

PURCHASING ORDINANCE  
FOR THE  
COUNTY OF MCHENRY,  
ILLINOIS



# MCHENRY COUNTY PURCHASING ORDINANCE

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# MCHENRY COUNTY PURCHASING ORDINANCE

## ARTICLE 1- General Provisions

### S1-101 POLICIES AND PROCEDURES

The underlying purposes and policies of this ordinance are as follows:

- (1) to provide for the fair and equitable treatment of persons involved in public purchasing by the County of McHenry;
- (2) to provide for increased public confidence in the procedures followed in public procurement;
- (3) to simplify, clarify, and modernize the law governing procurement by the County of McHenry;
- (4) to permit the continued development of procurement policies and practices;
- (5) to maximize to the fullest extent practicable the purchasing value of public funds in procurement;
- (6) to foster broad-based competition within the free enterprise system; and
- (7) to provide safeguards for the maintenance of a procurement system of quality and integrity.
- (8) to invite competition, to guard against favoritism, improvidence, extravagance, fraud, and corruption, and to secure the best work or supplies at the lowest price practicable.
- (9) To provide guidelines for purchases of equipment, materials, supplies, and services for the operational requirements of McHenry County, insuring competitive and unbiased selection of vendors.

### S1-102 APPLICATION

This Ordinance applies to all contracts for the procurement of goods, supplies, equipment, services, construction and professional services with the exception of the Division of Transportation as outlined within the specific sections of this Ordinance, entered into by the County of McHenry after the effective date of this Ordinance unless the parties agree to its application to contracts entered into prior to its effective date. 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 State law, State regulation, County of McHenry Ordinance or administrative policy. 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(s). Nothing in this Ordinance shall prevent any County agency from complying with the terms and conditions of any grant, gift, bequest, or cooperative purchasing agreement that is otherwise consistent with law. This Ordinance does not apply to the procurement of legal services.

S1-103 PUBLIC ACCESS TO PROCUREMENT INFORMATION

Procurement information shall be a public record subject to disclosure to the extent provided in the Illinois Freedom of Information Act (5 ILCS 140/1 et seq.).

S1-104 REQUIREMENT OF GOOD FAITH

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

S1-105 COPYRIGHT

The County of McHenry is the owner and has the right to all work, property, and materials created or developed in the performance of any contract, to include software, forms, data, and documents. The County of McHenry shall own the copyright to any work, property, and materials created or developed in the performance of any contract. The Vendor shall not copy or release any documents created in the performance of a contract without the express written consent of the County of McHenry.

S1-106 SEVERABILITY

If any provision of this Ordinance or any 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 severable.

S1-107 SINGULAR-PLURAL GENDER RULES

Words in the singular number include the plural, and those in the plural include the singular. Words of a particular gender include any gender and the neuter, and when the sense so indicates, words of the neuter gender may refer to any gender.

S1-108 DEFINITIONS

The words defined in this Section shall have the meanings set forth below whenever they appear in this Ordinance.

- (1) Architect-Engineer and Land Surveying Services. Those professional services within the scope of practice of architecture, professional

engineering, structural engineering, or land surveying, as defined by the laws of the State of Illinois.

- (2) Bid. An advertised, open, competitive solicitation for prices that are opened publicly. Usually for a commodity rather than a service.
- (3) Blind Trust. An independently managed trust in which the employee-beneficiary has no management rights and in which the employee-beneficiary is not given notice of alterations in, or other dispositions of, the property subject to the trust.
- (4) Business. Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.
- (5) Change Order. A written order signed and issued by the Director of Purchasing, directing the vendor to make changes to the original contract specifications which the "Changes" clause of the contract authorizes the Director of Purchasing to order without the consent of the vendor.
- (6) Contract File. A record maintained in the Purchasing Department which may include a requisition, purchase order, contract documents and/or related correspondence.
- (7) Contract Modification (bilateral change). Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by the mutual assent of the parties to the contract.
- (8) Confidential Information. Any information which is available to an employee only because of the employee's status as an employee of the County and is not a matter of public knowledge or available to the public via a request made pursuant to the Illinois Freedom of Information Act (5 ILCS 140/1 et seq.).
- (9) Construction. The process of building, altering, repairing, improving, demolishing, making structural repairs or other capital improvements to any public real property.
- (10) Contract. All types of County agreements, regardless of what they may be called, for the procurement of goods, supplies, services, construction or professional services.
- (11) Contractor. Any person having a contract with the County or a using agency thereof.

- (12) Cooperative Purchasing. Procurement conducted by or on behalf of more than one Public Procurement Unit.
- (13) Cost Analysis. The evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid, and costs to be reimbursed.
- (14) Cost Data. Factual information concerning the cost of labor, material, overhead, and other cost elements which have been actually incurred or which are expected to be incurred by the contractor in performing the contract.
- (15) Cost-Reimbursement Contract. A contract under which a contractor is reimbursed for costs which are allocable in accordance with the contract terms and the provisions of this Ordinance, and a fee or profit, if any.
- (16) County (Public) Agency. A County officer, department, official, commission, board, employee, or agency whose purchasing authority is subject to the McHenry County Board.
- (17) Direct or Indirect Participation. Involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification, or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity.
- (18) Employee. An individual drawing a salary or wages from the County of McHenry, whether elected or not.
- (19) Finance & Audit Committee. The Committee established by the McHenry County Board to review and recommend appropriation budgets and expenditure of funds for all using agencies.
- (20) Financial Interest.
  - (a) ownership of any interest or involvement in any relationship from which, or as a result of which, an individual within the past year has received, or is presently or in the future entitled to receive, more than \$1,200.00 per year, or its equivalent;
  - (b) ownership of 5% of any property or business; or
  - (c) holding a position in a business such as officer, director, trustee, partner, employee, or holding any position of management.

- (21) F.O.B. Free on Board.
- (22) Goods. All maintenance, repair and operating supplies and equipment necessary to sustain day to day County operations.
- (23) Gratuity. A payment, loan, subscription, advance, and deposit of money, service, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
- (24) IDOT. Illinois Department of Transportation.
- (25) Immediate Family. Husband, wife, mother, father, mother-in-law, father-in-law, son, daughter, brother, sister, son-in-law, daughter-in-law, uncle, aunt, brother-in-law, and sister-in-law.
- (26) Invitation for Bids. All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids.
- (27) Person. Any individual or group of individuals, business, union, firm, corporation, trustee, partnership, association, joint venture, committee, club, or other entity.
- (28) Price Analysis. The evaluation of price data, without analysis of the separate cost components and profit as in cost analysis, which may assist in arriving at prices to be paid and costs to be reimbursed.
- (29) Pricing Data. Factual information concerning prices for items substantially similar to those being procured. Prices in this definition refer to offered or proposed selling prices, historical selling prices and current selling prices. The definition refers to data relevant to both prime and subcontract prices.
- (30) Procurement. The buying, purchasing, renting, leasing, or otherwise acquiring of any goods, supplies, services, equipment, construction or professional services. It also includes all functions that pertain to the obtaining of any goods, supply, service, equipment, construction or professional services, including description of requirements, selection, and solicitation of sources, preparation and award of contract, and all phases of contract administration.
- (31) Professional Services. The services of a person possessing a high degree of professional skill where the ability or fitness of the individual plays an important part and the primary reason for the purchase is the service provided.
- (32) 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, educational, 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, supplies, services, construction and professional services.

