

## **Policy Concerning Contacts During Suffolk County Water Authority Procurements**

### **PURPOSE**

The Suffolk County Water Authority adopts this Policy pursuant to Section 139-j and 139-k of the State Finance Law. This policy provides that the Authority shall (a) designate a procurement officer to be responsible for communications relative to each Authority procurement, (b) undertake the procurement in a manner that is consistent with law and free from any conduct that would be violative of Public Officers Law ethics provisions, (c) requires offerers who contact the Authority about an Authority procurement to contact the procurement officer and not attempt to influence the Authority procurement in a way that violates or attempts to violate the ethics provisions of the Public Officers Law, and (d) require the Authority to record in a procurement record certain information about the persons who contact the Authority concerning a Authority procurement.

### **I. DEFINITIONS**

As used herein, the following terms shall have the meanings set forth below:

- A. 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 Authority Procurement.
- B. Authority:** The Suffolk County Water Authority.
- C. Contacts:** Any oral, written or electronic communication with the Authority under circumstances where a reasonable person would infer that the communication was intended to influence the Authority's Procurement.
- D. Proposal:** Any bid, quotation, offer or response to an Authority solicitation of submissions relating to a procurement.
- E. Authority Procurement:** Shall mean (i) the preparation or terms of the specifications, bid documents, request 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), renewal or extension of a procurement contract, or any other material change in the procurement contract resulting in a financial benefit to the Offerer.

- F. Offerer:** The individual or entity, or any employee, agent or consultant or person acting on behalf of such individual or entity, that contacts the Authority about a Procurement during the Restricted Period of such Procurement.
- G. Procurement Contract:** Shall mean any contract or other agreement for an article of procurement involving an estimated annualized expenditure in excess of five thousand dollars. Grants, article eleven-B state finance law contracts, program contracts between not-for-profit organizations, as defined in article eleven-B of this chapter, and the unified court system, intergovernmental agreements, railroad and utility force accounts, utility relocation project agreements or orders and eminent domain transactions shall not be deemed procurement contracts.
- H. Restricted Period:** Shall mean the period of time commencing with the earliest 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 Authority and ending with the final contract award and approval by the Authority.
- I. Ethics Officer:** Shall mean, for the purposes of this policy, the Authority's Chief Executive Officer or his designee.
- J. Procurement Officer:** Shall mean, unless otherwise specified by the Authority Members, the Authority's Purchasing Manager.

## **II. CONTACTS BY OFFERERS**

All Contacts concerning an Authority Procurement between an Offerer and the Authority during the Restricted Period, shall be made through the Procurement Officer, unless one of the following exceptions applies:

- A. The submission of written proposals in response to a request for proposals, invitation for bids or any other method of soliciting a response from Offerers intending to result in a Procurement Contract (collectively, "Solicitation Materials");
- B. The submission of written questions from Offerers to a designated contact set forth in any Solicitation Materials, when all written questions and responses are to be disseminated to all Offerers who have expressed interest in the Solicitation Materials;
- C. Participation by an Offerer in a conference provided for in any Solicitation Materials;
- D. Complaints made in writing by an Offerer to the Authority's Office of General

Counsel regarding the failure of the applicable Procurement Officer to respond in a timely manner to authorized Offerer Contacts, provided that such written complaints become part of the Procurement Record;

- E. Contacts by an Offerer tentatively awarded a contract and is engaged in communications with the Authority solely for the purpose of negotiating the terms of the contract after being notified of tentative award;
- F. Contact between designated Authority staff and an Offerer in which the Offerer requests the review of a Procurement Contract award;
- G. Contacts by Offerers in protests, appeals or other review proceedings before the Authority seeking a final administrative determination, or in a subsequent judicial proceeding;
- H. Complaints by an Offerer of alleged improper conduct in a Governmental Procurement to the Attorney General, Inspector General, District Attorney, or court of competent jurisdiction; or
- I. Any communication received by the Authority from members of the state legislature, or legislative staffs, when acting in their official capacity.

## **V. PROHIBITED OFFERER ACTIVITIES**

An Offerer shall not:

- A. Attempt to influence the Authority's Procurement in a manner that would result in a violation of the Public Officers Law, the Authority's Code of Ethics or Conflict of Interest Policies; or
- B. Contact any member, officer or employee of the Authority except pursuant to this Policy during the Restricted Period for the specific Authority Procurement, or
- C. Contact any other governmental entity concerning the Authority Procurement.

## **VI. PROCUREMENT RECORD**

For each Authority Procurement, the Procurement Officer shall maintain a Procurement Record containing Contacts made during the Restricted Period. For each Contact, the Procurement Officer shall obtain the name, address, telephone number, place of principal employment and occupation of the person or organization making the Contact and inquire and record whether the person or organization making such contact was the Offerer or was retained, employed or designated by or on behalf of the Offerer to appear before or contact the Authority about the Authority Procurement.

## **VII. OFFERER AFFIRMATION, DISCLOSURE AND CERTIFICATION**

The Authority shall seek an Affirmation of Understanding and Agreement from all Offerers. All Offerers shall submit a completed Disclosure of Non-Responsibility Form and Certification to the Authority. To comply with these requirements, an Offerer shall complete Appendix 1. Appendix 1 contains:

- A. Affirmation of Understanding and Agreement: A written affirmation from an Offerer as to the Offerer's understanding of and agreement to comply with the Authority's procedures relating to permissible contacts during the Authority Procurement.
- B. Disclosure of Non-Responsibility: A disclosure by an Offerer to the Authority any findings of non-responsibility made within the previous four years by any governmental entity where such prior finding of non-responsibility was due to:
  - 1. A violation of §139-j of the State Finance Law, or
  - 2. The intentional provision of false or incomplete information to a governmental entity.
- C. Certification: A certification on the form prepared by the Authority that all information provided to the Authority by the Offerer pursuant to this Policy is complete, true and accurate.

## **VIII. Policy Implementation**

To implement this Policy the Authority shall:

- A. Include this Policy in its Solicitation Materials.
- B. Prior to conducting an award of a procurement contract, the Authority shall make a final determination of responsibility of the proposed awardee. In making such a determination, the Authority shall consider whether the Offerer failed to timely disclosed accurate or complete information to the Authority concerning:
  - 1. Whether the Offerer was determined to be non-responsible due to
    - a. A violation of §139-j of the State Finance Law, or
    - b. The intentional provision false or incomplete information to a governmental entity, or
    - c. Otherwise fails to cooperate with the Authority in administering this Policy.

2. Notwithstanding the Authority may award a Procurement Contract to any such Offerer, its subsidiaries, and any related or successor entity with substantially similar function, management, board of directors, officers and shareholders if the Authority finds:
  - a. That the award of the Procurement Contract to the Offerer is necessary to protect public property or public health or safety, and
  - b. that the offerer is the only source capable of supplying the required article of procurement within the necessary time frame, provided, that the Authority shall include in the Procurement Record a statement describing the basis for such a finding.
- C. Include within all Authority contracts a provision authorizing the Authority to terminate the contract in the event the Offerer's certification pursuant to this Policy is found to be intentionally false or intentionally incomplete.
- D. Investigate Alleged Violations of this Policy.
  1. Any Member, officer or employee of the Authority who becomes aware that an Offerer Contacted the Authority in violation of this Policy shall immediately notify the Ethics Officer, who shall immediately investigate the alleged violation(s).
  2. The Ethics Officer upon receipt of an alleged violation of this Policy, shall investigate the allegation and if after commencing the investigation, the Ethics Officer finds that there is sufficient cause to believe the alleged violation has occurred, the Ethics Officers shall inform the Offerer in writing of the investigation and grant the Offerer an opportunity to be heard in response to the alleged violation.
- E. Distribute this Policy annually to the Authority's Members and officers. It shall also be distributed annually to those employees that have the ability to affect any Procurement. It shall also be distributed to each new Member, officer and applicable employee as soon as practicable following commencement of such position.

## **X. SANCTIONS**

Upon a determination by the Ethics Officers that an Offerer has violated this Policy, the Ethics Officer shall:

- A. Issue a determination of non-responsibility for such Offerer, and such offerer and its subsidiaries, and any related or successor entity with substantially similar function, management, board of directors, officers and shareholders shall not be

awarded the procurement contract, unless the Authority finds:

1. That the award of the procurement contract to the Offerer is necessary to protect public property or public health or safety, and
  2. That the Offerer is the only source capable of supplying the required article of procurement within the necessary time frame, provided, that the governmental entity shall include in the Procurement Record a statement describing the basis for such a finding.
- B. Notify the New York State Office of General Services of the determination of non-responsibility.
- C. Notify the Authority Board of the determination of non-responsibility.

**APPENDIX**

**FORM OF OFFERER DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATION**

Name of Individual or Entity Seeking to Enter into the Procurement Contract: \_\_\_\_\_

\_\_\_\_\_

Address: \_\_\_\_\_

Name and Title of Person Submitting this Form:

\_\_\_\_\_

Contract Procurement Number:\_\_\_\_\_

Date: \_\_\_\_\_

1. Has any Government Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years?

(Please circle):          No                                  Yes

If yes, please answer the next questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j?

(Please circle):          No                                  Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Government Entity?

(Please circle):        No                                      Yes

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity: \_\_\_\_\_

Date of Finding of Non-Responsibility: \_\_\_\_\_

Basis of Finding of Non-Responsibility: \_\_\_\_\_

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(Add additional pages as necessary)

5.        Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information?

(Please circle):        No                                      Yes

If yes, please provide details below:

Governmental Entity: \_\_\_\_\_



Date of Termination or Withholding of Contract: \_\_\_\_\_

Basis of Termination or Withholding: \_\_\_\_\_

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(Add additional pages as necessary)

Offerer certifies that all information provided to the Suffolk County Water Authority with respect to State Finance Law § 129-k is complete, true and accurate.

By: \_\_\_\_\_

Signature:

Name:

Title:

Date: