

Model Contract Termination Provision

Instructions:

A contract termination provision should be included in each Procurement Contract governed by State Finance Law §139-k. New York State Finance Law §139-k(5) provides that every Procurement Contract award subject to the provisions of State Finance Law §§139-k and 139-j shall contain a provision authorizing the Governmental Entity to terminate the contract in the event that the certification is found to be intentionally false or intentionally incomplete. This statutory contract language authorizes, but does not mandate, termination. “Governmental Entity” and “Procurement Contract” are defined in State Finance Law §139-k(1).

This required clause must be included in a covered Procurement Contract. Inclusion of such a clause is recommended in any solicitation documents (such as Invitations for Bids and Requests for Proposals). Doing so will provide notice to the business community about the statutory requirement. It is further recommended that this statutorily required clause be co-located with any other contractual termination provisions. The Model Contract Termination Provision set forth below, or similar language, may be used to comply with the State Finance Law §139-k(5) requirements. In any case, the clause used must contain the elements contained in that section.

If a contract is terminated in accordance with State Finance Law §139-k(5), the Governmental Entity is required to include a statement in the procurement record describing the basis for any action taken under the termination provision.

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

* References in the Model Contract Termination Provision may be amended as follows:

- “Governmental Entity” may be amended to specifically reference the governmental unit conducting the procurement.
- “Contract” may be amended to conform to the terminology used to describe the underlying agreement (i.e., Agreement, Contract).
- “Offerer” may be amended to conform to the Offerer’s legal identity (set forth in full or abbreviated) as set forth in the contract.
- The reference to the “written notification” may be amended to reflect the type of notice provided for under the agreement (i.e., oral notice).