

ARTICLE VI. PURCHASING

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DIVISION 1. GENERAL PROVISIONS

2-206: GENERALLY:

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

B. Applicability: This article applies to procurement of materials, services, supplies, equipment, construction, construction related services and professional services by Kane County. These provisions shall apply to all expenditures of public funds by a county agency for purchasing regardless of its source, except as otherwise provided by federal or state law, regulations, Kane County ordinance or administrative policy. Procurements involving federal or state funding will be subject to any applicable law, regulation or grant.

C. Severability: If any provision of this article or any application thereof to any person or circumstances is held invalid, such invalidity shall not affect the validity of the remaining provisions or application of this article.

D. Property Rights: Receipt of a solicitation or other procurement document, or submission of any response thereto, or other offer, confers no right to receive an award or contract, nor does it obligate Kane County in any manner. (Ord. 15-364, 12-8-2015)

2-207: DEFINITIONS:

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

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

C. Definitions:

ARCHITECTURAL, ENGINEERING AND LAND SURVEYING SERVICES: Those professional services within the fields of architecture, professional engineering, structural engineering or land surveying as defined by the local government professional services selection act, 50 Illinois Compiled Statutes 510/1 et seq.

BID SECURITY: A guarantee that the bidder will enter into a contract, if an offer is presented within the specified period of time, otherwise failure on the bidder's part will result in forfeiture of the bid security.

CHANGE ORDER: Written authorization directing the contractor to modify or change an existing purchase order or contract.

COMPETITIVE PROPOSALS: Purchases over the simplified acquisition threshold (SAT). Formal solicitation required as well as fixed price cost reimbursement contracts and is used when sealed bids are not appropriate. The contract should be awarded to the responsible firm whose proposal is most advantageous to the program, with pricing being one of the factors.

COMPETITIVE SELECTION: A process whereby public solicitation is used to select the most qualified and responsible provider of materials, equipment, supplies, services, construction, and construction related services. Methods of competitive selection include invitation for bids, requests for proposals and requests for qualifications and multiple price quotations.

CONFIDENTIAL INFORMATION: Any information which is available to an individual, solely due to his/her status as a county employee, and which is not a matter of public knowledge or accessible to the public on request.

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

CONTRACT: All types of county agreements, including purchase orders, whether oral or written and regardless of what they may be called, for the procurement of materials, services, equipment, supplies, or construction and construction related services that are legally binding promises enforceable by law.

CONTRACT MODIFICATION: Any written alteration in the terms or conditions of any contract accomplished by mutual action of the parties to the contract.

CONTRACT RENEWAL: Continuation of the contract for an additional period of time, under the original terms and conditions, when allowed by provisions for renewal, which were included in the original bid document. If the bid document does not include provisions for renewal, any continuation of the contract would be considered a new contract and therefore must be rebid.

CONTRACT, REVENUE GENERATING: Revenue generating contracts are agreements under which the county receives from a vendor either a commission or share in the profit generated from the sale of goods or services. Examples include vending machines, food service, and joint purchasing agreements.

CONTRACTOR: Any person or entity that is a party to a contract with the county or a using county agency thereof.

COOPERATIVE JOINT PURCHASING: Procurement conducted by or on behalf of more than one governmental unit.

COUNTY AGENCY: A county officer, employee, department, division, office, official, commission, board, or agency whose purchasing authority is subject to the provisions of this article.

DEBARMENT: Debarment is the process of determining that a contractor is ineligible to receive contract awards based upon a preponderance of evidence, usually a conviction. Debarment is usually three (3) years in length. The name of the debarred contractor may be published as ineligible on the system for award management (SAM), which is a website administered by the U.S. general services administration, or on the list of sanctioned providers maintained by the state of Illinois office of inspector general.

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

ELECTED OFFICIAL: For the purposes of this article, elected official includes: clerk of the circuit court, county auditor, county board chairman, county board members, county clerk, county coroner, county treasurer, county recorder of deeds, superintendent of the regional office of education, county sheriff and state's attorney. For purposes of this article, the chief judge of the 16th circuit is deemed an elected official.

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

EQUIPMENT: Goods that are purchased or used by a county agency that are not materials or supplies that are not expendable except through depreciation or wear and tear, and do not lose their identity or become integral parts of other items or installations.

FULLY EXECUTED CONTRACT: An agreement is fully executed when it bears the signatures of all parties obligated by the agreement, including the department head or county board chairman.

GOVERNMENTAL UNIT: The state of Illinois, any public authority which has the power to tax, or any other public entity created by federal or state statute.

INVITATION FOR BIDS: A formal request to prospective vendors soliciting price quotations or bids; contains, or incorporates by reference, the specifications or scope of work and all contractual terms and conditions.

MATERIALS: Items or supplies required in the performance of day to day operations.

MICROPURCHASES: Purchases that are less than ten thousand dollars (\$10,000.00) (\$2,000.00 for those construction projects subject to the Davis-Bacon act).

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

PARENT COMMITTEE: A standing or ad hoc committee established by the Kane County board with specific using agency jurisdiction and responsibilities.

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

PROCUREMENT: The purchasing, renting, leasing or otherwise acquiring of materials, supplies, equipment, services, construction and construction related services. Includes all functions that pertain to obtaining any material, equipment, supplies, services, construction or construction related services, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration. Procurement shall include, without limitation, the entering into of all contracts or agreements, whether the same are oral or written.

PROFESSIONAL SERVICES: Those services requiring special knowledge, education or skill whereby the qualifications of persons rendering the services are of primary importance. Professional services shall include, but not be limited to, appraisers, attorneys, architects, engineers, accountants, land surveying services, psychologists, physicians and other health professionals and clergy. An essential element distinguishing professional services from other services is confidence, trust, and belief in not only the ability, but also the judgment and talent, of the person performing the service.

PURCHASE ORDER: A written document signed and issued by the purchasing department to a vendor formalizing all terms and conditions of a proposed transaction, such as a description of requested item(s), delivery schedule, terms of payment, and transportation; and directing a business to provide materials, equipment, supplies, services, construction and construction related and professional services to the county.

PURCHASING AGENT: The director of purchasing or any staff member of the purchasing department authorized to act as a purchasing agent for the county and shall be responsible for the procurement of materials, supplies, equipment, services, construction, construction related services and professional services, and processing contract and purchase orders.

REQUEST FOR INFORMATION: All documents issued to vendors for the sole purpose of seeking information about the availability in the commercial marketplace of materials, equipment, supplies, services, construction, and construction related services.

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

REQUEST FOR QUALIFICATIONS: All documents, whether attached or incorporated by reference, which are used for soliciting qualifications in accordance with procedures defined herein.

RESPONSIBLE BIDDER OR OFFEROR: A person who has the capability, in all respects, to fully perform the contract requirements and who has the facilities, personnel, experience, integrity, reliability, equipment, acceptable past performance, financial strength, credit ranking which will assure good faith performance and is a responsive bidder.

RESPONSIVE BIDDER: A person who has submitted a bid that conforms, in all material respects, to the requirements set forth in the invitation for bid.

REVERSE AUCTIONS: A reverse auction is a real time bidding process taking place at a scheduled time and internet location, in which multiple suppliers, anonymous to each other, submit bids to provide the designated goods and services specified in the invitation to bid.

SEALED BIDS: Purchases over the simplified acquisition threshold (SAT). Formal solicitation required and the fixed price is awarded to the responsible bidder who conformed to all material terms and is the lowest in price.

SERVICES: The furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports, which are merely incidental to the required performance. This definition shall not apply to employment agreements, collective bargaining agreements or to the definition of "professional services" as provided in this section.

