

## ARTICLE VI. PROCUREMENT<sup>1</sup>

### ***PART 1. GENERAL PROVISIONS***

#### ***SUBPART A. PURPOSE AND APPLICATION***

##### **2-301: PURPOSE.**

- (1) ***Interpretation.*** This article shall be constituted and applied to promote its underlying purpose and policies.
- (2) ***Purpose and Policies.*** This article's underlying purpose and policies are to manage the procurement process in accordance with the law; spend taxpayer's money wisely and fairly; protect against fraud and favoritism; and to best meet the needs of DuPage County User Departments through continuous improvement of purchasing systems and procedures. The County is committed to competitive business opportunities for all vendors. This commitment is demonstrated in the County's Disadvantaged/Minority/Woman-owned Business Enterprises Program ("D/M/WBE Program") initially established pursuant to CB-R-0030-24. The D/M/WBE Program seeks to abolish barriers to full participation in County Contracts by all persons, regardless of race, ethnicity, or sex.

(Ord. No. FI-O-0091-20, 10-27-2020)

##### **2-302: APPLICATION.**

This article applies to Contracts for procurement of goods, services, and construction entered into by the County after the effective date of the ordinance from which this article derives. It shall apply to every expenditure of public funds by the County for public purchasing irrespective of its source, except as otherwise provided by federal or state law, federal or state regulation, County ordinance or administrative policy, or otherwise stated below. It shall not be applied to purchases made directly by Elected Officials unless the purchase is for County capital (e.g. a County vehicle which the Elected Official utilizes) or when the Elected Official is receiving a grant wherein the County will be bound by the terms of the grant, and/or the grant requires the County to ensure all state and federal laws/regulations are met (e.g., DBE criteria). However, if an Elected Official chooses to make any purchase with the assistance of the Procurement Division, the Elected Official is required to comply with all provisions of this article. When the procurement involves the expenditure of state or federal assistance or Contract funds, the procurement shall be conducted in accordance with any applicable mandatory state and/or federal law. Nothing in this article shall prevent any County User Department from complying with the terms and conditions of any grant, gift, bequest or cooperative purchasing agreement that is otherwise consistent with law. The County may adopt administrative procedures to ensure compliance with all bidding requirements, and those procedures may be more restrictive than required by statute.

##### **2-303: REQUIREMENT OF GOOD FAITH.**

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

(Ord. No. FI-O-0091-20, 10-27-2020)

## 2-304: SEVERABILITY.

If any provisions of this article, or the application thereof to any Business Entity, User Department, Elected Official, or circumstance, are held invalid, such invalidity shall not affect the applicability of the other provisions or the application of the remainder of this article which can be given effect without the invalid provision or application; and to this end, the provisions of this article are declared to be severable.

(Ord. No. FI-O-0091-20, 10-27-2020)

## 2-305: SINGULAR-PLURAL AND GENDER RULES.

- (1) ***Singular-plural.*** Words in the singular number include the plural, and those in the plural include the singular.
- (2) ***Gender.*** Words of a particular gender include any gender and the neuter, and when the senses indicate, words of the neuter gender may refer to any gender.

(Ord. No. FI-O-0091-20, 10-27-2020)

## 2-306 THROUGH 2-310: RESERVED.

### *SUBPART B. DEFINITIONS*

## 2-311: DEFINITIONS.

The word(s) defined in this section shall have the meanings set forth below whenever they appear in this article.

- (1) ***Architect, Engineer and Land Surveying Services.*** Those professional services within the practice of architecture, engineering, or land surveying, as defined in the Local Government Professional Services Selection Act or other applicable law.
- (2) ***Bid.*** The response submitted by a Bidder to a solicitation that is funded by or through the County.
- (3) ***Bid Security.*** A guarantee that the Bidder will enter into a Contract if it is offered within the specified period of time; failure to do so will result in forfeiture of Bid security.
- (4) ***Bidder.*** A Business Entity that has submitted a Bid on a County Contract, regardless of the Procurement method employed by the County or the type of goods or services sought.
- (5) ***Business Days.*** Any day in which normal business operations are conducted. For the County, a business day is considered to be Monday through Friday from 8 a.m. to 4:30 p.m. local time. Business days do not include weekends and public holidays.
- (6) ***Business Entity.*** Any corporation, partnership, person, individual, group of individuals, sole proprietorship, joint venture, other private legal entity, union, trustee, committee, or other entity which has submitted a Bid or otherwise seeks to do business with the County of DuPage.
- (7) ***Change Order.*** A change in an agreement, other than as specifically provided for in the Contract. Change Orders may also be referred to as Contract Modifications.
- (8) ***Chair.*** The Chairman of the DuPage County Board.
- (9) ***Consent Agenda.*** A group of routine meeting items which can be approved in one action unless a member of the County Board requests an item to be voted on separately.
- (10) ***Construction.*** The process of building, altering, repairing, improving, or demolishing any structure or

- building or other improvements of any kind to any real property.
- (11) **Construction-related.** Services completed by a consultant to develop and support construction activities, including preliminary engineering, design engineering, construction engineering, earthwork, and other projects performed by architects, engineers, and/or land surveyors.
  - (12) **Contract.** All types of County agreements, regardless of what they may be called, for the Procurement of goods, services or construction. Examples include, but are not limited to: payment vouchers, purchase orders, maintenance Contracts, service Contracts, systems Contracts, Intergovernmental Agreements, and oral agreements made in conformity with applicable law and this ordinance.
  - (13) **Contract Renewal.** A continuation of goods or services rendered under a contract for an additional period under the contract's original terms and conditions, where a clause permitting renewal is included in the Bid document and/or the original contract. (However, if the Bid document or original contract does not include the terms and conditions permitting a renewal, any continuation of the Contract is considered a new Contract, which must be re-Bid.)
  - (14) **Contractor.** Any Business Entity which is a party or beneficiary of a Contract with the County or through a User Department thereof, including consultants.
  - (15) **Cooperative Purchasing.** Cooperative purchasing may include, but is not limited to, joint or multi-party Contracts between public procurement units and open-ended state/national public procurement unit Contracts, which are made available to other public procurement units after having been bid by another public procurement unit where required.
  - (16) **Disadvantaged, Minority and Woman-owned Business Enterprise Program ("D/M/WBE Program").** The County's program that seeks to prohibit discrimination, abolish barriers, and provide equal opportunity for certified DBEs, MBEs and WBEs for the County's construction and construction-related Contracts as defined pursuant to CB-R-0030-24.
  - (17) **Elected Official.** For purposes of this article, "Elected Official" may include the Clerk of the Circuit Court, County Auditor, County Board Chair, County Board Members, County Clerk, County Coroner, County Treasurer, Recorder of Deeds, Superintendent of the Regional Office of Education, County Sheriff, and State's Attorney.
  - (18) **Emergency Procurement.** A Procurement defined by an imminent disruption of essential operations or conditions adversely affecting the safety, health or security of persons or property, where it is unfeasible to remedy such disruption or conditions through the use of normal competitive bidding procedures. Emergency Procurements do not include states of emergency or disaster declared under Section 10-7 of the Code of DuPage County.
  - (19) **Employee.** Individuals, including appointed and Elected Officials and their staff, who provide services for the County and draw salaries from the County.
  - (20) **Goods.** All tangible maintenance, repairs, and operation supplies, physical computer software, and/or equipment necessary to sustain day-to-day County operations.
  - (21) **Invitation For Bid.** All documents, whether attached or incorporated by reference, utilized to solicit competitive sealed bids.
  - (22) **Multi-Year Contracts.** Procurement Contracts extending more than one year in duration.
  - (23) **Parent Committee.** A standing committee established by the DuPage County Board with specific jurisdiction and responsibilities.
  - (24) **Payment Bond.** A guarantee by a sufficient surety (e.g., a bank, insurance company, or other guarantor) to pay for a subcontractor's labor and materials expended on the Contract if the Contractor defaults.
  - (25) **Performance Bond.** A guarantee by a sufficient surety (e.g., a bank, insurance company, or other guarantor) to either finish the project or reimburse the purchaser if the Contractor defaults.

