



STATE OF NEW YORK
DEPARTMENT OF STATE
FILED
JUN 25 1993
[Signature]
Secretary of State

State of New York

Executive Chamber

No. 170.1

E X E C U T I V E O R D E R

ESTABLISHING UNIFORM GUIDELINES FOR DETERMINING THE RESPONSIBILITY OF BIDDERS

WHEREAS, it is the established policy of the State of New York to award certain contracts to the lowest responsible and reliable bidder as will best promote the public interest;

WHEREAS, the statutes requiring competitive bidding of State contracts and approval of subcontractors have been interpreted by the courts to authorize contracting agencies to examine the responsibility of bidders for contracts and proposed subcontractors on a case-by-case basis;

WHEREAS, these reviews may include an examination of the skill, judgment, integrity, financial resources, performance, conduct and labor practices of bidders and proposed subcontractors on prior contracts, and consideration of the background of such bidders and subcontractors for this purpose, including their ownership, management, affiliation, history of past performance, and compliance with relevant State and Federal laws and regulations;

WHEREAS, the Council of Contracting Agencies, which was created within the Executive Department by Executive Order Number 125 to ensure the systematic collection and timely exchange of information relevant to agency determinations of responsibility and reliability of bidders, contractors and proposed subcontractors, has recently developed and adopted guidelines for the determination of contractor responsibility consistent with the duties of contracting agencies and the court interpretations of State law and regulations governing competitive bidding; and

WHEREAS, the public interest would be served by the uniform application of these guidelines by all contracting agencies;

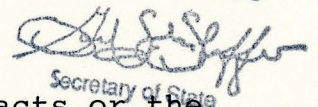
NOW, THEREFORE, I, MARIO M. CUOMO, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and Laws of the State of New York, do hereby order as follows:

A. Guidelines for Responsibility Determinations

In deliberating upon the responsibility of a bidder or a subcontractor, all contracting agencies shall give due consideration to any credible evidence or reliable information that the past or current record of a bidder or proposed subcontractor includes any of the following:

1. Lack of adequate expertise, prior experience with comparable projects, or financial resources to perform the work of the contract or subcontract in a timely, competent, and acceptable manner. Evidence of such a lack of ability to perform may include, but shall not be limited to, evidence of suspension or revocation for cause of any professional license of any director or officer, or any holder of five percent or more of the bidder's or proposed subcontractor's stock or equity; failure to submit satisfactory evidence of insurance, surety bonds or financial responsibility; or a history of termination of prior contracts for cause.

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2. Criminal conduct in connection with government contracts or the conduct of business activities involving: a) the infliction, attempted infliction, or threat of death, intentional personal injury, or intentional property damage, in connection with involvement in a pattern of racketeering, labor racketeering, extortion, obstruction of justice, or other comparable crimes; b) bribery, fraud, bid-rigging, embezzlement, or other comparable crimes; or c) serious moral turpitude, fundamental lack of integrity, or knowing disregard for the law. Evidence of such conduct may include a judgment of conviction, pending criminal indictment or formal grant of immunity in connection with a criminal prosecution of the bidder or proposed subcontractor, any director or officer, or any holder of five percent or more of the shares or equity of the bidder or proposed subcontractor, or any affiliate of the bidder or proposed subcontractor.

3. Grave disregard for the personal safety of employees, State personnel, or members of the public. Due consideration shall be given to whether available evidence concerning the training of employees, equipment actually in use at the work site, and company practices for identifying and addressing deficiencies and securing employee compliance, demonstrates a genuine commitment to safety, or lack of same.

4. Willful noncompliance with the prevailing wage and supplements payment requirements of the Labor Law, including consideration of any pending violations of the bidder or proposed subcontractor, or any affiliate of the bidder or proposed subcontractor.

5. Any other significant Labor Law violations, including but not limited to, child labor violations, failure to pay wages, or unemployment insurance tax delinquencies.

6. Any significant violation of the Workers' Compensation Law, including but not limited to, the failure of a bidder or proposed subcontractor to provide proof of workers' compensation or disability benefits coverage.

7. Any criminal conduct involving violations of the Environmental Conservation Law or other federal or State environmental statutes, or recurring or significant civil violations of federal or State environmental statutes or regulations.

8. The failure of a bidder or contractor to demonstrate good faith efforts to comply with applicable federal or State statutes and regulations requiring efforts to solicit and utilize minority-owned and women-owned business enterprises and disadvantaged business enterprises as potential subcontractors, in connection with a pending bid for the performance of a federal-aid or State funded or assisted project subject to such statutory and regulatory requirements.

9. The failure of a bidder, contractor or proposed subcontractor to demonstrate good faith efforts to provide employee apprenticeship opportunities through registered apprenticeship training programs.

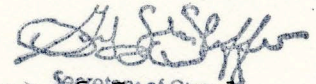
10. The failure of a bidder, contractor, or proposed subcontractor to comply with federal or State statutes or regulations requiring the hiring, training and employment of persons presumed to be disadvantaged in accordance with federal and State definitions to meet federal and State Equal Employment Opportunity requirements.

11. The submission of a bid which is mathematically or materially unbalanced.

12. The submission of a bid which is so much lower than the agency's confidential engineers' estimate of the cost of, or anticipated bids for, the contract, that it appears unlikely that the bidder will be able to perform the contract satisfactorily at the price bid.

13. Any other cause of so serious or compelling a nature that it raises questions about the present responsibility of a contractor or subcontractor, including but not limited to, submission to a contracting agency of a false or misleading statement on a uniform questionnaire, or in some other form, in connection with a bid for or award of a contract or a request for approval of a subcontractor.

In addition to the factors specified above, contracting agencies may also give due consideration to any other factors considered by the contracting agencies to bear upon responsibility, including but not limited to, any mitigating factors brought to the agency's attention by the bidder or proposed subcontractor.



B. Definitions

1. The term "contracting agencies" shall mean the Office of General Services, the Department of Transportation, the Department of Environmental Conservation, the Office of Parks, Recreation and Historic Preservation, the Facilities Development Corporation, the State University Construction Fund, the Dormitory Authority, the Thruway Authority and such other additional agencies as may be designated by the Council of Contracting Agencies.

2. The term "contract" shall mean any construction or service contract covered by Article 8 or Article 9 of the Labor Law, exceeding a dollar value not more than \$10,000 to be determined by the Council of Contracting Agencies, that is required by statute to be let by competitive bid to the lowest responsible bidder.

3. The terms "bidder," "contractor" and "subcontractor" shall mean any person or business entity submitting a competitive bid for, receiving the award of, or submitted for approval as a subcontractor on, a contract by any one of the contracting agencies.

4. A corporation, partnership or proprietorship shall be considered to be an "affiliate" of the bidder or proposed subcontractor if one owns, controls, or has the ability to control the other, or if a third person, corporation, partnership or proprietorship owns, controls, or has the ability to control both.

C. Report of the Council of Contracting Agencies

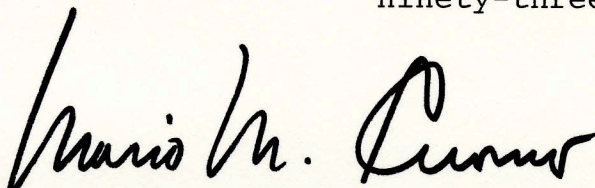
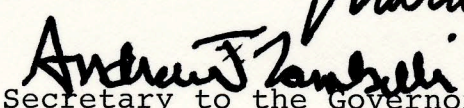
The Council of Contracting Agencies shall monitor the implementation of this Order and shall issue a report no later than March 1, 1994, setting forth its findings and conclusions and making such recommendations as it shall deem necessary and proper.

D. Cooperation of Other State Agencies

All State agencies, boards, bureaus, departments, divisions, commissions and offices shall provide any assistance deemed necessary by the Council of Contracting Agencies to carry out the purposes of this Order.

G I V E N under my hand and the Privy Seal of
the State in the City of Albany
this twenty-third day of June in
the year one thousand nine hundred
ninety-three.

BY THE GOVERNOR



Secretary to the Governor