

**LANDLORD AND TENANT OBLIGATIONS UNDER
NEW YORK STATE FINANCE LAW §§139-J AND 139-K**

PROJECT NO:	OCCUPYING AGENCY:
BUILDING ADDRESS (STREET/CITY/STATE/ZIP CODE/COUNTY):	
NAME OF LANDLORD OR TENANT:	ADDRESS:

Overview:

All Governmental Procurements conducted by the Office of General Services (“OGS”) in excess of \$15,000 annually are subject to the requirements of New York State’s State Finance Law Sections 139-j and 139-k. Pursuant to these requirements, all Contacts during the Restricted Period of a Governmental Procurement must be made only with one or more designated contacts and a record must be made of all Contacts so that the record can be included in the procurement record for the Governmental Procurement. OGS will provide vendors with notification of the designated contacts for a Governmental Procurement at the start of the procurement process. New York State Finance Law Section 139-j does include exceptions to the requirement that Contacts only be made to a designated contact, but there are penalties for violations of the statutes. Violations of the policy regarding permissible Contacts must be reported to the OGS Ethics Officer 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. Any determinations of non-responsibility or debarments due to violations of the Procurement Lobbying Law are posted on the OGS website in accordance with statutory requirements. In addition, the statutes require OGS to obtain certain affirmations and certifications from proposers. This document contains the forms with which to comply, together with additional information and instructions.

Definitions:

“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 Entity’s conduct or decision regarding the Governmental Procurement.

“Governmental Entity” (1) any department, board, bureau, commission, division, office, council, committee or officer of the State, whether permanent or temporary; 2) each house of the State Legislature; (3) the Unified Court System; (4) any public authority, public benefit corporation or commission created by or existing pursuant to the Public Authorities Law; (5) 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; (6) a municipal agency, as that term is defined in paragraph (ii) of Subdivision (s) of Section One-C of the Legislative Law; or (7) a subsidiary or affiliate of such public authority.

“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, request 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 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.

“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 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 communicates with the

procuring agency 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 Comptroller, as applicable), for an article of procurement involving an estimated annualized expenditure in excess of fifteen thousand dollars. Grants, Article Eleven-B State Finance Law contracts, program contracts between not-for-profit organizations, as defined in Article Eleven-B of this Chapter, and the Unified Court System, 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 posting, on a governmental entity’s website, in a newspaper of general circulation, or in the procurement opportunities newsletter in accordance with Article Four-C of the New York State Economic Development Law of written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method provided for by law or regulation for soliciting a response from Offerers intending to result in a Procurement Contract with a Governmental Entity and ending with the final contract award and approval by the Governmental Entity and, where applicable, the State Comptroller.

Instructions: New York State Finance Law §139-k(2) obligates OGS 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 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 extenuating circumstances apply. **OGS reserves the right to terminate a Contract (including any lease, license, entry permit, or sale documents) in the event it is found that the certification filed by the Proposer, in accordance with New York State Finance Law §139-k, was intentionally false or intentionally incomplete. Upon such finding, OGS may exercise its termination right by providing written notification to the Proposer in accordance with the written notification terms of the Contract.**

Section I: The New York State Office of General Services (“OGS”) must obtain an affirmation of understanding and agreement to comply with the requirements of New York State Finance Law §§139-j and 139-k. In accordance with this requirement, please complete the following section:

Offerer affirms that it understands and agrees to comply with the OGS’ procedures relative to permissible Contacts as required by State Finance Law §139-j(3) and §139-j(6) (b).	
Signature: _____	Date: _____
Name: _____	
Title: _____	
Contractor Name: _____	
Contractor Address: _____	

Section II: OGS must obtain a certification from every Offerer indicating that all information provided to it with respect to State Finance Law §139-k, regarding any prior findings of non-responsibility, is complete, true and accurate. In accordance with this requirement, please complete the following section:

Offerer Certification:

I certify that all information provided to OGS with respect to State Finance Law §139-k is complete, true and accurate.

Signature: _____ Date: _____

Name: _____

Title: _____

Contractor Name: _____

Contractor Address: _____

Section III: OGS must obtain disclosure of 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 State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity. A violation of State Finance Law §139-j includes, but is not limited to, an impermissible Contact during the Restricted Period of a Governmental Procurement (for example, Contacting a person or entity other than the designated contact person, when such Contact does not fall within one of the exemptions set forth in State Finance Law §139-j). As part of its responsibility determination, State Finance Law §139-k(3) mandates consideration of whether an Offerer fails to timely disclose accurate or complete information regarding the above referenced 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 a finding is made that the award of the Procurement Contract to the Offerer is necessary to protect public property or public health safety, and that the Offerer is the only source capable of supplying the required article of procurement within the necessary timeframe. In accordance with this requirement, please complete the following section:

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

Address: _____

Name and Title of Person Submitting this Form: _____

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 the answer to Question 1 is yes, please answer the following 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 the answer to Questions 2 or 3 is yes, please provide the following details regarding the finding of non-responsibility:

Name of the Governmental Entity That Made the Finding of Non-Responsibility:

Date of the Finding of Non-responsibility: _____

Basis of the Finding of Non-Responsibility:

(Add additional pages as necessary)

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

No

Yes

6. If the answer to Question 5 is yes, please provide details below.

Name of the Governmental Entity that Terminated or Withheld the Procurement Contract:

Date of the Termination or Withholding of the Contract:

Basis of the Termination or Withholding:

(Add additional pages as necessary)

The 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: _____