

**DU PAGE COUNTY PROCUREMENT ORDINANCE
ARTICLE I
GENERAL PROVISIONS**

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PART A - PURPOSE AND APPLICATION

1-101 PURPOSE

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- (1) Interpretation. This ordinance shall be constituted and applied to promote its underlying purpose and policies.
- (2) Purpose and Policies. The underlying purpose and policies of this ordinance 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 departments through continuous improvement of purchasing systems and procedures. To the extent permitted by law, the County will promote economic development by encouraging the participation of DuPage County businesses, by providing equal opportunity for minority and women-owned businesses, and for veterans, and by applying environmentally sound practices in the procurement process.

1-102 APPLICATION

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The DuPage County Purchasing Ordinance applies to contracts for procurement of goods, services, and construction entered into by the County after the effective date of this Ordinance. It shall apply to every expenditure of public funds by a County agency for public purchasing irrespective of its source, except as otherwise provided by the federal or state law, federal or state regulation, County of DuPage Ordinance or administrative policy. It shall not be mandatorily applied to purchases by elected officials who are not statutorily required to purchase in compliance with County policies or for whom purchases are not made by the County. If an elected official not otherwise required to comply with County policy chooses to make any purchase with the assistance of the Procurement Services Division this ordinance shall apply. 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 Ordinance shall prevent any County agency from complying with the terms and conditions of any grant, gift, bequest or co-operative 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.

1-103 REQUIREMENT OF GOOD FAITH

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

1-104 SEVERABILITY

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If any provisions of this Ordinance or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

1-105 SINGULAR – PLURAL AND GENDER RULES

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- (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.

PART B DEFINITIONS

1-201 DEFINITIONS

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

- (1) Administrative Change Order: A form approved by the Chief Procurement Officer to record a change necessitated by accounting or other management procedures. Includes amendments of vendor's company name or address, rate adjustments specifically provided in the original contract and similar changes including: processing of contract modifications described in 4-404E. Includes accounting changes where there is no change to the contract total and no changes to the scope of the project or services; and allows officials designated by bond ordinance to finalize bond costs within parameters approved by the County Board.
- (2) Architect – Engineer and Land Surveying Services. Those professional services within the practice of architecture, professional engineering, structural engineering or land surveying, as defined by State of Illinois Professional Services Selection Act.
- (3) Bid Level: All purchases by the County in an amount at or in excess of \$5,000 less than the amount set forth in 55 ILCS 5/5-1022, as may be amended from time to time, with the exception of Telecommunication purchases which will remain at the statutory level.
- (4) Bid Security. Is 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.
- (5) Board Level Procurement: The purchase of goods or services in an amount at or in excess of \$5,000 less than the amount set forth in 55 ILCS 5/5-1022, as maybe amended from time to time.
- (6) Business. Any corporation, partnership, individual, sole proprietorship, joint venture, or any other private legal entity.

- (7) Change Order. A purchaser's written authorization to the Contractor to modify or change an existing Purchase Order or Contract; these changes generally must be within the scope of the contract.
- (8) Committee Level Procurement. The purchase of goods or services in amount greater than \$5,000 up to the Board procurement level.
- (9) Confidential Information. Any information which is available to an employee only because of the employee status as an employee of the County and which is not a matter of public knowledge or available to the public on request.
- (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) Contract. All types of County agreements regardless of what they may be called, for the procurement of goods, services or construction, for example, payment vouchers, purchase orders, maintenance contracts, service contracts, systems contract, oral agreements, etc.
- (12) Contract Renewal. A continuation for an additional period under the original terms and conditions, where the renewal clause is included in the bid document. If the bid document does not include the terms and conditions of a renewal, any continuation of the contract is considered a new contract, which must be re-bid.
- (13) Contractor. Any person or entity who is a party or beneficiary of a contract with the County or through a using agency thereof.
- (14) 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. Where a bid by one using department has established a purchase price, other departments may enter into a 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.
- (15) County Agency. A County officer, employee, department, office of, or agency whose purchasing authority is subject to the DuPage County Board.
- (16) Elected Official for purposes of this ordinance, Elected Official may include: Clerk of the Circuit Court, County Auditor, County Board Chairman, County Board Members, County Clerk, County Coroner, County Treasurer, Recorder of Deeds, Superintendent of the Regional Office of Education, County Sheriff, and States Attorney,
 - a) as to purchases required by statute to comply with County policy.
 - b) as to purchases made by the County, and
 - c) as to purchases made by the Elected Official when the Elected Official elects to purchase with the assistance of the Purchasing division.
- (17) Emergency Procurement. An emergency situation shall be defined as 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 situation does not include States of Emergency or Disaster declared under Section 10-6 of the County Code.
- (18) Employee. Individuals including elected and appointed officials providing services for the County and drawing a salary from the County.