- (33) Purchase Order. A written order signed and issued by the Director of Purchasing directing a business to provide goods, services, construction or professional services on behalf of McHenry County.
- (34) Purchase Requisition. An internal document, by which a department sends, to the Purchasing Department, details of goods, materials or services to meet its needs for a specific job.
- (35) Quote/Quotation. Informal pricing obtained for the purchase of goods or services.
- (36) Request for Proposals (RFP). All documents, whether attached or incorporated by reference, utilized for soliciting proposals.
- (37) Request for Qualification (RFQ). Documentation requested for professional services including but not limited to a list of professional references and similar work performed.
- (38) Responsible Bidder or Offeror. A person who has the capability in all respects to perform fully the contract requirements, and the capacity, facilities, equipment, and credit which will assure good faith performance and a person who has submitted a bid which conforms in all material respects to the requirements set forth in the bid request.

A responsible bidder or offeror is not a person who has:

- (a) a conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
- (b) a conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business honesty which currently, seriously, and directly affects responsibility as a County Contractor;
- (c) a conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;

(d) violated contract provisions, as set forth below, which is regarded by the Director of Purchasing to be so serious as to find them non-responsible:

(aa) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

(bb) 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 caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.

(e) committed any other acts which the Director of Purchasing determines to be so serious and compelling as to affect responsibility as a County contractor, including debarment by another governmental entity for any cause listed in this Ordinance; and

(f) violated the ethical standards set forth in Article 11.

(39) 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 (30) of this Section.

(40) Specification. Any description of the physical or functional characteristics or of the nature of a good, supply, service, construction item or professional service. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

(41) Standing Committee. Any committee established by the McHenry County Board with specific using agency jurisdiction and responsibilities.

(42) Supplies. All property, including but not limited to equipment, materials, and printing, excluding land or a permanent interest in land.

- (43) Unauthorized Purchases. An unauthorized purchase occurs when the materials, services, or any expense is charged to the County of McHenry by a person who has not been given such authority.
  
- (44) Using Agency. Any County department requiring goods, supplies, equipment, services, construction or professional services procured pursuant to this Ordinance.

ARTICLE 2- Office of the Director of Purchasing

S2-101            AUTHORITY AND DUTIES

- (1) Principal Public Purchasing Official. Except as otherwise provided herein, the Director of Purchasing shall serve as the principal public purchasing official for the County, and shall be responsible for the procurement of goods, supplies, equipment, services, construction and professional services in accordance with this Ordinance, as well as the management and disposal of surplus supplies and equipment.
  
- (2) Duties. In accordance with this Ordinance, and subject to the supervision of the McHenry County Board, the Management Services Committee and the County Administrator, the Director of Purchasing shall:
  - (a) procure or supervise the procurement of all goods, supplies equipment, services, construction and professional services needed by the County, with the exception of policies as determined by IDOT for the Division of Transportation;
  
  - (b) sell, trade, transfer, or otherwise dispose of surplus goods, supplies and equipment belonging to the County;
  
  - (c) Departments shall forward to Director of Purchasing suggested specifications for goods, supplies, equipment, services, construction and professional services. The Director of Purchasing shall finalize, issue, revise, maintain, and monitor the use of specifications required by the County except that specifications for any public work involving professional engineering shall be prepared by a professional engineer. Specifications for construction and maintenance of highways, bridges, and culverts shall be prepared by the Director of Transportation/County Engineer. All specifications, including those prepared for the County by architects, engineers, designers and draftsmen, 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.
  
  - (d) establish and maintain programs for specifications development, contract administration and inspection and acceptance, in cooperation with the public agencies using the goods, supplies, equipment, services, construction and professional services;

- (e) 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 prepare and utilize its own specifications.
  - (f) have discretion to select the appropriate method of construction contracting management for a particular project. In determining which method to use, the Director of Purchasing shall consider the County's requirements, its resources, and the potential contractor's capabilities. The Director of Purchasing shall execute, and include in the contract file, a written statement setting forth the facts which led to the selection of a particular method of construction contracting management for each project.
- (3) Purchasing Operational Procedures. Consistent with this Ordinance, and with the approval of the Management Services Committee and County Administrator, the Director of Purchasing may adopt operational procedures relating to the execution of his/her duties.
  - (4) Management and Disposal of Surplus Goods, Supplies and Equipment. The Director of Purchasing shall have the authority to:
    - (a) manage the use and allocation of goods, supplies and equipment during their entire life cycle; and
    - (b) determine whether the sale, lease, or disposal of surplus equipment is to be conducted by public auction, competitive sealed bidding, or by any other appropriate method;
  - (5) Allocation of the Proceeds from Sale or Disposal of Surplus Goods, Supplies and Equipment. The Director of Purchasing shall allocate net proceeds from the sale, lease, or disposal of surplus goods, supplies or equipment back to the appropriate fund.
  - (6) Purchasing Determinations. The Director of Purchasing shall work cooperatively with all departments in making determinations relative to the purchase of goods, supplies, services, construction and professional services.

S2-102            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 enunciated in this Section applies to all

specifications including, but not limited to, those prepared for the County architects, engineers, designers and draftsmen.

ARTICLE 3- Source Selection and Contract Formation

S3-101           COMPETITIVE SEALED BIDDING

An openly publicized competitive process for the procurement of goods, supplies, equipment, services, and construction is the most effective means of determining the lowest cost from a responsible source and shall be utilized whenever possible. Purchases of goods, supplies, equipment, services, and construction in excess of \$20,000 shall be subject to competitive sealed bidding. However, for data processing and telecommunications goods, equipment and services these provisions shall apply for purchases in excess of \$25,000. This Section shall be applicable to all contracts except as otherwise provided in Sections S4-102; S5-101; S5-102; S5-103; S10-103, or as provided by State Statute.

S3-102           PROCEDURES

- (1)   Invitation for Bids. An invitation for bids shall be issued and shall include specifications, and all contractual terms and conditions applicable to the procurement.
- (2)   Public Notice. Adequate public notice of the invitation for bids shall be given, not less than ten (10) calendar days prior to the date set forth therein for the opening of bids. Such notice shall include publication in a newspaper of general circulation within the County and internet posting on the County website, not less than ten (10) days prior to the opening of bids. The public notice shall state the place, date, and time of bid opening.
- (3)   Requirement for Bid Security. Bid Security shall be required for all competitive sealed bidding for construction contracts when the price is estimated by the Director of Purchasing to exceed \$25,000.00. Bid security shall be a bond provided by a surety company authorized to do business in the State of Illinois, or a certified check, bank draft or cashier's check or otherwise supplied in a form satisfactory to the County. Nothing herein shall prevent the requirement of such bonds on construction contracts under \$25,000.00 when the circumstances warrant.
- (4)   Amount of Bid Security. Bid security shall be in an amount equal to at least ten percent (10%) of the amount of the bid except for the Division of Transportation, which should be at least five (5) percent.
- (5)   Bid and Performance Bonds on Goods, Supply, Services, or Construction Contracts. Bid and performance bonds or other security may be requested for goods, supply, services, or construction contracts as the Director of Purchasing or head of a using agency deems advisable to protect the County's interests. Any such bonding requirements shall be set forth in the solicitation. Bid or performance bonds shall not be used as a substitute for

a determination of a bidder or offeror's responsibility. When a construction contract is awarded in excess of \$25,000, the following bonds or security shall be delivered to the County and shall become binding on the parties upon the execution of the contract:

- (a) a performance bond satisfactory to the County, executed by a surety company authorized to do business in the State, or otherwise security in a manner satisfactory to the County, in an amount equal to one-hundred and ten percent (110%) of the price specified in the contract; and
  - (b) a payment bond satisfactory to the County, executed by a surety company authorized to do business in the State or otherwise secured in a manner satisfactory to the County, for the protection of all persons supplying labor or material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to one-hundred and ten percent (110%) of the price specified in the contract.
- (6) Reduction of Bond Amounts. After notice to the Finance Committee of the County Board, the Director of Purchasing is authorized to reduce the amount of the performance and payments bonds to fifty percent (50%) of the contract price for each bond when a written determination is made that it is in the best interests of the County to do so.
  - (7) Authority to Require Additional Bonds. Nothing in this Section shall be construed to limit the authority of the County to require a performance bond or other security in addition to those bonds, or in circumstances other than specified in subsection (5) of this Section.
  - (8) Rejection of Bids for Noncompliance with Bid Security Requirements. When the invitation for bids requires security, noncompliance requires that the bid be rejected unless it is determined that the bid fails to comply only in a nonsubstantial manner with the security requirements.
  - (9) Withdrawal of Bids. If a bidder is permitted to withdraw its bid before award as provided in subsection (14) of this Section, no action shall be had against the bidder or the bid security.
  - (10) Bid Opening. Sealed bids must be in writing and 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, and such other relevant information as the Director of Purchasing 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 S1-103.

- (11) Late Bids. No bids received after the time specified in the bid information will be considered. It is the bidder's responsibility to see that the bid is delivered by the time and at the place specified. All bids received after the specified time will be marked "Received too late for consideration," signed by the purchasing official and returned unopened.
- (12) Bid Acceptance and Bid Evaluation. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Ordinance. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those 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 bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the invitation for bids. Alternative bids may be considered and accepted provided they are specifically provided for in the invitation for bids and meet the evaluation criteria set forth therein.
- (13) Unsigned Bid. All bids must be signed in ink with the original signature of the bidder. Bids that fail to conform to the aforementioned requirements will not be publicly read and will be rejected.
- (14) Cancellation or Rejection of Invitations for Bids or Requests. An invitation for bids, a request for proposals, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is for good cause and in the best interests of the County. Each solicitation issued by the County shall state that the solicitation may be canceled by the Director of Purchasing and that any bid or proposal may be rejected in whole or in part for good cause when in the best interests of the County. The reasons therefore shall be made part of the contract file. Notice of cancellation shall be sent to all businesses solicited. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurements of similar items.
- (15) Correction or Withdrawal of Bids; Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such bid mistakes, may be permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written or electronically transmitted notice received in the office designated in the invitation for bids prior to the time set for bid opening. Written confirmation of the bid shall be mailed or

delivered the same day. After bid opening, corrections in bids shall be permitted only to the extent that the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the County or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:

- (a) the mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
- (b) the bidder submits evidence which clearly and convincingly demonstrates that a mistake was made.

All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Director of Purchasing.

(16) 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 invitation for bids. In the event the low responsive and responsible bid for a construction project exceeds available funds as certified by the Auditor, and such bid does not exceed such funds by more than ten percent (10%), the Director of Purchasing is authorized, when time or economic considerations preclude resolicitation of work on a reduced scope, to negotiate an adjustment in the bid price with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds. Contracts shall be awarded according to the following considerations:

- (a) Lowest and best bid. The awards will be made to the lowest responsive and responsible bidder, availability of funds and all other relevant factors, provided the bid meets the specifications and other requirements of the bid information.
- (b) Cash discounts. In determining the lowest bid, cash discounts, when stated separately, will be taken into account, unless stated otherwise in the bid information.
- (c) Trade and quantity discounts. Trade and quantity discounts may be indicated, but should always be deducted by the bidder in calculating the unit price quoted.
- (d) Illinois sales, service and use tax. Bidder should not include Retailers' Occupation Tax, Use Tax or Federal Tax in the

quotation. Receipts from sales to the County are normally exempt from these taxes.

- (e) Unit price governs. In case of a mistake in the extension of a price, the unit price will govern unless otherwise stated in the bid information.
- (f) Awards of any or all items. An award may be made to the lowest aggregate bidder for all items on an individual item basis unless otherwise stated in the bid information. If a split award is not acceptable to the bidder, it must be so stated in the bid.
- (g) Costs. Projected delivery, installation, and operational costs of equipment may be considered.
- (h) Guarantees and warranties. Terms and conditions of bidders' and manufacturers' guarantees and warranties will be considered in the evaluation of bids.
- (i) Repair and service requirements. The bidder's or manufacturer's ability to meet specified repair and service requirements may be used in evaluating bids.
- (j) Tie bids. If two or more bids meeting the specifications and other requirements of the bid information are tied for low price, the bids will be treated as follows:
  - (aa) if there is a significant difference in the responsibility of the bidders (including ability to deliver in the quantity and at the time required), the award will be made to the bidder who is deemed to be the most responsible.
  - (bb) if there is no significant difference in the responsibility of the bidders, but there is a difference in the quality of the commodities of services offered, the bid offering the best quality of services will be accepted.
  - (cc) if there is no significant difference in the responsibility of the bidders and no difference in the quality of the items and service offered, the bid offering the earliest delivery time will be accepted in any case in which the bid

information specified that the needs of the County require as early delivery as possible. In all other cases, delivery time will not be considered in making awards so long as the bidder states delivery will occur not later than time specified in the bid information as the latest acceptable delivery time.

(dd) if the bids quoting the same price are equal in every respect, the award may be split or made by lot.

(k) Contract renewal option. Certain bids may be solicited and contracts issued with renewal clauses to bind the contractor to a renewal period at the sole option of the County. In such cases, bidders will be asked to bid a firm price to be applicable during the renewal period, if the County chooses to renew, or, in the alternative, to bid prices geared to pertinent commodity price indexes to be applicable in renewal periods, if the County chooses to renew. In all cases where the renewal option is involved, the bid information will state that the County reserves the right to renew the contract, if awarded, in accord with prices (firm or geared to pertinent price indexed) included in bids received and that renewal on such terms is at its sole option.

(l) No contract may be issued for periods exceeding one (1) year however, a contract may be renewed for additional years not to exceed the term of office of all County Board Members in office at the time the parties enter into the initial one (1) year contract.

(17) Insurance.

