

**CNYRTA
Procurement Lobbying
Policy and Procedure**

Summary:

State Finance Law §§139-j and 139-k, enacted by Ch. 1 L. 2005, as amended by Ch. 596 L. 2005, effective January 1, 2006, constitute a significant legislative effort to regulate lobbying on government procurement, including procurements by CNYRTA to obtain commodities and services and to undertake real estate transactions.

Generally, the law restricts communications between a potential vendor or a person acting on behalf of the vendor, including its lobbyist, to communications with the officers and employees of the procuring agency designated in each solicitation to receive such communications. Further, the law prohibits a communication (a “Contact”) which a reasonable person would infer as an attempt to unduly influence the award, denial or amendment of a contract. These restrictions apply to each contract in excess of \$15,000 during the “restricted period” (the time commencing with the earliest written notice of the proposed procurement and ending with the later of approval of the final contract by the agency, or, if applicable, the State Comptroller). The agency must record all Contacts, and, generally, must deny an award of contract to a vendor involved in a knowing and willful Contact. Each agency must develop guidelines and procedures regarding Contacts and procedures for the reporting and investigation of Contacts. The agency’s procurement record must demonstrate compliance with these new requirements.

Policy:

It is the policy of CNYRTA to comply with the provisions of State Finance Law §§139-j and 139-k and related guidance offered by the Advisory Council on Procurement Lobbying and the Office of the State Comptroller.

Procedure:

The procedure set forth hereafter applies to Governmental Procurements by CNYRTA.

Definitions:

“**Contact**” means an oral, written or electronic communication made with respect to the related Governmental Procurement by or on behalf of the Offerer during the Restricted Period to a member of the governing body of CNYRTA, or its subsidiaries, and no other officer, employee or agent of the CNYRTA, or its subsidiaries, or of a Governmental Agency other than the CNYRTA, who reasonably infers that the Offerer intends to influence the related Governmental Procurement in any manner, including a manner which violates Public Officers Law §73(5)[offer of a gift of \$75 or more] or §74 (code of ethics for public officers and employees]. The term “Contact” does not include (a) a communication described in State Finance Law §139-j(3)(a)(1)[submission of written proposal], (2) [submission of written questions], (3) [participation in bidders conference], (4) [complaints], (5) [contract negotiations subsequent to notice of tentative award], (6) [review of contract award], and (7)(a) [protests, appeals or other review proceedings]; (b) a communication described in Legislative Law §1-t(e) by an Offerer or subcontractor to a Offerer qualified by education, training or experience to provide technical services to explain, clarify or demonstrate the qualities, characteristics or advantages of an article of procurement, who provides information to a Designated Contact to assist the Designated Contact in understanding and assessing the qualities, characteristics or anticipated performance of such article of procurement and who does not recommend or advocate contract provisions; or (c) a communication by

which the Offerer seeks generally available information, including clarification and interpretation, with respect to the solicitation documents or the Governmental Procurement process, including the status or timing of steps in the process.

It should be noted that State Finance Law §139-k(6) provides:

[a]ny communications received by a governmental entity from members of the state legislature, or legislative staffs, when acting in their official capacity, shall not be considered to be a “contact” within the meaning of this section and shall not be recorded by a governmental entity pursuant to this section.

“**Designated Contact**” means one or more officers or employees of CNYRTA identified in the solicitation for the related Governmental Procurement, or thereafter designated by the Director of Procurement or any employee authorized to make such designation.

Solicitations:

Each written solicitation by CNYRTA for a Procurement Contract shall contain the following:

- (1) the name of each Designated Contact, and a statement substantially in the following form:

“Prior to approval by CNYRTA of the contract for which this solicitation has been issued, an Offerer shall not communicate with CNYRTA other than with the person identified in this solicitation as Designated Contact, or with a person who the Designated Contact has advised the Offerer is also a Designated Contact”;

- (2) a summary of the policy and prohibitions regarding Contacts, in the form attached as Form A, and a copy of this statement of policy and procedure,
- (3) the requirement that each Offerer shall submit with its Proposal a written affirmation of its understanding of CNYRTA procurement lobbying procedures and agreement to comply with such procedures, in the form attached as Form B; and
- (4) the requirement that each Offerer shall submit with its Proposal, in the form attached as Form C, written disclosure whether the Offerer has been determined to be non-responsible within the previous four years by reason of having violated State Finance Law §139-j or having intentionally provided false or incomplete information to a Governmental Entity with respect to its compliance with State Finance Law §139-j; and certification and that the Offerer has provided accurate and complete information with respect to the Offerer’s compliance with State Finance Law §§139-j and 139-k within the previous four years.

