

**RESOLUTIONS OF THE OSWEGO COUNTY LEGISLATURE FOR  
MAY 2, 2019**

- 81 RESOLUTION AUTHORIZING THE EXECUTION OF A STIPULATION UPON  
SETTLEMENT OF AN ARTICLE 78 PROCEEDING INVOLVING A BID AWARD FOR  
THE LOB PORTICO REDESIGN GENERAL TRADES, CONTRACT 1

OSWEGO COUNTY LEGISLATURE

**RESOLUTION NO. 081**

**RESOLUTION AUTHORIZING THE EXECUTION OF A STIPULATION UPON SETTLEMENT OF AN ARTICLE 78 PROCEEDING INVOLVING A BID AWARD FOR THE LOB PORTICO REDESIGN GENERAL TRADES, CONTRACT 1**

By Legislator Stephen Walpole:

WHEREAS, the County of Oswego was sued in an Article 78 proceeding concerning the disqualification of Bouley & Associates, Inc. regarding Oswego County Legislative Office Building Portico Redesign - Contract 1, General Trades - Bid Ref: 9160 ("L.O.B. Portico Bid"); and

WHEREAS, an appearance was held in Supreme Court, Onondaga County, regarding the issuance of an Order to Show Cause seeking certain temporary relief at which time the parties were heard; and

WHEREAS, the Hon. Anthony J. Paris, J.S.C. has stayed Oswego County's determination of non-responsibility as concerns Bouley & Associates, Inc. pending a return date on May 1, 2019 but has permitted the contractor awarded the work, John R. Dudley Construction, Inc., to continue work under the L.O.B. Portico Redesign bid award in the interim; and

WHEREAS, the several parties have conferred amongst themselves and believe a settlement of this litigation on certain terms is in their mutual best interests,

NOW, THEREFORE, upon recommendation of the Infrastructure & Facilities Committee of this body, it is hereby,

RESOLVED, that the Chair of the Legislature be and is hereby authorized to execute the annexed proposed Stipulation and Order upon Settlement; and, it is further

RESOLVED, that the County Attorney be and is hereby authorized to execute any necessary Stipulation of Discontinuance as a result of same.

**ADOPTED BY A VOICE VOTE ON MAY 2, 2019:**

**YES: 22      NO: 0      ABSENT: 3      ABSTAIN: 0**

OSWEGO COUNTY LEGISLATURE

At a *Motion Term* of the Supreme Court of the State of New York, County of Onondaga, held at the Onondaga County Courthouse, 401 Montgomery Street, Syracuse, New York on May 1, 2019.

**PRESIDING: HON. ANTONY J. PARIS, J.S.C.**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ONONDAGA

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BOULEY ASSOCIATES, INC.,

*Petitioner,*

-vs-

THE COUNTY OF OSWEGO, OSWEGO COUNTY  
PURCHASING, COUNTY OF ONONDAGA,  
DIVISION OF PURCHASE, ANDREW TROMBLEY,  
PURCHASING DIRECTOR, ONONDAGA COUNTY  
DIVISION OF PURCHASE and OSWEGO COUNTY  
PURCHASING and  
JOHN R. DUDLEY CONSTRUCTION, INC.,

*Respondents.*

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**STIPULATION AND  
ORDER UPON  
SETTLEMENT**

Index Number:

**SU-2019-2542**

RJI No.:

This Article 78 proceeding having been commenced by the filing of a petition, proposed Order to Show Cause and memorandum of Law alleging, *inter alia*, that one or more Respondents with the exception of John R. Dudley Construction, Inc. (“Dudley”) have made a determination of non-responsibility as to Petitioner Bouley and Associates, Inc. (“Bouley”) that is arbitrary, capricious, contrary to law and/or in violation of Bouley’s procedural due process rights; and, the Court having scheduled a conference on March 26, 2019 for the parties to appear as to why an Order to Show Cause should not issue providing certain *pendente lite* relief including a stay of the award of a contract for the Oswego County Legislative Office Building Portico Redesign - Contract 1, General Trades - Bid Ref: 9160 (“L.O.B. Portico Bid”) awarded by Oswego County to Dudley; and

