

**AN ORDINANCE TO AMEND
THE CODE OF DEKALB COUNTY, GEORGIA, CHAPTER 2,
ARTICLE XIII (PURCHASING ORDINANCE)
AND FOR OTHER PURPOSES.**

WHEREAS, the Governing Authority of DeKalb County is tasked with the protection of the county's public health, safety, and general welfare; and

WHEREAS, the Governing Authority believes there should be efficient procedures for the purchase of supplies, equipment and services; and

WHEREAS, the governing authority of DeKalb County desires to obtain the best value in terms of quality, service and price when expending public funds and;

WHEREAS, the governing authority of DeKalb County desires to foster effective, fair and broad-based competition for public procurement within the free enterprise system and;

WHEREAS, the governing authority of DeKalb County desires to provide safeguards for the maintenance of quality, integrity and equity in the purchase and disposition of County property.

NOW THEREFORE, BE IT ORDAINED by the Governing Authority of DeKalb County, Georgia, and it is hereby ordained by the authority of same, that:

* * *

ENACTMENT

By amending Section 2 of the Code of DeKalb County, Georgia to add a new Article XIII and the following new sections 2-900 through 2-981 to read as follows:

* * *

GENERAL PROVISIONS

ARTICLE XIII. PURCHASING ORDINANCE

Sec. 2-901. Scope and Purpose; Centralization of Purchasing

(1) *Application.* This Article shall govern all procurements, acquisitions and dispositions by DeKalb County of goods, equipment, commodities and services including professional services and all related contracts, as permitted by law. In addition, this Article shall govern agreements for the acquisition of public works and road construction projects and agreements that may

generate revenue. Unless they voluntarily choose to procure goods or services through the County's Purchasing & Contracting Department, this Article does not apply to the acquisition or disposition of goods, equipment, commodities and services obtained or contracted for by ~~constitutional officers, exempted officials and their offices~~ the tax commissioner, clerk of superior court, the district attorney or the sheriff. This article applies only to contracts solicited or entered into after the effective date of the resolution from which this article is derived, unless the parties agree to its application to a contract solicited or entered into prior to the effective date.

(2) *Supplementary general principles of law applicable.* Unless displaced by the particular sections of this article, the principles of law and equity, including the uniform commercial code of the state, the law merchant, the law of real property and the law relative to capacity to contract, agency, fraud, misrepresentation, duress, coercion, mistake or bankruptcy, shall supplement this article.

Sec. 2-902. Definitions

For the purposes of this chapter, certain terms and words are hereby defined. Where words are not herein defined, but are defined in Section 1-2 of this DeKalb County Code, those words shall have the meaning as defined therein. The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them as directed above, except where the text clearly indicates a different meaning.

- (1) *Absolute Value:* The numerical value of an acquisition or change order request without regard to its sign.
- (2) *Acquiring Office:* The department, division, board, authority, or other unit of DeKalb County government under whose authority, on whose behalf, or for whose use a commodity, service, or real property is requested or acquired or a contract or agreement relating thereto is obtained.
- (3) *Acquisition:* A transaction in which the County purchases, orders, contracts for, or otherwise agrees to obtain for value any commodity, or service, or combination thereof.
- (4) *Addendum:* A written amendment to an invitation to bid, request for proposal or some other form of procurement that changes the scope or specifications and is issued to the bidders or respondents prior to the closing of the bid period.
- (5) *Amendment:* A formal change, addition, alteration, correction or revision to a bid or proposal contract document before or after procurement and approved where required herein by the Chief Executive Officer and/or Governing Authority.
- (6) *Bid:* Submission of information from a bidder that describes the bidder's goods, equipment, commodities or services, and any other information necessary to respond to the specifications subject to the requirements set forth in an invitation to bid.

(7) *Bidder*: Any person who has submitted a response to the County or otherwise offered to form a contract with the County in response to an invitation to bid subject to the requirements set forth therein.

~~(8) *Bid bond*: A form of bid security executed by the bidder as principal and by a surety to guarantee the bid pricing and maintain the bid prices submitted with his/her original bids and furnish any required payment and/or performance bonds. A bond with good and sufficient surety or sureties for the faithful acceptance of the contract payable to, in favor of, and for the protection of the county.~~

(9) *Bid guaranty*: A certified check, bid bond, cashier's check, for a sum of money deposited with the county by a bidder to guarantee that the bidder will enter into a contract within a specified time and maintain the bid prices submitted with his/her bid and furnish any required payment and/or performance bonds.

(10) *Brand Name or Equal Specification*: A specification limited to one or more items by manufacturer's names or catalogue numbers to describe the standard of quality, performance, and other salient characteristics needed to meet County requirements, and which provides for the submission of equivalent products.

(11) *Bridge*: For the purpose of requiring a bridge repair bond pursuant to Sec. 2-955 (e) of this Article, the term "bridge" includes the bridge plus the approaches to the bridge within 50' of either end of the bridge except when the bridge itself measures 100' or more in length, in which case "bridge" shall include the approaches within 100' of either end of the bridge.

(12) *Business*: Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

(13) *Change Order*: A written order that alters any term or provision of an existing contract or purchase order.

(14) *Commodity*: A discrete and distinct item of tangible personal property, including, without limitation, any such item which is intended to become an integrated part of another item of tangible personal property or of any improvement to real property.

(15) *Competitive sealed bidding*: A method of soliciting ~~public works construction~~ contracts whereby the award is based upon the lowest responsive, responsible bid in conformance with the provisions of this article.

(16) *Competitive sealed proposal*: A method of soliciting ~~public works~~ contracts whereby the award is based upon criteria identified in a request for proposals in conformance with the provisions of subsection (c) of Code section 36-91-21.

(17) *Confidential Information*: Any information which is available to an employee only because of the employee's status as an employee of DeKalb County and is not a matter of public knowledge or available to the public on request.

(18) *Construction*: The process of building, altering, repairing, remodeling, improving or demolishing any public structure or building, or other public improvements of any kind to any public real property **and may include public works or road construction projects otherwise defined in this Section**. It does not include the routine operation, repair, or maintenance of existing structures, buildings or real property.

(19) *Construction management*: A project delivery method in which the County enters into a contract or contracts for construction management services regarding constructability, cost, planning and coordination of a construction project.

(20) *Construction management at-risk*: A project delivery method in which the County enters into a contract or contracts for construction management services in which the construction manager assumes financial risks and liabilities placing the manager "at-risk." The construction manager can serve as the general contractor and can provide input regarding the design, constructability, coordination and planning of a project during the design phase.

(21) *Consultant*: A person who has expertise because of education or experience that qualifies him or her to provide specialized services or advice.

(22) *Contract*: Any agreement, purchase order, lease, or other document accepted and executed by the County and contracting parties which creates binding reciprocal obligations including, without limitation, any document evidencing a bid or proposal award which has been accepted by the bidder.

(23) *Contractor*: Any person who contracts with the County to provide goods, equipment, commodities and/or services to the County **including contracting for construction purposes**.

(24) *Cooperative Purchase*: An arrangement whereby two or more public procurement units purchased from the same supplier using a single Invitation to Bid or Request for Proposal.

(25) *Cost Plus Percentage of Cost Contract*: A contract in which an additional amount of money, expressed as a percentage, designated to cover the contractor's overhead costs that is paid by the client.

(26) *Cost Reimbursement Contract*: A contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this Code and a fee, if any.

(27) *Department*: The Department of Purchasing and Contracting.

(28) *Department Director*: The director, or their designee, of the user department requesting the

procurement, acquisition or disposition.

(29) *Director*: The Purchasing Director/Chief Procurement Officer or ~~their~~ his or her designee.

(30) *Employee; Official*: An individual drawing a salary or wage from DeKalb County, whether elected or not, any member of a board appointed by the governing authority, or any elected or appointed officer of DeKalb County.

(31) *Fast Track Construction*: A project delivery method in which the County utilizes a process where the design and construction phases of a project may overlap. It allows construction of an initial phase to begin as soon as the plans for that initial phase of the project are completed. While the contractor is constructing the project's initial phase, subsequent phases are being designed in preparation of constructing the subsequent phase. Separate competitive procurements may also be required.

(32) *Fixed Price Contract*: A contract whereby the price is fixed, not variable, for the entire life of the contract or until a set quantity of goods or services is delivered.

(33) *Formal Written Contract*: A contract which requires Law Department approval.

(33) *Governing Authority*: Shall mean the Board of Commissioners of DeKalb County and the Chief Executive Officer of DeKalb County, subject to and as defined in the DeKalb County Organizational Act, as amended.

(34) *Ineligible Source List*: An approved compilation of individuals, firms, and/or businesses that are not eligible to participate as a bidder/proposer, and that are not eligible to contract with DeKalb County for a period of time up to three years.

(35) *Invitation to Bid*: A method of formal solicitation requesting formal sealed bids. The award is made to the lowest responsible and responsive bidder, based on the criteria set forth in the Invitation to Bid.

(36) *Invoice*: The document provided by vendors to the county as a demand for payment of goods or services provided under the provisions of a contract.

(37) *Material Change*: For the purpose of this ordinance, a material change is an amendment to a provision of a contract that alters ~~a material term of the contract the cost, time for performance, scope of performance, indemnification, material fact, or other similar or significant term~~ after a proposed contract has been approved by the Governing Authority ~~or, where a contract is valued at less than \$100,000, by the chief operating officer.~~

(37) *Material Fact*: One which constitutes substantially the consideration of the contract, or without which it would not have been made.

(38) *Material Term*: The cost, time for performance, scope of work, specifications, indemnification provisions, material fact, or other similar or significant contract term.

(39) *Multi-year Contract*: An agreement that renews annually or lasts longer than a twelve-month period, as permitted by O.C.G.A § 36-60-13, and has been duly approved under the authority of this Article. In determining which method of approval will be utilized for such multiyear contracts, the combined total potential cost to the County for all years of the proposed multiyear contract shall serve as the dollar threshold.

(40) *Offeror or Responder*: Any person who has submitted a bid, quotation or proposal to the County or otherwise offered to form a contract with the County in response to a request for proposals.

(41) *Payment Bond*: A bond provided by a surety company payable to the county to guarantee that subcontractors and material suppliers on construction project will be paid.

(42) *Performance Bond*: A bond provided by a surety company to ensure the faithful performance of the contract and to indemnify the governmental entity for any damages occasioned by a failure to perform the same within the prescribed time. Such bond shall be payable to, in favor of, and for the protection of the county and guarantees to the county that the services contracted for will be performed in accordance with the terms and conditions specified in the contract documents.

(43) *Person*: Any individual, firm, business or other legal entity.

(44) *Personal Property*: Anything besides land that may be subject to ownership. The main characteristic of personal property is that it is movable, unlike real property or real estate. There are two types of personal property: tangible and intangible.

(45) *Procurement*: The process buying, purchasing, renting, leasing or otherwise acquiring any supplies, services or construction. Also includes all functions that pertain to the obtaining of any supply, service or construction, including a description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of the contract administration.

(46) *Professional and consulting services*: A service consisting in material part of advice, evaluation, planning, design, or other effort involving the exercise of judgment, discretion, and knowledge, including, without limitation, a service provided by a person whose profession is licensed or regulated by the state or federal government including architecture, professional engineering, landscape architecture, surveying, medical arts, accounting, auditing, government, law, psychology or any other similar kind or type of professional practice or industry.

(47) *Program/project management*: A project delivery method in which the county enters into a contract(s) for professional management services above and beyond normal architectural services and serves as an extension of the county's staff and acts on the county's behalf during all phases of the program/project.

(48) *Project delivery method*: A system chosen by the County for organizing and financing design, construction and operation of a structure or facility by entering into legal agreements with one or more parties.

(49) *Proposal*: Submission of information from a proposer (including a consultant) which states how that proposer intends to fulfill the specifications and other requirements described in a Request for Proposal.

(50) *Proposal Guaranty*: A certified check or cashier's check for a sum of money **required by law to be** deposited with the county by a bidder to guarantee that the bidder will enter into a contract for the construction of a road project within a specified time and maintain the bid prices submitted with his/her bid and furnish any required payment and/or performance bonds. A proposal guaranty **may also be required for other construction projects and** is similar to a bid bond on public works **and other** construction projects.

(51) *Public Works Construction*: The building, altering, repairing, improving or demolishing of any public structure or building or other public improvements of any kind to any public real property. Such term does not include the routine operation, routine repair, or maintenance of existing structures, buildings, or real property, **projects valued at less than \$100,000, projects excluded by O.C.G.A. 36-91-22, or road construction projects covered by Chapter 4 of Title 32 of the Official Code of Georgia Annotated.**

(52) *Purchase Order*: A written sales contract between the County and third party supplier(s) authorizing the delivery of goods or services and detailing the exact products or services to be rendered including such information as prices, descriptions, payment terms, quantities, date of performance, shipping and all other conditions and obligations. A purchase order is a contract but is not a Formal Written Contract as defined herein and does not need Law department approval.

(53) *Qualifications Based Selection Process (QBS)*: A two-step bid process used for the selection of services which allows firms to be evaluated by a designated committee based on their qualifications and demonstrated expertise prior to review of proposed costs and fee negotiations. Depending on the size and nature of the proposed services, a small number of responders are shortlisted based upon specific criteria and selected for further consideration. Those responders are notified to submit further information and possibly fee proposals. Fee proposals, when requested, are submitted in a separate sealed document and not considered until a ranking selection has been completed by the evaluation team. The top-ranked responder is then selected and the fee proposal is subsequently opened. If a satisfactory contract and fee agreement cannot be reached at the discretion of the Purchasing Director, the County may proceed to the next highest scoring responder until a selection is achieved.

(54) *Qualified Products List*: An approved list of supplies, services or construction items described by model or catalogue numbers, which prior to competitive solicitation, the County has determined will meet the County's applicable specification requirements.

(55) *Real Property*: All lands and the buildings thereon; all things permanently attached to land or to the buildings thereon; and, any interest existing in, issuing out of, or dependent upon land or the buildings thereon.

(56) *Request for Proposals*: A method of formal solicitation whereby sealed responses are requested from third-party suppliers and the award is made to the offeror whose proposal is determined to be the most advantageous to the County.

(57) *Responsible Bidder, Responder, or Offeror*: A person who shows the capability in all respects to perform fully the contract requirements, and the experience, reliability, capacity, facilities, equipment and credit which will assure good faith performance. Examples of non-responsible bidders include a bidder involved in an active or potential litigation matter, as determined by the Law Department in conjunction with the Purchasing Department, a bidder on the Ineligible Source List, a bidder with a history of non-performance or performance problems on other contracts, a record of financial difficulty or business instability, ethical violations, criminal or civil sanctions and/or tax delinquency, or a bidder's or offeror's failure to promptly supply information in response to an inquiry from the County.

(58) *Responsive Bidder, Responder or Offeror*: A person who is not on the Ineligible Source List and has submitted a bid or proposal response that conforms in all material respects to the requirements set forth in the procurement process as determined by the Purchasing Director.

(59) *Retainage*: The portion of the total contract amount that the County retains from the contractor until the project is complete.

(60) **Road:** As used in this Article, a highway, road, street, avenue, toll road, tollway, drive, detour, or other way that either is open to the public or has been acquired as right of way, and is intended to be used for enjoyment by the public and for the passage of vehicles in any county of Georgia, including but not limited to the following public rights, structures, sidewalks, facilities, and appurtenances incidental to the construction, maintenance, and enjoyment of such rights of way:

(A) Surface, shoulders, and sides;

(B) Bridges;

(C) Causeways;

(D) Viaducts;

(E) Ferries;

(F) Overpasses;

(G) Underpasses;

(H) Railroad grade crossings;

(I) Tunnels;

(J) Signs, signals, markings, or other traffic control devices;

(K) Buildings for public equipment and personnel used for or engaged in administration, construction, or maintenance of such ways or research pertaining thereto;

(L) Wayside parks;

(M) Parking facilities;

(N) Drainage ditches;

(O) Canals and culverts;

(P) Rest areas;

(Q) Truck-weighing stations or check points; and

(R) Scenic easements and easements of light, air, view, and access.

(61) **Road Construction Contract:** As used in this Article, a contract or subcontract entered into by a county with any person, with the state or federal government or an agency of either, with another county or counties, with a municipality or municipalities, or with any combination of the foregoing entities for the construction, reconstruction, or maintenance of all or part of a public road, including but not limited to a contract for the purchase of materials, for the hiring of labor, for professional services, or for other things or services incident to such work. The term does not include construction contracts valued at less than \$200,000 or other contracts excluded by O.C.G.A. 32-4-63 (a).

(61) **Scope of Work (SOW):** The element of an agreement where the work to be performed under the contract is described. The SOW is prepared at the beginning of any procurement process and is the basis for any resulting contract. The SOW should initially be prepared by and come from the user department, as defined herein, subject to review by the Purchasing Department, and contain materials, goals and objectives of the agreement, timelines, milestones, progress reports, deliverables and end products that are expected under the contract.

(62) *Services*: All support functions and activities purchased to support the operations of DeKalb County.

(63) *Sole Source*: Procurements made pursuant to a written determination by the Director pursuant to Sec. 2-934 of this Article that there is only one available source for the required goods, equipment, commodities or services.

(64) *Specifications*: In connection with a solicitation, a list or description of the characteristics of the goods, equipment, commodities or services which will meet the County's requirements.

(65) *Standard Form Contract*: A model contract not uniquely drafted for a particular transaction between the County and a third party, but one that is drawn up in advance by the DeKalb County Law Department and available for application to numerous transactions. More than one standard form contract may be drafted with each such form intended for use with certain types of transactions. Terms of standard form contracts may be amended during negotiation between the contracting parties.

(66) *Subcontractor*: A person other than an owner having a direct contract with the contractor.

(67) *Temporary Services Contract*: A contract between the County and a temporary services firm for the brief or intermittent use of the skills of private sector employees to carry out functions of a user department.

(68) *User Department*: Any County department or office, whether headed by an appointed or elected official, for which the governing authority has budgetary responsibility or which requests obtain goods or services through the County's procurement process.

(69) *Vendor*: A contractor; a supplier; a person who is offering to sell or supply goods, equipment, commodities or services, including professional services, to the County.

(70) *Work*: The furnishing of all labor, materials, tools, equipment and incidentals necessary by the contractor for completion and performance of all duties and obligations imposed by the contract documents.

Sec. 2-903. Exemptions

The Director, in their sole discretion, may choose to utilize the exemptions and procedures outlined herein for the procurement of goods, equipment, commodities and/or services where

appropriate.

The following goods, equipment, commodities and services generally are exempted from this Article:

- (1) The normal establishment and collection of taxes, fees, and other revenues that fund the normal functions of DeKalb County Government.
- (2) Works of art for public places, or other creative/artistic endeavors that require a particular and demonstrated skill or talent to include, but not limited to, artists, musicians, and writers.
- (3) Printed copyright material including published books, maps, periodicals and technical pamphlets (not including software for computer systems), except where a greater savings can be realized by a quantity purchase.
- ~~(4) Real property, real estate brokerage and appraising, abstract of titles for real property, title insurance for real property and other related costs of acquisition of real property.~~
- (5) Dues, memberships and board member fees.
- (6) Subscriptions.
- (7) Services provided directly to individual citizens, elected officials and employees including ~~reimbursements and other miscellaneous payments.~~
- (8) Utilities where there is no reasonable basis for competitive procurement, ~~for example electric power, water, and sewerage.~~
- ~~(9) Legal services, litigation related legal expenses, investigators, experts and materials, and services required for confidential employment related investigations.~~
- ~~(10) Marketing of bonds and other forms of debt or debt management products, including but not limited to interest rate management agreements.~~
- (10) Training, advisory consulting and related activities, facilitators for meetings, travel, lodging or meal expenses covered by other County policies and regulations.
- (11) Items for resale.
- (12) Advertisements and legal advertisements including, but not limited to, bid/proposal solicitations and advertisements placed by boards that are required by law to publicly advertise their meetings or actions in the legal organ of the County.

Commented [GJF1]: Clarification needed on which services are being referred to here.

Commented [GJF2]: Per the Ad Hoc Committee, why shouldn't legal services be subject to a qualification-based RFP process?

Commented [GJF3]: Per the Ad Hoc Committee, why shouldn't marketing of bonds, etc., be subject to a qualification-based RFP process?

- (13) Antiques and other unique assets of historical value, including restoration of these items.
- (14) Materials or services required for confidential and secure investigations, apprehensions and detentions of individuals suspected of or convicted of criminal offenses by law enforcement personnel.
- (15) Purchases made from, **or the disposition to,** other federal, state and local governments, associations, and universities/colleges, and non-profit organizations when determined by the Director to be in the best interest of the County.
- (16) Grant awards or agreements that require certain firms or individuals to perform the work.

Sec. 2-904. Interpretation; Rules of Construction

In this Article unless the text requires otherwise:

- (1) Words in the singular number include the plural, and those in the plural include the singular.
- (2) 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.
- (3) “May” shall be permissive and not mandatory.
- (4) “Shall” shall be mandatory and not permissive.
- (5) Terms which are not specifically defined herein shall have their usual and customary meanings.

Sec. 2-905. Application of Federal and State Law

It is intended that this Article shall conform to all applicable provisions of the laws of the United States and of the State of Georgia, and the provisions hereof shall be so construed wherever possible. In the event any portion of this Article shall be declared invalid for its failure to conform to state or federal law, such invalidity shall not affect the remaining portions hereof. Notwithstanding any other provision of this Article, the County may enter into any contract, follow any procedure, or take any action that is otherwise at variance with this Article if necessary or convenient to receiving funds from the government of the United States or the State of Georgia.

Sec. 2-906. Grants

- (a) **Applicability**

The expenditure of grant funds is subject to the requirements of this Article unless it is exempt under §2-903. If exempt, the grant agreement shall be handled or processed by the Purchasing and Contracting Department only to the extent that the agreement must be numbered for tracking purposes and routed to the appropriate departments and offices for signature.

(b) Approval of Requisitions

Purchase requisitions for the expenditure of any grant funds require special approval by the Director of Finance or his/her designee and the user department director or his/her designee.

PUBLIC ACCESS, ETHICS AND CONFLICTS OF INTEREST

Sec. 2-907. Public Access to Procurement Information

(a) Access Generally.

Interested persons shall have access to information regarding procurement transactions of DeKalb County in accordance with this Article and the Georgia Open Records Act, O.C.G.A. §50-18-70 *et seq.* including, but not limited to, procurement records required by subsection (c) of this Section, by subsections (b) and (e) of Sec. 2-912 of this Article, the quarterly reports required by Sec. 2-925 of this Article, and the work products required by Sec. 2-943 (b) of this Article.

In addition, the Director shall establish procedures to maximize public access to all non-confidential and non-proprietary records maintained by the Department and the user department., Access shall, to the extent feasible, be provided through the Oracle centralized information system, a successor system, or an alternative system.

(b) Contracts Published and Filed; Inspection

The Director shall ensure that summaries of all contracts for purchase other than contracts of employment shall be published on the County website within 30 days of approval of such contracts; and, all such contracts shall be on file and available for public inspection at a place designated by the Governing Authority.

(c) Procurement Records

All determinations and other written records pertaining to the solicitation, award or performance of a contract, including documentation required by Sec. 2-915 (d) of this Article, shall be maintained for the County in a contract file by the Director or in contract files maintained by user departments as prescribed by the Director.

Commented [GJF4]: Per the Ad Hoc Committee.
QUESTION: Is it feasible to link all documents to the Oracle system for full public access? Is it feasible to establish a portal where various documents could be housed for public access?

(d) 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 Governing Authority.

Sec. 2-908. Ethics; Conflicts of Interest

(a) Compliance with Ethics and Conflicts of Interest Rules Mandatory

County employees and officials, and contractors and vendors contracting with the County, shall comply with all applicable ethics and conflicts of interest rules and requirements including, but not limited to, the requirements of Secs. 22 and 22A of the DeKalb County Organizational Act, Sec. 20-20 of the DeKalb County Code of Ordinances prohibiting conflicts of interest, this Article, and the Chief Executive Officer's Executive Order No. 2014-4, as amended.

(b) Compliance by Vendors; Penalties

Vendors shall comply with all applicable ethics and conflict of interest rules pursuant to subsection (a) of this Article, including but not limited to, the following:

(1) Inside Information; Improper Influencing of Procurement by Vendors Prohibited.

Prospective vendors of goods, equipment, commodities, services including contractors offering construction services must compete for County business within the parameters of the solicitation processes set forth in this Article. Vendors are strictly prohibited from seeking to obtain inside information, attempting to skew the writing of specifications, or influencing a procurement decision through any means outside the process established for the particular solicitation under this Article. This principle applies to any vendor including any contractor, subcontractor, representative, employee or agent who may be associated with a procurement transaction.

(2) Attempting to Influence Contract Outcomes by Vendors Prohibited. Attempting to influence the outcome of any given contract by a vendor prior to a recommendation of award to the Governing Authority is strictly prohibited.

(3) Penalties. Violation of the ethics or conflicts of interest rules herein or under any other applicable law or ordinance may subject the violator to the penalties specified in subsection (k) of Sec. 22A of the DeKalb County Organizational Act. Any bid or offer submitted shall be disqualified from consideration for award, and that person may, among other things, be recommended for placement on the Ineligible Source List.

(c) Compliance by Employees and Officials; Penalties

County employees and officials shall comply with all applicable ethics and conflict of interest rules pursuant to subsection (a) of this Section including but not limited to, the following:

(1) *Purchasing for Personal Use Prohibited.* County employees and officials are prohibited from purchasing goods, equipment, commodities or services from a County contract for personal use.

(2) *Acceptance of Gifts from Prohibited Sources Prohibited.* County employees and officials shall not solicit or accept anything of value from vendors, potential vendors, subcontractors, potential subcontractors, or any other party doing or seeking to do business with the County.

(3) *Penalties.* Violation of the ethics or conflicts of interest rules specified in subsection (a) of this Section by the Director, purchasing and contracting staff, directors of user departments, or other county employee or officials; shall subject said person or persons to the penalties specified in subsection (k) of Sec. 22A of the DeKalb County Organizational Act. In addition, any such person or persons may also be subject to the penalties herein.

Sec. 2-909. Referral for Prosecution

In addition to any other penalties authorized by this Article, any allegations of collusion, self-dealing, bribes, or other possible criminal activity by vendors, county officials or county employees, including individuals responsible for rating and evaluating bids and proposals, may be referred to the county attorney for further investigation. The county attorney shall make a determination if such allegations and any relevant facts should be transmitted to the district attorney, solicitor, or other appropriate legal officer for further investigation and consideration.

Commented [GJF5]: QUESTION: Move Sections 2-926 (Penalties for Non-Compliance with or Abuse of Purchasing Processes by Officials or Employees) and 2-954 (Effect on Contract Where Procurement Violates this Article) here?

PROCUREMENT ORGANIZATION

Sec. 2-910. Responsibility of Purchasing and Contracting Department

The Purchasing and Contracting Department (Department) shall serve DeKalb County Government by procuring goods, equipment, commodities, and services, including professional or consultant services, and contracting for the construction of public works and roads in accordance with Georgia law and this Article.

Sec. 2-911. Procurement Roles and Responsibilities

(a) Director of Purchasing and Contracting

The Director of Purchasing and Contracting (the Director) shall, except as otherwise specified

herein, be responsible for the administration of all transactions governed by the provisions of this Article and shall serve as the principal procurement officer of the County. The Director shall implement and enforce all purchasing policies and procedures relating to procurements, acquisitions and dispositions subject to the provisions of this Article including the standard procurement operating procedures and policies, and other procedures required by this Article. The Director shall establish a course of training for orientation of new employees involved in the procurement process and a program of continued training and certification for all procurement personnel. The Director shall be subject to the authority and supervision of the Chief Executive Officer.

(b) Purchasing and Contracting Department Staff

The staff of the purchasing and contracting department provides centralized product search, procurement and contracting services for commodities and services for all county departments. Under the authority of the Director, the purchasing staff shall administer the procurement process and shall have any subsequent responsibilities as specified by the Director. The Department prepares specifications for bids and advertises and obtains formal bids as required by law and returns specifications that are unclear or incomplete to the user department for revisions before the procurement process begins. It processes county two-party contracts, license agreements, and other legal documents. It provides fleet maintenance with centralized procurement, invoice processing, and parts pickup and delivery. It also operates the county's print shop, mailroom, stockroom, and provides copy services and mail and supply courier services. Unless otherwise provided in this Article, any duties and powers of the Director may be delegated by the Director to subordinate purchasing staff members and other employees.

(c) Chief Executive Officer

Pursuant to the DeKalb County Organizational Act, Sec. 18, the Chief Executive Officer (CEO) shall establish rules to regulate purchasing for all county departments, offices, and agencies of the county government subject to this Article. Such rules shall be consistent with the provisions of this Article and are subject to approval by the Board of Commissioners. In addition, the CEO shall enforce compliance with Sec. 17 of the Organizational Act which requires that no expenditure of county funds shall be made except in accordance with the county budget or amendments to the county budget adopted by the Board of Commissioners.

(d) Board of Commissioners

Except for contracts of employment, the Board of Commissioners (the Board) shall review and approve all contracts involving the expenditure of county funds in excess of \$100,000 and any other contracts requiring Board approval by this Article. The Board shall also review and approve the scope of work, specifications, material changes, change orders, multi-year contracts, renewals, and cancellations of contracts pursuant to Secs. 2-915, 2-916, 2-917, 2-918, 2-919, 2-

920, and 2-923 of this Article and as may otherwise be required by this Article. In addition, the Board shall review and approve the rules promulgated by the CEO to regulate purchasing by all county departments, offices and agencies pursuant to Sec. 18 of the DeKalb County Organizational Act.

