

Department of Taxation and Finance

Procurement Lobbying Guidelines

I. INTRODUCTION

These Guidelines have been issued pursuant to the New York State Finance Law, which regulates lobbying on **Procurement Contracts**. The Guidelines, which apply to all Department of Taxation and Finance (DTF) **Procurement Contracts** having an estimated annualized expenditure of more than \$15,000, limit communications between **Offerers** and the DTF during the **Restricted Period** of a **Governmental Procurement**. During the **Restricted Period**, an **Offerer** may only communicate with the person or persons designated by the DTF to receive communications regarding such **Governmental Procurement**.

II. STATUTORY DEFINITIONS¹

Article of Procurement

A commodity, service, technology, public work, construction, revenue contract, the purchase, sale or lease of real property or an acquisition or granting of other interest in real property, that is the subject of a **Governmental Procurement**.

Contact

Any oral, written or electronic communication with the DTF under circumstances where a reasonable person would infer that the communication was intended to influence the **Governmental Procurement**.

Governmental Entity

All New York State agencies, both houses of the Legislature, the Unified Court System, certain public authorities and public benefit corporations, and municipal agencies.

Governmental Procurement

means: (i) the preparation of terms of the specifications, bid documents, requests for proposals, or evaluation criteria for a **Procurement Contract**, (ii) solicitation for a **Procurement Contract**, (iii) evaluation of a **Procurement Contract**, (iv) award, approval, denial or disapproval of a **Procurement Contract**, or (v) approval or denial of an assignment, amendment (other than amendments that are authorized and payable under the terms of the **Procurement Contract** as it was finally awarded or approved by the Comptroller, as applicable), renewal or extension of a **Procurement Contract**, or any other material change in the **Procurement Contract** resulting in a financial benefit to the **Offerer**.

Offerer

The individual or entity, or any employee, agent or consultant or person acting on behalf of such individual or entity, that communicates with the DTF about a **Governmental Procurement** during the **Restricted Period** of such **Governmental Procurement**.

¹ Defined terms are in bold

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Procurement Contract

Any contract or other agreement for an **Article of Procurement** involving an estimated annualized expenditure in excess of \$15,000. Grants, Article Eleven-B State Finance Law contracts, intergovernmental agreements, railroad and utility force accounts, utility relocation project agreements or orders, and eminent domain transactions shall not be deemed **Procurement Contracts** in these Guidelines.

Restricted Period

The period of time commencing with the earliest date of written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method for soliciting a response from **Offerers** intending to result in a **Procurement Contract** with the DTF and, ending with the final contract award and approval by the **Governmental Entity** and, where applicable, the Office of the State Comptroller.

III. VIOLATIONS

A violation of these Guidelines occurs when (1) there is a **Contact** during the **Restricted Period** between the **Offerer** and someone other than the person or persons designated by the DTF to receive communications for the particular **Governmental Procurement** or (2) the **Offerer** attempts to influence the **Governmental Procurement** in a manner that would result in a violation or attempted violation of section 73.5 or section 74 of the New York State Public Officers Law.

