

ROOSEVELT ISLAND OPERATING CORPORATION

Guidelines Regarding Procurement Lobbying

I. INTRODUCTION

These Guidelines Regarding Procurement Lobbying (the “Guidelines”) have been issued pursuant to the New York State Finance Law §§139-j and 139-k (“Procurement Lobbying Law”), which, with limited exceptions, prohibit lobbying on procurement contracts. As further set forth below, the Guidelines apply to Roosevelt Island Operating Corporation (“RIOC”) procurement contracts, and limit communications between **Offerers**¹ and RIOC during the **Restricted Period** of a **Governmental Procurement**. During the **Restricted Period**, **Offerers** may only communicate with the person or persons designated by RIOC to receive communications regarding such procurement.

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 RIOC staff or its consultants about a Governmental Procurement under circumstances where a reasonable person would infer that the communication was intended to influence the Governmental Entity’s conduct or decision regarding 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 public announcement, public notice, or public communication to any potential vendor of a determination of need for a procurement, which shall include, but not be limited to, the public notification of the specifications, bid documents, requests for proposals, or evaluation 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 Office of the State Comptroller, as applicable),

¹ Hereinafter, defined terms are in bold.

renewal or extension of a **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 contacts RIOC about a **Governmental Procurement** during the **Restricted Period** of such **Governmental Procurement** whether or not the caller has a financial interest in the outcome of the procurement; provided, however, that a governmental agency or its employees that communicate with RIOC regarding a **Governmental Procurement** in the exercise of its oversight duties shall not be considered an **Offerer**.

Procurement Contract

Any contract or other agreement, including an amendment, extension, renewal, or change order to an existing contract (other than amendments, extensions, renewals, or change orders that are authorized and payable under the terms of the contract as it was finally awarded or approved by the Office of the State Comptroller, as applicable) for an **Article of Procurement** involving an estimated annualized expenditure in excess of \$15,000. However, grants, State Finance Law Article XI-B contracts, intergovernmental agreements, railroad and utility force accounts, utility relocation project agreements or orders, contracts governing organ transplants, contracts allowing for state participation in trade shows, and eminent domain transactions shall not be deemed **Procurement Contracts**.

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 RIOC and ending with the final contract award and approval by RIOC, and where applicable, the Office of the State Comptroller.

III. EXEMPTIONS

Certain communications are exempt from the Guidelines and do not need to be directed to a designated contact. These include:

- (1) the submission of written proposals in response to a request for proposals, invitation for bids or any other method for soliciting a response from **Offerers** intending to result in a **Procurement Contract**;
- (2) the submission of written questions to a designated contact by a method set forth in a request for proposals, or invitation for bids, or any other method for soliciting a response from **Offerers** intending to result in a **Procurement Contract**, when all written questions and responses are to be disseminated to all **Offerers** who have expressed an interest in the request

- (3) participation in a demonstration, conference or other means for exchange of information in a setting open to all potential bidders provided for in a request for proposals, invitation for bids, or any other method for soliciting a response from **Offerers** intending to result in a **Procurement Contract**;
- (4) complaints by an **Offerer** regarding the failure of the person or persons designated by RIOC pursuant to this section to respond in a timely manner to authorized **Offerer** contacts made in writing to the Chief Financial Officer of RIOC, provided that any such written complaints shall become a part of the procurement record;
- (5) **Offerers** who have been tentatively awarded a contract and are engaged in communications with RIOC solely for the purpose of negotiating the terms of the **Procurement Contract** after being notified of tentative award;
- (6) **Contacts** between designated RIOC staff and an **Offerer** to request the review of a **Procurement Contract** award;
- (7) (a) **Contacts** by **Offerers** in protests, appeals or other review proceedings (including the apparent successful bidder or proposer and his or her representatives) before RIOC seeking a final administrative determination, or in a subsequent judicial proceeding; or (b) complaints of alleged improper conduct in a governmental procurement to the attorney general, inspector general, district attorney, or court of competent jurisdiction; or (c) protests, appeals or complaints to the State Comptroller's office during the process of contract approval, where the State Comptroller's approval is required, provided that the State Comptroller shall make a record of such communication and any response thereto which shall be entered into the procurement record;
- (8) communications between **Offerers** and RIOC that solely address the determination of responsibility by RIOC of an **Offerer**;
- (9) any communications relating to a **Governmental Procurement** made under §162 of the State Finance Law undertaken by (I) the non-profit-making agencies appointed pursuant to paragraph E of subdivision 6 of §162 of the State Finance Law by the Commissioner of the Office of Children and Family Services, the Commissioner for the Blind and Visually Handicapped, or the Commissioner of Education, and (II) the qualified charitable non-profit-making agencies for the blind and/or other severely disabled persons as identified in subdivision 2 of §162 of the State Finance Law; provided, however, that any communications which attempt to influence the issuance or terms of the specifications that serve as the basis for bid documents, requests for proposals, invitations for bids, or solicitations of proposals, or any other method for soliciting a response from **Offerers** intending to result in a **Procurement Contract** with a **Governmental Entity** shall not be exempt from the provisions of these Guidelines;
- (10) any communication about a **Governmental Procurement** being conducted by a **Governmental Entity** other than the New York State Legislature received by RIOC from members of the New York State Legislature or the Legislative Staff, when acting in their official capacity, shall not be considered a **Contact** for the purpose of these Guidelines.