(e) User Departments

The user departments serve as administrators for contracts assigned to the departments by the Director. The primary objective of the user departments is to ensure that contracts are properly performed by vendors and the County. The user departments designate department staff to oversee, monitor, and provide technical guidance to vendors performing under contract with the County. Other responsibilities and duties include:

- (1) Review all work by a vendor to confirm performance in accordance with terms of the contract;
- (2) Perform inspections and site visits and addresses any performance deficiencies;
- (3) Inspect and accepts work product or services being provided by a vendor;
- (4) Recommend contract modifications, terminations or claims dispositions, as necessary;
- (5) Document actions taken regarding each contract and maintain the original documentation in the official contract file;
- (6) Review and approve invoices submitted by a vendor and monitor the payment of invoices for timeliness and accuracy;
- (7) Recommend contract renewal(s) to the Director when appropriate;
- (8) Initiate and coordinate preconstruction/work conferences with the Department;
- (9) Monitor, review and document performance of vendors once every calendar quarter, or once every 60 days where the total contract period is six months or less;
- (10) Ensure that the performance of vendors is recorded on the vendor performance reports, submits reports to the Department, and enters reports into the Department's contract compliance centralized database;
- (11) Prepare contract specifications pursuant to Sec. 2-915 of this Article;
- (12) Conduct closeout procedures pursuant to Sec. 2-922 of this Article;
- (13) Conduct other activities delegated pursuant to this Article or assigned by the Director;
and
- ~~(14) Return specifications that are unclear or incomplete to the user department for revision~~

~~before the procurement process begins.~~

Sec. 2-912. Procurement Standard Operating Policies and Procedures

(a) Policies and Procedures; Evaluations; Database

~~At the request of the CEO,~~ The Director shall prepare standard operating policies, ~~rules~~ and procedures consistent with applicable law and this Article. In addition, such ~~policies and~~ procedures shall be based upon generally accepted public purchasing principles and practices. At a minimum, the purchasing ~~policies and~~ procedures shall identify:

- (1) procurement processes and types of procurement;
- (2) key performance factors and criteria for evaluating performance of contractors and vendors;
- (3) methods for measuring performance against identified factors and criteria;
- (4) time frames for conducting performance evaluations; and
- (5) time frames for recording and reporting performance evaluation results to the appropriate persons.

In addition, the standard operating ~~policies and~~ procedures shall establish a process for employing present performance results in evaluating performance measures and goals in future contracts.

Such ~~policies and~~ procedures shall also include establishment of a centralized database maintained by the Purchasing Department where evaluation reports required by this subsection shall be recorded and maintained.

(b) Approval of Procedures; Revisions

The standard operating ~~policies and~~ procedures ~~required by this Article shall be in writing and shall become effective upon review and approval by the Chief Executive Officer.~~ The procedures, as approved, may be revised, as necessary, through the same process used for their initial approval.

(c) Mandatory Application; Duty to Comply

~~The County, its employees, departments, and elected officials shall comply with the~~

~~standard operating procedures to all procurements, acquisitions, and purchases.~~

~~(1) Application of the standard operating policies and procedures to all procurements, acquisitions, and purchases shall be mandatory for the Director, purchasing and contracting staff, directors of user departments, and all other county employees and officials.~~

~~(2) It shall be a breach of duty on the part of a county employee or officials to solicit, procure, make any purchase, or aid or abet the making of any procurement or purchase, in any manner not in compliance with the provisions of this Article.~~

(d) Procurement Records; Documentation Required

The Director shall establish policies and procedures to ensure that all decisions by County purchasing and contracting staff regarding the procurement of goods, equipment, commodities, services, public works construction, road construction, disposal of property and all other decisions authorized pursuant to this Article shall be fully documented. At a minimum, such documentation shall record the complete history of each transaction subject to this Article including factors used in evaluating proposals and supporting procurement decisions and related documentation. In addition, the policies and procedures shall ensure that final work products generated as a result of consulting or other professional services contracts are properly maintained and documented. Procurement records generated pursuant to this subsection shall be available to the public pursuant to Sec. 2-907.

(e) Penalties

Failure to adhere to approved standard operating procedure in any procurement or purchase shall subject the Director, purchasing and contracting staff, directors of user departments, and other employees or officials, as applicable, to sanctions or penalties provided for ~~herein in Sec. 2-926.~~

Sec. 2-913. Purchase Orders; Requisitions

(a) Purchase Orders

No employee or official of the county shall request ~~contractors, suppliers or~~ vendors to deliver goods, equipment, commodities or services to the county except upon a regular purchase order issued by the Director subsequent to receipt of a requisition from a user department director or employee as required by subsection (b) of this Section.

(b) Requisitions and User Departments

(1) To obtain a purchase order, a requisition shall be prepared and requested by the User Department desiring the goods, equipment, commodities or services and shall be written with specifications that will best serve the interests of the county. All requests shall be

made pursuant to the rules and policies established by the Director of Purchasing and/or CEO. All scopes of work and specifications shall be definite, certain and shall permit free and open competition.

- (2) The requisition must include the department name, a specific and detailed description or amount for the scope of work, goods, equipment, commodities or service requested, an approximate cost, confirmation of the availability of funds for the requisition, and the signature of the user department director or designated employee.
- (3) The Purchasing Department shall maintain a cooperative working relationship with the user departments. The User Department shall request and schedule quarterly meetings with their assigned procurement team to review active and upcoming procurements.

(c) User Department Estimates

(1) *Project Cost Estimates.* Prior to any procurement, the user department shall prepare and provide the Purchasing Department with independent cost estimates for each project. The Director shall utilize independent cost estimates for the evaluation of bids and proposals and assist the Director in determining if bids or proposals are reasonably priced. In particular, the user departments shall investigate bids or proposals that appear abnormally high or low.

(2) *Quarterly Procurement Projections.* In addition to cost estimates for each project, the director of each user department shall file with the Director, within sixty (60) days after the adoption of the annual budget and quarterly thereafter, a procurement forecast of their needs for the procurement of services, including professional or consultant services, goods, equipment, commodities, and construction of public works and roads, for the ensuing fiscal year or calendar quarter. The Director shall utilize such forecasts for the scheduling of work activities and of procurements to be made by the Purchasing and Contracting Department.

(d) Review of Requisitions; Modification; Approval

The Purchasing Department personnel shall review the requisitions, the user department estimates, and the budget of the user department for availability of funds as required by this Section. The Director shall have the authority to revise any requisition as to quantity, quality or estimated cost, provided that the needs of the user department are met and revisions as to quality and quantity are made in accordance with the requirements of this Article. The Director shall approve or deny all requisitions for purchases. The Purchasing Department reserves the right to return requisitions that are deemed improper, unauthorized, unclear or incomplete.

Sec. 2-914. Appropriate Expenditures; Penalties

All purchases shall comply with applicable DeKalb County policies and budget

appropriations. To ensure that all purchases made are appropriate expenditures, each elected official or user department director shall ensure that purchases made pursuant to his or her authority comply with this Article, all applicable law and budgetary appropriations. Failure by a user department director or other county official to ensure that purchases comply with budget appropriations as required by Sec. 17 of the Organization Act may subject the director or official to sanctions or penalties provided for in Sec. 2-926 of this Article.

Sec. 2-914.1. Spend Analysis

The Director shall establish procedures for collecting and analyzing expenditure data for goods and services purchased by and for all departments of the County on a continuous basis. The Purchasing Department shall regularly update that data.

Sec. 2-915. Contract Specifications

(a) Intent

Specifications shall be prepared by the requesting user department and reviewed by the user department and the Purchasing Department with the intent of promoting overall economy and encouraging competition. Specifications shall include measurable outcomes, shall be made pursuant to industry standards, and shall not be unduly restrictive.

(b) Brand Names

A specific brand name or brand name equivalent shall not be identified in contract specifications except when the Director makes a written determination that only the identified brand name item or brand name equivalent will satisfy the project needs.

(c) Review of Specifications by Board of Commissioners; Changes in Specifications; Procedures

(1) The Board of Commissioners is authorized to review and either provide input to the Director or approve the specifications for certain specified contracts involving the expenditure of more than \$100,000 in county funds prior to the solicitation of bids or proposals by the Director. This authorization shall apply only to those contracts that:

(A) exceed a cost threshold specified in a resolution approved by the Board of Commissioners; or

(B) address certain matters specified in a resolution approved by the Board.

(2) Any change in specifications during the procurement process of a contract where the Board has reviewed the specifications pursuant to paragraph (1) herein shall be subject to review and approval of the Board of Commissioners.

(3) The Director shall develop procedures for implementing the requirements of this subsection. Such procedures shall, at a minimum, provide for notice to the Board of Commissioners sufficient to ensure that specifications for contracts subject to paragraph (1) of this subsection may be reviewed by the Commissioners prior to the solicitation of bids or proposals. In addition, such procedures shall specify a protocol by which the Board of Commissioners may initiate the review process authorized by this Section and shall further include procedures for ensuring participation of the user department director and staff in such review.

Commented [GJF6]: Cooperation between the Director and the BOC will be needed to make this specifications review process work such as early notice regarding pending procurement from user departments or the Director.

(d) Publishing Specifications

Specifications for contracts shall be publicly posted and made available to interested parties and the public prior to invitations to bid or requests for proposals being announced or forwarded. The Director shall develop procedures for such postings including procedures for postings by user departments as appropriate. Specifications for contracts for sole source purchases, and, if practical, contracts for emergency purchases, shall likewise be publicly published prior to the Director deciding to contract with a sole source provider or to make emergency purchases.

Commented [GJF7]: Intent is to deal with potential favoritism where specs are developed with a particular vendor in mind. Publishing the specs may also encourage the market to offer alternatives that might otherwise be overlooked by user department staff.

QUESTION: Could publishing specs result in illegal attempts to sway procurement process and specs by a specific contractor prior to formal procurement process.

CONTRACT APPROVALS

Sec. 2-916. Approval of Contracts

(a) General Provisions; Approval by Law Department

It shall be the responsibility of the user departments and the Purchasing Department to submit all contracts for review and approval as to legal form by the Law Department prior to execution by either party. All contracts, including any standard form contracts drafted by the Law Department or outside counsel, shall conform to state and federal law, this Article, and the rules promulgated by the Chief Executive Officer, and shall otherwise contain such provisions as are reasonably necessary to protect the interests of the County. Standard form contracts shall be subject to periodic review at the request of the Board of Commissioners.

(b) Execution and Approval of Contracts.

(1) The County's Chief Executive Officer or his/her designee Chief Operating Officer shall have the authority to sign all formal written contracts.

(2) Contracts in excess of \$100,000.00 shall be subject to review of and approval by official action of the Governing Authority.

(3) (A) Each contract requiring approval of the Board of Commissioners shall be presented for review by the Board after the Director, the user department, and the Law Department have determined and entered all material terms of the proposed contract into the contract submitted to the Board of Commissioners for review. Any subsequent change to a material term shall be subject to subsection (c) of this Section.

(B) Nothing in subparagraph (A) herein shall preclude the Board of Commissioners from reviewing contract specifications of scopes of work prior to the solicitation of bids or proposals by the Director authorized by Sec. 2-918 (c) or Sec. 2-919 (a) of this Article.

Commented [GJF8]: Per the Ad Hoc Committee and OIA, this is intended to address the concern that the BOC may be presented contracts for review and approval too early in the procurement process; i.e., before all material terms (defined in Sec. 2-902 (39.1)) are negotiated by staff. Assumption is that the BOC should be approving contracts close to when they are ready for execution and issuance of a notice to proceed to the vendor.

(c) Material Changes Subsequent to Board of Commissioners Approval; Duty to Inform; Ratification

Subsequent to any vote to approve a contract by the Board of Commissioners, but before final execution, any material change to such contract is subject to review and ratification by the Board of Commissioners. The Law Department, the Director and the director of the user departments shall have a duty to inform the Board of Commissioners of any proposed material change as required by this subsection.

(d) Multiple Contracts with Single Vendor; Approval

No more than one contract involving the expenditure of county funds shall be made during a fiscal year with any single vendor except with the approval of the Board of Commissioners regardless of the amount of such contract.

Sec. 2-917. Change Orders and Contract Modifications

(a) General Provisions; Procedures

A change order is an alteration, addition, or deduction from the original scope of work as defined by contract documents, prior to the end of the term of the contract, to address changes or unforeseen conditions necessary for project completion. The Director shall establish procedures for the review, consideration and approval of change orders and contract modifications that may be proposed.

(b) Justification for Change Orders

Change orders are authorized exclusively for the following reasons:

- (1) Where there is an immediate need to protect the public health, safety or welfare;
- (2) To correct deficiencies in design or construction documents provided by architects or engineers other than the contractor;
- (3) Due to changes in applicable laws or regulations;
- (4) Due to concealed site conditions or abnormal inclement weather;
- (5) Due to County-requested changes within the scope of the original contract; or
- (6) Due to the unanticipated increase in demand for supplies, services or resources procured by the contract.

(c) Emergency Change Orders

Where emergency circumstances exist which will not permit delay of a project, the user department director shall notify the Director and the Executive Assistant/Chief Operating Officer before proceeding to authorize work pursuant to an emergency change order. If the emergency change order is one that would otherwise require approval by the Governing Authority pursuant to subsection (c) of this Section, the emergency change order must be ratified by official action of the Governing Authority at a future Board of Commissioners' meeting and the reason for the emergency must be contained in the minutes of the meeting.

(d) Report to Board of Commissioners

The Director shall, pursuant to Sec. 2-928 of this Article, prepare a quarterly report to the Board of Commissioners summarizing each change order approved by the CEO where approval of the Governing Authority was not required. Said report shall note the nature of each change order, the justification for the change order, the value of the change order, and the value of the change order relative to the total cost of the contract. If a change order was due to an emergency and approved without the approval of the Board of Commissioners, the report shall also describe the nature of the emergency justifying the change order.

Commented [GJF9]: QUESTION: Can the Oracle reporting system provide this level of detail? If not, what is an alternative for reporting this information?

(e) Prohibition of Improper Use of Change Orders and Contract Modifications; Penalties

- (1) Using the change order or contract modification procedure to bypass competitive bidding or proposal processes, to authorize work that is independent of and outside the scope of the original contract, or to avoid meeting the terms of the original contract shall be considered an improper use of the change order or contract modification process.
- (2) Failure to adhere to the requirements of this Section, including, specifically, subsection (e) of this Section and paragraph (1) of this subsection, shall subject the Director, purchasing and contracting staff, directors of user departments, and other employees or officials, as applicable, to sanctions or penalties provided for herein in Secc.2-926.

2-918. Contract Renewals and Extensions

(a) Renewals.

Where a contract, other than a multi-year contract authorized by Sec. 2-919 of this Article, provides for renewal of the terms of the agreement for an additional period of time, the applicable user department must certify in writing to the Director that the vendor has performed satisfactorily and met all of the requirements set forth in the original award in order for the renewal to be approved.

(b) Extensions

In the event an extension of the term of a contract is necessary to afford the County a continuous supply of items or services, the applicable user department must justify extensions in writing to the Director. The Director, if in agreement, may seek approval as outlined in subsection (c) of this Section.

(c) Approval

(i) The Chief Executive Officer or his/her designee may approve all renewals and extensions except where noted ~~in subsection (2)~~ herein. The Governing Authority may, by terms of a particular contract, delegate to the Chief Executive Officer or his/her designee the right to approve amendments that serve only to extend the time with no need for additional funding.

(ii) The Governing Authority shall approve all renewals and extensions requiring additional funding if:

- (A) the original contract price exceeded \$100,000.00;
- (B) the proposed extension causes the total contract price to exceed \$100,000.00; or
- (C) the original contract was approved by action of the Governing Authority.

Sec. 2-919. Multiyear Contracts

(a) Authorization; Minimum Requirements

The County may enter into multiyear lease, purchase, or lease-purchase contracts for the acquisition of goods, materials, real and personal property, services, and supplies. Any such contract shall be procured pursuant to, and shall conform in all respects with, the requirements of O.C.G.A. § 36-13-60 and shall terminate absolutely and without further obligation on the part of the County at the close of the calendar or fiscal year in which it was executed and at the close of each succeeding calendar or fiscal year for which it may be renewed.

