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391.3 Any employee who is required to have a CDL but who cannot successfully pass the initial licensing requirements will be assigned temporary duties not requiring a CDL for a period not to exceed six (6) months, or until such time as the CDL is obtained, whichever occurs first. The temporary job assignment may be at a lower wage rate.

391.4 Any employee whose CDL has been suspended or not properly renewed shall be assigned temporary duties not requiring said license for the length of the suspension or until the CDL is reissued. The temporary assignment shall not exceed six (6) months and may be at a lower job rate. If CDL requirements require that the employee be retested prior to reinstatement of the license, a maximum of thirty (30) days from the date of suspension shall be allowed for this purpose.

391.5 Any employee whose CDL has been suspended or not properly renewed a second time shall be suspended from work without pay for a period of two (2) weeks as a result of said license suspension, or permitting the license to expire, or any combination thereof equaling two. The same penalties and conditions shall apply as listed in 391.4.

391.6 Any employee who fails to successfully obtain a CDL when required to do so, or any employee who suffers a third suspension, or fails to renew their license in a timely manner as required by Federal regulations, or any combination thereof totaling three, may be permanently demoted to a lower job classification not requiring a CDL, or may be terminated from County service with approval of the Fiscal Court.

392.0 Applicability of Code

392.1 Where any provision of Chapter 300, Personnel Administration, of this Administrative Code is found to differ from a parallel (corresponding) provision contained in a Union Agreement or Merit Board Regulation, then the language contained in said Union Agreement or Merit Board Regulation shall govern and take precedent over the Administrative Code.

400.0 PURCHASING

401.0 Introduction

401.1 This chapter of the Administrative Code constitutes the Kenton County Procurement Code and covers the purchasing policies by which the Kenton County Fiscal Court, its employees and its agents shall be obligated to operate.

401.2 A Purchasing Manual has also been developed as a tool to be used by county employees at all levels to guide them through the approved purchasing policies. The manual covers the "how to" aspects of county purchasing and has been published separately. The manual is not intended to be a policy statement, and if any part of the manual conflicts in any way whatsoever with the Administrative Code, the terms and definitions of the Administrative Code will govern.

401.3 Statement of public policy

- (1) Public employment is a public trust.
- (2) It is the policy and purpose of this Code to promote and balance the objective of protecting government integrity and of the facilitation, recruitment and retention of personnel needed by county government and public agencies by proscribing essential conflicts of interest without creating unnecessary barriers to public service and by

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facilitating development of fair and competitive access to local public agency purchasing by responsible contractors

- (3) Employees and Officials must discharge their duties and responsibilities fairly and impartially. They should also maintain a standard of conduct that will inspire public confidence in the integrity of county government of all local public agencies.

401.4 Purpose of Code

The purpose of the Ordinance is to prescribe specific standards to guide public officials and employees in the conduct of their offices or employment, and to proscribe improper conduct to the extent to which such conduct may be sufficiently described to enable statutory prohibitions against it to be properly enforced. It is at the same time recognized that under a free government it is both necessary and desirable that all citizens should have certain specific interests in the decisions of government, and that the activities and conduct of public officers and employees should not be unduly circumscribed.

402.0 Definitions for terms used in this Code

As used in this Code except as may be otherwise indicated by the context:

- (1) "Agency" means any of the departments of the County government, and any division, board, bureau, district, commission or other instrumentality within such department and any independent, court authority, commission, instrumentality or agency, any elected official.
- (2) "Aggregate amount" shall mean the total dollar amount during a fiscal year of items of a like nature, function, and use the need for which can reasonably be determined at the beginning of the fiscal year. Items the need for which could not reasonably be established in advance or which were unavailable because of a failure of delivery need not be included in the aggregate amount.
- (3) "Bid" an offer submitted by a prospective vendor in response to an invitation for bid issued by a purchasing authority.
- (4) "Bid Bond" an insurance agreement, accompanied by a monetary commitment, (surety bond or cashier check), the bidder will not withdraw the bid, the bidder will furnish bonds as required, and if the contract is awarded to the bonded bidder, the bidder will accept the contract as bid, or else the surety will pay the Fiscal Court a specific amount because of default on part of the bidder.
- (5) "Bidder" one who submits a response to an invitation for bid.
- (6) "Chief executive officer" shall mean the county Judge/Executive, or the principal administrative officer of a local public agency, board, district, or the person designated by the chief executive officer or governing body of the local public agency to perform the procurement function.
- (7) "Compensation" means any money, thing of value, or financial benefit conferred in return for services rendered or to be rendered.
- (8) "Construction" shall mean the process of building, altering, repairing, or improving any public structure or building, or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