- (26) **Procurement.** The buying, purchasing, renting, leasing, or otherwise acquiring of any goods, services, or construction. Includes all functions that pertain to the obtaining of any goods or services, or construction, including descriptions of requirements, selection and solicitation of sources, preparation and award of Contract, and all phases of Contract administration.
- (27) **Professional Services (Excluded).** Services for architectural, engineering and land surveying, which are excluded from the competitive bidding selection process under the Local Government Professional Services Selection Act 50 ILCS 510/0.01 *et seq.* or a similar federal statute.
- (28) **Professional Services (Exempted).** Contracts for professional services other than those listed in "Professional Services (Excluded)," where the selection is based more on ability than cost; or where cost is either not a factor or a minor factor. Services that may fall under this definition include, but are not limited to, services for medical doctors, attorneys, mediators, negotiators, appraisers, or other categories as approved by the Chief Procurement Officer which are exempted from the competitive bidding selection process. These exempted services must follow the Procurement procedures defined in section 2-353(2). Additionally, any attorney representing the County, a User Department or an Elected Official must be appointed by the State's Attorney consistent with section 2-356.
- (29) **Public Procurement Unit.** The State of Illinois, any county, city, town and any other subdivision of the state, or public agency of any such subdivision, public authority, education, health or other institution, any agency of the United States, and to the extent provided by law, any other entity which expends public funds for the Procurement of goods, services, and/or construction.
- (30) **Public Works Contract.** A Contract for public works as defined in the Illinois Prevailing Wage Act, 820 ILCS 130/2. Public works means all fixed works constructed or demolished by any public body or paid for with public funds, other than work done directly by any public utility company, whether or not done under public supervision or direction.
- (31) **Purchase Order.** A Contract for the purchase of goods, services or construction.
- (32) **Purchasing Agent.** The Chief Procurement Officer or any staff member of the Procurement Division authorized by the Chief Procurement Officer to act on behalf of the Chief Procurement Officer.
- (33) **Request for Proposal (RFP).** A formal request to Business Entities that solicits proposals, which includes all documents, whether attached or incorporated by reference, such as the scope of work, the Contract terms, and the Contract conditions.
- (34) **Responsible Bidder.** A Bidder that has the capability in all respects to perform fully the Contract requirements; the experience, personnel, integrity, reliability, facilities capacity, equipment, acceptable past performance, and credit necessary to assure good faith performance; and, when applicable, is in compliance with the County's Public Works Responsible Bidder Ordinance, FI-O-0020 -19.
- (35) **Responsive Bidder.** A Business Entity that has submitted a bid or proposal which conforms in all material respects to the requirements set forth in the Invitation For Bid. Compliance documents must be submitted as provided in the solicitation. When a Contract Goal has been assigned to a Contract, a Bidder must either meet the Contract Goal or establish its Good Faith Efforts to do so. Failure to do so will render the Bid non-responsive, and the Bid will be rejected pursuant to CB-R-0030-24.
- (36) **Reverse Auction.** An alternative Procurement method where the Procurement Division puts out a Contract for Bid through an online marketplace. The online marketplace allows multiple sellers to offer Bids on the items, competing to offer the lowest price that meets all the specifications of the Bid. However, the Reverse Auction method may not be used for services including, but not limited to telecommunications, communications, internet, construction, Professional Services (Exempted), or Professional Services (Excluded).
- (37) **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, Direct Payment Forms, Payment Vouchers and/or Grant Payment Forms.

- (38) **Sole Source Procurement.** A type of Procurement not suitable for Bid where the goods, services and/or construction are demonstrated to be available through only one source; and therefore, there is no competitive selection process (as further detailed in section 2-355 of this article).
- (39) **Specifications.** Any description of the physical or functional characteristics or of the nature of a good, service, or construction item, including but not limited to a description of any requirement for inspection, testing, or preparation of goods, services or construction projects.
- (40) **Stringing of Bids.** A person commits unlawful stringing of bids when the person has the intent to evade County bidding requirements and knowingly strings, assists in stringing or attempts to string any Contract with the County. The unlawful stringing of bids is a Class 4 felony. 720 ILCS 33E-18. Additionally, any Employee who unlawfully strings will be subject to discipline and may be personally obligated to pay for the items or services.
- (41) **Sub-contractor.** Any Business Entity hired to perform part of a contractual obligation under the control of the principal Contractor.
- (42) **Unauthorized Purchases.** An unauthorized purchase occurs when the materials, services, or any expense is charged to the County by a person who has not been given such authority. This includes ordering materials without an approved purchase order. The individual making an unauthorized purchase may incur a personal obligation to the vendor or the County for the expense incurred even though the materials or services are used for County business.
- (43) **User Department.** The County department that develops requisitions for the purchase of goods, services, or construction pursuant to this article.
- (44) **Used Equipment.** Equipment that:
- a) Has been in service for at least one-half its commercially reasonable life, or if life is less than twenty-four (24) months, is at least one (1) year old; or
  - b) Is a floor or demonstration model that is offered at a price at least twenty-five percent (25%) below current market price; or
  - c) Is otherwise determined by the Procurement Division on a case-by-case basis to be a bona fide used item.

(Ord. No. FI-O-0091-20, 10-27-2020)

## **2-312 THROUGH 2-315: RESERVED.**

### ***PART 2. PROCUREMENT DIVISION***

The Procurement Division administers Bids, Request for Proposals, and other procurement methods as outlined in Part 4 of this article. User Departments must comply with the policies and procedures established by the Chief Procurement Officer and administered by the Procurement Division. The Procurement Division's responsibilities shall include coordination with the Division of Contracting Equity to ensure that the County's Disadvantaged, Minority and Woman-owned Business Enterprise Program ("D/M/WBE Program") is implemented and administered pursuant to CB-R-0030-24 and subsequent implementing articles.

(Ord. No. FI-O-0091-20, 10-27-2020)

### ***SUBPART A. ROLE OF PROCUREMENT DIVISION***

## **2-316 : TERMS AND CONDITIONS.**

The Procurement Division is responsible for providing standardized contractual terms, conditions, notices, and

instructions for all Bid documents except for road construction, which follows Illinois Department of Transportation standards and regulations. All Bid documents shall include, but are not limited to:

- (1) Instruction to Bidders;
- (2) General conditions;
- (3) Bid and/or proposal forms;
- (4) Special or supplemental conditions (prepared by or in conjunction with the User Department);
- (5) Affidavits or certificates required by statute;
- (6) Language indicating specific state statutes applicable to the Procurement function or Contract performance; and
- (7) Bonds and insurance, where required.

Each Bid will be evaluated by the Procurement Division to determine the specific requirements of each individual Bid document.

(Ord. No. FI-O-0091-20, 10-27-2020)

## **2-317 : BID SECURITY AND BONDING REQUIREMENTS.**

- (1) **Requirement for Bid Security.** Bid Security may be required for Contracts when provided by statute or when the Chief Procurement Officer determines it is in the County's best interests. Bid Security shall be a bond provided by: (i) a surety company authorized to do business in the State of Illinois, (ii) a certified bank instrument, (iii) an irrevocable letter of credit, as defined by state statute, or (iv) an alternative financial instrument otherwise supplied in a form satisfactory to the Chief Procurement Officer and the Chief Financial Officer.
- (2) **Amount of Bid Security.** Bid Security shall be in an amount not to exceed ten percent (10%) of the amount of the Bid. Terms of forfeiture shall be expressed in the Bid document.
- (3) **Performance and Payment Bonds.** Performance and Payment Bonds may be required for Contracts when provided by statute or when the Chief Procurement Officer determines it is in the County's best interest. Performance and/or Payment Bonds shall be a bond provided by: (i) a surety company authorized to do business in the State of Illinois, (ii) a certified bank instrument, (iii) an irrevocable letter of credit, as defined by state statute, or (iv) an alternative financial instrument otherwise supplied in a form satisfactory to the Chief Procurement Officer and the Chief Financial Officer.
- (4) **Bid Security, Performance and Payment Bonds: When Required; Amounts.** When a Bid is submitted or a Contract is awarded, the required bonds or security in the amount stated in the Bid documents shall be delivered to the County and shall become binding on the parties upon the submission of the Bid and/or execution of the Contract.

(Ord. No. FI-O-0091-20, 10-27-2020)

## **2-318 : INSURANCE REQUIREMENTS.**

For all Contracts, Contractors and Sub-contractors shall be required to maintain adequate insurance coverage for the duration of the Contract. The Chief Procurement Officer shall determine, in consultation with the Chief Financial Officer, the types and amounts of coverage that shall be required, as recommended by the County's insurance broker/risk consultants. The Contractor shall have the County named as an additional insured as its interest may appear and shall furnish the Purchasing Agent with satisfactory evidence of said insurance.

