

Amending The Policy Established Through Resolution No. 78 Of 2024, A Policy Requiring Nonprofit Vendors To Comply With Applicable Financial Reporting And Tax Filing Regulations To Clarify Compliance Requirements And Enforcement For Nonprofit Vendors

Referred to: The Ways and Means Committee (Chairman Gavaris and Legislators Collins, Hansut, Kovacs, Nolan, Roberts, and Uchitelle)

Legislator Jeff Collins offers the following:

WHEREAS, this resolution has been submitted at the request of the County Executive on behalf of the Department of Finance; and

WHEREAS, pursuant to Resolution No. 78 of April 16, 2024, the Ulster County Legislature adopted and established a policy requiring Nonprofit Vendors to Comply with Applicable Financial Reporting and Tax Filing Regulations; and

WHEREAS, said policy reads as follows:

Ulster County hereby establishes a policy that all contracts with nonprofit vendors with a 501 (c)(3) or 501 (c)(6) status executed on or after January 1, 2025 shall contain the option to withhold the last and final contractual payment if the vendor is not current with applicable financial reporting and tax filings.

Ulster County shall confirm compliance, as directed by the County Executive, with applicable financial reporting and tax filings and withhold the last and final contractual payment for non-compliance.

A waiver from this policy may be granted by a two-thirds vote of the Ulster County Legislature in support of such waiver.

The County Executive, him/her/themselves or through designee, shall ensure all contracts with nonprofit vendors with a 501 (c)(3) or 501 (c)(6) status executed on or after January 1, 2025 are in compliance with applicable financial reporting and tax filings before execution.

Ulster County shall provide notice of this Policy on the county's website and in all announcements, including contracts, procurement requests, and requests for proposals; and

WHEREAS, such policy requires nonprofit vendors with 501(c)(3) or 501(c)(6) status to be current with applicable financial reporting and tax filings as a condition of both initial contracting and final contract payment; and

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WHEREAS, clarification is needed regarding the definition of “current compliance” and the enforcement mechanisms to ensure the fair and consistent application of this policy, particularly with consideration for smaller nonprofit organizations; now, therefore be it

RESOLVED, the Ulster County policy Requiring Non-Profit Vendors to Comply with Applicable Financial Reporting and Tax Filing Regulations shall be amended to read as follows:

“A waiver from this policy may be granted by a ~~two-thirds~~ **majority** vote of the Ulster County Legislature in support of such waiver.”; and, be it further

RESOLVED, that the Ulster County policy Requiring Non-Profit Vendors to Comply with Applicable Financial Reporting and Tax Filing Regulations shall be further amended to include the following additional paragraphs:

“For the purposes of this policy, a nonprofit vendor shall be deemed “current with applicable financial reporting and tax filings” if the vendor: (1) has timely filed the required IRS Form 990 return for its most recently completed fiscal year, either by the original deadline or by a duly granted IRS extension; and (2) maintains active federal tax-exempt status under Section 501(c)(3) or 501(c)(6) of the Internal Revenue Code, without revocation or suspension.

The Ulster County Commissioner of Finance shall, prior to releasing any final payment under a contract with a nonprofit vendor, confirm that the vendor is current with its IRS Form 990 series filings and maintains active tax-exempt status as defined above; provided, however, that in lieu of the IRS Form 990, a vendor may submit independently audited financial statements for its most recently completed fiscal year, accompanied by a written explanation for the substitution, subject to approval by the County Executive or designee; and provided further, that organizations that are not required by the IRS to file a Form 990 shall be exempt from the requirement to submit such filing, provided they submit documentation verifying their continued tax-exempt status, subject to approval by the County Executive or designee.

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If a nonprofit vendor fails to provide proof of filings and/or tax-exempt status by the time of final payment, the Ulster County Commissioner of Finance shall provide written notice of the deficiency to the vendor and copied to the Ulster County Comptroller's Office to allow a period of two (2) months from the date of notice to cure the noncompliance by submitting the necessary filings and documentation of active tax-exempt status.

Final contractual payment shall continue to be withheld until the vendor provides documentation confirming that they are current with applicable financial reporting and tax filing as defined above, or until a waiver is granted.

A nonprofit vendor that is not current with IRS Form 990 series filings or whose tax-exempt status has lapsed may remain eligible to enter into new contracts with Ulster County if the vendor has received written notice from the Ulster County Commissioner of Finance under this policy and is actively within the defined curing period, provided that the vendor demonstrates good faith efforts to achieve compliance and agrees in writing to the terms of the cure process, including applicable deadlines,"

and move its adoption.

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

Passed Committee: Ways and Means on _____.

FINANCIAL IMPACT:
NONE