(a) General. The successful bidder shall maintain for the duration of the contract and any extensions thereof, at bidder's expense, insurance that includes "Occurrence" basis wording and is issued by a company or companies qualified to do business in the State of Illinois that are acceptable to the County, which generally requires that the company(ies) be assigned a Best's Rating of A or higher with a Best's financial size category of Class XIV or higher, in the following types and amounts:

(aa) Commercial General Liability in a broad form, to include but not limited to, coverage for the following where exposure exists: Bodily

Injury and Property Damage, Premises/Operations, Independent Contractors, Products/Completed Operations, Personal Injury and Contractual Liability; limits of liability not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate;

(bb) Business Auto Liability to include, but not be limited to, coverage for the following where exposure exists: Owned Vehicles, Hired and Non-Owned Vehicles and Employee Non-Ownership; limits of liability not less than \$100,000,000 per occurrence, combined single limit for bodily Injury Liability and Property Damage Liability;

(cc) Workers' Compensation Insurance to cover all employees and meet statutory limits in compliance with applicable state and federal laws. The coverage must also include Employer's Liability with minimum limits of \$100,000 for each incident.

(b) Insurance Requirements for Construction Contracts. For all construction contracts, the contractor and all sub-contractors shall be required to maintain adequate insurance coverage for the duration of the contract. The Director of Purchasing shall determine, in consultation with the County Administrator and the Risk Management Department, the types and amounts of coverage that shall be required. The contractor shall have the County named as an additional insured as its interest may appear and furnish the Director of Purchasing with satisfactory evidence of said insurance.

(c) Certificate of Insurance. The successful bidder agrees that with respect to the above required insurance that:

(aa) the County of McHenry shall be provided with Certificates of Insurance evidencing the above required insurance, prior to commencement of the contract and thereafter with certificates evidencing renewals or replacements of said policies of insurance at least fifteen (15) days prior to the expiration or cancellation of any such policies;

- (bb) the contractual liability arising out of the contract shall be acknowledged on the Certificate of Insurance by the insurance company;
  - (cc) the County of McHenry shall be provided with thirty (30) days prior notice, in writing, of Notice of Cancellation or material change and said notification requirement shall be stated on the Certificate of Insurance;
  - (dd) subcontractors, if any, comply with the same insurance requirements; and
  - (e) insurance notices and certificates of insurance shall be provided to:
    - McHenry County Purchasing Department
    - 2200 N. Seminary Avenue, Room 200
    - Woodstock, Illinois 60098
  - (f) McHenry County is to be named as additional insured for all Contracts.
- (18) Hold Harmless Clause. The successful bidder will agree to indemnify, save harmless and defend the County of McHenry, its agents, servants, and employees, and each of them against and hold it and them harmless from any and all lawsuits, claims, demands, liabilities, losses and expenses, including court costs and attorney's fees, for or on account of any injury to any person, or any death at any time resulting from such injury, or any damage to property, which may arise or which may be alleged to have arisen out of or in connection with the work covered by this contract upon award. The foregoing indemnity shall apply except if such injury, death or damage is caused directly by the willful and wanton conduct of the County of McHenry, its agents, servants, or employees or any other person indemnified hereunder.
- (19) Right to Inspect Plant. The County may, at reasonable times, inspect the part of the plant, place of business, or worksite of a contractor or subcontractor at any tier which is pertinent to the performance of any contract awarded or to be awarded by the County.
- (20) Right to Audit Records.
- (a) Audit of Contract Costs. The County may at reasonable times and places, audit the books and records of any contractor who

has submitted cost or pricing data pursuant to Article 6 to the extent that such books, documents, papers, and records are pertinent to such cost or pricing data. Any person who receives a contract, change order, or contract modification for which cost or pricing data is required, shall maintain such books, documents, papers, and records that are pertinent to such cost or pricing data for three years from the date of final payment under the contract.

(b) Contract Audit. The County shall be entitled to audit the books and records of a contractor or a subcontractor at any tier under any negotiated contract or subcontract other than a firm fixed price contract to the extent that such books, documents, papers, and records are pertinent to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor or subcontractor for a period of three years from the date of final payment.

(21) Reporting of Anticompetitive Practices. When, for any reason, collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the State's Attorney.

(22) County Procurement Records.

(a) Contract File. All determinations and other written records pertaining to the solicitation, award, or performance of a contract shall be maintained for the County in a contract by the Director of Purchasing.

(b) 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 or as determined by the Director of Purchasing.

(23) Multi-Step Sealed Bidding. When it is considered impractical to prepare initially a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.

S3-103 SUBMISSION OF BIDS

- (1) Uniformity. To provide uniformity and to facilitate comparison of bids by the County, the bidders and interested members of the public, only bids submitted on the bid request form specified by the County will be acceptable. The County reserves the right to waive minor variances or irregularities.
- (2) Use of Typewriter or Ink. Every bid shall be typewritten or written in ink. The bid must be signed by the person submitting the bid or the person's duly authorized agent. The signature shall be an original signature in ink and the name and title of each person signing the bid shall be typed or printed below the signature.
- (3) Bid Reservations. The County reserves the right to reject any or all bids or any part thereof for any reason, to waive informalities and to accept the bids deemed to be in the best interest of the County (such as, the lowest priced responsive bid).(See S3 108 page 18 for the procedure.)
- (4) Compliance With Laws, Regulations, and Labor and Employment Provisions. The contractor agrees to comply with all laws, statutes, regulations, ordinances, ruling or enactments of any governmental authority which are applicable to the work or which in any way pertain to the project, including, without limiting the foregoing hereto, the following statutes:
  - (a) "AN ACT to prohibit discrimination and intimidation on account of race, creed, color, sex, religion, physical or mental handicap unrelated to ability, or national origin in employment under contracts for public buildings or public works." (775 ILCS 10/0.01).
  - (b) "AN ACT regulating wages of laborers, mechanics and other workers employed in any public works by the State, county, city or any public body or any political subdivision or by anyone under contract for public works." (820 ILCS 130/0.01).

S3-104 CONTENTS OF BIDS

- (1) Completeness of Bids. The bid will include all matters required by the bid information. All appropriate blanks in the bid form must be completed by the bidder.
- (2) Reference Specifications. Any specifications or standards adopted by business, industry, not-for-profit organization, or governmental unit may be incorporated by reference.

- (3) Brand Name or Equal. Specifications may refer to one or more brand name products followed by the words "or equal." "Or equal" submissions will not be rejected because of minor differences in design, construction, or features which do not affect the suitability of the product for its intended use. The burden of proof that the product is equal for the intended use is on the bidder.
- (4) Items Must be New and Current. Unless otherwise specified, the items offered must all be new and the latest model, crop or manufacture.
- (5) Bids on Alternate Items. When any bidder offers an alternate item for consideration, the bidder will give complete specifications, name the brand and demonstrate that the alternate item is equal. The County reserves the right to reject any alternate item which it determines is not equally suitable for the specified purpose. The burden of proof is on the bidder.
- (6) Unit and Total Prices. The price for the units specified in the bid shall be clearly shown for each individual item. Only one unit price shall be quoted for each item. The total price for the quantity requested must also be shown.
- (7) Period of Firm Bid. Unless otherwise provided in bid information, the price of each bid must be kept firm for at least 90 days after the bid opening date. A bidder may specify the price will remain firm for a longer period than required by the bid information or this rule. If the bidder has not specified an expiration date for the price, the price will continue to remain firm until the bidder gives notice of intent to terminate the price. After such notice the County will have 10 days to accept the bid at the original price.
- (8) Maintenance and Repair Service. If the bid information specified that maintenance or repair service must be provided by the successful bidder, each bidder will specify in the bid whether the service will be by the bidder or through an arrangement with another identified person or firm.
- (9) Taxes, Licenses, Assessments, and Royalties.
  - (a) the contractor shall pay all current and applicable city, county, state and federal taxes, licenses or assessments, including federal excise taxes, due on the performance of the contract, including, without thereby limiting the foregoing, those required by the Federal Insurance Contribution Act and the Federal and State Unemployment Tax Acts, together with all royalties due for any proprietary items. The contractor is

exclusively liable for the payment of the taxes to the respective governments. In the event said taxes, licenses, assessments or royalties, or any part thereof in the first instance charged to the County, the contractor shall, upon timely demand of the County, pay the County thereof, plus all penalties which may have accrued thereon.