(Ord. No. FI-O-0091-20, 10-27-2020)

## **2-319 : CONTRACTOR RECORD RETENTION.**

For all Contracts, Contractors and Sub-contractors shall be required to maintain adequate records appropriate to the type of Contract, to retain such records for a minimum of five (5) years from final payment unless otherwise specified in the solicitation, and to make such records available for inspection by the County upon reasonable terms consistent with state law. For Contracts subject to the Illinois Prevailing Wage Act, 820 ILCS 130/5 (a)(1), the retention period is also five (5) years. Contractors shall make payroll records available for inspection by the County and the Illinois Department of Labor ("IDOL"). In addition, Contractors shall also be required to submit certified payroll affidavits to IDOL under the Illinois Prevailing Wage Act.

(Ord. No. FI-O-0091-20, 10-27-2020)

## **2-320 : AUTHORIZATION FOR THE USE OF ELECTRONIC TRANSMISSIONS.**

- (1) The use of electronic media for all Procurement procedures, including acceptance of electronic signatures, is authorized consistent with state law for use of such media. The Chief Procurement Officer shall determine which solicitations are suitable for electronic transmissions, giving consideration to:
  - a) Appropriate security to prevent unauthorized access to the bidding, approval, and award processes; and
  - b) Accurate retrieval or conversion of electronic forms of such information into a medium which permits inspection and copying.

(Ord. No. FI-O-0091-20, 10-27-2020)

## **2-321 : AUTHORIZATION FOR ELECTRONIC BIDDING SYSTEM**

The Procurement Division may conduct all or some Procurement functions over the internet for solicitations, including quotes, sealed Bids, proposals and reverse auctions. The electronic Bidding system may not be used for the Procurement of Professional Services (Excluded), Professional Services (Exempted), telecommunications services, communications services, internet services, information services, or construction services.

## **2-322 : D/M/WBE PROGRAM COMPLIANCE**

For all construction and construction-related projects, the Bidders, Contractors, and all Sub-contractors shall follow all Bid and contract management requirements as defined in the County's Disadvantaged, Minority and Woman-owned Business Enterprise Program pursuant to CB-R-0030-24 and subsequent articles that implement the final D/M/WBE Program. For Bids, this includes following all program rules, submitting all related forms (e.g., Utilization Plan), and providing all certifications (e.g., DBE Certification Letter). Awarded Contractors shall be responsible for their and their subcontractor's compliance with all Contract requirements related to the D/M/WBE Program, including but not limited to achievement of Contract Goals or Good Faith Efforts to meet Contract Goals.

## **2-323 THROUGH 2-325: RESERVED.**

## ***SUBPART B. BID AND/OR PROPOSALS ADDENDA AND QUESTIONS***

## **2-326 : BID AND/OR REQUEST FOR PROPOSAL DOCUMENT - ADDENDA AND QUESTIONS.**

Once the Bid/Request for Proposal document has been issued, all questions regarding that document shall be submitted in writing to the Procurement Division. Contacting individual County employees with questions regarding Bid/Request for Proposal documents is prohibited. Any and all addenda to the Bid/RFP documents shall be issued by the Procurement Division.

(Ord. No. FI-O-0091-20, 10-27-2020)

## **2-327 : COMMUNICATION WITH BIDDERS.**

County Employees shall take care to limit communication with Bidders during the solicitation process so that the integrity of the competitive solicitation process is maintained. All representatives of the County shall avoid any vendor contact that would constitute interference with Contract submission and award under 720 ILCS 5/33E-6 or any other section of the Criminal Code. Discussions with vendors related to the normal course of business are permitted. However, if it is determined that a Bidder received an unfair advantage from information obtained through prohibited sources or under prohibited circumstances, the solicitation may be canceled, or the Bidder disqualified from participation in that solicitation request.

(Ord. No. FI-O-0091-20, 10-27-2020)

## **2-328 THROUGH 2-330: RESERVED.**

### *SUBPART C. PARENT COMMITTEE/BOARD AGENDAS*

## **2-331: PLACEMENT OF PURCHASING ITEMS ON AGENDAS.**

The Procurement Division shall review and approve purchasing items for compliance prior to submission for approval by Parent Committee for items greater than or equal to fifteen thousand dollars (\$15,000.00), or for approval by Parent Committee and County Board for items greater than thirty thousand dollars (\$30,000.00), as required by this article. This is all-inclusive except those road construction items that are placed on the agenda directly for the Transportation Committee and County Board. This review is required irrespective of whether the award is low Bid/Proposal, sole Bid/Proposal, or not low Bid/Proposal.

(Ord. No. FI-O-0091-20, 10-27-2020)

## **2-331 THROUGH 2-335: RESERVED.**

### *SUBPART D. PUBLIC ACCESS TO PROCUREMENT INFORMATION*

## **2-336: PUBLIC ACCESS TO PROCUREMENT INFORMATION.**

Procurement information shall be a public record subject to the exceptions of disclosure provided in the Freedom of Information Act 5 ILCS 140/1 *et seq.* and shall be available to the public.

(Ord. No. FI-O-0091-20, 10-27-2020)

## **2-337 THROUGH 2-340: RESERVED.**

## ***PART 3. CHIEF PROCUREMENT OFFICER***

### *SUBPART A. AUTHORITY AND DUTIES*

## **2-341: AUTHORITY AND DUTIES.**

(1) ***Principal Public Purchasing Official.*** The Chief Procurement Officer shall serve as the principal public purchasing



official for the County. The Chief Procurement Officer shall be responsible for the procurement of goods, services, and construction in accordance with this article, as well as disposing of County assets. No County User Department, officer or employee shall be empowered to execute any purchase order, Change Order, agreement, or Contract except as authorized by this article.

- (2) **Duties.** The duties of the Chief Procurement Officer pursuant to this article are subject to the supervision of the County Board Chair and Chief Financial Officer. The Chief Procurement Officer shall:
- a) Maintain an open and competitive environment to ensure that all potential buyers and sellers have access to County business and that all Procurement actions are conducted fairly and impartially in the best interest of the County.
  - b) Work cooperatively with User Departments in developing specifications; preparing Bids and Requests for Proposals; evaluating submissions; creating County Board and Committee agendas; awarding Contracts; and reviewing vendor performance.
  - c) Develop innovative strategies for alternative Procurement approaches to reduce costs and improve efficiency.
  - d) Use professional knowledge, skill with specifications, timing of purchases, and alternative supply sources to achieve cost benefits.
  - e) Supervise the Procurement of all goods and services that fall under the purview of this article, including professional services, and construction needed by the County except as noted.
  - f) Dispose of surplus personal and real property in a manner that comports with applicable law and is in the best interest of the County.
  - g) Establish and maintain programs for specification development, Contract standardization, material control, administration, inspection and acceptance, in cooperation with other public agencies.
  - h) Review the User Department evaluations of the vendor's performance to determine potential suitability for future use by the County.
- (3) **Purchasing Regulation and Operational Procedures.** With the approval of the County Board Chair and Chief Financial Officer, the Chief Procurement Officer may adopt purchasing regulations and operations procedures relating to the execution of their duties defined by this article. Periodically, the Chief Procurement Officer shall evaluate and modify policies and procedures to improve standardization, consistency, internal controls, efficiency, economy, and quality of purchasing.

(Ord. No. FI-O-0091-20, 10-27-2020)

## **2-342 THROUGH 2-345: RESERVED.**

# **PART 4. SOURCE SELECTION AND CONTRACT FORMATION**

## **SUBPART A. METHODS OF SOURCE SELECTION**

### **2-346: SMALL LEVEL PROCUREMENTS.**

- (1) **Definition.** Purchases greater than or equal to two thousand dollars (\$2,000.00) and less than fifteen thousand dollars (\$15,000.00) are Small Level Procurements.
- (2) **Solicitation Requirements.** The County shall award Contracts based on written quotations/proposals from at least three (3) vendors.
- (3) **Conditions of Use.** For Small Level Procurements of goods and services, Conditions of Use are as follows:

- a) Purchases shall be limited in frequency and related to goods and services.
- b) Contract requirements shall not be artificially divided to evade the approval process or competitive Procurement requirements for amounts greater than or equal to fifteen thousand dollars (\$15,000.00); however, the Chief Procurement Officer and the Chief Financial Officer shall determine when market or operational factors require the combining or dividing of Procurements.
- c) Stringing of Bids is unlawful and forbidden as further detailed in Section 2-311(40).
- d) Evaluation factors which may justify an award to a vendor who has not provided the lowest quote include, but are not limited to: the qualities of the articles supplied: their conformity with the specifications, their suitability to the requirements of the County; the availability of support services, the uniqueness of the service, materials, equipment, or supplies as it applies to networked, integrated computer systems, the compatibility to existing equipment, the delivery terms, quantity requirements, and past vendor performance.

(Ord. No. FI-O-0091-20, 10-27-2020)

## **2-347: COMMITTEE LEVEL PROCUREMENTS.**

- (1) **Definition.** Purchases greater than or equal to fifteen thousand dollars (\$15,000.00) and less than the amount set forth in 55 ILCS 5/5 – 1022 are Committee Level Procurements.
- (2) **Bidding Requirements.** The County shall award Bids by competitive bidding in accordance with procedures authorized herein.
- (3) **Conditions of Use.** For Committee Level Procurements of goods and services, Conditions of Use are as follows:
  - a) Except as provided herein, an award shall be made to the vendor offering the lowest responsive and responsible Bid, meeting the specifications. Adequate records to document the competition solicited and award determination made shall be retained with the Contract.
  - b) Evaluation factors which may justify an award to a vendor who has not provided the lowest Bid include, but are not limited to: the qualities of the articles supplied; their conformity with the specifications; their suitability to the requirements of the County; the availability of support services; the uniqueness of the service, materials, equipment, or supplies as it applies to networked, integrated computer systems; the compatibility to existing equipment; the delivery terms and/or quantity requirements; and past vendor performance.

(Ord. No. FI-O-0091-20, 10-27-2020)

## **2-348: BOARD LEVEL PROCUREMENTS—COMPETITIVE SEALED BIDDING.**

- (1) **Definition.** Purchases greater than or equal to the amount set forth in 55 ILCS 5/5 – 1022 are Board Level Procurements.
- (2) **Bidding Requirements.** Except as permitted by statute or where it is determined under this article that a Procurement is not suitable for bid, the County shall award Board Level Procurements by a competitively sealed Bid.
- (3) **Conditions of Use.** For Board Level Procurements of goods and services, Conditions of Use include:
  - a) An Invitation For Bids shall be issued and include specifications or general descriptions, and material non-

negotiable contractual terms and conditions applicable to the Procurement.

- b) Adequate public notice of the Invitation For Bids shall be provided by the Procurement Division in a reasonable time and no less than fourteen (14) calendar days prior to the date set forth therein for the submittal and opening for Bids. For Bids with a mandatory pre-Bid meeting, the public notice must be published at least seven (7) calendar days prior to the pre-Bid meeting date. Such notice may be given in a newspaper of general circulation within the County, or through an electronic Bid posting service, or as otherwise statutorily required. The public notice shall describe the project, submittal date, any statutory requirements, and the time and location of the Bid opening.
  - c) Evaluation factors which may justify an award to a vendor who has not provided the lowest Bid include, but are not limited to: the qualities of the articles supplied; their conformity with the specifications; their suitability to the requirements of the County; the availability of support services; the uniqueness of the service, materials, equipment, or supplies as it applies to networked, integrated computer systems; the compatibility to existing equipment; the delivery terms and/or quantity requirements; and past vendor performance.
- (4) **Bid Acceptance and Bid Evaluation.** Bids shall be unconditionally accepted without alteration or correction, except as authorized in this article. Based on the requirements set forth in the Invitation For Bid, the Procurement Division shall evaluate Bids for responsiveness. Criteria that will affect the Bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The Invitation For Bid shall set forth the evaluation criteria to be used. No criteria may be used in the evaluations that are not set forth in the Invitation for Bid. Alternative Bids may be considered and accepted only if they are specifically provided for in the Invitation For Bid and meet the evaluation criteria set forth therein.
- (5) **Correction of Bids, Withdrawal of Bids and Cancellation of Award.**
- a) **Bids Withdrawn Prior to Opening.** Bids may be withdrawn prior to the Bid opening upon written request of the Bidder and in accordance with the terms and conditions contained in the Bid document.
  - b) **Correcting Bid Totals.** After the Bid opening, no changes in prices or other provisions shall be permitted, except to correct calculations, as stated in the terms and conditions contained in the Bid document. In cases with calculation errors, the unit price prevails. The Procurement Division is responsible for reviewing all Bid forms.
  - c) **Clarifications.** The Chief Procurement Officer may seek and/or obtain any clarification deemed reasonably necessary to fully evaluate the Bid from any Bidder after opening.
  - d) **Cancellation of Award.** At any time prior to Contract execution, the Chief Procurement Officer may cancel a Contract award for cause (e.g. violations of this article, due to a Bidder's default, or for convenience).
- (6) **Tie Bids.** Should tie Bids between equally responsive, and responsible Bidders be received, the award will be made by a coin toss or otherwise by random selection in the Procurement Division by the Purchasing Agent. If a tie Bidder fails to send a representative to the selection, that Bidder shall waive the right to protest the selection.
- (7) **Right of Rejection.** The Parent Committee or County Board reserves the right to reject any or all Bids, to waive any technicalities, or to accept any Bid which, in its judgement, will be in the best interest of the public.
- (8) **Notice of Preliminary Award.** With reasonable promptness, the Chief Procurement Officer shall send appropriate written notice of preliminary award to the lowest, responsive and responsible Bidder whose Bid meets the requirements and criteria set forth in the Invitation For Bid. Copies of the Preliminary Notice will also be sent to the unsuccessful Bidder(s).
- (9) **Contract Negotiation.** After receipt of a Notice of Preliminary Award, the successful Bidder may submit any exceptions to the County's general and special conditions contained in the Invitation for Bidders, as well as to the County's proposed Contract documents. No preliminary award shall be approved unless the County and lowest, responsive and responsible Bidder reach agreement as to the terms and conditions of a Final Contract.
- (10) **Final Contract Approval.** The Final Contract shall be approved in accordance with Section 2-372 of this

article. Notice of Final Contract Approval shall be transmitted to the lowest, responsive and responsible Bidder, after which the Procurement Division shall issue all final contract documents and notices to proceed. All contractually required documentation will be required prior to issuing any notice to proceed.

- (11) **Cancellation of Contracts.** All Contract cancellations recommended by the Chief Procurement Officer will be presented to the County Board on a consent agenda.

(Ord. No. FI-O-0091-20, 10-27-2020)

## **2-349: BOARD LEVEL PROCUREMENTS—REQUEST FOR PROPOSALS.**

- (1) **Definition.** Purchases greater than or equal to the amount set forth in 55 ILCS 5/5 – 1022 are Board Level Procurements.
- (2) **Condition for Use.** In cases where the County seeks to contract for a project or service whose goals, tasks or results are known, but for which the procedure or method of accomplishing same either may not be specified or are otherwise undetermined, a Contract may be entered into by utilizing the Request for Proposal procedure. Prior to commencement of the Procurement, the Procurement Division shall approve utilization of the Request for Proposal procedure.
- (3) **Proposals.** Proposals shall be solicited through the Procurement Division and the Request for Proposal shall include but will not be limited to: specifications or general descriptions of goals; tasks or results; and material, non-negotiable contractual terms and conditions applicable to the Procurement.
- (4) **Public Notice.** Adequate public notice of the Request for Proposal shall be given in the same manner as public notice for Invitation For Bids under Subsection 2-348(3)(b) of this article. (Invitation For Bids).
- (5) **Evaluation Criteria.** Criteria including the weight to be given to each factor must be developed for evaluation of the proposal prior to notice and included in the request. The completed evaluations must be attached to the User Department's recommendation.
- (6) **Receipt of Proposals.** Names of Bidders will be acknowledged in the presence of one or more witnesses at the time and place designated in the public notice. Contents of the proposals shall not be disclosed to any of the Bidders during the selection process. A register of the proposals shall be prepared containing the name of each Bidder and a description sufficient to identify the item offered. The register of proposals shall be open for public inspection only after the Contract is awarded, subject to exemptions from disclosure under the Freedom of Information Act, 5 ILCS 140/1 *et seq.*
- (7) **Discussions with Responsible Bidder and Revisions to Proposals.** For the purposes of clarification, as well as furthering a successful understanding of and conformance to the solicitation requirements, as provided in the Request for Proposal, discussions may be conducted with the responsive, responsible Bidders who submitted Proposals determined to be reasonably likely to be selected for award. Bidders shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revision may be permitted after submission and prior to award, for the purpose of obtaining best and final offers.
- (8) **Notice of Preliminary Award.** With reasonable promptness, the Chief Procurement Officer shall send appropriate written notice of preliminary award to the lowest, responsive and responsible Bidder whose Bid meets the requirements and criteria set forth in the Bid. Copies of the Preliminary Notice will also be sent to the unsuccessful Bidder(s).
- (9) **Contract Negotiation.** After receipt of a Notice of Preliminary Award, the successful Bidder may submit any exceptions to the County's general and special conditions contained in the Invitation for Bidders, as well as the County's proposed Contract documents. No preliminary award shall be approved unless the County and lowest, most responsive and responsible Bidder reach agreement as to the terms and conditions of a Final Contract.
- (10) **Final Contract Approval.** The Final Contract shall be approved in accordance with Section 2-372 of this article. Notice of Final Contract Approval shall be transmitted to the lowest, most responsive and responsible and responsive Bidder, after which the Procurement Division shall issue all final contract documents and notices to proceed. All contractually required documentation will be required prior to issuing any notice to

proceed. The Contract file shall contain the basis on which the award was made.