(a) Approval; Review by County Attorney and Finance Director; Hearing

(1) Initial Year; Approval. Notwithstanding the provisions of Sec. 2-916 of this Article, all multi-year contracts shall be subject to approval by the Governing Authority. However, no such agreement shall be approved except following review of the proposed agreement by the County Attorney and the Director of the Finance Department who shall assess any long-term liabilities associated with the contract. The County Attorney and the Director of the Finance Department shall also ensure that the terms of the contract fully comply with the requirements of O.C.G.A. § 36-13-60 and with O.C.G.A. § 36-30-3 which limits the ability of one board of commissioners to bind a future board of commissioners on certain matters of government. For a multi-year contract involving the acquisition of real property, a public hearing must be held following two weeks' notice published in a newspaper of general circulation within the county.

(2) Subsequent Years; Appropriation; Review; Certification. Renewal for a subsequent year of a multi-year agreement shall be subject to appropriation of county funds to meet the county's obligation under the terms of the contract for the subsequent year and is further subject to review of the agreement by the County Attorney and the Director of the Finance Department to ensure compliance with the requirements of O.C.G.A. § 36-13-60. In addition, the director of the applicable user department shall certify in writing that the contractor has performed satisfactorily and met all the requirements set forth in the original award in order for renewal for a subsequent year to be approved.

Sec. 2-920. Procurement Methods and Process Scope of Work

(a) Review of Scope of Work by Board of Commissioners; Changes in Scope

(1) The Board of Commissioners is authorized to review and either provide input to the Director or approve the scope of work for certain specified contracts involving the expenditure of more than \$100,000 in county funds prior to the solicitation of bids or proposals by the Director. This authorization shall apply only to those contracts that:

- (A) exceed a cost threshold specified in a resolution approved by the Board of Commissioners; or
- (B) address certain matters specified in a resolution approved by the Board.

(2) Any change in scope of work during the procurement process of a contract where the Board has reviewed the scope of work shall be subject to review and approval of the Board of Commissioners.

(3) The Director shall develop procedures for implementing the requirements of this subsection. Such procedures shall, at a minimum, provide for notice to the Board of Commissioners sufficient to ensure that the scope of work for contracts subject to paragraph (1) of this subsection may be reviewed by the Commissioners prior to the solicitation of bids or proposals. In addition, such procedures shall specify a protocol by which the Board of Commissioners may initiate the review process authorized by this Section and shall further include procedures for ensuring participation of the user department director and staff in such review.

Commented [GJF10]: Cooperation between the Director and the BOC will be needed to make this scope of work review process work such as early notice regarding pending procurement from user departments or the Director.

(b) Publishing Scope of Work

The scope of work for contracts being procured by the Director shall be publicly posted on the county website for a minimum 30 business days and made available to interested parties and the public prior to invitations to bid or requests for proposals being announced or awarded. Scope of work for contracts for sole source purchases, and, if practical, contracts for emergency purchases, shall likewise be publicly published prior to the Director deciding to contract with a sole source provider or to make emergency purchases.

Commented [GJF11]: Intent is to deal with potential favoritism where the scope of work is developed with a particular vendor in mind. Publishing the proposed scope may also encourage the market to offer alternatives that might otherwise be overlooked by user department staff.

Question: does publishing scope of work risk jeopardizing the competitive bid process?

Sec. 2-921. Property Accountability

(a) Applicability

The Director shall not provide County personal property to a vendor pursuant to a contract with the County unless it is clearly demonstrated to be in the County's best interest or the overall benefit to the procurement significantly outweighs any increased risk to the property and cost of administration including property disposal at the termination of the contract.

(b) Documentation; Baseline Report

(1) Where the Director decides to provide county-owned equipment to a vendor in connection with performance of a contract between the County and said vendor, the best interest and benefit to the county versus any increased risk or cost shall be documented in writing.

(2) In addition to the documentation required by paragraph (1) herein, the Director shall prepare a baseline report describing the property to be provided to the vendor and describing the condition of the county equipment at the inception of the contract including photographic evidence of the condition of the equipment at such time. The baseline report shall be appended to the contract.

Sec. 2-922. Contract Closeout

(a) The Director shall establish a contract closeout procedure. The purpose of the closeout procedure is to verify that vendors as well as the County have fulfilled their contractual obligations and that there are no responsibilities remaining. A contract is completed when all goods and services have been received and accepted; all construction has been completed; all reports have been delivered and accepted; all administrative actions have been accomplished; all county furnished equipment and material has been returned; and final payment has been made to the contractor.

(b) The user department shall:

(1) Confirm whether that the contractor or vendor has satisfactorily performed all required contractual obligations;

(2) Confirm that all deliverables including reports have been delivered and accepted by the user agency;

(3) Confirm whether all county property has been returned from the contractor or vendor to the county in acceptable condition relative to the condition of the property at the inception of the contract as described in the report required by Sec. 2-924 of this Article (if applicable).

(c) The Purchasing Department shall:

(1) Ensure that all issues, if any, have been resolved;

(2) Determine whether all payments to the contractor or vendor have been made;

(3) Determine whether all administrative actions have been completed;

(4) Ensure that the official contract file contains all necessary documentation;

(5) Complete any closeout contractor performance report before final payment is made and, if applicable, retainage is released.

Sec. 2-923. Cancellation of Contracts

All contracts between the County and a vendor shall contain provisions for potential cancellation by the County for cause or for convenience. Such terms shall include the manner by which cancellation will be effected and the basis for any settlement. Such contract provisions shall provide the right to cancel any contract entered into under this Article upon occurrence of the following:

(1) Breach of contract;

- (2) The contractor fails to furnish a satisfactory surety within the time specified, when surety is required;
- (3) Failure of the contractor to make delivery of goods, equipment, commodities or services within the time specified in the contract;
- (4) In the event any goods, equipment or commodities are rejected for failure to meet specifications, non-conformity with sample or the items are not in good condition when delivered;
- (5) Wherever the contractor vendor is guilty of misrepresentation;
- (6) Wherever the contract was obtained by fraud, collusion, conspiracy or other unlawful means, or the contract conflicts with any statutory and constitutional provision of the State of Georgia or the United States; or
- (7) Wherever the Director or user department **deems that goods or equipment delivered to the County may be returned pursuant to the terms of the contract** or cancellation is otherwise in the best interest of the County.

Cancellations under this Section shall be subject to review and approval of the Governing Authority. Reasons for cancellations, including cancellations when in the best interest of the county, shall be fully documented in writing by the Director.

Sec. 2-924. Purchasing Advisory Committee (PAC)

(a) Creation of PAC; Purpose

A Purchasing Advisory Committee shall be established and comprised of members selected from user departments by the County's Chief Executive Officer, Executive Assistant/Chief Operating Officer, Director of Finance, and the Director. In addition, two members shall be selected by the Board of Commissioners who shall be County employees. The members selected by the Board of Commissioners shall serve for two-year staggered terms and may be reappointed at the end of any term. The Committee shall meet periodically, at least annually during the first quarter of each calendar year, to review purchasing policies and procedures and make recommendations for changes regarding such policies and procedures; resolve problems regarding the purchasing process; place persons on the Ineligible Source List in accordance with subsection (b) of this section; and make recommendations for standardization of goods, equipment and commodities, scheduled buying, qualified products list, annual contracts, vendor performance, and other problems or requirements related to purchasing.

(b) Ineligible Source List

The Director shall make recommendations regarding the placement of a supplier, vendor, contractor or other person on the Ineligible Source List. The PAC shall then consider the inclusion of any such supplier, vendor, contractor or other person the Ineligible Source List in accordance with the reasons, hearing, notice and other requirements of Sec. 2-968 of this Article.

Sec. 2-925. Quarterly Reporting to CEO and Board of Commissioners

The Oracle centralized information system, or a successor or alternative system, shall be configured to provide the following quarterly reports:

Commented [GJF12]: Question: Feasible?

- (1) A summary of all contracts approved during the previous quarter, including informal purchases, sole source purchases, and cooperative purchases authorized for procurement with the project delivery method and competitive process used for each contract indicated.
- (2) Change orders or other contract modifications, including emergency change orders, by the Chief Executive Officer, to be reported in the manner required by Sec. 2-921 (e).
- (3) Emergency purchases, the dollar amount, and a description of the emergency justifying each purchase approved as an emergency.
- (4) Contract renewals, extensions and cancellations.
- (5) Cancellations of invitations to bid and requests for proposals and the reason for each cancellation.
- (6) Purchases made without a purchase order/requisition, and all purchases made with a purchase order that was issued after receipt of the purchased item or service.
- (7) Any procurements where requisitions exceeded or threatened to exceed cost center budgeted amounts noting reasons for the exceedances.
- (8) A list of all persons currently on the Ineligible Source List authorized by Sec. 2-927 and Sec. 2-968 with all persons added or deleted since the previous list specifically notated.

In addition to the above, the CEO or Board of Commissioners may request that the Director prepare other reports relative to County procurement policies, procedures, or related actions of county officials and staff as necessary.

Sec. 2-926. Penalties for Non-Compliance with or Abuse of Purchasing Processes by Officials or Employees

Commented [GJF13]: Question: Move this section to a new Sec. 2-908.1 in the Public Access, Ethics and Conflicts of Interest part of this ordinance?

(a) Prohibition of Improper Use of Procurement Process; Penalties

(1) Cancelling or rejecting a contract or procurement for the purpose of favoring a potential person or entity shall be prohibited.

(2) Cancelling an invitation to bid or a request for proposals for the purpose of favoring or disfavoring a person or entity shall be prohibited.

(3) Procurements may not be artificially divided so as to circumvent the dollar threshold for requiring projects to be competitively bid or in order to circumvent required approval by the Board of Commissioners. Any contract or subcontract violating this subsection shall be considered to be entered into without legal authority and void *ab initio*.

(4) Failure to adhere to the requirements of this Article specifically including paragraphs (1), (2) and (3) of this subsection, may subject the Director, purchasing and contracting staff, directors of user departments, and other County employees or officials, as applicable, to sanctions or penalties provided herein.

(b) Failure by a county employee or official, other than an elected official, to comply with or otherwise abuse the provisions of this Article shall subject such employee or official to appropriate disciplinary action up to and including immediate dismissal in accordance with county merit system regulations. In the event such employee or official, other than an elected official, is not a merit system employee, disciplinary action up to and including immediate dismissal shall be determined and imposed by the Governing Authority. Failure of an elected official to comply with or otherwise abuse the provisions of this Article shall result in a referral to the Board of Ethics established pursuant to Sec. 22A of the DeKalb County Organizational Act for review and further action as appropriate.

PROCURING GOODS, COMMODITIES, EQUIPMENT, CONSTRUCTION AND SERVICES

Sec. 2-927. Methods of Procurement

DeKalb County recognizes the primary methods of procurement as defined herein and subject to the rules, policies and procedures established for the Purchasing Department by the Chief Executive Officer and the Director. The Director shall make the determination as to the appropriate method of procurement and make a recommendation to the Governing Authority, where required. The Director is hereby delegated the authority to administer a process for mandatory pre-qualification of prospective bidders for public works construction contracts pursuant to O.C.G.A. §36-91-20(f). The Director shall adopt policies and procedures to be followed in considering whether a competitive sealed proposal rather than an invitation to bid is

in the best interest of the County. Such procedures shall summarize acceptable reasons for choosing the proposal method.

Sec. 2-927.1 Evaluating Types of Contracts; Cost-plus Contracts Prohibited

Any type of contract which will promote the best interest of the County may be used including incentive fee contracts; provided, however, the use of a cost-plus percentage of cost contract is prohibited. A type of contract other than firm fixed-price may be used only when a determination is made by the Director in writing that such contract is likely to be less costly than the firm fixed-price contract or that it is impractical to obtain the supplies, services or construction required by the firm fixed-price contract and specifying the basis for the determination.

Sec. 2-928. Competitive Sealed Bidding

(a) Applicability

In most cases the competitive sealed bid is the preferred method of procurement in the public sector and should be used whenever possible as it allows qualified, responsive bidders to compete on the basis of price. Generally, the following conditions must be met to utilize competitive sealed bidding:

- (1) Clear and adequate specifications, including any pre-qualifications disseminated to prospective bidders as provided herein.
- (2) Two or more responsible bidders are willing to participate in the process.

(b) Acquisitions Costing in Excess of \$50,000.00 or Generating Revenue in Excess of \$100,000

Except as otherwise provided herein, formal sealed bids must be obtained for any goods, equipment, or commodities expected to cost in excess of \$50,000, or for any service expected to generate revenue in excess \$100,000.00, unless the competitive sealed bid process is either not applicable or is determined by the Director not to be in the best interest of the County as outlined herein in accordance with the procedures required by Sec. 2-927 of this Article. Should the DeKalb County Organizational Act be hereafter amended to increase or decrease this bidding threshold, so shall the amount in this Section be amended.

(c) Dissemination of Invitation to Bid; Advertisement

- (1) Public notice of an invitation to bid shall be published in the official organ of DeKalb

County a minimum of two times with the first advertisement occurring at least four weeks prior to the opening of the sealed bids. The second advertisement shall follow no earlier than two weeks from the first advertisement;

- (2) In addition to any notice or advertisement required by paragraph (1) of this subsection, any bid ~~or proposal~~ opportunity valued at more than \$10,000 shall be advertised in the Georgia Procurement Registry pursuant to O.C.G.A. § 36-80-26 and on the County website continuously for at least four weeks prior to the bid opening.
- (3) The public notice required by this subsection shall include such details and specifications as will enable the public to know the extent and character of the contract opportunity. Notice of any required bonding and insurance shall be included in the public notice.
- (4) All required notices of advertisement shall also advise of any mandatory prequalification requirements, pre-bid conferences, and any applicable federal requirements along with reasonable time for submission of prequalification requirements and notice of said conferences.
- (5) Any other methods of advertisement including other appropriate websites identified as likely to result in additional competition may be used in addition to required advertisements, at the discretion of the Director.
- (6) For the purposes of procuring a public works contract, notice of each contract opportunity shall be posted conspicuously in the office of the Governing Authority in addition to the other requirements of this subsection.
- (7) For the purposes of procuring a road construction contract, the advertisement or notice requirements of this subsection shall conform to the requirements of O.C.G.A. §32-4-65 (b).

(d) Receipt of Bid

No written bid shall be eligible for consideration by the County unless it is placed in a sealed envelope or package and actually received by the Purchasing and Contracting Department by the date and time specified in the Invitation to Bid. All bids shall be stamped or annotated with the date and time of receipt and secured until the designated opening time. Under no circumstances shall a bid delivered late be eligible for consideration by the County.

(e) Bid Opening

Bids shall be opened publicly in the manner and on the date and at the time and place designated in the Invitation to Bid. The Director shall be responsible for coordination of clock calibration with the National Bureau of Standards. The name of each bidder, the purchase price contained in

each bid, and such other information as the Director deems appropriate shall be announced as the bids are opened. A record of bid information shall be recorded and available for public inspection.

(f) Modification of Bid

Any clerical mistake that is patently obvious on the face of a bid, subject to the limitations described below, may be corrected upon written request and verification, submitted by the bidder. A non-material omission in a bid may be corrected if the Director determines the correction to be in the County's best interest. Omissions affecting or relating to price information or required bonding shall be deemed material and shall not be corrected after bid opening.

(g) Withdrawal of Bid

Bids may be withdrawn at any time prior to the bid opening. After bids have been publicly opened, withdrawal of bid shall be allowed as follows:

- (1) The bidder shall give notice in writing of his claim of right to withdraw his bid due to an error within two business days after the conclusion of the bid opening procedure.
- (2) Bids may be withdrawn from consideration if the price was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of the bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.
- (3) The bidder's original work papers shall be the sole acceptable evidence of error and mistake if a request is made to withdraw the bid.
- (4) If a bid is withdrawn under the authority of this provision, the lowest remaining responsive bid shall be deemed to be the low bid, and subject to other evaluative criteria.