(b) the County is exempted from Illinois Sales Taxes.

- (10) Federal Excise Tax. Bidders must not include in their prices any allowance for payment of federal excise tax, if the County is exempt from such taxes, if an order or contract is awarded for the purchase of an item that is subject to federal excise tax, the purchasing official will furnish the vendor with an exemption certificate upon request.
- (11) State and Federal Laws and County Rules. All bids and contracts are subject to this Part and to applicable federal laws and those of the State of Illinois conflict of interest statutes, nondiscriminatory employment statutes and equal employment opportunity laws. A certification is required in certain instances, and the form of this certification may be provided in the bid form.
- (12) Prevailing Wage. The State of Illinois requires under Public Works contracts that the general prevailing rate of wages in this locality be paid for each craft or type of worker hereunder. This requirement is in accordance with The Prevailing Wage Act, 820 ILCS 130/0.01 et seq., as amended. This shall include payment of the general prevailing rate for legal holiday and overtime work. It shall be mandatory upon the subcontractor under the contractor. A copy of the prevailing wage rates is posted on the McHenry County website at [www.co.mchenry.il.us](http://www.co.mchenry.il.us) under BIDS and RFP's. If wage rates change during the course of the project, the new rates will be available in the County of McHenry Purchasing Office. Contractors may access the Illinois Department of Labor website for updates at [www.state.il.us/agency/idol](http://www.state.il.us/agency/idol).

It shall also be mandatory upon the contractor to whom the contract is awarded to insert into each subcontract and into the project specifications for each subcontract a written stipulation to the effect that not less than the prevailing rate of wages shall be paid to all laborers, workers, and mechanics performing work under the contract. It shall also be mandatory upon each subcontractor to cause to be inserted into each lower tiered subcontract and into the project specifications for each lower tiered subcontract a stipulation to the effect that not less than the prevailing rate of wages shall be paid to all laborers, workers, and mechanics performing work under the contract. A contractor or subcontractor who fails to comply is in violation of the Act.

**Special Provision for Wages of Employees on Public Works.** The contractor and each subcontractor shall submit monthly, in person, by mail, or electronically a certified payroll to the public body in charge of the project. The certified payroll shall consist of a complete copy of the records. The certified payroll shall be accompanied by a statement signed by the contractor or subcontractor which avers that: (i) such records are true and accurate; (ii) the hourly rate paid to each worker is not less than the general prevailing rate of hourly wages required; and (iii) the contractor or subcontractor is aware that filing a certified payroll that he or she knows to be false is a Class B misdemeanor.

S3-105            BID RESULTS

No information pertaining to pending bids will be discussed or distributed by the Purchasing Department or County employees until after a bid has been formally awarded. Bid summary sheets will be provided only after formal award has taken place.

ARTICLE 4- Professional Services and Requests for Proposals

S4-101 PROFESSIONAL SERVICES

- (1) Department Heads shall have the authority to award Professional Service Contracts of less than \$20,000 and may determine, in their discretion, whether such contracts will be awarded on the basis of competitive sealed proposals. Professional Service Contracts for \$20,000 or greater will be subject to the Competitive Sealed Proposals provisions pursuant to S4-102, unless they meet one of the exceptions and/or requirements enumerated in Article 5, or unless they fall within the scope of subparagraph (3) of this article. Director of Transportation/County Engineer meets exceptions wherever IDOT requirements are necessary.
- (2) For Professional Services Contracts for \$20,000 or greater, the respective Department Head and the Director of Purchasing shall present a joint recommendation to the County Board for consideration and approval.
- (3) All Professional Services Contracts relative to engineering, architectural and land surveying services will be governed by the requirements of the Local Government Professional Services Selection Act (50 ILCS 510/1 et seq.). In the event that McHenry County issues a Request for Proposals for the selection of engineering, architectural, or land surveying services, proposals shall be evaluated based on the requirements set forth in the Request for Proposals, which may include qualifications, ability of professional personnel, past record and experience, performance data on file, willingness to meet time and budget requirements, location, workload of the firm, work on similar projects, past performance with McHenry County, and financial stability. Contracts for less than \$20,000 may be awarded by Department Heads; contracts for \$20,000 or greater must be referred to the County Board for approval. Competitive sealed proposals are required for contracts greater than \$20,000 unless a prior, satisfactory relationship exists for the services desired.

S4-102 COMPETITIVE SEALED PROPOSALS

- (1) Conditions for Use. Competitive Sealed Proposals shall be initiated and created in accordance with the procedures for Competitive Sealed Bidding as enumerated in Article 3 when the Director of Purchasing determines, and when not required by law, in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the County.
- (2) Request for Proposals. Proposals shall be solicited through request for proposals.
- (3) Public Notice. Adequate public notice of the request for proposals shall be given in the same manner as provided in Section S3-102(2).

- (4) Contract Clauses, Standard Clauses and Their Modification. All County contracts for goods, supplies, services, equipment, construction and professional services shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The Director of Purchasing, after consultation with the State's Attorney, may establish standard contract clauses for use in County contracts.
- (5) Receipt of Proposals. No proposals shall be handled so as to permit the disclosure of the identity of any offeror or the contents of any proposal to competing offerors during the process of negotiation. A register of the proposals shall be prepared containing the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the item offered. The register of proposals shall be open for public inspection only after contract award.
- (6) Evaluation Factors. The request for proposals shall state the relative importance of price and other evaluation factors.
- (7) Discussion with Responsible Offerors and Revisions to Proposals. As provided in the request for proposals, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full 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 revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of the identity of competing offerors or of any information derived from proposals submitted by competing offerors.

#### S4-103 CANCELLATION OR REJECTION OF REQUESTS FOR PROPOSALS

A request for proposals or other solicitation may be canceled, or any or all proposals may be rejected in whole or in part as may be specified in the solicitation, when it is for good cause and in the best interests of the County. Each solicitation issued by the County shall state that the solicitation may be canceled by the Director of Purchasing and that any proposal may be rejected in whole or in part for good cause when in the best interests of the County. The reasons therefore shall be made part of the contract file. Notice of cancellation shall be sent to all businesses solicited. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurement of similar items.

Article 5- Non-Competitive Procurement, Emergencies and Small Purchases

S5-101           NON-COMPETITIVE PROCUREMENT

- (1)    General. A contract may be awarded without competition when a Department Head determines, and Purchasing concurs in writing, and it is not required by law, after conducting a good faith review of available sources, that the contract by its very nature is not suitable to competitive bids or proposals. Examples of contracts which may not be suitable for competitive bids or proposals are contracts where:
  - (a) there is only one source for the required supply, service, or construction item;
  - (b) a sole supplier's item is needed for trial use or testing;
  - (c) products are bought for over-the-counter resale;
  - (d) purchases of used equipment; and
  - (e) purchases at auctions.
- (2)    Negotiation. The Director of Purchasing and responsible Department Head can conduct negotiations, as appropriate, as to price, delivery, and terms.