(Ord. No. FI-O-0091-20, 10-27-2020)

## **2-350: RESERVED**

(Ord. No. FI-O-0091-20, 10-27-2020)

## **2-351: EMERGENCY PROCUREMENTS.**

In emergency situations, the County Board Chair shall have the authority to waive the bidding procedures set forth in this article and to effect Procurements in excess of the amount otherwise provided in this article pursuant to the following procedures:

- (1) The reason for the determination of the emergency situation shall be indicated on the Emergency Procurement Decision Memo form. Failure of the User Department to timely comply with this article shall not prima facie constitute an emergency. In emergency situations, the County Board Chair shall not be required to comply with competitive bidding and advertising requirements of this article and shall be empowered to negotiate and execute Contracts without prior approval of the County Board.
- (2) For purchasing emergencies in amounts greater than or equal to fifteen thousand dollars (\$15,000.00), the User Department Head shall inform the County Board Chair, Chief Procurement Officer, and the Chief Financial Officer in a timely manner.
- (3) A Purchase Order, along with all written documentation, shall be submitted to the Parent Committee or Parent Committee and County Board for ratification in accordance with Section 2 -375.
- (4) For purchasing emergencies in amounts less than fifteen thousand dollars (\$15,000.00), the User Department Head shall make the Emergency Procurement in the Best Interest of the County.

(Ord. No. FI-O-0091-20, 10-27-2020)

## **2-352: COOPERATIVE AND JOINT PURCHASING AUTHORIZED.**

Subject to applicable state statutes, the County may participate in, sponsor, conduct, and/or administer a Cooperative Purchasing agreement for the Procurement of goods, services, and/or construction with one or more public procurement units in accordance with an agreement entered into between the participants. Such cooperative purchasing may include, but is not limited to, joint or multi-party Contracts between public procurement units and open-ended state public procurement unit Contracts, which are made available to other public procurement units after having been bid by another public procurement unit where required. All Cooperative Purchasing conducted under this article shall be under Contracts awarded in compliance with the requirements of the Governmental Joint Purchasing Act, 30 ILCS 525/0.01 *et seq.* and/or the Intergovernmental Cooperation Act, 5 ILCS 120/1 *et seq.* The Chief Procurement Officer shall maintain an updated list of County Board approved Cooperative Purchasing agreements that may be used for purchases. To ensure that Cooperative Purchasing pricing is competitive, the Procurement Division may validate prices through a market survey when cooperative pricing is received.

Joint Purchasing agreements are Contracts where a Bid by one User Department has established a purchase price and another User Department may enter into the same Contract based on that Bid, but only to the extent that the combined purchases are within the limits of the original Bid amount or the estimate provided in the original Bid. The Chief Procurement Officer may administer Joint Purchasing agreements for the Procurement of goods, services, or construction across multiple User Departments.

(Ord. No. FI-O-0091-20, 10-27-2020)

## **2-353: PROFESSIONAL SERVICES SELECTION PROCESS.**

- (1) **Professional Services (Excluded).** These services are defined in Section 2-311. Providers of these services shall be selected in accordance with the Local Government Professional Services Selection Act, 50 ILCS 510/.01 *et seq.*, or other applicable federal statute, with the following additional requirements:
- a) For all Contracts estimated to cost greater than or equal to thirty thousand dollars (\$30,000.00), User Departments shall, at a minimum, issue a public notice requesting a statement of interest in a specific project.
  - b) For Contracts estimated to cost greater than or equal to one hundred thousand dollars (\$100,000.00), an existing satisfactory relationship with one (1) or more Business Entity shall not be the sole basis for selection.
  - c) User Departments shall jointly develop guidelines for the qualifications-based selection of engineering, architectural and land surveying services in accordance with the Local Government Professional Services Selection Act, or other applicable federal statute, taking into consideration the specific criteria noted in a and b above.

- (2) **Professional Services (Exempted).** These services are defined in Section 2-311.

The User Department shall complete the Decision Memo section of the Procurement Review Comprehensive Checklist form for review and approval for the purposes of contractual award. For Professional Services (Exempted) where the Contract is expected to exceed two hundred fifty thousand dollars (\$250,000.00), User Department staff will seek Parent Committee direction as to the method of vendor selection to be utilized.

- a) User Department staff shall bring Procurements to the respective Parent Committee to seek direction as to the method of vendor selection for Procurement of services otherwise deemed exempted from Bid, if the expiring Contract for services or goods has been held continuously by the same vendor for a period of at least three (3) years, whether through multiple year Contracts or annual Contracts which have been renewed. User Department staff shall bring such Procurements forward in a timely fashion, but no later than six (6) months before the end of the current Contract period, in order to allow for Parent Committee input. Such input shall include the form of competitive vetting to be employed.
- (3) **Performance Criteria.** Upon completion of each Contract of an amount greater than or equal to twenty-five thousand dollars (\$25,000.00), the User Department shall prepare a written evaluation of the consultant's performance. The details of the evaluation shall be consistent with the cost and complexity of the Contract. For Contracts of an amount greater than or equal to twenty-five thousand dollars (\$25,000.00), the Procurement Division will maintain a record of such evaluations for the use of all User Departments when selecting future professional service consultants. No consultant shall be awarded subsequent Contracts unless the User Department has submitted a satisfactory evaluation to the Procurement Division.

(Ord. No. FI-O-0091-20, 10-27-2020)

## **2-354: GRANT PROGRAMS.**

- (1) Under certain grant programs the County acts as a third-party administrator of local, state and/or federal funds and does not procure goods and services for the County. The processing of a grant requisition is done to facilitate the method of payment and does not require any of the normal Procurement procedures or approvals under this article.
- (2) The County has determined that the provision of weatherization services under the State grant program is not suitable for competitive bidding as permitted by 55 ILCS 5/5 -1022(c). Vendors may be selected for such services under a grant from the Illinois Emergency Weatherization Program using an alternative negotiated fixed bid process rather than competitive bidding, provided that all guidelines promulgated by the State for such alternative process are followed. Notwithstanding the title "Illinois Emergency Weatherization Program," payments under this program are not deemed an emergency for purposes of this article.

(Ord. No. FI-O-0091-20, 10-27-2020)

## **2-355: CIRCUMSTANCE NOT SUITABLE FOR BID.**

- (1) In addition to Professional Services (Excluded) and Professional Services (Exempted), the following types of Procurements are determined by the County Board to be not suitable for competitive bidding as defined in 55 ILCS 5/5-1022(c): purchases of used equipment, purchases at auction, purchases under Section 2-354, purchases of regulated utility services or other services for which a tariff or set rates are published; Sole Source Procurements; and purchases for which there has been a record of no competition, as evidenced by single Bids, for three (3) consecutive years, or purchases when there have been extreme supply chain interruptions affecting the availability, supply or delivery schedule of necessary materials, supplies, equipment, components or parts, documented by a history of non-responsive Bids or quotes, the inability to place orders in purchasing cooperatives and/or cancelled Contracts.
- (2) Contracts awarded under this section, Section 2-355, shall not exceed a one-year term, and shall not contain an automatic renewal clause, but must be reviewed annually by the Chief Procurement Officer for permissive renewal.
- (3) **Sole Source Procurement.** In certain situations, the Chief Procurement Officer shall have the authority to waive the bidding procedures set forth in this article and approve one select provider under the Sole Source Procurement process. Valid justifications for Sole Source Procurements include:
  - A) There is only one provider of a licensed good, patented good or service.
  - B) There is only one provider of items that are compatible with existing equipment, inventory, systems, programs, or services.
  - C) There is only one provider of a factory authorized warranty service.
  - D) There is only one authorized distributor based on the manufacturer's established territories.
  - E) There is only one manufacturer for the desired product.
  - F) There is only one developer/support/maintenance provider for the desired software.
  - G) There is only one provider with expertise relative to the project.
  - H) It is not feasible to satisfy the minimum bidding requirements.

