

I. INTRODUCTION

The Guidelines have been issued pursuant to the New York State Finance Law, which prohibits lobbying on procurement contracts. The Guidelines, which apply to all Office of Attorney General (OAG) procurement contracts, limit communications between offerers and the OAG 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 OAG to receive communications regarding such Governmental Procurement.

II. STATUTORY DEFINITIONS<sup>1</sup>

**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 an interest in real property that is the subject of a governmental procurement.

**Contact:** Any oral, written or electronic communication with the OAG 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 and authorities, both houses of the Legislature, the Unified Court System, municipal agencies and their respective employees.

**Governmental Procurement:** shall mean: (i) the preparation of terms of the specifications, bid documents, requests for proposals, or evaluations 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 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 OAG about a **Governmental Procurement** or seeks to participate in a **Governmental Procurement**.

**Procurement Contract:** Any contract or other agreement for an **Article of Procurement** involving an estimated annualized expenditure in excess of \$15,000. Grants, Article 11-B State Finance Law Contracts, Intergovernmental Agreements, Railroad and Utility Force Accounts, Utility Relocation Project Agreements or Orders of 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 OAG and, ending with the final contract award and approval by, where applicable, the Office of the State Comptroller.

III. EXEMPTIONS

Certain communications are exempt from the Guidelines. These include: (i) submissions in response to an invitation for bid, a

request for proposal or other solicitation, (ii) submissions of written questions to a designated contact set forth in an invitation for bid, request for proposal or other solicitation, (iii) participation in a conference provided for in an invitation for bid, request for proposal or other solicitation, (iv) contract negotiations, (v) inquiries regarding the factual status of a **Procurement Contract**, and (vi) complaints and protests regarding the procurement process and outcome.

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

IV. VIOLATIONS

A violation of these Guidelines occurs when there is a **Contact** during the **Restricted Period** between the **Offerer** and someone other than the person or persons designated by the OAG to receive communications for the particular **Governmental Procurement**. This includes instances where the **Offerer** **Contacts** the OAG regarding **Governmental Procurements** of other **Governmental Entities**.

Attempts by an **Offeror** to influence a **Governmental Procurement** in a manner that would result in a violation of the Public Officer's Law, the Executive Orders of the Attorney General, or any other applicable ethics code shall also be a violation of these Guidelines.

V. PROCEDURES

- A. Notifying Vendors of Procurement Lobbying Guidelines
  1. For each **Procurement Contract**, the OAG Budget and Fiscal Management Bureau will designate a person or persons to receive communications from **Offerers** concerning the **Procurement Contract**.
  2. The OAG Purchasing Team will incorporate a summary of the policy and prohibitions regarding permissible communications during a **Governmental Procurement** in its documents relating to the **Procurement Contract** and provide a copy of these Guidelines.
  3. The OAG Purchasing Team shall seek written affirmation from all **Offerers** as to the **Offerer's** understanding of and compliance with these Guidelines (Appears at the end of this guideline).
  
- B. Making Determinations of Responsibility
  1. Prior to award of a **Procurement Contract**, the OAG 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 in the Vendor Responsibility Questionnaire whether it has been found non-responsible within the last five 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 OAG is complete, true and accurate (Appears at the end of this guideline).
  2. The **Procurement Contract** shall include a provision allowing the OAG 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 OAG. The OAG 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**.

C. Recording Contacts

1. All OAG employees must record any **Contact** from any person or entity. **Contacts** may be initiated by parties with an interest in the procurement that are not necessarily connected directly to the **Offerer**. **Contacts** may come in the form of telephone conversations, correspondence, electronic mail and person-to-person discussions. The Record of Contact Form should be used to record all **Contacts**.

2. Examples of **Contacts** for which a Record of Contact must be completed include:

- a. During the **Restricted Period**, an **Offerer Contacts** an OAG employee (other than the employee designated to receive such communications) to discuss the **Offerer's**, cost-competitiveness or its suitability to be selected for a contract
- b. A court reporter, expert witness or any other vendor offers an OAG employee a gift of any monetary value during the **Restricted Period**.

3. Examples of permissible communications for which there is no need to prepare Record of Contact include:

- a. Inquiries as to the status of the procurement process
- b. Requests to be included on the OAG's **Offerer's** list
- c. Receipt of advertising material
- d. Intra-agency communications of administrative details concerning the procurement
- e. Responses to OAG issued Requests for Information
- f. Written questions submitted by **Offerers** regarding a solicitation during the allowable time period of a competitive procurement
- g. Complaints about the procurement process or outcome
- h. Participation in an **Offerer's** conference as provided in a request for proposal or invitation for bid
- i. Submission of a bid in response to a request for proposal or invitation for bid
- j. Contract negotiations
- k. Debriefing of a **Offerer** after a contract award has been made

4. If an OAG employee is in doubt about whether a communication was intended to influence the **Governmental Procurement**, he/she should record the communication on the Record of Contact Form and submit it to [ProcurementLaw@OAG.State.NY.US](mailto:ProcurementLaw@OAG.State.NY.US) for further investigation

5. The OAG Purchasing Team will be required to include all Records of Contact in the procurement record for the related **Procurement Contract**.

D. Investigation of Contacts/ Penalties for Violations

1. All reported **Contacts** will be immediately investigated by the OAG Ethics Officer or his or her designee. If the OAG Ethics Officer 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 OAG Ethics Officer should find at the conclusion of the 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 OAG 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**.

<sup>1</sup>Defined terms are in bold

**Bidder Understanding & Compliance with State Finance Law Section 139-j & 139-k:**

Bidder affirms that it understands and agrees to comply with the procedures of the Office of the Attorney General relative to permissible contacts as required by State Finance Law Section 139-j (3) and Section 139-j (6) (b); and that all information provided to the Office of the Attorney General, with respect to State Finance Law Section 139-k is complete, true and accurate.

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

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

Name (Print): \_\_\_\_\_

Title: \_\_\_\_\_

Bidder Name: \_\_\_\_\_

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

**Bidder Disclosure of Prior Non-Responsibility Determinations:**

Has any NYS agency/authority made a finding of non-responsibility regarding the Offerer in the last 5 years?:  
 Yes  No

Has any NYS agency/authority terminated a procurement contract with the Offerer due to intentional provision of false or incomplete information?:  
 Yes  No

If "Yes" to either/both questions, please provide details; such as: NYS Agency/Authority, Basis for Finding, Year of Finding/Termination, and Facts Underlying Finding/Termination.