S5-102           EMERGENCY PROCEDURES

Notwithstanding any other provisions of this Ordinance, the Director of Purchasing or other County officials may make emergency procurement of supplies, equipment, services, or construction items when there exists a threat to public health, welfare, or safety, or to prevent or minimize serious disruption of government service; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. A confirming Resolution, along with the written determination, shall be submitted to the County Board for all emergency procurements of \$20,000 or more in accordance with Section S8-105.

S5-103           PURCHASE STRUCTURE

- (1)    Purchases Under \$500. Purchases below \$500 can be made at Department Head discretion without prior approval of the Purchasing Department.
- (2)    Purchases From \$500-\$20,000. Purchases between \$500 and \$20,000 require that three (3) quotations be obtained from the Purchasing

Department after requisition and specifications have been created by the requesting department.

- (3) Purchases Over \$20,000. Purchases over \$20,000 require a formal sealed bid after requisition and specifications have been created by the requesting department. Purchases over \$20,000 also require Board Resolution brought forth from the requestor.

S5-104            SMALL PURCHASES

- (1) General. Any contract of less than \$20,000 may be made in accordance with the small purchase procedures authorized in this Section. Contract requirements shall not be artificially divided so as to constitute a small purchase under this Section.
- (2) Procedure. The Director of Purchasing shall adopt operational procedures for making small purchases. Such operational procedures shall provide for obtaining adequate and reasonable competition by written or oral quotation for the supply, service or construction being purchased. Award shall be made to the business offering the lowest acceptable quotation. Adequate records to document the competition obtained shall be maintained.

ARTICLE 6- Cost or Pricing Data and Analysis

S6-101            CONTRACTOR CERTIFICATION

A contractor or prospective contractor shall, except as provided in Subsection (3) of this section, submit cost or pricing data and shall certify that, to the best of their knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of a mutually determined specified date prior to the date of:

- (1) the pricing of any contract awarded by Competitive Sealed Proposals or pursuant to the sole source procurement authority where the total price is expected to exceed an amount established by purchasing regulations or when determined by the Director of Purchasing to be in the best interest of the County; or
- (2) the pricing of any change order or contract modifications which is expected to exceed an amount established by purchasing regulations or when determined by the Director of Purchasing to be in the best interests of the County.

S6-102            PRICE ADJUSTMENT

Any contract, change order, or contract modification under which a certificate is required shall contain a provision that the price to the County, including profit or fee, shall be adjusted to exclude any significant sums by which the County finds that such price was increased because the contractor-furnished cost or pricing data was inaccurate, incomplete, or not current as of the date agreed upon between the parties.

S6-103            COST OR PRICING DATA NOT REQUIRED

The requirements of this section need not be applied to contracts:

- (1) where the contract price is based on adequate price competition;
- (2) where the contract price is based on established catalogue prices or market prices;
- (3) where contract prices are set by law or regulation; or
- (4) where it is determined in writing by the Director of Purchasing that the requirements of this Section may be waived, and the reasons for such waiver are stated in writing.

S6-104 COST OR PRICE ANALYSIS

A cost analysis or price analysis, as appropriate, shall be conducted prior to award of a contract other than one under Section S3-101 or Section S5-103. A written record of such cost analysis or price analysis shall be made a part of the contract file.

S6-105 APPROVAL OF ACCOUNTING SYSTEM

Except with respect to firm fixed price contracts, no contract type shall be used unless it has been determined in writing by the Director of Purchasing that:

- (1) the proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and
- (2) the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted cost accounting principles.

ARTICLE 7- Types of Contracts and Contract Administration

S7-101 TYPES OF CONTRACTS

- (1) General Authority. Subject to the limitations of this Section, any type of contract which is appropriate to the procurement and which will promote the best interests of the County may be used, provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited. A cost reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the County than any other type or that it is impracticable to obtain the supply, service, or construction item required except under such a contract.
  
- (2) Multi-Term Contracts.
  - (a) Specified Period. Unless otherwise provided by law, a contract for supplies or services may be entered into for any specified period of time deemed to be in the best interests of the County, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. However, the total contract term for any contract, including the time periods by which the contract is extended due to renewal, shall not exceed five (5) years. Payment and performance obligations for succeeding fiscal periods shall be subject to availability and appropriation of funds therefore. (See Section S3-102(15)(k)).
  
  - (b) Determination Prior to Use. Prior to the utilization of a multi-term contract, it shall be determined in writing:
    - (aa) that estimated requirements cover the period of the contract and are reasonably firm and continuing; and
    - (bb) that such a contract will serve the best interests of the County by encouraging effective competition or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled.
  
  - (c) Cancellation Due to the Unavailability of Funds in Succeeding Fiscal Periods. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled.

- (3) Multiple Source Contracting.
- (a) General. A multiple source award is an award of an indefinite quantity for one or more similar supplies or services to more than one bidder or offeror.
  - (b) Limitations on Use. A multiple source award may be made when awards to two or more bidders or offerors for similar products is necessary for adequate economic delivery, service or product compatibility. Any multiple source award shall be made in accordance with the provision of Section S3-101; Section S4-102; Section S5-103; and Section S5-102, as applicable. Multiple source awards shall not be made when a single award will meet the County's needs without sacrifice of economy or service. Awards shall not be made for the purpose of dividing the business, making available product or supplier selection to allow for user preference unrelated to utility of economy, or avoiding the resolution of tie bids. Any such awards shall be limited to the least number of suppliers necessary to meet the valid requirements of the County without sacrificing economy and service.
  - (c) Contract and Solicitation Provisions. All eligible users of the contract shall be named with provisions for additional users to be added if it will not materially affect the contract in the solicitation, and it shall be mandatory that the actual requirements of such users that can be met under the contract be obtained in accordance with the contract, provided that:
    - (aa) the County shall reserve the right to take bids separately if a particular quantity requirement arises which exceeds its normal requirement or an amount specified in the contract; and
    - (bb) the County shall reserve the right to take bids separately if the Director of Purchasing approves a finding that the supply or service available under the contract will not meet a nonrecurring special need of the County.
  - (d) Intent to Use. If a multiple source award is anticipated prior to issuing a solicitation, the County shall reserve the right to make such an award and the criteria for award shall be stated in the solicitation.

- (e) Determination Required. The Director of Purchasing shall make written determination setting forth the reasons for a multiple source award, which shall be made a part of the procurement file.

S7-102            CONTRACT ADMINISTRATION

A contract administration system designed to insure that a contractor is performing in accordance with the solicitation under which the contract was awarded, and the terms and conditions of the contract shall be maintained.

## ARTICLE 8- Contract Execution

### S8-101 REQUISITIONS

Prior to submission to the Purchasing Department, all requisitions shall be signed by the Department Head making the request or by an individual authorized by the Department Head.

### S8-102 FISCAL RESPONSIBILITY

Prior to the issuance of any purchase order, contract, change order or contract modification, the Auditor shall certify that sufficient budgeted funds are available.

