

**PURCHASING ORDINANCE FOR
THE COUNTY OF McHENRY, ILLINOIS**



Revised 8/1/2014
Revised 12/1/2015
Revised 4/1/2018
Revised 8/1/2019
Revised 6/1/2021
Revised 11/1/2023

TABLE OF CONTENTS

ARTICLE 1 – General Provisions

S1-101 POLICIES AND PROCEDURES	5
S1-102 APPLICATION.....	5
S1-103 PUBLIC ACCESS TO PROCUREMENT INFORMATION.....	5
S1-104 REQUIREMENT OF GOOD FAITH.....	5
S1-105 PROPERTY RIGHTS	5
S1-106 SEVERABILITY	5
S1-107 SINGULAR PLURAL GENDER RULES	6
S1-108 DEFINITIONS.....	6-11

ARTICLE 2 – Office of the Director of Procurement & Special Services

S2-101 AUTHORITY AND DUTIES	12-13
S2-102 MAXIMUM PRACTIBLE COMPETITION	13

ARTICLE 3 – Source Selection and Contract Formation

S3-101 COMPETITIVE SEALED BIDDING	14
S3-102 PROCEDURES	14-20
S3-103 SUBMISSION OF BIDS.....	20
S3-104 CONTENTS OF BIDS	20-22
S3-105 BID RESULTS.....	22

ARTICLE 4 – Professional Services and Requests for Proposals

S4-101 PROFESSIONAL SERVICES	23
S4-102 COMPETITIVE SEALED PROPOSALS	23-24
S4-103 CANCELLATION OR REJECTION OF REQUESTS FOR PROPOSALS	24

ARTICLE 5 – Non-Competitive Procurement, Emergencies, and Small Purchases

S5-101 NON-COMPETITIVE PROCUREMENT	25
S5-102 EMERGENCY PROCEDURES	25
S5-103 PURCHASE STRUCTURE	26
S5-104 SMALL PURCHASES	26

ARTICLE 6 – Cost or Pricing Data and Analysis

S6-101 CONTRACTOR CERTIFICATION.....	27
S6-102 PRICE ADJUSTMENT	27
S6-103 COST OR PRICING DATA NOT REQUIRED	27
S3-104 COST OR PRICE ANALYSIS.....	27
S3-105 APPROVAL OF ACCOUNTING SYSTEM	27-28

ARTICLE 7 – Contract Management Policy

S7-101 CONTRACT POLICY	29
S7-102 DEFINITIONS.....	29
S7-103 PROCEDURES	29-30
S7-104 TYPES OF CONTRACTS	30-31

ARTICLE 8 – Contract Execution

S8-101 REQUISITIONS.....	32
S8-102 FISCAL RESPONSIBILITY	32
S8-103 AUTHORIZATION TO ISSUE BIDS OR OTHER SOLICITATIONS	32
S8-104 REVIEW OF CONTRACTS	32
S8-105 APPROVAL OF CONTRACTS.....	32

ARTICLE 9 – Contract Changes

S9-101 CHANGE ORDERS AND CONTRACT MODIFICATIONS	33
---	----

ARTICLE 10 – Cooperative Purchasing

S10-101 COOPERATIVE PURCHASING AUTHORIZED	34
S10-102 SALE, ACQUISITION, OR USE OF GOODS AND SUPPLIES	34
S10-103 COOPERATIVE USE OF GOODS, SUPPLIES, AND SERVICES	34
S10-104 JOINT USE OF FACILITIES.....	34

ARTICLE 11 – Ethics in Public Contracting

S11-101 STATEMENT OF POLICTY	35
S11-102 GENERAL STANDARDS OF ETHICAL CONDUCT	35
S11-103 CRIMINAL PENALTIES.....	35
S11-104 EMPLOYEE CONFLICT OF INTEREST	35-36
S11-105 GRATUITIES AND KICKBACKS.....	36
S11-106 PROHIBITION AGAINST CONTINGENT FEES	36
S11-107 CONTEMPORANEOUS EMPLOYMENT PROHIBITED	36
S11-108 WAIVERS FROM CONTEMPORANEOUS EMPLOYMENT, PROHIBITION, AND OTHER CONFLICTS OF INTEREST.....	36
S11-109 USE OF CONFIDENTIAL INFORMATION.....	36
S11-110 REPORTING OF ANTI-COMPETITIVE PRACTICES	37
S11-111 SANCTIONS	37
S11-112 RECOVERY OF VALUE TRANSFERRED OR RECEIVED IN BREACH OF ETHICAL STANDARDS	37

ARTICLE 12 – Appeals and Remedies

S12-101 BID PROTESTS.....	38
S12-102 CONTRACT CLAIMS	38

S12-103 AUTHORITY OF THE DIRECTOR OF PROCUREMENT & SPECIAL SERVICES TO SETTLE BID PROTESTS AND CONTRACT CLAIMS	38
S12-104 ACCESS TO ADMINISTRATIVE FORUM, SUBJECT TO STATUTORY PROVISIONS.....	39
S12-105 PROCEDURE FOR NON-COMPLIANCE	39-40

ARTICLE 13 – Debarment

S13-101 AUTHORITY TO DEBAR	41
S13-102 DECISION TO DEBAR.....	41-42

ARTICLE 14 – Purchase Orders

S14-101 GENERAL	43
S14-102 PROCEDURES	43
S14-103 EXCEPTIONS	43-44

ARTICLE 15 – Division of Transportation Requirements

S14-101 DIVISION OF TRANSPORTATION.....	45
---	----

ARTICLE 16 – Market Competitive Procurement

S16-101 GENERAL	46
S16-102 EXAMPLES	46
S16-103 DETERMINATION.....	46

McHENRY COUNTY PURCHASING ORDINANCE

ARTICLE 1 – General Provisions

S1-101 POLICIES AND PROCEDURES

The underlying purpose and policies of this Ordinance are to manage the Procurement process in accordance with law; spend taxpayer money wisely and fairly; encourage fair and equitable treatment through broad-based competition; protect against fraud, favoritism, extravagance and corruption; obtain the best commodities and Services at the lowest price practicable; provide safeguards for the maintenance of a Procurement system of quality and integrity; and meet the needs of McHenry County through continuous improvement of purchasing systems and procedures.

S1-102 APPLICATION

This Ordinance applies to all Contracts for the Procurement of Goods and 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 and all elected or appointed County Employees 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. The County may adopt administrative procedures to ensure compliance with this Ordinance, and those procedures may be more restrictive than required by statute. 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 PROPERTY RIGHTS

Receipt of an Invitation to Bid or other Procurement document or submission of any response thereto, or other offer, confers no right to receive an award or Contract nor does it obligate McHenry County in any manner.

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) Architectural, Engineering, 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.
- 3) Bid Security. A guaranty that the bidder will enter into a Contract if an offer is presented within the specified period of time; bidder's failure to do so will result in forfeiture of the Bid Security.
- 4) 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.
- 5) Business. Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.
- 6) Change Order. 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 consent of the parties to the Contract. Where required, a Change Order will amend a contract's Purchase Order.
- 7) 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.).
- 8) Construction. The process of building, altering, repairing, improving, demolishing, making structural repairs or other capital improvements to any public real property.
- 9) Contract. All types of agreements, regardless of what they may be called, for the Procurement of Goods and Supplies, Services, Construction, or Professional Services that are legally binding promises enforceable by law. For purposes of this document only, the term Contract does not include nor encompass County Employment Contracts.
- 10) Contract Employee. See Independent Contractor.
- 11) Contract File. A record maintained in the Purchasing Department which may include a requisition, Purchase Order, Contract documents and/or related correspondence, excluding employment Contracts and Contracts that contain information that falls under HIPPA laws.

- 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 having a Contract with the County or a Using Agency thereof.
- 14) Cooperative Purchasing. Procurement conducted by or on behalf of more than one Public Procurement Unit.
- 15) 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.
- 16) 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.
- 17) 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.
- 18) County (Public) Agency. A County officer, department, Elected Official, commission, board, Employee, or agency.
- 19) Debar. To remove a Person for cause from consideration for award of Contracts.
- 20) 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.
- 21) Emergency Purchase. Procurement obtained in circumstances which include threats to public health or safety, where immediate repairs to County property are required to protect or prevent against further loss or damage, or where immediate action is needed to prevent or minimize serious disruption to County services.
- 22) Employee. An individual drawing a salary or wages from the County of McHenry, whether elected or not.
- 23) Equipment. Items that are purchased or used by the County that are not Goods and Supplies and which are not expendable except through depreciation or wear and tear, and which do not lose their identity or become integral parts of other items or installations.
- 24) 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.
- 25) 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.

- 26) F.O.B. Free on Board.
- 27) Goods and Supplies. All personal property relating to the maintenance, repair and operating materials necessary to sustain day to day County operations.
- 28) 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.
- 29) IDOT. Illinois Department of Transportation.
- 30) 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.
- 31) Independent Contractor. A Person hired to accomplish a given result who has the right to control or direct his, her or its own work as to details and means by which the desired results are achieved. Compare with Employee.
- 32) Invitation for Bids. A formal request to vendors soliciting price Quotations or Bids, which contains or incorporates by reference the Specifications or scope of work and all contractual terms and conditions, and includes all documents, whether attached or incorporated by reference, utilized for soliciting price Quotations or Sealed Bids.
- 33) Market Competitive Procurement. A Market Competitive Procurement is a good that is sold by multiple vendors, is readily available through retail sale, and/or a bid for said goods or services results in a percentage over retail cost as determined by the Purchasing Director. Usually a small purchase per S5-104, procurement of this good may be made by departments following Article 16 of this Ordinance.
- 34) Material Alteration. Any construction, repair, reconstruction, rehabilitation, addition or improvement of a County owned, leased or rented building or structure, which appreciatively affects or influences its function, use or appearance.
- 35) Person. Any individual or group of individuals, Business, union, firm, corporation, trustee, partnership, association, joint venture, committee, club, or other entity.
- 36) 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.
- 37) 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.
- 38) Procurement. The buying, purchasing, renting, leasing, or otherwise acquiring of any Goods and Supplies, Services, Equipment, Construction, or Professional Services. It also includes all

functions that pertain to the obtaining of any Goods and Supplies, Services, Equipment, Construction, or Professional Services, including description of requirements, selection, and solicitation of sources, preparation and award of Contracts, and all phases of Contract administration.

- 39) Procurement Executive Summary. The Procurement Executive Summary (PES) is a document produced by the Purchasing Department for each Bid or RFP completed needing Board approval. The PES shows the bid number and name, the recommended vendor, amount or estimate of total award, bid or RFP due date, number of bids or proposals received, whether or not the procurement is subject to prevailing wage or is proprietary, an award statement, and a simplified chart showing responsive and responsible bidders and their respective costs for the Bid or RFP. Purchasing provides each department a copy of the PES for any solicitation on behalf of the County. The PES is included with each contract approval that comes to the County Board.
- 40) Professional Services. The Services of a Person possessing a high degree of professional skill where the ability or fitness of the Person plays an important part and the primary reason for contracting with the Person is the County's confidence, trust, and belief in his or her talent and ability to perform the Services. Professional Services include, but are not limited to, appraisers, architects, engineers, accountants, land surveyors, psychologists, physicians, and other health care professionals. A Contract is one for Professional Services when the County's need for the Services is necessarily dependent upon the particular skill, ability, judgment and talent of the Person performing the Services.
- 41) Progressive Purchase Order. A Purchase Order which allows for multiple payments throughout the Contract period.
- 42) Proprietary Procurement. The situation resulting from the inability to obtain competitive Bids, which may result because only one vendor or supplier possesses the unique ability to meet the particular requirements of the solicitation. Proprietary Procurement requires written justification from the requesting department explaining why there is only one source. Such justification will be reviewed and co-signed by the Director of Purchasing for validity.
- 43) 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 and Supplies, Services, Equipment, Construction, and Professional Services.
- 44) Public Works Projects. Public Works Projects means any fixed work construction, improvement or demolition by any public body that is funded or financed in whole or in part with public funds.
- 45) Purchase Order. A written order signed and issued by the Director of Purchasing directing a vendor to provide Goods, Supplies, Services, Equipment, Construction, or Professional Services to McHenry County.
- 46) Purchase Order Change (Internal Purpose). Revision to a Purchase Order approved by the Director of Purchasing to record a change necessitated by accounting or other management procedures. Includes amendments to vendor's company name or address, rate adjustments

specifically provided for in the original Contract and Contract Changes specified in Article 9 of this Ordinance.

- 47) Purchase Requisition. An internal document, by which a department sends, to the Purchasing Department, details of Goods and Supplies, Services, Equipment, Construction, or Professional Services to meet its needs for a specific job.
- 48) Quote/Quotation. Informal pricing obtained for the purchase of Goods and Supplies, Services, Equipment, Construction, or Professional Services.
- 49) Request for Proposals (RFP). All documents, whether attached or incorporated by reference, utilized for soliciting proposals.
- 50) Request for Qualification (RFQ). Documentation requested for Professional Services including but not limited to a list of professional references and similar work performed.
- 51) Responsible Bidder. A Person who has the capability in all respects to perform fully the Contract requirements contained in the Invitation for Bids, has the capacity, facilities, equipment, and credit which will assure good faith performance, and has submitted a Bid which conforms in all material respects to the requirements set forth in the Invitation for Bids. Responsible bidders on Public Works Projects may also have apprenticeship and training programs which fit the needs of the Public Works Project. Those criteria that will affect the Bid price and be considered in evaluation for award shall be objectively measurable, such as quality of the articles supplied; their conformity with the Specifications; their suitability to the requirements of the County; availability of support Services; uniqueness of the Goods and Supplies, Equipment, or Services as it applies to networked, integrated computer systems; compatibility to existing Equipment; and the delivery terms. The County Board also may take into consideration whether a bidder is a private enterprise or a State-controlled enterprise and, notwithstanding any other provision of this Section or a lower Bid by a State-controlled enterprise, may let a Contract to the lowest Responsible Bidder that is a private enterprise. The Invitation for Bids shall set forth the evaluation criteria to be used. No criteria may be used in the Bid evaluation unless they are set forth in the Invitation for Bids.

A Responsible Bidder is not a Person who has:

- 1) 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; or
- 2) 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; or
- 3) a conviction under state or federal antitrust statutes arising out of the submission of Bids or proposals; or
- 4) 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:
 - i. deliberate failure without good cause to perform in accordance with the Specifications or within the time limit provided in the Contract; or

- ii. 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; or
 - 5) 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; or
 - 6) violated the ethical standards set forth in Article 11.
- 52) 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 this Ordinance
- 53) Specification. Description of the physical or functional characteristics or of the attributes of Goods and Supplies, Equipment, Services, Construction, or Professional Services upon which a purchase order or contract is to be based. It may include a description of any requirement for inspecting, testing, or preparing Goods and Supplies, Services, or Construction items for delivery. Specifications set forth the characteristics of the property and/or service to be purchased as to enable the vendor to determine and understand that which is to be supplied. Specifications must be written to ensure the quality of the item is suited to its intended use and eliminates unnecessary features or frills.
- 54) Standing Committee. Any committee established by the McHenry County Board with specific Using Agency jurisdiction and responsibilities.
- 55) Stringing. Dividing or fragmenting multiple purchases with intent to circumvent any of the provisions of this Ordinance.
- 56) Surplus Property. Property including Goods and Supplies and Equipment that exceeds the reasonably foreseeable needs of the County or no longer has any use to the County.
- 57) Unauthorized Purchase. 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. Unauthorized Purchases include procuring Goods and Supplies, Equipment, Construction, or Services (including Professional Services) without following the provisions of this Ordinance. The individual making an Unauthorized Purchase may incur a personal obligation to the vendor or the County for the expense even though the Goods and Supplies, Equipment, Construction, or Services (including Professional Services) are used for County business.
- 58) Used Equipment. Equipment that: (a) has been in service for at least one-half of its commercially reasonable life, or if its 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 twenty-five percent (25%) below current market price; or (c) is otherwise determined by the Director of Purchasing on a case-by-case basis to be a bona fide used item.
- 59) Using Agency. Any County department requiring Goods and 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 Procurement & Special Services shall serve as the Director of Purchasing and principal public purchasing official for the County, and shall be responsible for the Procurement of Goods and Supplies, Equipment, Services, Construction, and Professional Services in accordance with this Ordinance, as well as the management and disposal of Surplus Property.
- 2) Duties. In accordance with this Ordinance, and subject to the supervision of the McHenry County Board, the Finance and Audit Committee, and the County's Deputy Administrator, the Director of Purchasing shall:
 - a. procure or supervise the Procurement of all Goods and 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 Property belonging to the County;
 - c. Departments shall forward to the Purchasing Department suggested Specifications as defined in S1-108 (53). The Purchasing Department 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.

Requirements for purchase of computer software using General Fund monies shall be in accordance with and as specified in the County of McHenry Software Management Policy—Sections 4.1.4 and 4.1.5—as adopted in December 2012. All functional Specifications shall be drafted with the assistance of the Information Technology Department to promote standardization of software through selected providers/vendors. Existing software infrastructure, already in existence at the County, should always be explored first to determine whether it can address the need. The Information Technology Department will provide guidance and direction for software acquisition to the Purchasing Department in compliance with this Ordinance.

