



MEMORANDUM

TO: All Staff

FROM: Sabrina M. Ty, President and CEO /s/

DATE: June 1, 2017

SUBJECT: Policy and Procedures on Procurement Lobbying

The New York State Environmental Facilities Corporation (the “Corporation”) hereby establishes a policy and procedures on procurement lobbying, in accordance with State Finance Law §§ 139-j and 139-k. (the “Policy and Procedures”). The Deputy Director of Corporate Operations has been designated as the Corporation’s Procurement Integrity Officer (“PIO”) responsible for ensuring the Corporation’s compliance with such statutes as well as the Policy and Procedures set forth herein.

The PIO shall review the Policy and Procedures at least annually prior to the Annual Meeting of the Corporation’s Board of Directors. The Board of Directors shall review and approve the Policy and Procedures at least annually at the Annual Meeting.

I. Definitions

“**Contact,**” pursuant to State Finance Law §§ 139-j and 139-k, means any oral, written or electronic communication with the Corporation under circumstances where a reasonable person would infer that the communication was intended to influence the Corporation’s conduct or decision regarding the procurement.

“**Designated Contact(s)**” means a person or persons who are knowledgeable about a procurement and that the Corporation designates for such procurement, pursuant to State Finance Law § 139-j, as the person or persons who may be contacted by Offerers relating to the procurement.

“**Offerer,**” pursuant to State Finance Law §§ 139-j and 139-k, means the individual or entity, or any employee, agent or consultant or person acting on behalf of such individual or entity, that contacts the Corporation about a procurement during the restricted period of such procurement whether or not the entity has a financial interest in the outcome of the procurement; provided, however, that a governmental agency or its employees that communicates with the Corporation regarding a governmental procurement in the exercise of its oversight duties shall not be considered an Offerer.

“Restricted Period,” pursuant to State Finance Law §§ 139-j and 139-k, means the period of time commencing with the earliest posting, on the Corporation’s website, in a newspaper of general circulation, or in the procurement opportunities newsletter in accordance with Economic Development Law Article 4-C, of written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method provided for by law or regulation for soliciting a response from Offerers intending to result in a procurement contract with the Corporation and ending with the final contract award and approval by the Corporation and, where applicable, the Office of the State Comptroller.

“State” means New York State.

II. Policy

The award of procurement contracts by the Corporation will be based on the merits of written proposals received in response to a solicitation and will not be influenced by improper lobbying.

The Corporation will comply with the procedural controls to prohibit improper lobbying during the Restricted Period for a procurement, as set forth in State Finance Law §§ 139-j and 139-k. State Finance Law §§ 139-j and 139-k restrict Contacts, other than to Designated Contacts, between the Corporation and Offerers during the Restricted Period for procurement contracts involving an estimated annual amount of \$15,000 or more, unless it is a Contact that is included among certain statutory exceptions.

III. Procedures

A. Commencement of the Restricted Period and Designated Contacts

The Corporation shall identify Designated Contacts for each procurement at the same time that the Restricted Period commences. The Corporation will also request that all Offerers identify a contact person for the procurement.

The PIO shall notify all EFC employees of the commencement of the Restricted Period and the procurement to which such period relates.

B. Contacts During the Restricted Period

1. Permissible Contacts

Offerers that contact the Corporation about a procurement shall only make permissible Contacts with respect to the procurement. Pursuant to State Finance Law § 139-j(3), permissible Contacts shall include Contacts with the Designated Contacts regarding the procurement. Permissible Contacts shall also include Contacts with other than the Designated Contacts regarding the following:

- a. submission of written proposals in response to a request for proposals, invitation for bids or any other method for soliciting a response from Offerers intending to result in a procurement contract;
- b. the submission of written questions by a method set forth in a request for proposals, or invitation for bids, or any other method for soliciting a response from Offerers intending to result in a procurement contract, when all written questions and responses are to be disseminated to all Offerers who have expressed an interest;
- c. participation in a demonstration, conference, or other means for exchange of information in a setting open to all potential bidders provided for in a request for proposals, invitation for bids, or any other method for soliciting a response from Offerers intending to result in a procurement contract;
- d. complaints by an Offerer regarding the failure of the Designated Contacts to respond in a timely manner to permissible Contacts made in writing to the General Counsel of the Corporation, provided that any such written complaints shall become a part of the procurement record;
- e. negotiations between Offerers who have been tentatively awarded a contract and the Corporation following the tentative award;
- f. Contacts between designated staff of the Corporation and an Offerer to request the review of procurement contract award;
- g. Contacts by Offerers in protests, appeals or other review proceedings (including the apparent successful bidder or Offerer and his or her representatives) before the Corporation seeking a final administrative determination, or in a subsequent judicial proceeding;
- h. complaints of alleged improper conduct in a procurement to the attorney general, inspector general, district attorney, or court of competent jurisdiction; and
- i. protests, appeals or complaints to the State Comptroller's office during the process of contract approval, where the State Comptroller's approval is required, provided that the State Comptroller shall make a record of such communications and any response thereto which shall be entered into the procurement record; and
- j. communications between Offerers and the Corporation that solely address the determination of responsibility of an Offerer by the Corporation.

Communications that do not fall within the definition of a Contact are not subject to these restrictions.

2. Impermissible Contacts

Offerers shall not attempt to influence the procurement in a manner that would result in a violation or an attempted violation of Public Officers Law §§ 73(5) or 74, or of other applicable equivalent ethics code provisions.

Upon any Contact in the Restricted Period, the Corporation employee who received the Contact shall obtain and record information regarding the Contact on **Exhibit 1, Record of Contact**, and immediately forward the form to the PIO. Corporation employees are required to use the **Record of Contact** form to notify the PIO of all Contacts within the Restricted Period, including contacts from employees, agents or consultants of any Offerer competing for the contract award or any attempt by any person to influence the procurement process. All recorded Contacts shall be included in the procurement record for the procurement contract.

Any Corporation officer or employee who becomes aware of any improper lobbying or attempt thereof, or any attempt to influence the procurement process in violation of State Finance Law § 139-j, Public Officers Law §§ 73(5) or 74, or this Policy and Procedures, shall immediately notify the PIO using the **Record of Contact** form. The PIO shall review and immediately investigate any and all allegations and the Offerer shall have an opportunity to be heard in response. If, upon review, the PIO determines that an attempt to influence the procurement process occurred, then the Corporation may impose such sanctions as it deems appropriate, which may include, but shall not be limited to, the disqualification of the proposal from consideration for contract award.

Any determinations on any procurement shall be made in a manner consistent with the Corporation's Procurement Guidelines and this Policy and Procedures, and free from any conduct that would be prohibited by Public Officers Law §§ 73(5) or 74 or other applicable ethics code provisions.

Any Corporation employee who fails to report improper lobbying or attempt thereof, or any attempt to influence the procurement process, may be subject to disciplinary action, or considered in violation of Public Officers Law §§ 73(5) or 74 and subject, without limitation, to enforcement by the State Inspector General and/or the State Joint Commission on Public Ethics.

C. Offerer Requirements

The Corporation shall incorporate the language in **Exhibit 2, Summary of Policy and Procedures on Procurement Lobbying** into all solicitations.

The Corporation shall seek a written affirmation from all Offerers as to their understanding of and agreement to comply with the Corporation's procedures relating to permissible Contacts during a governmental procurement pursuant to State Finance Law § 139-j.

The Corporation shall ensure that solicitations or contract documents, as applicable, for procurement contracts shall require Offerers to disclose findings of non-responsibility made within the previous four years by any governmental entity where such prior finding of non-responsibility was due to: (i) a violation of State Finance Law § 139-j, or (ii) the intentional provision of false or incomplete information to a governmental entity. The failure of Offerers to timely disclose accurate and complete information or otherwise cooperate with the Corporation shall be considered by the Corporation in its determination of responsibility.

