



DuPage County
Finance Department
Procurement Division
421 North County Farm Road
Room 3-400
Wheaton, Illinois 60187-3978

LIMITATIONS ON THE AUTHORITY OF THE COUNTY OF DUPAGE TO CONTRACT

Section I: Contact Information

Please complete the contact information below.

BID NUMBER:	25-032-FM
COMPANY NAME:	Enerwise Global Technologies, LLC dba CPower
CONTACT PERSON:	Becky Carfagno
CONTACT EMAIL:	becky.carfagno@cpowerenergy.com

Section II: Limitations

The County of DuPage ("County") is a non-home rule unit of local government under the Constitution and laws of the State of Illinois. Pursuant to Section 7 of Article VII of the Illinois Constitution of 1970, counties and municipalities which are not home rule units have only the powers granted to them by law and the powers set forth in the state constitution. Accordingly, and unlike Cook County and many of Illinois's larger municipalities, every action DuPage County takes must be tied to a specific constitutional or statutory grant of authority or be necessarily inferred from that specifically granted authority. Any action the County takes in excess of that authority is *ultra vires* and void *ab initio* as a matter of law.

During the course of the procurement process, vendors frequently provide standard form contracts or propose exceptions that contain terms which, though commercially reasonable in a particular industry, are outside of the County's authority to agree to. The most common areas of conflict involve proposed provisions that require the County to provide a vendor with an indemnity, exclude the state's attorney's participation in the selection and control of outside counsel, or provide for more aggressive payment and interest terms than are permitted by law.

Indemnification

DuPage County has no authority to provide an indemnity to a vendor. As noted above, the County has only those powers conferred by the Illinois Constitution or state law or which can be necessarily inferred from those powers. While state law does require the County to indemnify its officers and employees and authorizes it to indemnify a limited number of other governmental entities, the legislature has not authorized counties to indemnify private vendors. Moreover, the Illinois Constitution requires that all expenditures of public funds be for public purposes. In an indemnity agreement, the indemnifying party agrees to be liable for the costs associated with the defense of the other party. If the indemnified party is not a public entity, then an indemnification agreement would impermissibly require an expenditure of public funds the benefit of that private party and not for the public. Finally, an indemnity contract is an extension of the public credit and an agreement to undertake a liability. Such an extension of credit requires an appropriation for that purpose sufficient to cover the obligation at the time of contract formation.

Choice of Counsel, Waiver of Defenses

Under Illinois law, the state’s attorney shall “defend all actions and proceedings brought against his county.” Historical and judicial precedents along with various opinions of Illinois’s attorneys general, interpret this language to mean that **the state’s attorney is the exclusive legal representative of his county**. The state’s attorney will generally appoint any attorney recommended to him by an indemnifying party or its insurance carrier who meets his approval as a “special” assistant state’s attorney for the purposes of the litigation. While the state’s attorney must retain the right to approve outside counsel and control the litigation, he will not interfere unreasonably with the indemnifying party’s attorney selection or legal strategy (or those of its insurance carrier). The County has no authority to retain or permit counsel to represent its interests nor can it contract away the duties of the state’s attorney. For this reason, the County also cannot contractually waive any defenses, privileges or immunities which may be available to it in litigation.

Payment Terms

The provisions of the Local Government Prompt Payment Act, 50 ILCS 505/1 et. seq. apply to all purchases made by DuPage County. The Act provides that the County must approve or disapprove of an invoice for goods or services within 30 days of the presentation of the invoice or delivery of the goods or services – whichever is later. The County then has 30 days after approval to pay any portion of the invoice which it has not disapproved. Interest, when permitted under the Act, accrues on a monthly basis at 1%. While the County may not offer payment or interest terms which are more generous to the vendor than authorized by the Act, the parties may agree to provide an incentive for more rapid payments.

Section III: Acceptance

The above list is not exhaustive, but it does address the most common areas of concern during the contract negotiation phase. **Accordingly, all prospective offerors are on notice that the County is without the authority to accept nor will it respond to any exceptions which purport to impose a duty on the County to indemnify a vendor, abridge the duties of the state’s attorney, waive any legal privilege, defense, or immunity available to it, or obligate it to payment and interest terms other than as permitted by the Local Government Prompt Payment Act. Further all prospective offerors are on notice that any such provision in any standard form contract is unenforceable and void as a matter of law whether or not approved by the County.**

Please acknowledge your Acceptance of the Limitations on the Authority of the County of DuPage to Contract as stated above. Your signature below shall establish your consent to a contract subject to such limitation on the County’s authority to contract. This page must also be incorporated as an exhibit to any contract the County will be asked to sign.

Receipt of the above ACCEPTANCE is hereby acknowledged by:

Printed Name: Shelley Schopp Signature on File
Signature: 
Title: Senior VP Date: 3/5/2025