### S8-103 AUTHORIZATION TO ISSUE BIDS OR OTHER SOLICITATIONS

The Director of Purchasing may issue bids or other solicitations for any supply, service or construction item for which funds have been specifically budgeted. Approval of both the Liaison Committee in charge of the using agency making the request and the Finance Committee is required prior to any solicitation for any supply, service or construction item not specifically authorized in the budget, except those covered by Section S5-104 (Small Purchases).

### S8-104 REVIEW OF CONTRACTS

At the discretion of the Director of Purchasing, the State's Attorney shall review, prior to award, all contracts. This review shall not be required when the form and content of the contract documents has previously been approved by the State's Attorney.

### S8-105 APPROVAL OF CONTRACTS

- (1) Contracts of \$20,000 or More. The Liaison Committee in charge of the using agency and the Finance Committee shall jointly submit their recommendation on the award of a contract, in excess of \$20,000.00, by Resolution, to the County Board for its consideration at its next meeting. After award by the County Board, contracts shall be signed by the County Board Chairman and/or the Director of Purchasing.
- (2) Contracts of Less than \$20,000. The County Board Chairman and/or the Director of Purchasing shall sign all contracts of less than \$20,000.

ARTICLE 9 – Contract Changes

S9-101 CHANGE ORDERS AND CONTRACT MODIFICATIONS

- (1) When the total of change orders, contract modifications or price adjustments on any contract of \$20,000 or more exceeds ten percent (10%) of the original contract amount, approval of the Liaison Committee in charge of the using agency and the Finance Committee is required.
- (2) When a change order or series of change orders authorize or necessitate an increase or decrease in either the cost of a contract by a total of \$20,000 or more, or the time of completion by a total of 30 days or more, the authorized employee or official shall make a determination in writing that:
  - (a) the circumstances said to necessitate the change in performance were not reasonably foreseeable at the time the contract was signed, or
  - (b) the change is germane to the original contract as signed, or
  - (c) the change order is in the best interests of the County and authorized by law.

The written determination and the written change order resulting from that determination shall be retained in the contract file which shall be open to the public for inspection.

- (3) The Director of Purchasing or designee is authorized to sign all change orders and to consent to contract assignments. Additionally, the Director of Transportation/County Engineer is authorized to sign change orders for projects relating to planning, design, construction and maintenance of highways, bridges, and culverts.

ARTICLE 10 – Cooperative Purchasing

S10-101        COOPERATIVE PURCHASING AUTHORIZED

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

S10-102        SALE, ACQUISITION, OR USE OF GOODS

The County of McHenry may sell to, acquire from, or use any goods belonging to another public procurement unit independent of Article 3.

S10-103        COOPERATIVE USE OF GOODS, SUPPLIES AND SERVICES

The County of McHenry may enter into an agreement independent of the requirements Article 3 with any other public procurement unit for the cooperative use of goods, supplies and services under the terms agreed upon between the parties.

S10-104        JOINT USE OF FACILITIES

The County of McHenry may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other facilities with another public procurement unit under the terms agreed upon between the parties.

ARTICLE 11 – Ethics in Public Contracting

S11-101        STATEMENT OF POLICY

Public employment is a public trust. It is the policy of the County to promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by the County. Such policy is implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to entering public service. Public employees must discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the County procurement organization. To achieve the purpose of this Article, it is essential that those doing business with the County also observe the ethical standards prescribed herein.

S11-102        GENERAL STANDARDS OF ETHICAL CONDUCT

- (1)    General Ethical Standards for Employees. Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employee's duties is a breach of a public trust.
  
- (2)    General Ethical Standards for Non-Employees. Any effort to influence any public employee to breach the standards of ethical conduct set forth in this Article is a breach of ethical standards.

S11-103        CRIMINAL PENALTIES

To the extent that violations of the ethical standards of conduct set forth in this Article constitute violations of State Statutes, they shall be punishable as provided therein. Such penalties shall be in addition to the civil sanctions set forth in this Article. Criminal, civil, and administrative sanctions against employees or non-employees which are in existence on the effective date of this Ordinance shall not be impaired.

S11-104        EMPLOYEE CONFLICT OF INTEREST

- (1)    Conflict of Interest. It shall be unethical for any County employee to participate directly or indirectly in procurement contract when the County employee knows that:
  - (a)    the County employee or any member of the county employee's immediate family has a financial interest pertaining to the procurement contract; or
  
  - (b)    any other person, business, or organization with whom the County employee or any member of a County employee's immediate family is negotiating or has an arrangement

concerning prospective employment is involved in the procurement contract.

- (2) Financial Interest in a Blind Trust. A County employee or any member of a County employee's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest.
- (3) Discovery of Actual or Potential Conflict of Interest, Disqualification, and Waiver. Upon discovery of an actual or potential conflict of interest, an employee shall promptly file a written statement of disqualification and shall withdraw from further participation in the transaction involved. The employee may, at the same time, apply for an advisory opinion as to what further participation, if any, the employee may have in the transaction pursuant to Section S11-108.

#### S11-105 GRATUITIES AND KICKBACKS

- (1) Gratuities. It shall be unethical for any person to offer, give, or agree to give any County employee, or for any County employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any direct or indirect participation in a procurement activity.
- (2) Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any individual associated therewith, as an inducement for the award of a subcontract or order.

#### S11-106 PROHIBITION AGAINST CONTINGENT FEES

It shall be unethical for a person to be retained, or to retain a person, to solicit or secure a County contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

#### S11-107 CONTEMPORANEOUS EMPLOYMENT PROHIBITED

It shall be unethical for any County employee who is participating directly or indirectly in the procurement process to become or to be, while such a County employee, the employee of any person contracting with governmental body by whom the employee is employed.

S11-108 WAIVERS FROM CONTEMPORANEOUS EMPLOYMENT PROHIBITION AND OTHER CONFLICTS OF INTEREST

The Management Services Committee may grant a waiver from Section S11-104(1) or Section S11-107 upon making a written determination that;

- (a) the contemporaneous employment or financial interest of the County employee has been publicly disclosed;
- (b) the County employee will be able to perform its procurement functions without actual or apparent bias or favoritism; and
- (c) the award will be in the best interests of the County.

S11-109 USE OF CONFIDENTIAL INFORMATION

It shall be unethical for any employee or former employee to knowingly use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

S11-110 REPORTING OF ANTI-COMPETITIVE PRACTICES

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 McHenry County personnel policies. 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 McHenry County personnel policies and State statute.

S11-111 SANCTIONS

- (1) Employees. Sanctions on a County employee for violations of the ethical standards of this Article shall be imposed in accordance with McHenry County personnel policies.
- (2) Non-Employees. The Management Services Committee may impose one or more of the following sanctions on a non-employee for violations of the ethical standards:
  - (a) written warnings or reprimands; or
  - (b) termination of contracts.

S11-112 RECOVERY OF VALUE TRANSFERRED OR RECEIVED IN BREACH OF ETHICAL STANDARDS

- (1) General Provisions. The value of anything transferred or received in breach of the ethical standards of this Ordinance by a County employee or a non-employee may be recovered from both County employee and non-employee.
- (2) Recovery of Kickbacks by the County. Upon showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order there under, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the County and will be recoverable hereunder from the recipient. In addition, that amount may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

## ARTICLE 12- Appeals and Remedies

### S12-101 BID PROTESTS

- (1) Right to Protest. Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Director of Purchasing. Any protest must be submitted in writing within ten (10) calendar days from the issuance of the solicitation, addendum, and notice of award or other decision by the Purchasing Department.
- (2) Stay of Procurement During Protest. In the event of a timely protest under Subsection (1) of this Section, the Director of Purchasing or the Management Services Committee, after consulting with the State's Attorney shall determine whether it is in the best interests of the County to proceed with the solicitation or award of the contract.
- (3) Entitlement to Costs. When a protest is sustained and the protesting bidder or offeror should have been awarded the contract under the solicitation but is not, then the protesting bidder or offeror shall be entitled only to the reasonable costs incurred in connection with the solicitation, including bid preparation costs other than attorney's fees.

### S12-102 CONTRACT CLAIMS

All claims by a contractor against the County relating to a contract, except bid protests, shall be submitted in writing to the Director of Purchasing. The contractor may request a conference with the Director of Purchasing on the claim. Claims include, without limitation, disputes arising under a contract, and those based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.

### S12-103 AUTHORITY OF THE DIRECTOR OF PURCHASING TO SETTLE BID PROTESTS AND CONTRACT CLAIMS

- (1) Authority. The Director of Purchasing is authorized to settle any procedural protest regarding the solicitation or award of a County contract prior to an appeal to the McHenry County Board, or any committee thereof. The Director of Purchasing, after consulting with the State's Attorney, is authorized to make recommendations on the settlement of any monetary claim to the appropriate committees of the McHenry County Board for their consideration.
- (2) Notice to the Contractor of the Director of Purchasing's Decision. If the protest or claim is not resolved by a mutual agreement, the Director of Purchasing shall promptly issue a decision in writing, and it shall be immediately mailed or otherwise furnished to the contractor. The decision

shall state the reasons for the decision reached, and shall inform the contractor of its appeal rights under Subsection (3) of this Section.

- (3) Finality of Director of Purchasing's Decision; Contractor's Right to Appeal. The Director of Purchasing's decision shall be final and conclusive unless, within ten (10) calendar days from the date of receipt of the decision, the Chairman of the Management Services Committee receives a written appeal from the contractor.
- (4) Failure to Render Timely Decision. If the Director of Purchasing does not issue a written decision regarding any protest or claim within ten (10) calendar days after written request for a final decision, or within such longer period as may be agreed upon between the parties, then the aggrieved party may proceed as if an adverse decision had been received.

S12-104 ACCESS TO ADMINISTRATIVE FORUM, SUBJECT TO STATUTORY PROVISIONS

- (1) Appeal Process. Any actual or prospective bidder, offeror or contractor may appeal a decision of the Director of Purchasing regarding bid protests or contract claims to the Management Services Committee. Said appeal shall be made in writing within ten (10) calendar days from the date of receipt of the decision. The protestor shall be notified of the time and date when the appeal shall be considered and afforded a reasonable opportunity to state its position. Any party whose interests may be adversely affected by a protest or appeal shall also be notified and have the right to appear for the purpose of protecting those interests.
- (2) Decision. The Management Services Committee shall promptly issue a decision:
  - (a) prior to award, said decision shall be referred with the Resolution for award of the contract for consideration by the County Board; or
  - (b) after award, the decision of the Management Services Committee shall be final and conclusive.
- (3) Elected County Officials. Decisions and determinations made under this Section and Section S12-103 are subject to the review and approval of elected county officials as provided by State law.

## 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 Director of Purchasing, 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 cancelled or revised to comply with applicable law.
- (2) Prior to Award. If after bid opening or the closing date for receipt of proposals, the Director of Purchasing, after consultation with the State's Attorney, determines that a solicitation or proposed award of a contract is in violation of federal, state, or local law, then the solicitation or proposed award shall be cancelled.
- (3) After Award. If, after an award, the Director of Purchasing, after consultation with the State's Attorney, 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:
    - (aa) the contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of the County; or
    - (bb) the contract may be terminated and the person awarded the contract shall be compensated for the actual costs reasonably incurred under the contract prior to notification; or
  - (b) if the person awarded the contract has acted fraudulently or in bad faith the contract may be declared null and void or voidable, if such action is in the best interests of the County.

ARTICLE 13- Division of Transportation Requirements

S13-101      DIVISION OF TRANSPORTATION REQUIREMENTS

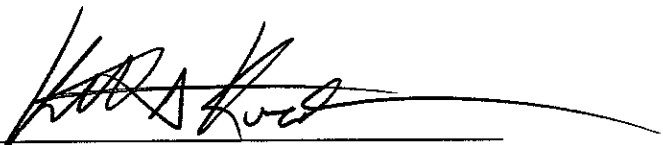
The Division of Transportation follows the current Resolution for Authorizing a Consultant Selection Policy for the Division of Transportation. In addition, the following statement is in place by IDOT for qualification based selection for Consultant Engineering Services. According to the Local Government Professional Services Selection Act, 50 ILCS 510/0.01 et seq., and Title 23, Chapter 1, Subchapter I, Paragraph 112(b)(2) of the United States Code, local governments must negotiate and enter into contracts for architectural, engineering and land surveying services on the basis of demonstrated competence and qualifications for the type of services required and at fair and reasonable compensation. Awarding a contract to the lowest bidder through competitive bidding is not allowed. Chapter 5, Section 5.07 of the Bureau of Local Roads & Streets manual details the qualification based selection process.

**BE IT FURTHER ORDAINED**, that all ordinances or parts thereof in conflict with the provision of this amended Ordinance are hereby repealed as of December 1, 2006.

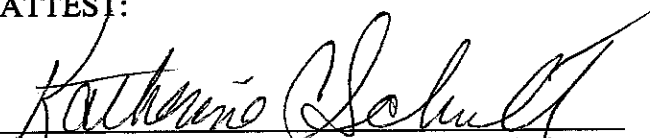
**BE IT FURTHER ORDAINED**, that this Ordinance and its provisions as adopted by the McHenry County Board will take effect on December 1, 2006, and replaces all previous McHenry County Purchasing Ordinance.

**BE IT FURTHER ORDAINED**, that the County Clerk is hereby authorized to distribute certified copies of this Ordinance to all Appointed Department Heads and Elected Officials.

**DATED** at Woodstock, McHenry County, Illinois, this twenty-first day of November, A.D., 2006.

  
\_\_\_\_\_  
KENNETH D. KOEHLER, Chairman  
McHenry County Board

ATTEST:

  
\_\_\_\_\_  
KATHERINE C. SCHULTZ, County Clerk

STATE OF ILLINOIS            )  
                                          SS  
COUNTY OF MCHENRY        )

I, Katherine C. Schultz, County Clerk within and for said County and State aforesaid, do hereby certify the foregoing to be a true and complete copy of Ordinance No. O-200611-09-107, Adoption of Purchasing Ordinance for the County of McHenry, Illinois. WHEREOF I have hereunto subscribed my hand and affixed the official seal of said County, at my office in Woodstock, Illinois this 27 day of Nov AD, 2006.

Katherine C Schultz  
McHenry County Clerk