(h) Bid Evaluation

Bids shall be evaluated based on the requirements set forth in the invitation to bid. No criteria may be used in bid evaluation that is not specifically set forth in law, applicable County policies or the solicitation.

(i) Bid Cancellation of Invitation to Bid

An invitation to bid may be canceled prior to opening date; or, any or all bids may be rejected in

whole or in part as may be specified in the solicitation where it is in the best interest of the County. The Director shall adopt procedures to be followed in considering whether cancellation of an invitation to bid is in the best interest of the County. Such procedures shall summarize acceptable reasons for bid cancellations. The reasons for any cancellation shall be made part of the bid file. Procedures required by this subsection may be subject to review and approval by the Governing Authority.

(j) Bid Award

(1) Responsive and Responsible Bidders. Subject to the approval by the Governing Authority, as required, bids shall be awarded to the responsible bidders who have submitted the lowest cost responsive bids **or the highest revenue responsive bid, or whose bid represents the best value to the County.**

(2) Rejection or Deferral of Bids. The Director may reject **all** bids or may defer bid awards to allow time for additional evaluation or review of bids or for other business purposes, consistent with the best interest of the County.

(3) Disqualification of Bid. The following types of bids shall be disqualified for consideration for a bid award:

- (A) A bid which is incomplete in any material aspect, element, or fact.
- (B) A bid submitted without required bonds.
- (C) A bid submitted by a Person on the Ineligible Source List.
- (D) A bid submitted by a Person having been determined to be in violation of this Article.

(4) Tie Bids. In the event two or more responsive bids are tied for the lowest price and the other terms and conditions of the two or more bids are substantially the same, the bid shall be awarded to the local firm if only one of the bidders has its principal place of business in DeKalb County. If some or none to the tied bidders are DeKalb County based, then the bid award shall be made to the winner of a coin toss by purchasing staff in a public session. Bidders will be invited to attend and one or more witnesses shall be present.

Sec. 2-929. Competitive Sealed Proposal

(a) Applicability

When use of the competitive sealed bid method is either not practical, not applicable, or not advantageous to the County, as outlined in writing and determined by the Director, a contract **for procurements valued at less than \$50,000 or for public works contracts** may be entered into by use of the competitive sealed proposal method. Use of the proposal method is dependent upon

such factors as:

- (1) Whether quality, availability or capability is overriding in relation to price in procurement of technical supplies or technical or professional services.
- (2) Whether the initial installation needs to be evaluated together with subsequent maintenance and service capabilities and what priorities should be given these requirements in the County's best interest.
- (3) Whether a fixed price or cost type contract is more advantageous.
- (4) Whether the market place will respond better to a solicitation permitting not only a range of alternate proposals, but evaluation and discussion of them before making the award.

(b) Procedures; Competitive Sealed Proposal

The Director shall adopt procedures to be followed in considering whether a competitive sealed proposal rather than an invitation to bid is in the best interest of the County. Such procedures shall summarize acceptable reasons for choosing the proposal method. Procedures required by this subsection may be subject to review and approval by the Governing Authority.

(c) Dissemination of Proposal; Advertisement

- (1) Public notice of a request for proposals shall be published in the official organ of DeKalb County a minimum of two times with the first advertisement occurring at least four weeks prior to the opening of the sealed proposals. The second advertisement shall follow no earlier than two weeks from the first advertisement;
- (2) In addition to any notice or advertisement required by paragraph (1) of this subsection, any proposal opportunity for a contract **valued at more than \$10,000** shall be advertised in the Georgia Procurement Registry pursuant to O.C.G.A. 36-80-26 and on the County website continuously for at least four weeks prior to the proposal opening.
- (3) The public notice required by this subsection shall include such details and specifications as will enable the public to know the extent and character of the contract opportunity. Notice of any required bonding and insurance shall be included in the public notice.
- (4) All required notices of advertisement shall also advise of any mandatory prequalification requirements, pre-bid conferences, and any applicable federal requirements along with reasonable time for submission of prequalification requirements and notice of said conferences.
- (5) Any other methods of advertisement including other appropriate websites identified as

likely to result in additional competition may be used in addition to required advertisements, at the discretion of the Director.

(d) Receipt of Proposal

No written proposal shall be eligible for consideration by the County unless it is placed in a sealed envelope or package and actually received by the Purchasing and Contracting Department by the date and time specified in the request. All proposals shall be stamped or annotated with the date and time of receipt and secured until the designated opening time. A proposal delivered late shall under no circumstances be eligible for consideration by the County.

(e) Proposal Opening

Proposals shall be opened by the designated agent for the Purchasing & Contracting Department publicly and at the time and place designated in the request for proposals so as to avoid disclosure of contents to competing offerors during the process of negotiation.

(f) ~~Proposal~~ Cancellation of Request for Proposals

A request for proposals may be canceled prior to opening date or any or all proposals may be rejected in whole or in part as may be specified in the solicitation, where it is in the best interest of the County. The Director shall adopt procedures to be followed in considering whether cancellation of a particular request for proposals is in the best interest of the County. Such procedures shall summarize acceptable reasons for request for proposal cancellations. The reasons for any cancellation shall be made part of the proposal file. Procedures required by this subsection may be subject to review and approval by the Governing Authority.

(g) Proprietary Information

Information submitted by a proposer that is specifically marked “proprietary” shall not be disclosed by the County to other persons without prior email notification to the Proposer at the email address given by the proposer for such notification. The County will comply with any applicable law regarding disclosure, including the Georgia Open Records Act, O.C.G.A. §50-18-70, *et seq* and advises proposers that entire proposals may not be deemed “proprietary.”

(h) Evaluation of Proposal

- (1) *Initial Evaluation.* Each proposal shall be evaluated to determine whether it is responsive to the specifications and other terms and conditions contained in the Request for Proposals. With the approval of the Purchasing and Contracting Department employee named in the solicitation, the evaluating team may communicate with each proposer to clarify each proposer’s proposal. No information concerning any other proposer’s proposal

shall be communicated in any way to the proposer.

(2) *Addendums; Exceptions; Request for Supplemental Information.* As set forth in the request for proposals, proposers may be afforded an opportunity to ask questions, request clarification, or proposed exceptions to the request for proposal. Addendums and exceptions may only be addressed prior to award. In accordance with the request for proposals, all responsible proposers shall be notified of and given an opportunity to participate to respond to addendums or exceptions deemed acceptable by the Director or their designee. During the process of discussing and submitting addendums or exceptions, the Director shall not disclose the contents of proposals to competing proposers.

(3) *Best and Final Offer (BAFO).* The Director reserves the right to request a best and final offer from all participating responders.

(i) Award of Proposal

(1) *Responsive and Responsible Proposal.*

(A) Award shall be made to the responsive and responsible proposer whose proposal is determined to be the most advantageous to the County based upon the evaluation factors set forth in the request for proposal.

(B) In the event scores rounded to the nearest whole number result in a tie score, two additional points will be added to the graded average score of any local firm. In the event there are two or more local firms whose scores rounded to the nearest whole number result in a tie score, the award will be based on lowest cost.

(C) All proposal and scoring documents shall be made part of the procurement file and maintained by the Purchasing Department.

(2) *Approval of Proposal.* The Governing Authority shall approve all awards where cost or revenue is in excess of \$100,000.00.

(3) *Rejection or Deferral of Proposal.* The Director may reject **all proposals** or may defer **an** awards for **any** proposals when **they he or she** deems such action to be in the best interest of the County.

(4) *Disqualification of Proposal.* The following include, but do not limit, the types of proposals shall be disqualified for consideration for award:

(A) A proposal submitted without required bonds.

(B) A proposal submitted by a person on the Ineligible Source List.

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(C) A proposal which is incomplete in any material fact.

(D) A proposal submitted by a person having been determined to be in violation of this Article.

Sec. 2-930. Informal Purchase

(a) Applicability

Procurements, purchase orders or contracts that involve amounts \$50,000.00 or less do not require a formal sealed bid or proposal process. The Director and CEO shall establish the methods and procedures to be used in handling informal purchases \$50,000.00 or less. Should the DeKalb County Organizational Act be hereafter amended to change the threshold for requiring formal sealed bids, so shall the amount in this Section be amended. **Such procedures shall be in writing and posted on the County website.**

(b) Procedures

Procurement within this category shall be made in accordance with the informal purchase procedures established by the Director, subject to any rules promulgated by the Chief Executive Officer. These procedures will cover purchases delegated to user departments as well as those handled through the central procurement process. Such operational procedures shall provide for obtaining adequate and reasonable competition for the supply, service or construction being purchased. Unless otherwise specifically provided in the methods and procedures established by the Director, such purchases will be obtained competitively through telephone quotations or informal written solicitations. In most instances, this may be accomplished through a Purchase Order and does not require a formal, written agreement; however, the Director may, in his or her discretion, require that certain purchases be accomplished through formal, written agreement **or that a competitive process may be employed where appropriate.**

(c) Records

The operational procedures required by this Section shall require the preparation and maintenance of written records to adequately document the competition obtained and properly account for the funds expended and facilitate audit/review of the transaction.

(d) Types of Informal Purchases

Informal purchases are classified by two categories:

- (1) Those that may be made directly by the user department.

(2) Those that are required to be made through the central procurement process.

(e) Informal Purchase by User Departments

Each user department is granted the authority, at the discretion of the Department Director, to handle purchases where the cost is less than \$25,000.00. Three telephone quotations are required for purchases where cost is \$5,000.00 or greater but less than \$25,000.00. Each User Department shall keep written documentation of applicable phone quotations and receipts for each purchase in separate files for auditing purposes.

(f) Informal Purchases by Purchasing Staff

Purchasing staff may obtain goods, equipment, commodities and services competitively through written quotations where cost is over \$25,000.00. A minimum of three (3) written quotations is required unless adequate source supply is not available.

(g) Prohibition of Improper Use of Competitive Sealed Proposals; Penalties

Purchases may not be artificially divided in order to circumvent the requirements herein. The informal purchase process shall not be used for frequently recurring acquisitions that warrant volume purchases or periodic term contracts.

(h) Purchase Cards

Informal purchases by county employees or officials by way of county-issued purchase cards, debit cards or credit cards shall be subject to a separate purchase card (“P-Card” policy or ordinance enacted by the Governing Authority.

Sec. 2-931. Sole Source Purchase

(a) Applicability

A sole source procurement may be used when only one supplier is available or able to fill requirements for the intended use. Sole source may be used for compatibility with equipment for repair purposes, or for compatibility with existing systems. Standardization may require a sole source procurement, depending upon the intended use. Standardization, which is either established as a result of past procurement(s) or by approval of the Purchasing Advisory Committee, can be a satisfactory justification for a sole source.

(b) Public Advertisement

All intended sole source procurements shall be advertised on the County website for a minimum of five business days. The advertisement shall include a brief description of supplies or services,

the identity of the intended sole source supplier, and instructions on how vendors can submit offers to perform the procurement.

(c) Approval by Director

All sole source purchases in any amount must be submitted by the user department and authorized by the Director. Prior to authorization, written justification, including project cost estimates and specifications, must be prepared and signed by the user department director and submitted to Purchasing and Contracting for evaluation. Based upon evidence that a particular commodity or service may be obtained from only one source and no similar commodity or service available from a different source will adequately meet an acquiring office's requirements and specifications, the Director may decide that the commodity or service be purchased sole source or, if authorized, by reference to a brand name based upon supporting documentation from the requesting user department.

(d) Approval by Governing Authority

All sole source purchases where the initial or collective cost over a twelve (12) month period is in excess of \$100,000.00 shall be approved by official action of the Governing Authority.

Sec. 2-932. Emergency Purchases

(a) Applicability

The Director shall have the authority to purchase goods, equipment, commodities and services when there exists an emergency constituting an imminent threat to public health or safety or a material loss of essential government services.

(b) Approval by the Director.

All emergency purchases, except as authorized by this Section, must be authorized by the Director. The Director is authorized to determine if a competitive process is required in any given emergency. Prior to authorization, written justification, including project cost estimates and specifications, must be prepared and signed by the user department director and submitted to Purchasing and Contracting for evaluation. Competitive processes should be followed to the extent possible in an emergency as long as the ability to respond to the emergency is not seriously impaired. However, where a competitive process is not used, the Director shall, prior to any emergency purchase, canvass such number of suppliers as the emergency circumstances will permit and make the purchase at the lowest obtainable price or delegate such canvassing to the director of the appropriate user department.

(c) Documentation of Emergencies Required

Emergencies shall be documented by the user department and submitted to the Purchasing and

Contracting Department. Documentation shall specify in detail the nature of the emergency including the imminent threat to public health or safety or the material loss of an essential government service that would be at risk if the contract in question would be procured through a non-emergency contracting method rather than as an emergency purchase under this Section.

(d) Emergency Purchases by User Department

When emergency circumstances do not permit involvement of the Purchasing and Contracting Department in the procurement of necessary goods, equipment, commodities and services, the director of the user department is authorized to purchase necessary goods, equipment or commodities or acquire services to make necessary repairs. The reason for the emergency purchase or acquisition must be documented by the director of the user department and provided to the Director for approval as soon as practicable after the purchase or acquisition is made.

(e) Emergency Costs Exceeding Amounts Authorized to User Department

For emergencies where cost exceeds the amount authorized to a user department, written documentation shall be prepared and submitted to the Purchasing and Contracting Department explaining the nature of the emergency prior to authorization of the purchase by the Director.

(f) Ratification by Governing Authority

Emergency purchases where cost is in excess of \$100,000.00 and emergency purchases where cost exceeds the amount authorized to a user department require ratification by official action of the Governing Authority at a future meeting of the Board of Commissioners. The reason for the emergency purchase, including the documentation supporting the emergency nature of the purchase or, where applicable, justifying emergency costs exceeding amounts authorized, shall be contained in the minutes of the meeting.

(g) Public Advertisement

All intended emergency procurements shall, to the extent feasible, be advertised on the County website for a minimum of five business days. The advertisement shall include a description of supplies or services, the identity of the intended emergency supplier, and instructions on how vendors can submit offers to perform the procurement.

(h) Prohibition of Improper Use of Emergency Purchasing Process; Penalties

The use of an emergency purchase under this Section shall be considered an improper use of the emergency purchasing process if the approval is being sought due to delay, poor planning or management of the procurement process by the User Department or Purchasing Department.

Sec. 2-933. Cooperative Purchase

(a) Applicability

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The County may participate in a cooperative purchase for the acquisition of goods, equipment, commodities and services through an authorized contract of any other governmental entity or agency whether federal, state or local, provided a competitive procurement process has been followed and the cooperative purchase is determined by the Director to be in the best interest of the County.

(b) Procedure

The sponsoring entity, whether federal, state or local must have performed a competitive procurement process and entered into a contract that stipulates allowance for other governmental entities to purchase from the supplier at the same price and under the same terms and conditions as extended to itself. If such arrangement has not been made a part of the contract, written permission from the sponsoring entity and the awarded supplier must be obtained. Documentation to substantiate this decision shall be maintained by the Purchasing and Contracting Department.

(c) Governing Authority Approval

Cooperative purchases, when the value of the procurement exceeds \$100,000, are subject to approval of the Governing Authority.