User Department shall prepare supporting documentation for review and approval of a Sole Source selection by the Chief Procurement Officer. Whenever the Chief Procurement Officer determines that a Sole Source is justified, the reason for this determination shall be indicated in writing in the Sole Source section of the Procurement Review Comprehensive Checklist form.

## **2-356: LEGAL SERVICES.**

When it is necessary for a Special Assistant State's Attorney to be appointed, the DuPage County State's Attorney will appoint an attorney who will sign an engagement letter with the State's Attorney's Office.

(Ord. No. FI-O-0091-20, 10-27-2020)

## **2-357: CREDIT ACCOUNTS.**

- (1) Where a User Department uses a credit account for the purchase of goods or services, any points, bonuses, "reward miles," or other benefits earned or accrued by the use of such an account may only be used for the benefit of the County and may only be used with the approval of the Finance Department. Personal purchases on credit accounts are prohibited.
- (2) Where a User Department seeks to establish a credit account, the User Department must seek approval of the account and the account limit from the User Department's Parent Committee of the County Board.
- (3) Stringing of Bids as defined by Subsection 2-311(40), shall be prohibited on credit

accounts.

(Ord. No. FI-O-0091-20, 10-27-2020)

## **2-358 THROUGH 2-360: RESERVED.**

### *SUBPART B. QUALIFICATIONS AND DUTIES*

#### **2-361: RESPONSIBILITY OF BIDDERS.**

If a Bidder or designee who otherwise would have been awarded a Contract is found non-responsible, a written determination of non-responsibility, setting forth the basis of the findings shall be prepared by the User Department. In determining responsibility of any Bidder, the County may consider, in addition to financial responsibility, past records of transactions with the Bidder, experience, adequacy of equipment and ability to complete performance within a specific time (for example, the ability to meet the specified completion date in accordance with the specifications). A detailed explanation shall be sent promptly to the non-responsible Bidder who shall then have three (3) days to provide evidence to defeat the determination. The final determination shall be made part of the Contract file. The unreasonable failure of a Bidder to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for such determination.

(Ord. No. FI-O-0091-20, 10-27-2020)

## **2-362 THROUGH 2-365: RESERVED.**

### *SUBPART C. CONTRACT ADMINISTRATION*

#### **2-366: CONTRACT ADMINISTRATION.**

A Contract administration system is designed to ensure that the Contractor is performing in accordance with the terms and conditions of the Contract. Contract administration results may be utilized by the Chief Procurement Officer for vendor evaluation.

- (1) It is the User Department's responsibility to match Contract terms and prices with invoices, and to otherwise monitor compliance with the Contract terms. The User Department is also responsible to determine the imminent need for a Change Order and to begin processing the Change Order where appropriate.
- (2) Payment must be identified to an existing Contract or purchase order.

(Ord. No. FI-O-0091-20, 10-27-2020)

#### **2-367: COUNTY PROCUREMENT RECORDS.**

- (1) **Procurement Records.** All determinations and other written records, notes of telephone conversations and notes for oral conversations pertaining to the solicitation, award and performance of a Contract shall be maintained for the County in the Procurement records in the Procurement Division.
- (2) **Contract Audit.** The County Auditor shall be entitled to audit the books and records of a Contractor or a Subcontractor at any tier under any Contract or Subcontract to the extent that such books, documents, papers, and records are pertinent to the performance of such Contract or Subcontract. The Contractor or Subcontractor shall maintain such books and records for a period of five (5) years from the date of final payment. Medicare record retention requirements shall be followed when appropriate.
- (3) **Retention of Procurement Records.** All Procurement records shall be retained and disposed of by the County in accordance with records retention guidelines and schedules approved by the State of Illinois Local Records



Commission.

(Ord. No. FI-O-0091-20, 10-27-2020)

## **2-368 THROUGH 2-370: RESERVED.**

### ***SUBPART D. AUTHORIZATION, REVIEW AND APPROVAL PROCESS***

#### **2-371: AUTHORIZATION TO INITIATE BIDS OR OTHER SOLICITATIONS.**

The Procurement Division may initiate Bids or other solicitations for any goods, services or construction for which they have received a User Department's approved purchase requisitions, engineering specifications or other Procurement documents (except for road construction projects where the Division of Transportation may initiate their own Bids or solicitations.)

(Ord. No. FI-O-0091-20, 10-27-2020)

#### **2-372: PROCUREMENT PROCESS.**

**Approval Discretion.** At the discretion of the County Board Chair or the Procurement Division, any Contract or purchase of an item, combination of items, or contractual services not otherwise requiring approval may be presented to the relevant Parent Committee or Parent Committee and the County Board for approval.

- (1) **Small Level Procurement Approvals.** For Small Level Procurements of goods and services, approvals include:
  - a) First, the User Department Head or authorized signatory approves the requisition.
  - b) Second, the Procurement Division approves the requisition.
- (2) **Committee Level Procurement Approvals.** For Committee Level Procurements of goods and services, approvals include:
  - a) First, the User Department Head or authorized signatory approves the requisition.
  - b) Second, the Procurement Division approves the requisition.
  - c) Third, the assigned Parent Committee approves the requisition.
  - d) The Chief Procurement Officer is authorized to sign any Contract or agreement, once approved by the Committee, and after receipt of all the contractually required documentation.
- (3) **Board Level Procurement Approvals.** For Board Level Procurements of goods and services, approvals include:
  - a) First, the User Department Head or authorized signatory approves the requisition.
  - b) Second, the Procurement Division approves the requisition.
  - c) Third, the assigned Parent Committee approves the requisition.
  - d) Fourth, the Finance Committee approves the requisition.
  - e) Fifth, the County Board approves the requisition.
  - f) The Chief Procurement Officer may be authorized to sign any Contract or agreement, after receipt of all contractually required documentation, if such authority has been granted within the resolution passed by the County Board.

(Ord. No. FI-O-0091-20, 10-27-2020)

## **2-373: FISCAL RESPONSIBILITY.**

Prior to the issuance of any purchase order, Contract, Change Order or Contract modification, the Finance Department shall certify that sufficient budgeted funds are available.

(Ord. No. FI-O-0091-20, 10-27-2020)

## **2-374: LEGAL REVIEW OF CONTRACTS.**

Prior to Final Contract Approval, the Chief Procurement Officer may request the State's Attorney to review a Contract that is not in a standard form. This review shall not be required when the form and content of the Contract documents have previously been approved by the State's Attorney.

(Ord. No. FI-O-0091-20, 10-27-2020)

## **2-375: CHANGE ORDERS AND CONTRACT MODIFICATIONS.**

A Change Order is a change to an agreement, other than as specifically provided for in the Contract. Change Orders may also be referred to as Contract Modifications. All Change Orders and Contract Modifications, except those under subsections (5) and (6) of this section, will be presented in advance to the Procurement Division. Change Orders are approved at three different Procurement levels: (1) Administrative & Small Level Procurements, (2) Committee Level Procurements, and (3) Board Level Procurements. The rules applicable to Change Order are as follows:

- (1) Administrative & Small Level Procurement Change Orders
  - a) **Definitions/Conditions**
    - i. Change Orders with a cumulative price increase less than or equal to ten thousand dollars (\$10,000.00).
    - ii. Change Orders that change accounting codes.
    - iii. Change Orders that change vendor information (e.g., company name or address).
    - iv. Change Orders that change rates specifically provided in the original Contract.
    - v. Change Orders that change final bond cost as allowed by bond ordinance within parameters approved by the County Board.
    - vi. Change Orders which cumulatively increase or decrease the term of a Contract by less than sixty (60) calendar days.
  - b) **Approvals**
    - i. First, the User Department Head or authorized signatory authorizes the Change Order.
    - ii. Second, the Procurement Division authorizes the Change Order.
- (2) Committee Level Procurement Change Orders
  - a) **Definitions/Conditions**
    - i. Change Orders that increase Contract values such that Contract totals are greater than the Small Level Procurement but less than the Board Level Procurement.
    - ii. Change Orders with a cumulative price increase greater than ten thousand dollars (\$10,000.00) where the total contract value is less than the Board Level.
    - iii. Change Orders that materially alter the scope of work for the initial Contract with Contracts at the Committee Level.
  - b) **Approvals**
    - i. First, the User Department Head or authorized signatory authorizes the Change Order.