Contracts:

Each Procurement Contract shall contain the following statement in substantially the following form:

“CNYRTA reserves the right to terminate this contract in the event it is determined that the certification filed by the Contractor in accordance with State Finance Law §§139-j and 139-k was intentionally false or intentionally incomplete. Upon such determination, CNYRTA may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of the contract.”

Records of Contacts:

It is not the intention of this Policy and Procedure that the member of the governing body of CNYRTA, or its subsidiaries, and other officer, employee or agent of the CNYRTA, or its subsidiaries shall make a record of every communication received from a vendor or its representative with respect to a Governmental Procurement. Rather, a record shall be made only with respect to a communication which is a Contact, as defined above. If a member of the governing body of CNYRTA, or its subsidiaries, and other officer, employee or agent of the CNYRTA, or its subsidiaries who is not a Designated Contact with respect to a Governmental Procurement receives a communication from a vendor or its representative, the member of the governing body of CNYRTA, or its subsidiaries, and other officer, employee or agent of the CNYRTA, or its subsidiaries should refer the vendor or its representative to the related Designated Contact.

Each member of the governing body of CNYRTA, or its subsidiaries, and other officer, employee or agent of the CNYRTA, or its subsidiaries shall make a record of each Contact which such person receives or, in the case of a Contact made to another Governmental Entity, of which such person becomes aware, promptly upon the receipt or knowledge of such Contact. Such record shall be made in the form attached as Form D. With respect to multiple Contacts by the same person within five business days, only one record of Contact need be made and forwarded. The recipient shall forward such record of Contact to the Director of Procurement or designee. All records of Contact shall be made part of the procurement record.

Review and Investigation:

Promptly upon receipt of a record of Contact, the CNYRTA designated Ethics Officer for the Authority (“Reviewer”) shall promptly review and investigate. The Reviewer shall notify the Offerer that an investigation is ongoing, give notice of the allegations of misconduct, and give the Offerer an opportunity to respond promptly in writing or to meet. The Offerer shall not be entitled to representation by counsel. The Reviewer shall determine whether the Offerer has made a Contact willfully and knowingly. The Reviewer shall advise the Offerer and the Director of Procurement of the final determination. The determination of the Reviewer shall not be subject to further appeals within the CNYRTA. In the event the Reviewer determines that the Offerer has made a Contact with a Governmental Entity other than CNYRTA, the Reviewer shall so notify the ethics officer, inspector general or other appropriate official of such other Governmental Entity. In the event the Reviewer determines that in connection with a Contact a member of the governing body of CNYRTA, or its subsidiaries, and other officer, employee or agent of the CNYRTA, or its subsidiaries has violated the provisions of Public Officers Law §73(5) [prohibition of acceptance of a gift of \$75 or more] or §74 [code of ethics], the Reviewer shall so advise the Executive Director.

Determinations of Non-Responsibility:

The Director of Procurement or employee authorized for such purpose, shall determine whether an Offerer has been non-responsible either because (1) the Offerer has made a Contact willfully and knowingly, or (2) the Offerer has failed intentionally to make accurate and complete disclosure of findings of non-responsibility with respect to Governmental Procurements within the previous four years. Upon making a determination of non-responsibility, the Director of Procurement shall so notify the Offerer..

FORM A

SUMMARY

**Policy and Procedure of the CNYRTA
Relating to New York State Finance Law §§139-j and 139-k**

State Finance Law §§139-j and 139-k, enacted by Ch. 1 L. 2005, as amended by Ch. 596 L. 2005, effective January 1, 2006, regulate lobbying on government procurement, including procurements by CNYRTA to obtain commodities and services and to undertake real estate transactions.

