

TO: BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

Your Committee recommends passage of “A LOCAL LAW amending the Laws of Westchester County by adding a new Article IV to Chapter 233, entitled ‘Board of Acquisition and Contract,’ regarding requirements for lowest responsible bidding on County public work projects.”

Your Committee is aware that New York State General Municipal Law § 103 requires the County to award all public work contracts involving an expenditure of more than thirty-five thousand dollars (\$35,000) to the lowest responsible bidder.

Your Committee believes that the County and its taxpayers have a strong interest in ensuring that an effective screening process regarding bidder responsibility exists, so that public works contracts can be awarded appropriately. This Local Law, if adopted, would improve the County’s ability to identify the lowest responsive and responsible bidder on public work contracts. Currently, the County’s bidder review process involves guidance and procedures that are found in various County documents—including, for example, a Westchester County Executive Order from 1998 regarding compliance with prevailing wage and labor laws. This Local Law would codify, in one place, comprehensive submission requirements for bidders as well as an enhanced evaluation system for the County. A thorough evaluation process regarding bidders can help minimize the risk of contractor delay, nonperformance, or even default. The proposed Local Law will enable the County to better assess, prior to contracting, whether the subject lowest responsive bidder is also “responsible” under the law, based on the bidder’s financials, legal capacity, integrity, and past performance on government contracts. Indeed, quality workmanship, efficient operation, safety, and timely completion of projects are not necessarily assured by awarding a public work contract solely on the basis of the low price.

Your Committee understands that this proposed Local Law establishes uniform guidelines for determining bidder responsibility. Under the proposed law, the bidder must complete, certify, and submit with its bid a form that responds to questions regarding the bidder's financial ability, legal capacity, integrity, past performance on government contracts, and compliance with applicable laws and regulations. Based on the information provided in this questionnaire, along with any other information about the bidder gathered pursuant to the Local Law, the County will be better able to make a determination about the bidder's responsibility—or lack thereof—prior to executing the relevant contract.

Your Committee also understands that this proposed Local Law outlines a detailed process through which a bidder may file an internal appeal with the County's Board of Acquisition and Contract, should the bidder wish to contest the relevant County agency's initial determination that the bidder is not responsible.

Your Committee is aware that this proposed Local Law also includes mechanisms by which the County can continue to monitor the winning bidder's responsibility through the life of the contract. The proposed law provides expressly that the contractor must remain responsible during the contract's term and that, if the County requests it, the contractor must provide information about its continuing legal authority to do business in New York; its integrity; and its experience, ability, prior performance, and organizational and financial capacity.

Your Committee has been advised that the attached Local Law is subject to a permissive referendum pursuant to Section 209.171(2), because it changes a provision of law relating to public bidding and/or contracts. Consequently, pursuant to Section 209.181 of the Laws of Westchester

County, the attached Local Law, if adopted, may not take effect until sixty (60) days after its adoption, assuming that within that time a petition protesting its adoption is not filed by the statutorily required number of qualified electors.

Finally, Your Committee is informed that the proposed project does not meet the definition of an action under New York State Environmental Quality Review Act ("SEQRA") and its implementing regulations 6 NYCRR Part 617. Please refer to the memorandum from the Department of Planning, dated January 14, 2025, which is on file with the Clerk of the Board of Legislators. Your Committee concurs in this conclusion.

Your Committee recommends adoption of this Local Law.

Dated: March 31, 2025
White Plains, New York











Legislation

COMMITTEE ON

Public Works & Transportation

Dated: March 31, 2025

White Plains, New York

The following members attended the meeting remotely and approved this item out of Committee with an affirmative vote. Their electronic signature was authorized and is below.

Emiliana May

COMMITTEE ON

Legislation

LOCAL LAW INTRO. NO. - 2025

A LOCAL LAW amending the Laws of Westchester County by adding a new Article IV to Chapter 233, entitled 'Board of Acquisition and Contract,' regarding requirements for lowest responsible bidding on County public work projects.

BE IT ENACTED by the County Board of the County of Westchester as follows:

Section 1. A new Article IV is hereby added to Chapter 233 of the Laws of Westchester County to read as follows:

CHAPTER 233, Article IV. - Lowest Responsible Bidder for Public Work

Sec. 233.501. Short Title.

Sec. 233.511. Applicability.

Sec. 233.521. Definitions.

Sec. 233.531. Determination of Lowest Responsible Bidder; Provisional Determinations of Non-responsibility.

Sec. 233.541. Notice to Bidder Regarding Provisional Determination of Non-responsibility.

Sec. 233.551. Final Determination.

Sec. 233.561. Contractor's Ongoing Responsibility.

Sec. 233.571. Recordkeeping.

Sec. 233.581. Severability.

Sec. 233.501. Short Title.

This Article shall be known as and may be cited as the "Lowest Responsible Bidder for Public Work Law."

Sec. 233.511. Applicability.

This Local Law shall apply to public work projects subject to, and not otherwise excepted from, the competitive bidding requirements of New York State General Municipal Law section 103(1) and the Laws of Westchester County section 161.11(3).

Sec. 233.521. Definitions.

1. Bidder: Any individual, sole proprietor, partnership, firm, corporation, limited liability company, association, or other legal entity that responds to requests for bids issued by the County for public work pursuant to New York State General Municipal Law section 103(1) and the Laws of Westchester County section 161.11(3).
2. Commissioner: The Commissioner of the County Department that is requesting bids, and/or the Commissioner's designee.
3. Contractor: Any individual, sole proprietor, partnership, firm, corporation, limited liability company, association, or other legal entity that enters into a contract with the County for public work following the award of such contract under New York State General Municipal Law section 103(1) and the Laws of Westchester County section 161.11(3).
4. Principal: Any individual, sole proprietor, partnership, firm, corporation, limited liability company, association, or other legal entity that holds an ownership interest of 10 percent or more in the Bidder or Contractor.
5. Provisional Determination: The initial, non-final determination about a Bidder's Responsibility, which is made by the Commissioner.
6. Responsibility: The financial ability, legal capacity, integrity, and past performance of a Bidder or Contractor, and its compliance with applicable laws and regulations.
7. Responsibility Questionnaire:
 - a. A questionnaire, as may be amended from time to time, that is applicable to the public work project and the Bidder.
 - b. The applicable questionnaire requires Bidders to answer questions demonstrating the Bidders' financial ability, legal capacity, integrity, past performance on municipal or other government contracts, and compliance with applicable laws and regulations.

- c. Such Responsibility Questionnaire shall be certified by an owner or official of the Bidder.
- 8. Responsive: A Bidder's meeting the minimum specifications or requirements as prescribed in the request for bids.

Sec. 233.531. Determination of Lowest Responsible Bidder; Provisional Determinations of Non-responsibility.

- 1. Whenever any contract for public work is bid pursuant to General Municipal Law section 103(1) and the Laws of Westchester County section 161.11(3), the County shall include the relevant Responsibility Questionnaire as part of the request for the bid, along with the other relevant bid documents.
- 2. Only bids including a completed Responsibility Questionnaire and all other necessary documentation will be considered for the relevant contract by the County. The submission of a bid shall establish that the Bidder received all necessary documents, including, but not limited to, the Responsibility Questionnaire. Failure to submit the completed Responsibility Questionnaire with the bid documents shall render the bid non-responsive.
- 3. The Commissioner shall determine whether the apparent lowest Bidder is responsible after the Commissioner's review and consideration of, as applicable, the following:
 - a. the bid documents;
 - b. the information provided by the Bidder in the completed Responsibility Questionnaire;
 - c. material information regarding the financial ability, legal capacity, integrity, and past performance of the Bidder;