Petitioner having appeared by Kevin M. Cox, Esq. of the Camardo Law Firm, P.C.; and the County of Oswego Respondents having appeared by Richard C. Mitchell, Oswego County Attorney; and, the Onondaga County Respondents having appeared by John E. Heisler, Jr., Senior Deputy Onondaga County Attorney; and John R. Dudley Construction, Inc. having appeared by Kimberly A. Steele, Esq. of the Steele Law Firm; and, the Court and counsel having had a Bench Conference regarding a possible global resolution of this matter; and, the Court having executed the proposed Order to Show Cause staying the determination of non-responsibility as to Petitioner only but allowing Dudley to proceed with the contract awarded as concerns the LOB Portico Bid; and, Petitioner having filed and served an Amended Verified Petition; and, the parties having conferred with each other and with their respective counsel; and, with the Court; and, it appearing that a settlement of this litigation is in the best interests of all concerned,

**THEREFORE**, the parties to this litigation mutually agree to settle same as follows:

1. The parties to the action shall execute and file a stipulation of discontinuance, with prejudice, upon submission and acceptance of the Stipulation by the Court.
2. Oswego County shall rescind any and all findings of non-responsibility as concerns petitioner Bouley for bid reference 9160 for LOB Portico G.C. work including as contained in a February 27, 2019 letter (Petition Exhibit B) *nunc pro tunc*.
3. Once that has occurred, the petitioner, Oswego County respondents and Dudley agree that Bouley is the lowest responsible bidder for the Oswego County LOB Portico G.C. work under bid 9160 and a contract for the Oswego County L.O.B. Portico G.C. work shall be awarded to Bouley as lowest responsible bidder in the amount of \$618,000 opened on January 24, 2019.
4. Petitioner shall not object to Dudley being paid by Oswego County in *quantum meruit* for the Oswego County LOB Portico work performed to date and project costs incurred to date by Dudley. Petitioner agrees to review same for efficiency purposes and may voluntarily use same, if convenient, but is not bound to use same. Dudley makes no representations or warranties as to the sufficiency or compliance with the bid specifications to Bouley and should Bouley use same, it does so at its own risk.
5. In light of an intervening change order issued by Barton & LoGuidice in January of 2019 for the Hannibal Transfer Station, a change in technical coatings from original specifications and slab conditions extant before commencement of contract work, and as

a further inducement to settlement, Oswego County Department of Solid Waste shall also rescind its declaration of default concerning the Hannibal Transfer Station (Slab Replacement Project - Contract No. 1 - General Construction) *nunc pro tunc* and will further waive contractual warranty work by Bouley upon completion and acceptance of the 2019 Change Order work and return of the required executed paperwork to close the project; the product warranty from Transpo running to Oswego shall not be affected by this provision.

6. Each party hereby submits to the jurisdiction of the Court regardless as to whether a formal appearance or responsive pleadings have been interposed and shall be responsible for their own attorney's fees, costs and disbursements.
7. By signing this stipulation, all parties hereto confirm that have read the foregoing Stipulation of Settlement and have full authority to execute same in their own name and as to any divisions, departments or employees of the respective parties.
8. This stipulation may be executed in counterparts and, once executed, shall be submitted to the Court.
9. The Petitioner Bouley and the remaining named Respondents Oswego County and Dudley agree that this matter shall be **DISMISSED** with prejudice.

BALANCE OF PAGE INTENTIONALLY LEFT BLANK.

10. Supreme Court, Onondaga County, shall retain jurisdiction to enforce the terms and conditions of this Stipulation and Order upon Settlement.

**WHEREFORE**, each party has affixed their hands and seals on the date and year written below.

Date: May \_\_\_\_\_, 2019                      By: **BOULEY AND ASSOCIATES, Inc.**  
\_\_\_\_\_  
Charles A. Bouley, Jr., President

Date: May \_\_\_\_\_, 2019                      By: **COUNTY OF OSWEGO**  
\_\_\_\_\_  
Hon. James L. Weatherup  
Chairman of the Legislature

Date: May \_\_\_\_\_, 2019                      By: **JOHN R. DUDLEY CONSTRUCTION, INC.**  
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Brian M. Dudley, President

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**IT IS SO ORDERED.**

Dated: May \_\_\_\_\_, 2019

Syracuse, New York

**ENTER.**

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HON. ANTHONY J. PARIS, J.S.C.  
JUSTICE OF THE SUPREME COURT