- d. establish and maintain programs for Specifications development, Contract administration and inspection and acceptance, in cooperation with the public agencies using the Goods and 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 Finance and Audit Committee and Deputy Administrator, the Director of Purchasing may adopt operational procedures relating to the execution of his/her duties.
- 4) Management and Disposal of Surplus Property. The Director of Purchasing shall have the authority to:
- a. manage the use and allocation of Goods and Supplies and Equipment during their entire life cycle; and
 - b. determine whether the sale, lease, or disposal of Surplus Property 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 Property. The Director of Purchasing shall allocate net proceeds from the sale, lease, or disposal of Surplus Property 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 and Supplies, Equipment, Services, Construction, and Professional Services.

S2-102 MAXIMUM PRACTIBLE 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 and 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 and Supplies, Equipment, Services, and Construction, except for Professional Services (which are governed by S4-101 and S4-102), where the total cost exceeds \$30,000 shall be subject to competitive sealed bidding. This Section shall be applicable to all Contracts except as otherwise provided in Sections S1-102; 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 percent (5%).
- 5) Bid and Performance Bonds on Goods and Supplies, Services, or Construction Contracts. Bid and performance bonds or other security may be requested for Goods and Supplies, Equipment, 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's responsibility. When a Construction Contract is awarded in excess of \$30,000, 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 other security in a form satisfactory to the County, in an amount equal to one-hundred 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 ten percent (110%) of the price specified in the Contract.

- 6) Reduction of Bond Amounts. After notice to the Finance & Audit 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 non-substantial 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 and those criteria set forth in S1-108(48) of this Ordinance. 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) 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 therefor shall be made part of the Contract File. Notice of cancellation shall be sent to all Businesses solicited. The notice will be electronically posted and shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future Procurements of similar items.

14) 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.

15) Award. The Contract shall be awarded with reasonable promptness by appropriate written notice to the lowest Responsible Bidder whose Bid meets the requirements and criteria set forth in the Invitation for Bids. In the event the lowest responsible Bid exceeds estimated costs or available funds, and such Bid does not exceed such costs or funds by more than ten percent (10%), the Director of Purchasing is authorized, when time or economic considerations preclude re-solicitation of work on a reduced scope, to negotiate an adjustment in the Bid price with the lowest Responsible Bidder in order to bring the Bid within the amount of budgeted funds. Contracts shall be awarded according to the following considerations:

- a. Lowest and Best Bid. The awards will be made to the lowest 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:
 - i. 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.
 - ii. 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 items or Services will be accepted.
 - iii. if there is no significant difference in 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 the time specified in the Bid information as the latest acceptable delivery time.
 - iv. if the Bids quoting the same price are equal in every respect, the award may be split or made by lot.

16) Duration of Contracts.

- a. Contracts may be issued for periods exceeding the lesser of (i) two (2) years or (ii) the amount of time between the date the Contract is entered into and the date that the new County Board shall take office after the next general election. Provided, however, that a Contract may be issued for a period not to exceed four (4) years so long as such Contract contains the proviso that the County shall have one hundred twenty (120) days after each election of County Board members to terminate the Contract without cause and without penalty. (iii) The County Board reserves the right to award contracts for shorter or longer terms as deemed necessary to fulfill business needs of the County. Purchasing may issue Bids and Requests for Proposal for longer terms subject to final approval/award by the County Board.
- b. Leases of Equipment and Machinery. The County Board may, upon the affirmative vote of two-thirds of its members, enter into one or more leases for a period not to exceed five (5) years for computer Equipment, data processing machinery, and software as may be required.
- c. Purchase or Lease of Property. The County Board may purchase or lease any real estate or personal property for public purposes under Contracts providing for payment

in installments over a period of time of not more than twenty (20) years in the case of real estate, and not more than ten (10) years in the case of personal property, with interest on the unpaid balance owing not to exceed the maximum rate authorized by the Bond Authorization Act, as amended at the time of the making of the 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:
 - i. 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;
 - ii. 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 \$1,000,000 per occurrence, combined single limit for bodily Injury Liability and Property Damage Liability;
 - iii. 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 a minimum limit of \$100,000 for each incident.
- b. Insurance Requirements for Construction Contracts. For all Construction Contracts, the Contractor and all subcontractors 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:
 - i. 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; and
 - ii. the contractual liability arising out of the Contract shall be acknowledged on the Certificate of Insurance by the insurance company; and

- iii. 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; and
- iv. Except as otherwise provided by law, in addition to being named as an additional insured on the Certificate of Insurance, each liability policy shall contain an endorsement naming the County of McHenry as an additional insured. A copy of the endorsement shall be provided to McHenry County along with the Certificate of Insurance. The Director of Purchasing shall be responsible for obtaining and maintaining all required Certificates of Insurance and Policy Endorsements; and
- v. subcontractors, if any, shall comply with the same insurance requirements; and
- vi. insurance notices and certificates of insurance shall be provided to:
McHenry County Purchasing Department
2200 N. Seminary Avenue, Room 200
Woodstock, Illinois 60098; and
- vii. McHenry County shall be named as additional insured for all Contracts.

18) Hold Harmless Clause. The successful bidder agrees 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 the 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 (3) 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 (3) years from the date of final payment.

21) Reporting Anticompetitive Practices. When, for any reason, collusion or other anticompetitive practices are suspected among any bidders, 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 File 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.

23) Multi-Step Sealed Bidding. When it is considered impractical to prepare specifications which 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) Signed Bid. All Bids must be appropriately signed with an original signature of the bidder. Bids that fail to conform to the requirements will not be publicly read and will be rejected. The Bid must be signed by the Person submitting the Bid or the Person's duly authorized agent, and the name and title of each Person signing the Bid shall be typed or printed below the signature.
- 3) Compliance With Laws, Regulations, and Labor and Employment Provisions. The Contractor agrees to comply with all laws, statutes, regulations, ordinances, rulings 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, 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 Extended 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 Extended price for the quantity requested must also be shown. In the event there is a discrepancy between the unit and extended prices, the Unit price listed shall be the accepted price measure.
- 7) Period of Firm Bid. Unless otherwise provided in Bid information, the bid price must be valid for ninety (90) days after the Bid opening date. Bidders may specify a bid price may be valid longer than required by the Bid information or this rule. Any bidder who does not specify an expiration date for their bid price will be held to the ninety (90) day rule in this section.
- 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 exempt 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 including, but not limited to, 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 current prevailing wage rate sheet is posted by the State of Illinois at <https://www2.illinois.gov/idol/Laws-Rules/CONMED/Pages/Rates.aspx>

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.

