

# Local Law Filing

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

- County
- City of Erie \_\_\_\_\_
- Town \_\_\_\_\_
- Village \_\_\_\_\_

Local Law No. 1 \_\_\_\_\_ of the year 20 09 \_\_\_\_\_

A local law \_\_\_\_\_  
*(Insert Title)*

to strengthen and encourage Lowest Responsible Bidder Requirements  
for Erie County Contracts

Be it enacted by the Legislature \_\_\_\_\_ of the  
*(Name of Legislative Body)*

- County
- City of Erie \_\_\_\_\_ as follows:

**BE IT ENACTED BY THE ERIE COUNTY LEGISLATURE AS FOLLOWS:**

Section 1. Legislative Intent.

The Erie County Legislature hereby finds, declares and determines that:

- A. New York General Municipal Law Section 103 authorizes the letting of public contracts by the State of New York, local governments, public authorities and public benefit corporations to the "lowest responsible bidder."
- B. Taxpayers have a strong interest in an effective screening process in determining that appropriate "responsible" contractors be awarded a public works contract. Without an effective screening process, a number of serious problems may occur, including cost overruns, schedule delays and defective or inferior work. Such problems have immediate costs which are readily apparent, as well as potential costs going forward.
- C. Taxpayers will experience increased costs and administrative efforts as a result of an award to an incompetent or dishonest contractor. Without good screening the low-bid system produces a "false economy" due to schedule delays, poor quality and other problems caused by hiring unqualified contractors.
- D. An appropriate system for determining those who qualify as responsible contractors avoids the project and administrative costs which may otherwise occur and makes it more likely that a project will be performed up to specifications and on time. Given all of the above a number of jurisdictions have enacted lowest responsible bidder laws to strengthen contractor screening capabilities.
- E. The experience of elected officials in recent years has shown that lowest responsible bidder policies can provide opportunities to ensure the delivery of construction services and/or purchases on a high quality basis while protecting the rights of employees of government contractors.

Section 2. Short Title.

This Local Law shall be known as "Erie County's Lowest Responsible Bidder Law".

### Section 3. Applicability.

This Local Law shall apply to construction projects in excess of \$10,000 and advertised for bids on or after the effective date.

### Section 4. Requirements.

- A. All general bidders and sub-bidders (including sub-sub bidders) for construction projects funded by Erie County, as set forth above in Section 3, shall as a condition for bidding agree in writing that they shall comply with the following obligations set forth below in this Section 4.
- B. Erie County will require all bidders to fill out the attached "Qualifications Statement" in order to ascertain the pecuniary and financial responsibility, accountability, reliability, skill, capacity, ability, judgment, and integrity of the apparent lowest bidder.
- C. The contractors and all subcontractors under the bidder 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.
- D. 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 Erie County Commissioner of Public Works, Erie County Department of Public Works [herein "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.
- E. The County agrees to promptly pay contractors covered by this Local Law no later than forty two (42) days from the date of the invoice; and contractors agree to pay their subcontractors no later than fourteen (14) days after that, if funds are readily available as determined by the Erie County Comptroller.

### Section 5 Compliance

- A. The Commissioner shall distribute to all bidders a copy of this statute and the attached Qualifications Statement, 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 immediately upon Freedom of Information Law (FOIL) request.
- 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.
- C. If the amount of the lowest responsible bidder appears disproportionately low when compared with estimates undertaken by or on behalf of Erie County, and/or compared to other bids submitted (10% or greater disparity), Erie 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.

D. The Commissioner shall post on the Erie County Website, one (1) week before Erie County 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.

E. If the apparent lowest bidder answers "Yes" to any of the questions set forth in Section II, Group I of the attached qualifications sheet, the bidder shall be deemed a non-responsible bidder, unless proven otherwise, and rejected. Otherwise, based on all of the information collected pursuant to this local law, the Commissioner shall determine if the apparent lowest bidder is in fact "responsible."

F. 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 to be not responsible, the next lowest bidder shall become the apparent lowest bidder.

G. No later than five (5) calendar days prior to a final determination that the apparent lowest bidder is not responsible, Erie County 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.

H. Any resident of Erie County who believes that the Commissioner improperly determined that the lowest responsible bidder is "responsible" may, within five (5) calendar days of the Award, request in writing to the Commissioner, a hearing as set forth in Section 5(G) above, and an opportunity to appear and be heard and present evidence and testimony as to why the contractor or subcontractor is not responsible. Such hearing shall be held within ten (10) calendar days of the written request for a hearing. After such hearing, the Commissioner may change his/her determination of the lowest responsible bidder.

#### Section 6, Sanctions.

A. Any bidder or subcontractor bidder, or its alter ego, or control group, of any bidder or subcontractor, who fails to comply with any of the obligations described in Sections 4 and 5 above as determined by the Commissioner of Public Works for any period of time must 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 Erie 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 Erie 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, 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 Erie County for six months for the first violation, three years 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 7. 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 8. Effective Dates.

This Local Law shall take effect 30 days after the filing with the Secretary of State, in accordance with Section 27 of the New York State Municipal Home Rule Law.

