

OFFICE OF MENTAL HEALTH PROCUREMENT LOBBYING GUIDELINES

I. INTRODUCTION

These Guidelines have been issued pursuant to the New York State Finance Law Sections 139-j and 139-k, which prohibit lobbying on **Procurement Contracts**.¹ The Guidelines, which apply to all OMH **Procurement Contracts**, limit communications between **Offerers** and OMH during the **Restricted Period** of a **Governmental Procurement**. During the **Restricted Period**, an **Offerer** may only make **Contact** with the person or persons designated by OMH to receive communications regarding the particular **Governmental Procurement**. In addition, an **Offerer** may not attempt to influence the **Governmental Procurement** in a manner that would result in a violation or an attempted violation of Section 73(5) or Section 74 of the Public Officers Law² or of other applicable equivalent ethics code provisions.

Any **Contact** during the **Restricted Period** of the **Governmental Procurement** -- that is, any communication with OMH in an attempt to influence that **Governmental Procurement** -- is required to be recorded by the OMH staff with whom such **Contacts** are made and shall become part of the **Procurement Record**. All **Contacts** with anyone other than the OMH-designated contact for that procurement or which may violate the Public Officers Law shall be referred for investigation to the Office of Counsel to determine whether a violation of the permissible **Contact** provision has occurred. Any **Offerer** who, after notice of an investigation and an opportunity to be heard, is found to have knowingly and willfully violated the State Finance Law will be determined to be a non-responsible bidder and shall not, except in very limited cases, be awarded the contract.

At the time of bid submission, or when otherwise directed, all **Offerers** shall be required:

(1) to affirm their understanding of, agreement to and compliance with these Guidelines by completing Attachment J1; and

(2) to certify on Attachment J2 whether they have been found non-responsible within the last four years by any **Governmental Entity** for:

(a) failure to comply with State Finance Law §139-j, or

(b) the intentional provision of false or incomplete information.

¹ **Procurement Contract** is a defined term. See Section II of these Guidelines. Defined terms appear in bold throughout the Guidelines.

² Public Officers Law Section 73(5) specifically prohibits State employees from soliciting, accepting or receiving gifts valued, individually or cumulatively over a 12-month period, at \$75 or more which are or could be intended to influence the employee in the discharge of official duties or award the employee for any official action on his or her part. Public Officers Law Section 74 generally prohibits State employees from engaging in any activity which does or could give rise to a conflict of interest or the appearance of a conflict of interest between the employee's public responsibilities and his or her personal interests. Details of the Public Officers Law may be found at <http://www.dos.state.ny.us/ethc/lawsregs.html>

All **Procurement Contracts** shall contain a provision which allows OMH to terminate the contract if either certification is found to be intentionally false or incomplete.

For purposes of these guidelines, OMH shall mean either the Central Office or the individual OMH facility originating the procurement, as applicable.

These Guidelines shall be deemed to include and to incorporate by reference the New York State Office of General Services Procurement Lobbying Guidelines set forth at: <http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/Faq.htm>

II. STATUTORY DEFINITIONS

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 OMH 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	(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 OMH 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, including revenue contracts, the purchase, sale or lease of real property; and the acquisition or granting of other interests in real property.

Exceptions: Grants, Article Eleven-B State Finance Law Contracts (contracts between OMH and not-for-profit organizations to operate a program or perform a service), 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 OMH and, ending with the final contract award and approval by, where applicable, the Office of the State Comptroller.

III. PROCEDURES

A. Notifying **Offerers** of Procurement Lobbying Guidelines

1. For each **Procurement Contract**, the solicitation document will indicate a person or persons to receive communications from **Offerers** concerning the **Procurement Contract**.
2. Where OMH has determined that a particular solicitation is subject to these **Procurement Lobbying Guidelines**, the Guidelines will apply throughout the **Restricted Period**, even if the contract is ultimately awarded in an amount less than \$15,000.
3. OMH will incorporate a summary of the policy and prohibitions regarding permissible communications during the **Governmental Procurement** in

the solicitation documents relating to the **Procurement Contract** and will provide access to an electronic copy of these **Guidelines**.

4. OMH shall seek written affirmation from each **Offerer** as to the **Offerer's** understanding of and agreement to comply with these Guidelines (Attachment J1).
5. For single and sole source contracts and, where applicable, amendments and extensions of existing contracts, OMH will notify the **Offerer** of the beginning of the **Restricted Period** and the person or persons designated to receive communications concerning the **Procurement Contract**.

B. Identifying and Recording **Contacts**

1. The law does not prohibit all communications between OMH employees and **Offerers** or require that all communications be recorded.
 - a. **Offerers** who are current OMH contractors and OMH employees may continue to communicate regarding day-to-day administration and implementation of on-going contracts.
 - b. The requirement that a record be made of communications between OMH employees and **Offerers** applies only if:
 - (i) An **Offerer** makes a **Contact** with OMH--that is, communicates with OMH in an attempt to influence a **Governmental Procurement**, and
 - (ii) the **Contact** is made during the **Restricted Period** of the **Governmental Procurement**.

2. Types of **Contacts**

All **Contacts**, whether permissible or impermissible, must be recorded as set forth in Section B.3 below. Impermissible **Contacts** must also be referred for investigation.