- (19) Goods. All tangible maintenance, repairs, and operation supplies, physical computer software and equipment necessary to sustain day-to-day County operations.
- (20) Invitation For Bid. All documents whether attached or incorporated by reference, utilized for soliciting sealed bids.
- (21) Multi-Year Contracts. Procurement contracts extending more than one year.
- (22) Parent Committee. A Standing or Ad-Hoc committee established by the DuPage County Board with specific using agency jurisdiction and responsibilities.
- (23) Person. Any individual or group of individuals, business, union, firm, corporation, trustee, partnership association, joint venture, committee, or other entity.
- (24) 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.
- (25) Procurement Card. A payment method whereby requisitioners are empowered to deal directly with suppliers for low-dollar, high frequency type purchases by using a card issued by a bank or major credit card provider. The cards reduce paperwork and enable purchasing and accounts payable personnel to focus on more value-added activities.
- (26) Professional Services. The service of a person(s) possessing a high degree of professional skill where the judgment, artistic or subjective talent, ability, experiences, qualifications and fitness of the provider(s) play an important part in the selection and primary reason for the service provided, other than those described in the State of Illinois Local Government Professional Services Selection Act (50 ILCS 510/) and as further defined in section 4-108 of the DuPage County Procurement Ordinance.
- (27) Professional Services (excluded): Contracts for architectural, engineering and land surveying services shall issued on the basis of demonstrated competence and qualifications for the type of services required and at fair and reasonable compensation as specified in 50 ILCS 510/1. These services are excluded from the competitive bidding selection process.
- (28) Professional Services (exempted): Contracts for professional services other than those listed in “Professional Services (excluded)”, not required to be selected by competitive means, but not excluded from such selection methodology.
- (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 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 by any public body, 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) Purchase Requisition. An internal document, by which a department sends, to the Procurement Services Division, details of goods, materials or services to meet its needs for a specific job.

- (33) Purchasing Agent. The Chief Procurement Officer or any staff member of the Procurement Services Division authorized by the Chief Procurement Officer to act on behalf of the Chief Procurement Officer.
- (34) Request for Proposals. All documents, whether attached or incorporated by reference, utilized for soliciting proposals.
- (35) Responsible Bidder or Offeror. A person (firm) who has the capability in all respects to perform fully the contract requirements, and the experience, personnel, integrity, reliability, facilities capacity, equipment, acceptable past performance and credit which will assure good faith performance.
- (36) Responsive Bidder. A person who has submitted a bid, which conforms in all material, respects to the requirements set forth in the invitation to bid.
- (37) Reverse Auction. A procurement method where Procurement puts out a contract for bid, through an online marketplace, multiple sellers offer bids on the item, competing to offer the lowest price that meets all of the specifications of the bid. An alternate procurement method for qualified commodities.
- (38) Services. The furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This definition shall not apply to employment agreements, collective bargaining agreements or to the definition of “Professional Services” as provided in subsection (17) of this Section and items paid by Direct Payment Forms, Payment Vouchers and Grant Payment Forms.
- (39) Sole Source Procurement: A situation created due to the inability to obtain competition. May result because only one vendor or supplier possesses the unique ability to meet the particular requirements of the solicitation. Procurement requires justification from the requesting agency explaining why this is the only source for the requirement; justification will be reviewed by Chief Procurement Officer for validity.
- (40) Specifications. Any description of the physical or functional characteristics or of the nature of a good, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing goods, services or construction projects.
- (41) String Purchasing. For purposes of this ordinance, splitting or stringing purchases is the practice of issuing multiple purchase orders, procurement card transactions, or requisitions for purchasing like items or services, with the willful intent to circumvent the purchasing policy. Splitting or stringing purchases will be dealt with as an impropriety and may result in withdrawal of delegated purchase authority. In addition, the person(s) responsible may be subject to disciplinary actions, and may be personally obligated to pay for the items or services.
- (42) Unauthorized Purchases. An unauthorized purchase occurs when the materials, services, or any expense is charged to the County of DuPage 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) Using Department or Using Agency. Any County agency requiring goods, services or construction procured pursuant to this Ordinance.
- (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 24 months, is at least one year old; or
- b) Is a floor or demonstration model that is offered at a price at least 25% below current market price; or
- c) Is otherwise determined by the Procurement Services Division on a case by case basis to be a bona fide used item.