IV. EXEMPTIONS

During the **Restricted Period**, certain **Contacts** are exempt from the rule expressed in III (1) of these Guidelines. These include: (i) submissions of written proposals in response to an invitation for bid, a request for proposal or other solicitation intended to result in a **Procurement Contract**, (ii) submissions of written questions to a designated contact set forth in an invitation for bid, request for proposal or other solicitation intended to result in a **Procurement Contract**, when all written questions and responses are to be disseminated to all **Offerers** who have expressed an interest in the invitation for bid, request for proposal or other solicitation intended to result in a **Procurement Contract**, (iii) participation in a conference provided for in an invitation for bid, request for proposal or other solicitation intended to result in a **Procurement Contract**, (iv) contract negotiations following notification of tentative award of a **Procurement Contract**, (v) communications between designated procuring **Governmental Entity** staff and an **Offerer** to request the review of a **Procurement Contract** award, (vi) complaints by an **Offerer** to the procuring **Governmental Entity's** Office of General Counsel when the **Governmental Entity's** designated person for the **Procurement Contract** fails to respond to authorized **Offerer Contacts**, (vii) **Contacts** by **Offerers** in protests, appeals or other review proceedings (including the apparent successful bidder or proposer and his or her representatives) before the **Governmental Entity** conducting the procurement seeking a final administrative determination, or in a subsequent judicial proceeding, (viii) complaints of alleged improper conduct in a **Governmental Procurement** to the Attorney General, Inspector General, District Attorney, or court of competent jurisdiction, and (ix) written protests, appeals or complaints to the State Comptroller's Office during the process of contract approval, where the State Comptroller's approval is required by law, and where such communications and any responses thereto are made in writing and shall be entered in the procurement record.

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In addition, any communication received by the DTF from members of the New York State Legislature or the Legislative Staff, when acting in their official capacity, shall not be considered a **Contact**.

V. PROCEDURES

A. Notifying Vendors of DTF Procurement Lobbying Guidelines

- 1 For each **Procurement Contract**, the DTF Procurement Section in the Office of Budget Management and Analysis (OBMA) will designate a person or persons to receive communications from **Offerers** concerning the **Procurement Contract**.
- 2 The DTF's Procurement Section will notify **Offerers** of the **Restricted Period** and provide designated contact information for the **Governmental Procurement**.
- 3 A summary of the policy and prohibitions regarding permissible **Contacts** during a **Governmental Procurement**, and a copy of these Guidelines will be made available for all DTF solicitations of proposals, bid documents or specifications.
- 4 The DTF's Procurement Section shall seek written affirmation from all **Offerers** as to the **Offerer's** understanding of and agreement to comply with the DTF's Guidelines (Attachment 1).

B. Making Determinations of Responsibility

Prior to award of a **Procurement Contract**, the DTF must make a responsibility determination with respect to the **Offerer** to be recommended for the award of the contract based upon, among other things, the information supplied by that **Offerer**. The **Offerer** must disclose, using the **Offerer Disclosure of Prior Non-Responsibility Determinations Form** (Attachment 2), whether it has been found non-responsible within the last four years by any **Governmental Entity** for: (1) failure to comply with State Finance Law §139-j, or (2) the intentional provision of false or incomplete information. This disclosure must be certified by the **Offerer** and must affirmatively state that the information supplied by the **Offerer** to the DTF is complete, true and accurate (Attachment 3, Offerer's Certification of Compliance with State Finance Law 139-k(5)).

The **Procurement Contract** must include a provision allowing the DTF to terminate the contract if the certification is subsequently found to be incomplete, false or inaccurate. Admissions by the **Offerer** of past findings of non-responsibility may constitute a basis for rejection of the **Offerer** by the DTF. The DTF can award a contract to the **Offerer** despite the past findings of non-responsibility if it determines that the award of the **Procurement Contract** to the **Offerer** is necessary to protect public property or public health or safety, and that the **Offerer** is the only source capable of supplying the required **Article of Procurement** within the necessary time frame. The basis of such a finding must be included in the procurement record of the **Procurement Contract**.

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C. Recording Contacts

- 1 All DTF employees must record any **Contact** from any person or entity. **Contacts** may come in the form of telephone conversations, correspondence, electronic mail and person-to-person discussions. The Record of Contact Form (Attachment 4) should be used to record all **Contacts**. The form will be completed and sent to the Procurement Section.
- 2 If a DTF employee is in doubt about whether a communication was intended to influence the **Governmental Procurement**, he or she will record the communication on the Record of Contact Form and submit it to the Procurement Section.
- 3 The DTF Procurement Section will review all Records of Contact and forward impermissible contacts to the Inspector General's Office for further review. All Records of Contact will be retained in the procurement record for the related **Procurement Contract**.
4. A list of all **Contacts** will be reported to the Lobbying Commission, as required by such Commission.

