

**LOCAL LAW NUMBER 12- 2012
COUNTY OF CATTARAUGUS, NEW YORK**

Pursuant to Section 10 of the Municipal Home Rule Law and
Section 103 of the General Municipal Law.

**A LOCAL LAW ESTABLISHING UNIFORM GUIDELINES FOR
DETERMINING THE RESPONSIBILITY OF BIDDERS**

BE IT ENACTED by the Legislature of the County of Cattaraugus ("the County"), as follows:

Section 1. Legislative Intent. It is the intent of this Local Law to enhance the County's ability to identify the lowest "responsible bidder" on public works construction projects by instituting more comprehensive submission requirements and an evaluation system which is in compliance with New York State General Municipal Law. The County, based upon its experience, has determined that quality workmanship, efficient operation, safety, and timely completion of projects are not necessarily assured by awarding a public works contract solely on the basis of the low price. This Local Law establishing uniformity of guidelines for determining the responsibility of bidders will assure efficient use of taxpayer dollars, will promote public safety, and is in the public interest.

Section 2. Applicability. This Local Law shall apply to construction projects subject to the competitive bidding requirements of General Municipal Law § 103 and advertised for bids on or after the effective date.

Section 3. Public Works. For purposes of this Local Law, the term "public works" shall mean the following: any constructing, altering, reconstructing, repairing, rehabilitating, refinishing, refurbishing, remodeling, remediating, renovating, custom fabricating, maintenance, landscaping, improving, moving, wrecking, painting, decorating, demolishing, and adding to or subtracting from any public building, structure, highway, roadway, street, alley, bridge, sewer, drain, ditch, sewage disposal plant, water work, parking facility, railroad, excavation, or other project, development, real property, or improvement, or to any part thereof, whether or not the performance of the work herein described involves the addition to, or fabrication into, any structure, project or development, real property or improvement herein described of any material or article of merchandise, which is paid for out of public funds in an amount exceeding \$10,000.00. The term also includes any public works leased by the County under a lease containing an option to purchase exceeding the \$10,000.00 threshold established hereby.

Section 4. Responsible Bidder Questionnaire.

A. New York State Vendor Responsibility Questionnaire. Before a public works contract may be awarded pursuant to General Municipal Law §103, contracting officials shall determine the responsibility of potential contractors and subcontractors by reviewing uniform questionnaires submitted by each contractor and subcontractor for the project. All bidders are required to submit the New York State Vendor Responsibility Questionnaire For-Profit Construction (CCA-2) form (hereinafter "uniform questionnaire") with appendices A,

B, and C to ascertain information as to integrity, responsibility and competence.

B. List of Subcontractors. Each bidder shall submit a list of the subcontractors used in the calculation of the bid upon submission of the uniform questionnaire.

C. Conformity by Subcontractors. Subcontractors shall complete the Uniform Questionnaire and meet the same responsibility standards as contractors to be eligible to work on public work contracts. Questionnaires shall be completed by subcontractors no later than the time and date of the award. The County reserves the right to reject the bid on the basis of unsatisfactory questionnaire responses by a subcontractor designated to perform work by the bidding general contractor.

Section 5. Requirements.

A. All general bidders and sub-bidders (including sub-sub bidders) for construction projects funded by the County of Cattaraugus as set forth above in Section 2, shall as a condition of the bid, agree in writing that they shall comply with the obligations established by this Local Law.

B. The County shall require that all bidders fill out the uniform questionnaire in order to ascertain the financial responsibility, accountability, reliability, skill, judgment, and integrity of the apparent lowest bidder.

C. The County shall utilize the "Guidelines for Responsibility Determinations" as set forth in Executive Order No. 170 (9 NYCRR 4.170) in evaluating the responsibility of contractors and determining the lowest responsible bidder.

D. Contractors and all subcontractors shall properly classify their workers as employees rather than as independent contractors, unless those workers meet the definition of "independent contractor" as defined by the Internal Revenue Service, and shall treat said employees accordingly for purposes of workers' compensation insurance coverage, unemployment insurance, employment taxes, and social security taxes.

E. The contractors and all subcontractors shall require each employee to sign in and out at the beginning and end of each day, and list next to his or her name his or her craft, and to provide such information to the County Commissioner of Public Works ("the Commissioner"), on a bi-weekly basis. Such information shall be kept in the Commissioner's office for a period of three (3) years, and copies of same shall be made available to the public immediately upon Freedom of Information Law (FOIL) request.

Section 6. Procedure.