- ii. Second, the Procurement Division approves the Change Order.
  - iii. Third, the assigned Parent Committee approves the Change Order.
- (3) Board Level Procurement Change Order
  - a) **Definitions/Conditions**
    - i. Change Orders that increase the Contract value such that the Contract total is greater than Committee Level.
    - ii. Change Orders with a cumulative price increase greater than ten thousand dollars (\$10,000.00) where the total Contract value is greater than Committee Level.
    - iii. Change Orders that materially alter the scope of work for the initial Contract with a Contract at the Board Level.
    - iv. Change Orders which cumulatively increase or decrease the term of the Contract by sixty (60) or more calendar days.
    - v. Change Orders that cancel any Contract.
    - vi. Change Orders that decrease a Contract by greater than ten thousand dollars (\$10,000.00).
  - b) **Approvals**
    - i. First, the User Department Head or authorized signatory authorizes the Change Order.
    - ii. Second, the Procurement Division approves the Change Order.
    - iii. Third, the assigned Parent Committee approves the Change Order.
    - iv. Fourth, the Finance Committee approves the Change Order.
    - v. Fifth, the County Board approves the Change Order.
- (4) For Change Orders to close an expired Contract where six (6) months have passed since the expiration date and where zero dollars (\$0.00) are left to spend, the Procurement Division shall close the Contract.
- (5) Where the time required to approve and process a Change Order necessitated by field conditions would unreasonably interrupt Contract work to the financial detriment of the County, the Change Order may be processed upon the agreement of the User Department's Head and Project Manager, subject to ratification by the County Board on the action agenda. The Committee Chair shall be notified of field condition Change Orders at the earliest possible opportunity.
- (6) In the case of Public Works Contracts, no Change Order, including a field condition Change Order, can be made where the total Contract value is increased by fifty percent (50%) or more of the initial Contract price. In such case, the new or increased value of goods or services must be submitted for competitive bidding pursuant to the statute. Public Works Contract Change Order Act, 50 ILCS 525/5.

(Ord. No. FI-O-0091-20, 10-27-2020)

## **2-376: MULTI-YEAR CONTRACTS.**

- (1) The County's policy on multi-year Contracts includes the following:
  - a) All multi-year Contracts presented for approval shall contain the total value of the award for the multi-year period.
  - b) Only the current fiscal year portion shall be encumbered.
  - c) Multi-year Contracts shall not be presented to a Parent Committee or Parent Committee and County Board that exceed a total term of four (4) years, unless approved in advance by the Chief Procurement Officer and the Chief Financial Officer.

(Ord. No. FI-O-0091-20, 10-27-2020)

## 2-377: CONTRACT RENEWALS.

The following governs Contract renewals:

- (1) All Contracts that contain an optional renewal clause shall be presented for approval with the total dollar value for the initial period of award.
- (2) All requests for Contract renewals shall originate from the User Department indicating the Contractor's desire for the renewal.
- (3) The request shall be submitted at least ninety (90) days prior to the expiration date of the current period.
- (4) Procurement Services will obtain Contractor approval and submit the necessary correspondence for approval.
- (5) All renewals shall be for the time period specified in the original Contract document.
- (6) No Contract renewal clause(s) shall exceed a total term (i.e., initial contract plus all optional renewal terms) of four (4) years unless approved in advance by the Chief Procurement Officer and the Chief Financial Officer.

(Ord. No. FI-O-0091-20, 10-27-2020)

## 2-378: ELECTED OFFICIALS - COMPETITIVE BID PROCESS.

The Competitive Bids section of the Counties Code authorizes the County Board to determine the lowest responsible Bid for User Departments and Elected Officials when the total amount of a contract for services, materials, equipment, or supplies is over thirty thousand dollars (\$30,000.00), and the procurement does not qualify as a professional service or qualify under another exception enumerated in the statute. (55 ILCS 5/5-1022) This article cannot require more of an Elected Official than is required by state or federal law.

The Competitive Bids statute gives the County Board the authority to determine the lowest responsible Bidder on all Bids received by User Departments and County Elected Officials. (55 ILCS 5/5-1022)

In determining the lowest responsible Bidder, the County Board shall take into consideration the qualities of the articles supplied; their conformity with the specifications; their suitability to the requirements of the County; the availability of support services; the uniqueness of the service, materials, equipment, or supplies as it applies to networked, integrated computer systems; the compatibility to existing equipment; and the delivery terms. (55 ILCS 5/5-1022(b))

**Limited Authority:** The County Board cannot approve the necessity of the purchase since the Elected Official can determine what is necessary for their office as long as it is within their budget. The County Board is only determining which Bidder is the lowest responsible Bidder.

### ***Minimum Requirements for a Legal Bid:***

- (1) **Public Notice.** Adequate public notice of the Invitation For Bids shall be given, by the Elected Official, a reasonable time, no less than fourteen (14) calendar days prior to the date set forth therein for the submittal and opening of Bids. Such notice may be given in a newspaper of general circulation within the County, or through an electronic Bid posting service, or as statutorily required. The public notice shall state the project, service, materials, equipment, or supplies requested; submittal date; any statutory requirements along with the time and location of the Bid opening.
- (2) **Documentation to be Included in the County Board Packet.** All requisitions shall be signed by the Elected Official or an authorized signatory and shall include the Bid tabulation; the agreement or Contract with the vendor; and the Required Vendor Ethics Disclosure Statement. Other additional documents such as a Decision

Memo are helpful for the County Board.

- (3) ***Nothing in this article is intended to address Budget Transfers or Appropriations.***

**2-379 THROUGH 2-380: RESERVED.**

***PART 5. SPECIFICATIONS***

***SUBPART A. RESPONSIBILITY, USER DEPARTMENT, COMPETITION***

**2-381: RESPONSIBILITY FOR SPECIFICATIONS.**

The Chief Procurement Officer or their designee (normally a User Department) shall prepare, revise, maintain, and monitor specifications for goods, services, and construction required by the County, except that specifications for any public work involving professional engineering shall be prepared by a professional engineer. The Division of Transportation may prepare specifications for construction and maintenance of highways, bridges, and culverts in accordance with IDOT standards.

Specifications for grant-funded Contracts shall include all terms and conditions required by the grant, and it shall be the responsibility of the User Department to furnish such terms and conditions for inclusion by the Purchasing Agent.

(Ord. No. FI-O-0091-20, 10-27-2020)

**2-382: RELATIONSHIP WITH USER DEPARTMENTS.**

The Chief Procurement Officer shall obtain advice and assistance from personnel of User Departments in the development of specifications and may delegate in writing to a User Department the authority to submit its own specifications which shall be accepted by the Purchasing Agent unless written objections are made by the Purchasing Agent.

(Ord. No. FI-O-0091-20, 10-27-2020)

**2-383: MAXIMUM PRACTICABLE COMPETITION.**

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

(Ord. No. FI-O-0091-20, 10-27-2020)

**2-384: RESPONSIBILITY FOR D/M/WBE PROGRAM**

In consultation with the User Department, the Division of Contracting Equity shall be responsible for setting DBE, MBE or WBE Contract Goals, using a narrowly tailored contract goal setting methodology. In addition, the Division of Contracting Equity shall be responsible for monitoring D/M/WBE compliance (e.g., vendor reporting, contracting goals, certification status, determining Utilization Plan compliance, site inspections, closeouts) and Contractor goal achievement pursuant to CB-R-0030-24 and subsequent articles that implement the D/M/WBE Program.

**2-385: RESERVED.**

## ***PART 6. DECLARATION OF NON-RESPONSIBILITY***

### ***SUBPART A. DECLARATION PROCESS***

#### **2-386: AUTHORITY TO ISSUE A DECLARATION OF NON-RESPONSIBILITY.**

After reasonable notice to the Business Entity involved and reasonable opportunity for that Business Entity to be heard, the Chief Procurement Officer is authorized to declare the Business Entity non-responsible for purposes of supplying goods, services and construction to the County. The declaration shall be in effect for a period of not more than two years, for all solicitations.