SIMPLIFIED ACQUISITION THRESHOLD: The acquisition of supplies and services including construction, research and development and commercial items, the aggregate amount of which does not exceed thirty thousand dollars (\$30,000.00) in any one year period.

SMALL PURCHASE THRESHOLD: The threshold established by the county at which public bids are not required.

SMALL PURCHASES: Purchases that are at least ten thousand dollars (\$10,000.00) (\$2,000.00 for those construction projects subject to the Davis-Bacon act) and less than thirty thousand dollars (\$30,000.00).

SOLE SOURCE PROCUREMENT: Award of contract when there is only one source for the required supply, service, or construction item as determined through a competitive selection process.

SOLICITATION: An invitation for bids or request for proposals to provide materials, services, equipment, supplies or construction and construction related services and professional services.

SPECIFICATIONS: Any description of the physical or functional characteristics or nature of materials, services, equipment, supplies or construction and construction related services. It may include a description of any requirement for inspecting, testing or preparing materials, services, supplies, equipment, construction and construction related services.

STRINGING: Dividing or fragmenting procurements in order to circumvent competitive selection processes and procedures. For purposes of this article, "stringing" is the practice of issuing multiple purchase orders or requisitions for purchasing like items or services, with the wilful intent to circumvent purchasing policies.

SUBCONTRACTOR: A person who contracts to perform work or render service to a contractor or to another subcontractor as a part of a contract with the county.

SUPPLIES: Materials or items used in day to day operations, which are usually stored and dispensed as required.

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

SUSPENSION: The process of determining that a contractor is ineligible to receive contract awards based upon adequate evidence, usually an indictment. Suspension is a temporary measure having a twelve (12) month limit. It is usually used pending completion of an investigation or legal proceedings. The name of the suspended contractor will be published as ineligible on the system for award management (SAM), which is a website administered by the U.S. general services administration, or on the list of sanctioned providers maintained by the state of Illinois office of inspector general.

USING AGENCY: Any county agency which utilizes any materials, services, supplies, equipment or construction and construction related services procured under this article. (Ord. 15-364, 12-8-2015; amd. Ord. 21-538, 12-14-2021)

DIVISION 2. PROCUREMENT ORGANIZATION

2-208: OFFICIAL:

A. Principal Public Purchasing Official: The director of purchasing shall serve as the purchasing agent for the county and shall be responsible for the procurement of materials, supplies, equipment, services, construction, construction related services and professional services in accordance with this article.

B. Duties: In accordance with this article and subject to the direction of the Kane County board, the finance committee, and the director of finance, the director of purchasing shall:

1. Procure or supervise the purchasing of materials, services, supplies, equipment, construction, construction related services and professional services required by the county.

2. Process contracts and purchase orders solicited through open competition for materials, equipment, services, supplies, construction, and construction related services and professional services required by the county.

3. Create and maintain programs for contract administration, specification preparation, inspection, testing and acceptance, in cooperation with the county agencies using the materials, supplies, services, equipment, construction, construction related services and professional services.

4. Make written determinations as required by this article, specifying the facts supporting the determination, for retention in the permanent contract file.

5. Sell, trade, transfer, or otherwise dispose of surplus county property. (Ord. 15-364, 12-8-2015)

2-209: REGULATIONS AND OPERATIONAL PROCEDURES:

Consistent with this article, in conjunction with the approval of the finance committee and director of finance, the director of purchasing may adopt purchasing regulations and procedures, which relate to the execution of his/her duties. All such regulations and procedures shall be made available for public inspection.

As a matter of accounting procedure to ensure the county has accurate real time accounting records, department heads are required to use the purchasing module of the county's finance system for requisitioning materials, supplies, equipment, services, construction, construction related services and professional services, in order for the purchasing department to issue purchase orders for these transactions. (Ord. 15-364, 12-8-2015)

2-210: PUBLIC ACCESS TO PROCUREMENT INFORMATION:

Procurement information is a public record but is subject to certain exemptions from disclosure under the Illinois freedom of information act. (Ord. 15-364, 12-8-2015)

2-211: DELEGATION TO OTHER COUNTY OFFICIALS:

A. Authority: Pursuant to this article, the director of purchasing may delegate authority to a using agency to purchase certain supplies, equipment, materials, services or construction and construction related services, if such delegation is determined to be the most effective means for procurement of these items.

B. Procurement Authority: When the director of purchasing has delegated procurement authority to a county agency, delegation of all duties and responsibilities of the director of purchasing under this article shall transfer to the county official to whom procurement authority has been delegated.

C. Specific Delegation; Elected Officials: Elected officials having "purchasing authority" pursuant to an internal control statute are encouraged to use the support services of the county's director of purchasing wherever possible. In all cases where the county's purchasing department is not a part of the purchasing transaction, and as a part of the county's duty to provide timely financial information, the duty to follow the provisions of section 2-209 of this chapter and all other provisions regarding the requisition of goods and services is hereby delegated to each and every such elected official.

As a matter of accounting procedure to ensure the county has accurate real time accounting records, elected officials are required to use the purchasing module of the county's finance system for requisitioning materials, supplies, equipment, services, construction, construction related services and professional services.

D. Department Of Transportation: The procurements as set forth below by the county's department of transportation need not be processed by the director of purchasing, but the department shall be subject to the requirements of this article and the regulations promulgated hereunder in making these procurements:

1. Road and bridge construction, construction related services, engineering services, land acquisition, appraisal services and technical services necessary to meet the operational requirements of the Kane County engineer.

E. Purchasing Records: All records relating to a purchase shall be maintained by the county agency to which procurement authority has been delegated and a copy of all such records shall be provided to the purchasing department upon selection of a vendor. (Ord. 15-364, 12-8-2015)

DIVISION 3. SOURCE SELECTION AND CONTRACT FORMATION

2-212: PURCHASES BELOW SIMPLIFIED ACQUISITION THRESHOLD:

A. Simplified Acquisition Threshold (SAT): The simplified acquisition threshold (SAT) for the purpose of this article is established at the level of thirty thousand dollars (\$30,000.00).

1. Micropurchases: Procurement of materials, services, supplies, equipment, construction or construction related services that are less than ten thousand dollars (\$10,000.00) (\$2,000.00 for those construction projects subject to the Davis-Bacon act). There is no requirement to obtain competitive quotes but efforts should be made to distribute purchases equitably among qualified providers.

2. Small Purchases: Procurement of materials, services, supplies, equipment, construction or construction related services that are at least ten thousand dollars (\$10,000.00) (\$2,000.00 for those construction projects subject to the Davis-Bacon act) and less than the simplified acquisition threshold of thirty thousand dollars (\$30,000.00) may be awarded by department heads and/or the director of purchasing where there has been a competitive price quotation process and at least

three (3) quotations have been obtained prior to selection. (Ord. 15-364, 12-8-2015; amd. Ord. 21-538, 12-14-2021)

2-213: ARTIFICIAL DIVISION OR FRAGMENTATION PROHIBITED:

Procurements shall not be artificially divided or fragmented (stringing) so as to fall below the simplified acquisition threshold (SAT) in order to circumvent any bidding or competitive selection process and procedures described in this article. (Ord. 15-364, 12-8-2015)

2-214: BIDDING:

A. Competitive Bidding:

1. **Conditions For Use:** All procurements whose value equals or exceeds the simplified acquisition threshold (SAT) of thirty thousand dollars (\$30,000.00) shall be awarded either by competitive sealed bidding or electronic reverse auction in accordance with section 2-229, "Electronic Reverse Auction Bidding", of this chapter, except as otherwise provided in sections 2-215, "Request For Proposals", 2-216, "Professional Services Selection Process", 2-217, "Emergency Purchase", and 2-221, "Cooperative Joint Purchasing", of this chapter or as provided by state statute.
2. **Invitation For Bids:** An invitation for bids shall be issued and include all specifications, terms and conditions applicable to the procurement.
3. **Public Notice:** Reasonable time for the required public notice of the invitation for bids shall be given, not less than ten (10) calendar days, excluding county holidays, prior to the date set forth therein for the submittal and opening of bids. For bids requiring a mandatory prebid conference, the public notice must be published at least five (5) calendar days prior to the conference date. Such notice shall include publication in a newspaper of general circulation within Kane County. The public notice shall state the project, place, submittal date and time of bid opening.
4. **Bid Opening:** Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The name of each bidder, bid amount and the relevant information the director of purchasing deems appropriate shall be read aloud and recorded on an abstract. The abstract shall be available to public inspection in accordance with section 2-210, "Public Access To Procurement Information", of this chapter.
5. **Late Bids:** No bids received after the time specified in the invitation for bids will be considered, as it is the responsibility of the bidder to ensure the bid is delivered according to the requirements stated in the solicitation. All bids received after the specified time will be returned unopened to the bidder.
6. **Acceptance And Evaluation Of Bids:** Bids shall be unconditionally accepted without alteration or correction, except as authorized by this article. Bids shall be evaluated to determine which bidder offers the lowest cost to the county in accordance with the evaluation criteria set forth in the solicitation. Only objectively measurable criteria set forth in the invitation for bids shall be applied in determining the lowest responsive bidder. Examples of such criteria include, but are not limited to, quality of the product supplied, the product's conformity with the specifications, suitability of the product to the requirements of the county, availability of support services, uniqueness of the service, materials, equipment or supplies as it applies to networked integrated computer systems, compatibility to existing equipment, delivery terms, discounts, transportation costs, and total or life cycle costs. The invitation for bids shall set forth the evaluation criteria to be used and no other criteria, not stated in the specifications, shall be used. Alternative bids may be considered and accepted, only if provisions authorizing such offers are specifically stated in the invitation for bids and fulfill the required evaluation criteria set forth therein.
7. **Award:** Upon submittal and approval from the using agency's parent committee and executive committee or county board, whichever is appropriate, the contract shall be awarded by appropriate notice to the lowest responsible bidder whose bid meets the requirements and criteria set forth in the invitation for bids. All contractually required documentation will be required prior to any notice to proceed.

B. Multistep Sealed Bids:

1. **Conditions For Use:** The multistep sealed bid method may be used if the purchasing director determines:
 - a. Available specifications or purchase descriptions are not sufficiently complete to permit full competition without technical evaluations and discussions to ensure mutual understanding between the bidder and the county.
 - b. Definite criteria exists for evaluation of technical offers.
 - c. More than one technically qualified source is expected to be available.
 - d. A fixed price contract will be utilized.
2. **Invitation To Submit Technical Offers:** In phase one, multistep bidding shall be initiated by the issuance of an invitation to submit technical offers and shall be prepared in a format approved by the director of purchasing. The invitation to submit technical offers shall contain the following information:
 - a. Notice that the procurement will be conducted in two (2) phases and priced bids shall be considered only in the second phase from bidders whose unpriced technical offers are found acceptable in the first phase.
 - b. Instructions and information concerning submission requirements, due date and time, submittal address, time period the offer shall remain open and any other special information.
 - c. The best description of the materials, equipment or services requested.

d. The requirements of the technical offers, such as drawings, descriptive literature, samples, technical data and inspection or testing of a product before award.

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

4. Public Opening: The name of each offeror and other information deemed appropriate by the director of purchasing shall be read aloud and recorded on an abstract, which will be available for public inspection. The abstract and each technical offer shall be open to public inspection in accordance with section 2-210, "Public Access To Procurement Information", of this chapter.

5. Amendments To Technical Offers: The invitation to submit technical offers may be amended after the submission of the unpriced technical offers and shall only be distributed to bidders who submitted unpriced technical offers. These bidders will be permitted to submit new unpriced technical offers or to amend the offers previously submitted. If an amendment materially changes the procurement, the invitation to submit technical offers shall be canceled in accordance with subsection 2-224A of this chapter.

6. Acceptance And Evaluation Of Technical Offers: Unpriced technical offers shall be evaluated solely in accordance with the criteria set forth in the invitation to submit technical offers and shall be determined to be either acceptable or potentially acceptable for further consideration or unacceptable. A determination that an unpriced technical proposal is unacceptable shall be in writing, state the basis of the determination and be retained in the procurement file. If the director of purchasing determines a bidder's unpriced technical offer is unacceptable, the director of purchasing shall notify the bidder of this determination and that the bidder shall not be afforded an opportunity to amend its technical offer.

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

8. Receipt Of Final Technical Offers: After receipt of final technical offers, the director of purchasing shall determine whether the technical offers are acceptable for consideration in phase two or are unacceptable.

9. Withdrawal Of Offers In Phase One: At any time during phase one, offers may be withdrawn.

10. Public Access: Technical offers received shall be open to public inspection after the execution of a contract except to the extent set forth in section 2-210, "Public Access To Procurement Information", of this chapter.

11. Phase Two Of Multistep Sealed Bidding: Upon completion of phase one, the director of purchasing shall conduct phase two by issuing an invitation for bids under subsection A, "Competitive Bidding", of this section, except that the invitation for bids shall be issued only to bidders whose technical offers were determined to be acceptable in phase one. (Ord. 15-364, 12-8-2015)

2-215: REQUEST FOR PROPOSALS:

A. Conditions For Use: In cases where the county seeks to contract for a project or service whose goals, tasks or results are known, but for which the procedure or method of accomplishing same either may not be specified or is otherwise undetermined, a contract may be entered into by use of the request for proposal procedure. Reasons for using the request for proposal procedure shall be approved by the director of purchasing prior to the commencement of this procedure and presented for informational review to the finance committee and the appropriate parent committee at their next scheduled meeting. Professional service contracts that equal or exceed thirty thousand dollars (\$30,000.00) shall be subject to a request for proposal according to the selection process set forth in section 2-216, "Professional Services Selection Process", of this chapter.

B. Request For Proposals: A request for proposals shall be issued and include all specifications, terms and conditions applicable to the procurement.

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

D. Receipt Of Proposals: Names of offerors will be read aloud in the presence of one or more witnesses and recorded on an abstract. Contents of the sealed proposals shall not be disclosed to any of the competition or offerors during the negotiation process. The abstract shall be open for public inspection only after the contract is awarded in accordance with section 2-210, "Public Access To Procurement Information", of this chapter.

E. Evaluation Factors: The request for proposals shall state the relative importance of price and other evaluation factors.

F. Discussions With Responsible Offerors And Revisions To Proposals: As provided in the request for proposals,

discussions may be conducted with the responsible offerors, who submitted proposals determined to be susceptible of being selected for award, for the purpose of clarification to assure full understanding and responsiveness to the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revision of proposals and such revision may be permitted after submissions and prior to award for the purpose of obtaining best and final offers.

G. Award: After submission and approval by the using agency's parent committee and executive committee or county board, whichever is appropriate, award will be made to the responsible offeror whose proposal conforms to the solicitation and is determined, in writing, to be in the best interests of the county based on the evaluation factors set forth in the request for proposals. The contract file shall contain the basis on which the award is made. (Ord. 15-364, 12-8-2015)

2-216: PROFESSIONAL SERVICES SELECTION PROCESS:

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

The services may require mandatory or essential technical skills as well as, in some cases, professional licenses or certifications and are provided by accredited professionals in connection with defined assignments, which may result in the preparation of a report, the review and analysis of reports prepared by others, preparation of plans or specifications, recommendations of a particular course of action or policy, and include supervision of an activity (such as construction).