IV. VIOLATION

A violation of these Guidelines occurs when there is a **Contact** during the **Restricted Period** between the **Offerer** and someone other than the person(s) designated by RIOC to receive communications for the particular **Governmental Procurement**. This includes instances where the **Offerer Contacts** RIOC regarding a procurement of another **Governmental Entity**.

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.

V. PROCEDURES

A. Notifying Vendors of Procurement Lobbying Guidelines

1. For each **Procurement Contract**, at the same time that a **Restricted Period** is imposed, RIOC will designate a person or persons, who are knowledgeable about the procurement, to receive communications from **Offerers** concerning the **Governmental Procurement**.
2. RIOC will incorporate a summary of the policy governing lobbying during a **Governmental Procurement** in its documents relating to the **Procurement Contract** and provide a copy of the policy and prohibitions regarding permissible communications to **Offerers**.
3. RIOC shall seek written affirmation from all **Offerers** indicating that they understand and agree to comply with these Guidelines (Attachment 1). Such a written affirmation by an **Offerer** shall be deemed to apply to any amendments to a procurement submitted by RIOC after an initial affirmation is received with an initial bid.

B. Making Determinations of Responsibility or Debarment

1. Prior to award of a **Procurement Contract**, RIOC must make a responsibility determination with respect to the **Offerer** to be recommended for the award of the contract based upon, among other things, the information supplied by that **Offerer**, using the **Offerer** Disclosure of Prior Non-Responsibility Determinations Form (Attachment 2), 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 RIOC is complete, true and accurate.
2. Any determination of non-responsibility due to violation of the Procurement Lobbying Law within four years of a prior determination of non-responsibility due to a violation of the Procurement Lobbying Law shall result in the **Offerer** being debarred from submitting a proposal on or being awarded any

3. The **Procurement Contract** must include a provision allowing RIOC to terminate the contract if the certification is subsequently found to be incomplete, false or inaccurate. Admissions by the **Offerer** of past findings of non-responsibility may constitute a basis for rejection of the **Offerer** by RIOC. RIOC can 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 of Procurement** within the necessary time frame. The basis of such a finding must be included in the procurement record of the **Governmental Procurement**.

C. Recording **Contacts**

1. All members, officers and employees of RIOC must record any **Contact** from any person or entity. **Contacts** may be initiated by parties with an interest in the procurement that are not necessarily connected directly to the **Offerer**. **Contacts** may come in the form of telephone conversations, correspondence, electronic mail and person-to-person discussions. The Record of Contact Form (Attachment 3) should be used to record all **Contacts**. The form shall be made available from the RIOC Finance Department.
2. Examples of **Contacts** for which a Record of Contact must be completed include:
 - a. During the **Restricted Period**, an **Offerer** **Contacts** a RIOC employee (other than the employee designated to receive such communications) to discuss the **Offerer's** cost, competitiveness or its suitability to be selected for a contract.
 - b. A court reporter, expert witness or any other vendor offers a RIOC employee a gift of any monetary value during the **Restricted Period**.
3. Examples of permissible communications which may be directed to persons other than those designated by RIOC to receive communications from **Offerers** concerning the **Governmental Procurement** include:
 - a. Inquiries as to the status of the procurement process;
 - b. Requests to be included on RIOC's **Offerer** list;
 - c. Receipt of advertising material;
 - d. Intra-agency communications of administrative details concerning the procurement;
 - e. Responses to RIOC issued Requests for Information;
 - f. Written questions submitted by **Offerers** regarding a solicitation during the allowable time period of a competitive procurement;
 - g. Complaints about the procurement process or outcome;
 - h. Participation in an **Offerer's** conference as provided for in a Request for Proposals or Invitation for Bids;
 - i. Submission of a proposal or bid in response to a Request for Proposals or Invitation for Bids;
 - j. Contract negotiations; and

- k. Debriefing of an **Offerer** after a contract award has been made.

None of the above communications require the preparation of a Record of Contact unless such communication constitutes an attempt to influence the **Governmental Procurement**.