- a. Permissible: In general, **Contacts** are permissible only if made to OMH's designated person or persons (the "sole point(s) of contact") for the **Governmental Procurement**. However, the following **Contacts** are permissible even if made to someone other than the sole point(s) of contact:
 - (i) submissions in response to an invitation for bid, a request for proposal or other solicitation for a **Procurement Contract**,

- (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 pre-bid conference provided for in an invitation for bid, request for proposal or other solicitation,
- (iv) contract negotiations with OMH after a tentative award,
- (v) complaints by an **Offerer** to OMH's Counsel's Office where the designated person for the **Procurement Contract** fails to respond in a timely matter, provided that any such written complaints become a part of the procurement record, and
- (vi) filing of written disputes in administrative hearings, judicial proceedings and to the Attorney General, Inspector General, District Attorney or State Comptroller (where the Comptroller's approval is required by law and any communications and responses are in writing and are entered in the procurement record pursuant to State Finance Law Section 163).

Any communication received by OMH from members of the New York State Legislature or the Legislative Staff, when acting in their official capacity, are not considered a **Contact** and shall not be recorded.

b. **Impermissible Contacts:**

- (i) Any communication to someone other than OMH's designated contact person in an attempt to influence the **Governmental Procurement**.
- (ii) Any attempt to influence the **Governmental Procurement** in a manner that would result in a violation or an attempted violation of Public Officers Law Section 73(5) or 74, or of other applicable, equivalent ethics code provisions where the public officials involved in the **Governmental Procurement** are not subject to Public Officers Law Section 73(5) or 74.³

c. **Communications which are not Contacts:** Only communications which are, or would generally be construed as, attempts to influence a pending procurement are **Contacts** which must be limited and must be recorded. Examples of permissible communications which do not rise to the level of **Contacts** and for which there is, therefore, no need to prepare a Record of **Contact** include:

³ See footnote 2.

- (i) Inquiries as to the status of the procurement process or other ministerial issues such as whom to contact or where to send materials.
- (ii) Receipt of advertising material.
- (iii) Responses to OMH-issued Requests for Information.

3. Recording **Contacts**

- a. All OMH employees must record any **Contact** from any person or entity, whether permissible or impermissible.
 - (i) **Contacts** may come in the form of telephone conversations, correspondence, electronic mail and person-to-person discussions.
 - (ii) The Record of **Contact** Form (Attachment J3) will be used to record all **Contacts**, both permissible and impermissible.
- b. OMH will be required to include all Records of **Contact** in the procurement record for the related **Procurement Contract**.
- c. If OMH receives a **Contact** regarding a **Governmental Procurement** being conducted by another **Governmental Entity**, OMH shall transmit the Record of **Contact** to the other **Governmental Entity** for inclusion in that entity's procurement record for the related **Procurement Contract**.
- d. Any employee who becomes aware that an **Offerer** has or may have violated the restrictions on permissible **Contacts** shall immediately notify the Office of Counsel.

C. Making Determinations of Responsibility

- 1. Prior to award of a **Procurement Contract**, OMH must make a responsibility determination regarding the **Offerer** who it intends to recommend for the award of the contract. Among other things, OMH will consider the information supplied by the **Offerer** on the "OMH Offerer Disclosure of Prior Non-Responsibility Determinations" form (Attachment J2). The **Offerer** must disclose whether it has been found non-responsible within the last four 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 OMH is complete, true and accurate.
- 2. The **Procurement Contract** must include a provision allowing OMH to terminate the contract if the certification is subsequently found to be intentionally false or incomplete. Admissions by the **Offerer** of past

findings of non-responsibility may constitute a basis for rejection of the **Offerer** by OMH. However, OMH may 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(s) of Procurement** within the necessary time frame. The basis of such a finding must be included in the procurement record of the **Procurement Contract**.

IV. VIOLATIONS

A violation of these Guidelines occurs when:

- A. There is a **Contact** during the **Restricted Period** between the **Offerer** and someone other than the person or persons designated by OMH to receive communications for the particular **Governmental Procurement** which does not fall within one of the enumerated exceptions in Section III.B.2.a. above. This includes instances where the **Offerer** contacts OMH regarding **Governmental Procurements** of other **Governmental Entities** in an effort to influence those procurements. Attempts by an **Offerer** to influence a **Governmental Procurement** in a manner that would result in a violation of the Public Officers Law, or any other applicable ethics code shall also be a violation of these Guidelines.
- B. The **Offerer** intentionally provides false or incomplete information on any of the certifications required to comply with the Procurement Lobbying Law.

V. INVESTIGATION OF CONTACTS/ PENALTIES FOR VIOLATIONS

- A. All reported impermissible **Contacts** will be immediately investigated by the Office of Counsel or his or her designee. If it is found that there is 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**.
- B. If, at the conclusion of the investigation, it is determined that the **Offerer** knowingly and willfully made a prohibited **Contact** in violation of these Guidelines, then the **Offerer** shall be disqualified as nonresponsible, unless the OMH 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**.

Any questions about these Procurement Guidelines should be submitted in writing to: ProcurementLobbyingAct@omh.state.ny.us