- d. information collected pursuant to this and other New York State and Local Laws, including the list described in Section 233.571 of this Chapter; and
 - e. county and state executive orders and rules and regulations, including the “Guidelines for Responsibility Determinations,” set forth in New York Codes, Rules and Regulations, Title 9, Section 4.170.
4. In the event of any of the following, the Commissioner shall make a Provisional Determination that the Bidder is not responsible:
- a. the Bidder is found to have falsified any material information on a submitted Responsibility Questionnaire;
 - b. the Bidder fails to properly disclose any material information on a submitted Responsibility Questionnaire;
 - c. the Bidder has committed or been found guilty of a willful violation of a provision of the New York State Labor Law within the preceding thirty-six (36) months, as determined by the State Department of Labor or a court of competent jurisdiction; and/or
 - d. any Principal of the Bidder is or was a Principal of any other business entity that has committed or been found guilty of a willful violation of the New York State Labor Law within the preceding thirty-six (36) months, as determined by the State Department of Labor or a court of competent jurisdiction.
5. Upon a Provisional Determination by the Commissioner that the apparent lowest Bidder is not responsible, (a) the Commissioner shall provide the reasons therefor in a memorandum to the Board of Acquisition and Contract (“A&C”), and append any documentation in support of the Provisional Determination to the memorandum, and (b) sections 233.541 and 233.551 of this Article shall apply.

Sec. 233.541. Notice to Bidder Regarding Provisional Determination of Non-responsibility.

1. When a Provisional Determination is made that the Bidder is not responsible, A&C shall notify the respective Bidder of the Provisional Determination of non-responsibility, in writing, stating the reasons therefor, and shall provide the apparent lowest Bidder with copies of any supporting materials, including those that the Commissioner has submitted to A&C in support of the Commissioner's Provisional Determination of Bidder non-responsibility (hereafter, the "Notice"). The Notice shall be sent within seven (7) days after the Provisional Determination is received by A&C.
2. The Notice shall set forth a date, time, and place for the apparent lowest Bidder to appear and be heard on the issue of non-responsibility before A&C (the "Appearance Date"), and the Notice must advise that the Bidder shall have the opportunity to rebut the Provisional Determination either (a) in-person before A&C on the date set forth in the Notice, with or without counsel; and/or (b) upon the submission of a written response and any supporting documentation at least three (3) days prior to the date set forth in the Notice.
3. No fewer than ten (10) days before the Appearance Date set forth in the Notice for the apparent lowest Bidder to appear and be heard on the issue of non-responsibility before A&C, the Notice shall be either: (a) personally served on the Bidder; (b) sent via overnight mail to the mailing address provided by the Bidder, by a carrier that provides proof of delivery; or (c) sent via e-mail to the e-mail address provided by the Bidder.
4. The Appearance Date shall be no later than fourteen (14) days after the Notice is served on the Bidder as provided in subsection (3) above.

Sec. 233.551. Final Determination.

1. The Bidder may respond to the Notice regarding the Provisional Determination as follows:

- a. On the Appearance Date, at the time and place set forth in the Notice, a representative of the Bidder may appear in person before A&C, with or without counsel; and/or
 - b. At least three (3) days before the Appearance Date, the Bidder may submit a written response and any supporting documentation.
2. No fewer than six (6) days after the Appearance Date set forth in the Notice of the Provisional Determination of non-responsibility, A&C shall make a final determination, via resolution (the "Resolution"), regarding the Responsibility of the apparent low Bidder (the "Final Determination"). In making a Final Determination, A&C shall review and consider, as applicable, the following:
 - a. the bid documents;
 - b. the information provided by the Bidder in the completed Responsibility Questionnaire;
 - c. material information regarding the financial ability, legal capacity, integrity, and past performance of the Bidder;
 - d. information collected pursuant to this and other New York State and Local Laws, including the list described in Section 233.571 of this Chapter;
 - e. county and state executive orders and rules and regulations, including the "Guidelines for Responsibility Determinations," set forth in New York Codes, Rules and Regulations, Title 9, Section 4.170; and
 - f. any information provided by the Bidder pursuant to the process set forth in paragraph 1 of this section (Sec. 233.551(1)).
3. Within five (5) business days of the Final Determination, A&C shall notify the Commissioner and the Bidder of the Final Determination by providing a copy of the Resolution to: (a) the Commissioner, via e-mail, inter-office mail, personal delivery, or other means; and (b) the

Bidder, via either (i) personal service on the Bidder or (ii) overnight mail to the mailing address provided by the Bidder, by a carrier that provides proof of delivery.