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- (9) "Contract" shall mean all types of local public agency agreements, including grants and orders, for the purchase of disposal of supplies, services, construction, or any other item. It includes awards and notices of award; contracts of a fixed-price, cost, cost-plus-a-fixed-fee, or incentive type; contracts providing for the issuance of job or task orders; leases; letter contracts; and purchase orders. It also includes supplemental agreements with respect to any of the foregoing. It does not include labor contracts with employees of local public agencies.
- (10) "Cooperative Purchasing" is a variety of arrangements whereby two or more public procurement units purchase from the same supplier using a single Invitation to Bid (IFB) or Request for Proposals (RFP).
- (11) "Cost" means actual expenses incurred in delivering a product, service, or construction; includes both direct and indirect costs, but does not include fee or profit for the vendor. 2: the amount, measured in money of the expenditure to obtain goods and services, but does not include fee or profit for the vendor.
- (12) "Cost-Plus-Fixed-Fee" a cost-reimbursement contract that provides for payment of a negotiated fee that is fixed at the inception of the contract and does not vary with the actual cost of performing the work, although the fee may be adjusted when there are changes in work to be performed.
- (13) "County" a subdivision of state government encompassing a particular geographical area and it's citizens.
- (14) Emergency Purchase (procurement)- a purchase made to alleviate a situation in which there is a threat to health, welfare, or safety under certain conditions defined as an emergency by the Judge/Executive or his designee that does not allow time for normal, competitive purchasing procedures.
- (15) "Established catalogue price" shall mean the price included in the most current catalogue, price list, schedule, or other form that:
- (a) Is regularly maintained by the manufacturer or vendor of an item; and
 - (b) Is either published or otherwise available for inspection by customers; and
 - (c) States prices at which sales are currently or were last made to a significant number of buyers constituting the general buying public for that item.
- (16) "Evaluated bid price" shall mean the dollar amount of a bid after adjustments are made pursuant to objective measurable criteria, set forth in the invitation for bids, which affect the economy and effectiveness in the operation or use of the product, such as reliability, maintainability, useful life, residual value, and time of delivery, performance, or completion.
- (17) "Fiscal Court" unit of local government made up of elected officials who deal with issues of the County.
- (18) "Fixed-Price Contract" a contract providing for a firm price or a price that may be adjusted only in accordance with contract clauses providing for revision of the contract under stated circumstances.
- (19) "Incentive Contract" a fixed-price or cost-reimbursement contract with special provision for adjustment of the fixed price or fee after completion of the contract. Adjustment is

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based on the contractor's actual costs, plus a sliding scale for profit or fee, which varies inversely with the cost, but is within the maximum price or fee stated in the contract.

- (20) "Invitation for bids" shall mean all documents, whether attached or incorporated by reference, utilized for soliciting bids in accordance with the procedures set here in.
- (21) "The legislative body or governing board" shall mean the Fiscal Court, a council, commission, or other governing body or special district; or board of any other local public agency to which the Judge/Executive and/or the Fiscal Court has appointing authority.
- (22) "Local public agency" shall mean the county, special district, or an agency formed by a combination of such agencies, or any department, board, commission, authority, office, or other sub-unit of a political subdivision which shall include the offices of the county clerk, county sheriff, coroner, and jailer.
- (23) "Lowest Bid Price" lowest price of all bids submitted.
- (24) "Lowest Evaluated Bid" lowest price among the responsible bids.
- (25) "May" shall mean permissive. However, the words "no person may..." mean that no person is required, authorized, or permitted to do the act prescribed.
- (26) "Negotiation" bargaining process between two or more parties, each with it's own view points and objectives, seeking to reach a mutually satisfactory agreement on, or settlement of, a matter of common concern.
- (27) "Noncompetitive negotiation" shall mean informal negotiation with one (1) or more vendor, contractor, or individual without advertisement or notice.
- (28) "Objective measurable criteria" shall mean sufficient information in the invitation to bid as to weight and method of evaluation so that the evaluation may be determined with reasonable mathematical certainty. Criteria which are otherwise subjective such as taste and appearance may be established when appropriate.
- (29) "Offeror" one who submits a proposal in response to a RFP in a competitive negotiation.
- (30) "Performance Bond" a bond, executed subsequent to an award by a successful bidder, to protect the buyer from loss due to the bidder's inability to complete the contract as agreed; secures the fulfillment of all contract requirements.
- (31) "Person" shall mean any business, individual, union, committee, club, or other organization or group of individuals.
- (32) "Procurement" buying, purchasing, renting, leasing, or otherwise acquiring any goods, services or construction. It also includes all functions that pertain to the obtaining of any supply, service or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.
- (33) "Proposal" the document submitted in response to the request for proposal (RFP) to be used as the basis for negotiations for entering into a contract.
- (34) "Purchase Order" a purchaser's written document to a vendor formalizing all the terms and conditions of a proposed transaction, such as a description of the requested item(s), delivery schedule, terms of payment, and transportation.

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- (35) "Purchasing Manager" an employee in public purchasing with responsibility and authority to act for the jurisdiction in certain areas.
- (36) "Purchasing Records" records and documents that pertain to purchasing, i.e. purchase orders, contracts, agreements, RFB, RFP, bid sheets, quotes, etc.
- (37) "Responsive Bidder" a vendor who has submitted a bid which conforms in all material respects to the requirements stated in the IFB.
- (38) "Responsible Bidder" a bidder who has the capability in all respects to perform fully the contract requirements, and the experience, integrity, perseverance, reliability, capacity, facilities, equipment, and credit which will assure good faith performance.
- (39) "Request for Proposal (RFP)" all documents, whether attached or incorporated by reference, utilized for soliciting competitive proposals.
- (40) "Shall" means imperative.
- (41) "Small Purchases" any procurement not exceeding a given upper monetary limit, as established by law or regulation.
- (42) "Specifications" a description of the physical or functional characteristics, or of the nature of supply, service, or construction item; the requirements to be satisfied by a product, material, or process indicating, if appropriate, the procedures to determine whether the requirements are satisfied.
- (43) "Surety" an individual or corporation legally liable for the debt, default, or failure of a principal to satisfy the obligations of a contract.
- (44) Services are classified as follows:
 - a. Personal Services: Unique, technical, and/or infrequent functions performed by an independent entrepreneur. Examples: translation, technical editing, computer programming, consultant, realtor and appraisal services.
 - b. Professional Services: Unique, technical, and/or infrequent functions performed by independent contractors whose occupations is rendering of such services. Examples: medicine and medical arts, management and system consultation, the performing arts, legal engineering, architecture and accounting.
 - c. Proprietary or Support Services: Functions performed by independent contractors where the process is more important than the product, if any. Examples: janitorial, and custodial services, protection and security and trash removal.
 - d. Client Services: Services contracted for by a jurisdiction on behalf of clients, frequently requiring prequalification or licensing by government for the performance of the services. Examples: day care, halfway houses, vocational rehabilitation, guidance counseling, employment services and catering.
 - e. Management Services: Managerial/ministerial functions performed by independent contractors assuming governance of the service delivery, the real and personal property and in differing contractual formats, the personnel of

