

LOCAL LAW NO. 2016-12

RESPONSIBLE BIDDER REQUIREMENTS ON PUBLIC WORKS PROJECTS

Section 1. Legislative Intent

It is the intent of the local law to enhance the town'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 town, based on 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 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 effective date.

Section 3. Public works

For purposes of this chapter, 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, airport facility, 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 do 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 a public fund or out of a special assessment. The term also includes any public works leased by a political subdivision under a lease containing an option to purchase.

Section 4. Responsible Bidder Questionnaire

- A. New York Vendor Responsibility Questionnaire – Before a public contract may be awarded, 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”) 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 at the time of the bid.

Section 5. Requirements

All general bidders for construction projects funded by the town as set forth above in Section 2, shall as a condition for bidding, agree in writing that they shall comply with and require subcontractors to comply with the following obligations set forth below in this section.

- A. All bidders shall fill out the uniform questionnaire in order to ascertain the financial responsibility, accountability, reliability, skill, judgment and integrity of the apparent lowest bidder. All bidders shall require sub-bidder to fill out the uniform questionnaire within seven (7) days of bid opening.
- B. The town shall utilize the “Guidelines for Responsibility Determinations” as set forth in Executive Order No. 170 (9 NYCRR 4.170) in evaluating responsibility of contractors and determining the lowest responsible bidder.
- C. Contractors and all subcontractors shall properly classify their workers as employees rather than as independent contractors, unless those workers meet the definition of “independent contractors” as set forth in the New York Construction Fair Play Act, and shall treat such employees accordingly for purposes of workers’ compensation insurance coverage, unemployment insurance, employment taxes and social security taxes.
- D. Contractors and all subcontractors awarded public works contracts 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 apprenticeship status, and to provide such information to the Town’s Engineer, or any other designee as appointed by the Town Board, on a bi-weekly basis. Such information shall be kept in the Town Engineer’s Office for a period of three (3) years and copies of the same shall be made available to the public immediately upon Freedom of Information Law (FOIL) request.

Section 6. Local Hire Credit Toward Bid Award

The following criteria shall be used as a credit toward a bid determining the lowest responsible bidder. If the town applies any credit(s) towards a bid, the credit(s) will not reduce the amount of a contract.

Example: \$1,000,000 bid received a \$50,000 local bidder credit. For purposes of determining the lowest bidder the contractor's bid is \$950,000. However, the contract price will remain \$1,000,000.

- A. The town shall apply a credit equal to 2% or \$20,000, whichever is less, towards the bid of a bidder with a local workforce. "Local workforce" means at least 25% of the bidder's construction employees reside in the county where the work is to be performed or in a county adjacent to the county where the work is to be performed. The bidder is not required to have a place of business in the county where the work is to be performed for this credit to apply.

The bidder is responsible for requesting credit based upon the above criteria and, upon request by the Town, presenting written proof of compliance until substantial completion as determined by the Town.

Section 7. Procedure

- A. The Town's Engineer, or any other designee as appointed by the Town Board 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 requested in this local law, or provides false information, the bidder's bid will be rejected at the bid opening.
- C. The Town's Engineer, or any other designee as appointed by the Town Board shall post on the town website, one (1) week before the town makes an award of work to a contractor or subcontractor for a project of \$10,000 or more, a listing of the three apparent lowest bidders.
- D. If any bidding contractor or designated subcontractor is found to have willfully violated New York Labor Law §220 ("New York Prevailing Wage Law"), that bidder shall automatically be deemed "non-responsible" and be rejected unless the Town's Engineer, or any other designee as appointed by the Town Board, determines otherwise. Otherwise, based on all of the information collected pursuant to this local law and any other factor the Town Board deems relevant the Town's Engineer, or any other designee as appointed by the Town Board shall determine if the apparent lowest bidder is in fact "responsible."

- E. If the apparent lowest bidder is deemed not to be 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 not responsible and the next lowest bidder shall become the apparent lowest bidder.
- F. If the amount of the lowest responsible bidder appears disproportionately low when compared with estimates undertaken by or on behalf of the town and/or compared to other bids submitted (10% or greater disparity), the town 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. No later than five (5) calendar days prior to a final determination that the apparent lowest bidder is not responsible, the town will notify the party of same in writing, stating the reasons and setting forth a time, date and place for the apparent lowest bidder to appear and be heard, but no later than ten (10) calendar days thereafter, prior to a final determination being made.

Section 8. 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 town. The submission requirements also apply to all subcontractors, except that the contractor shall submit all subcontractor questionnaires to the town no later than seven (7) days following the bid opening. Contractor and/or subcontractor submissions deemed non-responsive will result in automatic rejection of the bid.

Section 9. Sanctions

- A. Any bidder or subcontractor bidder who fails to comply with any of the obligations described herein, and only following an opportunity for the bidder to be heard, may be subject to one or more of the following sanctions.
- Temporary suspension of work on the project until compliance is obtained; or
 - Withholding by the town of payment due under the contract until compliance is obtained; or
 - Permanent removal from any further work on the project; or
 - Liquidated damages payable to the town in an amount equal to that which is set forth in the contract documents.

- B. In addition to the above sanctions, any contractor or subcontractor, its alter ego or control group 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 town for six (6) months for the first violation, three (3) months for the second violation and permanently for the third violation.
- C. Any sum collected as a fine or penalty pursuant to this section shall be applied toward enforcement and administration costs.

Section 10. Public Records

All information submitted by a contractor or subcontractor pursuant to this local law is public record and shall be immediately available to any person upon request.

Section 11. Materiality

The requirements of this ordinance are a material part of the bid documents and the contract and the successful bidder shall insert this ordinance in all subcontracts.

Section 12. Severability

If any portion of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other portions or applications of this ordinance which can be given effect without the invalid portions or applications and, to this end, the portions of this ordinance are severable.

Section 13. Other Ordinances

Any prior local law or portion thereof in conflict with this local law is hereby repealed.

Section 14. 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.