13) Reporting Requirement. Per Illinois Public Act 98-328, the County does not collect certified payroll reports. It shall be incumbent on each contractor or subcontractor to file appropriate Prevailing Wage Reports with the Illinois Department of Labor.

14) Safety Plan. The Contractor shall have in force a safety plan that meets the requirements set forth in the Safety and Health Management Guidelines promulgated by the United States Occupational Health and Safety Administration, 54 Fed. Reg. 3904-3916 (Jan. 26, 1989), or such other safety plan as may be deemed acceptable by the County.

S3-105 BID RESULTS

Bid results are unofficial until after award by the County Board. Unofficial bid results are provided by the Purchasing Department to departments for review. Unofficial bid results will be provided by departments to their respective County Board Liaison Committee via the Procurement Executive Summary, and then to the County Board via the monthly agenda packet.

ARTICLE 4 - Professional Services and Requests for Proposals

S4-101 PROFESSIONAL SERVICES

- 1) Department Heads and Elected Officials shall have the authority to award Professional Services Contracts, except for Professional Services Contracts for Architectural, Engineering, and Land Surveying Services (which are governed by S4-101(3) and S4-101(4)), and may determine, in their discretion, whether such Contracts will be awarded on the basis of competitive sealed proposals.
- 2) For Professional Services Contracts, except for Professional Services Contracts for Architectural, Engineering, and Land Surveying Services (which are governed by S4-101(3) and S4-101(4)), where the total cost of the Contract exceeds \$30,000, the respective Department Head or Elected Official shall submit a request for an opinion to the State's Attorney as to whether the service being contracted for constitutes a "professional service" under Illinois law. Upon a determination by the State's Attorney, the respective Department Head or Elected Official 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 Architectural, Engineering, 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 Architectural, Engineering, 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. Notwithstanding any provision of this Ordinance to the contrary, in no event shall a County Agency, prior to selecting for negotiation under 50 ILCS 510/7 an individual or firm for Architectural, Engineering, or Land Surveying Services, seek formal or informal submission of verbal or written estimates of costs or proposals in terms of dollars, hours required, percentage of construction cost, or any other measure of compensation. Competitive sealed proposals are required where the total cost of the Contract is greater than \$30,000 unless a prior, satisfactory relationship exists for the Services desired. For all Professional Services Contracts relative to Architectural, Engineering, and Land Surveying Services where the total cost of the Contract exceeds \$30,000, the respective Department Head or Elected Official and the Director of Purchasing shall present a joint recommendation to the County Board for consideration and approval. The County Board may waive the requirements of Sections 4, 5, and 6 of the Local Government Professional Services Selection Act if it determines by Resolution, that an emergency situation exists and a firm must be selected in an expeditious manner.
- 4) Department Heads and Elected Officials may award Professional Services Contracts relative to Architectural, Engineering, and Land Surveying Services where the total cost for the project is expected to be less than \$30,000, without regard to Sections 4, 5, and 6 of the Local Government Professional Services Selection Act.

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 and 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 bidder or the contents of any proposal to competing bidders during the process of negotiation. A register of the proposals shall be prepared containing the name of each bidder, 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 Bidders and Revisions to Proposals. As provided in the Request for Proposals, discussions may be conducted with Responsible Bidders 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. All such discussions shall be conducted by the Director of Purchasing on behalf of the County until such time as the Contract has been awarded. Bidders 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 bidders or of any information derived from proposals submitted by competing bidders.

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 re-solicitation or any future Procurement of similar items.

ARTICLE 5 – Non-Competitive Procurement, Emergencies, and Small Purchases

S5-101 NON-COMPETITIVE PROCUREMENT

- 1) General. Subject to requirements in 55 ILCS 5/5-1022 (c) and (d), 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 Goods and Supplies, Service, or Construction;
 - 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) Technology Purchases Not Suitable for Competitive Bid. The purchase of computer software, computer hardware, computer databases that have been competitively procured and that require additional proprietary licensing, software integrations, software development, software maintenance, computer hardware maintenance, database maintenance, software support services, database support services, cloud services and computer hardware support services are not suitable for competitive procurement. Purchases over \$30,000 must be authorized by the County Board.

The purchase of used computer hardware, used computer hardware maintenance, and used computer hardware support services shall not be required to be competitively procured. Purchases over \$35,000 must be authorized for purchase by the County Board. However, the Director of Information Technology and the Director of Purchasing may authorize technology purchases up to \$35,000 without competitive procurement. Purchases over \$35,000 will be subject to competitive procurement according to S5-103

- 3) 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 (as authorized by the County Board or Illinois or federal statute) may make emergency Procurement of Goods and Supplies, Equipment, Services, Professional Services, or Construction 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 Goods and Supplies, Equipment, Services, Professional Services, and Construction, exceeding \$30,000. The confirming Resolution process for emergency Procurements shall be in accord with the procedure set forth in Section S8-105.

S5-103 PURCHASE STRUCTURE

- 1) Purchases under \$5,000. Purchases below \$5,000 can be made at Department Head discretion without prior approval of the Purchasing Department.
- 2) Purchases between \$5,000 and \$30,000. Purchases, except for purchases of Professional Services (the purchasing structure of which is set forth in Article 4), where the total cost is between \$5,000 and \$30,000 require that three (3) Quotations be obtained by the Purchasing Department from specifications created by the requesting department. Such purchases require prior approval by the Director of Purchasing and may be approved without Liaison Committee or Board approval. In the event three (3) quotations cannot be obtained, the Purchasing Director shall document a good faith effort was made and attach such documentation to the requisition in the County Enterprise Resource Program (ERP). A vendor's refusal to quote or notice of no quote may be considered a quote response and will be documented in the ERP.
- 3) Purchases Over \$30,000. Purchases, except for purchases of Professional Services (the purchasing structure of which is set forth in Article 4), where the total cost exceeds \$30,000 require formal sealed Bids after specifications have been created by the requesting department. Such purchases require a Resolution brought forth by the Liaison Committee and the Finance & Audit Committee for Board approval.