government functions. Examples: management of hospitals, airports, transit facilities and functions, parks and concessions.

- f. High Technology Services: Subset of management services provided by independent contractors who furnish and operate high technology installations to perform complex support programs. Examples: hosting web sites and installations, and providing complete information technology support, these services may be performed on site or remotely.

410.0 Responsibility and Delegation of Authority

410.1 The Judge/Executive or his designee is responsible for administration of the procurement function of the Fiscal Court and shall establish procedures to perform the procurement function in accordance with this Code and other applicable laws.

410.2 This Code shall be adopted as the Kenton County Fiscal Court Procurement Code, all pursuant to KRS 68.005, subsection (d) (County Administrative Code).

410.3 The Judge/Executive may delegate to the Deputy Judge/Executive or other designee such authority as may be appropriate and necessary for the proper performance of the procurement functions.

410.4 No delegation of authority shall be made to the Deputy Judge/Executive or department heads to award any contract in excess of the maximum allowed by law, without requiring use of a procurement process as set forth herein.

410.5 Judge/Executive shall have purchasing authority to make individual purchases up to the limit set forth in section 410.7, provided it is a lawful expenditure, its procurement has complied with the procedures set forth herein and sufficient and appropriate funds for said expenditure have been made within the proper budget allocation.

410.6 No procurement shall be made for an amount which exceeds the sum budgeted and appropriated for the procurement by the Fiscal Court.

410.7 The Fiscal Court must approve all expenditures in excess of ~~thirty-fourty~~ thousand dollars (\$~~340,000.00~~) as provided in KRS Chapter 45A. Further any one project which the sum of all its components or expenditures to multiple vendors, exceeds ~~thirty-fourty~~ thousand dollars (\$~~340,000.00~~) must also be approved by the Fiscal Court before any encumbrances or binding commitments are made even if individual purchases fall under the purchase authority in 410.5. For purposes of this section only, one project is defined as expenditures having a common component or nexus such that a reasonable conclusion would be that all expenditures further the same goal or initiative.

410.8 The Fiscal Court has the sole authority to award any procurement or contract which exceeds ~~thirty-fourty~~ thousand dollars (\$~~340,000.00~~). Regardless of whether the award is based on competitive sealed bids, multi-step sealed bidding, competitive negotiations, or by non-competitive negotiations.

410.9 The Fiscal Court reserves the right to reject any and all bids and to waive technicalities and minor irregularities in bids.

410.10 An invitation for bids, a request for proposals or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interest of the county. The reasons therefore shall be made part of the contract file, and each solicitation issued by the county shall state that it may be canceled and that any bid or proposal may be rejected in whole or in part for good cause when in the county's best interest. Reasons for rejections shall

be provided in writing upon request to unsuccessful bidders or offerors, and set forth in Fiscal Court minutes.

410.11 Non-responsiveness. If a bidder or offeror who otherwise would have been awarded a contract is found non-responsive, a written determination of non-responsiveness, setting forth the basis of the finding, shall be prepared by the Judge/Executive or his designee. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry may be grounds for a determination of non-responsiveness with respect to such bidder or offeror. The final determination shall be made part of the contract file and be made a public record.

410.12 Right of Nondisclosure. In the instance of a Request for Qualifications or Request for Proposals or Competitive Negotiation Process or upon request of a bidder or offeror and upon the discretion of the Judge/Executive information furnished by them may not be disclosed provided such information meets the requirements of KRS. 61.878.

410.13 Uniform Application. All local public agencies shall comply with the terms of the Procurement Code unless they have adopted a code that is at least as stringent as this code.

420.0 Bidders Lists

420.1 Any person, firm, or corporation desiring to receive written Notice of Procurement Requirements of the Fiscal Court may make application to have his/her name placed on a bidder's list for the goods or services he/she wishes to supply or provide.

421.0 Methods of Source Selection

421.1 The county may purchase materials, supplies and services established pursuant to State Procurement Price Contract, General Service Administration Contract (GSA), or Sourcewell.

421.2 All county contracts other than those for personal or professional services shall be awarded by Competitive Sealed Bidding unless it is otherwise determined by the County Judge/Executive or his designee that another method provided for by this Code is more appropriate, i.e. Competitive Negotiations, Small Purchases, Multi-step Sealed Bidding, or Emergency Procurement or Request for Qualifications and Request for Proposals.

422.0 Automated Purchasing System

422.1 The Fiscal Court shall establish by order, a system for an automated purchasing system.

430.0 Competitive Sealed Bids

430.1 The Fiscal Court shall comply with KRS 424.260 upon commencement of seeking competitive sealed bids.

430.2 The advertisement for bids may also be placed in other publications when, in the judgment of the Judge/Executive or his designee such advertisement would best secure the interests of the Fiscal Court.