A. Requirements For Engagement Of Independent Professionals: The need or requirement of the county for the engagement of independent professional services shall be based on a determination that one or more of the following circumstances exist:

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

B. Procedures For Selection Of Independent Professionals Not Subject To The Local Government Professional Services Selection Act: Contracts for professional services that are less than ten thousand dollars (\$10,000.00) may be awarded by department heads pursuant to rules promulgated by the Director of Purchasing.

Contracts for professional services that are at least ten thousand dollars (\$10,000.00) and less than thirty thousand dollars (\$30,000.00) may be awarded by department heads and/or the Director of Purchasing where there has been a competitive price quotation process and at least three (3) quotations for the services have been obtained prior to selection.

Contracts for professional services that equal or exceed thirty thousand dollars (\$30,000.00) shall be awarded after a competitive selection process that includes a request for proposal to provide the services, except in cases of actual emergency as set forth in section 2-217, "Emergency Purchase", of this division. The County may require a uniform request for proposal process to be employed in the case of all contracts subject to the jurisdiction of the Kane County Board and such other cases where it can be made applicable.

Contracts for professional services shall include or be accompanied by documentation from the appropriate department head or parent committee referencing the specific provision(s) of subsection A, "Requirements For Engagement Of Independent Professionals", of this section applicable to the particular project.

C. Procedures For Selection Of Independent Professionals Subject To The Local Government Professional Services Selection Act: Professional services of architects, engineers and land surveyors are governed by the requirements of the Local Government Professional Services Selection Act, 50 Illinois Compiled Statutes 510/1 et seq. (the "Act"), and by local policy, rules and regulations, including where applicable, the qualification based selection process of the Kane County Division of Transportation. All professional service contracts or agreements for professional services for architectural, engineering or land surveying purposes, which equal or exceed five thousand dollars (\$5,000.00), shall be subject to the Act.

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

E. Procedures For Purchase Of Items Not Suitable For Competitive Bid, 55 Illinois Compiled Statutes 5/5-1022(c): The purchase of used computer hardware, used computer hardware maintenance, and used computer hardware support services shall not be required to be competitively procured. Purchases over thirty thousand dollars (\$30,000.00) must be authorized for purchase by the County Board.

The purchase of computer software, computer hardware, and computer databases that have been competitively procured and that require additional proprietary licensing, software integrations, software development, software maintenance, computer hardware maintenance, database maintenance, software support services, database support services and computer hardware support services are not suitable for competitive procurement and may be authorized for purchase. Purchases over thirty thousand dollars (\$30,000.00) must be authorized by the County Board.

F. Sole Source Procurement: With the exception of micropurchases (subsection 2-212A1 of this division), no contract may be awarded without complying with the competitive selection process appropriate for the type of procurement as determined by one of the following sections of this division: subsection 2-212A2, "Small Purchases", subsection 2-214A, "Competitive Bidding", subsection 2-214B, "Multistep Sealed Bids", section 2-215, "Request For Proposals", this section, section 2-217, "Emergency Purchase", section 2-218, "Auction Purchases", or section 2-221, "Cooperative Joint Purchasing".

1. Purchases below the simplified acquisition threshold (\$30,000.00): If after conducting a good faith review of available sources, there is only one source for the required supply, service, or construction item, both the Purchasing Director and the department head must approve of the negotiated price, delivery and terms.

2. Purchases at or above the simplified acquisition threshold (\$30,000.00): If after complying with the appropriate competitive selection process only one responsive bid or offer is received, the procurement shall comply with the procedures stated in subsection 2-223F, "Only One Bid/Offer Is Received", of this division. (Ord. 15-364, 12-8-2015; Ord. 19-46, 2-11-2019; Ord. 21-538, 12-14-2021)

2-217: EMERGENCY PURCHASE:

A. Conditions For Use: An emergency purchase equaling or exceeding thirty thousand dollars (\$30,000.00) may be authorized without bidding in certain situations including, but not limited to, situations threatening public health or safety, where immediate repairs are required to County property to protect or prevent against further loss or damage, where immediate action is needed to prevent or minimize disruption to County services, where immediate action is required to ensure integrity of County records and where immediate action is necessary to avoid the lapse or loss of Federal, State or donated funds. An emergency purchase shall be limited to those materials, supplies, equipment, services, construction and construction related services necessary to satisfy the emergency and these purchases shall be made with such competitive evaluation as is practicable under the circumstances.

B. Emergency Affidavit: A department seeking an emergency purchase shall prepare an emergency affidavit documenting both the existence of an emergency condition and the nature of the emergency. The department head shall sign the affidavit and submit to the County Board Chairman the emergency affidavit requesting authorization to make the emergency purchase. If the county board chairman is unavailable, then the signature authorizing approval shall be obtained from the board vice chairman. If the board vice chairman is unavailable, then the signature authorizing approval shall be obtained from the using agency's parent committee chairman and the finance committee chairman.

C. Cost Or Pricing Data: The director of purchasing may require from the requesting county agency the submission of cost or pricing data in connection with an award under this section.

D. Negotiations: The director of purchasing shall negotiate with the supplier, to the extent practical, a contract in the best interest of the county. The price being paid must be reasonable considering the circumstances.

E. Contract Documentation: The emergency affidavit must be submitted to the director of purchasing as soon as practicable and shall be included in the contract file.

F. Board Ratification: Any emergency purchase equaling or exceeding thirty thousand dollars (\$30,000.00) under this section shall be placed on the agenda for ratification at the next regularly scheduled parent committee, executive committee and county board meeting. (Ord. 15-364, 12-8-2015)

2-218: AUCTION PURCHASES:

Purchases may be made at auction in accordance with the procedures and requirements applicable to that particular auction. Notice and competitive selection is not a requirement and the amount paid shall be the amount bid and accepted, plus any required buyer's premium. Prior to the auction, the county's finance director must authorize in writing an upper expenditure limit for the item(s) under consideration at auction. Auction purchases shall be treated as an emergency purchase and shall comply with the procedures stated in subsections 2-217B and C of this chapter. (Ord. 15-364, 12-8-2015)

2-219: REQUEST FOR INFORMATION:

The director of purchasing may issue a request for information to obtain data about services, equipment, materials, supplies, or construction and construction related services to meet a specific county requirement. Sufficient public notice shall be provided in the same manner as stipulated in subsection 2-214A3, "Public Notice", of this chapter. (Ord. 15-364, 12-8-2015)

2-220: CHANGE ORDER(S):

Change order(s) for a contract obtained pursuant to this article shall be processed under the following guidelines:

A. A change order(s) where the cost equals or exceeds thirty thousand dollars (\$30,000.00), either singularly or in the aggregate, requires approval from the authorized official of the using agency, the parent committee of the using agency and the county board.