ARTICLE 2 PROCUREMENT SERVICES DIVISION

The Procurement Services Division is the procurement agency of the County. All bids, RFP's and other procurement methods, as outlined in Article 4, shall be established by the Procurement Services Division and compliance shall be the responsibility of the using department.

PART A – ROLE OF PROCUREMENT SERVICES DIVISION

2-101. TERMS AND CONDITIONS

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The Procurement Services Division is responsible for providing standardized contractual terms, conditions, notices, instructions, etc., for all bid and/or proposal documents except for Road Construction that follow Illinois Department of Transportation standards and regulations. All bid/proposal documents shall include, but not be limited to:

- Instruction to Bidders and/or Offerors
- General Conditions
- Bid and/or Proposal Forms
- Special or Supplemental Conditions (prepared by or in conjunction with the using department)
- Affidavits or certificates required by statute
- Language indicating specific state statutes applicable to the procurement function or contract performance
- Bonds and insurance, where required.

Each bid/proposal will be evaluated by the Purchasing Division to determine the specific requirements of each individual bid/proposal document.

2-102. BID SECURITY/BONDING/REQUIREMENTS

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- (1) Requirement for Bid Security. Bid security may be required for contracts when provided by statute or when Chief Procurement Officer determines it is in the County's best interests. Bid security shall be a bond provided by a surety company authorized to do business in the State of Illinois, or a certified bank instrument, or otherwise supplied in a form satisfactory to the Chief Procurement Officer and Chief Financial Officer. A letter of credit, as defined by state statute, may also be accepted.
- (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) Contract Performance and Payment Bonds: When Required – Amounts. When a contract is awarded the required bonds or security in the amount stated in the bid document shall be delivered to the County and shall become binding on the parties upon the execution of the contract.

2-103 INSURANCE REQUIREMENTS

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For all contracts, the contractor and all 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 furnish the Purchasing Agent with satisfactory evidence of said insurance.

2-104 CONTRACTOR RECORD RETENTION

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For all contracts, the contractor and all sub-contractors shall be required to maintain adequate records appropriate to the type of contract, to retain such records for a minimum of three (3) 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, the retention period shall be five (5) years and the Contractor shall also be required to submit certified payroll affidavits and to make such all payroll records available for inspection by the Illinois Department of Labor.

2-105 AUTHORIZATION FOR THE USE OF ELECTRONIC TRANSMISSIONS

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A.(1) The use of electronic media for all procurement procedures, including acceptance of electronic signatures, is authorized consistent with Illinois law for use of such media. The Chief Procurement Officer shall determine which solicitations are suitable for electronic transmissions, giving consideration to:

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1-a) appropriate security to prevent unauthorized access to the bidding, approval and award processes; and

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2-b) accurate retrieval or conversion of electronic forms of such information into a medium which permits inspection and copying.

PART B – BID AND/OR PROPOSALS ADDENDA AND QUESTIONS

2-201 BID AND/OR REQUEST FOR PROPOSAL DOCUMENT ADDENDA AND QUESTIONS

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Once the bid/request for proposal document has been issued, all questions regarding that document shall be submitted in writing to the Procurement Services Division. Any and all addenda shall be issued by the Procurement Services Division pursuant to any alterations required in the bid document. If it is determined that a bidder/offeror received an unfair advantage from information obtained through other departments or agencies, the bid or request for proposal may be canceled.

2-202 COMMUNICATION WITH BIDDER/OFFERORS

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County Officers and employees shall take care to limit communication with bidders/offerors during the solicitation process so that the integrity of the competitive solicitation process is

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maintained. All representatives of the County shall avoid any vendor contact that would constitute interference with contract submission and award under the Criminal Code, 720 ILCS 5/33E-6. If it is determined that a bidder/offeror received an unfair advantage from information obtained through prohibited sources or under prohibited circumstances, the solicitation may be canceled, or the bidder/offeror disqualified from participation in that solicitation request.

PART C – PARENT COMMITTEE/BOARD AGENDAS

2-301 PLACEMENT OF PURCHASING ITEMS ON AGENDAS

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The Procurement Service Division shall review and approve purchasing items for compliance prior to submission for approval by Parent Committee, or Parent Committee and County Board for items over \$5,000, as required by the Purchasing Ordinance. 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.