S5-104 SMALL PURCHASES

- 1) General. Any Contract where the total cost is less than \$30,000 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 Goods and Supplies, 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.
- 3) End of Year Vendor Cost Reconciliation. At the end of each fiscal year, the Purchasing Department will conduct a review of small procurement purchase orders. In the event over \$30,000 is spent with a vendor, but no bid was conducted, the Purchasing Director and County Auditor will review the invoices to confirm there is no stringing, and that cumulative purchases would not otherwise have been bid. If the Director of Purchasing and the County Auditor agree a bid should be conducted for regularly purchased items, a solicitation will be conducted for the following years' procurement according to Purchasing Ordinance Article 3 or Article 4, depending on a Bid or RFP being required. Payment to any vendor who has already provided or completed delivery of a good or service will not be withheld during the review. Departments may continue to use a vendor as they have, until a contract is approved by the County Board and entered into the County ERP System.

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 – Contract Management Policy

S7-101 CONTRACT POLICY

- 1) Purpose. This policy defines the parameters by which a County Contract is created and defines the required administrative review process for managing County Contracts.
- 2) Policy. The Purchasing Department shall be responsible for ensuring that all Contracts comply with applicable state and federal laws and internal procedures. All Contracts entered into by the County, including original Contracts, amendments, and extensions, are subject to appropriate legal review, and must be stored and retained according to federal, state and County document retention policies unless specifically excluded by this or another policy adopted by the County Board. All Contracts may be signed only by the Director of Procurement & Special Services, designated Authorities set forth in this Ordinance, or as assigned by Board Resolution or by accepted Grant requirements.

S7-102 DEFINITIONS

- 1) Contract Compliance. The process of reviewing and managing Contracts and agreements that bind the County. Policies that determine how Contracts will be processed fall under the responsibility of the County Board and shall be enforced by County Administration and administered through the Purchasing Department.
- 2) Contract Administration. The ongoing process of ensuring that the terms and conditions of Contracts are being implemented as agreed to by the parties. Contract Administration is the responsibility of the Purchasing Department and the requesting Department Head or Elected Official. The Department Head or Elected Official is the individual responsible for promoting the Contract, including ensuring that appropriate approval is obtained and, where required, obtaining Liaison Committee and/or Board approval and signature.

S7-103 PROCEDURES

- 1) All proposed Contracts must be submitted to the Purchasing Department for review and processing. The Director of Purchasing, upon completion of his review, may, if deemed necessary, submit the Contract to the State's Attorney's Office to ensure that the Contract meets all legal requirements.
- 2) If submitted to the State's Attorney's Office for review, after an opinion has been rendered on the proposed Contract, the Director of Purchasing will edit the language of the Contract as suggested by the State's Attorney's Office and forward the revised draft Contract to the Department Head or Elected Official to obtain approval as required by this Ordinance. If no legal opinion is requested, the Director of Purchasing will, upon completion of his review, forward the draft Contract to the Department Head or Elected Official to obtain approval including, where required, Liaison Committee and/or Board approval and signature.
- 3) After approval of the proposed Contract is obtained, the Director of Purchasing will send the Contract to the vendor for signature with instructions to return it to the Purchasing Department. Upon receipt of the signed Contract, the Director of Purchasing shall be responsible to have the Contract executed on behalf of the County and will advise the requesting Department Head or Elected Official when the Contract has been duly executed and is in force.

- 4) The Purchasing Department will index and image the Contract, ensuring access to it by the requester and other County Officials as directed by statute. The original Contract will be filed with the County Clerk's office as mandated by statute. A system will be put in place that will generate a notice to the originating Department Head or Elected Official six (6) months prior to the expiration of each Contract to allow the original requester to begin the process of developing a new Contract.

S7-104 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 Goods and Supplies, Equipment, Services, or Construction required except under such a Contract.
- 2) Multiple Source Contracting.
 - a. General. A multiple source award is an award of an indefinite quantity for one or more similar Goods and Supplies or Services to more than one bidder.
 - b. Limitations on Use. A multiple source award may be made when awards to two or more bidders 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 or 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:
 - i. 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
 - ii. the County shall reserve the right to take Bids separately if the Director of Purchasing approves a finding that the Goods and Supplies 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.

3) Excluded Contracts.

- a. Employment Contracts. Unless mandated by the County Board no employment contracts will be held in the Purchasing Department nor will they be approved or negotiated by the Director of Purchasing.
- b. HIPAA Contracts. Under the U.S. Health Insurance Portability and Accountability Act of 1996, a HIPAA business associate agreement (BAA) is a Contract between a HIPAA covered entity and a HIPAA business associate (BA). The Contract protects personal health information (PHI) in accordance with HIPAA guidelines and therefore will not be held in the Purchasing Department nor be part of this Ordinance.

ARTICLE 8 – Contract Execution

S8-101 REQUISITIONS

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

S8-102 FISCAL RESPONSIBILITY

Prior to the issuance of any Purchase Order, Contract, or Change Order, the Department Head or Elected Official 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 Goods and Supplies, Equipment, Services, or Construction 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 & Audit Committee is required prior to any solicitation for any Goods and Supplies, Equipment, Services, or Construction 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 over \$30,000. The Liaison Committee in charge of the Using Agency and the Finance & Audit Committee (except with respect to Division of Transportation Contracts governed by Federal or Illinois Department of Transportation regulations, which shall be presented only to the Transportation Committee) shall jointly submit their recommendation on the award of a Contract where the total cost of the Contract exceeds \$30,000, 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 Unless specified differently in the Resolution.
- 2) Contracts of Less than \$30,000. The County Board Chairman and/or the Director of Purchasing shall sign all Contracts where the total cost of the Contract is between \$5,000 and \$30,000, unless a different signature is required by grant parameters, etc.
- 3) Contracts Involving a Material Alteration. All Contracts, regardless of cost, that will result in a Material Alteration as defined in S1-108(35) of this Ordinance shall be jointly submitted by the Administrative Services and Finance & Audit Committees, by Resolution, to the County Board for its consideration at its next meeting. After award by the County Board, all such Contracts shall be signed by the County Board Chairman and/or the Director of Purchasing.