B. In situations where the time required for processing approval of a change order necessitated by field conditions,

whose total purchase cost exceeds thirty thousand dollars (\$30,000.00), would unreasonably interrupt project schedules to the financial detriment of the county, the change order may be processed by an authorized official of the county's using agency after written notification to the using agency's parent committee chairman. Change orders made under these conditions shall be placed on the agenda for ratification at the next regularly scheduled executive committee or county board meeting, whichever is appropriate. (Ord. 15-364, 12-8-2015)

2-221: COOPERATIVE JOINT PURCHASING:

A. The director of purchasing may procure materials, services, supplies, equipment, construction or construction related services, through any governmental agency without complying with the requirements of subsection 2-214A, "Competitive Bidding", of this chapter, provided:

1. Such procurements are made pursuant to a written agreement between the governmental agency and the Kane County board.
2. Competitive selection procedures, similar to the requirements of subsection 2-214A, "Competitive Bidding", of this chapter, were used in the applicable procurement.
3. This type of procurement is not employed as a means for circumventing the general intent of this article.
4. The county is authorized by Illinois law or regulation to contract with such governmental agency, including, without limitation, authorization under the Governmental Joint Purchasing Act, 30 ILCS 525/01 et seq.

Prior to entering into any such written agreement, the director of purchasing shall obtain a written opinion from the Kane County state's attorney that such agreement is authorized by law.

B. The Director of Purchasing may, without violating any bidding requirements of Section 4.2, procure supplies and services under any contract let by the State pursuant to lawful procurement procedures in accordance with the Governmental Joint Purchase Act, 30 ILCS 525/4.2. (Ord. 15-364, 12-8-2015; amd. Ord. 22-144, 4-12-2022)

2-222: SOLICITATION AMENDMENTS:

A. Conditions For Use: If necessary, an amendment to a solicitation shall be issued to:

1. Make changes in the solicitation.
2. Correct defects or ambiguities.
3. Furnish other bidders information provided one bidder if the information will assist the other bidders in submitting bids or the lack of information will prejudice the other bidders.

B. Distribution: Amendments to solicitations will be identified as such and shall be sent to all persons to whom the solicitation was originally sent.

C. Receipt Acknowledgement: Amendments shall require the bidder to acknowledge receipt of the amendment by signing and returning the offer to contract page with their bid response on or before the scheduled date and time of the opening.

D. Time Frame For Vendor Evaluation: Amendments shall be issued a reasonable period before the due date to allow prospective bidders sufficient time to consider the amendment in preparing their bids. If the due date does not allow the bidder sufficient time to review the amendment, the due date may be extended. (Ord. 15-364, 12-8-2015)

2-223: BIDS/OFFERS:

A. Prebid Conferences: The county may conduct a prebid conference within a reasonable time, but not less than five (5) days before the scheduled bid opening date, to explain the procurement requirements. Verbal statements made at the prebid conference which are not consistent with the written solicitation shall not be binding upon the county unless a written amendment is issued.

B. Preopening Modification Or Withdrawal Of Bids/Offers:

1. Invitation For Bid Modification Or Withdrawal: A bidder may modify or withdraw its bid at any time before the bid opening, if the sealed modification or withdrawal is received in writing before the due date. A bidder or the bidder's authorized representative may withdraw the bid in person if, before the scheduled opening date, the identity of the individual requesting withdrawal is established and that person signs a receipt for the bid. A bid may not be withdrawn if the bid opening has begun.

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

3. Document Retention: All documents concerning a modification or withdrawal of a bid/offer shall be retained in the appropriate procurement file.

C. Late Bids/Offers, Late Withdrawals And Late Modifications:

1. Definition Of Late Bid/Offer/Withdrawal/Modification: A bid, offer, withdrawal, or modification is considered late by the county if it is received after the date and time set for the submission of such bids/offers.

2. Conditions For Rejection: A late bid, late offer, late withdrawal, or late modification shall be rejected unless it would have been received on time but for the action or inaction of county personnel.

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

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

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

E. Mistakes In Bids/Offers:

1. Mistake Discovered Prior To Bid/Offer Opening: A bidder/offeror may correct mistakes discovered before the scheduled date and time for the bid/offer opening by withdrawing or correcting the bid/offer as provided in subsection B, "Preopening Modification Or Withdrawal Of Bids/Offers", of this section.

2. Mistake Discovered After Bid/Offer Opening: After bid/offer opening, a bid/offer mistake may not be corrected or withdrawn except in the following situations:

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

b. The director of purchasing may waive any minor (nonprice) informalities in a bid/offer or allow the bidder/offeror to correct them if the revision is in the best interests of the county.

c. Corrections to a bid/offer shall be permitted only to the extent the bidder/offeror can show by clear and convincing evidence that a mistake of nonjudgmental character was made, the nature of the mistake and the bid/offer price actually intended. The director of purchasing shall consult with the using agency and parent committee chairman prior to allowing the correction.

d. In lieu of bid/offer correction, a bidder/offeror alleging a material mistake of fact may be permitted to withdraw its bid if:

(1) The mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or

(2) The bidder submits evidence that clearly and convincingly demonstrates that a mistake was made.

(3) The director of purchasing consults with the using agency and parent committee chairman prior to allowing the bid withdrawal.

3. Mistake Discovered After Award: Mistakes shall not be corrected after award of a contract except in cases where the director of purchasing makes a written determination that it would be unconscionable in not allowing correction to the error and upon approval from the using agency, parent committee, and county board.

4. Written Determination: If a correction or withdrawal of a bid/offer after bid/offer opening is permitted or denied under this section, the director of purchasing shall prepare a written determination indicating the basis of the decision to approve or deny the correction or withdrawal.

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

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

G. Tie Bids:

1. Conditions For Tie Bids: Tie bids are the lowest cost bids from responsive and responsible bidders that are identical in price.

2. Award Determination: Award of tie bids will be determined as follows:

a. If the bids are equal in all respects, the award shall be made by a coin toss by the director of purchasing with one or more witnesses upon three (3) days' written notice to the bidders. Tie bidders will be afforded the opportunity to witness the coin toss, however, attendance is voluntary.

H. Confidential Information: If a person believes a bid, proposal, offer, specification or protest submitted to the county contains either trade secrets or proprietary property, a statement should be included in the submission, which describes and supports their claim. The trade secrets or proprietary property must be specifically identified as the information considered confidential. Entire bid submissions shall not be eligible for consideration as confidential material. Trade secrets or

proprietary property are exempt from inspection and copying under the Illinois freedom of information act (the "act").

The county does not represent, warrant or guarantee that any information designated as trade secrets or proprietary property will in fact be so deemed by any court, and all bidders assume the risk that any and all information contained in a bid or proposal may not be exempt from disclosure under the act. The county expressly disclaims all liability for such disclosure. (Ord. 15-364, 12-8-2015)

2-224: SOLICITATION:

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

B. Cancellation Of A Solicitation Before The Due Date And Time:

1. Authority For Determining Cancellation: The director of purchasing has the authority to cancel a solicitation, in whole or part, before the due date and time if a determination is made that cancellation is in the best interests of the county.

2. Notification Of Cancellation: If a solicitation is canceled before the required submittal date and time, notice of the cancellation shall be sent to all persons to whom the solicitation had been distributed. The notice shall identify the solicitation and the reason for cancellation.

3. Handling Of Received Bids/Proposals: Any received bids/proposals shall be returned unopened to the vendors.

C. Cancellation Of A Solicitation After Receipt Of Bids Or Proposals:

1. Authority For Determining Cancellation: The director of purchasing has the authority to cancel a solicitation after receipt of bids or proposals, but before award, if a determination is made that cancellation is in the best interests of the county.

2. Notification Of Cancellation: A notice of cancellation shall be sent to all bidders or offerors submitting bids or proposals.