PART D – PUBLIC ACCESS TO PROCUREMENT INFORMATION

2-401 PUBLIC ACCESS TO PROCUREMENT INFORMATION

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Procurement information shall be a public record subject to the exceptions of disclosure to the extent provided in the Illinois Freedom of Information Act, and shall be available to the public as provided by the DuPage County Policy implementing said Act.

ARTICLE 3 CHIEF PROCUREMENT OFFICER

PART A-AUTHORITY AND DUTIES

3-101 AUTHORITY AND DUTIES

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- (1) Principal Public Purchasing Official. The Chief Procurement Officer shall serve as the principal public purchasing official for the County. He shall be responsible for the procurement of goods and service, and construction in accordance with this Ordinance, as well as disposing of County assets as outlined by Board Approved Resolution. No department, office, agency, officer or employee of the County shall be empowered to execute any Purchase Order, Change Order, Agreement or Contract except as authorized by this ordinance.
- (2) Duties. Duties in accordance with this Ordinance are subject to the supervision of the County Board Chairman, and Chief Financial Officer. The Chief Procurement Officer shall:
 - a) Supervise the procurement of all goods and services including professional services, and construction needed by the County except as noted in 2-101.
 - b) Dispose of surplus goods belonging to the County in accordance with Resolution FI-0027-97, including any amendments that may supersede the original Resolution titled "Disposition of Surplus and Personal Property" that follows State Statute.
 - c) Establish and maintain programs for specification development, contract standardization, material control, administration, inspection and acceptance, in cooperation with other public agencies using goods, services and construction.
 - d) Review the Department's evaluation of the vendor's performance in order to determine potential suitability for future use by the County.
- (3) Purchasing Regulation and Operational Procedures. Consistent with this Ordinance, and with the approval of the County Board Chairman, and Chief Financial Officer, the Chief Procurement Officer may adopt purchasing regulations and operations procedures relating to execution of his duties.

ARTICLE 4 SOURCE SELECTION AND CONTRACT FORMATION

PART A – METHODS OF SOURCE SELECTION

4-101. SMALL PROCUREMENTS (PURCHASES UNDER \$5,000)

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- (1) Condition of Use. These purchases are limited in frequency related to individual commodities and services. Contract requirements shall not be artificially divided so as to constitute a small procurement or evade the competitive procurement requirements for amounts in excess of \$5,000 under this section. The Chief Procurement Officer and Chief Financial Officer shall determine when market or operational factors require the combining or dividing of procurements.
- (2) Minimum Requirements:
Procurements up to \$5,000 may be obtained in a way that it is in the best interest of the County as determined by the Department Head or Elected Official. The payment of these purchases will be made on Payment Voucher Forms presented to the Finance Department without Purchasing Division approval and processing. Certain circumstances may require the use of a purchase order under \$5,000 (e.g. Vendor required, expenditures from certain accounts, etc.)

4-102. COMMITTEE LEVEL PROCUREMENTS

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- (1) Condition of Use. Any Committee level procurement shall be made in accordance with procedures authorized in this herein. These purchases are related to individual commodities and services. Purchases shall not be artificially divided so as to constitute a small procurement or evade the competitive bidding requirements herein. The Chief Procurement Officer and Chief Financial Officer shall determine when market or operational factors require the combining or dividing requirements. String Purchasing is forbidden and purchases shall not be artificially divided for purposes of evading the competitive sealed bidding requirement.
- (2) Minimum Quotation Requirements. The requesting department shall work with the Procurement Services Division to validate the specifications for quotations and shall utilize e-quoting or a method determined to be appropriate for quote solicitation. The Procurement Services Division shall obtain quotations/proposals (these may be in written form, fax or e-mail) from at least three (3) vendors. Where it is not feasible to obtain 3 quotes, a Decision Memo must be submitted. Purchase documentation not in compliance with this ordinance and all applicable statutes shall not be processed and shall be returned to the using department. The Procurement Services Division reserves the right to change suggested vendor if a contract exists for the requested goods or services or if better prices are obtained.
- (3) Evaluation Factors. Evaluation factors which may justify an award to a vendor who has not provided the lowest quotation include; but are not limited to, delivery requirements, quantity requirements, quality and past vendor performance. Whenever it is determined

that it is in the best interest to award a purchase contract to a vendor who did not submit the lowest acceptable quotation, the reason for the determination shall be indicated in a Decision Memo and retained with the contract. The Decision Memo documents and determines the appropriateness of the requested procurement process and approvals.

