

### Limitations on the Authority of the County of DuPage to Contract

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.

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.

#### ACCEPTANCE

Receipt of the above ACCEPTANCE is hereby acknowledged by:

Midwest Veterinary Supply, Inc.

(Contractor)

This 30th day of October, 2024

By: Colleen Sachse

Title: Bid and Pricing Specialist

**SECTION 7 - BID FORM PRICING**

F.O.B.: All goods shall be shipped F.O.B. Destination, delivered and installed.

NO	ITEM	UOM	PRICE
1	CTS Duo+ Companion Laser Therapy System	LS	\$ 33,669.42
2	Jump Start Program Kit including Doggles Kit	LS	Included at no cost \$
3	4 Year Warranty with Loaner Provision	LS	Included at no cost \$
4	Additional Year of Warranty Coverage (CTS-DUO only)	LS	Included at no cost \$
<b>GRAND TOTAL</b>			\$33,919.42 (includes shipping)
<b>GRAND TOTAL</b> Thirty three thousand nine hundred and nineteen dollars and forty two cents (In words)			

SECTION 8 - BID FORM SIGNATURE PAGE

The Contractor agrees to provide the service, and/or supplies as described in this solicitation and subject, without limitation, to all specifications, terms, and conditions herein contained. Bidder shall acknowledge receipt of each addendum issued in the space provided on the bid form.

X



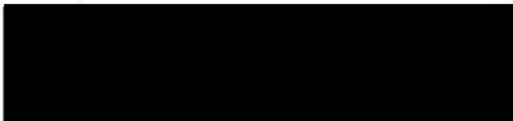
*Bid and Pricing Specialist*

(Signature and Title)

CORPORATE SEAL  
(If available)

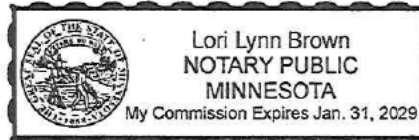
BID MUST BE SIGNED AND NOTARIZED (WITH SEAL) FOR CONSIDERATION

Subscribed and sworn to before me this 31 day of October AD, 2024



My Commission Expires: Jan 31, 2029

(Notary Public)



SEAL

**SECTION 9 - MANDATORY FORM  
COMPANION THERAPY LASER SYSTEM 24-104-ANS**

(PLEASE TYPE OR PRINT THE FOLLOWING INFORMATION)

Full Name of Bidder	Midwest Veterinary Supply, Inc.		
Main Business Address	21467 Holyoke Avenue		NS
City, State, Zip Code	Lakeville, MN, 55044		
Telephone Number	952-894-4350	Email Address	mvsbids@midwestvet.net
Bid Contact Person	Colleen Sachse		

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The undersigned certifies that he is:

- the Owner/Sole Proprietor     
 a Member authorized to sign on behalf of the Partnership Corporation     
 an Officer of the Corporation     
 a Member of the Joint Venture

Herein after called the Bidder and that the members of the Partnership or Officers of the Corporation are as follows:

Jeff Burkhamer  
(President or Partner)

Paul Crary  
(Vice-President or Partner)

Scott Davis  
(Secretary or Partner)

Scott Davis  
(Treasurer or Partner)

Further, the undersigned declares that the only person or parties interested in this bid as principals are those named herein; that this bid is made without collusion with any other person, firm or corporation; that he has fully examined the proposed forms of agreement and the contract specifications for the above designated purchase, all of which are on file in the office of the Procurement Officer, DuPage County, 421 North County Farm Road, Wheaton, Illinois 60187, and all other documents referred to or mentioned in the contract documents, specifications and attached exhibits, including

Addenda No. \_\_, \_\_\_\_, \_\_\_\_, and \_\_\_\_ issued thereto.

Further, the undersigned proposes and agrees, if this bid is accepted, to provide all necessary machinery, tools, apparatus, and other means of construction, including transportation services necessary to furnish all the materials and equipment specified or referred to in the contract documents in the manner and time therein prescribed.

Further, the undersigned certifies and warrants that he is duly authorized to execute this certification/affidavit on behalf of the Bidder and in accordance with the Partnership Agreement or by-laws of the Corporation, and the laws of the State of Illinois and that this Certification is binding upon the Bidder and is true and accurate.

