

Development Authority of the North Country Governance Policies



Subject: Procurement Lobbying Law Policy & Procedures

Adopted: December 9, 2010

Resolution: 2010-12-02

PROCUREMENT LOBBYING LAW POLICY & PROCEDURES

SECTION 1.0 POLICY

It is the policy of the Development Authority of the North Country (Authority) to comply with and seek compliance with State Finance Law § 139-j and § 139-k (Law) relative to anyone (Offerer) contacting the Authority about an Authority procurement.

SECTION 2.0 APPLICABILITY

The Law applies to procurement contracts that have an annual value in excess of \$15,000. The requirements of the Law commence at the earliest written notice, advertisement or solicitation of request for proposals, invitation for bids, or solicitation of proposals, or any other method for soliciting a response from Offerers intending to result in a procurement contract and end with the final contract award.

SECTION 3.0 PROCEDURES

Pursuant to State Finance Law § 139-j and § 139-k, the Authority will designate person(s) who are the only staff that can be contacted relative to a procurement and will record all "contacts" by an Offerer or its representative regarding the procurement.

A "contact" is any communication with the Authority under circumstances where a reasonable person would infer that the communication was intended to influence the procurement. Information that must be recorded in the procurement record includes: the name, address, telephone number, place of principal employment and occupation of the person making contact; whether the person is retained or employed by the Offerer; and whether the contact is an attempt to influence a specific procurement.

An impermissible "contact" is any communication that meets the definition above, other than the exceptions cited below, by the Offerer, or its representative, with anyone other than the Authority's designated contact(s) for such procurement. Any Authority employee who becomes aware that an Offerer has violated the provisions of a permissible contact during a procurement must immediately notify the Authority's Compliance Officer who shall investigate such incident.

The law recognizes specific communications and contacts that can go to other than the Designated Contacts, i.e., to Permissible Subject Matter Contacts.

These communications and contacts include:

1. submission of written proposals;
2. submission of written questions to the designated contact when all written questions and responses are to be disseminated to all interested offerers;
3. written complaints by an Offerer to the Authority General Counsel regarding the failure of Authority staff to comply timely with the provisions of the Law;
4. participation in a bid conference or interviews;
5. negotiations subsequent to tentative award;
6. review and debriefings of procurement awards; and
7. communications during bid complaints, protests or appeals.

The Procurement Advisory Council established in conjunction with the Law has advised that these permissible contacts must also be recorded and included in the procurement record.

Any Offerer that knowingly and willfully violates the restrictions to permissible contacts shall be found non-responsible and shall not be awarded the procurement contract. Determinations of non-responsibility due to such violations shall be reported to the NYS Office of General Services (OGS). OGS shall maintain a list of Offerers determined to be non-responsible due to such violations. Any subsequent determination of non-responsibility within four (4) years of a previous determination of non-responsibility based upon an impermissible contact shall result in the Offerer being ineligible to submit a proposal or be awarded a procurement contract with any governmental entity, as defined in State Finance Law § 139-j (1) (a), for a period of four (4) years from the second determination.

Prior to the award of a procurement contract, the Authority must include in its responsibility review a determination of the Offerer's compliance with provisions of the Law including any disclosure of a previous violation of the Law within the previous four (4) years during any governmental procurement.

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