- (4) Award. Except as provided herein award shall be made to the vendor offering the lowest responsive and responsible quote who meets the specifications. Adequate records to document the competition solicited and award determination made shall be retained with the contract.
- (5) Sole Source. Circumstances may exist where the Chief Procurement Officer determines that it is not feasible to secure three (3) quotations. In other situations, the Chief Procurement Officer may determine that it is in the best interests of the County to consider only one supplier who has previous expertise relative to procurement. Whenever the Chief Procurement Officer determines that it is not feasible, or is not in the County's best interest to satisfy the minimum quotation requirements of subsection (2) the reason for this determination shall be indicated in writing on a Decision Memo and retained with the contract.

4-103 BOARD LEVEL PROCUREMENTS - COMPETITIVE SEALED BIDDING

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- (1) Conditions of Use. Any Board level procurements (except where allowed by statute) shall be awarded by competitively sealed bidding except as otherwise provided in section 4-104 (Request for Proposals), 4-105 (Emergency Procurements), 4-106 (Cooperative Purchases), or as provided by State Statute. String Purchasing is forbidden and purchases shall not be artificially divided for purposes of evading the competitive sealed bidding requirement.
- (2) Invitation for Bids. 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.
- (3) Public Notice. Adequate public notice of the Invitation for Bids shall be given, by the Procurement Services Division, a reasonable time, no less than fourteen (14) calendar days prior to the date set forth therein for the submittal and opening of bids. For bids with a mandatory prebid meeting, the public notice must be published at least seven (7) calendar days prior to the 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 statutorily required. The public notice shall state the project, submittal date, any statutory requirements, time and location the of bid opening.
- (4) Bid Opening. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the Invitation for Bids. The amount of each bid, or such other relevant information as the Purchasing Agent deems appropriate, together with the name of each bidder shall be recorded. The record and each bid shall be open to public inspection in accordance with section 2-401 (Public Access to Procurement Information), subject to exemptions from disclosure under the Freedom of Information Act.
- (5) Bid Acceptance and Bid Evaluation. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Ordinance. The Procurement

Services Division, based on the requirements set forth in the Invitation for Bids shall evaluate bids for responsiveness. Those criteria that will effect 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 Bids and meet the evaluation criteria set forth.

(6) Correction or Withdrawal of Bids, 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. The Procurement Services Division is responsible for reviewing all bid forms.
- c) Clarifications – The Chief Procurement Officer may obtain clarification from any bidder, after opening, deemed necessary to fully evaluate the bid.
- d) Bid Withdrawal after Bid Opening – If the bidder alleges a material error or mistake of fact, they may be permitted to withdraw the bid if the bidder submits evidence, which clearly and convincingly demonstrates that an error was made. The request for withdrawal of the bid and written documentation shall be submitted to the Chief Procurement Officer.

(7) Tie Bids. Should tie bids between equally responsive bidders be received, the award will be made by a coin toss or otherwise by random selection in the Purchasing 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.

(8) Right of Rejection. The Parent Committee and/or County Board reserves the right to accept or reject any or all bids/proposals and to waive any technicalities in the document.

(9) Award. The contract shall be awarded with reasonable promptness by appropriate written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Bids. After the bid is awarded, in accordance to Section 4-405 “Approval of Contracts and Bids,” the Procurement Services Division shall issue all notices of awards and notices to proceed. All contractually required documentation will be required prior to any notice to proceed.

(10) Cancellation of Contracts – All contract cancellations recommended by the Chief Procurement Officer will be presented to the County Board on a Consent Agenda.

4-104 BOARD LEVEL PROCUREMENTS - REQUEST FOR PROPOSAL

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- (1) 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 use of the Request for Proposal procedure. Reasons for

using the Request for Proposal procedure shall be approved by the Purchasing Division prior to the commencement of the procedure.

- (2) Request for Proposal. Proposals shall be solicited through the Procurement Services Division and shall include specifications or general descriptions of goals, tasks or results, and material non-negotiable contractual terms and conditions applicable to the procurement.
- (3) Public Notice. Adequate public notice of the request for proposal shall be given in the same manner as Public Notice for Invitation for Bids, section 4-102 subsection (2) (Invitation for Bids) and subsection (3) (Public Notice).
- (4) 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 using department recommendation.
- (5) Receipt of Proposals. Names of offerors 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 competition or offerors during the selection process. A register of the proposals shall be prepared containing the name of each offeror, 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.
- (6) Discussions with Responsible Offeror and Revisions to Proposals. As provided in the request for proposals, discussions may be conducted with the responsible offerors who submitted proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to a successful understanding of and conformance to, the solicitation requirements. Offerors 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. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.
- (7) Award. The County Board shall make the award to the responsible offeror whose proposal conforms to the solicitation and is determined, in writing, to be the most advantageous to the County taking into consideration price and the evaluation factors set forth in the Request for Proposals. The contract file shall contain the basis on which the award is made.