Sec. 2-934. State of Georgia and Federal Contracts; Piggybacking

Purchases may be made without formal sealed solicitations under an existing contract with the State of Georgia or Federal government and provided that such purchase is determined by the Director to be in the best interest of the County. The purchase must be made pursuant to the price, terms, and conditions of said contract and the County must receive all the benefits of such contract.

Sec. 2-935. Lease-Purchase Procurements

(a) Cost-Benefit Analysis; Procedures

The Director shall adopt procedures for the User Department to evaluate the costs and benefits of leasing versus purchasing equipment. Such procedures shall provide for a case-by-case evaluation of the comparative costs and benefits of a lease compared to a purchase contract whereby the Director, in consultation with the director of the User Department and the Director of Finance, should conduct a cost/benefit analysis to determine the appropriate contracting method taking into consideration all of the elements involved in the life cycle of the equipment, including asset management and disposal issues.

(b) Criteria

When making a decision to lease, purchase, or lease to purchase, the procedures required by subsection (a) of this Section should require consideration of comparative costs and other factors that, at a minimum, include:

- (1) Estimated time period the equipment is to be used and the frequency of use within that period;
- (2) Financial and operating advantages of alternative types and makes of equipment;
- (3) Estimated cumulative rental payments for the estimated period of use;
- (4) Estimated net purchase price;
- (5) Delivery and installation costs;
- (6) Maintenance and other service costs;
- (7) Availability of funds and cost of capital;
- (8) Potential obsolescence of the equipment because of technological improvements.

Sec. 2-936. Temporary Services Contracts

The Director shall adopt procedures governing the procurement of temporary services in compliance with all other sections herein. Such procedures shall include conditions, limitations and circumstances supporting the need for procuring temporary services and shall specify contract provisions to ensure that an employer-employee relationship is not created by any contract for temporary services. Temporary contracts for a period greater than six months or valued at more than \$50,000 shall be subject to review and approval by the Chief Executive Officer or the Chief Operation Officer.

Sec. 2-937. Punch-Out List Purchases

The User Department shall create a punch-out list at the time of purchase of goods, equipment and commodities by user departments using only approved contracts or purchases. Any such list shall be subject to review and approval by the Purchasing Director.

Sec. 2-938. Responding to Invitations to Bid and Requests for Proposal by Persons Drafting an Invitation to Bid or Request for Proposal Prohibited

A consultant, vendor or any other person, including any employee of such consultant or vendor, who has developed, drafted or assisted the Director or any other employee or official of the County in developing or drafting specifications, scope of work, or other requirements related to an invitation to bid or request for proposals is prohibited from submitting a bid or proposal or otherwise performing any work on a contract or subcontract resulting from such solicitation documents.

Sec. 2-939. Supplier's Compliance History

A supplier's contract compliance history with DeKalb County and other contractual parties is a valid element in the decision to award a solicitation.

Sec. 2-940. Consideration of Strategic Economic Development Objectives

DeKalb County stipulates that the furtherance of its strategic goals for job creation, stability and growth in the tax base, business retention, and other fiscal and economic development objectives may be considered during the procurement process. The Director is authorized to establish procurement initiatives consistent with the County's strategic economic development objectives. These procurement practices shall be applied consistently and equitably, and shall have a direct relationship to the County's goals.

Sec. 2-941. Alignment of Performance and Contract Periods

In order to diminish the necessity for contract modifications, the Director shall adopt procedures to ensure that, for any procurement, the use department ensures that the contract time period shall be aligned with the performance period to the extent possible.

Sec. 2-942. Mandatory Pre-qualification Process; Qualification Based Selection

(a) Applicability

The Director, in consultation with user departments, is authorized to determine whether it is in the best interest of the county to establish a mandatory prequalification process for bidders and offerors regarding procurement of particular types of goods, equipment, commodities and services, and for the procurement of public works and road construction projects. When prequalification is mandatory, only those bidders and offerors who submit the required

prequalification information to the Director and who in fact become prequalified under the mandatory procedure for a particular procurement shall be allowed to submit bids or proposals.

(b) Criteria and Notice for Pre-Qualification; Response

- (1) Criteria for pre-qualification shall be reasonably related to the project or the quality of the work.
- (2) Criteria for pre-qualification shall be available to any prospective bidder requesting such information.
- (3) There shall be a method of notifying prospective bidders or offerors of the criteria for pre-qualification.
- (4) If the bidder or offeror is found to meet all of the prequalification criteria for the procurement, the Director shall prequalify the bidder or offeror as qualified to submit a bid or proposal and notify the bidder or offeror in writing of such prequalification.
- (5) If a bidder or offeror is found not to meet the prequalification standards established by the Director, a written notice of same shall be prepared by the Director and delivered to the bidder or offeror.
- (6) There shall be a procedure for a disqualified bidder or offeror to respond to his or her disqualification to the Director; however, such procedure shall not include a formal appeal or bid protest.

(c) Qualification Based Selection (QBS)

- (1) Where the Director establishes mandatory pre-qualification of prospective bidders or offerors for proposed contracts for professional services including professional services related to public works construction contracts pursuant to O.C.G.A. §36-91-20 (f) or for road construction projects pursuant to Article 3 of Chapter 4 of Title 32 of the Official Code of Georgia Annotated, the Director may, as part of a pre-qualification process authorized by this subsection, further establish a qualifications based selection (QBS) phase in addition to a technical proposal phase.
- (2) If a QBS procedure is established by the Director for a procurement, the county's invitation to bid or its request for proposals must:
 - (A) specify that the qualification-based selection procedure will be a factor in the procurement process; and
 - (B) specify the criteria to be used by the Director in selecting qualified bidders or offerors.

(d) Non-Compliant Bids or Proposals

No bid or proposal shall be eligible for consideration by the County from a prospective bidder or offeror who has not been pre-qualified on the procurement in question where the invitation to bid or the request for proposal specified that pre-qualification would be mandatory, and any non-compliant bid or proposal received shall be returned to the prospective bidder unopened.

PROCURING PROFESSIONAL SERVICES

Sec. 2-943. Procuring Professional Services, Generally

(a) Process

The selection process for professional services shall follow the same process as that for competitive sealed proposals as defined by this Article. The director of the user department utilizing professional services procured under this Section shall be responsible for monitoring the work of the provider of professional services to confirm compliance by the provider with the terms, conditions, and specifications of the contract.

(b) Deliverables

(1) Work Products. Any contract for the procurement of professional services pursuant to this Article shall require that one or more tangible work products be produced by the person with whom the County is contracting for professional services. Such work products shall be commensurate to the amount of money paid by the County for services procured as specified in such contract.

(2) Public Access. All work products or deliverables produced pursuant to a contract for professional services with the County shall be made available for review by the Board of Commissioners upon request and shall be posted on the county website except to the extent any such work product or deliverable includes information which is required to be kept confidential under state or federal law.

(c) Performance Evaluation

Upon completion of services, the User Department will conduct an evaluation of the service provider's performance, to be used in future evaluation and ranking regarding future services. The evaluation report will include, but not be limited to, evaluation of timely completion of work, adherence to contract scope and budget, and quality of the work. The User Department shall provide the Director and the consultant a copy of the report. The service provider shall be provided an opportunity to respond to the Director and the director of the user department

regarding the evaluation.

(d) Project Delivery Methods

(1) *Construction*. The following construction project delivery methods are authorized for construction of public works projects:

- (A) Design-bid-build (traditional bid method);
- (B) Construction management at risk;
- (C) Design-build;
- (D) Design-build-operate; and
- (E) Fast track construction.

(2) *Professional project construction services*. The following project delivery methods are authorized for procurements relating to architect-engineer design, land surveying, operations and maintenance, and other professional services:

- (A) Program/project management;
- (B) Construction management;
- (C) Construction management at risk;
- (D) Operations and maintenance;
- (E) Design-build; and
- (F) Design-build-operate.

(3) *Selection*. The Director is authorized to approve any project delivery method described in this subsection or otherwise authorized pursuant to OCGA 36-91-20 *et seq.* In determining which project delivery method to use for the selection of construction services, professional services and construction management, the Director shall consider the county's requirements, its resources, and potential contractors' capabilities. The project delivery method chosen for a public works project shall be that which is most advantageous to the county and which will result in the most timely, economical and successful completion of the construction project.

Sec. 2-944. User Department Responsibility

In all procurements by the County, the user departments shall have primary responsibility for establishing the scope of work, proposal requirements, and evaluation of the proposals, and evaluation of performance, while the Department will ensure that the process is handled in accordance with this Article. Any agent or firm employed to assist in any procurement project shall be required to adhere to the requirements of this Article.

PROCURING PUBLIC WORKS CONSTRUCTION

Sec. 2-945. General Applicability

Public works construction contracts, as defined in Sec. 2-902 (52) of this Article, shall be governed by and procured in all respects pursuant to O.C.G.A. § 36-91-1 *et seq.*, as amended and attached hereto as Addendum ____, and by all other applicable laws and ordinances including Section 18 of the Organizational Act and this Article.

Sec. 2-945.1 Competitive Processes

Except as provided in Sec. 2-947 of this Article, public works construction contracts shall be procured by competitive bid or proposal processes pursuant to Secs. 2-927 through 2-929 of this Article.

Sec. 2-946. Public Notice; Specifications; Mandatory Requirements

Public notice of an invitation to bid or request for proposals shall be published in the official organ of DeKalb County in accordance with Sec. 2-928 (c) or 2-929 (c) of this Article, and pursuant to O.C.G.A. §§ 36-91-20 and 36-80-26, as amended.

Sec. 2-947. Exceptions

The requirements for public works contracts herein shall not apply to public works construction projects:

(1) that involve federal assistance or funds which require the County to comply with federal requirements that differ from the requirements of this Article;

(2) in which materials are purchased by the county for a public works project where the labor used or to be used in a project is furnished at no expense by the state or federal government, in which case the notice and other requirements of OCGA 36-91-22 (d) shall

apply.

(3) that are necessitated by an emergency, in which case any emergency public works construction shall be procured in a manner substantially consistent with Sec. 2-921 of this Article.

(4) that are self-performed by the County;

(5) where there is a sole source for the performance of the contract, in which case any sole source public works construction shall be procured in a manner substantially consistent with Sec. 2-934 of this Article;

(6) road construction projects subject to the requirements of Chapter 4 of Title 32; and

(7) that are otherwise excepted by O.C.G.A. § 36-91-20 et seq., as amended.

Sec. 2-947.1 Addenda Modifying Plans; Opening of Bids or Proposals Extended

The Director shall not issue or cause to be issued any addenda modifying plans and specifications within a period of 72 hours prior to the advertised time for the opening bids or proposals, excluding Saturdays, Sundays, and legal holidays. However, if the necessity arises to issue an addendum modifying plans and specifications within the 72-hour period prior to the advertised time for the opening of bids or proposals, excluding Saturdays, Sundays, and legal holidays, then the opening of bids or proposals shall be extended at least 72 hours, excluding Saturdays, Sundays, and legal holidays, from the date of the original bid or proposal opening without need to re-advertise.

Commented [GJF16]: Reinserted this section. Intent is to limit possible abuse where the addendum is intended to favor one vendor over another especially in a limited time situation.

Sec. 2-947.2. No Disqualification of Otherwise Qualified Bidder or Offeror Due to Lack of Experience with Size of Project or Construction Delivery Method

Pursuant to O.C.G.A. § 36-91-23, in awarding a public works contract based upon sealed competitive bids or sealed competitive proposals, no responsible bidder shall be disqualified from a bid or proposal or denied prequalification based upon:

Commented [GJF17]: Reinserted this state law requirement for clarity

(1) a lack of previous experience with a job of the size for which the bid or proposal is being sought if:

(A) the bid or proposal is not more than 30 percent greater in scope or cost

from the responsible bidder's previous experience in jobs;

(B) the responsible bidder has experience in performing the work for which bids or proposals are sought; and

(C) the responsible bidder is capable of being bonded by a surety which meets the qualifications of the bid documents for a bid bond, a performance bond, and a payment bond as required for the scope of the work for which the bid or proposal is being sought; or

(2) a lack of experience with the construction or project delivery method to be used for the job for which the bid or proposal is being sought.

Sec. 2-947.3. Certain Labor Practices Prohibited

No contracts for public works construction shall require or prohibit bidders, offerors, contractors, subcontractors, or material suppliers to engage in certain labor practices described in O.C.G.A. § 36-91-21 (f).

Commented [GJF18]: Reinserted this state law requirement for clarity

Sec. 2-948. Failure to Comply; Contract Void; Payment for Work Forfeited

(a) No public works contract shall be valid if the county lets out the contract without complying with the requirements of Chapter 91 of Title 36 of the Official Code of Georgia Annotated.

(b) Any contractor who performs any work under a public works contract knowing that the contract was let without complying with the notice and competitive award requirements of this Article shall not be entitled to receive any payment for such work, pursuant to O.C.G.A. § 36-91-21, as amended.

Sec. 2-949. Personal Benefits to Official or Employee Prohibited; Misdemeanor

Pursuant to O.C.G.A. § 36-91-21(g), if any official or employee of the county lets out any public works construction contract subject to the requirements of this Article and receives, takes, or contracts to receive or take, either directly or indirectly, any part of the pay or profit arising out of any such contract, he or she shall be guilty of a misdemeanor.

Sec. 2-950. Bonding and Security Requirements Mandatory

No public works construction contract shall be valid for any purpose unless the contractor

complies with all bonding and security requirements contained in Chapter 91 of Title 36 of the Official Code of Georgia Annotated and as specified in Sec. 2-955 of this Article.

Sec. 2-951. Collusive or Anti-Competitive Practices Prohibited; Oath Required

(a) Anti-competition Practices Prohibited

No person shall prevent or attempt to prevent competition in bidding or proposals for contracts by any means whatever. No bidder or offeror who desires to procure work for himself or herself or for another shall prevent or endeavor to prevent anyone from making a bid or proposal therefor by any means whatever, nor shall such person so desiring the work cause or induce another to withdraw a bid or proposal for the work.

(b) Oath in Writing Required; Procedure; Contract Void; Sums Recoverable

Before commencing work on a contract with the County, any person who procures such contract shall make an oath in writing that he or she has not directly or indirectly violated subsection (a) of this Section. The oath shall be filed by the officer of the contractor whose duty it is to make the payment. If the contractor is a partnership, all of the partners and any officer, agent, or other person who may have represented or acted for them in bidding for or procuring the contract shall also make the oath. If the contractor is a corporation, all officers, agents, or other persons who may have acted for or represented the corporation in bidding for or procuring the contract shall make the oath. If the oath given is false, the contract shall be void, and all sums paid by the County on the contract may be recovered by appropriate action.

PROCURING ROAD CONSTRUCTION

Sec. 2-952. Applicability

Road construction contracts, as defined in Sec. 2-902 (62) of this Article, shall be governed by and procured in all respects pursuant to O.C.G.A. § 32-4-60 *et seq.*, as amended and attached hereto as Addendum _____, and by all other applicable laws and ordinances including Section 18 of the Organizational Act and this Article.

Sec. 2-952.1. Competitive Process

(b) Except as provided in Sec. 2-953 of this Article, road construction contracts shall be competitively bid pursuant to Secs. 2-927 and 2-928 of this Article.

Sec. 2-952.2 Public Notice; Specifications; Mandatory Requirements

Public notice of an invitation to bid shall be published in accordance with Sec. 2-928 (c) of this Article, and pursuant to O.C.G.A. §§ 32-4-65, as amended.

