




OFFICE OF THE CHIEF PROCUREMENT OFFICER  
ONE WEST STREET, 1<sup>ST</sup> FLOOR  
MINEOLA, NEW YORK, 11501

## MEMORANDUM

**To:** All Department Heads and DCCOs  
**From:** Robert Cleary,  Chief Procurement Officer  
**CC:** John Chiara, Deputy County Executive for Compliance  
**Re:** Bid Withdrawal Policy for Formal Sealed Bids  
**Date:** December 11, 2019

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### I. INTRODUCTION

In the conduct of formal sealed bid solicitations, there are occasions in which a bidder requests to withdraw its bid due to a mistake or error where the mistake or error is not evident on the face of the bid following the bid opening. Withdrawal of bids due to such a mistake or error may be allowed when requested timely, properly documented, and justified to the satisfaction of the County. In determining whether a requested bid withdrawal is warranted, the County shall be guided by GML §103 (11) as described below.

### II. SCOPE

This policy relates to bid withdrawal requests received during the conduct of procurements subject to GML § 103, namely construction and other formal sealed bid solicitations.

### III. BID WITHDRAWAL REQUEST PROCEDURE

Any bid withdrawal request by a bidder where the mistake or error is not evident on the face of the bid following the bid opening shall meet the following criteria:

- 1) be submitted by the bidder in writing addressed to the authorized County contact identified in the solicitation;

- 2) be prior to award of the contract or within three days after the bid opening, whichever period is shorter;
- 3) the price bid was based on an error of such magnitude that enforcement would be unconscionable;
- 4) the error in the bid is actually due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of work, labor, material, goods, or services made directly in the compilation of the bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of the original work paper, documents, or materials used in the preparation of the bid sought to be withdrawn; and
- 5) it is possible to place the County in the position it was in prior to the bid withdrawal request.

Unless otherwise required by law, the sole remedy for a bid mistake in accordance with this policy shall be withdrawal of that bid and the return of the bid bond or other security, if any, to the bidder. Thereafter, the awarding department may, in its discretion, award the contract to the next lowest responsible bidder or rebid the contract. Any amendment to or reformation of a bid or a contract to rectify such an error or mistake is strictly prohibited.

To support and justify any request to withdraw a bid, the bidder shall submit to the County within the timeframe stipulated above:

- 1) original, complete documents demonstrating the error and the intended correct bid; and
- 2) a signed and sworn explanation by a principal of the bidder specifically describing the circumstances as to where, when, how, and by whom the mistake was committed, including an attestation that all information and documentation provided to the County is true, accurate, and unaltered. In addition, any claim that the bidder intended, but failed, to apply a markup, discount, or other differential also should be supported and ascertainable by clear evidence.

The County reserves the right to request additional information from or meet with the bidder to discuss the requested withdrawal and supporting documents prior to making a determination.

Based on all information presented, the Department Chief Contracting Officer (DCCO) shall determine whether to reject the bid withdrawal request. Any bid withdrawal accepted by the DCCO also requires additional approval by the Chief Procurement Officer (CPO).

#### **IV. RECORDS OF BID WITHDRAWAL REQUESTS**

For each bid withdrawal request received, the DCCO shall generate and retain a record-of-decision memorandum outlining the circumstances and rationale for allowing or declining the bid withdrawal. The DCCO shall maintain a record of all such memoranda on file. In addition, a copy of each memorandum shall be submitted to the CPO for retention in a central file.