Generally, the law restricts communications between a potential vendor or a person acting on behalf of the vendor, including its lobbyist, to communications with the officers and employees of the procuring agency designated in each solicitation to receive such communications. Further, the law prohibits a communication (a "Contact") which a reasonable person would infer as an attempt to unduly influence the award, denial or amendment of a contract. These restrictions apply to each contract in excess of \$15,000 during the "restricted period" (the time commencing with the earliest written notice of the proposed procurement and ending with the later of approval of the final contract by the CNYRTA). The agency must record all Contacts, and, generally, must deny an award of contract to a vendor involved in a knowing and willful Contact. Each agency must develop guidelines and procedures regarding Contacts and procedures for the reporting and investigation of Contacts. The agency's procurement record must demonstrate compliance with these new requirements.

Accordingly, neither a potential vendor nor a person acting on behalf of the vendor should contact any individual at CNYRTA other than the person designated in this solicitation as CNYRTA's Designated Contact, nor attempt to unduly influence award of the contract. CNYRTA will make a record of all Contacts, and such records of Contact will become part of the procurement record for this solicitation. A determination that a vendor or a person acting on behalf of the vendor has made intentionally a Contact or provided inaccurate or incomplete information as to its past compliance with State Finance Law §§139-j and 139-k is likely to result in denial of the award of contract under this solicitation. Additional sanctions may apply.

A complete copy of the CNYRTA Procurement Lobbying Policy and Procedure is available for review by contacting the Procurement Department located at 200 Cortland Ave., Syracuse, NY 13205.

FORM B

Offerer Affirmation with respect to New York State Finance Law §§139-j and 139-k

A complete copy of the CNYRTA Procurement Lobbying Policy and Procedure is available for review at 200 Cortland Ave, Syracuse, NY 13205.

Procurement Description: _____

RFP/IFB or Contract # (if applicable): _____

Contracting Agency: Central New York Regional Transportation Authority

“Offerer AFFIRMS that it has reviewed and understands the Policy and Procedure of the CNYRTA of New York, relating to State Finance Law §§139-j and 139-k, and agrees to comply with CNYRTA’s procedure relating to Contacts with respect to this procurement.”

Name of Offerer: _____

Address: _____

Person Submitting Form on behalf of Offerer:

Signature _____

Name: _____

Title: _____

FORM C

Disclosure and Certification with respect to New York State Finance Law §§139-j and 139-k

Procurement Description: _____

RFP/IFB or Contract #: (if applicable): _____

Contracting Agency: Central New York Regional Transportation Authority _____

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1. Has a Governmental Entity, as defined in State Finance Law §139-j(1)(a), made a determination of non-responsibility with respect to the Offerer within the previous four years where such finding was due to a violation of State Finance Law §139-j or the intentional provision of false or incomplete information with respect to previous determinations of non-responsibility? (check one)

No _____ Yes _____

If yes, provide the following details:

Governmental Entity which made the finding: _____

Date of finding: _____

Basis of finding: _____

2. Has a Governmental Entity terminated or withheld a procurement contract with the Offer because of violations of State Finance Law §139-j or the intentional provision of false or incomplete information with respect to previous determinations of non-responsibility? (check one)

No _____ Yes _____

If yes, identify the following:

Governmental Entity which terminated the contract: _____

Date of contract termination or withholding: _____

Identify the related procurement contract: _____

FORM C (cont'd)

Disclosure and Certification with respect to New York State Finance Law §§139-j and 139-k

“Offerer CERTIFIES that all information provided by Offerer with respect to its compliance with State Finance Law §§139-j and 139-k is complete, true and accurate”.

Name of Offerer: _____

Address: _____

Person Submitting Form on behalf of Offerer:

Signature _____

Name: _____

Title: _____

Form D

**CNYRTA Procurement Lobbying Law
Record of Contact**

Procurement Information

Agency: Central New York Regional Transportation Authority

To: CNYRTA Ethics Officer

From: (Name of Upstate employee, officer, Trustee) _____

Subject: Record of Contact under State Finance Law §139-k(4)

RFP/IFB or Contract # (if applicable): _____

Procurement Description: _____

CONTACT INFORMATION

Date(s) of Contact: _____

CNYRTA Contact Name: _____

Designated Contact: _____ Non-Designated Contact: _____ (check one)

Name of Offerer Firm/Organization: _____

Address: _____

Name of Person Contacting CNYRTA on behalf of Offerer: _____

Telephone Number: _____

Place of Principal Employment: _____

Occupation: _____