430.3 If it is determined during the advertising period that additional time should be allowed for the prospective bidders to respond, the bid opening date may be extended by advertising the project as set forth above, specifying a revised bid opening date.

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430.4 Extensions of bid opening date may be permitted when:

- (1) Changes are made in specifications after advertisement and it becomes necessary to issue addenda to the specifications. The addenda must be in writing and must be mailed or delivered to all potential bidders holding specifications for the bid.
- (2) One or more bidders notify the Fiscal Court of discrepancies, errors, or areas requiring clarification in the specifications which require additional time;
- (3) Specifications require design work on the part of bidders, or when it is determined by the Judge/Executive or his designee that unforeseen conditions made it impossible for the bidders to complete bid preparation prior to the bid deadline;
- (4) Strikes, disasters, or other factors beyond normal control prevent bidders from acquiring the information necessary for the bid preparation;
- (5) Other reasons as may be determined by the Fiscal Court.

430.5 An invitation for bids (IFB) may be rescinded when:

- (1) The conditions for receiving the bids change sufficiently to make the proposed purchase unnecessary or unwarranted.
- (2) Funds for the proposed purchase become unavailable.
- (3) It becomes apparent that no bids will be received because:
 - (a) the item or service requested is currently unavailable;
 - (b) the available funds are insufficient;
 - (c) major revisions in the specifications are necessary to ensure that reasonable bids are received.
 - (d) Lack of interest shown by potential bidders.

430.6 All Municipalities and Special Districts are invited to join the Northern Kentucky Governmental Purchasing Association, as specified in the Interlocal Cooperation Agreement dated November 29, 1995, and filed with the Kenton County Clerk.

430.7 Bids accepted by the Fiscal Court are available to all members of the association under the Kenton County Cooperative Purchasing Agreement.

430.8 With regard to Grant Requirements, nothing in these regulations shall be construed in such a manner as to relieve the Fiscal Court of the responsibility to comply with any and all procurement requirements imposed by an agency from which the Fiscal Court may receive funds, including, but not limited to state and federal agencies.

432.0 Specifications and Standard Specifications

432.1 Maximum Practicable Competition: All specifications used in the procurement process shall be designed to provide the maximum practicable competition from vendors consistent with the level of quality desired.

432.2 All specifications shall be in a standard format and approved by the Judge/Executive or his designee.

432.3 A bid that is submitted in response to a Competitive Sealed Bid Process shall be awarded to the responsible bidder who submits a responsive bid at the lowest bid price, or lowest evaluated bid price.

432.4 If a Competitive Sealed bid is not to be awarded on the basis of lowest bid price, the method of award shall be clearly stated in the invitation for bids.

432.5 If a Competitive Sealed bid is to be awarded on the basis of the lowest evaluated bid price, the evaluation criteria to be used and the applicable formulas or computation methods shall be clearly stated.

433.0 Materials Preference

433.1 The Fiscal Court realizes the importance of having a waste management policy and supporting recycling industries to further such policy.

433.2 Preference may be given to purchasing items containing recycled material whenever practicable and feasible.

434.0 Bid Bonds

434.1 The Fiscal Court, shall require a bid bond for construction contracts that exceed twenty-five thousand dollars (\$25,000.00) and may require a bid bond, at its discretion in the form of a surety bond, certified check, letter of credit, or other guarantee, suitable to the Fiscal Court, from vendors accepting liability and guarantees that the bidder will not withdrawal the bid all of which shall be specified in the invitation for bid or proposal.

434.2 Bid bonds shall be in an amount equal to at least five percent (5%) of the amount of the bid.

434.3 Bid bonds from unsuccessful bidders will be returned promptly upon awarding a bid to others.

434.4 Successful bidders will have their bid bond returned upon award and acceptance of the contract.

440.0 Withdrawal of Bids

440.1 No bid when once submitted to the Fiscal Court may be withdrawn by the bidder before the allotted time established by the Fiscal Court and stated in the invitation to bid or in the specifications unless:

- (1) Bids have not been opened and a written request is received from a bidder for withdrawal of his bid more than twenty-four (24) hours before the date and time set for opening.
- (2) The bidder can demonstrate from work sheets or other supporting documents that a major, grievous error has been made in preparation of the bid documents.

440.2 Any request for withdrawal of a bid shall be made in writing to the Judge/Executive or his designee in a timely manner and shall clearly state the reason for the request for withdrawal. Any bid withdrawal except under the circumstances stated above in Section 440.1 shall require forfeiture of bid bond.

442.0 Time for Receipt of Bids

442.1 The advertisement and invitation for bid(s) will clearly state the date, time, and place when bids are due. All bids are time stamped when received and bids being submitted after the advertised receipt time will be returned unopened.

442.2 Faxed bids will not be accepted when a sealed bid is requested.

442.3 It shall be the bidder's responsibility to assure that the bid is received by the County before the advertised receipt time.

443.0 Time of Bid Opening

443.1 The Judge/Executive or his designee shall publicly open all bids submitted at the place advertised, and on the advertised date, time and place announced for opening the bids.

443.2 The amount of each bid, and such other relevant information as may be specified for a particular procurement, together with the name of each bidder shall be recorded.

443.3 Bids shall not be examined, inspected or reviewed by any persons at the opening until all bids covering the same proposal or invitation to bid have been opened.