Any procurement contract award subject to the provisions of State Finance Law §§ 139-j and 139-k shall contain a certification by the Offerer that all information provided to the Corporation with respect thereto is complete, true and accurate, and each such procurement contract shall contain a provision authorizing the Corporation to terminate such contract in the event such certification is found to be intentionally false or intentionally incomplete.

D. Violations

A finding by the Corporation that an Offerer has knowingly and willfully violated State Finance Law § 139-j(3) regarding permissible Contacts shall result in a determination of non-responsibility and such Offerer shall not be awarded the procurement contract, unless the Corporation finds 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 timeframe, provided that the Corporation shall include in the procurement record a statement describing the basis for such a finding.

Any subsequent determination of non-responsibility due to a violation of State Finance Law § 139-j within four years of a determination of non-responsibility due to a violation of such provision shall result in the Offerer being rendered ineligible to submit a proposal on or be awarded any procurement contract for a period of four years from the date of the second final determination.

Upon a determination by the Corporation of non-responsibility or debarment due to a violation of State Finance Law § 139-j, the Corporation shall notify the Office of General Services, which shall keep a list of all Offerers who have been determined to be non-responsible bidders or debarred due to violations State Finance Law § 139-j.

The Corporation shall not award a contract to an Offerer who fails to timely disclose accurate and complete information regarding findings of non-responsibility made within the previous four years by any governmental entity (where the finding was due to a violation of State Finance Law § 139-j or the intentional provision of false or incomplete information to a governmental entity) or otherwise cooperate with the Corporation unless the Corporation finds 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 timeframe, provided, that the Corporation shall include in the procurement record a statement describing the basis for such a finding.

E. Reporting

The PIO shall maintain records of all Record of Contact forms and such information contained therein as well as the results of any investigations by the PIO shall be incorporated into EFC's Annual Report on Procurement Contracts, which shall be submitted to the Division of Budget, with copies to the Department of Audit and Control, the Department of Economic Development, the Senate Finance Committee, and the Assembly Ways and Means Committee.

Attachments

EXHIBIT 1

**New York State Environmental Facilities Corporation
Record of Contact
Pursuant to State Finance Law § 139-k(4)**

TO: Procurement Integrity Officer for the Procurement Record

FROM: _____

RE: RFP for _____
Dated _____

DATE: _____

SUBJECT: Record of Contact under State Finance Law § 139-k(4)

On _____, ____, 20____, I had contact with the below named individual regarding the above identified procurement. The term “contact” is defined in State Finance Law § 139-k(1)(c) and the Corporation’s Policy and Procedures on Procurement Lobbying to mean any oral, written, or electronic communication with the Corporation under circumstances where a reasonable person would infer that the communication was intended to influence the Corporation’s conduct or decision regarding the governmental procurement. In accordance with State Finance Law § 139-k(4), the following information was obtained.

Name: _____

Address: _____

Telephone Number: _____

Place of Principal Employment: _____

Occupation: _____

Is the above named person or organization the offerer in this governmental procurement?
(Please Circle) Yes No

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

a) Appear before the governmental entity about the governmental procurement?
(Please Circle) Yes No

b) Contact the governmental entity about the governmental procurement?

EXHIBIT 2

Summary of Policy and Procedures on Procurement Lobbying

State Finance Law §§ 139-j and 139-k restrict communications between the Corporation and Firms during the procurement process, from the earliest posting of this request for proposals (“RFP”) on a governmental entity’s website, in a newspaper of general circulation, or in the procurement opportunities newsletter, through final award and approval of the contract by the Corporation to other than the designated contacts identified in this RFP unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law § 139-j(3)(a).

Violations of this provision may be grounds for immediate disqualification. Further information about this restriction may be found at: Procurement Lobbying Law FAQ, Section 7: Designated Contacts: <http://www.ogs.ny.gov/aboutogs/regulations/advisoryCouncil/Faq.htm>.

The Corporation’s full Policy and Procedures on Procurement Lobbying can be found on the Corporation’s website.