

Local Law Filing

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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 Town Village
(Select one.)

of Erie

Local Law No. 2 of the year 2021

A local law updating and reforming Erie County's Requirements for

(Insert Title)

Lowest Responsible Bidding on County Construction Projects and

Repealing and Replacing Local Law 1-2009 in its entirety.

Be it enacted by the Erie County Legislature of the
(Name of Legislative Body)

County City Town Village
(Select one.)

of Erie

as follows:

Section 1. Legislative Intent.

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

A. New York General Municipal Law Section 103 requires that all contracts entered into by the County of Erie for public work involving an expenditure of more than thirty-five thousand dollars (\$35,000) shall be awarded to the lowest responsible bidder.

B. Taxpayers have a strong interest in an effective screening process to ensure that appropriate contractors be awarded public works contracts. A thorough evaluation process ensures that the taxpayers get a proper return on their investment and that qualified contractors are awarded bids.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

C. General Municipal Law § 103(15)(a) recognizes the need for this process and provides that municipalities, such as the County of Erie, may establish guidelines governing the qualifications of bidders seeking to bid or enter into such contracts.

D. By enacting this Local Law, the County of Erie seeks to establish such guidelines in order to assure the prudent and economical use of public moneys for the benefit of all the inhabitants of the County.

Section 2. Short Title.

This Local Law shall be known as “the Erie County Lowest Responsible Bidder Law”.

Section 3. Applicability.

This Local Law shall apply to County of Erie construction projects, defined herein, in excess of \$35,000 and advertised for bids on or after the effective date of this Local Law.

Section 4. Definitions.

A. “The County of Erie” or “County” as used herein shall include the political subdivision known as the County of Erie as well as those County Departments responsible for letting public works contracts.

B. “Bidder” or “bidders” as used herein shall include individuals, companies, partnerships or other entities that respond to requests for bids issued by the County of Erie.

C. “Construction Projects” as used herein shall mean projects with a value in excess of \$35,000 where the County of Erie is a direct or indirect party to the contract which includes more than an incidental amount of construction type activity intended to benefit the public, including all work which is necessary, incidental or connected with the execution of the contract which is performed by construction workers. A public entity need not be party to the construction contract. A construction contract includes: projects that the County of Erie funds directly, projects that the County of Erie funds indirectly by providing funds to a separate entity to perform the construction type activity; privately financed construction projects specifically built with the intent of leasing them to any Department of the County of Erie government; and construction projects built under the County of Erie’s direction and later paid for with County of Erie funds.

D. “Commissioner” as used herein shall mean the Commissioner of the County of Erie Department that is requesting bids and/or his or her designee.

E. “Responsible” or “responsibility” as used herein means the financial ability, legal capacity, integrity, past performance of a business entity and compliance with applicable laws and regulations and as such terms have been interpreted relative to public procurements.

F. "Responsive" as used herein means a bidder meeting the minimum specifications or requirements as prescribed in the request for bids.

G. "Responsibility Questionnaire" shall mean the current the New York Vendor Responsibility Questionnaire For-Profit Construction (CCA-2), as maintained by the New York Office of the State Comptroller, and as may be amended from time to time, which requires all bidders to answer questions demonstrating their financial ability, legal capacity, integrity, past performance on municipal contracts and compliance with applicable laws and regulations. Such Questionnaire shall be affirmed by a principal of the bidder.

Section 5. Requirements.

A. By submitting bids in response to solicitations from the County of Erie, all bidders and sub-bidders (including sub-sub bidders) for construction projects funded by the County of Erie, acknowledge the terms and conditions of this Local Law and agree that they shall comply with the obligations of this Local Law.

B. In addition to the bid response, all bidders shall complete and submit a Responsibility Questionnaire as defined in Section 4 so that the County can evaluate the financial responsibility and organizational capacity of the bidder; the bidder's legal authority to do business in this County and State; the integrity of the owners, officers, principals, members and contract managers and the past performance of the bidder on prior municipal or public contracts. The completed Responsibility Questionnaire must be submitted with the bid.

C. Failure to submit the completed Responsibility Questionnaire with the bid documents shall render the bid non-responsive and the bid shall not be considered by the Commissioner.

Section 6. Procedure.

A. Bids for construction projects to which this Local Law applies shall be advertised in accordance with the requirements of the General Municipal Law and other applicable State and Local Laws. Such advertisement shall set forth the request for bids and shall set forth the deadline for submission and the time and place of the public opening of the bids.

B. The Commissioner, or his or her designee, shall distribute to all bidders a copy of this Local Law and the Responsibility Questionnaire referenced above. Distribution of the aforementioned documents shall be deemed effectuated when delivered in the same manner as the request for bids and any associated documents. The submission of a bid shall establish that the bidder received all necessary documents, including but not limited to, the Responsibility Questionnaire.

C. Only Bids accompanied by the Responsibility Questionnaire and all other necessary documentation will be considered by the Commissioner and or his or her designee.

D. All bids received shall be publicly opened and read at the time and place so specified in the advertisement for bids and the identity of all bidders shall be publicly disclosed at the time and place so specified. The apparent lowest bidder shall be announced at that time.