The causes for such a declaration include:

- (1) Conviction for commission of a criminal offence as an incident to obtaining or attempting to obtain public or private Contract or Subcontract, or in the performance of such Contract or Subcontract;
- (2) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offences indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a County Contractor;
- (3) Conviction under state or federal antitrust statutes arising out of the submission of any bids;
- (4) Violation of Contract provisions, as set forth below, of a character which is regarded by the Chief Procurement Officer to be so serious as to evidence non-responsibility:
  - a) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the Contract; or
  - b) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more Contracts, provided that failure to perform or unsatisfactory performance is not caused by acts beyond the control of the Contractor.
- (5) Any other cause the Chief Procurement Officer determines to be so serious and compelling as to affect responsibility as a County Contractor, including suspension by another governmental entity for any cause listed in this article.

(Ord. No. FI-O-0091-20, 10-27-2020)

#### **2-387: DECISION TO DECLARE NON-RESPONSIBLE.**

The Chief Procurement Officer shall issue a written determination, which shall state the reasons for the action taken, and inform the affected Business Entity involved of its rights concerning administrative review.

(Ord. No. FI-O-0091-20, 10-27-2020)

#### **2-388: NOTICE OF DECISION.**

A copy of the decision required by Section 2-387 shall be mailed by certified return receipt.

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(Ord. No. FI-O-0091-20, 10-27-2020)

## **2-389: FINALITY OF DECISION.**

A decision under Section 2-387 shall be final or conclusive, unless fraudulent, or the affected Business Entity within ten (10) business days after receipt of the decision by certified mail makes an appeal to the County Board Chair.

(Ord. No. FI-O-0091-20, 10-27-2020)

## **2-390: RESERVED.**

### ***SUBPART B. APPEALS AND REMEDIES***

## **2-391: AUTHORITY OF THE CHIEF PROCUREMENT OFFICER TO SETTLE BID PROTESTS.**

- (1) **Authority.** The Chief Procurement Officer is authorized to resolve any procedural protest regarding the solicitation or award of any Bid under their purview.
- (2) **Right to Protest.** Any actual or prospective Bidder or Contractor who believes they have been adversely affected in connection with the solicitation or award of a Contract may, within seven (7) calendar days of the solicitation or Notice of Preliminary Award, submit by mail or have served a letter of protest to the Chief Procurement Officer.
- (3) **Delay of Procurement During Protest.** In the event of a timely protest under subsection (2) of this section, the County shall determine whether it is in its best interest to proceed with the solicitation or Final Contract Approval.
- (4) **Notice to the Protestor of the Chief Procurement Officer's Decision.** If the protest or claim is not resolved by mutual agreement, the Chief Procurement Officer shall issue by mail or otherwise furnish a decision in writing to the protesting entity within five (5) business days from receipt of the protest, unless otherwise agreed upon between the parties. The decision shall state the reasons for the decision reached and shall inform the protestor of their option to appeal under subsection (5) of this section.
- (5) **Protestor Right to Appeal.** The Chief Procurement Officer's decision shall be final and conclusive unless, within five (5) business days from the date of receipt of the decision, the County Board Chair receives a written appeal regarding the Chief Procurement Officer's decision. The County Board Chair shall, in writing, render a decision within ten (10) business days.
- (6) **Failure to Render Timely Decision.** In the event the Chief Procurement Officer does not issue a written decision within the specified time period prescribed under subsection (4) of this section or within such longer period as may be agreed upon between the parties, the protesting entity may proceed as if an adverse decision had been received.

(Ord. No. FI-O-0091-20, 10-27-2020)

## **2-392: REMEDIES FOR SOLICITATIONS OR AWARDS IN VIOLATION OF LAW.**

- (1) **Prior to Bid Opening or Closing Date for Receipt of Proposals.** If, prior to the Bid opening or the closing date for receipt of proposals, the Chief Procurement Officer, after consultation with the State's Attorney, determines that a solicitation is in violation of federal, state or local law, then the solicitation shall be canceled or revised to comply with applicable law.
- (2) **Final Contract Approval.** If after Bid opening or the closing date for receipt of proposals, the Chief Procurement Officer determines that a solicitation or a proposed award of a Contract is in violation of federal, state or local law, then the solicitation or proposal award shall be canceled in accordance with this article.

- (3) **After Final Contract Approval.** If, after Final Contract Approval, the Chief Procurement Officer determines that a solicitation or award of a Contract was in violation of applicable law, then:
- a) If the Business Entity awarded the Contract has not acted fraudulently or in bad faith, the Contract may be terminated in accordance with the terms and conditions of the Contract.
  - b) If the Business Entity awarded the Contract has acted fraudulently or in bad faith, the Contract may be declared null and void.

(Ord. No. FI-O-0091-20, 10-27-2020)

## **2-393 THROUGH 2-395: RESERVED.**

# **PART 7. ETHICS**

## **SUBPART A. ETHICS AND CONFORMANCE**

### **2-396: ETHICS.**

Any or all actions related to this Purchasing Ordinance shall comply with approved County Ethics Ordinance and Personnel Policy Manual. In the event of a conflict, the Ethics Ordinance will control.

(Ord. No. FI-O-0091-20, 10-27-2020)

### **2-397: VIOLATIONS.**

Non-conformance with this article is a violation of the Code of DuPage County, and in some instances, non-compliance is also a violation of the Personnel Policy Manual, State and Federal civil and criminal laws which may result in legal actions and/or sanctions.

(Ord. No. FI-O-0091-20, 10-27-2020)

### **2-398: REPORTING OF ANTI-COMPETITIVE PRACTICES.**

When for any reason collusion or other anti-competitive practices are suspected among any Bidders or any County Employees or officers, an Employee with knowledge of such reason shall follow the reporting requirements of the County's Personnel Policy Manual. Facts may also be presented to the County Auditor or the State's Attorney for appropriate investigation. Any employee making a good faith report under this section shall have all protections afforded to a whistleblower under the Personnel Policy Manual and state statute.

(Ord. No. FI-O-0091-20, 10-27-2020)

### **2-399: REQUIRED DISCLOSURES OF CONTRACTORS AND VENDORS.**

- (1) Prior to Final Contract Approval, every Contractor, union, or vendor that is seeking or has previously obtained a Contract, Change Orders to one (1) or more Contracts, or two (2) or more individual Contracts with the county resulting in an aggregate amount at or in excess of the amount required for a Board Level Procurement, shall provide to Procurement Division a written disclosure of all political campaign contributions made by such Contractor, union, or vendor within the current and previous calendar year to any incumbent County Board Member, County Board Chair, or countywide Elected Official whose office the Contract to be awarded will benefit. The Contractor, union or vendor shall update such disclosure annually



during the term of a multi - year Contract and prior to any Change Order or renewal requiring approval by the County Board.

- (2) All Contractors and vendors who have obtained or are seeking Contracts with the County shall disclose the names and contact information of their lobbyists, agents and representatives and all individuals who are or will be having contact with County Elected Officials, officers or employees in relation to the Contract or Bid and shall update such disclosure with any changes that may occur.
- (3) For purposes of the disclosure requirements set forth in this Section, "Contractor" and/or "vendor" includes owners, officers, managers, lobbyists, agents, consultants, bond counsel and underwriters counsel, Subcontractors and corporate entities under the control of the Business Entity, and political action committees to which the Business Entity has made contributions.
- (4) Any Contractor or vendor that knowingly violates the disclosure requirements set forth in this section is subject to penalties which may include, but are not limited to, the immediate cancellation of the Contract and possible disbarment from future County Contracts.

(Ord. No. FI-O-0091-20, 10-27-2020)

## ***PART 8. CHANGES***

### **2-399.1: REVIEW OF ORDINANCE.**

The County Board shall review this article as appropriate but at least every five years to ensure conformance with current statutes and best Procurement practices, and to further the interests of the County.

(Ord. No. FI-O-0091-20, 10-27-2020)

### **2-399.2: RECOMMENDATIONS.**

Any individual using this article is encouraged to recommend changes. Proposed changes should be addressed in writing to the following:

Chief Procurement Officer  
Procurement Division County of  
DuPage  
421 N. County Farm Road  
Wheaton, IL 60187

(Ord. No. FI-O-0091-20, 10-27-2020)

### **2-399.3: EFFECTIVE.**

No change to this article shall be effective until approved as an amendment by the County Board.

(Ord. No. FI-O-0091-20, 10-27-2020)