

Thruway Authority/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 by Chapter 596 of the Laws of 2005 (collectively referred to as the “Lobbying Law”), makes major changes to the Legislative Law and State Finance Law relative to lobbying on government procurements. More specifically, the Lobbying Law creates 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. The Lobbying Law applies to all procurements initiated on or after January 1, 2006. In this regard, a procurement means a contract or agreement involving an annual expenditure in excess of \$15,000 for a commodity, service, technology, public work, or construction; purchase, sale or lease of real property; or revenue contract.

In conformity with the Lobbying Law, during a procurement’s restricted period² the only Authority/Corporation officer(s) or employee(s) that the offerer may “contact” is/are the Authority/Corporation designated contact person(s) for that procurement. In this regard, “contact” means any oral, written or electronic communication under circumstances where a reasonable person would infer that the communication was intended to influence a procurement. Exceptions to this rule include :

- submission of a written proposal in response to an RFP, 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 conference scheduled as part of an RFP, IFB or other solicitation process;
- written complaints by an offerer that the Authority/Corporation designated contact for a procurement fails to respond in a timely manner;
- negotiations with the Authority/Corporation following tentative award;
- contacts between designated Authority/Corporation staff and offerer to request the review of a contract award; and
- 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.

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

¹ 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.

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

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 Vendor Guidelines and related forms are available in the Business section of the Authority’s website at <http://www.thruway.state.ny.us> or in the Business and Development section of the Corporation’s website at <http://www.canals.state.ny.us>. A copy of the new Lobbying Law and Sections 73 and 74 of the Public Officer’s Law are also available on the Authority/Corporation’s website. If you require further guidance on the new Lobbying Law, you are encouraged to visit the Advisory Council on Procurement Lobbying website at <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>, where Frequently Asked Questions “FAQ’s” adopted by the Council have been posted.