A. The Commissioner, or other department head soliciting public works bids, shall distribute to all bidders a copy of this local law and the uniform questionnaire and thereafter collect from bidders all information required by this local law, and keep such information in his/her offices for a period of three (3) years, review of which will be made available to the public.

B. If a bidder fails or refuses to provide all the information required by this local law, or provides false information, the bidder's bid will be rejected at the bid opening.

C. The Commissioner shall post a list of the three low apparent bidders on the County of Cattaraugus website five (5) days after the bid opening.

D. If the apparent lowest bidder is deemed not responsible, then the next lowest bidder will be reviewed and so on until the lowest bidder is deemed responsible and selected as the lowest responsible bidder. In the event a bidder fails to furnish the requested information, the bidder shall be deemed disqualified and determined to be not responsible, the next lowest bidder shall become the apparent lowest bidder.

E. Not later than five (5) calendar days prior to a final determination that the apparent lowest bidder is not responsible, the County will notify the party of same, in writing, stating the reasons and setting forth a reasonable time, date and place for the apparent low bidder to appear and be heard.

F. If the bid of the lowest responsible bidder appears disproportionately low when compared with estimates obtained by or on behalf of the County and/or compared to other bids submitted (10% or greater disparity), the County reserves the right to inquire further of the apparent lowest bidder to determine whether the bid contains mathematical errors, omissions and/or erroneous assumptions, and whether the apparent lowest bidder has the capability to perform and complete the contract for the bid amount.

G. If a bidder is found to have willfully violated New York Labor Law §220 within the previous five (5) years, that bidder shall automatically be deemed "not responsible" and his bid shall be rejected unless the Commissioner, subject to review by the Public Works Committee of the Cattaraugus County Legislature, determines otherwise. Otherwise, based on all of the information collected pursuant to this local law and any other factor deemed relevant, the Commissioner of Public Works, or other department heads soliciting public works bids, shall determine if the apparent lowest bidder is in fact "responsible."

Section 7. Incomplete Submissions by Bidders and Subcontractors. It is the sole responsibility of the contractor to comply with all submission requirements at the time it submits its bid to the County. The submission requirements also apply to all subcontractors, except that the contractor shall submit all subcontractor questionnaires to the County of Cattaraugus no later than the date and time of the contract award. Contractor and/or subcontractor submissions deemed non-responsive will result in automatic rejection of the bid.

Section 8. Sanctions.

A. Any bidder or subcontractor bidder who fails to comply with any of the obligations described in as determined by the Commissioner may, in the sole discretion of the County, and only following an opportunity for the bidder to be heard, be subject to one or more of the following sanctions:

1. Temporary suspension of work on the project until compliance is obtained; or
2. Withholding by the County of payment due under the contract until compliance is obtained; or
3. Permanent removal from any further work on the project; or
4. Liquidated damages payable to the County in an amount equal to five percent (5%) of the dollar value of the general contract.

B. In addition to the above sanctions, any contractor or subcontractor, or principal officer who has been determined to have violated any of the provisions of this local Law shall be barred from performing any

work on future contracts awarded by the County for six (6) months for the first violation, three (3) years for the second violation, and permanently for the third violation.

C. Any sum collected as a penalty pursuant to this section shall be applied toward enforcement and administration costs.

Section 9. Public Records. All information submitted by a contractor or subcontractor pursuant to this Local Law is a public record and shall be immediately available to any person upon request made pursuant to the Freedom of Information Law (Public Officers Law Article 6).

Section 10. Materiality. The requirements of this Local Law are a material part of the bid documents and the contract and the successful bidder shall insert this Local Law in all subcontracts.

Section 11. Severability. If any clause, sentence, paragraph, subdivision, section or part of this Local law or the application thereof, to any person, individual, corporation, firm, partnership, entity or circumstance, shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional such order of Judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this Local law or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved In the controversy in which such judgment or order shall be rendered.

Section 12. Other Local Laws. Any prior Local Law or portion thereof in conflict with this Local Law is hereby repealed.

Section 13. Effective Date. This Local Law shall take effect upon filing in the Office of the Secretary of State, in accordance with Section 27 of the New York State Municipal Home Rule Law.

Resolution Referred to:

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| Finance | <input type="checkbox"/> | Human Services | <input type="checkbox"/> |
| Co. Operations | <input type="checkbox"/> | Develop. & Ag | <input type="checkbox"/> |
| DPW | <input type="checkbox"/> | Public Safety | <input type="checkbox"/> |
| Senior Services | <input type="checkbox"/> | Labor Relations | <input type="checkbox"/> |
| Strategic Planning | <input type="checkbox"/> | _____ | <input type="checkbox"/> |