4-105 SOLE SOURCE PROCUREMENT

A contract may be awarded where the Chief Procurement Officer determines that it is not feasible to secure bids or that there is only one source for the required goods or services. In other situations, the Chief Procurement Officer may determine that it is in the best interests of the County to consider only one supplier who has previous expertise relative to procurement. The using department shall prepare supporting documentation for review and approval by the Chief Procurement Officer. Whenever the Chief Procurement Officer determines that it is not feasible, or is not in the County's best interest to satisfy the minimum bid requirements, the reason for this determination shall be indicated in writing on a Decision Memo, where required, and retained with the contract.

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4-106 EMERGENCY PROCUREMENTS

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

- (1) The reason for the determination of the emergency shall be indicated on a Decision Memo Form. Failure of the using agency to timely comply with this Ordinance shall not *prima facie* constitute an emergency. In emergency situations, the County Board Chairman shall not be required to comply with competitive bidding and advertising requirements of this ordinance and shall be empowered to negotiate and execute contracts without prior approval of the County Board.
- (2) For purchasing emergencies in excess of \$5,000, the Department Head shall inform the County Board Chairman and Chief Procurement 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 4-405 'Approval of Contracts and Bids'.

4-107 COOPERATIVE JOINT PURCHASING AUTHORIZED

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Subject to applicable state statutes, DuPage County may either participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of goods, services, 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.

4-108 PROFESSIONAL SERVICES SELECTION PROCESS

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- (1) It is the intention of DuPage County to employ consultants on the basis of their perceived competence and expertise relative to the services to be rendered, the cost of their services, their ability to complete work within a required time frame, their past record in performing similar type work, and their ability to work with County staff and elected officials. Types of services to be covered:
 - a) Engineering, Architects and Land Surveyors. These services require mandatory or essential technical skills provided by accredited professionals or quasi-professionals in connection with a defined assignments, which result in the preparation of a report, specifications or recommendation of a particular course of action, and may include supervision of an activity (such as construction). Providers of these services shall be selected in accordance with the State of Illinois Local Government Professional Services Selection Act (50 ILCS 510/).
 - b) Other Professional Services. These services are provided on the basis of defined services to be rendered, by individuals or organizations, relative to policy,

organizational, operational or administrative aspects of government, including recommendations, and the potential to assist in implementing recommendations (i.e., strategic planning, operational management, management information systems, human resources). The using department shall prepare a Decision Memo for review and approval for the purposes of contractual award. For Professional Services (exempted) where the contract is expected to exceed \$250,000, department staff will seek Parent Committee direction as to the method of vendor selection to be utilized.

- (2) Performance Criteria. Upon completion of each contract over \$25,000, the department involved shall prepare a written evaluation of the consultant's performance. The details of the evaluation shall be consistent with the cost and complexity of such assignments. For contracts over \$25,000, the Procurement Services Division will maintain a record of such evaluations for the use of all departments when selecting future professional service/consultants. No consultant shall be awarded subsequent contracts unless the using department has submitted a satisfactory evaluation to the Procurement Division.

4-109 GRANT PROGRAMS

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- (1) Under certain Grant Programs the County acts as a third-party administrator of local, state and 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 ordinance.
- (2) The County has determined that the provision of weatherization services under the State grant program is not suitable for competitive bidding as described in 55 ILCS 5/5-1021. Vendors to be called for such services under a grant from the State of Illinois Emergency Weatherization Program may be selected by 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 ordinance.

4-110 CIRCUMSTANCE NOT SUITABLE FOR BID

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- (1) 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 4-109, purchases of regulated utility services or other services for which a tariff or set rates are published; purchases for which there has been a record of no competition, as evidenced by single bids, for three consecutive years.
- (2) Contracts awarded under this section shall have a one year term, and shall not contain an automatic renewal clause, but must be reviewed annually by Procurement Services Division, for permissive renewal.

4-111 **CONTRACTS FOR LEGAL SERVICES**

Contracts for legal services will be made through a countersigned engagement letter offered by the State's Attorney, and no contract for legal services shall be made without the approval of the State's Attorney.

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PART B – QUALIFICATIONS AND DUTIES

4-201 **RESPONSIBILITY OF BIDDERS AND OFFERORS**

If a bidder, designee or offeror 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 using department. In determining responsibility of any bidder, the County may take into account, 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 to the specifications.) A detailed explanation shall be sent promptly to the non-responsible bidder or offeror who shall then have 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 or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for such determination.

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PART C - CONTRACT ADMINISTRATION

4-301 **CONTRACT ADMINISTRATION**

A contract administration system is designed to insure 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 using department's responsibility to match contract terms and prices with invoices, and to otherwise monitor compliance with the contract terms. The using department is also responsible to determine the imminent need for and to begin processing a change order where appropriate.
- (2) Payment must be identified to an existing contract or purchase order.

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~~4-302~~ **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 Services Division.

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- (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 three years from the date of final payment. Medicare record retention 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.

PART D – AUTHORIZATION, REVIEW AND APPROVAL PROCESS

4-401. AUTHORIZATION TO INITIATE BIDS OR OTHER SOLICITATIONS

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

4-402. PROCUREMENT PROCESS

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Approval Discretion. At the discretion of the County Board Chairman, Elected Official or the Procurement Services Division any purchase or contract 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 PROCUREMENTS**
Procurements up to \$5,000 may be obtained in a way that it is in the best interest of the County as determined by the Department Head or Elected Official. Contract requirements shall not be artificially divided so as to constitute a small procurement or evade the competitive procurement requirements for amounts in excess of \$5,000 under this section. The Chief Procurement Officer and Chief Financial Officer shall determine when market or operational factors require the combining or dividing of procurements.
- (2) **COMMITTEE LEVEL PROCUREMENTS**
Prior to submission to the Purchasing Division, all requisitions shall be signed by the department head or authorized signatory. The purchase or contract of any item, combination of items, or contractual service which price equals or exceeds \$5,000 but less than County Board Level shall be submitted to the Procurement Services Division for review by the using department prior to presentation to Committee. Note: Appropriate bidding or Decision Memo procedures must also be followed. 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.

All procurements in excess of County Board Level require the approval of the Finance Committee and all other approvals as required in the County Board Rules.

(3) **BOARD LEVEL PROCUREMENTS**

Prior to submission to the Procurement Services Division, all requisitions shall be signed by the department head or authorized signature. The purchase or contract of any item, combination of items, or contractual service which price equals or exceeds County Board Level shall be submitted to the Procurement Services Division for review prior to presentation for approval by the Committee, and any other approvals as defined in the County Board Rules and the County Board, and shall be covered by a Purchase Order. Note: appropriate bidding or Decision Memo procedures must also be followed. The Chief Procurement Officer may be authorized to sign any contract or agreement, after receipt of all contractually required documentation, if authority has been granted within the Resolution.

4-403 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.

4-404 LEGAL REVIEW OF CONTRACTS

Prior to award, 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 has previously been approved by the State's Attorney.

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4-405 CHANGE ORDERS AND CONTRACT MODIFICATIONS

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- (1) All change orders and contract modifications except those under section (4) will be presented in advance to the Procurement Services Division. If no further approval is required, as described below, the Procurement Services Division will continue the processing of necessary documentation.
 - a) For interim (non-final) change orders and contract modifications where the total purchase amount, including any changes, does not exceed the Small Procurement level, processing may continue without further approval.
 - b) For final change orders processing may continue without further approval where:
 - (i) there is a price increase of up to \$2,500 or
 - (ii) there is a price increase of no more than 10% of the initial price.
 - c) Processing may continue subject to County Board ratification on a consent agenda for change orders that:
 - (i) decrease a contract by \$10,000 or more;
 - (ii) increase or decrease the term by 30 or more calendar days
 - (iii) cancel any contract
- (2) Further approval, by the Parent Committee, is required before further processing occurs in the following cases:
 - a) where Department Head approval was required for the initial contract and the change order increases the contract to an amount in excess of the Small Procurement level,
 - b) where Parent Committee approval was required for the initial contract and the change order increases the contract to an amount no greater than Committee Procurement level, and
 - c) where Parent Committee approval was required for the initial contract and the change order materially alters the scope of work to be performed.
- (3) Further approval, by the Parent Committee and the County Board, is required before further processing occurs in the following cases:
 - a) where Department Head approval or Parent Committee approval was required for the initial contract and the change order increases the contract to an amount in excess of Committee Procurement level, and
 - b) where Parent Committee and County Board approval was required for the initial contract and the change order materially alters the scope of work to be performed.
- (4) 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 Department Head and Project Manager, subject to ratification by the County Board on the action agenda. The Parent Committee Chair shall be notified of a field condition change order at the earliest possible opportunity.
- (5) 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 to more than 50% of the initial contract price. In such case, the new or increased value goods or services must be submitted for competitive bidding pursuant to statute.

4-406 MULTI-YEAR CONTRACTS

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- (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.

4-407 CONTRACT RENEWALS

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The following governs contract renewals:

- (1) All contracts that contain an optional renewal clause shall be presented for approval to the with the total dollar value for the initial period of award.
- (2) All requests for contract renewals shall originate from the using department in the form of a requisition indicating the desire for the renewal, the subsequent renewal term and the total dollar value for the renewal period.
- (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) All contracts containing renewal clauses shall not be presented to the 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.

ARTICLE 5 SPECIFICATIONS

PART A – RESPONSIBILITY, USING AGENCY, COMPETITION

5-101 RESPONSIBILITY FOR SPECIFICATIONS

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The Chief Procurement Officer or designee (normally using 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 Department 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 using department to furnish such terms and conditions for inclusion by the Purchasing Agent.

5-102 RELATIONSHIP WITH USING AGENCIES

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

5-103 MAXIMUM PRACTICABLE COMPETITION

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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.

ARTICLE 6 DECLARATION OF NON RESPONSIBILITY

PART A – DECLARATION PROCESS

6-101 AUTHORITY TO ISSUE A DECLARATION OF NON RESPONSIBILITY

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After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Chief Procurement Officer is authorized to declare the person 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 bids or proposals;
- (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 Ordinance.

6-102 DECISION TO DECLARE NON RESPONSIBLE

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

6-103 NOTICE OF DECISION

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A copy of the decision required by Section 6-102 shall be mailed by certified return receipt.

6-104 FINALITY OF DECISION

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A decision under Section 6-102 shall be final or conclusive, unless fraudulent, or the affected person within ten (10) business days after receipt of the decision by certified mail makes an appeal to the County Board Chairman.

PART B – APPEALS AND REMEDIES

6-201 AUTHORITY OF THE CHIEF PROCUREMENT OFFICER TO SETTLE BID PROTESTS AND CONTRACT CLAIMS, SUBJECT TO STATUTORY PROVISIONS

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- (1) Authority. The Chief Procurement Officer is authorized to resolve any procedural protest regarding the solicitation or award of any bid under his purview.
- (2) Right to Protest. Any actual or prospective bidder, offeror, or contractor who believes they have been adversely affected in connection with the solicitation or award of a contract may, within seven calendar days of the solicitation, bid opening or award, by mail, fax or have served, a letter of protest to the Chief Procurement Officer. The Chief Procurement Officer must submit a response in writing to the protesting entity, within five (5) business days from receipt of the protest.
- (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 of the bid, bid opening or award of the contract.
- (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 promptly issue a decision in writing, and it shall be immediately mailed or otherwise furnished to the protesting entity. 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 Chairman receives a written appeal regarding the Chief Procurement Officer's decision. The County Board Chairman 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 (2) 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.

6-202 REMEDIES FOR SOLICITATIONS OR AWARDS IN VIOLATION OF LAW

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- (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 Purchasing Manager, 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) Prior to Award. If after bid opening or the closing date for receipt of proposals, the Purchasing Manager 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 Ordinance.
- (3) After Award. If, after an award, the Purchasing Manager determines that a solicitation or award of a contract was in violation of applicable law, then:
 - a) If the person 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 person awarded the contract has acted fraudulently or in bad faith, the contract may be declared null and void.

ARTICLE 7 ETHICS

PART A – ETHICS AND CONFORMANCE

7-101 ETHICS

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

7-102 VIOLATIONS

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Non-conformance with this ordinance may violate County rules, State of Illinois civil and criminal laws and may result in legal actions and sanctions.

7-103 REPORTING OF ANTI-COMPETITIVE PRACTICES.

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When for any reason collusion or other anti-competitive practices are suspected among any bidders or offerors, or by any County employees or officers, an employee with knowledge of such reason shall follow the reporting requirements of the County's Personnel Ordinance. 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 Ordinance and State statute.

~~PART~~ ARTICLE 8
~~-~~CHANGES

8-100 AMENDMENTS

8-101 REVIEW OF ORDINANCE

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

8-102 RECOMMENDATIONS

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

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

8-103 EFFECTIVE

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

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Adopted March 8, 2011