Further, the undersigned certifies that the Bidder is not barred from bidding on this contract as a result of a violation of either 720 Illinois Compiled Statutes 5/33 E-3 or 5/33 E-4, bid rigging or bid-rotating, or as a result of a violation of 820 ILCS 130/1 et seq., the Illinois Prevailing Wage Act.

The undersigned certifies that he has examined and carefully prepared this bid and has checked the same in detail before submitting this bid, and that the statements contained herein are true and correct.

If a Corporation, the undersigned, further certifies that the recitals and resolutions attached hereto and made a part hereof were properly adopted by the Board of Directors of the Corporation at a meeting of said Board of Directors duly called and held and have not been repealed nor modified, and that the same remain in full force and effect. (Bidder may be requested to provide a copy of the corporate resolution granting the individual executing the contract documents authority to do so.)

Further, the Bidder certifies that he has provided equipment, supplies, or services comparable to the items specified in this contract to the parties listed in the reference section below and authorizes the County to verify references of business and credit at its option.

Finally, the Bidder, if awarded the contract, agrees to do all other things required by the contract documents, and that he will take in full payment therefore the sums set forth in the bidding schedule (subject to unit quantity adjustments based upon actual usage).

**CONTRACT ADMINISTRATION INFORMATION:**

<b>CORRESPONDENCE TO CONTRACTOR:</b>		<b>REMIT TO CONTRACTOR:</b>	
NAME	Lauren Freak	NAME	Wells Fargo NA
CONTACT		CONTACT	Accounts Receivable
ADDRESS	21467 Holyoke Avenue	ADDRESS	PO Box 856500
CITY ST ZIP	Lakeville, MN, 55044	CITY ST ZIP	Minneapolis, MN 55485
TX	612-210-1201	TX	952-567-6249
FX	952-894-5407	FX	612-255-3287
EMAIL	lauren.freak@midwestvet.net	EMAIL	epay@midwestvet.net
<b>COUNTY BILL TO INFORMATION:</b>		<b>COUNTY SHIP TO INFORMATION:</b>	
DuPage County Animal Services 120 North County Farm Road Wheaton, IL 60187 TX: (630) 407-2800		DuPage County Animal Services 120 North County Farm Road Wheaton, IL 60187 TX: (630) 407-2803 EMAIL: kristie.lecaros@dupageco.org	

ALL MATERIALS MUST BE BID AND SHIPPED F.O.B. DESTINATION, DELIVERED AND INSTALLED  
(FREIGHT INCLUDED IN PRICE)

**JOINT PURCHASING AGREEMENT**

**JOINT PURCHASING:**

OTHER TAXING BODIES: Based on County Board Resolution IR-084-76.

Would your firm be willing to extend your bid to other taxing bodies in DuPage County such as school districts, townships, cities and villages, etc.? The approximate quantity usage is unknown.

YES  NO

State any other requirements that they would have to meet beyond that of our Bid invitation and specification.

None

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NOTE: The County of DuPage would not be involved in purchasing by any other taxing body other than to receive a copy of their purchase order that would reference the County of DuPage contract number. The invoicing and payments would be entirely between the other taxing bodies and the Contractor. If the County of DuPage accepts this bid, the procedure to handle joint purchases would be developed by the County of DuPage with the Contractor and distributed to the taxing bodies by the County of DuPage.

**SECTION 10 - REFERENCES**

The bidder must list three (3) references, listing firm name, address, telephone number and contact person to whom they have provided similar equipment, material, or services for a period of not less than six (6) months.

COMPANY NAME:	City of El Paso
ADDRESS:	300 N. Campbell, El Paso, TX 79901
CONTACT PERSON:	Michael Newsom
TELEPHONE NUMBER:	915-212-5463

COMPANY NAME:	Jefferson Parish
ADDRESS:	200 Derbigny St. Suite 4400, Gretna, LA 70053
CONTACT PERSON:	Doris Abraham
TELEPHONE NUMBER:	504-364-2690

COMPANY NAME:	City of Grand Prairie
ADDRESS:	2222 W Warrior Trail, Grand Prairie, TX 75052
CONTACT PERSON:	Angi Mize
TELEPHONE NUMBER:	972-237-8262