Sec. 2-953. Road Construction Contracts, Exceptions

The requirements for road construction contracts herein shall not apply to road construction projects:

- (1) with a state agency or county or municipality with which a county is authorized to contract in accordance with the provisions of Code Sections 32-4-61 and 32-4-62;
- (2) for the purchase of materials, supplies, and equipment necessary for the County's construction and maintenance of its public roads and for the support and maintenance of the county's forces used in such work, as authorized by Chapter 91 of Title 36;
- (3) with a railroad or railway company or a publicly or privately-owned utility concerning relocation of its line, tracks, or facilities where the same are not then located in a public road and such relocation or grade-crossing elimination is necessary as an incident to the construction of a new public road or to the reconstruction or maintenance of an existing public road;
- (4) for engineering or other kinds of professional or specialized services;
- (5) for emergency maintenance requiring immediate repairs to a public road, including but not limited to bridge repairs, snow and ice removal, and repairs due to flood conditions, in which case any emergency road maintenance contract shall be procured in a manner substantially consistent with Sec. 2-935 of this Article;
- (6) as otherwise expressly authorized by law; and
- (7) that are otherwise excepted by O.C.G.A. § 32-4-63 (a), as amended.

Sec. 2-953.1. Bonding and Security Requirements Mandatory

No road construction contract shall be valid for any purpose unless the contractor complies with all bonding and security requirements contained in Chapter 4 of Title 32 of the Official Code of Georgia Annotated and as specified in Sec. 2-955 of this Article.

Sec. 2-953.2. Multiple Estimates Mandatory

Pursuant to O.C.G.A. § 32-4-63 (b), no road construction contract involving an expenditure of more than \$20,000 but less than \$200,000 shall be awarded without the submission of at least two estimates.

GENERAL CONTRACTING REQUIREMENTS

Sec. 2-954. Effect on Contract Where Procurement Violates this Article

Commented [GJF19]: QUESTION: Move this Section to a new Sec. 2-908.2 in Public Access, Ethics and Conflicts of Interest part?

(a) Applicability

The provisions of this Section apply whenever it is determined by the Director or the Governing Authority, in consultation with the county attorney, that a contract for purchase, expenditure, or agreement for expenditures arises from a procurement that does not comply with the requirements of this Article, violates Secs. 22 or 22A of the DeKalb County Organizational Act, or is in violation of state law. ~~If the determination of a violation occurs prior to the award of a contract, the proposed award may be: (1) canceled; or (2) resubmitted for procurement in compliance with this Article.~~

(b) Violation Occurring Prior to the Award of Contract

If the determination of a violation occurs prior to the award of a contract, the contract award may, at the discretion of the Board of Commissioners, be cancelled or resubmitted for procurement in compliance with this Article.

(c) Violation Occurring After Award of Contract

If the determination of a violation occurs after the award of a contract, the contract award shall be deemed automatically rescinded and the awarded party shall be notified in writing of the rescission and the reason therefore.

(d) Disclaimer; Lack of Authority

The Governing Authority may disclaim responsibility and liability for any purchase, expenditure, or agreement for expenditures arising from procurements made in its name or in the name of any agency under its authority by an unauthorized person, or any person acting in conflict with the requirements of this Article, local ordinances, or state law. Any expense of such disclaimed transaction may become the personal liability of the individual who acted improperly.

Sec. 2-955. Bonding and Security Requirements

(a) Applicability.

The bonding and security requirements of this Section shall apply to:

- (1) All public works construction contracts awarded where the cost is in excess of \$50,000.00.
- (2) All road construction contracts awarded where the cost is in excess of \$5,000.00.
- (3) Contracts for the delivery of goods, equipment, commodities or services when the Director determines that requiring bonds or other security for such contracts is in the best interest of the County.

Commented [GJF20]: State law threshold is \$100,000 for public works contracts, but Org Act requires projects of \$50,000 or more to be bid, so \$50,000 used here.

The bonds or security required by this Section shall be delivered to the County and shall become binding on the parties upon execution.

(b) Bid Bond

(1) *Bid Bond for Public Works Contracts.* Pursuant to O.C.G.A. § 36-91-50, *et seq.*, bid security shall be required for all competitive sealed bids and proposals for public works contracts subject to this Section. Bid security shall be a bond provided by a surety company or sureties approved by the County. Such bid bond shall secure the faithful acceptance by the bidder or proposer of a bid or proposal award and shall be issued for the protection of the County.

(2) *Type.* A bid bond shall be in an amount as specified in the bid or proposal but in no case shall it be less than 5% of the contract price. Bonds shall be of a forfeiture type. All sureties shall be licensed to do business in the State of Georgia, have a current certificate of authority to transact surety business by the Georgia Insurance Commissioner, have the ratings established by the Finance Department, and be listed in the Department of Treasury's publication of companies holding certificates of authority as acceptable reinsuring companies.

(3) *Release.* Release of bid security to the successful bidder or proposer shall be conditioned upon the bidder's execution of a contract within thirty (30) days following the County's award. Bid security shall also be returned to unsuccessful bidders or proposer upon determination of the successful bidder or proposer by the County.

(4) *Rejection of Bids or Offers for Noncompliance.* When the invitation for bids or request for proposal requires bid security, the bid or offer shall be rejected if the Director determines that it fails to comply with the security requirements.

(5) *Withdrawal of Bids.* After the bids or offers are opened, they shall be irrevocable for the period specified in the invitation for bids or request for proposals. If a bidder or proposer is

permitted to withdraw a bid before award, no action shall be had against the bidder or proposer.

(c) Proposal Guaranty

(1) *Proposal Guaranty Required for Road Contracts.* No bid for a road construction contract, other than one solely for engineering or other professional services, shall be accepted by the County unless it is accompanied by a proposal guaranty in the form of a certified check or other security acceptable to the County pursuant to O.C.G.A. § 32-4-67.

(2) *Amount.* The proposal guaranty shall be in an amount the Director deems sufficient to ensure that a successful bidder will execute the contract on which he or she bid.

(3) *Liquidated Damages.* Failure of a successful bidder to sign the contract or furnish the bonds required by this section shall result in the proposal guaranty becoming the property of the County as liquidated damages.

(d) Performance Bond

A performance bond shall be required for all competitive sealed bids and proposals for contracts subject to this Section pursuant to O.C.G.A. § 36-91-70. Such performance bond shall be issued with good and sufficient surety or sureties approved by the County, in favor of the County and in at least the amount of the total purchase price or as specified in the solicitation and payable under the bid or proposal and shall be increased as the contract amount increases. Such performance bond shall be conditioned upon the bidder's faithful performance of the terms of the bid or proposal and the contract executed in connection therewith. All sureties must be licensed to do business in the State of Georgia, have a current certificate of authority to transact surety business by the Georgia Insurance Commissioner have the ratings established by the Finance Department, and be listed in the Department of Treasury's publication of companies holding certificates of authority as acceptable surety on federal bonds and as acceptable reinsuring companies.

(e) Payment Bond

A payment bond shall be required for all competitive sealed bids and proposals for contracts subject to this Section. Such payment bond shall be issued with good and sufficient surety or sureties approved by the County, in favor of the County and in at least the amount of the total purchase price or as specified in the solicitation and payable under the bid or proposal and shall be increased if requested by the County as the contract amount is increased. Such payment bond shall be for the protection of all subcontractors and all persons supplying labor, materials, machinery and equipment in the prosecution of the work provided in the contract. All sureties must be licensed to do business in the State of Georgia, have a current certificate of authority to transact surety business by the Georgia Insurance Commissioner, have the ratings established by the Finance Department, and be listed in the Department of Treasury's publication of companies holding certificates of authority as acceptable surety on federal bonds and as acceptable reinsuring companies. In lieu of a payment bond, the Director may accept, in his discretion, a cashier's

check, certified check, or cash in an amount not less than the total amount payable by the terms of the contract.

(f) Bridge Repair Bond

Where a road construction contract relates to the construction or reconstruction of all or a part of a bridge, as that term is defined in Sec. 2-902 (8) of this Article, the Director may, pursuant to O.C.G.A. § 32-4-70, require a successful bidder to add to the conditions of the performance bond required by subsection (b) of this Section additional surety to keep the bridge in good condition for a period of not less than seven years.

(g) Reduction or Waiver of Performance and Payment Bonds

The Director in consultation with the chief financial officer is authorized to reduce or waive performance and payment bonds for contracts for \$100,000.00 or less, when a written determination is made that it is in the best interests of the county to do so including an explanation of the basis for the waiver.

(h) Strengthening of Bond; Remedy; Termination of Contract

The Director may require the contractor to strengthen any or all of the bonds or to furnish a new or additional bond or bonds whenever, in the judgment of the Director:

- (1) a surety on a bid, performance, or payment bond has become insolvent;
- (2) a corporate surety is no longer certified or approved by the Commissioner of Insurance to do business in the state; or
- (3) there are no longer proper or sufficient sureties on any or all of the bonds.

In the event one or more of the circumstances in paragraphs (1), (2) or (3) herein, the Director may require the contractor to strengthen any or all of the bonds or to furnish a new or additional bond or bonds within ten days. If so ordered by the Director, all work on the contract shall cease unless such new or additional bond or bonds are furnished. If such bond or bonds are not furnished within such time, the Director may terminate the contract and complete the same as the agent of and at the expense of the contractor and his or her sureties.

(i) Insurance Requirements

The Director in coordination with the Risk Management Director shall adopt procedures to determine what types and amounts of insurance coverage are reasonably necessary for the protection of the County's interests for all acquisitions covered by this Article. Sureties and carriers must be licensed to do business in the State of Georgia and must have ratings established

by the Finance Department. The Director, with the recommendation of the Directors of Finance and Risk Management, shall have the authority to waive or modify any requirements regarding insurance in compliance with the procedures required herein. Any waiver or modification shall be in writing and shall specify the reasons for the waiver or modification and justify any additional risks to the County to the extent the waiver or modification would result in such risks.

(j) Authority of Director Regarding Additional Security

Nothing in this Section shall be construed to:

- (1) Prevent the Director from requiring bonds or security for construction contracts other than public works or road construction contracts or for public works contracts below the threshold specified in subsection (a) of this Section when the Director determines that circumstances warrant such requirement; or
- (2) Limit the authority of the Director to require other security in addition to those bonds or in circumstances other than those specified herein.

Sec. 2-956. Retainage and Progress Payments

(a) Applicability

The Director shall include provisions requiring progress payments and retainage in any contract for the construction of public works or roads where the value of the contract exceeds \$150,000 or the duration exceeds 45 days. Any retainage requirements in a public works, water or sewer, or road construction contract shall conform in all respects to the requirements of Article 2 of Chapter 10 of Title 13 of the Official Code of Georgia Annotated, as amended and attached hereto as Addendum . Nothing herein shall prevent the Director from including provisions requiring progress payments and retainage in other contracts below the thresholds specified herein.

(b) Maximum Amount Withheld; Progress Payments

- (1) *Public Works and Road Construction.* Any contract for construction of public works or roads shall provide for progress payments in installments based upon an estimated percentage of completion with a percentage of the contracts proceeds to be retained by the county pending completion of the contract. The retained amount of each progress payment or installment shall be no more than ten percent; provided, however, when 50 percent of the contract value including change orders and other additions to the contract is due and the progress is reasonably satisfactory to the County, no additional retainage shall be withheld.
- (2) *Water and Sewer Construction and Maintenance.* Up to ten percent of the gross value of

the completed work may be retained; provided, however, no additional amounts may be retained after 50 percent of the work has been completed to the satisfaction of the County.

(c) Subcontractors Completion of Work

At the discretion of the Director, and with the approval of the contractor, the retainage of each subcontractor may be released separately as the subcontractor completes his or her work.

(d) Reinstatement of Retainage

If, after discontinuing retention, the Director determines that the work is unsatisfactory or has fallen behind schedule, retainage may be resumed at the previous level.

(e) Release of Retained Funds; Remaining Minor Items

(1) *Substantial Completion.* Upon substantial completion of work, as defined in the contract, funds held by the county as retainage shall be released by the Director to the contractor. Such funds shall be released within 30 days after the Director receives an invoice and proper documentation of substantial completion.

(2) *Remaining Items.* If there are remaining incomplete minor items at the time of release of retained amounts as required by paragraph (1) of this subsection, the Director may withhold an amount equal to 200 percent of the value of each incomplete item or items until such item or items are complete.

(f) Alternative for Water and Sewer Construction or Repairs

In lieu of the retainage otherwise provided for in this Section, the Director may include in any contract for the installation, extension, improvement, maintenance or repair of any water or sewer facility a clause providing for an escrow account in an amount at least equal to the amount authorized to be retained by the contract. Any such escrow clause shall, as a minimum, meet the requirements of O.C.G.A. § 13-10-82.

Sec. 2-957. Liquidated Damages; Incentive Provisions; Early Payment Discounts

The Director may include in contracts for constructions provisions for liquidated damages for late construction project completion and incentive provisions for early construction project completion; except that for contracts costing over \$50,000, provisions for liquidated damages and incentive provisions for early completion shall be included in such contracts. In addition, the Director may include discount provisions for prompt payment to the contractor by the County. Where such terms for liquidated damages, incentives, and discounts are to be included in a

Commented [GJF21]: QUESTION: \$50,000 is an arbitrary threshold. Should it be higher or lower?

contract for construction, the terms shall be established in advance as a part of the construction contract and included within the terms of the bid or proposal.

Sec. 2-958. Right to Inspect Business

The Director may, at reasonable times, inspect the part of the plant, place of business or work site of a contractor or subcontractor at any tier that is pertinent to the performance of any contract awarded or to be awarded by the county.

Sec. 2-959. Right to Audit Records

(a) Audit of Cost or Pricing Data

The Director may, at reasonable times and places, audit the books and records of any contractor who has submitted cost or pricing data requested by the Director to the extent that such books, documents, papers, and records are pertinent to such cost or pricing data. Any business that receives a contract or change order for which cost or pricing data is required, shall maintain such books, documents, papers and records that are pertinent to such cost or pricing data for three years from the date of final payment under the contract.

(b) Contract Audit

The Director shall be entitled to audit the books, documents 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 sub-contract. Unless a longer retention period is specified by the County, such books, documents and records shall be maintained by the contractor for a period of three years from the date of final payment under the prime contract and by the subcontractor for a period of three years from the date of final payment under the subcontract.

Sec. 2-960. Prompt Payment Requirements

Pursuant to O.C.G.A. § 13-11-1 *et seq.* as amended and attached hereto as Addendum _____, the Director shall establish procedures to require proper documentation of the status of the performance of contracts and reporting of same to the Finance Department to ensure timely payment to certain contractors who have performed in accordance with a contract with the County to improve real property.

Sec. 2-961. Non-Responsibility of Bidders and Offerors

(a) Determination of Non-Responsibility

If a bidder or offeror who otherwise would have been awarded a contract is found to be non-responsible, a written determination of non-responsibility shall be prepared by the Purchasing and Contracting Department and forwarded to the bidder or offeror. A copy of the determination shall be made part of the solicitation file and vendor performance files.

(b) Vendor Performance Rating

The Director shall establish a vendor performance rating system for use in eliminating those suppliers who fail to perform or who perform unsatisfactorily. Rating systems shall be used for evaluation and award purposes. When establishing the vendor performance rating system, the Director shall set a rating threshold; vendors that fall below such threshold may be subject to being placed on the Ineligible Source List at the Director's discretion pursuant to Sec. 2-968.