4. If a RIOC employee is in doubt about whether a communication was intended to influence the **Governmental Procurement**, he or she should record the communication on the Record of Contact Form and submit it to RIOC's Chief Financial Officer for further investigation.
5. The RIOC Chief Financial Officer, or his or her designee, will be required to ensure that all Records of Contacts are included in the procurement record for the related **Procurement Contract**.

D. Investigation of **Contacts**/Penalties for Violations

1. All reported **Contacts** will be immediately investigated by the RIOC Chief Financial Officer, or his or her designee. If the RIOC Chief Financial Officer finds 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**.
2. If the RIOC Chief Financial Officer should find at the conclusion of the investigation that the **Offerer** knowingly and willfully made a prohibited **Contact** in violation of these Guidelines, then the **Offerer** shall be disqualified as non-responsible, unless RIOC 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**.
3. Upon a determination of non-responsibility or debarment due to a violation of these Guidelines, the RIOC Chief Financial Officer shall notify the New York State Office of General Services, which shall keep and publish on its website a list of all **Offerers** who have been determined to be non-responsible bidders or debarred due to violations of the New York State Finance Law §§ 139-j and 139-k.

AFFIRMATION OF UNDERSTANDING AND COMPLIANCE

Contract Number Related to Offer: _____

_____ hereby affirms that it has read and understands the Roosevelt Island Operating Corporation's ("RIOC") Guidelines Regarding Procurement Lobbying (available on www.rioc.ny.gov), and agrees to comply with RIOC's procedures relating to permissible Contacts during a Governmental Procurement. This Affirmation shall be deemed to apply to any subsequent amendments to a procurement submitted by RIOC after the initial affirmation is received with the initial bid.

Date: _____, 20__

Name of Offerer_____

Address: _____

Name and Title of Person Signing the Affirmation

General Information (Summary)¹

All **Procurement Contracts**² by the RIOC in excess of \$15,000 annually, are subject to New York State's State Finance Law §§139-j and 139-k ("Procurement Lobbying Law"). Pursuant to the Procurement Lobbying Law, all **Contacts** during a **Governmental Procurement** must be made only with a designated person or persons. Exceptions to this rule include written questions during the bid/proposal process, communications with regard to protests, contract negotiations and RFP conference participation. Nothing in the Lobbying Law inhibits any rights to make an appeal, protest or complaint under existing administrative or judicial procedures.

Violations of the policy regarding permissible contacts must be reported to RIOC's Chief Financial Officer ("CFO") and investigated accordingly. The first violation may result in a determination of non-responsibility and ineligibility for award to the violator and its subsidiaries, affiliates and related entities. The penalty for a second violation within four (4) years is ineligibility for bidding/proposing on a procurement and/or ineligibility from being awarded any contract for a period of four (4) years. RIOC will notify the New York State Office of General Services ("OGS") of any determinations of non-responsibility or debarments due to violations of the Procurement Lobbying Law. Violations found to be "knowing and willful" must be reported to the CFO and OGS. Moreover, the statutes require the RIOC to obtain certain affirmations and certifications from bidders and proposers. The below disclosure statement contains the forms with which to comply, together with additional information and instructions.

Instructions

New York State Finance Law §139-k(2) obligates the RIOC to obtain specific information regarding prior non-responsibility determinations. This information must be collected in addition to the information that is separately obtained pursuant to New York State Finance Law §163(9). In accordance with New York State Finance Law §139-k, an **Offerer** must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any **Governmental Entity** due to: (a) a violation of New York State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a **Governmental Entity**.

As part of its responsibility determination, New York State Finance Law §139-k(3) mandates consideration of whether an **Offerer** fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no procurement contract shall be awarded to any **Offerer** that fails to timely disclose accurate or complete information under this section, unless the factual elements of the limited waiver provision can be satisfied on the written record.

¹ Please refer to RIOC's Guidelines Regarding Procurement Lobbying (available on www.rioc.ny.gov) for additional information.

² All terms in bold are as defined in State Finance Law §139-k(1).

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

2. If yes, 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 yes, please provide details regarding the finding of non-responsibility below.

Governmental Entity: _____

Date of Finding of Non-Responsibility: _____

Basis of Finding of Non-Responsibility: _____

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: _____

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

By: _____

Signature

Date: _____

Name: _____

Title: _____

**Roosevelt Island Operating Corporation
Record of Contact
Under State Finance Law §139-k(4)**

Was the person making the Contact informed that the Contact would be documented?

☐ Yes

☐ No

To: Procurement Record Regarding

Procurement Contract Number:

From:

(Name and title)

Date:

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

I had Contact with the below named individual regarding the above identified procurement. The term “Contact” is defined in State Finance Law §139-k (1)(c). In accordance with State Finance Law §139-k (4), the following information was obtained.

Name:

Address:

Telephone Number:

Place of Principal Employment:

Occupation:

No	Yes
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Optional:

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2