

New York State Thruway Authority/New York State Canal Corporation

Guidelines Regarding Permissible Contacts During a Procurement and the Prohibition of Inappropriate Lobbying Influence

Chapter 1 of the Laws of 2005, as amended (referred to as the “Lobbying Law”), set forth in the Legislative Law and State Finance Law specific requirements relative to lobbying on government procurements and procurement contracts. More specifically, the Lobbying Law created 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. In this regard, a procurement contract means a contract or agreement (including an amendment, extension, renewal or change order to an existing contract where such amendment, extension, renewal or change order is not authorized and payable under the terms of the contract) involving an estimated annual expenditure in excess of \$15,000 for a commodity, service, technology, public work, or construction; purchase, sale, lease, or acquisition of real property; or revenue contract.

In conformity with the Lobbying Law, during the restricted period² for an Authority/Corporation procurement, an offerer may only make permissible “contacts” regarding such procurement, which means that the offerer shall contact only the Authority/Corporation designated contact person(s) for that procurement. In this regard, “contact” means any oral, written or electronic communication with a governmental entity under circumstances where a reasonable person would infer that the communication was intended to influence the governmental entity’s conduct or decision regarding the Authority/Corporation procurement. Exceptions to this rule include:

- submission of a written proposal in response to a Request for Proposals (RFP), Invitation for Bids (IFB) or any other solicitation method;
- 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;
- participation in a pre-proposal or pre-bid demonstration, conference or other exchange of information open to all bidders scheduled as part of an RFP, IFB or other solicitation process;

¹ An individual or entity, or any employee, agent, consultant or person acting on behalf of such individual or entity, that contacts the Authority/Corporation about a procurement during the restricted period whether or not the caller has a financial interest in the outcome of the procurement. A governmental agency or its employees that communicates with the Authority/Corporation regarding a procurement in the exercise of its oversight duties shall not be considered an offerer.

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

- written complaints that the Authority/Corporation designated contact for a procurement fails to respond in a timely manner to authorized offerer contacts;
- negotiation of procurement contract terms with the Authority/Corporation following tentative award;
- contacts between designated Authority/Corporation staff and an offerer to request the review of a procurement contract award;
- communications with the Authority/Corporation 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; and,
- communications between Authority/Corporation staff and offerers that solely address the determination of vendor responsibility.

An offerer shall not, under any circumstance, attempt to influence an Authority/Corporation 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.

An offerer who contacts the Authority/Corporation 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 Authority/Corporation about the procurement.

An offerer that submits a proposal, bid or other response to an Authority/Corporation 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 Authority/Corporation procurement contracts will contain: a certification by the offerer that all information provided to the Authority/Corporation with respect to the Lobbying Law is complete, true and accurate; and a provision authorizing the Authority/Corporation to terminate the contract in the event such certification is found to be intentionally false or incomplete.

The Authority/Corporation will investigate all allegations of violations of the Authority/Corporation 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 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 Authority/Corporation will notify the New York State Office of General Services (“OGS”)

of any determinations of non-responsibility or debarments due to violations of the Lobbying Law.

These Guidelines and related forms are available on the Authority's website, www.thruway.ny.gov, under Purchasing Services; Forms, Guidelines and Reports section; Lobbying Law Forms & Guidelines or on the Corporation's website, www.canals.ny.gov, under the Doing Business section. Copies of Sections 73 and 74 of the Public Officer's Law are also available on the Authority/Corporation websites. If you require further guidance on the new Lobbying Law, you are encouraged to visit the Advisory Council on Procurement Lobbying website at www.ogs.state.ny.us/aboutogs/regulations/defaultadvisorycouncil.html, where the Lobbying Law and the Guidelines on Procurement Lobbying (Frequently Asked Questions) adopted by the Council are posted.