkville, Illinois 60560

With copy to:  
Kendall County State's Attorney  
807 John Street  
Yorkville, Illinois, 60560

*If to the Municipality* Mayor  
*651 Prairie Pointe Drive*  
*Yorkville, Illinois, 60560*

9. This Agreement shall be interpreted and enforced under the laws of the State of Illinois. Any legal proceeding related to enforcement of this Agreement shall be brought in the Circuit Court of Kendall County, Illinois. In case any provision of this Agreement shall be declared and/or found invalid, illegal or unenforceable by a court of competent jurisdiction, such provision shall, to the extent possible, be modified by the court in such manner as to be valid, legal and enforceable so as to most nearly retain the intent of the parties, and, if such modification is not possible, such provision shall be severed from this Agreement, and in either case the validity, legality, and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

10. This Agreement represents the entire agreement between the parties as it relates to GIS support services to be performed by Kendall County, and there are no other promises or conditions in any other agreement whether oral or written related to the GIS support services to be provided by Kendall County to the United City of Yorkville. Except as stated herein, this Agreement supersedes any other prior written or oral agreements between the parties as it relates to GIS support services and may not be further modified except in writing.

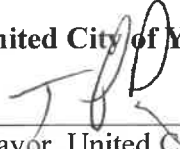
11. Kendall County and the United City of Yorkville each hereby warrant and represent that their respective signatures set forth below have been, and are on the date of this Agreement, duly authorized by all necessary and appropriate corporate and/or governmental action to execute this Agreement;

**IN WITNESS WHEREOF**, the parties hereto have caused this Intergovernmental Agreement to be executed by their duly authorized officers as of the date of last signature.

**County of Kendall, Illinois**

**United City of Yorkville**

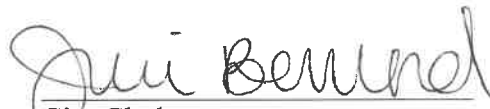
By: \_\_\_\_\_  
Chair, Kendall County Board

By:   
\_\_\_\_\_  
Mayor, United City of Yorkville

*Attest:*

*Attest:*

\_\_\_\_\_  
County Clerk

  
\_\_\_\_\_  
City Clerk



# Kendall County Agenda Briefing

---

**Meeting Type:** County Board Meeting  
**Meeting Date:** 8/7/2024  
**Subject:** Approval of Kendall Area Transit Procurement Policy  
**Prepared by:** Jennifer Breault, PCOM  
**Department:** Administration

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**Action Requested:**

Approval of Kendall Area Transit Procurement Policy

**Board/Committee Review:**

Economic Development

**Fiscal impact:**

N/A

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**Background and Discussion:**

This policy is for Kendall Area Transit to use for third policy contracts. To ensure that Kendall Area Transit complies with Federal Transit Administration (FTA) and the Illinois Department of Transportation's standards.

**Staff Recommendation:**

Approval of Kendall Area Transit Procurement Policy

**Attachments:**

Kendall Area Transit Procurement Policy



## County of Kendall, Illinois

Resolution 2024-\_\_\_\_\_

### RESOLUTION ADOPTING THE KENDALL COUNTY FTA PROCURMENT POLICY FOR KENDALL AREA TRANSIT

**WHEREAS**, in the year 2021, Kendall County enacted a procurement ordinance and;

**WHEREAS**, in 2010, Kendall County established Kendall Area Transit as the official transit service provider for the region and;

**WHEREAS**, this policy delineates the guidelines and minimum standards that Kendall County's Kendall Area Transit will implement in the administration of its third-party contracts and;

**WHEREAS**, this policy is crafted in adherence to the standards set forth by the Federal Transit Administration (FTA) and the Illinois Department of Transportation (IDOT) and;

**WHEREAS**, its purpose is to uphold principles of full and open competition, as well as to ensure equitable treatment of all potential sources in connection with purchases funded by federal, state, and local government resources.

#### **NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY BOARD OF KENDALL COUNTY, AS FOLLOWS:**

The Kendall County Board hereby adopts the Kendall County FTA Procurement policy for the Kendall Area Transit attached as Exhibit A

Approved and adopted by the County Board of Kendall County, Illinois this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

Board Chairman Signature:

Attest:

\_\_\_\_\_  
Matt Kellogg, Chairman  
Kendall County Board

\_\_\_\_\_  
Debbie Gillette  
County Clerk



**Kendall County  
FTA PROCUREMENT POLICY**

**2024**

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# 1. INTRODUCTION

## 1.1. Purpose

This policy establishes guidelines and minimum standards that Kendall County will use in the management of its third party contracts. This manual is intended to ensure that Kendall County complies with Federal Transit Administration (FTA) and the Illinois Department of Transportation's standards to ensure full and open competition and equitable treatment of all potential sources for all purchases made with funding derived from the Federal, state, and local governments. In all purchasing activity, the goal of Kendall County is to ensure maximum open and free competition consistent with:

- FTA Circular 4220.1F "Third Party Contracting Guidance" or latest version thereof;
- 2 CFR § 200.317 – 200.326

## 1.2. Applicability

This manual applies to all procurements undertaken and financed, in whole or in part, with FTA financial assistance provided to Kendall County to support **open market procurements**. An open market solicitation is used to purchase a good or service by soliciting from any available source. Most grantee procurement activity will be undertaken on the open market. Open market procurements exclude:

- Employment Contracts;
- Real Estate Contracts; and
- Intergovernmental Agreements.

The goal of this procurement policy is to provide an atmosphere in which all procurement transactions will be conducted in a manner providing full and open competition. Kendall County will avoid the following situations considered to be restrictive of competition:

- Application of unreasonable requirements placed on firms in order for them to qualify to do business;
- Imposition of geographic preference standards in the selection of vendors;
- Imposition of unnecessary experience and excessive bonding requirements;
- Use of noncompetitive pricing practices between firms or between affiliated companies;
- Employment of noncompetitive awards to any person or firm on retainer contracts;
- Failure to recognize organizational conflicts of interest, which means that because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice to the grantee; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage;
- Use of "brand name" specifications without listing its salient characteristics and not allowing "an equal" product to be offered; and
- Any arbitrary action in the procurement process.

Kendall County will conduct procurements in a manner that does not give in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This does not pre-empt Illinois

licensing laws from being considered in those disciplines that are regulated by the State of Illinois. Geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services if an appropriate number of qualified firms, given the nature and size of the project, are able to compete for the contract.

### **1.3. Third Party Contracting Capacity**

FTA regulations (2 CFR § 200.319(c) and FTA Circular 4220.1F, Chapter III, § 3a) requires Kendall County to have written procurement procedures. This policy is designed to meet FTA and IDOT's requirements in this regard.

### **1.4. Relationship to Other County Policies**

The purpose of these purchasing policies and procedures are two-fold. First, the County has established these policies and procedures to conform to the provisions of Federal procurement regulations that govern the County use of FTA and IDOT funds. Second, these policies and procedures assure that materials, supplies, services and equipment required for efficient and effective operation of the transit program are procured with regard to an analysis of price, quality, quantity, terms and delivery specifications. These policies and procedures pertain only to the County's purchases made with FTA funds for the transit program; purchases with local funds and for purposes other than transit should follow the applicable Illinois law.

These policies may not answer all questions related to purchasing; if any employee of Kendall County has a question regarding these procedures, IDOT should be contacted for clarification and guidance.

When Kendall County undertakes any purchase utilizing FTA funds, this policy shall supersede any existing purchasing policy promulgated by the County. When any conflict exists between this policy and the existing policies of the County, the procedures in this policy shall prevail. If any employee of Kendall County determines that a conflict exists between these policies and state and local law, Kendall County shall contact IDOT and communicate the conflict.

## **2. CODE OF ETHICS AND CONFLICT OF INTEREST POLICY**

### **2.1. Purpose**

Federal grant management rules (2 CFR § 200.318(c)(1)) require each recipient to maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. This policy must address:

- Personal conflicts of interest
- Gifts; and
- Violations.

### **2.2. Definition of Key Terms**

As used herein, the following definitions apply:

**Conflict of Interest** – A situation in which an employee, Kendall County Board Member, officer, or agent has a private or personal interest sufficient to appear to influence the objective exercise of his or her official duties. A conflict of interest represents a divergence between a person covered by this policy and their private interests and their professional obligations to the Kendall County such that an independent observer might reasonably question whether the individual’s professional actions or decisions are determined by considerations of personal gain, financial or otherwise.

**Financial Interest** – An officer, agent, Kendall County Board Members, his or her partner, employee, or their immediate family, is considered as having a financial interest in a company if: they receive more than \$10,000 in consulting income, salaries, or equity in the company; they have more than 5 percent equity in the company; they have intellectual property rights in or receive royalties from the company; or they serve as a director, officer, partner, trustee, manager or employee of the company.

**Immediate Family** – Immediate family includes an employee’s spouse, grandparent, parent, brother, sister, child or grandchild, his or her partner.

### **2.3. Applicability**

No employee, elected official, agent, or other individual under an employment contract with Kendall County, or his or her immediate family member, partner, or organization that employs or is about to employ any of the foregoing may participate in the selection, award, or administration of a contract supported with FTA assistance if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when any of those previously listed individuals has a financial or other interest in the firm selected for award.

### **2.4. Gifts**

Any contractor, subcontractor, or supplier who has a contract with the County; has performed under such a contract within the past year; or anticipates bidding on such a contract in the future shall be prohibited from making gifts or to providing favors to any individual defined in Section 2.2. who is charged with the duty of:

- Preparing plans, specifications, or estimates for public contract; or
- Awarding or administering public contracts; or
- Inspecting or supervising construction.

Kendall County also prohibits all covered individuals defined in Section 2.2. who perform the functions listed above from receiving or accepting any such gift or favor.



## **2.5. Employee Conflicts of Interest**

### **2.5.1. Conflicts of Interest**

It shall be a breach of ethical standards for any Kendall County employee to participate directly or indirectly in a procurement when the employee knows:

- The employee or any member of the employee's immediate family, Kendall County Board Member, officer, agent, his or her partner, has a financial interest pertaining to the procurement;
- A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or
- Any other person, business, or organization with whom the employee or any member of employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

### **2.5.2. Discovery of Actual or Potential Conflict of Interest (Disqualification and Waiver)**

Upon discovery of an actual or potential conflict of interest, an employee participating directly or indirectly in a procurement shall:

- Promptly file a written statement of disqualification with the Kendall County Administrator; and
- Withdraw from further participation in the procurement.

The employee may, at the same time, request from the Kendall County Administrator an advisory opinion as to what further participation, if any, the employee may have in the procurement. It shall be at the discretion of the Kendall County Administrator to determine if the employee may have any further participation in the procurement and, if so, the extent to which the employee may participate. Any employee who fails to comply with the provisions of this paragraph may be subject to disciplinary action.

### **2.5.3. Employee Disclosure Requirements**

A Kendall County employee, who has reason to believe that he/she or his/her immediate family have an interest that may be affected by his/her official acts or actions as a Kendall County employee or by the official acts or actions of Kendall County, shall disclose the precise nature and value of such interest in a written disclosure statement to the Kendall County Administrator. The employee's disclosure statement will be reviewed by the Kendall County Administrator and the Kendall County Administrator will respond to the employee in writing with an opinion as to the propriety of said interest.

