

Procurement Lobbying Law Purchase Order Requirements

Purchase Order Number:

The following language is hereby added to the contract:

Procurement Lobbying Law Summary:

Pursuant to State Finance Law §§139-j and 139-k, this procurement includes and imposes certain restrictions on communications between the New York State Department of Environmental Conservation (Department) and a vendor during the procurement process. A vendor is restricted from making contacts from the earliest notice of intent to enter into a Contract through final award and approval of the Contract by the Department and, if applicable, Office of the State Comptroller (“restricted period”) to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated staff, as of the date hereof, is identified below. Department employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the vendor pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4 year period, the vendor is debarred from obtaining governmental Procurement Contracts. Further information about these requirements, including a copy of the lobbying law, can be found at:

<http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>

For information concerning the Department’s guidelines, see Attachment 1: New York State Department of Environmental Conservation Guidelines Regarding Permissible Contacts During a Procurement and the Prohibition of Inappropriate Lobbying Influence.

Designated Department Staff Person(s):

Name and Title:

Division:

Address:

Telephone Number:

Termination:

The Department reserves the right to terminate this Contract in the event it is found that the certification filed by the Contractor in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Department may exercise its termination right by providing written notification to the Contractor.

Affirmation:

Contractor’s Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b)

By signing below, the Contractor affirms that it understands and agrees to comply with the procedures of the New York State Department of Environmental Conservation relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

Contractor’s Signature and Date: _____

Attachment 1
New York State Department of Environmental Conservation
Guidelines Regarding Permissible Contacts During a Procurement and
the Prohibition of Inappropriate Lobbying Influence

Chapter 1 of the Laws of 2005, as amended by Chapter 596 of the Laws of 2005 (collectively referred to as the “Lobbying Law”), makes major changes to the Legislative Law and State Finance Law relative to lobbying on government procurements. More specifically, the Lobbying Law creates two new sections in the State Finance Law: Section 139-j addresses restrictions on “contacts” during the procurement process; and Section 139-k addresses the disclosure of contacts and the responsibility of offerers¹ during the procurement process. The Lobbying Law applies to all procurements initiated on or after January 1, 2006. In this regard, a procurement means a contract or agreement involving an annual expenditure in excess of \$15,000 for a commodity, service, technology, public work, or construction; purchase, sale or lease of real property; or revenue contract.

In conformity with the Lobbying Law, during a procurement’s restricted period² the only New York State Department of Environmental Conservation (Department) officer(s) or employee(s) that the offerer may “contact” is/are the Department designated contact person(s) for that procurement. In this regard, “contact” means any oral, written, or electronic communication under circumstances where a reasonable person would infer that the communication was intended to influence a procurement. Exceptions to this rule include:

1. submission of a written proposal in response to an RFP, IFB or any other solicitation method;
2. submission of written questions as part of an RFP, IFB or other solicitation method where all written questions and written responses will be provided to all offerers;
3. participation in a pre-proposal or pre-bid conference scheduled as part of an RFP, IFB or other solicitation process;
4. written complaints by an offerer that the Department designated contact for a procurement fails to respond to in a timely manner;
5. negotiations with the Department following tentative award;
6. contacts between designated Department staff and offerer to request the review of a contract award; and
7. communications with the Department regarding an appeal, protest or other review of a procurement, participation in an administrative or judicial proceeding regarding a procurement, and complaints regarding a procurement made to the Attorney General, Inspector General, District Attorney, or State Comptroller.

An offerer shall not, under any circumstances, attempt to influence a Department procurement in a way that violates or attempts to violate: Public Officers Law Section 73(5), relating to gifts intended to influence; or Public Officers Law Section 74, relating to the code of ethics for employees of state agencies, public authorities and public benefit corporations, members of the New York State Legislature, and Legislative employees.

¹ Individual or entity, or any employee, agent, consultant or person acting on behalf of such individual or entity, that contacts the Department about a procurement during the restricted period.

² The period of time commencing with the earliest written notice, advertisement or solicitation of a Request for Proposals (RFP), Invitation for Bids (IFB), solicitation of proposals or any other method for soliciting responses from offerers intending to result in a procurement contract by the Department, and ending with the final contract award and approval by the Department, and the Office of the State Comptroller (if required).

An offerer who contacts the Department designated contact person for a procurement during the restricted period must be prepared to provide the following information: name, address, telephone number, place of principal employment and occupation of the person or organization making the contact, and whether the person/organization making the contact is the offerer or is retained, employed or designated by or on behalf of the offerer to appear before or contact the Department about the procurement.

An offerer that submits a proposal, bid or other response to a Department RFP, IFB or other solicitation method must: certify that it understands and agrees to comply with these guidelines regarding permissible contacts during a procurement and the prohibition of inappropriate lobbying influence; and disclose whether any governmental entity has, within the prior four years, found the offerer non-responsible due to a violation of the Lobbying Law or the intentional provision of false or incomplete information. Further, all Department procurement contracts will contain: a certification by the offerer that all information provided to the Department with respect to the Lobbying Law is complete, true and accurate; and a provision authorizing the Department to terminate the contract in the event such information is found to be intentionally false or incomplete.

The Department will investigate all allegations of violations of the Department guidelines regarding permissible contacts during a procurement and the prohibition of inappropriate lobbying influence. A finding that an offerer has knowingly and willfully committed such a violation may result in a determination that the offerer and its subsidiaries are non-responsible and therefore ineligible for award of the procurement contract. A second determination of non-responsibility for such a violation within four (4) years of the first such determination may render the offerer and its subsidiaries ineligible to submit a bid or proposal or be awarded a procurement contract for four (4) years from the date of the second determination. The Department will notify the New York State Office of General Services (OGS) of any determination of non-responsibility or debarments due to violations of the Lobbying Law.

If you require further guidance on the new Lobbying Law, you are encouraged to visit the Advisory Council on Procurement Lobbying website at the following address: <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>, where Frequently Asked Questions (FAQ's) and answers adopted by the council have been posted. A copy of the new Procurement Lobbying Law is also available on this website.