3. Document Retention And Public Inspection: Bids or proposals received for the canceled solicitation shall be retained in the appropriate procurement file. If, within a reasonable time, the director of purchasing intends to issue a new solicitation for the same materials, services, equipment, supplies, construction or construction related services the proposals submitted under the canceled solicitation may be withheld from public inspection upon written determination that this action is in the county's best interest. After award of the second solicitation, bids or proposals submitted in response to both solicitations shall be open for public inspection to the extent set forth in section 2-210, "Public Access To Procurement Information", of this chapter. (Ord. 15-364, 12-8-2015)

2-225: REJECTION OF INDIVIDUAL BIDS OR PROPOSALS:

A. Conditions For Rejection: A bid or proposal may be rejected if:

1. The bidder is determined to be nonresponsive in accordance with section 2-226 of this chapter.
2. The bid is nonresponsive pursuant to subsection 2-207C, definition of "responsive bidder", of this chapter.
3. The proposed price is unreasonable.
4. The bid or proposal is not in the best interests of the county.

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

C. Document Retention And Public Inspection: The determination for rejection will be retained in the procurement file and shall be available for public inspection to the extent set forth in section 2-210, "Public Access To Procurement Information", of this chapter. (Ord. 15-364, 12-8-2015)

2-226: RESPONSIBILITY OF BIDDERS AND OFFERORS:

A. Determination Of Vendor Responsibility: Before awarding a contract to a bidder or offeror, the director of purchasing will determine whether that bidder or offeror is responsible. The signature of the appropriate official authorized to execute the contract award signifies the bidder or offeror is responsible.

1. Factors In Determining Responsibility: Factors considered in determining whether a bidder or offeror is responsible are:

- a. The bidder's or offeror's resources in terms of financial, physical and personnel.
- b. The bidder's or offeror's record in terms of past performance and integrity, such as a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; a violation of the county's ethics ordinance; a debt owed by the contractor to the county; or suspension or debarment by another governmental entity.
- c. Whether the bidder or offeror is legally qualified to do business with the county.
- d. Whether the bidder or offeror complied with requirements for submitting information regarding their responsibility.

e. Whether the bidder or offeror met specific responsibility criteria established within the solicitation for a particular procurement.

f. Where a bidder or offeror fails to promptly supply information in connection with any inquiries concerning responsibility.

g. The qualities of the products supplied, their conformity with the specifications and their suitability to the requirements of the county.

h. Availability of support services.

i. Uniqueness of the services, materials, equipment or supplies as it applies to networked, integrated computer systems.

j. Compatibility to existing equipment.

k. Delivery terms.

2. Determination Of A Nonresponsible Bidder/Offeror: A determination of a nonresponsible bidder or offeror shall be in writing by the director of purchasing outlining the basis of the determination and a copy shall be included in the procurement file.

3. Notification To Nonresponsible Bidder/Offeror: A notice shall be sent to the nonresponsible bidder or offeror stating the basis of the determination. The decision may be appealed as provided in division 5 of this article.

4. Dissemination Of Bidder/Offeror Information: Information furnished by a bidder or offeror pursuant to this section shall not be disclosed outside of the purchasing department without the prior written consent by the bidder or offeror except in accordance with section 2-210, "Public Access To Procurement Information", of this chapter.

5. Bidder/Offeror Rights: A finding of nonresponsibility shall not be construed as a violation of the rights of any person.

B. Bid Security And Performance/Payment Bonds: Bid security may be required for contracts when provided by statute or when the director of purchasing determines it is in the best interests of the county.

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

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

When a contract is awarded the required performance bonds or payment bonds, in the amount stated in the bid document, shall be delivered to the county and shall become binding on the parties upon the execution of the contract. Bid security, performance bonds or payment bonds shall not serve as a substitute for determining bidder responsibility. (Ord. 15-364, 12-8-2015)

2-227: MULTIYEAR CONTRACTS:

The county's policy on multiyear contracts includes the following:

A. All multiyear contracts presented for approval shall contain the total value of the award for the multiyear period.

B. Multiyear contracts shall not be presented to a parent committee or county board where the terms of the contract exceeds two (2) years without prior approval by the director of purchasing and director of finance.

C. All multiyear contracts will include a nonappropriations clause stating that continuation of the contract is based on the appropriation of funding approved by the county board.

D. The resolution authorizing the chairman to execute the multiyear contract shall include the following, or substantially similar language:

Whereas, the Contract calls for the use of funds beyond the present budget year and the County of Kane acknowledges the necessity of the appropriation of such funds.

(Ord. 15-364, 12-8-2015)

2-228: EXTENSION OF BID/OFFER ACCEPTANCE TIME:

After opening of bids or offers, the director of purchasing may request, in writing, an extension of time during which the county may accept the bids or offers only from bidders or offerors meeting the stipulated submission date and time requirements of the solicitation.

Subsequent to receipt of the county's extension request the bidder or offeror may withdraw their bid or offer, without penalty, through written notification to the director of purchasing. No other modifications shall be allowed. (Ord. 15-364, 12-8-2015)

2-229: ELECTRONIC REVERSE AUCTION BIDDING:

The purchasing director may procure materials, services, supplies, equipment, construction, construction related services and professional services with an electronic reverse auction company, in accordance with the Illinois procurement code, when deemed to provide the best value or all purchasing methods provide equal value to the county.

A. Soliciting Reverse Auction Bids: Reverse auction bids will be solicited in the same manner as other invitation for bids in subsection 2-214A, "Competitive Bidding", of this chapter, with the exception that the bids will be done electronically with an internet company. During the auction, a bidder's price shall be disclosed to other bidders. Bidders shall have an opportunity to reduce their bid prices during the auction. At the conclusion of the auction, the record of bid prices received and the name of each bidder shall be open to public inspection. (Ord. 15-364, 12-8-2015)

2-230: COMMUNICATION DURING THE PROCUREMENT PROCESS:

In an effort to create a more competitive and unbiased procurement process, the county desires to establish a single point of contact throughout the solicitation process. Therefore, from the issue date of any solicitation, until the due date of the solicitation, all requests for clarification or additional information regarding the solicitation, or contact with county personnel concerning this solicitation or the evaluation process must only be through the purchasing department staff. Inquiries will be collected by purchasing department staff who will then submit the inquiries to the department head responsible for the procurement. Responses by the department head to the inquiries will be submitted to the purchasing department staff who will then distribute the responses to all vendors responding to the solicitation. In this way it will be assured that all vendors participating in the process will be receiving the same information. No contact regarding this solicitation with other county employees, agents of the county or elected officials is permitted unless expressly authorized by the purchasing director. A violation of this provision is cause for the county to reject the bidder's proposal. If it is later discovered that a violation has occurred, the county may reject any proposal or terminate any contract awarded pursuant to this solicitation. (Ord. 15-364, 12-8-2015)

2-231: REVENUE GENERATING CONTRACTS:

Revenue generating contracts are agreements under which the county receives a commission from a vendor or other public entity for goods or services sold, such as a joint purchasing agreement or vending contract. Departments should ensure that an agreement has been fully executed between the county and the vendor or public entity. The purchasing director and/or state's attorney's office is required to be notified of any revenue generating agreements that are executed by department heads or elected officials. (Ord. 15-364, 12-8-2015)

2-231-1: RESPONSIBLE BIDDER REQUIREMENTS FOR PUBLIC WORKS PROJECTS:

A. Public Works: For purposes of this section, the term "Public Works" shall mean construction projects advertised and awarded by Kane County, and financed, in whole or in part, with County public funds. Public Works projects shall only include those projects where Kane County is the awarding authority and that require County Board approval as designated by the Kane County Purchasing Ordinance. Additionally, Public Works projects shall only include cost share drainage projects that exceed One Hundred Thousand Dollars (\$100,000).

B. Bid Submission Requirements:

1. In determining whether a bidder is a "responsible bidder" for the award of a Public Works contract, the bidder must submit the following information and supporting documentation, as directed on corresponding forms designated by the purchasing department, which may include a notarization requirement and/or a requirement that the bidder submits a signed statement as to their compliance with the bid submission requirements supported by affidavit, in order for the bid to be accepted:

a. A copy of the Illinois Secretary of State's Department of Business Services online records evidencing that the bidder has a current corporate annual report on file. If the bidder is an individual, sole proprietor, or partnership, this subsection shall not apply.

b. Documents evidencing current registration with the Illinois Department of Revenue if bidder has employees (e.g. document with account number, Illinois Business Tax number).

c. Documents evidencing current registration with the Illinois Department of Employment Security if bidder has employees (e.g. document with UI account number).

d. Disclosure of any federal, state or local tax liens or tax delinquencies against the bidder or any officers of the bidder in the last five (5) years.

e. A statement that all employees are (i) covered under a current workers' compensation insurance policy and (ii) properly classified under such policy. If the bidder is insured with a carrier, the evidence of workers' compensation insurance shall be a copy of the "Information Page" of the bidder's workers' compensation policy and any continuation of that Information Page which include the name and address of the insured, as well as the class codes the compensation premium is based on and the total estimated remuneration per class code.

f. A statement of compliance with all provisions of the Illinois Prevailing Wage Act (820 ILCS 130/1 et seq.) and all rules and regulations therein, for the past five (5) years. Such statement shall also provide that the bidder has reviewed the Prevailing Wage Act or federal Davis Bacon and Related Acts, has reviewed and agrees to pay the applicable prevailing wage rates attached to the bid specifications, and will strictly comply with the Prevailing Wage Act or federal Davis Bacon and Related Acts and related requirements. A bidder who has been found by the Illinois Department of Labor to be in violation of the Prevailing Wage Act twice within a three (3) year period shall be deemed not to be a Responsible Bidder for two (2) years from the date of the latest finding.

g. A copy of the written program for the prevention of substance abuse to be filed with a public body pursuant to the Substance Abuse Prevention on Public Works Projects Act (820 ILCS 265/1 et seq.).

h. A statement that individuals who will perform work on the Public Works project on behalf of the contractor are

properly classified as either (i) an employee or (ii) an independent contractor under all applicable state and federal laws and local ordinances.

i. Documents evidencing any professional or trade license required by law or local ordinance for any trade or specialty area in which the bidder is seeking a contract award. Additionally, the bidder must disclose any suspension or revocation of such license held by the company, or of any director, officer or manager of the company.

j. Evidence of participation in apprenticeship training programs applicable to the work to be performed on the project, which are approved by and registered with the United States Department of Labor's Office of Apprenticeship, or its successor organization; and evidence that any applicable apprenticeship program has graduated at least five (5) apprentices in each of the past five (5) years for each of the construction crafts the bidder will perform on the project. Evidence of graduation rates are not required for apprenticeable crafts dedicated exclusively to the transportation of material and equipment to and from the Public Works project.

The required evidence includes but is not limited to a copy of all applicable apprenticeship standards and Apprenticeship Agreement(s) for any apprentice(s) who will perform work on the Public Works project; and documentation from each applicable apprenticeship program certifying that it has graduated at least five (5) apprentices in each of the past five (5) years for each construction craft the bidder will perform on the project. Additional evidence of participation and graduation requirements may be requested by the purchasing department at its discretion.

k. Bidder shall certify that all employees expected to perform work on the project and who face hazards on the job have completed a 10 hour or greater OSHA safety program. Only workers that have satisfactorily completed a 10 hour or greater OSHA safety program will be allowed to participate on the project. The bidder must have copies of employee OSHA cards on file, and the purchasing department may request the bidder provide copies of employees OSHA cards; failure to produce an employee's OSHA card may result in a determination that the bidder is not a responsible bidder.

l. Disclosure of the name and address of each subcontractor from whom the bidder has accepted a bid and/or intends to hire on any part of the project.

Further, any subcontractor that will complete either (1) 10% or more of the work on a project, or (2) at least \$100,000 of the work on a project, shall be required to adhere to all of the requirements set forth herein as though it were bidding directly to Kane County. All other subcontractors shall only be required to adhere to the requirements of subsections (j), (k), and (o) as though it were bidding directly to Kane County. Each bidder shall submit all subcontractor information and supporting documentation to the purchasing department prior to the subcontractor commencing work on the project.

m. Statements as to past performance, which shall give an accurate and complete record of three (3) similar public works projects completed in the past three (3) years by the bidder. Such statements shall include the name of the public body and the project, original contract price, final contract price, the names of all subcontractors used, if applicable, and a statement as to compliance with completion deadlines.

n. Any determinations against the bidder by a court or governmental agency for violations of federal, state, or local laws, including but not limited to serious, willful or repeated violations of the Occupational Safety and Health Act (OSHA), violations of contracting or antitrust laws, tax or licensing laws, environmental laws, or the Federal Davis Bacon and Related Acts.

o. All bidders will be required to turn in certified payrolls as specified in Illinois Public Act 94-0515, and follow all provisions of the Employee Classification Act, 820 ILCS 185/1 et seq.

2. Any material changes to the bidder's status, at any time, must be reported in writing within fourteen (14) calendar days of its occurrence. Failure to comply with this requirement is grounds for the bidder to be deemed a non responsible bidder.

3. If a bidder submits proof of appropriate prequalification through the Illinois Capital Development Board or Illinois Department of Transportation, the bidder need only to submit documentation referenced in subsection (B)(1)(j), evidence of participation in apprenticeship training programs applicable to the work to be performed on the project.

C. Incomplete Submissions by Bidders and Subcontractors:

1. It is the sole responsibility of the bidder to comply with all submission requirements at the time it submits its bid to the purchasing department. Bidder submissions deemed incomplete shall result in a determination that the bidder is not a responsible bidder. A submission is deemed incomplete if the Bidder has not cured the deficiency in its submission within seven (7) calendar days after written notice given by the County.

2. The submission requirements also apply to all subcontractors, except that the successful bidder shall submit all applicable subcontractor submissions, as outlined in subsection B(1)(l) prior to the subcontractor commencing work on the project. Failure of a subcontractor to submit the required information shall not disqualify the successful bidder from performing work on the project and shall not constitute a contractual default and/or breach by the successful bidder. However, Kane County shall withhold all payments otherwise due for work performed by a subcontractor, until the subcontractor submits the required information and the director of purchasing approves such information. Where the director of purchasing deems there to be a non material error in the submission of the required information for a subcontractor, the director of purchasing can utilize limited discretion in implementing such withholding requirement. Further, where the director of purchasing deems necessary, Kane County may also require that the successful bidder remove the subcontractor from the project and replace it with a responsive and responsible subcontractor.

D. Validity of Pre Qualification Classification:

1. Upon designation by the director of purchasing that a bidder's or subcontractor's submission in anticipation of a bid is complete and timely, and upon any further consideration deemed necessary by the director of purchasing, the bidder or subcontractor may be pre qualified for future Kane County Public Works projects. A bidder's classification as "qualified" shall exempt the bidder or sub contractor from the comprehensive submission requirements contained herein for a total period of three (3) calendar years. However, Kane County may ask a bidder to submit additional documents during the time period in which a bidder is pre qualified. Thereafter, during the three (3) calendar year period, bidders or subcontractors who are pre qualified must submit a complete application for continuation of "pre qualified" standing, on a form provided by the purchasing department, (also referred to as the "short form") by December 31st for the upcoming calendar year. Failure by any pre qualified bidder or subcontractor to timely submit its complete application for continuation of "pre qualified" standing shall result in automatic removal of the designation, effective January 1 of the upcoming year. However, the "removed" bidder or subcontractor shall still be permitted to bid on Kane County Public Works projects. Kane County may establish rules permitting bidder's to be pre qualified outside of the bidding process.

2. Any material changes to the bidder's status, at any time, must be reported in writing within fourteen (14) calendar days of its occurrence to the purchasing department. The pre qualification designation is solely within the discretion of the director of purchasing and Kane County specifically reserves the right to change or revoke the designation for a stated written reason(s).

3. Denial of pre qualification shall be in writing and shall be forwarded to the bidder within seven (7) calendar days of such decision. Any bidder denied or losing pre qualification status may request reconsideration of the decision by submitting such request in writing to the director of purchasing within seven (7) calendar days of receipt of notice of denial.

E. Lowest Bidder Not Chosen:

1. When the award is not recommended to be given to the lowest bidder, a statement of the reason for such recommendation shall be prepared by the purchasing department.

2. In the event that there are no bidders pursuant to the Responsible Bidder Ordinance, Kane County may pursue bidders pursuant to the standard provisions otherwise set out by the Kane County Purchasing Ordinance.

F. Multiple Low Bids: When two or more responsible bidders submit the same low bid, the contract award shall be determined by drawing lots at a public meeting.

G. Public Records: All information submitted by a successful bidder pursuant to this Ordinance are public records subject to review pursuant to the Illinois Freedom of Information Act (5 ILCS 140/1 et seq.).

H. Materiality: The requirements of this Ordinance are a material part of the bid documents and the contract and the successful bidder shall insert this Ordinance in all subcontracts.

I. Severability: If any portion of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other portions or applications of this Ordinance which can be given effect without the invalid portions or applications and, to this end, the portions of this Ordinance are severable.

J. Other Ordinances: Any prior ordinance or portion thereof in conflict with this Ordinance is superseded by the requirements of this Ordinance. Where this Ordinance is silent, Kane County may adhere to the requirements laid out in the Kane County Purchasing Ordinance.

(Ord. 23-340, 8-8-2023)

DIVISION 4. SPECIFICATIONS

2-232: RESPONSIBILITY FOR SPECIFICATIONS:

The director of purchasing or delegated using agency shall prepare, revise, maintain and monitor specifications for materials, supplies, services, equipment and construction or construction related services required by the county. (Ord. 15-364, 12-8-2015)

2-233: RELATIONSHIP WITH USING AGENCIES:

The director of purchasing shall obtain expert advice and assistance from personnel of using agencies in the development of specifications and may delegate in writing to a using agency the authority to submit its own specifications. The director of purchasing shall retain authority to approve or disapprove all specifications. (Ord. 15-364, 12-8-2015)

2-234: MAXIMUM PRACTICABLE COMPETITION:

All specifications shall be drafted so as to promote overall economy for the purposes intended and encourage competition in satisfying the county's requirements and shall not be unduly restrictive. This policy applies to all specifications including, but not limited to, those prepared for the county by architects, engineers, designers, and draftsmen. (Ord. 15-364, 12-8-2015)

2-235: CONTRACTORS ENGAGED FOR SPECIFICATION DEVELOPMENT:

In order to ensure objective contractor performance and eliminate unfair competitive advantage, when procuring property and services under a federal award, contractors that develop or draft specifications, requirements, statements of work, and invitations for bids or requests for proposals must be excluded from competing for such procurements. (Ord. 15-364, 12-8-2015)

DIVISION 5. APPEALS AND REMEDIES

2-236: BID PROTESTS AND CLAIMS:

A. Right To Protest: Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with any solicitation or award of a contract may protest to the director of purchasing. Any protest must be submitted in writing within seven (7) calendar days from the issuance of the solicitation, addendum, notice of award, or other decision by the director of purchasing or authorized official of the using agency.

1. Stay Of Procurement During Protest: In the event of a timely protest under this subsection A, the director of purchasing or the authorized official of the using agency or the using agency's parent committee, after consulting with the state's attorney, shall determine whether it is in the best interests of the county to proceed with the solicitation or award of the contract.

B. Claims By Contractor After Contract Is Awarded: Unless otherwise provided by the terms of the contract, all claims by a contractor against the county relating to a contract shall be submitted in writing to the director of purchasing. The contractor may request a conference with the director of purchasing on the claim. Claims include, without limitation, disputes arising under a contract and based upon breach of contract, mistake, or misrepresentation. In the case of a contract based dispute, the provisions of this article shall prevail over any inconsistent provision in the contract, unless the county board has expressly waived such protection.

C. Bid Protests And Contract Claims:

1. Authority: The director of purchasing is authorized to settle any procedural protest regarding the solicitation or award of a county contract prior to an appeal to the appropriate parent committee thereof so long as all affected or interested parties are in agreement. The director of purchasing, after consulting with the state's attorney, shall make recommendations on the resolution of any unresolved protest or claim to the appropriate parent committee of the Kane County board for their consideration.

2. Notice Of The Director Of Purchasing's Decision: If the protest or claim is not resolved by mutual agreement, the director of purchasing shall issue a decision in writing within seven (7) business days of receipt of the protest or claim, and such decision shall be mailed or otherwise furnished to the aggrieved party. The decision shall state the reasons for the decision reached and shall inform the aggrieved party of its appeal rights under section 2-237 of this chapter.

3. Finality Of The Director Of Purchasing's Decision And Right To Appeal: The director of purchasing's decision shall be final and conclusive unless, within seven (7) business days from the date of receipt of the decision, the chairman of the using agency's parent committee receives a written appeal from the aggrieved party.

4. Failure To Render Timely Decision: If the director of purchasing does not issue a written decision regarding any protest or claim within seven (7) business days of receipt of such protest or claim, or within such longer period as may be agreed upon between the parties, then the aggrieved party may proceed as if an adverse decision had been received. (Ord. 15-364, 12-8-2015)

2-237: APPEAL:

A. Appeal Process: Any actual or prospective bidder, offeror, or contractor may appeal a decision by the director of purchasing regarding bid protests or contract claims to the chairman of the using agency's parent committee. Said appeal shall be made in writing within seven (7) business days from the date of receipt of the decision by the director of purchasing. The protestor shall be notified of the time and date when the appeal shall be considered and afforded a reasonable opportunity to state its position. Any party whose interests may be adversely affected by a protest or appeal shall also be notified and have the right to appear for the purpose of protecting those interests.

B. Decision: The using agency's parent committee shall issue a decision:

1. Prior to award, said decision shall be referred with the resolution for award of the contract for consideration by the county board.

2. After award, the decision of the using agency's parent committee shall be scheduled for discussion and decision at the next regularly scheduled executive committee or county board meeting, whichever is appropriate.

3. The decision of the county board is final.

C. Elected Officials: Decisions and determinations made under this section and subsection 2-236C, "Bid Protests And Contract Claims", of this chapter are subject to the review and prior approval of the appropriate elected county official as provided by the internal control statutes or as otherwise provided by law. (Ord. 15-364, 12-8-2015)

DIVISION 6. DEBARMENT AND SUSPENSION

2-238: PROHIBITION TO AWARD CONTRACTS TO PARTIES DEBARRED OR SUSPENDED:

No contract may be awarded to parties listed on the federal government's excluded parties list system in the system for award management (SAM), on the state of Illinois' list of sanctioned persons maintained by the agency's office of inspector general, or on the county's own list of parties suspended or debarred from doing business with the county. (Ord. 15-364, 12-8-2015)

2-239: CERTIFICATION LANGUAGE TO BE INCLUDED IN SOLICITATIONS AND CONTRACTS:

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

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

(Ord. 15-364, 12-8-2015)