In the event that the Kendall County Administrator has reason to believe that he/she or his/her immediate family has an interest that may be affected by his/her official acts or actions as a Kendall County employee or by the official acts or actions of Kendall County, he/she shall disclose the precise nature and value of such interest in a written disclosure statement to the Kendall County Board Chairman.

#### **2.5.4. Confidential Information**

A Kendall County employee may not directly or indirectly make use of, or permit others to make use of, for the purpose of furthering a private interest, confidential information acquired by virtue of their position or employment with Kendall County .

#### **2.5.5. Solicitation Provision**

Kendall County shall insert the following provisions in all formal competitive solicitation documents for products and services:

*These policies shall apply to Kendall County employees involved in procurement. It is a breach of ethical standards for any Kendall County employee to participate directly or indirectly in a procurement when the employee knows:*

- *The employee or any member of the employee’s immediate family has a financial interest pertaining to the procurement;*
- *A business or organization in which the employee, or any member of the employee’s immediate family, has a financial interest pertaining to the procurement; or*
- *Any other person, business or organization with whom the employee or any member of employee’s immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.*

*In addition, any persons acting as members of an evaluation committee for any procurement shall, for the purposes of the procurement, be bound by conditions of this Section. Throughout the bid/proposal evaluation process and subsequent contract negotiations, offerors shall not discuss or seek specific information about this procurement, including but not limited to, the contents of submissions, the evaluation process or the contract negotiations, with members of any evaluation committee, the Kendall County Board, or other Kendall County employees other than the designated procurement officer.”*

#### **2.6. Organizational Conflicts of Interest**

The procurement officer and technical personnel are encouraged to work closely with the Kendall County States Attorneys Office to review all situations that appear to have the potential for an organizational conflict of interest.

Organizational conflicts of interest may result in bias and potentially provide an unfair competitive advantage to a potential offeror. An organizational conflict of interest occurs due to the type of work to be performed under a third-party contract, or because of other activities or relationships such as:

- A contractor is unable, or potentially unable, to render impartial assistance or advice to the County;
- A contractor’s objectivity in performing contract work is or might otherwise be impaired; or
- A contractor has an unfair competitive advantage.

Bias arises when a contractor is placed in a situation where there may be an incentive to distort advice or decisions. Whenever a contract is awarded that involves the rendering of advice, the question must always be asked as to whether the potential for a conflict of interest exists for the contractor rendering the advice. Kendall County will utilize a "Conflict of Interest Disclosure Statement," in its solicitation when contracting for services of this nature.

### **3. KENDALL COUNTY RESPONSIBILITIES UNDER FEDERAL LAW**

#### **3.1. Third Party Contracting Capacity**

Kendall County must maintain adequate technical capacity to carry out its FTA assisted projects and comply with Federal rules. Kendall County's third party contracting capacity must be adequate to undertake its procurements effectively and efficiently in compliance with applicable Federal, state, and local requirements.

#### **3.2. Contract Administration System**

Kendall County must maintain a contract administration system to ensure that it and its third-party contractors comply with the terms, conditions, and specifications of their contracts or purchase orders and applicable Federal, state and local requirements.

##### **3.2.1. Written Procurement Procedures**

Kendall County must maintain and follow written procurement procedures that address:

- (a) Solicitations – Requirements for Kendall County solicitations are addressed in Section 5.
- (b) Necessity – Requirements related to Kendall County's need for products or services are addressed in Section 3.2.2.
- (c) Lease Versus Purchase – Requirements related to the use of lease or purchase alternatives to achieve an economical and practical procurement are addressed in Section 3.2.2
- (d) Metric Usage – Requirements related to the acceptance of products and services dimensioned in the metric system of measurement are addressed in Section 3.5.2.
- (e) Environmental and Energy Efficiency Preferences – Requirements related to preference for products and services that conserve natural resources, protect the environment, and are energy efficient are addressed in Sections 3.4.3 and 3.4.4.
- (f) Procurement Methods – Descriptions of the procurement methods that Kendall County may use are included in Section 5.
- (g) Legal Restrictions – Descriptions of Federal and state restrictions on Kendall County's acquisitions are included in Section 5.

(h) Third Party Contract Provisions – Specific third party contract provisions required for each third party contract and flow down requirements to subcontracts are included in Section 3.1 through 3.7.

- (1) Sources – Descriptions of the availability and use of various sources of products and services are addressed in Section 4.
- (2) Resolution of Third Party Contracting Issues – Procedures related to the resolution of third party contracting issues are included in Section 6.8.

### **3.2.2. Adequate Third Party Contract Provisions**

Kendall County must include provisions in all of its third-party contracts that are adequate to form a sound and complete agreement.

### **3.2.3. Industry Contracts**

Kendall County shall not use an industry developed contract or a contract that is provided by a bidder or offeror unless it has first evaluated the benefits of the contract. Kendall County shall ensure that such contracts include all required Federal provisions but do not include terms and conditions that may be unfavorable to Kendall County .

### **3.2.4. Revenue Contracts**

Kendall County may enter into a revenue contract with a third party to generate revenues in connection with a transit related activity, or to create business opportunities utilizing an FTA funded asset. Any such said contract opportunity will follow a competitive selection procedures and principles outlined herein.

### **3.2.5. Record Keeping**

Kendall County must prepare and maintain adequate and readily accessible project performance and financial records, covering procurement transactions as well as other aspects of project implementation. Kendall County must maintain these records for five (5) years after Kendall County and its subrecipients, if any, have made final payment and all other pending matters are closed. Specific record keeping requirements include:

- (a) Written Record of Procurement History – Kendall County must maintain and make available to IDOT and FTA written records detailing the history of each procurement. For all procurements above the micro-purchase level Kendall County must maintain records relating to:
  - (1) Procurement Method – Kendall County must provide its rationale for the method of procurement it used for each contract, including a sole source justification for any acquisition that does not qualify as competitive;
  - (2) Contract Type – Kendall County must state the reasons for selecting the contract type it used;
  - (3) Contractor Selection – Kendall County must state its reasons for contractor selection or rejection;

- (4) Contractor Responsibility – Kendall County must provide a written determination of responsibility for the successful contractor;
  - (5) Cost or Price – Kendall County must evaluate and state its justification for the contract cost or price; and
  - (6) Reasonable Documentation – Kendall County must retain documentation commensurate with the size and complexity of the procurement.
  - (7) Vendor Verification – Kendall County must include verification of acceptance with a selected vendor/supplier/manufacturer through the Federal System of Award Management (SAM) for each project and associated project file.
- (b) Access to Records – Kendall County must provide FTA and IDOT officials, the Comptroller General, or any of their representatives, access to and the right to examine and inspect all records, documents, and papers, including contracts, related to any FTA project financed with Federal assistance.
- (c) Use of Technology/Electronic Commerce – Kendall County may use an electronic commerce system to conduct third party procurements. If Kendall County uses an electronic commerce system, then the following requirements apply:
- (1) Sufficient System Capacity – Kendall County 's system must have sufficient system capacity necessary to accommodate all Federal requirements for full and open competition.
  - (2) Written Procedures – Before any solicitation takes place, Kendall County must establish adequate written procedures to ensure that all information FTA/IDOT requires for project administration is entered into the system and can be made readily available to IDOT as needed.

### **3.3. Determination of Needs**

Kendall County must maintain and follow adequate procedures for determining the types and amounts of products and services it needs to acquire. Kendall County shall comply with the following requirements when determining the types and amounts of products and services it needs to acquire:

### **3.4. Eligibility**

All products and services to be acquired with FTA funds must be eligible under the Federal law authorizing the FTA assistance award and any regulations thereunder. All products and services to be acquired with FTA funds must also be eligible for support within the scope of the underlying grant or cooperative agreement from which the FTA assistance to be used is derived.

### **3.5. Necessity**

Kendall County shall adhere to the following standards for avoiding the purchase of duplicative and/or unnecessary products and services it does not need.

### 3.5.1. Unnecessary Reserves

Kendall County shall limit the acquisition of Federally-assisted property and services to the amount it needs to support its operations.

### 3.5.2. Acquisition for Assignment Purposes

Kendall County shall contract only for its current and reasonably expected public transportation needs and shall not add quantities or options to third party contracts solely to permit assignment to another party at a later date. These limits on assignments, however, do not preclude joint procurements that are entered into simultaneously by two or more parties to obtain advantages unavailable for smaller procurements.

- (a) General Prohibition – Kendall County may contract only for its current and reasonably expected public transportation needs and may not add quantities or options to third party contracts solely to permit assignment to another party at a later date.
- (b) Changes in the Recipient’s Needs – IDOT and FTA recognize that the quantity of property or services a recipient reasonably believes it may need at the time of contract award may change. Kendall County 's later needs might decrease due to changed circumstances or honest mistakes. In those situations, Kendall County may assign its unneeded contract authority to another entity that would like to acquire the property or services.
- (c) Exceptions – These limits on assignments, however, do not preclude:
  - (1) Joint Procurements – Kendall County and one or more other FTA recipients may enter into a single procurement at the same time to obtain advantages unavailable for smaller procurements.
  - (2) Participation in IDOT Sponsored Vehicle Procurements – Kendall County may enter into contracts developed by the State of Illinois to acquire vehicles.
- (d) Procurement Size – For every procurement, Kendall County shall consider whether to consolidate or break out the procurement to obtain the most economical purchase. Absent efforts to foster greater opportunities for Disadvantaged Business Enterprises (DBEs), small and minority firms and women’s business enterprises, Kendall County shall not split a larger procurement merely to gain the advantage of micro-purchase or small purchase procedures.
- (e) Options – Kendall County shall justify, as needed, all option quantities included in every solicitation and contract. An option is a unilateral right in a contract by which, for a specified time, Kendall County may acquire additional equipment, supplies, or services than originally procured. An option may also extend the term of the contract.
- (f) Lease Versus Purchase – Kendall County shall review lease versus purchase alternatives for acquiring property and shall prepare or obtain an analysis to determine the most economical alternative. If Kendall County chooses to lease an asset then it must prepare a written comparison of the cost of leasing the asset compared with the cost of purchasing or constructing the asset.

- (g) Specifications – Kendall County 's procurement specifications shall clearly describe the products or services to be procured and shall state how the proposals will be evaluated. Kendall County 's procurement specifications shall not be exclusionary, discriminatory, unreasonably restrictive or otherwise in violation of Federal or Illinois laws or regulations.

### **3.6. Contractor Responsibilities**

Kendall County , in awarding contracts, financed in whole or in part, with FTA financial assistance, shall follow guidance in this section to evaluate contractor capabilities to perform the contract.

In addition to the Federal rules (2 CFR § 200.318(h)) that require contract awards be made only to responsible contractors, Federal transit law at 49 U.S.C. § 5325(j) limits third party contractor awards to those contractors capable of successfully performing under the terms and conditions of the proposed contract. Before selecting a contractor for award, Kendall County must consider such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

#### **3.6.1. Debarment and Suspension**

Debarment and suspension regulations and guidance include the following provisions.

#### **3.6.2. DOT Debarment and Suspension Regulations**

U.S. Department of Transportation (DOT) regulations, “Nonprocurement Suspension and Debarment,” 2 CFR Part 1200 apply to each third party contract at any tier of \$25,000 or more, to each third party contract at any tier for a federally required audit (irrespective of the contract amount), and to each third party contract at any tier that must be approved by an FTA official irrespective of the contract amount (2 CFR § 1200). Kendall County shall apply DOT’s debarment and suspension requirements to itself and each third-party contractor at every tier to the extent required by DOT’s regulations that incorporate the requirements of Office of Management and Budget (OMB), “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)” (2 CFR § 180).

#### **3.6.3. System for Award Management**

The System for Award Management (SAM) combines Federal procurement systems and the Catalog of Federal Domestic Assistance into one new system. SAM includes the functionality from the following systems:

- Central Contractor Registry (CCR)
- Federal Agency Registration (Fedreg)
- Online Representations and Certifications Application
- Excluded Parties List System (EPLS)

At its discretion, Kendall County may collect a debarment and suspension certification from the prospective third party contractor or include a clause in the third party contract requiring disclosure.

Additionally, it shall be the policy of Kendall County to verify that the prospective third party vendor is not listed as a debarred contractor on SAM.

#### **3.6.4. Lobbying Certification and Disclosure**

If a third-party contract will exceed \$100,000, before awarding the contract, Kendall County will obtain a lobbying certification, and if applicable, a lobbying disclosure from a prospective third party contractor (see DOT regulations, “New Restrictions on Lobbying,” 49 CFR Part 20, modified as necessary by 31 U.S.C. Section 1352).

#### **3.6.5. Additional Requirements**

In addition to the requirements outlined above, there are various requirements that may apply to Kendall County’s third-party contracts, depending upon the type of procurement and the anticipated dollar value of said contract. It is the responsibility of Kendall County to assess each procurement and determine the applicable FTA third party terms and conditions that should be included in the solicitation and contract documents. FTA Circular 4220.1F, Appendix D, has a matrix stipulating these conditions. These conditions may include:

- Federal Civil Rights Laws and Regulations
  - Federal Equal Employment Opportunity (EEO) Requirements
  - Nondiscrimination on the Basis of Sex
  - Nondiscrimination on the Basis of Age
  - Nondiscrimination in Federal Public Transportation Programs
  - Title VI of the Civil Rights Act
  - Environmental Justice
  - Limited English Proficiency (LEP)
  - Nondiscrimination on the Basis of Disability
- Socio-Economic Development Regulations
  - Disadvantaged Business Enterprises (DBE)
  - Small and Minority Firms and Women’s Business Enterprises
  - Sensitive Security Information
  - Seat Belt Use
- Socio-Economic Requirements for the Acquisition of Property and Services
  - Labor Regulations
    - Wage and Hour Requirements
    - Fair Labor Standards
- Environmental Protections
  - Environmental Mitigation
  - National Environmental Policy Act (NEPA)
    - Protections for Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites
    - Clean Air
    - Clean Water
    - Recycled Products
    - Other Federal Environmental Protection Requirements
- Energy Conservation



- Preference for U.S. Property--Buy America
- Shipments of Property--U.S. Flag Requirements
  - Shipments by Ocean Vessel
  - Shipments by Air Carrier
  - Project Travel--Use of U.S. Flag Air Carriers
- Technical Restrictions on the Acquisition of Property and Services
  - Intelligent Transportation Systems (ITS)
  - Metric Measurements
  - Use of \$1 Coins
- Rolling Stock--Special Requirements
  - Accessibility
  - Transit Vehicle Manufacturer Compliance with DBE Requirements
  - Minimum Service Life
  - Spare Ratios
  - Air Pollution and Fuel Economy
  - Pre-award and Post Delivery Review
  - Bus Testing
  - In-State Dealers
  - Basis for Contract Award
  - Five-Year Limitation
- Public Transportation Services—Special Requirements
  - Protections for Public Transportation Employees
  - Drug and Alcohol Testing
  - Accessibility
  - Charter Service Restrictions
  - School Bus Restrictions
- Construction – Special Requirements
  - Bonding
  - Bid Guarantee
  - Performance Bond
  - Payment Bond
  - Anti-Kickback
  - Construction Safety
  - Labor Neutrality
  - Prevailing Wages
- Other Required Provisions
  - Trafficking in Persons
  - Federal Tax Liability and Recent Felony Convictions
  - Prohibition on Certain Telecommunications and Video Surveillance Services and Equipment
  - Program Fraud and False or Fraudulent Statements and Related Acts

### **3.7. Bonding**

Some procurements may require Kendall County to require the vendor to submit a bid bond, performance bond, or payment bond (typically construction projects). When bonding is required, the following conditions will apply.

#### **3.7.1. Thresholds**

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, IDOT may accept the bonding policy and requirements of the County provided that IDOT has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

##### **3.7.1.1. Bid Guarantee**

A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

##### **3.7.1.2. Performance Bond**

A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

##### **3.7.1.3. Payment Bond**

A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

#### **3.7.2. Acceptable Sureties**

Federal rules for non-governmental recipients requires the non-governmental recipient to obtain construction bonds from companies holding certificates of authority as acceptable sureties under Department of the Treasury regulations, “Surety Companies Doing Business with the United States,” (31 CFR Part 223). For a current list of approved sureties, see Department of the Treasury’s Listing of Approved Sureties (Department Circular 570). As FTA encourages governmental recipient to require similarly acceptable sureties, it shall be the policy of Kendall County to such accept sureties.

#### **3.7.3. Reduced Bonding**

Kendall County recognizes that bonding costs can be expensive. Kendall County will accept a local bonding policy that conforms to the minimums described in Section 3.4.1. If bonding levels are sought at levels less than these amounts, Kendall County must obtain the prior approval of IDOT/FTA. IDOT/FTA

shall approve such requests only if it determines that Kendall County 's bonding policy adequately protects the Federal interest in the project.

#### **3.7.4. Excessive Bonding**

Kendall County will adhere to FTA's rules on excessive bonding requirements (FTA Circular 4220.1F, Chapter IV, § 2h(1)(f)). However, if Kendall County determines it has a material risk of loss because of a failure of the prospective contractor, bonding requirements may exceed those outlined in Section 3.7.1 only with the prior approval of IDOT/FTA.

#### **3.8. Veterans Preference**

As provided by 49 U.S.C. § 5325(k), Kendall County shall ensure that contractors working on a capital project funded using Federal financial assistance give a hiring preference, to the extent practicable, to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or former employee.

#### **3.9. Preference for U.S. Manufactured Products -- Build America, Buy America**

Buy America regulations require that all iron, steel, and manufactured products used in an FTA project are produced in the United States. Vehicle purchases are included in the category of manufactured products. Originally, the iron and steel requirements applied to all construction materials made primarily of steel or iron used in infrastructure projects.

On November 15, 2021, President Biden signed the Infrastructure Investment and Jobs Act (IIJA or the Bipartisan Infrastructure Law), Pub. L. No. 117-58, which includes the Build America, Buy America Act (BABA). IIJA div. G §§ 70901-27.

Specifically, BABA expands the coverage and application of Buy America preferences in Federal financial assistance programs for infrastructure. BABA requires that no later than May 14, 2022—180 days after the date of enactment—the head of each covered Federal agency shall ensure that “none of the funds made available for a Federal financial assistance program for infrastructure ... may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.” IIJA § 70914(a).

BABA provides that the preferences under Section 70914 apply only to the extent that a domestic content procurement preference as described in Section 70914 does not already apply to iron, steel, manufactured products, and construction materials. IIJA § 70917(a)–(b). This provision allows Federal agencies to preserve existing Buy America policies and provisions that meet or exceed the standards required by BABA.

One of the new Buy America preferences included under BABA is for construction materials. By May 14, 2022, each covered Federal agency must ensure that all manufacturing processes for construction materials used in federally assisted infrastructure projects occur in the United States. None of the

specific statutes that apply particular Buy America requirements to the Federal financial assistance programs administered by DOT's Operating Administrations specifically covers construction materials, other than to the extent that such materials would already be considered iron, steel, or manufactured products. IIJA § 70914.

### **3.9.1. Application of Build America, Buy America Preference**

By May 14, 2022, agencies must ensure that all applicable programs comply with section 70914 of the Act, including by the incorporation of a Buy America preference in the terms and conditions of each award with an infrastructure project.<sup>1</sup> The Act requires the following Buy America preference:

(1) All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) All manufactured products used in the project are produced in the United States. This means the manufactured product was manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.

(3) All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.<sup>2</sup>

### **3.9.2. Waivers of Build America, Buy America Requirements**

#### **3.9.2.1. Waiver based on time of award:**

(1) DOT is waiving the BABA construction materials requirements for any contracts entered into before November 10, 2022. Second, DOT is waiving the BABA construction materials requirements for any contracts entered into before March 10, 2023, that result from solicitations published before May 14, 2022. For contracts executed after May 14, 2022, the waiver does not apply to any construction materials that a contractor or subcontractor takes delivery of on or after October 1, 2024.

The waiver is applicable to awards that are obligated on or after January 30, 2023. For awards that are obligated on or after November 10, 2022, but prior to January 30, 2023, this waiver is applicable to expenditures for construction materials incurred on or after January 30, 2023. For contracts executed

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<sup>1</sup> IIJA, § 70923(a) & (b)(1).

<sup>2</sup> IIJA, § 70912 (2) & (6)(B)(ii)

after May 14, 2022, the waiver does not apply to any construction materials that a contractor or subcontractor takes delivery of on or after October 1, 2024.

### **3.9.2.2. Small Purchase Waiver**

Total purchases less than the current small purchase threshold of \$150,000 are not required to apply Buy America provisions. FTA applies Buy America rules based on total allowable purchases costs. This means that all costs of a purchase, even those not subject to Buy America rules, such as labor, are considered in the total value of a purchase to determine if Buy America rules apply to the purchase.

### **3.9.2.3. Rolling Stock Waiver**

When procuring rolling stock, this waiver allows for the cost of the components and subcomponents produced in the United States to be more than 70% rather than all of the cost of all components of the rolling stock, for fiscal year 2020 and after.

### **3.9.2.4. Microprocessor Waiver**

Microprocessors, computers, microcomputers, or software, or other such devices, which are used solely for the purpose of processing or storing data have a general public interest waiver. The waiver does not extend to a product or device which merely contains a microprocessor or microcomputer and is not used solely for the purpose of processing or storing data.

### **3.9.2.5. Public Interest Waiver for De Minimis Costs and Small Grants**

Effective for awards obligated or sub awards made after August 16, 2023, the USDOT issued a waiver for de minimis costs and small grants. That is, the waiver considers only total Buy America applicable project cost— the cost of materials (including the cost of any manufactured products) used in the project that are subject to a domestic preference requirement, including materials that are within the scope of an existing waiver. The waiver is applicable to subawards only if the subawards are made by a pass-through entity for a specific project.

A project may qualify for the BABA Public Interest Waiver in one of two categories:

**De Minimis Cost Waiver:** This portion allows for a waiver of Buy America preference on the total value of non-compliant products if their value is not more than the lesser of \$1,000,000 or 5 % of total applicable costs for the project.

**Small Grants Wavier:** This portion allows for a waiver of construction costs on a project if the total amount of Federal financial assistance applied to the project, through awards or subawards, is below \$500,000.

### 3.9.3. Notifying Potential Third-Party Contractors of BABA Requirements

Where applicable, Kendall County must include appropriate terms and conditions in all solicitations and awards, in accordance with applicable legal requirements and its established procedures, in order to effectuate the requirements of the Act and this guidance. That is, in addition to the Buy America clause regarding iron, steel, and manufactured projects that has been required by FTA for years, Kendall County must now also provide applicants for infrastructure projects fair notice of the Buy America conditions that will apply to funds granted under the federal award.

*The following is sample language to be included in all infrastructure solicitations and awards:*

Recipients of an award of Federal financial assistance from a program for infrastructure are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

- (1) all iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- (2) all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
- (3) all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

### 3.10. Accessibility

Facilities to be used in public transportation service must comply with 42 U.S.C. Sections 12101 *et seq.* and DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR § 37; and Joint ATBCB/DOT regulations, “Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 CFR § 1192 and 49 CFR § 38. Notably, DOT incorporated by reference the ATBCB’s “Americans with Disabilities Act Accessibility Guidelines” (ADAAG), revised July 2004, which include accessibility guidelines for buildings and facilities, and are incorporated into Appendix A to 49 CFR Part 37. DOT also added specific provisions to Appendix A modifying the ADAAG, with the result that

buildings and facilities must comply with both the ADAAG and amendments thereto in Appendix A to 49 CFR Part 37.

### **3.11. Prohibition on Certain Telecommunication and Video Surveillance Services or Equipment**

2 CFR § 200.216 prohibits FTA recipients from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104. The effective date for the current rule prohibiting these purchases was August 13, 2020.

Covered and prohibited telecommunications equipment or services refers to certain brands owned or controlled by the government of the People’s Republic of Chinese, including the following:

- (1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
- (2) Video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
- (3) Telecommunications or video surveillance services provided by such entities or using such equipment; or
- (4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Kendall County will not purchase covered equipment, and will include the corresponding clause in all solicitations and third party contracts.

## **4. SOURCES OF ACQUISITIONS**

### **4.1. Force Account**

Force account means use of Kendall County 's own labor forces and equipment to undertake a project (typically construction, renovation, or repair). The use of force account labor is a project management function, rather than a procurement and contract administration function, except in the general sense of the County’s ability to perform work with its own forces rather than contracting with another entity to acquire the property or services it needs, and the cost implications of the recipient’s decision. Kendall County does not charge force account labor to its FTA grants.

### **4.2. Joint Procurements**

Kendall County may participate in joint procurements whereby Kendall County and one or more other entities agree from the outset to use a single solicitation document and enter into a single contract with

a vendor for delivery of products or services. The following requirements apply to Kendall County 's participation in joint procurements:

- Solicitation documents may not be drafted for the purpose of accommodating the needs of other parties that may later want to participate in the benefits of the contract.
- Kendall County is responsible for ensuring that the joint procurement solicitation and contract complies with all Federal requirements and that the solicitation document and contract includes all required clauses and certifications.

### **4.3. State or Local Government Purchasing Schedules or Purchasing Contracts**

#### **4.3.1. Definition**

FTA uses the term "state or local government purchasing schedule" to mean an arrangement that a State or local government has established with several or many vendors in which those vendors agree to provide essentially an option to the State or local government, and its subordinate government entities, to acquire specific property or services in the future at established prices. These arrangements are somewhat similar to the General Services Administration's (GSA) Cooperative Purchasing Program available for Federal Government use.

#### **4.3.2. Applicability of Federal Provisions**

When obtaining property or services in this manner, Kendall County must ensure all Federal requirements, required clauses, and certifications (including Buy America) are properly followed and included, whether in the master intergovernmental contract or in the recipient's purchase document. While IDOT takes all precautions to ensure that such provision are in the original solicitation and contract documents, it is ultimately Kendall County 's responsibility to ensure such documents and certifications are obtained.

If such requirements, clauses, and certifications were not included in the original purchase solicitation and contracts, Kendall County may request the vendor to append the required Federal clauses in the purchase order or other document that effects the Kendall County 's procurement. When this method is used, Kendall County shall obtain Buy America certification before entering into the purchase order. This method cannot be used to circumvent FTA's Buy America requirements.

#### **4.3.3. Federal Supply Schedules**

Purchases by Kendall County from Federal Supply Schedules established by the U.S. General Services Administration (GSA) are limited to the purchase of information technology (IT) products and to products and services to facilitate recovery from a major disaster. The following requirements apply to Kendall County purchases from GSA schedules:

- Kendall County is authorized to use GSA schedules for purchases of products and services to facilitate recovery from a major disaster that is declared by the President of the United States. Upon declaration of a major disaster by the President, Kendall County may purchase products and services from GSA schedules both in advance and in the aftermath of the emergency event.



Kendall County shall be responsible for ensuring that the products and services acquired will only be used for recovery.

- Kendall County must ensure that all Federal requirements, required clauses and certifications are properly followed and included, whether in the master intergovernmental contract or Kendall County's purchase document.
- Kendall County is required to evaluate the reasonableness of prices obtained from GSA schedules. GSA schedule pricing may not be used as a sole or single source for procurement. Kendall County may only use GSA schedule pricing as one of multiple pricing sources solicited in accordance with its requirements for small purchases described in Section 5.

#### **4.3.4. Existing Contracts**

Kendall County may use existing contract rights as an acquisition source. An "existing contract" means a contract that, when formed, was intended to be limited to the original parties thereto.

##### **4.3.4.1. Permissible Actions**

Within the conditions set forth below, Kendall County may use existing contract rights held by another recipient of FTA assistance:

- (a) Exercise of Options – Kendall County may use contract options held by another recipient of FTA assistance with the following limitations:
  - (1) Consistency with the Underlying Contract – Kendall County must ensure that the terms and conditions of the option it seeks to exercise are substantially similar to the terms and conditions of the option as stated in the original contract at the time it was awarded.
  - (2) Price – Kendall County may not exercise an option unless it has determined that the option price is better than prices available in the open market, or that when it intends to exercise the option, the option is more advantageous.
  - (3) Awards Treated as Sole Source Procurements – The following actions constitute sole source awards:
    - i. Failure to Evaluate Options Before Awarding the Underlying Contract – If a contract has one or more options and those options were not evaluated as part of the original contract award, exercising those options after contract award will result in a sole source award.
    - ii. Negotiating a Lower Option Price – Exercising an option after Kendall County has negotiated a lower or higher price will also result in a sole source award unless that price can be reasonably determined from the terms of the original contract, or that price results from Federal actions that can be reliably measured.
- (b) Assignment of Contract Rights ("Piggybacking") – If Kendall County finds that it has inadvertently acquired contract rights in excess of its needs, it may assign those contract rights to another IDOT subrecipient if the original contract contains an assignability provision that permits the assignment of all or a portion of the specified deliverables under the terms originally advertised, competed, evaluated, and awarded, or contains other appropriate assignment

provisions. Kendall County may use contractual rights through assignment from another recipient of FTA assistance after first determining the contract price remains fair and reasonable, and the contract provisions are adequate for compliance with all Federal requirements. Kendall County need not perform a second price analysis if a price analysis was performed for the original contract; however, Kendall County must determine whether the contract price or prices originally established are still fair and reasonable before using those rights. Kendall County shall be responsible for ensuring the contractor's compliance with FTA's Buy America requirements and execution of all the required pre-award and post-delivery Buy America review certifications. Before proceeding with the assignment, however, Kendall County shall review the original contract to be sure that the quantities the assigning recipient acquired, coupled with the quantities that Kendall County seeks, do not exceed the amounts available under the assigning recipient's contract.

#### **4.3.4.2. Impermissible Actions**

Kendall County may not use Federal assistance to finance:

- (a) Improper Contract Expansion – A contract has been improperly expanded when it includes a larger scope, greater quantities, or options beyond the recipient's reasonably anticipated needs. A contract has also been improperly expanded when excess capacity has been added primarily to permit assignment of those contract rights to another entity.
- (b) Cardinal Changes – A significant change in contract work that causes a major deviation from the original purpose of the work or the intended method of achievement, or causes a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract, is a cardinal change or "tag-on". A change within the scope of the contract is not a cardinal change or "tag-on".

#### **4.4. The Open Market**

Kendall County will acquire most of the property and services it needs through procurements in the open market using procedures described in Section 5 of this Manual.

## **5. PROCEDURES FOR OPEN MARKET PROCUREMENTS**

### **5.1. Solicitation of Competitive Price Quotes, Bids or Proposals**

Compliance with the solicitation procedures described in Section 5.4 below will fulfill FTA requirements for "full and open competition."

### **5.2. Receipt and Evaluation of Unsolicited Proposals**

Kendall County may enter into contracts based on an unsolicited proposal when authorized by applicable State law or regulation. Receipt of an unsolicited proposal does not, by itself, justify contract award without providing for full and open competition. Unless the unsolicited proposal offers a proprietary concept that is essential to contract performance, Kendall County must seek competition.

To satisfy the requirement for full and open competition, Kendall County must take the following actions before entering into a contract resulting from an unsolicited proposal:

- Publicize its receipt of the unsolicited proposal;
- Publicize an adequate description of the products or services offered without improperly disclosing proprietary information or disclosing the originality of thought or innovativeness of the products or services sought;
- Publicize its interest in acquiring the products or services described in the proposal;
- Provide an adequate opportunity for interested parties to comment or submit competing proposals; and
- Publicize its intention to award a contract based on the unsolicited proposal or another proposal submitted in response to the publication.

If it is impossible to describe the products or services offered without revealing proprietary information or disclosing the originality of thought or innovativeness of the products or services sought, Kendall County may make a sole source award to the offeror. A sole source award may not be based solely on the unique capability of the offeror to provide the specific products or services proposed.

### **5.3. Prequalification**

Kendall County may prequalify bidders, offerors, and products for procurement purposes; however, Kendall County is not required to do so. The decision of whether to require prequalification for eligibility to participate in procurement shall be made separately for every procurement and shall be approved by the Program Compliance Oversight Monitor (PCOM).

If Kendall County opts to prequalify bidders, offerors, and products for procurement purposes, the following conditions apply:

- Kendall County must ensure that all prequalification lists it uses are current;
- Kendall County must ensure that all prequalification lists it uses include enough qualified sources to provide maximum full and open competition; and
- Kendall County must permit potential bidders or offerors to qualify during the solicitation period (from the issuance of the solicitation to its closing date). Kendall County is not required to hold a particular solicitation open to accommodate a potential supplier that submits products for approval before or during that solicitation nor must Kendall County expedite or shorten prequalification evaluations of bidders, offerors, or products presented for review during the solicitation period.

### **5.4. Solicitation Requirements and Restrictions**

Every procurement solicitation that Kendall County issues above the micro-purchase level (currently established in Federal guidance at \$10,000), must include the following information and be advertised in a manner that ensures adequate and open competition.

#### **5.4.1. Statement of Federal Assistance**

Pursuant to Circular 4220.1F, Chapter III, § 3e, all RFPs, solicitations, press releases or other publications involving FTA assistance must state that FTA is or will be providing Federal assistance for the project, the amount of the assistance FTA has provided or expects to provide, and the Catalogue of Federal Domestic Assistance (CFDA) Number of the program that authorizes Federal assistance. Note: this notification requirement applies only to States and their subrecipients, lessees, and third party contractors. The current Master Agreement will define the notification requirements that are currently in effect, as they may change from year to year.

#### **5.4.2. Description of the Property or Services**

The solicitation and the contract awarded thereunder must include a clear and accurate description of Kendall County 's technical requirements for the products or services to be acquired in a manner that provides for full and open competition.

##### **5.4.2.1. Descriptive Elements**

Kendall County will prepare descriptions of property, goods, or service in terms of functions to be performed or level of performance required, including the range of acceptable characteristics or minimum acceptable standards. Detailed product specifications should be avoided if at all possible; however, there is no prohibition against their use when appropriate.

##### **5.4.2.2. Quantities**

Additional quantities or options above Kendall County 's needs at the time of acquisition may not be added to contracts solely to allow assignment of those quantities or options at a later date.

##### **5.4.2.3. Brand Name or Equal**

When it is impractical or uneconomical to provide a clear and accurate description of the technical requirements of the property to be acquired, a “brand name or equal” description may be used to define the performance or other salient characteristics of a specific type of property. The salient characteristics of the named brand that bidders or offerors must provide must be identified.

##### **5.4.2.4. Prohibited Practices**

Solicitations with requirements that contain features that unduly restrict competition may not be used. Kendall County shall not:

- Impose unreasonable business requirements for bidders or offerors.
- Impose unnecessary experience requirements for bidders and offerors.
- Use prequalification procedures that conflict with the prequalification standards described in Section 5.3.
- Make a noncompetitive award to any person or firm on a retainer contract with Kendall County if that award is not for the property or services specified for delivery under the retainer contract.

- Impose unreasonable restrictive bonding requirements on bidders and offerors in excess of FTA and state requirements.
- Specify only a “brand name” product without allowing offers of an “equal” product, or allowing an “equal” product without listing the salient characteristics that the “equal” product must meet to be acceptable for award.
- Specify in-state or local geographical preferences, or evaluating bids or proposals in light of in-state or local geographic preferences, even if those preferences are imposed by State or local laws or regulations. The only exception expressly mandated or encouraged by Federal law that may be applicable to Kendall County is the procurement of Architectural and Engineering (A&E) Services. Geographic location may be a selection criterion in the procurement of A&E services if an appropriate number of qualified firms are eligible to compete for the contract in view of the nature and size of the project.
- Engage in practices that result in organizational conflicts of interest. An organizational conflict of interest occurs when any of the following circumstances arise:
  - Lack of Impartiality or Impaired Objectivity – When the bidder or offeror is unable, or potentially unable, to provide impartial and objective assistance or advice to Kendall County Transit due to other activities, relationships, contracts, or circumstances.
  - Unequal Access to Information – When the bidder or offeror has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.
  - Biased Ground Rules – When during the conduct of an earlier procurement, the bidder or offeror has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.
- Support or acquiesce in noncompetitive pricing practices between firms or between affiliated companies.
- Take any arbitrary action in the procurement process.

**5.4.3. Evaluation Factors.**

All solicitations issued by shall identify all factors to be used in evaluating bids or proposals. At the discretion of Program Compliance Oversight Monitor (PCOM), the relative order of importance and/or weights may be communicated to prospective offerors.

**5.4.4. Permissible Contract Types**

Kendall County shall state the type of contract that will be awarded in all solicitation documents. The following types of contracts will typically be executed with the successful vendor:

**5.4.4.1. Firm Fixed Price**

A firm fixed price contract includes a price that remains fixed irrespective of the contractor’s cost experience in performing the contract. A firm fixed price contract may include an economic price adjustment provision, incentives, or both.

**5.4.4.2. Cost Reimbursement**

A cost-reimbursement contract provides for payment of the contractor's allowable incurred costs, to the extent prescribed in the contract. Allowable costs may include incentives if the recipient believes they can prove helpful. Cost-reimbursement contracts are suitable for use only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed price contract.

#### **5.4.5. Prohibitive or Restricted Contract Types**

The following contract types are prohibited or restricted:

##### **5.4.5.1. Cost Plus Percentage of Cost**

Cost plus Percentage of Cost type contracts are prohibited.

##### **5.4.5.2. Time and Materials**

Time and Materials type contracts may be used only after a written determination is made that no other contract type is suitable. In addition, the contract between Kendall County and the Contractor must specify a ceiling price that the Contractor may not exceed except at its own risk.

#### **5.4.6. Other Federal Requirements Affecting the Property or Services to be Acquired**

The solicitation and resulting contract must identify those Federal requirements that will affect contract scope and performance.

#### **5.4.7. Other Federal Requirements Affecting the Bidder or Offeror and the Contractor**

The solicitation and resulting contract must identify all Federal requirements that a bidder or offeror must fulfill before and during contract performance.

#### **5.4.8. Reservation of Right to Award to Other Than the Low Bidder or Offeror**

The solicitation must specifically reserve Kendall County right to award a contract to other than the low bidder or offeror. If the solicitation documents do not specify this right, Kendall County will be obligated to award the contract to the low bidder.

#### **5.4.9. Reservation of Right to Reject All Bids or Offers**

The solicitation must specifically reserve Kendall County 's right to reject all bids or offers.

### **5.5. Methods of Procurement**

Kendall County shall use competitive procedure(s) appropriate for the acquisition undertaken. The procedures used must comply with Illinois and local law as well as with Federal requirements. Federal restrictions vary with the type of procurement method used. The following guidance is based on the requirements of 2 CFR § 200.318 – 200.326, supplemented by FTA policies that address the needs of FTA recipients.

### **5.5.1. Micro-Purchases**

#### **5.5.1.1. Definition**

Micro-purchases are those purchases of products and services that are less than or equal to \$10,000, as defined by 2 CFR §200.67 (or current threshold established by Federal Acquisition Regulations (FAR)); for purposes of this policy, Kendall County will use \$10,000 as the threshold for relatively simple purchases as a means to expedite the completion of its lowest-dollar small purchase transactions and minimize the associated administrative burden and cost.

#### **5.5.1.2. Approval Authority**

Micro-purchases must be approved in writing by one of the following Kendall County employees:

- Deputy County Administrator; or
- County Administrator.

#### **5.5.1.3. Competition**

Kendall County may acquire products and services valued at or less than \$10,000 without obtaining competitive quotations. Micro-purchases should be distributed equitably among qualified suppliers.

Micro purchases are exempt from FTA's Buy America requirements. Davis-Bacon prevailing wage requirements, however, will apply to construction contracts exceeding \$2,000, even though the recipient uses micro-purchase procurement procedures.

#### **5.5.1.4. Prohibited Divisions**

The size or dollar value of procurements may not be divided or reduced merely to come within the micro purchase limit. The only allowable exception to this restriction is for the express purpose of fostering greater participation of DBEs, small and minority firms and women's business enterprises in Kendall County's Federally-assisted procurements.

#### **5.5.1.5. Documentation**

Every micro-purchase must be accompanied by a written determination that the price is fair and reasonable and a description of how that determination was made. Internet and telephone pricing is acceptable for a micro-purchase. Bids shall be obtained from at least three suppliers and the contract shall be awarded to the lowest bidder.

Records of bids received shall be retained. IDOT should be provided post award notification and documentation.

### **5.5.2. Small Purchases**

#### **5.5.2.1. Definition**

FTA defines small purchases are those purchases of products and services, including construction services, that cost greater than \$10,000 but not more than \$100,000. For purposes of this policy, Kendall County will consider small purchase those that cost greater than \$10,000 but not more than \$30,000.

**5.5.2.2. Approval Authority**

Small purchases must be approved in writing by one of the following Kendall County employees:

- County Administrator and/or
- County Administrator.

Pre-bid concurrence is not required by IDOT. However, prior to award, IDOT must provide concurrence.

**5.5.2.3. Required Competition**

Price or rate quotations must be obtained from an adequate number of qualified sources. It is the responsibility of Kendall County to ensure that an adequate number of quotations, bids, or proposals are received.

Small purchases are exempt from Buy America provisions.

**5.5.2.4. Prohibited Divisions**

The size or dollar value of procurements may not be divided or reduced merely to come within the small purchase limit. The only allowable exception to this restriction is for the express purpose of fostering greater participation of DBEs, small and minority firms and women’s business enterprises in Kendall County 's Federally-assisted procurements

**5.5.2.5. Documentation**

Every small purchase must be documented in the grantee’s written procurement history file. The level of documentation is stipulated in Section 6.6.1.

For small purchases, price quotations may be oral or written.

**5.5.2.6. Special Considerations**

Kendall County may acquire products and services directly from State contract vendors in lieu of competitively procuring such products and services itself through the small purchase method of procurement.

Kendall County reserves the right to use formal purchase methods, even if small purchase thresholds are met, if the Program Compliance Oversight Monitor (PCOM) believes it is in the best interests of the Kendall County to do so.

**5.5.3. Formal Purchases**



#### **5.5.3.1. Definition**

Formal purchases are those purchases of products and services that cost greater than the current Federal threshold of \$100,000. For purposes of this policy, Kendall County will use formal procedures for all purchases over \$30,000.

#### **5.5.3.2. Approval Authority**

Large purchases must be approved in writing by the following Kendall County employees or officials:

- Kendall County Board Chairman

No further delegation of approval authority for large purchases may be made. In addition, IDOT must provide in writing both pre-bid and pre-award concurrence.

#### **5.5.3.3. Procurement Methods**

There are two primary methods of procurement for large purchases of products and services:

- Sealed Bid method; and
- Competitive Proposal method.

#### **5.5.3.4. Required Competition**

Formal bids and competitive proposals must be publicly advertised.

For formal purchases by the sealed bid method of procurement, two or more responsible bidders must be willing and able to compete effectively for the business.

For formal purchases by the competitive proposal method of procurement, two or more offerors must be willing and able to submit an offer or proposal.

#### **5.5.3.5. Required Documentation**

Every formal purchase must, at a minimum, be supported by a written independent cost estimate, formal bids or proposals, a written cost or price analysis as appropriate, a written justification and detailed rationale for contractor selection (including application of evaluation criteria) and a written determination of the responsibility of the contractor. Additional documentation requirements are dependent upon the formal procurement method that is utilized to make the purchase.

#### **5.5.3.6. Special Considerations**

Kendall County may acquire products and services via state contract in lieu of competitively procuring such products and services itself through the sealed bid and competitive proposal methods of procurement.

### 5.5.3.7. Procedural Methods for Sealed Bids

The sealed bid method of procurement is a formal method in which bids are publicly solicited and a firm fixed price contract is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the Invitation for Bids (IFB), is lowest in price. The vehicle through which bids are solicited is an IFB. The IFB document contains technical specifications for the product or service to be purchased, a description of the procedures for submitting a bid, and the forms on which bids must be submitted.

- (a) When Appropriate – The sealed bid method of procurement is the preferred method for acquiring products and services that, including construction services, cost greater than \$30,000. The sealed bid method of procurement may also be used for small purchases if it is determined to be appropriate. The sealed bid method of procurement is appropriate if the following conditions apply:
- (1) Precise Specifications – A complete, adequate, precise, and realistic specification or purchase description is available.
  - (2) Adequate Sources – Two or more responsible bidders are willing and able to compete effectively for the business.
  - (3) Fixed Price Contract – The procurement generally lends itself to a firm fixed price contract.
  - (4) Price Determinative – The successful bidder can be selected on the basis of price and those price-related factors listed in the solicitation including, but not limited to, transportation costs, life cycle costs, and discounts expected to be taken. Apart from responsibility determinations, contractor selection may not be determined on the basis of other factors whose costs cannot be measured at the time of award.
  - (5) Discussions Unnecessary – Discussions with one or more bidders after bids have been submitted are expected to be unnecessary as award of the contract will be made based on price and price-related factors alone.
- (b) Requirements for Sealed Bids – The following requirements apply to the sealed bid method of procurement:
- (1) Publicity – The Invitation for Bids must be publicly advertised.
    - i. The Program Compliance Oversight Monitor (PCOM) shall ensure that sufficient time is allowed to prepare bids before the date of bid opening.
    - ii. Notice of bidding opportunities may be provided in other ways in addition, but not as a substitute, to a published notice. The methods may include, but not necessarily be limited to:
      - a. Direct notice, based on compiled vendor lists or from pre-qualification list, sent to prospective offerors; or
      - b. Use of advertisement by electronic means.
  - (2) Adequate Sources – Bids must be solicited from an adequate number of known suppliers.
  - (3) Adequate Specifications – The Invitation for Bids, including any specifications and pertinent attachments, must describe the property or services sought in sufficient detail that a prospective bidder will be able to submit a proper bid.
  - (4) Sufficient Time – Bidders must be allowed sufficient time to prepare bids before the date of bid opening.

- (5) Public Opening – All bids must be publicly opened at the time and place prescribed in the Invitation for Bids.
- (6) Fixed Price Contract – A firm fixed price contract must be awarded in writing to the lowest responsive and responsible bidder unless the Invitation for Bids specifically allowed for award of a fixed price incentive contract or the inclusion of an economic price adjustment provision.
- (7) Rejection of Bids – Any or all bids may be rejected if there is a sound, documented business reason.

#### **5.5.3.8. Competitive Proposals**

The competitive proposal method of procurement is a formal method in which written proposals are publicly solicited and a contract is awarded to the responsible offeror whose proposal, taking into consideration price and other factors, is considered to be the most advantageous to Kendall County or that is considered to be the “best value” to Kendall County . The vehicle through which proposals are solicited is Request for Proposals (RFP). The RFP document contains technical specifications for the product or service to be purchased, a description of the procedures for submitting a proposal and the forms on which proposals must be submitted, if applicable.

- (a) When Appropriate – The competitive proposal method of procurement is appropriate for the acquisition of products and services that cost greater than \$30,000 when the nature of the procurement does not lend itself to sealed bidding and Kendall County expects that more than one source will be willing and able to submit a proposal. The competitive proposal method of procurement may also be used for small purchases if it is determined to be appropriate. The competitive proposal method of procurement may not be used for the procurement of construction services. The competitive proposal method of procurement is appropriate when any of the following circumstances are present:
  - (1) Type of Specifications – The products or services to be acquired are described in a performance or functional specification, or if described in detailed technical specifications, other circumstances such as the need for discussions or the importance of basing contract award on factors other than price alone are present.
  - (2) Uncertain Number of Sources – Uncertainty about whether more than one bid will be submitted in response to an Invitation for Bids.
  - (3) Price Alone Not Determinative – Due to the nature of the procurement, contract award need not be based exclusively on price or price-related factors.
  - (4) Discussions Expected – Separate discussions with individual offerors are expected to be necessary after they have submitted their proposals.
- (b) Requirements for Competitive Proposals – The following requirements apply to the competitive proposal method of procurement:
  - (1) Publicity – The Request for Proposals must be publicly advertised.
  - (2) Evaluation Factors – All evaluation factors and their relative importance must be specified in the solicitation, but numerical or percentage ratings or weights need not be disclosed.
  - (3) Adequate Sources – Proposals must be solicited from an adequate number of qualified sources.

- (4) Evaluation Method – A specific method must be established and used to conduct technical evaluations of the proposals received and to determine the most qualified offeror.
- (5) Price and Other Factors – An award must be made to the responsible offeror whose proposal is most advantageous to Kendall County or that represents the “best value” to Kendall County with price and other factors considered.
- (6) Best Value – Kendall County may award a contract to the offeror whose proposal provides the greatest value to Kendall County. To do so, the solicitation must inform potential offerors that the award will be made on a “best value” basis and identify what factors will form the basis for award. Kendall County must base its determination of which proposal represents the “best value” on an analysis of the tradeoff of qualitative technical factors and price or cost factors.

#### **5.5.3.9. Two-Step Procurements**

Kendall County may use two-step procurement procedures in both sealed bid and competitive proposal procurements, provided the opportunity for full and open competition is retained.

- (a) Review of Technical Qualifications and Approach – The first step is a review of the prospective contractors’ technical approach to Kendall County’s request and their technical qualifications to carry out that approach followed by the establishment of a competitive range consisting of prospective contractors that demonstrate a technically satisfactory approach and have satisfactory qualifications.
- (b) Review of Bids and Proposals Submitted by Qualified Prospective Contractors – The second step consists of soliciting and reviewing complete bids or proposals, including price, submitted by each prospective contractor determined to be qualified. Absent exceptional circumstances, bids or proposals must be solicited from at least three qualified prospective contractors.

#### **5.5.3.10. Architectural and Engineering (A&E) Services and Other Services**

FTA’s enabling legislation at 49 U.S.C. § 5325(b)(1) requires the use of the qualifications-based procurement procedures contained in the “Brooks Act,” 40 U.S.C. § 1101 through 1104, to acquire A&E services.

- (a) Qualifications-Based Procurement Procedures Required – Kendall County must use qualifications-based procurement procedures to acquire architectural and engineering (A&E) services as well as certain other services that are directly in support of, directly connected to, directly related to, or lead to construction, alteration, or repair of real property. In addition to A&E services, other services that must be procured by qualifications-based procurement procedures include:
  - Program management;
  - Construction management;
  - Feasibility studies;
  - Preliminary engineering;
  - Design, architectural, engineering;
  - Surveying, mapping; and

- Other related services.

The nature of the work to be performed and its relationship to construction, not the nature of the prospective contractor, determine whether qualifications-based procurement procedures may be used.

- (b) Qualifications-Based Procurement Procedures Prohibited – Unless FTA determines otherwise in writing, qualifications-based procurement procedures may not be used to acquire other types of services if those services are not directly in support of, directly connected to, directly related to, or do not lead to construction, alteration, or repair of real property. Qualifications-based procurement procedures may not be used for actual construction, alteration or repair to real property.
- (c) Qualifications-Based Procurement Procedures – The following procedures apply to qualifications-based procurements:
- (1) Qualifications – Unlike other two-step procurement procedures in which price is an evaluation factor, an offeror’s qualifications are evaluated to determine contract award.
  - (2) Price – Price is excluded as an evaluation factor.
  - (3) Most Qualified – Price negotiations are first conducted with only the most qualified offeror.
  - (4) Next Most Qualified - Only after failing to agree on a fair and reasonable price may negotiations be conducted with the next most qualified offeror. Then, if necessary, negotiations with successive offerors in descending order may be conducted until contract award can be made to the offeror whose price the recipient believes is fair and reasonable.

## 5.6. Procurement by Other Than Full and Open Competition

Normally, Kendall County must provide for full and open competition when soliciting bids or proposals. Federal regulations at 2 CFR § 200.320(f)(1) – (4), however, acknowledges that under certain circumstances, a recipient may conduct procurements without providing for full and open competition.

### 5.6.1. When Appropriate

Noncompetitive procurement procedures may only be used when the procurement is inappropriate for small purchase procedures, sealed bids, or competitive proposals, and at least one of the following circumstances are present:

#### 5.6.1.1. Competition Adequacy

After soliciting several sources and receiving an inadequate response, Kendall County shall review its specifications to determine if they are unduly restrictive or if changes can be made to encourage submission of more price quotes, bids or proposals. If Kendall County determines that the specifications are not unduly restrictive and changes cannot be made to encourage greater competition, Kendall County may determine the original competition adequate and complete the purchase from among the sources that submitted a price quote, bid or proposal. A cost analysis must be performed in lieu of a price analysis when this situation occurs.

### 5.6.1.2. Sole Source

When Kendall County requires products or services available from only one responsible source, and no other products or services will satisfy its requirements, Kendall County may make a sole source award. In addition, when Kendall County requires an existing contractor to make a change to its contract that is beyond the scope of that contract, Kendall County will consider the change a sole source award that must be justified. Sole source awards are only appropriate when one of the following conditions apply:

- (a) Unique Capability or Availability – The products or services are available from only one source if one of the conditions described below is present:
  - (1) Unique or Innovative Concept – The offeror demonstrates a unique or innovative concept or capability not available from another source. Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted, and is available to Kendall County only from one source and has not in the past been available to Kendall County from another source.
  - (2) Patents or Restricted Data Rights – Patent or data rights restrictions preclude competition.
  - (3) Substantial Duplication Costs – In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition.
  - (4) Unacceptable Delay – In the case of a follow-on contract for the continued development or production of a highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in unacceptable delays in fulfilling Kendall County 's needs.
- (b) Single Bid or Proposal – Upon receiving a single bid or proposal in response to a solicitation, Kendall County should determine if competition was adequate. This should include a review of the specifications for undue restrictiveness and might include a survey of potential sources that chose not to submit a bid or proposal.
  - (1) Adequate Competition – Competition is adequate when the reasons for a single response were caused by conditions beyond Kendall County 's control.
  - (2) Inadequate Competition – Competition is inadequate when the reasons for a single response were caused by conditions within Kendall County 's control.
- (c) Unusual and Compelling Urgency – Kendall County may limit the number of sources from which it solicits bids or proposals when Kendall County has such an unusual and urgent need for the products or services that Kendall County would be seriously injured unless it were permitted to limit the solicitation. Kendall County may also limit the solicitation when the public exigency or emergency will not permit a delay resulting from competitive solicitation for the products or services.
- (d) Authorized by IDOT – Kendall County may request permission from IDOT to allow it to use noncompetitive proposals for a particular procurement.
- (e) When Prohibited – Less than full and open competition is not justified based on:

- (1) Failure to Plan – Kendall County 's lack of advance planning, resulting in limited competition, is not justification for a sole source or single bid award.
  - (2) Limited Availability of Federal Assistance – Concerns about the amount of Federal assistance available to support the procurement;
- (f) Procurement Procedures – The following requirements apply when Kendall County completes a procurement utilizing less than full and open competition:
- (1) Potential Sources – Kendall County must solicit offers from as many potential sources as is practicable under the circumstances.
  - (2) Sole Source Justification – Kendall County must justify all sole source procurements in writing. Sole source procurement justifications must describe the reasons for why a sole source procurement is appropriate, state which of the authorized justifications listed in Section 5.6.1.2 are applicable, include a cost analysis and be signed by the Program Compliance Oversight Monitor (PCOM). If Kendall County decides to solicit an offer from only one source, Kendall County must justify its decision in writing. The written justification must include the same elements as a sole source justification except that it must state which of the authorized justifications listed in Section 5.6.1.2 are applicable to the sole source purchase.
  - (3) Cost Analysis – Kendall County must prepare or obtain a cost analysis verifying the proposed cost data, the projections of the data, and the evaluation of the costs and profits. A price analysis shall not be adequate to justify a sole source purchase.
- (g) Exception for Procurement Activities Using Non-FTA Funds – When it is determined by the Program Compliance Oversight Monitor (PCOM) to be in the best interest of Kendall County, noncompetitive procurement procedures may be utilized to acquire professional or other transportation-related services that do not involve the use of FTA financial assistance. Any such determination must be made in writing and signed by the Program Compliance Oversight Monitor (PCOM).

## 5.7. Evaluation Requirements

The following standards shall apply to all evaluations of bids or proposals conducted by Kendall County .

### 5.7.1. General

When evaluating bids or proposals received in response to a solicitation, Kendall County shall consider all evaluation factors specified in the solicitation documents and shall evaluate the bids or offers proposals only on the evaluation factors included in those solicitation documents. Kendall County may not modify its evaluation factors after bids or proposals have been received without re-opening the solicitation.

### 5.7.2. Options

The following standards shall apply when awarding contracts that include options:

### **5.7.2.1. Evaluation Required**

In general, Kendall County must evaluate bids or offers for any option quantities or periods contained in a solicitation if it intends to exercise those options after the contract is awarded.

### **5.7.2.2. Evaluation Not Required**

Kendall County need not evaluate bids or offers for any option quantities when Kendall County does not intend to exercise those options after the contract is awarded or if it determines that evaluation would not otherwise be in its best interests.

### **5.7.2.3. Evaluators**

In addition to evaluators with experience in technical or public policy matters related to the procurement, other evaluators may also include auditors and financial experts to the extent that the Program Compliance Oversight Monitor (PCOM) determines would be necessary or helpful. If Kendall County lacks qualified personnel within its organization, it may solicit evaluators from other transit organizations or may contract for evaluation services. If it does so, the procurement procedures in this policy will apply to those contracts and to those contractors selected to perform evaluation functions on behalf of the recipient.

## **5.8. Contract Award Requirements**

The following standards shall apply to all contract award decisions made by Kendall County :

### **5.8.1. Award to Other Than the Lowest Bidder or Offeror**

Kendall County may award a contract to other than the lowest bidder if the award furthers an objective consistent with the purposes of 49 U.S.C. Chapter 53, including improved long-term operating efficiency and lower long-term costs. Kendall County may also award a contract to other than the offeror whose price proposal is lowest, when stated in the evaluation factors of the solicitation. In both cases, Kendall County must include a statement in its solicitation document reserving the right to award the contract to other than the low bidder or offeror.

#### **5.8.1.1. Award Only to a Responsible Bidder or Offeror**

Kendall County may only award contracts to responsible contractors possessing the ability, willingness, and integrity to perform successfully under the terms and conditions of the contract and who demonstrate that its proposed subcontractors also qualify as responsible. Kendall County must consider such matters as contractor integrity, compliance with public policy, record of past performance and financial and technical resources when making a determination of contractor responsibility. Kendall County must also ensure that the contractor is not listed as a debarred or suspended contractor on the System for Award Management (SAM), which is maintained by the General Services Administration (GSA), at the time of contract award. Entities that are listed as debarred or suspended contractors on SAM may not be determined to be responsible contractors by Kendall County . For every procurement action above the micro-purchase level, Kendall County must make a written determination of the



responsibility of the contractor and include such determination in the applicable contract file (See Section 3.6).

To designate a prospective contractor “responsible” as required by 49 U.S.C. § 5325, Kendall County, at a minimum, must determine and ensure that the prospective contractor satisfies the following criteria described herein. In addition to being otherwise qualified and eligible to receive the contract award under applicable laws and regulations, a responsible contractor:

- (a) Integrity and Ethics – Has a satisfactory record of integrity and business ethics, in compliance with 49 U.S.C. Section 5325(j)(2)(A).
- (b) Debarment and Suspension – Is neither debarred nor suspended from Federal programs under DOT regulations, “Nonprocurement Suspension and Debarment,” 2 CFR Parts 180 and 1200, or under the FAR at 48 CFR Chapter 1, Part 9.4.
- (c) Affirmative Action and DBE – Is in compliance with the Common Grant Rules’ affirmative action and FTA’s Disadvantaged Business Enterprise requirements.
- (d) Public Policy – Is in compliance with the public policies of the Federal Government, as required by 49 U.S.C. § Section 5325(j)(2)(B).
- (e) Administrative and Technical Capacity – Has the necessary organization, experience, accounting, and operational controls, and technical skills, or the ability to obtain them, in compliance with 49 U.S.C. Section 5325(j)(2)(D).
- (f) Licensing and Taxes – Is in compliance with applicable licensing and tax laws and regulations.
- (g) Financial Resources – Has, or can obtain, sufficient financial resources to perform the contract, as required by 49 U.S.C. Section 5325(j)(2)(D).
- (h) Production Capability – Has, or can obtain, the necessary production, construction, and technical equipment and facilities.
- (i) Timeliness – Is able to comply with the required delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments.
- (j) Performance Record – Is able to provide a:
  - (1) Current Performance – Satisfactory current performance record; and
  - (2) Past Performance – Satisfactory past performance record in view of its records of long-time performance or performance with a predecessor entity, including:
    - i. Sufficient Resources. Key personnel with adequate experience, a parent firm with adequate resources and experience, and key subcontractors with adequate experience and past performance,
    - ii. Adequate Past Experience. Past experience in carrying out similar work with particular attention to management approach, staffing, timeliness, technical success, budgetary

controls, and other specialized considerations as described in the recipient's solicitation, and

- iii. Any Past Deficiencies Not the Fault of the Bidder or Offeror. A prospective bidder or offeror that is or recently has been seriously deficient in contract performance is presumed to be non-responsible, unless the recipient determines that the circumstances were properly beyond the bidder or offeror's control, or unless the bidder or offeror has taken appropriate corrective action. Past failure to apply sufficient tenacity, perseverance, and effort to perform acceptably is strong evidence of non-responsibility. Failure to meet the quality requirements of a contract is a significant factor to consider in determining satisfactory performance. IDOT expects Kendall County to consider the number of the bidder or offeror's contracts involved and the extent of deficient performance in each contract when making this determination.

### **5.8.1.2. Rejection of Bids and Proposals**

Kendall County may reject all bids or proposals submitted in response to an Invitation for Bids or Request for Proposals. Kendall County must include a statement in its solicitation document reserving the right to reject all bids or proposals.

- (a) Extent and Limits of Contract Award – The selection of a contractor to participate in one aspect of a project does not, by itself, constitute a sole source selection of the contractor's wholly owned affiliates to perform other work in connection with the project.

## **5.9. Independent Cost Estimate and Cost and Price Analysis**

### **5.9.1. Independent Cost Estimate**

For every procurement, Kendall County shall make a written independent estimate of cost prior to receiving price quotes, bids or proposals.

### **5.9.2. Cost or Price Analysis**

Kendall County shall perform a cost or price analysis in connection with every procurement over \$250,000 and for all contract modifications.

#### **5.9.2.1. Price Analysis**

If Kendall County determines that competition was adequate, a written price analysis, rather than a cost analysis, is required to determine the reasonableness of the proposed contract price.

#### **5.9.2.2. Cost Analysis**

Kendall County must perform or obtain a cost analysis when:

- (a) A price analysis will not provide sufficient information to determine the reasonableness of the contract cost.

- (b) When the offeror submits elements of the estimated cost.
- (c) When only a sole source is available, even if the procurement is a contract modification.
- (d) In the event of a change order.

**5.9.3. Approval of Contracts**

All contracts must be signed by the Kendall County Board Chairman.

## **6. CONTRACT ADMINISTRATION REQUIREMENTS AND CONSIDERATIONS**

### **6.1. Kendall County Staff Responsibilities**

Prior to execution of third party contracts, Kendall County shall designate a Project Manager to serve as Kendall County 's principal contact with the contractor and as the primary administrator of the contract. The designated Project Manager for each contract shall have responsibility for directing and overseeing the work performed by the contractor; reviewing and approving deliverables and invoices from the contractor; determining percentage of contract completion for progress payments (if applicable); making recommendations on the exercise of contract options (if applicable); recommending contract changes; preparing justifications for contract changes; performing independent cost estimates and cost or price analyses for contract changes; making recommendations on approval or rejection of subcontractors; assisting with the resolution of contract disputes; making recommendations on contract termination or other contractor disciplinary actions; maintaining complete contract files; and other contract administration duties that may be necessary.

### **6.2. Administrative Restrictions on the Acquisition of Property and Services**

The following Federal laws and regulations impose administrative requirements, many of which will affect specific third party procurements.

#### **6.2.1. Legal Eligibility**

The property or services acquired must be eligible for support under the restrictions accompanying the Federal statute authorizing the Federal assistance to be used.

#### **6.2.2. Scope of the Project**

The property or services acquired must be eligible for support within the scope of the underlying grant or cooperative agreement from which the Federal assistance to be used is derived.

#### **6.2.3. Period of Performance**

Kendall County will use sound business judgment and be judicious in establishing and extending a contract's period of performance.

### **6.2.3.1. General Standards**

The period of performance generally should not exceed the time necessary to accomplish the purpose of the contract. Kendall County will also consider competition, pricing, fairness, and public perception. Kendall County's procurement files will document its rationale for determining the performance period designated for each contract.

### **6.2.3.2. Time Extensions**

Consistent with the general tone of FTA Circular 4220.1F, contract time extensions shall be considered in light of whether they are permissible changes or impermissible cardinal changes. Once Kendall County awards a third party contract, an extension of the contract term length that amounts to a cardinal change will require a sole source justification.

### **6.2.3.3. Authority to Extend**

The County Board Chairman has the sole authority to approve and execute contract modifications. The Program Compliance Oversight Monitor (PCOM) for the contract shall recommend all contract time; prior to making a recommendation for a contract time extension. The Program Compliance Oversight Monitor (PCOM) shall prepare a written justification and cost analysis (if applicable) for the contract time extension and shall negotiate the appropriate contract modification with the contractor.