D. Investigation of Contacts/ Penalties for Violations

- 1 All impermissible **Contacts** made to a non-designated person will be immediately reviewed and/or investigated by the DTF Inspector General's Office. If the Inspector's General Office finds sufficient cause to believe that an **Offerer** has violated these Guidelines, the **Offerer** will be notified in writing of the investigation and will be afforded an opportunity to respond to the alleged violation. Investigations will be completed as soon as practicable so as not to delay the progress of the **Governmental Procurement**.
- 2 If the Inspector General's Office should find at the conclusion of the review and/or investigation that the **Offerer** knowingly and willfully made prohibited **Contact** in violation of these Guidelines, then the **Offerer** shall be disqualified as non-responsible, unless the Procurement Section makes a finding that the award of the **Procurement Contract** to the **Offerer** is necessary to protect public property or public health or safety, and that the **Offerer** is the only source capable of supplying the required **Article of Procurement** within the necessary time frame. The basis of such a finding must be included in the procurement record of the **Procurement Contract**.
- 3 The DTF will notify the New York State Office of General Services of any determination of non-responsibility or debarments due to violations of the Procurement Lobbying Law.

**New York State Department of Taxation and Finance
Offerer Affirmation of Understanding of, and Compliance with, Procurement Lobbying
Guidelines**

New York State Finance Law 139-j(6)(b) requires that DTF seek written affirmation from all Offerers as to the Offerer's understanding of and agreement to comply with the DTF procedures relating to permissible contacts during a Government Procurement.

Procurement Description, Contract or Bid Number:

Offerer Name: _____

Offerer Address: _____

Telephone Number: _____

e-Mail Address: _____

Offerer affirms it has read, understands and agrees to comply with the Guidelines of the New York State Department of Taxation and Finance relative to permissible contacts as required by the State Finance Law 139-j(3) and 139-j(6)(b).

By (signature): _____

Name (please print): _____

Title (please print): _____

Date: _____

New York State Department of Taxation and Finance
Offerer Disclosure of Prior Non-Responsibility Determinations

New York State Finance Law §139-k(2) obligates a Governmental Entity to obtain specific information regarding prior non-responsibility determinations with respect to State Finance Law §139-j. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law §163(9). In accordance with State Finance Law §139-k, an Offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (a) a violation of State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity. The terms "Offerer" and "Governmental Entity" are defined in State Finance Law § 139-k(1). State Finance Law §139-j sets forth detailed requirements about the restrictions on Contacts during the procurement process. A violation of State Finance Law §139-j includes, but is not limited to, an impermissible Contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such contact does not fall within one of the exemptions).

As part of its responsibility determination, State Finance Law §139-k(3) mandates consideration of whether an Offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no Procurement Contract shall be awarded to any Offerer that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the Offerer is necessary to protect public property or public health safety, and that the Offerer is the only source capable of supplying the required Article of Procurement within the necessary timeframe. See State Finance Law §§139-j (10)(b) and 139-k(3).

A Governmental Entity must include a disclosure request regarding prior non-responsibility determinations in accordance with State Finance Law §139-k in its solicitation of proposals or bid documents or specifications or contract documents, as applicable, for procurement contracts. The attached form is to be completed and submitted by the individual or entity seeking to enter into a Procurement Contract. It shall be submitted to the Governmental Entity conducting the Governmental Procurement.