E. Commencing on the date of the bid opening and lasting for ten (10) calendar days thereafter, there shall be a public comment period during which members of the public may submit information relative to any such bidder to the Commissioner. The Commissioner shall acknowledge receipt of such information, and provide a written response prior to the final determination of bidder responsibility.

F. After review of the bid documents, the information collected pursuant to this and other Local Laws, New York State Law, applicable rules and regulations, consideration of the information provided in the Responsibility Questionnaire and of the financial ability, legal capacity, integrity, past performance of the bidder and compliance with applicable laws and regulations, the Commissioner shall determine if the apparent lowest bidder is responsible.

H. If the amount of the lowest responsible bidder appears disproportionately low when compared with estimates undertaken by or on behalf of the County of Erie, 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.

I. If the apparent lowest bidder is deemed responsible by the Commissioner, such low bidder will be notified, as soon as is practicable.

J. At least five (5) business days prior to the award of the contract to the low bidder, the Commissioner shall post on the Erie County Website a listing of the three apparent lowest bidders for the work.

Section 7. Non-Responsibility Determination.

A. If, after review of the bid documents, the information collected pursuant to this and other Local Laws, New York State Law, applicable rules and regulations, consideration of the information provided in the Responsibility Questionnaire and of the financial ability, legal capacity, integrity, past performance of the bidder and compliance with applicable laws and regulations, the Commissioner makes a provisional determination that the apparent lowest bidder is deemed not to be responsible, the provisions of subdivisions C-E herein shall apply.

B. In the event the bidder is found to have falsified information on a submitted Responsibility Questionnaire or if the bidder fails to properly disclose information that would call into question the financial ability, legal capacity, integrity, or past performance of the business entity, the Commissioner shall make a provisional determination that the bidder is not responsible subject to the provisions of subdivisions C-E herein.

C. Not less than five (5) business days prior to any final determination that the apparent lowest bidder is not responsible, the County shall notify the affected bidder of the same, in writing, stating the reasons therefore and setting forth a time, date and place for the apparent lowest bidder to appear and be heard on the issue of non-responsibility. Mailing via first class mail to the address provided by bidder shall constitute sufficient service of the notice.

D. At the date, time and place set forth above, the bidder may appear in person, with or without counsel or via affidavit. After due consideration, the Commissioner shall make a determination with regard to responsibility. Such determination may be appealed pursuant to the CPLR.

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. The Commissioner reserves the right to award the contract to the bidder determined to be the lowest responsible bidder or to reject all bids and rebid the contract in accordance with the General Municipal Law.

Section 8. Ongoing Responsibility.

A. The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

B. Any resident of Erie County who has reason to believe that an awarded contractor is not responsible, may submit to the Commissioner evidence as to why the contractor or subcontractor is not responsible. The Commissioner shall acknowledge receipt of such evidence, and provide a written response within fifteen (15) calendar days.

C. The Commissioner may, upon receipt of such information, conduct a further investigation into whether or not the contractor is responsible and prior to making any determination of non-responsibility shall proceed in accordance with the process set forth in Section 7 above.

Section 9. Sanctions.

A. Any contractor or subcontractor, its alter ego or control group, or principal officer who has, after the opportunity to be heard as set forth above, been determined by the Commissioner to be non-responsible, shall be barred from bidding on contracts for the County of Erie for a period of six months for the first violation. In the event the bidder subsequently fails to comply with the provisions of this Local Law on future bids, it may be subject to additional penalties, including prohibition against work on County contracts for three years for the second violation, and permanently for the third violation.

Section 10. Emergency.

A. Notwithstanding the provisions of this Local Law, in the case of a public emergency arising out of an accident or any other unforeseen occurrence or condition whereby circumstances affecting public buildings, public property or the life, health, safety or property of the inhabitants of the County of Erie, which requires immediate action which cannot await competitive bidding or competitive offering, contracts for public work may be let by the appropriate officer, board or agency of the County of Erie without competitive bidding and as it otherwise deems appropriate.

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. Effective Date.

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.

Sponsors:

Timothy Meyers
April N.M. Baskin
Howard Johnson

(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. 2 of 20²¹ of the (County) _____ of Erie was duly passed by the Erie County Legislature on February 4 2021, and was (approved)(not approved) (repassed after disapproval) by the Eric County Executive (Elective Chief Executive Officer*) and was deemed duly adopted on March 1 20²¹, in accordance with the applicable provisions of law.

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____. (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.

* 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 2 above.

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

Date: March 2, 2021

(Seal)

A Public Hearing was held on the foregoing **Local Law Intro. No. 7-1-2020** on **February 23, 2021** due notice thereof having been published in the official newspapers of the County of Erie designated for this purpose, and after due deliberation thereon, I, MARK C. POLONCARZ, County Executive of Erie County, do hereby APPROVE and SIGN said Local Law this 1 day of March, 2021.



Mark C. Poloncarz

A Public Hearing was held on the foregoing Local Law Intro. No. 7-1-2020 on February 23, 2021 due notice thereof having been published in the official newspapers of the County of Erie designated for this purpose, and after due deliberation thereon, I, MARK C. POLONCARZ, County Executive of Erie County, do hereby DISAPPROVE and VETO said Local Law this ___ day of _____, 2021.

Mark C. Poloncarz