

SCHEDULE A

COUNTY OF SARATOGA

LOCAL LAW NO. 2 OF 2014

**A LOCAL LAW TO AUTHORIZE CONTRACT AWARDS
BASED UPON BEST VALUE METHODOLOGY**

BE IT ENACTED, by the Saratoga County Board of Supervisors as follows:

SECTION 1. Title. This Local Law shall be known as “A Local Law to Authorize Contract Awards Based Upon Best Value Methodology”.

SECTION 2. Legislative Findings and Declaration of Intent.

General Municipal Law §103 (“GML §103”) sets forth the general rules applicable to the awarding of contracts for public work and contracts for purchase by a municipality.

Prior to January 27, 2012, GML §103 required that contracts for public work involving an expenditure of more than \$35,000 and all purchase contracts involving an expenditure of more than \$20,000, shall be awarded by the appropriate officer, board or agency of a municipality to the lowest responsible bidder furnishing the required security after advertisement for sealed bids.

The State Legislature and Governor amended GML §103 (A8692/S6117) on January 27, 2012 to provide local governments greater flexibility in awarding contracts by authorizing the award of purchase contracts, including contracts for service work, but excluding any purchase contracts necessary for the completion of a public works contract pursuant to Article 8 of the Labor Law, on the basis of best value. The state legislation requires counties with a population of less than one million to pass a local law authorizing the use of the best value award process.

Enactment of such a local law provides additional procurement options to localities in ways that may expedite the procurement process and result in cost savings. The “best value” standard for selecting goods and services vendors is critical to efforts to use strategic sourcing principles to modernize the supply chain and ensure that taxpayers obtain the highest quality goods and services at the lowest potential cost, while also ensuring fairness to all competitors.

The federal government, approximately half of the states and many localities have added best value selection processes to their procurement options, in recognition of these advantages. With the increased complexity of the goods and services that municipalities must obtain in order to serve taxpayers, it is critical to consider selection and evaluation criteria that measure factors other than cost in the strictest sense.

Taxpayers are not well served when a public procurement results in low unit costs at the outset, but ultimately engenders cost escalations due to factors such as inferior quality, poor reliability and difficulty of maintenance. Best value procurement links the procurement process directly to the municipality’s performance requirements, incorporating selection factors such as useful lifespan, quality and options and incentives for more timely performance and/or additional services.

Even if the initial expenditure is higher, considering the total value over the life of the procurement may result in better value and long-term investment of public funds. Best value procurement also encourages competition and, in turn, often results in better pricing, quality and customer service. Fostering healthy competition ensures that bidders will continue to strive for excellence in identifying and meeting municipalities' needs, including such important goals as the participation of small, minority and women-owned businesses, and the development of environmentally-preferable goods and service delivery methods. Best value procurement will provide much-needed flexibility in obtaining important goods and services at favorable prices, and will reduce the time to procure such good and services.

SECTION 3. Definitions.

A. "Best value" shall mean the basis upon which a contract may be awarded after a competitive bid or competitive offer for the purchase of goods or services to the bidder or offeror which optimizes quality, cost and efficiency, among responsive and responsible bidders or offerors. Such basis shall reflect, wherever possible, objective and quantifiable analysis. Such basis may also identify a quantitative factor for bidders or offerors that are small businesses or certified minority- or women-owned business enterprises as defined in subdivisions one, seven, fifteen and twenty of section three hundred ten of the executive law to be used in evaluation of offers for awarding of contracts for services. Factors that may be used to determine the "best value" and to award a contract to other than the lowest bidder, are:

1. cost of maintenance for good(s) or service(s);
2. features of the offered product or service set forth in detailed specifications for the product offered;
3. warranties and/or maintenance to be provided with the product or service ;
4. product life of good(s) or service(s);
5. references, past performance and reliability, including reliability or durability of the product being offered and current or past experience with the provision of similar goods or services;
6. organization, staffing (both members of staff and particular abilities and experience), and ability to undertake the type and complexity of the work;
7. financial capability; or
8. record of compliance with all federal, State and local laws, rules, licensing requirements, where applicable, and executive orders, including but not limited to compliance with existing labor standards and prevailing wage laws.

B. "Purchasing Agent" shall mean the Director of Purchasing, or other appropriate officer, board, legislative committee or agency of Saratoga County, consistent with the purchasing policy established (and as may be amended from time to time) by the Saratoga County Board of Supervisors, to have the authority to award purchase contracts upon the basis of "best value" as defined herein.

SECTION 4. The Best Value Award Methodology. When developing solicitation documents for competitive bids or competitive offers for the award of purchase contracts including contracts for service work, but excluding any purchase contracts necessary for the completion of a public works contract pursuant to Article 8 of the Labor Law, the Purchasing Agent may, and subject to the requirements herein and the applicable requirements set forth in the County's Purchasing Policy, determine that an award of a purchase contract shall be based upon best value methodology. In making such determination, the Purchasing Agent shall consider the recommendation, if any, of the Department Head or designee of the Department the purchase contract is being procured for. The Department Head or designee shall, in all instances, obtain the approval of the Purchasing Agent to utilize best value methodology prior to issuance of the competitive bid or competitive offer documents.

SECTION 5. Requirements. Where the basis for an award of a purchase contract will be the best value offer, the Purchasing Agent shall, in all instances:

- A. Document in the procurement record as a component of the competitive award process and in advance of the initial receipt of offers, the determination of the evaluation criteria, which whenever possible, shall be quantifiable, and the process to be used in the determination of best value and the manner in which the evaluation process and selection shall be conducted, and
- B. Shall select a formal competitive procurement process in accordance with guidelines established under the County's Purchasing Policy and document the determination in the procurement record. The process of selection shall include, but may not necessarily be limited to, a clear statement of need; a description of the required specifications governing performance and related factors; a reasonable process for ensuring a competitive field; a fair and equal opportunity for offerers to submit responsive offers; and a balanced and fair method of award. Where the basis for the award is best value, documentation in the procurement record shall, where practicable, include a quantification of the application of the criteria to the rating of proposals and the evaluation results, or, where not practicable, such other justification which demonstrates that best value will be achieved.
- C. The solicitation shall prescribe the minimum specifications or requirements that must be met in order to be considered responsive and shall describe and disclose the general manner in which the evaluation and selection shall be conducted. Where appropriate, the solicitation shall identify the relative importance and/or weight of cost and the overall technical criterion to be considered by the County in its determination of best value.
- D. The Purchasing Agent shall develop procedures with the approval of the Saratoga County Board of Supervisors that will govern the award of contracts upon the basis of best value. The procedures, once approved by the Board of Supervisors, will be incorporated in the County Purchasing Policy and reviewed by the Board of Supervisors as necessary.

SECTION 6. Severability. If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity or circumstances shall be adjudged by an Court of competent jurisdiction to be invalid or unconstitutional, such order or 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 law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

SECTION 7. Effective Date. This Local Law shall take effect immediately upon filing with the New York State Secretary of State.