Offerer Disclosure of Prior Non-Responsibility Determinations

Procurement Description, Contract or Bid Number:

Offerer Name:

Offerer Address:

Telephone Number:

e-Mail Address:

Name and Title of Person Submitting this Form:

1. Has any New York State agency or authority made a finding of non-responsibility regarding the Offerer in the last four years? (Please circle):

No Yes

If yes, please answer the following questions:

2. Was the basis for the finding of the Offerer's non-responsibility due to a violation of State Finance Law 139-j? (Please circle):

No Yes

3. Was the basis for the finding of the Offerer's non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle):

No Yes

Offerer Disclosure of Prior Non-Responsibility Determinations continued

4. If you responded yes to Questions 1, 2 or 3 , please provide details regarding the finding of non-responsibility below:

Government Entity: _____

Date of Finding of Non-responsibility: _____

Facts Underlying Finding of Non-Responsibility (Add additional pages as necessary)

5. Has any New York State agency or authority terminated a procurement contract with the Offerer due to the intentional provision of false or incomplete information? (Please circle):

No Yes

If you responded yes to the above question, please provide details regarding the termination below:

Government Entity: _____

Date of Finding of Non-responsibility: _____

Facts Underlying Finding of Non-Responsibility: (Add additional pages as necessary)

Offerer certifies that all information provided to the DTF with respect to State Finance Law 139-k is complete, true and accurate.

By: *(Signature)*: _____

Name: *(Please print)* _____

Date: _____

**New York State Department of Taxation and Finance
Offerer's Certification of Compliance with State Finance Law 139-k(5)**

New York State Finance Law 139-k(5) requires that every Procurement Contract award subject to the provisions of State Finance Law 139-k or 139-j shall contain a certification by the Offerer that all information provided to the procuring Government Entity with respect to State Finance Law 139-k is complete, true and accurate.

Offerer Certification

I certify that all information provided to the DTF with respect to State Finance Law 139-k is complete, true and accurate.

By: *(signature)* _____

Date: _____

Procurement Description, Contract or Bid Number:

Name *(Please print)*: _____

Title: _____

Offerer Name: _____

Offerer Address: _____

Telephone Number: _____

e-Mail Address: _____

**New York State Department of Taxation and Finance
Record of Contact Form**

Instructions:

New York State Finance Law 139-k(4) requires that all DTF employees, during the Restricted Period of a Procurement Contract, make a written record of any **Contact**. The term "Contact" is defined by statute and refers to oral, written or electronic communications that a reasonable person would infer are attempts to influence the Government Procurement. It should be noted that State Finance Law 139-(6) provides that "[a]ny communications received by a governmental entity from members of the state legislature, or legislative staffs, when acting in their official capacity, shall not be considered to be a "contact" within the meaning of this section and shall not be recorded by a governmental entity pursuant to this section."

Please use the following form, provided on the Procurement Lobbying Intranet Web Site, and complete as much information as you know. E-mail the completed form, as an attachment, to the OBMA-Procurement Lobbying mailbox. The subject line of the email should indicate "Record of Contact under the DTF Procurement Lobby Guidelines.

Was the person making the Contact informed the Contact would be documented? *(Please circle)*

No

Yes

Procurement Description, Contract or Bid Number:

Employee Name: _____

I was contacted by the below named individual regarding the above identified procurement. The communication was under circumstances where a reasonable person would infer that the communication was intended to influence a governmental procurement. The contact took the form of:

correspondence* in person by telephone electronic mail* other

Name of Contact: _____

Contact Information (Please complete all known information):

Place of Offerer's Principal Employment: _____

Occupation: _____

Address: _____

Telephone Number: _____

* Please attach

Record of Contact Form continued

List all dates of Contact: _____

Summary of the Contact:

Was an offer made of goods, services, or other inducements? *(Please circle)* No Yes

If yes, state the good, service, or other inducement:

Is the above named contact or organization the "offerer" in this government procurement? *(Please circle)*

 No Yes

If no, was the above named contract or organization retained, employed or designated by the offerer to:

appear before the DTF about the government procurement? *(Please circle)* No Yes

contact the DTF about the government procurement? *(Please circle)* No Yes

Please indicate how you concluded the conversation.

For Procurement Section Use Only

Procurement Reviewer: _____

Date: _____

Was this a permissible contact? *(Please circle)* No Yes

If impermissible, date sent to Inspector General's Office: