

# ORANGE COUNTY LEGISLATURE

## LOCAL LAW NO. 5 OF 2014

### A LOCAL LAW AMENDING LOCAL LAW NO. 13 OF 2013 (AS PREVIOUSLY AMENDED) KNOWN AS THE "PAY-TO-PLAY LOCAL LAW."

**Section 1.** This Legislature does wish to amend Local Law No. 13 of 2013 (as previously amended) to provide uniformity to campaign contribution limits for county elected officials.

**Section 2.** Local Law No. 13 of 2013 is hereby amended and restated as follows:

**BE IT ENACTED**, by the County Legislature of the County of Orange as follows:

**WHEREAS**, large political contributions from those seeking or currently performing business with the County ("Pay-to-Play"), may raise concerns on the part of taxpayers and residents as to their trust in government contracts; and

**WHEREAS**, it has become common for some individuals or entities to make substantial political contributions to those holding elective County office who are ultimately responsible for awarding contracts for County business; and

**WHEREAS**, it is important to foster public confidence in governmental operations by preventing any actual, or even any perception of, corruption; and

**WHEREAS**, the Orange County Legislature sets forth a policy to set maximum dollar amounts that professional business entities may contribute politically, beyond which they become ineligible to receive a public contract from the County of Orange.

**NOW THEREFORE**,

**BE IT ENACTED**, by the Legislature of Orange County, New York, as follows:

**Section 1. Title.**

This Local Law shall be known by and may be cited as the "Pay-to-Play Local Law".

**Section 2. Definitions.**

The terms listed below shall have the following meanings for purposes of this local law:

- (a) "County" means the County of Orange or any department, board, executive division, institution, office, branch, bureau, commission, agency, legislature or other division or part thereof.
- (b) "County elected official" means the County Executive, a County Legislator, the County Clerk, the District Attorney or the Sheriff.
- (c) "Contract" for purposes of this local law means any agreement or contract, including any amendment or modification thereto with the County of Orange as defined in this Section 2 (a) for:

- (i) the rendition of any services or work;
- (ii) the sale or lease of any land or building except for real property acquired by the County via a tax sale or tax foreclosure procedure pursuant to Article 10 or Article 11 of the New York State Real Property Tax Law;
- (iii) a grant, loan or loan guarantee;

For purposes of this local law, the term "Contract" excludes Project Labor Agreements and exempt contracts set forth in Section 8 herein.

(d) "Professional Business Entity" means an individual, person, firm, corporation, professional corporation, partnership, organization, union, or association in the rendering of any work contracted through the County. The definition of a professional business entity includes all principals who own 10% or more of the equity in the corporation or business trust, partners, officers in the aggregate, as well as any subsidiaries directly controlled by the Professional Business Entity. The term Professional Business Entity does not include a political subdivision of the State of New York (i.e., municipalities), school districts, state and/or federal governments.

(e) "In-kind contributions" shall include:

Goods and services offered free of charge;  
Goods and services offered at less than the usual and normal charge;  
Payments by a third party for goods and services rendered to a candidate or political committee.

The value of a particular in-kind gift is determined as follows:

**Goods:** (such as equipment supplies, facilities and mailing lists) are valued at their normal purchase or rental price.

**Services** (such as advertising, printing or consulting) are valued at the prevailing commercial rate at the time the services are rendered (i.e., the amount that was paid or would have been paid for the services).

**Discounts** are valued at the amount discounted (i.e., the difference between the usual and normal charge and the amount paid)

### **Section 3. Campaign Contribution Limits.**

- A. No professional business entity who contracts with the County of Orange or its boards shall make a monetary or in-kind contribution to:
  - a) An individual holding the position of Orange County Legislator or is a candidate for said position if that contract must be approved or voted on by such individual; or
  - b) A committee controlled by such individual, in an amount not to exceed \$250.00 per calendar year, but in the event the professional business entity does not contribute annually to the individual or committee as described above, then the amount that a professional business entity may contribute shall not exceed \$1,000.00 during the four-year term of office.

- B. No professional business entity who contracts with the County of Orange or its boards shall make a monetary or in-kind contribution to:
- a) An individual holding the position of Orange County Executive, Orange County Clerk, Orange County District Attorney or Orange County Sheriff or is a candidate for said position if that contract must be approved or voted on by such individual; or
  - b) A committee controlled by such individual, in an amount not to exceed \$1,000.00 per calendar year, but in the event the professional business entity does not contribute annually to the individual or committee as described above, then the amount that a professional business entity may contribute shall not exceed \$4,000.00 during the four-year term of office.

#### **Section 4. Campaign Contributions Made prior to the Effective Date.**

No contribution or money or any other thing of value, including in-kind contributions, made by a professional business entity to those individuals or entities set forth in Section 3 shall be deemed a violation of this section, or be disqualified thereby, if that contribution was made by the professional business entity prior to the effective date of this local law. The disclosure requirements shall not apply to contracts awarded subsequent to the effective date if the solicitation and/or renewal process was initiated prior to the effective date of this local law.

#### **Section 5. Contribution Statement by Professional Business Entity.**

Prior to the awarding of a Contract, the Orange County Department of General Services shall receive a sworn statement from the professional business entity under penalty of perjury that the entity has not made a campaign contribution in violation of Section 3 of this local law during the four (4) years preceding such sworn statement.

The professional business entity under penalty of perjury will make the statement that it has not knowingly made a contribution in violation of the local law hereof, during the four (4) years preceding such sworn statement, and has not made or solicited contributions through intermediaries, third parties, or immediate relatives for the purpose of concealing the source of the contribution during that same four (4) year time period.

#### **Section 6. Review of NYS Board of Elections Disclosure Statements.**

Prior to the award of a contract, the Commissioner of General Services or his or her designee shall review the New York State Disclosure Statements filed by County Elected Officials and candidates for such offices for the past four (4) calendar years to determine whether the business entity has contributed to such individual's campaign in an amount in excess of the campaign contribution limits set forth in Section 3 of this local law. In the event it is found that such professional business entity has exceeded the threshold campaign contribution limits, the Commissioner of General Services shall notify the business professional entity that it has exceeded the campaign contribution limits as provided for in this local law. The professional business entity will have thirty (30) calendar days to cure the defect by requesting that the excess contributions be returned immediately. Proof of receipt of the return of such excess contributions must be submitted to the Commissioner of General Services. Failure to provide such proof shall result in the Commissioner of General Services rejecting the professional business entity's proposal or applications.

## **Section 7. Individual or Entity "Doing Business with the County of Orange" Database.**

The County Executive's office shall, on a bi-annual basis, in January and July, compile a list of names, based on the County's records, listing those professional business entities doing business with the County of Orange, as of those months, with this list being made available for public viewing in the office of the Orange County Commissioner of General Services.

## **Section 8. Exemption.**

The contribution limitations specified in this Local Law do not apply **professional business entities when:**

- i. such contract is awarded to the lowest bidder pursuant to New York State Law;
- ii. (a). **such** contract **is** between the County and Early Intervention and/or pre-school special education providers that are not subject to the Request for Proposal Process under the Orange County Procurement Policy and that the County is required to enter into pursuant to state Law;  
  
(b). **such** Contract **is** between the County and individuals, including parents, legal guardians and/or their designees for transporting children to Early Intervention and/or pre-school special education services.
- iii. procurement **is** authorized by NYS General Municipal Law ("GML") § 103(3) (goods and services through another New York county's contract), GML § 104 (goods and services through NYS Office of General Services contracts, and GML § 103(16) (certain goods and services through another government's contracts, "piggybacking")
- iv. **such** contract **is** awarded to Preferred Sources or as authorized in Section 162 of the State Finance Law, as amended from time to time;
- v. **the Contract is with a** sole or single source provider;
- vi. **the contract is awarded to a contractor of another unit of government such as the United States of America, New York State, another County, a Town, City, or Village, or group of such other units of government, which is passing through funds of such other unit(s) of government or acting on behalf of such other unit of government;** and
- vii. contracts awarded as emergency contracts when the public exigency requires the immediate emergency services as determined by General Municipal Law, Executive Order or Resolution in accordance with Orange County Procurement Policy Part VIII.

## **Section 9. Violations/Penalty.**

- (a) A professional business entity that files a false sworn Contributions Statement will have its Contract with Orange County declared null and void and will be disqualified from being awarded any contract with the County for a period of four years from the date of the filing of the false sworn Contributions Statement and the matter shall be referred to the Orange County District

Attorney for prosecution.

- (b) The professional business entity shall have a continuing duty to report any violations of this law that may occur during the negotiation, proposal process or duration of a contract. Any professional business entity who violates Section 3 of this local law shall be in material breach of the terms of the Contract, and the County Attorney shall seek damages against the professional business entity as provided for in said Contract.
- (c) Any professional business entity who violates Section 3 of this local law shall be disqualified from eligibility for the submission of proposals or applications for future Contracts for a period of four calendar years from the date of such violation.

**Section 10. Incorporation by Reference.**

The regulatory and penalty provisions of this local law shall be incorporated by reference into the Orange County Procurement Policy and all Orange County Contracts as defined in Section 2 (c) of this local law.

**Section 11. Severability**

If any provision of this Local Law is held invalid, such invalidity shall not affect the remaining provisions of the Local Law which shall remain effective absent the invalid provision, and to this end, the provisions of the Local Law are declared to be severable.

**Section 12. Effective Date.**

This Local Law shall take effect as provided by the New York State Municipal Home Rule Law and upon completion of the requisite filings and procedures.