## **6.3. Federal Cost Principles**

Federal rules require project costs to conform to applicable Federal cost principles for allowable costs. In general, costs must be necessary and reasonable, allocable to the project, authorized or not prohibited by Federal law or regulation, and must comply with Federal cost principles applicable to the recipient.

OMB guidance for grants and agreements, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR § 200, applies to project costs incurred Kendall County .

## **6.4. Payment Provisions**

Kendall County will follow the provisions of this section when using FTA funds to support its third party contracts.

### **6.4.1. Financial Support for the Project**

Costs may only be incurred by Kendall County if IDOT has awarded a financial assistance contract to Kendall County .

#### **6.4.1.1. Progress Payments**

Progress payments are payments for contract work that has not been completed. Kendall County may use IDOT assistance to support progress payments provided the recipient obtains adequate security for those payments and has sufficient written documentation to substantiate the work for which payment is requested.

#### **6.4.1.2. Adequate Security for Progress Payments**

Adequate security for progress payments may include taking title or obtaining a letter of credit or taking equivalent measures to protect the recipient's financial interest in the progress payment. Adequate security should reflect the practical realities of different procurement scenarios and factual circumstances. Kendall County should always consider the costs associated with providing security (for example, the recipient may need to acquire bonds or letters of credit in the commercial marketplace) and the impact of those costs on the contract price, as well as the consequences of incomplete performance.

#### **6.4.1.3. Adequate Documentation**

Sufficient documentation is required to demonstrate completion of the amount of work for which progress payments are made.

#### **6.4.1.4. Percentage of Completion Method**

Federal rules require that any progress payments for construction contracts be made on a percentage of completion method described therein. Kendall County, however, may not make progress payments for other than construction contracts based on this percentage method.

### **6.5. Protections Against Performance Difficulties**

Kendall County shall include provisions in its third party contracts that will reduce potential problems that might occur during contract performance, as follows:

#### **6.5.1. Changes**

Kendall County shall include provisions that address changes and changed conditions in all third party contracts except for routine supply contracts.

#### **6.5.2. Remedies**

Kendall County shall include provisions that address remedies in its third party contracts. Provisions related to remedies may include provisions for:

##### **6.5.2.1. Liquidated Damages**

Kendall County may use liquidated damages if Kendall County reasonably expects to suffer damages through delayed contract completion, or if weight requirements are exceeded, and the extent or amount of such damages are uncertain and would be difficult or impossible to determine. Rate and measurement standards must be calculated to reasonably reflect Kendall County's costs should the standards not be met, and must be specified in the solicitation and contract. The assessment for damages may be established at a specific rate per day for each day beyond the contract's delivery date or performance period. A measurement other than a day or another period of time, however, may be established if that measurement is appropriate, such as weight requirements in a rolling stock purchase.

The contract file must include a record of the calculation and rationale for the amount of damages established. Any liquidated damages recovered must be credited to the project account.

#### **6.5.2.2. Violation or Breach**

Third party contracts exceeding \$250,000 must include administrative, contractual, or legal remedies for violations or breach of the contract by the third party contractor.

#### **6.5.2.3. Suspension of Work**

Kendall County may include provisions pertaining to suspension of work in its third party contracts.

#### **6.5.2.4. Termination**

Termination for cause and termination for convenience provisions must be included in third party contracts exceeding \$10,000.

### **6.6. Contents of Complete Contract Files**

The following documents shall comprise the contents of a complete contract file for procurements above the micro-purchase level:

#### **6.6.1. Written Record of Procurement History**

Kendall County shall maintain written records detailing the history of the procurement, including records relating to:

##### **6.6.1.1. Procurement Method**

Kendall County must provide its rationale for the method of procurement it used for each contract, including a sole source justification for any acquisition that does not qualify as competitive.

##### **6.6.1.2. Contract Type**

Kendall County must state the reasons for selecting the contract type it used.

##### **6.6.1.3. Contractor Selection**

Kendall County must state its reasons for contractor selection or rejection, including written justification and evaluation documents.

##### **6.6.1.4. Contractor Responsibility**

Kendall County must provide a written determination of responsibility for the successful contractor.

##### **6.6.1.5. Cost or Price**

Kendall County must evaluate and state its justification for the contract cost or price, including the independent cost estimate and cost or price analysis.

#### **6.6.1.6. Reasonable Documentation**

Kendall County must retain documentation commensurate with the size and complexity of the procurement, including documents related to solicitation, receipt and evaluation of offers, and contract award, negotiation and execution.

#### **6.7. Access to Records**

Federal rules (49 U.S.C. § 5325(g)) provide FTA and IDOT officials, the Comptroller General, or any of their representatives, access to and the right to examine and inspect all records, documents, and papers, including contracts, related to any FTA project financed with Federal assistance authorized by 49 U.S.C. Chapter 53.

#### **6.8. Contract Administration and Close-Out Documents**

Kendall County shall maintain written records detailing the performance and close-out of the contract, including records relating to:

##### **6.8.1. Contractor Performance**

Kendall County must maintain documents related to contractor adherence to budget and schedule, compliance with contract terms and conditions, DBE participation, progress reports, disputes and disciplinary actions.

##### **6.8.2. Contract Deliverables**

Kendall County must maintain copies of all contract deliverables and records relating to approval, rejection and requested modifications of contract deliverables.

##### **6.8.3. Contract Changes**

Kendall County must maintain copies of all contract modifications, including documentation related to the determination of need, written justification and rationale, cost analysis, negotiation and execution.

##### **6.8.4. Contract Payments**

Kendall County must retain documentation of invoices, approval of payments, requests for modifications to invoices, determination of percentage of contract completion for partial payments (if applicable), and ownership of title to partial work products.

##### **6.8.5. Contract Close-Out**

Kendall County must retain documentation related to contractor performance and evaluation, approval of final deliverables and payments, transfer of title to complete work products to Kendall County , and contract audit and final reconciliation.



**6.9. Protest Procedures**

**6.9.1. Statement of Policy**

Kendall County is responsible for resolving all contractual and administrative issues, including protests of evaluations and contract awards, arising out of its third party procurements using good administrative practices and sound business judgment.

In general, IDOT will not substitute its judgment for that of Kendall County unless the matter is primarily a Federal concern. Nevertheless, IDOT and FTA can become involved in Kendall County's administrative decisions when a Kendall County protest decision is appealed to IDOT.

Kendall County shall give timely notification to IDOT when it receives a third party procurement protest and will keep FTA informed about the status of any such protest. Kendall County shall disclose all information about any third party procurement protest to IDOT upon request.

Kendall County's procedure for addressing third party procurement protests is described in Paragraph 6.9.2 below. Kendall County shall insert its protest procedure in all solicitation documents for products and services having an estimated value of \$100,000 or greater.

**6.9.2. Kendall County Staff Responsibilities**

The following staff responsibilities shall be assigned in all protests:

- Program Compliance Oversight Monitor (PCOM) – Responsibilities include: ensuring that the Kendall County Protest Procedure is included in all solicitation documents; and providing information to and assisting the Kendall County and Kendall County States Attorneys Office with the resolution of protests.
- Kendall County States Attorneys Office – Responsibilities include: reviewing all procurement protests; and advising and assisting the Kendall County as needed with the resolution of all procurement protests.

**6.9.3. Solicitation Provision**

Kendall County shall insert the following provision in all solicitation documents:

**6.9.3.1. Pre-Proposal Protests**

All protests concerning solicitation specifications, criteria and/or procedures shall be submitted in writing (defined as being sent or received via letter or facsimile on official firm/agency letterhead or by electronic mail) to the Program Compliance Oversight Monitor (PCOM) as specified below not later than ten (10) business days prior to the deadline for submission of bids/proposals.

The Program Compliance Oversight Monitor (PCOM) may, within his or her discretion, postpone the deadline for submission of bids/proposals, but in any case, shall provide a written response to all protests not later than five (5) business days prior to the deadline for submission of bids/proposals. If

the deadline for submission of bids/proposals is postponed by the Program Compliance Oversight Monitor (PCOM) as the result of a protest the postponement will be announced through an addendum to the solicitation.

The decision by the Program Compliance Oversight Monitor (PCOM) shall be the final agency decision on the matter but shall be subject to judicial review as set forth by FTA below.

#### **6.9.3.2. Pre-Award Protests**

With respect to protests made after the deadline for submission of bids/proposals but before contract award by Kendall County , protests shall be limited to those protests alleging a violation of Federal or State law, a challenge to the bids/proposals evaluation and award process, Kendall County 's failure to have or follow its protest procedures or its failure to review a complaint or protest. Such protests shall be submitted in writing (defined as being sent or received via letter or facsimile on official firm/agency letterhead or by electronic mail) to the Program Compliance Oversight Monitor (PCOM) as specified below not later than five (5) business days after the Recommendation for Contract Award announcement by Kendall County .

The Program Compliance Oversight Monitor (PCOM) may, within his or her discretion, postpone the award of the contract, but in any case, shall provide a written response to all protests not later than three (3) business days prior to the date that Kendall County shall announce the contract award.

The decision by the Program Compliance Oversight Monitor (PCOM) shall be the final agency decision on the matter but shall be subject to judicial review as set forth or review by IDOT as specified below.

#### **6.9.4. Requirements for Protests**

All protests must be submitted to Kendall County in writing (defined as being sent or received via letter or facsimile on official firm/agency letterhead or by electronic mail), with sufficient documentation, evidence and legal authority to demonstrate that the Protestor is entitled to the relief requested. The protest must be certified as being true and correct to the best knowledge and information of the Protestor, and be signed by the Protestor. The protest must also include a mailing address to which a response should be sent.

Protests received after the deadlines for receipt of protests specified above are subject to denial without any requirement for review or action by Kendall County .

All protests must be directed in writing (defined as being sent or received via letter or facsimile on official firm/agency letterhead or by electronic mail) to the Program Compliance Oversight Monitor (PCOM) at the address shown in the solicitation documents.

#### **6.9.5. Protest Response**

The Program Compliance Oversight Monitor (PCOM) shall issue written responses to all protests received by the required protest response dates. All protest responses shall be transmitted by first-class U.S. Postal Service to the address indicated in the protest letter.

For convenience, Kendall County will also send a copy of the response to a protest to the Protester by facsimile and/or electronic mail if a facsimile number and/or electronic mail address are indicated in the protest letter. The protest response transmitted by U.S. Postal Service shall be the official Kendall County response to the protest and Kendall County will not be responsible for the failure of the Protester to receive the protest response by either facsimile or electronic mail.

#### **6.9.6. Review of Protests by IDOT**

All protests involving contracts financed with Federal assistance shall be disclosed to IDOT. Protesters shall exhaust all administrative remedies with Kendall County prior to pursuing protests with IDOT. IDOT limits its reviews of protests to: a grantee's failure to have or follow its protest procedures; a grantee's failure to review a complaint or protest when presented an opportunity to do so; or violations of Federal law or regulation. Appeals to IDOT must be received within five (5) working days of the date the Protester has received actual or constructive notice of Kendall County final decision or within five (5) working days of the date the Protester has identified other grounds for appeal to IDOT.