443.4 Bids which are inadvertently open before the bid opening date shall be re-sealed in front of at least two witnesses, appropriately identified, noted by all witnesses on the envelope, and held until the advertised bid opening time.

444.0 Evaluation and Awards

444.1 Following the bid opening, the Purchasing Manager, the Department Head of the procuring department, and others as may be designated by the Fiscal Court shall review all bids for compliance with the specifications, terms, and conditions.

444.2 If required, bidder(s) may be asked to clarify or explain in writing, any matter contained in the bid(s) which the Judge/Executive or his designee feels the need for clarification or explanation. Any bidder who fails to provide such written clarification or explanation upon request within a reasonable amount of time shall not be considered for award. The written clarification or explanation of a bid shall be incorporated in, and become a part of, any contract awarded on the basis of that bid.

444.3 When compliance is determined, the Purchasing Manager shall submit his recommendation concerning the final disposition of the bids (i.e., award the lowest or best bid and reject all others, reject all bids and rebid, etc.) to the Fiscal Court at their next regularly scheduled meeting.

444.4 The Judge/Executive, upon advice to the Fiscal Court in open session may waive formalities of the herein provided procurement methods and establish conditions under which incomplete bids, or bids not necessarily the lowest bid, may be considered if it is determined that such waiver is in the best interest of the Fiscal Court.

444.5 Efforts will be made to solicit participation of locally owned, minority owned, female owned and small businesses where feasible. The County, at its discretion, may provide a five percent (5%) price advantage to vendors which are owned and operated within Kenton County, meaning that Kenton County

vendors submitting prices five percent (5%) higher than that of their non-local competition may be considered low bid. Vendors located outside of Kenton County but owned and operated in Northern Kentucky (those counties associated with the Northern Kentucky Area Development District) may receive a two percent (2%) advantage over other non-local bidders.

445.0 Award of Contracts

445.1 After a reasonable period of evaluation, a contract may be awarded to the most responsive and responsible bidder whose bid is either the lowest bid price or the lowest evaluated bid price, as designated in the invitation to bid.

445.2 If it is determined that no satisfactory bid has been received, all bids may be rejected by the Fiscal Court. The basis for rejection of the bids and subsequent action taken with respect to the invitation for bids shall be recorded in the Fiscal Court minutes.

446.0 Contract Security

446.1 The Fiscal Court may at its discretion require a performance bond in the form of a surety bond, letter of credit, certified check, or other guarantee from vendors accepting liability and guaranteeing that the bidder will not withdrawal the bid, as stated in the specifications of the invitation for bid or proposal.

446.2 Every contractor to whom it is proposed to award a contract for construction services costing more than twenty-five thousand dollars (\$25,000.00) shall give, prior to the commencement of the delivery of goods or services under such a contract, shall provide security to the Fiscal Court as obligee, in a penal sum equal to 100% of the estimated contract price.

446.3 Regardless of the form of security, in no case shall the aggregate security for the completion of the project be less than 100% of the contract price.

446.4 The County Judge/Executive or his designee with the advice and consent of the County Attorney shall be final arbiter of whether said security is adequate.

448.0 PURCHASE OF SERVICES

448.1 Policy

It is the policy of Kenton County to publicly announce all requirements for the purchase of Services, as defined in Section 402.0 (44), and to negotiate contracts for these services on the basis of demonstrated competence and qualification for the type of services required, and at fair and reasonable prices. The County may utilize a Request for Qualification Process (RFQ) for projects over ~~\$340,000.00~~.

448.2 Services Selection Committee.

(1) In the procurement of Services, the county Purchasing Officer shall encourage firms engaged in the lawful practice of their profession to submit a statement of qualifications and performance data. This RFQ may be done in advance so as to maintain a standing list of qualified firms or at the time of need for a specific project. A Review and Selection Committee comprised of the Deputy County Judge, the County Treasurer, the County Purchasing Officer and one person from the using department. The Judge Executive may add other persons to the review committee as seen fit to provide more expertise for selection of a firm for a specialized project.

(2) The Selection Committee shall evaluate current statements of qualifications and performance data already on file with the county purchasing department together with those that may be submitted by other firms regarding a proposed project. The Selection Committee shall conduct discussions with no less than three firms regarding the project and relative utility of alternative methods of approach for furnishing the required services, and then shall select there from, in order of preference, based upon criteria established and published by the Selection Committee, no less than three of the firms deemed to be the most highly qualified to provide the services required.

(3) Once the Selection committee has selected the three best qualified firms through the RFQ process, then final selection of a firm shall commence by advertisement of a Request for Proposals (RFP). The Selection Committee may require price data to be submitted with the RFP or negotiate pricing following selection of the best proposal.

(4) The Committee shall negotiate a contract with the firm it determines the best qualified in its sole judgment for the services being purchased at compensation, which the Committee determines in writing to be fair and reasonable to the County. In making this decision, the Committee shall take into account the estimated value, the scope, the complexity, and the professional nature of the services to be rendered. Should the Committee be unable to negotiate a satisfactory contract with the firm considered to be best qualified, negotiations with that firm shall be formally terminated. The Committee shall then undertake negotiations with the second best qualified firm. Failing accord with the second best qualified firm, the Committee shall formally terminate negotiations. The Committee shall then undertake negotiations with the third best-qualified firm. Should the Committee be unable to negotiate a contract at a fair and reasonable price with any of the selected firms, the Committee shall select additional firms in order of their competence and qualifications, and continue negotiations in accordance with this section until an agreement is reached.

(5) At the conclusion of negotiations that result in a contract, the Selection Committee shall document how it used the evaluation factors in the RFP to select the best-qualified suppliers and the principal elements of negotiations. It includes this information in the contract file, which becomes public information.

448.3 Request for Proposals(RFP). A RFP should include the following parts:

- (1) A work statement or performance specification.
- (2) Time frame in which the work is to be completed.
- (3) Specific criteria to be used in evaluating the proposal.
- (4) When, where and how detailed specifications may be obtained.
- (5) Required time and place for submission and opening of offers.
- (6) The RFP should require the offerer to provide the following information:
 - a. Understanding of the problem, the work to be done, or the program; and the approach to be used to achieve the objectives, including detailing of tasks involved in the offerer's approach;
 - b. Verifiable milestone list, if not specified in the RFP;
 - c. Facility and capability data not otherwise included in the RFQ.

448.4 All written proposals received by the county in response to an RFP shall be kept secure and unopened until the date and time set for opening.

448.5 Proposals which are inadvertently opened shall be identified in front at least two witnesses, noted by all witnesses on the envelope, and re-sealed until the advertised time to open proposals.

448.6 Proposals shall be opened on the date and time set for opening. It shall be the offerer's responsibility to assure that the proposal is submitted to the County before the advertised receipt time.

448.7 Proposals being evaluated under the RFP process or competitive negotiations shall not be subject to full public inspection until negotiations between the county and all offerers have been concluded and a contract awarded. However, the Selection Committee may determine what parts, if any, of a proposal may be released for public inspection provided such release does not impede the negotiation process or give an unfair advantage to one or more offerers.

450.0 Competitive Negotiation

450.1 Competitive negotiations may be used for a procurement when:

- (1) The particular procurement is of such a complex nature or includes such technical detail that specifications cannot be fairly and objectively prepared to permit competition by sealed bids, or
- (2) The particular procurement is for high technology equipment available from a limited number of sources of supply and for which specifications cannot reasonably be prepared except by reference to the manufacturer's specifications for the required equipment, or
- (3) The Judge/Executive or his designee determines in writing that favorable conditions permitting contracting by competitive negotiation are present.

450.2 When it is determined in writing that competitive negotiation is necessary or appropriate to carry out a particular procurement, competitive negotiations shall commence by advertisement of a request for written proposals (RFP).

450.3 The Judge/Executive or his designee shall determine in writing, based upon individual review, those proposals/offers received from responsible offerors that constitute a reasonable basis for negotiation. Each such offeror shall be contacted informally and a meeting scheduled for discussion of the offeror's proposals.

450.4 Discussion need not be conducted under the following circumstances:

- (a) Where such prices are fixed by law or regulation except that consideration shall be given to competitive terms and conditions;
- (b) Where time of delivery or performance will not permit discussions;
- (c) Where it is clear from prior experience with that particular supply, service or construction item, that acceptance of an initial offer without discussion would result in fair and reasonable prices and the request for proposal notifies all offerors of the possibility that award may be made on the basis of initial offers.

450.5 Discussions with bidders shall be held informally, orally, in writing, or both orally and in writing, as determined by the Judge/Executive or his designee to be most advantageous to the Fiscal Court.

450.6 After discussions with all responsible offerors have been concluded it is determined that no acceptable proposal has been submitted, any or all proposals may be rejected and new proposals may be

requested as provided in these regulations on the basis of the same or revised terms, or the procurement may be abandoned.

450.7 The Judge/Executive or his designee shall recommend to the Fiscal Court the successful offeror.

455.0 Multi-Step Sealed Bidding

455.1 When it is believed that competitive bidding would produce the best prices, yet insufficient information exists to describe the required product or service, an invitation for bids may be issued.

- (1) Requirement for bidders to submit unpriced technical proposals.
- (2) Determine acceptable proposals and negotiate with almost acceptable supplier to improve their proposals.
- (3) Create invitation for bid (IFB) and allow acceptable bidders to submit sealed bid prices.
- (4) Purchasing holds a public bid opening and tabulates the bids. Fiscal Court awards contract to low bid.

460.0 Non-Competitive Negotiations

460.1 Non-competitive negotiations may be used only after a written determination by the Judge/Executive or his designee that at least one of the following conditions exist:

- (1) There is only a single source (sole-source) within a reasonable geographic area; or
- (2) The contract is for perishable items; or
- (3) The contract is for replacement parts where the value of the parts represents a fraction of the worth of the item(s) being repaired or maintained; or
- (4) The contract is for proprietary items for resale; or
- (5) The contract is for group life insurance, group health and accident insurance, group professional liability insurance, Workers Compensation insurance, or unemployment insurance; or
- (6) The contract is for a purchase of supplies at reduced prices that will afford a purchase at savings to the Fiscal Court.

460.2 Upon successful negotiation, the Judge/Executive or his designee after affirmative vote of the Fiscal Court shall authorize the award of a contract if for under ~~thirty-fourty~~ thousand dollars (\$~~340,000.00~~) total value or if authorized by the Fiscal Court. The Fiscal Court may ratify the contract so authorized by the Judge/Executive or his designee.

460.3 Upon successful negotiation, the Judge/Executive or his designee shall recommend the awarding of a contract if for more than ~~thirty-fourty~~ thousand dollars (\$~~340,000.00~~) total value subject to the approval of the Fiscal Court.