(c) Penalties for Non-Performance

Penalties for non-performance are outlined in the contracts between the county and the successful bidder or offeror. Additionally, multiple failures to respond to bid or proposal solicitations may result in removal from the DeKalb County's bidder's list, and possibly being placed on the Ineligible Source List pursuant to Sec. 2-962 of this Article.

Sec. 2-962. Ineligible Source List

(a) Placement on List; Time; Reasons for Placement on List

A person may be placed on an Ineligible Source List for a reasonable period of time, not to exceed three years, based upon the recommendation of the Director and the approval of the Purchasing Advisory Committee (PAC) for the following reasons:

- (1) Bid or proposal submitted in bad faith;
- (2) Willful or repeated breaching of contract or contracts with the County;
- (3) Repeated refusals to accept a bid or proposal award;
- (4) Established pattern or practice of unethical or immoral business practices;
- (5) Conviction of a crime involving moral turpitude;

- (6) The person's performance rating pursuant to the rating system established by Sec. 2-961(b) above falls below the acceptable threshold as set by the Director.
- (7) The person is an entity owned or managed, in whole or in part, by any other person described in paragraphs of this subsection;
- (8) The person has demonstrated a pattern of violating bonding and security requirements of Sec. 2-955 of this Article;
- (9) The person has a pending lawsuit against the County concerning a dispute with its officials or employees related to the provision of goods, equipment, commodities, services, or construction by that person. This does not include tax appeals.
- (10) The person is the subject of a pending claim or lawsuit filed by the County concerning goods, equipment, commodities, services or construction provided by that person;
- (11) The person has violated ethics or conflicts requirements of this Article or is in violation of the County Ethics Ordinance or state law;
- (12) The person has violated collusion prohibitions per of this Article, or in violation of applicable ordinances or state law; or
- (13) The person has violated procurement requirements of this Article, or in violation of applicable ordinances or state law.

(b) Ineligibility to Provide Goods, Equipment, Commodities or Services

Any person or entity placed on the Ineligible Source List shall not be eligible to contract with or provide any goods, equipment, commodities or services to the County during the period such person or entity remains on the Ineligible Source List.

(c) Hearing; Notice

Upon a recommendation from the Director to the PAC that a person should be placed on the Ineligible Source List, a hearing before the PAC shall be scheduled. The Director shall send written notice to the person of the Director's recommendation at least 14 days prior to the hearing. The notice shall include, at a minimum, the following information:

- (1) A statement of intention to place the person on the Ineligible Source List.
- (2) The paragraph or paragraphs under subsection (a) of this Section upon which the Director has relied in making the recommendation that the person be placed on the Ineligible Source

List;

(3) Notice of the date, time and location of the hearing before the PAC.

(4) that legal counsel representing the County may be present at the hearing.

(5) Notice that the person has the right to be represented or accompanied by legal counsel of their own choosing and expense. In the event that the person is represented or accompanied by counsel, the person shall notify the PAC and the Director in writing not fewer than seven days prior to the hearing.

(6) Failure of a person to notify the PAC and Director as required by paragraph (5) this subsection is grounds for the County to reschedule the PAC hearing.

(d) Procedure; Evidence

(1) Each side shall have no more than one hour to present its case.

(2) Adherence to the rules of evidence shall not be required and neither party shall be allowed to conduct discovery.

(3) At the PAC hearing, the Director will present facts and evidence to the PAC supporting the recommendation to place the person or entity on the Ineligible Source List. At the completion of the Director's presentation, the person or their legal counsel shall have an opportunity to present their facts and evidence that disputes the facts and evidence presented by the Director. At any time during the hearing, any member of the PAC may ask questions or request additional evidence of either party. If a member of the PAC requests additional evidence from a party, that party shall have five business days to produce the requested evidence. Failure to do so will require the PAC to consider their decision without reviewing or taking into account the requested evidence.

(e) Final Determination

The PAC shall make the final determination based on the evidence presented at the hearing and supplemental information provided, if any, within the time permitted after the hearing. A written determination of the PAC shall be sent to all parties, which shall include the basis for the determination and the length of the period for which the Person shall be placed on the Ineligible Source List, if any.

(f) Maintenance of List

The Director shall maintain and update an Ineligible Source List of all person(s) that have been debarred and the date upon which the debarment expires. On a quarterly basis, the Director shall

circulate a copy of the Ineligible Source List to the Chief Executive Officer, the Executive Assistant/Chief Operating Officer, Board of Commissioners and to the directors of all departments in the County.

(g) Remedies

Nothing in this section implies or states that placing a person or persons on the Ineligible Source List is the County or the Department's exclusive remedy in the case of a breach of contract, criminal malfeasance, or any other misconduct on the part of a person related to a contract with the County. The County reserves its right to pursue all remedies available to it in a court of law or equity.

Sec. 2-963. Bid Protests

(a) Grounds for Protests

An actual or prospective Bidder may protest a solicitation or contract award made by the County (hereinafter a "Solicitation Protest") based on the following criteria:

(1) *Right to protest.* Any actual or prospective bidder, offeror or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the purchasing agent and Chief Procurement Officer (the "CPO"). Bidders are required to seek resolution of their complaints initially with the CPO. A protest with respect to an invitation for bids or request for proposals shall be submitted in writing to the CPO prior to the opening of bids or the closing date of proposals, unless the aggrieved business did not know and should not reasonably have known of any of the facts giving rise to such protest prior to bid opening or the closing date for proposals. The protest shall be submitted within five (5) calendar days after such aggrieved business knows or reasonably should have known of any of the facts giving rise thereto.

(2) *Stay of procurements during protests.* In the event of a timely protest under subsection (a) of this section, the Purchasing Department and/or County shall have the discretion but shall not be required to stay the solicitation or award of the contract until all administrative remedies have been exhausted. Notice of any such stay shall be provided to all prospective bidders, offerors or contractors. The stay provisions of this subsection shall not apply where a contract has already been awarded.

(b) Authorization; Notice

An actual or prospective bidder, offeror, or contractor may protest a solicitation, offer, or award of contract made by the Director pursuant to this Article. The protestor must present such protest in writing to the Director. A written protest may be presented in person, through traditional mail, or electronically. The protestor bears the burden of proof. At the sole discretion of the County, the County may postpone the deadline for submission of the bids/proposals until the resolution of the protest is determined. In no event will a Solicitation Protest be considered if all

bids/proposals were rejected or if the solicitation was cancelled.

(c) Protest Procedure

(1) Emergency procurements are not subject to bid protests. All other solicitation protests must be submitted in writing as provided herein and received by the Director of Purchasing not later than ten (10) days from the date of the notice of award, whether by the governing authority or authorized department. Any party who failed to participate in or submit a timely response in response to an invitation to bid (“ITB”) or a request for proposals (“RFP”) shall not be entitled to submit a bid protest.

Solicitation protests must be sent via First Class U.S. Mail and electronically to:

The Department of Purchasing and Contracting
Attn: Director/CPO
1300 Commerce Drive, 2nd Floor
Decatur, GA 30030
Email: pcadmin-ops@dekalbcountyga.gov

(2) All protests shall include the following information:

- (A) Company’s name, mailing address, e-mail, phone number and name of individual responsible for submission of and responses to the bid protest;
- (B) Protest letter signed by an authorized agent of the company;
- (C) Specify the County’s solicitation number and title;
- (D) Complete statement of the basis for the protest, to include specific description of each act or decision alleged to have been violated and identifying the specific portion of the referenced document, policy, regulation, or statute that forms the basis for the bid protest;
- (E) Referencing the specific project, Solicitation Process, and (if available) contract number being protested; and
- (F) Recommended corrective action or clarification that the County should make in response to said solicitation protest.

(d) Time limits and process.

The procedure and time limits set forth in this policy are mandatory and are the vendor’s sole and exclusive remedy in the event of a solicitation protest. A protesting party’s failure to fully

comply with these procedures shall constitute a waiver of any right to further pursue a solicitation protest or challenge a rejection by the County and/or Purchasing Department.

- (1) *Notification; Additional Information; Meeting.* The Director will notify any protestor of receipt of a timely protest and may, where appropriate, request additional information. The Director or their designee may, at their sole discretion, schedule a meeting with the protestor to review the issues raised in the protest.
- (2) *Written Decision.* After review of a protest, the Director or their designee will issue a written decision on the basis of the information provided by the protestor, the result of any meetings with the protestor, and the County's investigation of the facts. The decision shall be final. The written decision will include the reasons for the decision made, and any actions taken. A copy of the decision shall be provided to the protestor and any other intervening party.
- (3) *Time for Decision.* Decisions will be made, and the protestor and other intervening parties will be notified of the decisions, within thirty (30) calendar days of receipt of the written protest. The County may notify the protestor that it requires additional time to render a decision in writing, said time for a response which shall not exceed an additional sixty (60) days. If additional time is not requested and a final decision has not been made within the required time frame, the protest will be considered automatically denied. All decisions by the Director in response to a properly submitted solicitation protest shall be deemed to be final decisions by the County.
- (4) *Remedies.* If the protest is upheld, the Director will take appropriate action to correct the solicitation or procurement including, but not limited to, re-issuance of the solicitation, revised evaluation of the offers or the County's conclusion of the evaluations, or termination of the contract. If the protest is denied, the County will proceed with the procurement as it deems appropriate.

Sec. 2-964. Employment of Unauthorized Aliens

(a) Applicability; Audits

It is the policy of DeKalb County that unauthorized aliens shall not be employed to perform work on County contracts involving the physical performance of services. Therefore, the County shall not enter into a contract for the physical performance of services within the State of Georgia unless the contractor shall provide evidence on County provided forms that it and its subcontractors have registered for and are participating in the federal work authorization program as defined by O.C.G.A. § 13-10-90(3) to verify information of all new employees. The Purchasing and Contracting Department with the assistance of the County's Internal Audit staff shall be authorized to conduct random audits of a contractor's or subcontractors' compliance with O.C.G.A. § 13-10-91 and the rules and regulations of the Georgia Department of Labor.

The contractor and subcontractors shall retain all documents and records of its compliance for a period of three (3) years following completion of the contract. This requirement shall apply to all contracts for the physical performance of services with the County.

(b) Records; Reports to Homeland Security

Whenever it appears that a contractor's or subcontractor's records are not sufficient to verify the work eligibility of any individual in the employ of such contractor or subcontractor, the Director shall report same to the Department of Homeland Security.

(c) Penalties

A contractor's failure to participate in the federal work authorization program as defined by O.C.G.A. § 13-10-90(3) may be sanctioned by termination of the contract. If it is determined that a subcontractor is not participating in the federal work authorization program as defined by O.C.G.A. § 13-10-90(3), DeKalb County may direct the contractor to terminate that subcontractor. A contractor's failure to follow DeKalb County's instruction to terminate a subcontractor that is not participating in the federal work authorization program as defined by O.C.G.A. § 13-10-90(3) may be sanctioned by termination of the contract.

(d) Requirements Supplemental to State and Federal Law

These requirements shall be in addition to the requirements of state and federal law, and shall be construed to be in conformity with those laws.

DISPOSITION OF PROPERTY

Sec. 2-965. County-Owned Personal Property

(a) Declaration of Unserviceability; Delegation

The Governing Authority shall determine whether a particular item or category of personal property can no longer be used advantageously by the County and has therefore become unserviceable. The Governing Authority may establish criteria establishing unserviceability for categories of personal property which may become unserviceable on a regular, frequently recurring basis, and may delegate to the Chief Executive Officer (CEO) the determination of whether a particular commodity meets the criteria of unserviceability for its category.

(b) Disposition

Unserviceable personal property may be sold by public sale, sealed bidding, spot bidding or any other means deemed most advantageous to the County under the particular circumstances as determined by the Governing Authority. A sale to a private person shall be for the highest net purchase price reasonably obtainable by the County. A sale to another unit of government shall

be for a fair and reasonable purchase price that need not be as high as the purchase price obtainable from a private person.

(c) Approval

All sales for personal property items where the original unit purchase cost is \$25,000.00 or less shall approved by the CEO. The Governing Authority shall approve sales for personal property where unit cost exceeds \$25,000.00.

Sec. 2-966. County-Owned Real Property

County-owned real property shall be identified for sale, transfer, or other disposition in accordance with Georgia law. Also, unless otherwise provided by law, including provisions of O.C.G.A. 36-31-11.1 which governs the sale of certain county property to newly-formed municipalities, the sale or disposition of all interests in County-owned real property shall be to the highest responsible bidder by competitive sealed bidding, pursuant to O.C.G.A. § 36-9-3, as amended. The abandonment, substitution, disposal or leasing of County-owned real property no longer needed for public road purposes shall be in accordance with the provisions of O.C.G.A. § 32-7-1 et seq.

ELECTRONIC COMMERCE

Sec. 2-967. Electronic Transmissions of Information

(a) Electronic commerce shall include but is not limited to on-line vendor registration, acceptance of bids and proposals by electronic mail, electronic or virtual purchasing malls and catalogs, internet auctions and reverse auctions, notifications of solicitations and download capability and acceptance of electronic (digital) signatures.

(b) Notwithstanding any other provisions, this chapter applies to records generated, stored, processed, communicated, or used for any purpose by DeKalb County for purchasing, acquisition, services, or disposition of personal property. This shall apply to all DeKalb County contracts.

(c) The Chief Executive Officer or his/her designee is authorized to promulgate procedures to coordinate, create, implement, and facilitate the use of common approaches and technical infrastructure, as appropriate, to enhance the utilization of electronic commerce, electronic records, electronic signatures, and electronic security procedures by and for DeKalb County for these purposes, and for all other purposes and is authorized to promulgate methods, means, and standards for secure electronic procurement transactions.

Sec. 2-968. Electronic Signatures and Records

- (a) An electronic record satisfies any rule requiring a document to be in writing. An electronic signature satisfies any rule of law requiring a signature. Any electronic record is signed as a matter of law if it contains a secure electronic signature.
- (b) An electronic signature is deemed to be secure if it is created by application of a security procedure that is commercially reasonable and provided the electronic signature can be verified. Further, it is considered secure if it can be linked to the electronic record to which it relates in a manner such that, if the record is changed, the electronic signature is invalidated.
- (c) An electronic record is deemed to be secure if it is created by application of a security procedure that is commercially reasonable and agreed to by DeKalb County. The electronic record will be deemed secure when it can be verified not to have been altered since a specified point in time.

PART III. EFFECTIVE DATE

This article shall become effective within sixty (60) days after adoption by the Board of Commissioners and execution by the Chief Executive Officer.

PART IV. SEVERABILITY

Should any court of this state declare any section, part, paragraph or clause of this Article unconstitutional or invalid for any cause or reason, then such decision shall affect only that section, part, paragraph or clause so declared to be unconstitutional or invalid, and shall not affect any other section, part, paragraph or clause of this Article.

ADOPTED by the DeKalb County Board of Commissioners, this ____ day of _____, 2018.

JEFF RADER
Presiding Officer
Board of Commissioners
DeKalb County, Georgia

Working Draft
September 27, 2018

APPROVED by the Chief Executive Officer of DeKalb County, this ____ day of _____, 2018.

MICHAEL L. THURMOND
Chief Executive Officer
DeKalb County, Georgia

ATTEST:

BARBARA SANDERS-NORWOOD, CCC
Clerk to the Board of Commissioners and
Chief Executive Officer
DeKalb County, Georgia

APPROVED AS TO FORM:

VIVIANE ERNESTES
County Attorney

APPROVED AS TO SUBSTANCE:

TALISA CLARK
Director of Purchasing