## QUALIFICATIONS STATEMENT

Name of Firm \_\_\_\_\_  
Address \_\_\_\_\_

Principle Office \_\_\_\_\_  
Owner or Authorized Representative \_\_\_\_\_  
Contact Phone No. \_\_\_\_\_

Check One:

- Corporation
- Partnership
- Individual
- Joint Venture
- Other \_\_\_\_\_

### Background Information- Section 1

1. How many years has your firm been in business? \_\_\_\_\_
  
2. How many years has your firm been doing business in the work you propose to perform on this project? \_\_\_\_\_
  
3. Under what former names has the firm conducted business? \_\_\_\_\_
  
4. Please submit with this Qualifications Statement all work to be subcontracted identifying the firm(s) to which the work will be subcontracted. All subcontractors are subject to the approval of Erie County, as described above.
  
5. Please submit with this Qualifications Statement your firm's experience with projects of comparative size, complexity, and cost within the last five (5) years.
  
6. Please submit with this Qualifications Statement previous projects regarding the kind of work performed, timeliness of performance, quality of work, extension requests, fines and penalties imposed, liens filed, history of claims for extra work, contract defaults;

**Compliance with Existing Laws- Section 2**

Please answer the following questions. If you answer any questions "Yes" to any of the questions, then you must submit an attached written explanation including all details such as facts, date(s) of occurrences, locations, name of project, and current status.

**Group I**

1. Has your organization employed persons who are illegal aliens?

Yes \_\_\_\_\_

No \_\_\_\_\_

2. Has your organization had any violations, within the previous five (5) years of New York Labor Laws, including but not limited to prevailing wage law, wage and hour law, and unemployment insurance delinquency.

Yes \_\_\_\_\_

No \_\_\_\_\_

3. Has your organization been found to have violated the National Labor Relations Act within the previous five (5) years.

Yes \_\_\_\_\_

No \_\_\_\_\_

4. Has your organization been in violation of New York Worker's Compensation law, including, but not limited to the failure to provide proof of Workers' Compensation or Disability Coverage, within the previous (5) years?

Yes \_\_\_\_\_

No \_\_\_\_\_

**Group II**

1. Has your organization, or any owner, director, officer or managerial employee of your organization, filed for bankruptcy within the last five years?

Yes \_\_\_\_\_

No \_\_\_\_\_

2. Has your organization, including any owner, director, officer or managerial employee of your organization, had a professional license suspended or revoked (only insofar that any work to be performed is within the field of such licensed profession)?

Yes \_\_\_\_\_

No \_\_\_\_\_

3. Has your organization been found to have violated, or have any pending charges of any federal, state or municipal environmental and/or health laws, codes, rules and/or regulations within the past five (5) years?

Yes \_\_\_\_\_

No \_\_\_\_\_

4. Has your organization been named as a defendant in an action involving discrimination against any employee by reasons of race, creed, color, national origin, disability, sex or age?

Yes \_\_\_\_\_

No \_\_\_\_\_

TIMOTHY M. KENNEDY  
MARIA R. WHYTE  
ROBERT B. REYNOLDS JR.  
DANIEL M. KOZUB  
THOMAS A. LOUGHRAN  
MICHELE M. IANNELLO  
BARBARA MILLER-WILLIAMS  
BETTY JEAN GRANT

1 F

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

**1. (Final adoption by local legislative body only.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 \_\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_, in accordance with the applicable provisions of law.  
*(Name of Legislative Body)*

**2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer\*.)**

I hereby certify that the local law annexed hereto, designated as local law No. 1 of 20 09 of the (County)(City)(Town)(Village) of Erie was duly passed by the Erie County Legislature on March 12 20 09, and was ~~(approved)(not approved)~~ (repassed after disapproval) by the Erie County Executive and was deemed duly adopted on April 23 20 09, in accordance with the applicable provisions of law.  
*(Name of Legislative Body)*  
*(Elective Chief Executive Officer\*)*

**3. (Final adoption by referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 \_\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_, and was (approved)(not approved) ~~(repassed after disapproval)~~ by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_.  
*(Name of Legislative Body)*  
*(Elective Chief Executive Officer\*)*

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general) (special)(annual) election held on \_\_\_\_\_ 20 \_\_\_\_\_, in accordance with the applicable provisions of law.

**4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 \_\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_, and was (approved)(not approved) ~~(repassed after disapproval)~~ by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_ 20 \_\_\_\_\_, in accordance with the applicable provisions of law.  
*(Name of Legislative Body)*  
*(Elective Chief Executive Officer\*)*

\* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

**5. (City local law concerning Charter revision proposed by petition.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 \_\_\_\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on \_\_\_\_\_ 20 \_\_\_\_\_, became operative.

**6. (County local law concerning adoption of Charter.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 \_\_\_\_\_ of the County of \_\_\_\_\_ State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_ 20 \_\_\_\_\_, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

**(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)**

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph \_\_\_\_\_, above.

\_\_\_\_\_  
Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

Date: June 2, 2009

(Seal)

**(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)**

STATE OF NEW YORK  
COUNTY OF Erie

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

\_\_\_\_\_  
Signature Assistant County Attorney  
Title

County  
~~City~~ Erie  
~~Town~~  
~~Village~~

Date: 6/2/09