470.0 Small Purchase Procedures

470.1 The Judge/Executive or his designee shall first determine the need for any item required and whether or not the contract is for less than the maximum amount allowed by law without required use of a formal bid process.

470.2 Small Purchases are those procurements not exceeding the amount of ~~thirty-four~~ thirty thousand dollars (\$~~340,000.00~~), established by law or regulation, for a formal bid process. Administrative costs for small low dollar-value purchases can be minimized by utilizing some of the following practices:

- (1) State centralized stores;
- (2) Petty cash fund;
- (3) Telephone requests for quotes;
- (4) Simple hand-written request-for-quote forms;
- (5) Requirements or blanket-type orders combining similar or like low-dollar-value items; or,
- (6) Travel requests.

470.3 Procurement requirements shall not be parceled, split, divided, or purchased over a period of time in order to avoid dollar limitations.

470.4 The Purchasing Manager shall obtain three price quotes from vendors and select the one most advantageous to the Fiscal Court that meets the needs of the user groups, except when the cost of the product or service is less than five hundred dollars (\$500.00).

470.5 The Purchasing Manager shall maintain records of all small purchases made by vendor and type of product or service.

470.6 A pre-qualified vendor is defined as a source of recurring small purchases that is established through taking price quotes and market analysis to determine a source for items that individually would not have to be bid, but collectively would exceed the bid limit. The analysis shall determine, through a system of quotes and/or bids, the lowest price source for the combined items authorized to be purchased at the source. This process will greatly facilitate the procurement of recurring purchases at the most economical price to the county.

470.7 Purchasing cards are available for prior approved use and small purchases under two hundred dollars (\$200.00). The Judge/Executive or his designee, will make the decision as to who receives a purchasing card as specified in the Kenton County Fiscal Court Purchasing Card User Manual.

470.8 In the event an authorized employee makes an unauthorized purchase with a County Purchasing card, that employee shall be personally liable for the purchase and may be subject to disciplinary action including but not limited to repayment of said purchase.

475.0 Emergency Procurement

475.1 Notwithstanding any other provisions of this Code, when the Judge/Executive or his designee has declared an emergency pursuant to KRS 424.260, the Judge/Executive or designee may make or authorize others to make emergency procurements when there exist a threat to public health, welfare or safety under emergency conditions; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

480.0 Appropriations

480.1 The Fiscal Court shall not award a contract for any procurement when the contract price would exceed the funds budgeted for the procurement by the legislative body.

480.2 If all bids received in response to an invitation to bid exceed the amount appropriated for the procurement and sufficient additional funds are not authorized to permit an award to the lowest responsive and responsible bidder, the Judge/Executive or his designee may proceed with a competitive negotiations process or may reissue an invitation for bids, or cancel the procurement.

480.3 An invitation for bids or requests for proposals may be advertised in anticipation of an appropriation provided such invitation or request clearly states that funds for the anticipated procurement, while anticipated, have not been appropriated.

480.4 The Fiscal Court may award a contract for the procurement of supplies, equipment, or services for a period that exceeds the fiscal year provided the contract permits cancellation without penalty in the event that funds for the contract are not appropriated for any succeeding year.

485.0 Verification and Public Availability of Records

485.1 Copies of records, specifications, procedures, and regulations relating to purchasing shall be available to the public during normal business hours, upon request, and at a cost not to exceed the cost of copying the material, subject to the provisions set for above or below.

485.2 The Judge/Executive or his designee may not disclose to the public or to a prospective vendor's competitors:

- (1) Information furnished in response to a request from the Judge/Executive or his designee for information necessary to determine a bidder's responsibility or reliability.
- (2) Information obtained from a prospective vendor during negotiations which qualifies as confidential technical information or trade secrets, and/or the disclosure of which would constitute violation of patent rights or copyrights.
- (3) With regard to Grant Requirements, nothing in these regulations shall be construed in such a manner as to relieve the Fiscal Court of the responsibility to comply with any and all procurement requirements imposed by an agency from which the Fiscal Court may receive funds, including, but not limited to state and federal agencies.

490.0 Inventory Control

490.1 The Judge/Executive or his designee is responsible for maintaining an Inventory of all property and equipment owned by the Fiscal Court when the original purchase price of an item is ~~five-~~ hundred one thousand dollars (\$51,000.00) or more.

490.2 All items of equipment shall be identified by a property Identification Label (ID) which shall list the location by department and ID number.

490.3 The Judge/Executive or his designee shall maintain accurate records of all equipment showing the responsible department, the dollar value at time of purchase, and the acquiring purchase order number if available.

490.4 Reporting of suspected collusion; documents

(1) When for any reason any bidder, offeror, fiscal court official or employee, suspects collusion among any bidders, offerors, any court official or employee, a written notice of the facts giving rise to such suspicion shall be immediately transmitted to the County Attorney.

(2) All documents involved in any procurement in which collusion is suspected shall be retained until the County Attorney gives notice to the Judge/Executive or his designee that they may be released, and all such documents shall be made available to the County Attorney or his designee upon request.

490.5 Filing of protest

(1) The County Attorney, or his designee, shall have authority to investigate protests and other controversies involving of actual or prospective bidders or offerors in connection with the solicitation, selection or award of a contract.

(2) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation, selection or award of a contract may file a protest with the County Attorney. A protest or notice of other controversy must be filed promptly and in any event within two (2) calendar weeks after such aggrieved person knows or should have known of the facts giving rise thereto. All protest or notices of other controversies must be in writing.

(3) The County Attorney shall promptly issue a determination in writing of his Findings to the Fiscal Court. A copy of said Findings shall be mailed or otherwise furnished to the complaining party and shall state his recommendations for any action if any to be taken.

(4) The Findings and recommendations of the County Attorney shall be reviewed by the Fiscal Court who shall take appropriate action.

490.6 Effect of protest - In the event of a protest timely filed under this Code, the County shall not proceed further with the solicitation or award involved, until the County Attorney, or his designee, makes a written and adequately supported determination that continuation of the procurement is necessary to protect the substantial interests of the County.

490.7 Collusion to restrain bids prohibited - Any agreement or collusion among bidders or prospective bidders or offerors which restrains, tends to restrain, or is reasonably calculated to restrain competition by agreement to bid or offer at a fixed price, or to refrain from bidding or offering or otherwise obtain an unfair competitive advantage is prohibited.

490.8 Conflicts of interest of public officers and employees

(1) No officer or employee of the county or any agency or member of a county board or commission, may be in any manner interested, either directly or indirectly, in his own name or in the name of any other person, association, trust, or corporation, in any contract for the performance of any work in the making or letting or administration of which such officer or employee may be called upon to act or vote. No such officer or employee may represent, either as agent or otherwise, any person, association, trust, or corporation, with respect to any application or bid for any contract or work in regard to which such officer or employee may be called upon to act or vote. Nor may any such officer or employee take, solicit, or receive, either directly or indirectly, any money or other thing of value as a gift or bribe or means of influencing his vote or action in his official character. Any contract made and procured in violation hereof is void. For the purposes of this section the holding of less than five percent (5%) of the stock of a corporation is not considered an interest.

(2) No officer or employee of the county, or officer or employee of any agency, shall act as officer or agent for the county or any other agency in the transaction of any business with himself,

or with any corporation, company, association, or firm in which he or his spouse has any interest greater than five percent (5%) of the total value thereof.

(3) No officer or employee of a board or agency or appointee of same shall knowingly himself or by his partners or through any corporation which he controls or in which he owns or controls more than ten percent (10%) of the stock, or by any other person for his use or benefit or on his account, undertake, execute, hold, or enjoy, in whole or in part, any contract, agreement, sale, or purchase of the value of one hundred dollars (\$100.00) or more, made, enter into, awarded or granted by an agency or board, unless said contract, agreement, sale or purchase was made or let after public notice and competitive bidding.

(4) No officer, employee, or appointee of an agency or board, including persons who serve without salary or other payment for their services, shall knowingly receive or agree to receive, directly or indirectly, compensation for any services rendered or to be rendered, either by himself or another, in any cause, proceeding, application, or other matter which is before said agency or before the department of county government in which said agency or board functions.

490.9 Conflict of interest; gratuities and kickbacks; use of confidential information

(1) It shall be a breach of ethical standards for any employee with procurement authority to participate directly in any proceeding or application; request for ruling or other determination; claim or controversy; or other particular matter pertaining to any contract, or subcontract, and any solicitation or proposal therefor, in which to his knowledge:

- (a) He, or any member of his immediate family has financial interest therein; or
- (b) A business or organization in which he or any member of his immediate family has a financial interest as an officer, director, trustee, partner, or employee, is a party; or
- (c) Any other person, business, or organization with whom he or any member of his immediate family is negotiating or has an arrangement concerning prospective employment is a part. Direct or indirect participation shall include but not be limited to involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

(2) It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment, in connection with any decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling or other determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract and any solicitation or proposal therefor.

(3) It is a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

(4) The prohibition against conflicts of interest and gratuities and kickbacks shall be conspicuously set forth in every local public agency written contract and solicitation therefor.

(5) It shall be a breach of ethical standards for any public employee or former employee knowingly to use confidential information for his actual or anticipated personal gain, or the actual or anticipated personal gain of any other person.

490.10 Recovery of value of anything transferred or received in breach of ethical standards

(1) The value of anything transferred or received in violation of these provisions by any official or employee or a nonemployee may be recovered from both the employee, official and/or the nonemployee.

(2) Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the local public agency and will be recoverable hereunder from the recipient. In addition, said value may also be recovered from the subcontractor making such kickbacks. Recovery from one (1) offending party shall not preclude recovery against other offending parties.

495.0 Penalties

495.1 Any violation of this Code set forth in section 490.4 to 490.9 shall be deemed Class A Misdemeanor and prosecuted according to law, in addition to any other civil or criminal penalty according to law..

495.2 Any bidder, offeror or vendor who has violated the terms of this Code, in addition to any other penalty may be suspended (for a period of up to two (2) years) or permanently barred from bidding or contracting in any manner with the County after a Finding that a violation of these provisions has occurred.

500.0 SPECIAL DISTRICTS

501.0 Procedures for Dissemination of Information

501.1 For the purpose of efficient and successful administration of County boards, districts, and commissions, the governing body of such board, district, or commission shall develop and present copies of minutes, audits, and fiscal year budgets to the Judge/Executive for the purpose of sharing information.

502.0 Procedures for Dissolution

502.1 A plan of dissolution of any special district shall be made by the Judge/Executive in writing and shall be submitted to the Fiscal Court for approval.

502.2 The Judge/Executive shall notify the Chairperson of the special district which is the subject of the plan of dissolution. The notice shall be in writing and shall be provided at least five (5) days before the plan of dissolution is submitted to the Fiscal Court.