

WESTERN FINGER LAKES SOLID WASTE MANAGEMENT AUTHORITY

PROCUREMENT POLICY

(ADOPTED September 25, 2006)

PURPOSE

As a public benefit corporation, the Western Finger Lakes Solid Waste Management Authority (the "Authority") conducts its operations in a manner that best serves the interests of its customers and the general public. The Authority expects all members, officers and employees to comply and cause the Authority to comply with all laws and regulations governing business transactions. The state legislature recently adopted state finance law §§ 139-j and 139-k (the "Statutes") to reform the procurement process for all governmental entities, including the Authority.

This Procurement Policy is intended to conform the Authority's procurement process to the requirements of the Statutes.

ARTICLE 1

DEFINITIONS

As used herein, the following terms shall have the meanings set forth below:

1. **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 other interest in real property, that is the subject of a Governmental Procurement.

2. **Contacts**

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 Procurement.

3. Governmental Entity

(a) Any department, board, bureau, commission, division, office, council, committee or officer of the state, whether permanent or temporary; (b) each house of the state legislature; (c) the unified court system; (d) any public authority, public benefit corporation or commission created by or existing pursuant to the public authorities law; (e) any public authority or public benefit corporation, at least one of whose members is appointed by the governor or who serves as a member by virtue of holding a civil office of the state; (f) a municipal agency, as that term is defined in paragraph (ii) of subdivision (s) of section one-c of the legislative law; or (g) a subsidiary or affiliate of such a public authority.

4. Governmental Procurement

(a) the preparation or terms of the specifications, bid documents, request for proposals, or evaluation criteria for a Procurement Contract, (b) solicitation for a Procurement Contract, (c) evaluation of a Procurement Contract, (d) award, approval, denial or disapproval of a Procurement Contract, or (e) 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 a Procurement Contract, or any other material change in the Procurement Contract resulting in a financial benefit to the Offerer.

5. Impermissible Contacts

Contacts made by an Offerer shall be considered impermissible if the Offerer fails to satisfy the requirements of Article 4 and Article 5 hereof. In general, an Impermissible Contact occurs when an Offerer contacts a person in a Governmental Entity who is not the Designated Contact Person in a way that a reasonable person would infer was intended to influence the Governmental Procurement.

6. **Offerer**

The individual or entity, or any employee, agent or consultant or person acting on behalf of such individual or entity, that contacts a Governmental Entity about a Governmental Procurement during the Restricted Period of such Governmental Procurement.

7. **Permissible Contacts**

Contacts made by an Offerer shall be considered permissible only if the Offerer satisfies the requirements of Article 4 and Article 5 hereof.

8. **Procurement Contract**

Any contract or other agreement for an Article of Procurement involving an estimated annualized expenditure in excess of Fifteen Thousand Dollars (\$15,000). Grants, article eleven-B state finance law contracts (i.e., any contract providing for a payment under a program appropriation to a not-for-profit corporation), intergovernmental agreements, railroad and utility force accounts, utility relocation project agreements or orders and eminent domain transactions shall not be deemed Procurement Contracts.

9. **Designated Contact Person**

This term shall have the meaning set forth in Article 3 hereof.

10. **Procurement Record**

This term shall have the meaning set forth in Article 6 hereof.

11. **Proposal**

Any bid, quotation, offer or response to a Governmental Entity's solicitation of submissions relating to a procurement.

12. **Restricted Period**

The period of time commencing with the earliest written notice, advertisement or solicitation of a 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 and ending with the final contract award and approval by the Governmental Entity.

13. Solicitation Materials

This term shall have the meaning set forth in paragraph (a) of Article 4 hereof.

**ARTICLE 2
ETHICS OFFICER**

On an annual basis, members of the Authority who are deemed to be “independent members” under the public authorities accountability act shall appoint an “Ethics Officer” who shall be responsible for recommending updates, as appropriate, to the Authority’s code of ethics or conflict of interest policies (collectively “Code of Ethics”) and shall have the further responsibilities set forth in Article 9 hereof.

**ARTICLE 3
DESIGNATED CONTACT PERSON**

The members of the Authority hereby delegate to the Authority’s administrator (“Administrator”) the power to select a "Designated Contact Person" for each and every Governmental Procurement by the Authority. The Administrator may either select the Designated Contact Person at the time the Governmental Procurement commences or select a Designated Contact Person in advance for each type or category of Governmental Procurement. Such Designated Contact Person shall be the designated "contact" person for Offerers during the Restricted Period surrounding each Governmental Procurement.

**ARTICLE 4
CONTACTS BY OFFERERS**

All Contacts between an Offerer and the Authority during the Restricted Period for each Governmental Procurement shall be made through the Designated Contact Person, unless one of the following exceptions applies:

(a) The submission of written proposals in response to a request for proposals, invitation for bids or any other method of soliciting a response from Offerers intending to result in a Procurement Contract (collectively, "Solicitation Materials");

(b) The submission of written questions to a designated contact set forth in any Solicitation Materials, when all written questions and responses are to be disseminated to all Offerers who have expressed interest in the Solicitation Materials;

(c) Participation in a conference provided for in any Solicitation Materials;

(d) Complaints made in writing by an Offerer to the Administrator by an Offerer regarding the failure of the applicable Procurement Officer to respond in a timely manner to authorized Offerer Contacts, provided that such written complaints shall become a part of the Procurement Record;

(e) Offerers who have been tentatively awarded a contract and are communicating with the Authority for the sole purpose of negotiating the contract, so long as the Contact occurs after the Offerer has received notice of the tentative award;

(f) Contact between designated Authority staff and an Offerer in which the Offerer requests the review of a procurement award;

(g) Contacts by Offerers in protests, appeals or other review proceedings before the Authority seeking a final administrative determination, or in a subsequent judicial proceeding;

(h) Complaints of alleged improper conduct in a Governmental Procurement to the attorney general, inspector general, district attorney, or court of competent jurisdiction; or

(i) Written protests, appeals or complaints to the state comptroller's office during the process of contract approval, where the state comptroller's approval is required by law, provided that such communications are made in writing and shall be entered into the Procurement Record; and

(j) Complaints of improper conduct in a Governmental Procurement conducted by a municipal agency or local legislative body to the state comptroller's office.

The Statutes and this Policy permit communications between Offerers and the Authority prior to the Restricted Period in the form of a request for information ("RFI") by the Authority and the response thereto by the Offerer. The RFI must be used as a means to collect information upon which to base a decision by the Authority to proceed with a Governmental Procurement and not as a tool employed to award a Procurement Contract.

ARTICLE 5

OTHER PROHIBITED OFFERER ACTIVITIES

In addition to utilizing the Designated Contact Person for all Contacts with the Authority, the following additional rules shall apply to all Offerers:

(a) Offerers shall not attempt to influence the Authority's Governmental Procurement in a manner that would result in a violation of any state ethics/conflict of interest statute or the Authority's Code of Ethics; and

(b) Offerers are prohibited from contacting any member, officer or employee of a Governmental Entity other than the Authority¹, during the Restricted Period of a Governmental Procurement, regarding the Authority's pending procurement.

ARTICLE 6

PROCUREMENT RECORD

For each Governmental Procurement of the Authority, the Designated Contact Person shall maintain a procurement record (the "Procurement Record"), including all written materials pertaining to the specific Governmental Procurement. Upon any Contact in the Restricted Period, the Designated Contact Person shall obtain the name, address, telephone number, place of principal employment and occupation of the person or organization making the Contact and inquire and record whether the person or organization making such contact was the Offerer or was retained, employed or designated by or on behalf of the Offerer to

¹ This prohibition is not applicable to Contacts between an Offerer and a member of the state legislature or legislative staff about a governmental entity other than the state legislature, or a member of the state legislature or legislative staff contacting a governmental entity about a Governmental Procurement being conducted by a Governmental Entity other than the state legislature, provided that the member of the state legislature or legislative staff is acting in their official capacity.

appear before or contact the Authority about the Governmental Procurement. The Procurement Record shall include all recorded Contacts described in the prior sentence, whether such Contacts are Permissible Contacts or Impermissible Contacts. The Procurement Record shall not include Contacts with certain public officials as described in the footnote to item (b) of Article 5 hereof. In addition, the Procurement Record shall not include communications that a reasonable person would infer are not intended to influence a Governmental Procurement. The Authority shall keep a written or electronic copy of the Procurement Record for a period of six years from the end of the Restricted Period for each Governmental Procurement.

ARTICLE 7

REQUIRED DISCLOSURE

In general, all Solicitation Materials shall incorporate a summary of the policy and prohibitions of the Statutes as well as include copies of rules, regulations and the Authority's guidelines and procedures regarding Permissible Contacts during a Governmental Procurement. The following provisions offer specific methods for satisfying such requirements.

1. In all Authority Solicitation Materials, the following statement shall appear:

Pursuant to State Finance Law §§139-j and 139-k, this solicitation [or use other applicable identifier, i.e. "Invitation for Bid" or "Request for Proposal, " etc.] includes and imposes certain restrictions on communications between a Governmental Entity (including the Authority) and an Offerer/bidder during the procurement process. An Offerer/bidder is restricted from making contacts from the earliest notice of intent to solicit offers [or use other applicable identifier, i.e. "Invitation for Bid" or "Request for Proposal, " etc.] through final award and approval of the Procurement Contract by the Authority and, if applicable, the Office of the State Comptroller [the Authority may delete the reference to Comptroller approval when not applicable] ("restricted period'), to other than the Authority's Designated Contact Person unless it is a contact that is included among certain statutory exceptions set forth

in State Finance Law §139-j(3)(a). The Authority's Designated Contact Person for this Governmental Procurement, as of the date hereof, is identified on the first page of this solicitation for bids [or wherever in the bid document it is identified]. Authority employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four (4) year period, the Offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements may be obtained from the Designated Contact Person.

2. In all Authority Procurement Contracts, the following provision shall appear:

The Authority reserves the right to terminate this contract in the event it is found that the certification filed by the Offerer in accordance with State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Authority may exercise its termination right by providing written notification to the Offerer in accordance with the written notice terms of this contract.

3. In each response to any Solicitation Materials, the Offerer shall complete the following in a timely, complete and accurate fashion:

(a) "Offerer Affirmation of Understanding of and Agreement pursuant to State Finance Law §§139-j(3) and 139-j (6)(b)" in the form provided in Appendix "A" hereto;

(b) " Offerer Certification of Compliance with State Finance Law § 139-k (5)" in the form provided in Appendix "A" hereto; and

(c) "Offerer Disclosure of Prior Non-Responsibility Determinations" in the form provided in Appendix "B" hereto.

The failure of an Offerer to comply with such disclosure requirements will subject the Offerer to the sanctions described in Article 10 hereof, as well as any other penalties permitted by law.

ARTICLE 8
REQUIREMENTS OF THE AUTHORITY PRIOR TO
AWARDING PROCUREMENT CONTRACTS

Prior to conducting an award of a Procurement Contract, the Members of the Authority shall:

1. Make a final determination of responsibility of the proposed awardee in accordance with the Authority's existing procedures;
2. Make a final determination of responsibility of the proposed awardee that measures compliance with the provisions of the Statutes regarding (i) Permissible Contacts, (ii) the timely and accurate disclosure of all information required in any Solicitation Materials (including, but not limited to, prior findings of non-responsibility by a Governmental Entity) as provided for in Article 7 hereof and (iii) the awardee's duty to cooperate with the Authority in administering the provisions of this Policy; and
3. Make a final determination that the procurement process for such proposed award was free from any conduct prohibited under the public officers law as well as the applicable provisions of the Authority's Code of Ethics.

ARTICLE 9
ALLEGED VIOLATION; PROCEDURE

1. Any member, officer or employee of the Authority who becomes aware that an Offerer has violated this Policy or the Statutes shall:
 - (a) Immediately notify the Ethics Officer, who shall immediately investigate the alleged violation(s).
 - (b) If, after commencing the investigation, the Ethics Officer finds that there is sufficient cause to believe the alleged violation has occurred, s/he shall give the alleged violating Offerer reasonable notice (in the form of a certified letter, return receipt requested) informing

him/her that an investigation of the allegation is ongoing and providing him/her with an opportunity to be heard in response to the allegation(s).

(c) If, following the opportunity to be heard, the Ethics Officer determines that the Offerer has knowingly and willfully violated this Policy, the Statutes or any other applicable procurement disclosure standards affecting Offerers, members, officers or employees of the Authority, the Offerer shall be subject to sanctions described in Article 10 hereof.

2. The Ethics Officer shall report to the ethics officer of another Governmental Entity conducting a Governmental Procurement any violation of the Statutes by an Offerer or by such other Governmental Entity's employees. The ethics officer shall be the person designated by such procuring Governmental Entity to receive similar communications coming from another Governmental Entity.

ARTICLE 10

SANCTIONS

1. Upon a finding by the Ethics Officer that an Offerer has knowingly and willfully violated this Policy, the Statutes or any other applicable procurement disclosure standards affecting Offerers, members, officers or employees of the Authority, the Offerer shall be subject to the following sanctions, as well as any other penalty permitted by law:

(a) The Offerer shall be deemed "non-responsible" and such Offerer (along with its subsidiaries and any other related or successor entity) shall not be awarded the Procurement Contract, unless the Authority finds that the following special circumstances exist and includes a statement describing the basis for such a finding in the Procurement Record:

(i) The award to the offending Offerer is necessary to protect public property or public health or safety; and

(ii) The offending Offerer is the only source capable of supplying the required Article of Procurement within the necessary timeframe.

(b) In addition, the Ethics Officer shall notify the office of general services of the finding of non-responsibility².

2. Upon a finding that a member, officer or employee of the Authority has knowingly and willfully violated this Policy, the Statutes or any other applicable procurement disclosure standards affecting members, officers or employees of the Authority, the Ethics Officer shall immediately notify the Chair of the Board of the Authority. The offending member, officer or employee shall be subject to the sanctions described in the Authority's Code of Ethics.

DISTRIBUTION OF THIS POLICY

This Policy shall be distributed annually to the Authority's members and officers. It shall also be distributed annually to those employees that have the ability to affect any Procurement. It shall also be distributed to each new member, officer and applicable employee as soon as practicable following commencement of such position.

² A second finding of non-responsibility under the Statutes within four (4) years of a determination of responsibility shall result in the Offerer (along with its subsidiaries and any other related or successor entities) being rendered ineligible to submit a proposal on or be awarded any Procurement Contract for a period of four (4) years from the date of the second final determination of non-responsibility, unless the special circumstances outlined in Section (1)(a) of this Article 10 exist.

Appendix "A"

Form of Offerer's Affirmation of Understanding and Agreement/Certification of Compliance

Offerer affirms that it understands and agrees to comply with the procedures of the Authority relative to permissible Contacts as required by State Finance Law §139-j (3) and §139-j (6) (b) and certifies that all information provided to the Authority with respect to State Finance Law §139-k is complete, true and accurate.

By: _____ Date: _____

Name: _____

Title: _____

Contractor Name: _____

Contractor Address: _____

Appendix "B"

Offerer Disclosure of Prior Non-Responsibility Determinations

Name of Individual or Entity Seeking to Enter into the Procurement Contract:

Address: _____

Name and Title of Person Submitting this Form: _____

Contract Procurement Number: _____

Date: _____

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle):

No Yes

If yes, please answer the next questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please circle):

No Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle):

No Yes

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity: _____

Date of Finding of Non-responsibility: _____

Basis of Finding of Non-Responsibility:

(Add additional pages as necessary)

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle):

No Yes

6. If yes, please provide details below.

Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding: _____

(Add additional pages as necessary)

Offerer certifies that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

By: _____ Date: _____
Signature

Name: _____

Title: _____