ARTICLE 9 – Contract Changes

S9-101 CHANGE ORDERS AND CONTRACT MODIFICATIONS

- 1) All Change Orders and Contract Modifications shall be in writing. When the total of Change Orders or price adjustments on any Contract exceeding \$30,000 exceeds ten percent (10%) of the original Contract amount, approval of the Liaison Committee in charge of the Using Agency and the Finance & Audit Committee is required. Upon approval, it shall be the responsibility of the requesting department to obtain a Resolution from the County Board authorizing such price adjustment before such price adjustment shall be effective.
- 2) When a Change Order or series of Change Orders authorize or necessitate an increase or decrease in 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.
 - d. 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) When any Change Order or series of Change Orders for any public works Contract authorizes or necessitates any increase in the Contract price that is fifty percent (50%) or more of the original Contract price or that authorizes or necessitates any increase in the price of a subcontract under the Contract that is fifty percent (50%) or more of the original subcontract price, then the portion of the Contract that is covered by the Change Order must be resubmitted for bidding in the same manner for which the original Contract was bid.
- 4) The foregoing paragraph (1) does not apply to Division of Transportation Contracts relating to the planning, design, Construction and maintenance of highways, bridges, and culverts, so long as the Change Orders, in the aggregate, do not exceed the total dollar amount previously approved by Resolution of the County Board; however where a Change Order will result in the aggregate of all Change Orders exceeding the total dollar amount as previously approved by the County Board, such Change Order shall be subject to the procedures contained in paragraph (1) above.
- 5) The Director of Purchasing or designee retains the right to get County Board approval to sign all Change Orders and to consent to Contract assignments. All such Change Orders shall be approved in writing by the head of the requesting department before execution of the Change Order by the Director of Purchasing. No Change Order may exceed the threshold set for Sealed Bids and cannot exceed a County Board approved Resolution. 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 30 ILCS 525, commonly known as the Illinois Governmental Joint Purchasing Act, the County of McHenry may either participate in, sponsor, conduct, or administer a Cooperative Purchasing agreement for the Procurement of Goods and Supplies, Equipment, Services, Construction, or Professional Services with one or more Public Procurement Units. 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 AND SUPPLIES

The County of McHenry may sell to, acquire from, or use any Goods and Supplies belonging to another Public Procurement Unit independent of Article 3.

S10-103 COOPERATIVE USE OF GOODS AND SUPPLIES AND SERVICES

The County of McHenry may enter into an agreement independent of the requirements of Article 3 with any other Public Procurement Unit for the cooperative use of Goods and 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. Employees must discharge their duties impartially 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. Accordingly, the County shall adhere to the requirements of state law regarding the Procurement process, including the use of competitive bidding where required. 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 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 Employee to participate directly or indirectly in Procurement when the Employee knows that:
 - a. the Employee or any member of the Employee's Immediate Family has a Financial Interest pertaining to the Procurement; or
 - b. any other Person, Business, or organization with whom the Employee or any member of an Employee's Immediate Family is negotiating or has an arrangement concerning prospective employment is involved in the Procurement.
- 2) Financial Interest in a Blind Trust. An Employee or any member of an Employee's Immediate Family who holds a Financial Interest in a disclosed Blind Trust shall not be deemed to have a conflict of interest regarding 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 Employee, or for any 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 Employee who is participating directly or indirectly in the Procurement process to become or to be, while such an Employee, the employee of any Person contracting with governmental body by whom the Employee in employed.

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

The Administrative 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 Employee has been publicly disclosed;
- b. the 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 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 an Employee for violations of the ethical standards of this Article shall be imposed in accordance with McHenry County personnel policies.
- 2) Non-Employees. The Finance and Audit 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 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 Finance and Audit 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 should have been awarded the Contract under the solicitation but is not, then the protesting bidder 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, after consultation with the State's Attorney, 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 Finance and Audit 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 or Contractor may appeal a decision of the Director of Purchasing regarding Bid protests or Contract claims to the Finance and Audit 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 Finance and Audit 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 Finance and Audit 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.

S12-105 PROCEDURE FOR NON-COMPLIANCE

- 1) Competitive Sealed Bids/Competitive Sealed Proposals – Non-compliance Ascertained 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) Competitive Sealed Bids/Competitive Sealed Proposals – Non-compliance Ascertained 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) Competitive Sealed Bids/Competitive Sealed Proposals – Non-compliance Ascertained 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 the Purchasing Ordinance, then:
 - a. if the Person awarded the Contract has not acted fraudulently or in bad faith:
 - i. the Contract may be ratified and affirmed by the County Board, provided it is determined that doing so is in the best interests of the County and provided that no violation of State or Federal law has occurred in the procurement process; or
 - ii. 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 – Debarment

S13-101 AUTHORITY TO DEBAR

After reasonable notice to the Person involved and reasonable opportunity for that Person to be heard, the Director of Purchasing, after consultation with the State’s Attorney, is authorized to Debar a Person for cause from consideration for award of Contracts. The debarment shall be for a period of not more than three (3) years. The causes for debarment include:

- 1) criminal conviction for an incident related to obtaining or attempting to obtain a public or private Contract or subcontract, or in the performance of such Contract or subcontract;
- 2) conviction for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or honesty which seriously and directly affect responsibility as a County Contractor;
- 3) conviction under state or federal antitrust laws arising out of the submission of Bids or proposals;
- 4) violation of Contract provisions or a character which is regarded by the Director of Purchasing to be so serious as to justify debarment, including, but not limited to:
 - a. deliberate failure to perform the Specifications or within the time limit provided in the Contract; or
 - b. a record within the previous five (5) years of failure to perform or to perform unsatisfactorily the terms of one or more Contracts, excluding situations in which the lack of performance is caused by acts beyond the control of the Contractor.
- 5) any other cause which the Director of Purchasing determines to be so serious and compelling as to affect responsibility as a County Contractor, including debarment by any other governmental entity for any cause listed in this Ordinance; and
- 6) for violation of the ethical standards set forth in Article 11 of this Ordinance

S13-102 DECISION TO DEBAR

The Director of Purchasing shall issue a written decision to Debar. The decision shall state the reasons for the action taken and inform the debarred Person involved of its rights concerning administrative review. A copy of said decision shall be provided to the Chair of the Finance and Audit Committee.

- 1) A copy of the decision required by this section shall be mailed or otherwise delivered by the Director of Purchasing to the debarred Person within five (5) days after such decision is made.
- 2) A decision to Debar under this Article shall be final. The debarred Person shall have ten (10) calendar days after receipt of the decision to submit a written appeal to the Chairperson of the Finance and Audit Committee for consideration by the full committee. The debarred Person shall be notified in writing of the time, date and location when the appeal shall be considered and shall be afforded a reasonable opportunity to state its position in writing, to submit evidence, to examine and cross-examine witnesses and to hire and be represented by counsel

of its own choice. The Finance and Audit Committee shall issue its decision promptly, but in no event later than thirty (30) days after conclusion of the hearing. The decision of the Finance and Audit Committee shall be final and reviewable in accordance with state law.

ARTICLE 14 – PURCHASE ORDERS

S14-101 GENERAL

Purchase Orders shall be the basis to authorize all procurement of goods, services, construction, and professional services. Purchases authorized by County Board Resolution satisfy the requirements as set forth under this Ordinance for the Purchasing Department to issue a Purchase Order.

S14-102 PROCEDURES

- 1) Department Purchase Order. The department, agency, or County office shall approve and issue a purchase order for purchases less than \$5,000. Purchases shall be made in accordance with County of McHenry or other government contracts whenever possible.
- 2) County of McHenry Purchase Orders. Except as stated in S6-102 (1), departments shall forward a requisition to the Purchasing Department requesting goods, services, construction or professional services for purchases greater than \$5,000.
 - a. The Purchasing Department shall issue all purchase orders for transactions between \$5,000 and \$30,000 for goods, equipment and services, in accordance with S5-103 and S5-104 (PURCHASE STRUCTURE and SMALL PURCHASES, respectively).
 - b. For purchases greater than \$30,000 for goods, equipment and services the User Department shall forward a requisition to encumber funds and direct the Purchasing Department to procure the goods or services through either a competitive bid or sealed proposal process, except as provided for in ARTICLE 15 Division of Transportation Requirements.

S14-103 EXCEPTIONS

- 1) Examples of non-negotiable and proprietary purchases that do not require competitive procurement or a purchase order and, therefore, may be processed by voucher directly to Accounts Payable, include, but are not limited to:
 - a. Books
 - b. Subscriptions
 - c. Copyrighted Material
 - d. Membership and Registration fees
 - e. Travel
 - f. Interdepartmental Reimbursements
 - g. Employee Reimbursements
 - h. Legal Services and Related Litigation Expenses
 - i. County postage permit fund replenishment and permit renewal
 - j. Statutory Clerk election mail
 - k. Statutory Treasurer tax mailing
 - l. Statutory Assessor mail
 - m. Intergovernmental Payments
 - n. Bank Payments
 - o. Settlement of Judgements & Claims
 - p. Utility payments for water, sewer, gas, electricity, telephone and cell phones
 - q. Refunds

r. Hospital, Medical, Doctor and Dentist Expenses

2) Non-negotiable purchases shall be determined by the Purchasing Department and approved by the Administrative Services and Finance and Audit Committees of the County Board.

ARTICLE 15 – Division of Transportation Requirements

S15-101 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.

ARTICLE 16 – Market Competitive Procurements

S16-101 GENERAL

Market Competitive procurement is the process by which departments may procure goods where the Market provides multiple vendors for the same product, the product itself is generic enough to be readily available, and/or competitive bidding requirements result in higher prices than retail, or the Purchasing Director determines the cost of County Procurement is greater than the price of the good or goods to be procured.

Procurement of Market Competitive goods and services may be made under the same provisions as S5-103 (1) "Purchases under \$5,000."

S16-102 EXAMPLES

Examples of Market Competitive Goods include but are not limited to:

- 1) Heating, Ventilation, Air Conditioning, and Refrigeration repair parts
- 2) Facility general Repair Parts (i.e. doors, locks, windows and related parts)
- 3) Bulk Regular 87 Octane and Diesel Fuel
- 4) Original Equipment Manufacturer (OEM) parts for vehicles and equipment
- 5) Per State Statute 55 ILCS 5/5-1022, a contract in excess of \$30,000 may be let without advertising bids in the case of expedited replacement of a disabled, inoperable, or damaged patrol vehicle
- 6) Fleet and Facility Maintenance Hand Tools

S16-103 DETERMINATION

Market Competitive Procurement shall be determined by the Purchasing Department Director and approved by the Finance and Audit Committee of the County Board.

BE IT FURTHER ORDAINED, that all ordinances or parts thereof in conflict with the provisions of this amended Ordinance are hereby repealed as of November 1, 2023.

BE IT FURTHER ORDAINED, that this Ordinance and its provisions as adopted by the McHenry County Board will take effect on November 1, 2023 and replaces all previous McHenry County Purchasing Ordinances.

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

DATED at Woodstock, McHenry County, Illinois, this 17th day of October 2023.

Michael Buehler, Chairman McHenry County Board

ATTEST:

Joseph J. Tirio, County Clerk