4. If the Final Determination of A&C deems the apparent lowest Bidder to be non-responsible:
 - a. The Final Determination may be appealed by the Bidder pursuant to Article 78 of the New York Civil Practice Law and Rules.
 - b. As soon as practicable after notification of the Final Determination, and regardless of whether the Bidder has appealed the Final Determination, the Commissioner shall review the next lowest Bidder for the public work project to determine whether such Bidder is responsible, until a lowest responsible Bidder is determined through the process set forth above in Sections 233.531(3)–(5), 233.541, and 233.551.

Sec. 233.561. Contractor's Ongoing Responsibility.

1. Following the award of the contract to the lowest responsible Bidder, the Contractor shall at all times during the contract term remain responsible.
2. At all times during the contract term, the Contractor shall have a duty to disclose to the Commissioner (a) any violations by the Contractor of local, state, or federal law, as determined by an administrative agency or a court of competent jurisdiction; and (b) any allegations of violations by the Contractor of local, state, or federal law, as alleged in any filed civil complaint, criminal indictment, or criminal complaint.
3. The Contractor shall, as may be requested by the Commissioner, provide information to the Commissioner about the Contractor's continuing legal authority to do business in New York State; its integrity; its experience, ability, prior performance, and organizational and financial capacity.

4. If the Contractor fails to comply with the requirements of paragraph 1-3 of this section, in addition to any sanctions available under the contract, the Contractor may be subject to sanctions including, but not limited to: (a) temporary suspension of work on the public work project until the Contractor complies with the requirements of paragraph 1 of this section; and/or (b) withholding by the County of payments due under the contract until the Contractor complies with the requirements of paragraph 1 of this section.
5. The Commissioner shall, upon receipt of the information listed in paragraphs 2 and/or 3 of this section, conduct an investigation into whether the Contractor is responsible in accordance with the procedure set forth above in Section 233.531(3)-(5).
6. If the Commissioner makes a Provisional Determination that the Contractor is not responsible, and, following the process outlined in sections 233.541 and 233.551 above and the Contractor's opportunity to be heard, A&C makes a Final Determination that the Contractor is not responsible, then A&C may, through resolution, determine that the Contractor is in default with respect to the awarded contract.

Sec. 233.571. Recordkeeping.

A&C shall keep an accurate list of all Bidders and Contractors who have been deemed to be not responsible through a Final Determination of A&C. This list shall be for informational purposes only, and the inclusion of an entity on the list shall not bar the entity from bidding on or being awarded a County contract. Such non-responsible entities shall remain on the list for a period of no fewer than five (5) years, unless a court of competent jurisdiction determines that the County's non-responsibility determination was in error.

Sec. 233.581. Severability.

If any clause, sentence, paragraph, section, or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Section 2.

The Clerk of the Board shall cause a notice of this Local Law to be published at least once a week for two successive weeks, the first publication of which shall be had within ten days after such local law is adopted, in the official newspapers published in the County of Westchester, said notice to contain the number, date of adoption and a true copy of the Local Law, and a statement that this Local Law changes a provision of law relating to public bidding and/or contracts, and is therefore subject to the provisions of Sections 209.171(2) and 209.181 of the Laws of Westchester County, providing for a permissive referendum.

Section 3.

This Local Law shall take effect sixty (60) days after its adoption, subject to the provisions of Section 209.181 of the Laws of Westchester County.