

NYS Finance Law & Disclosure Guideline Requirements

The New York State Bridge Authority operates under various requirements of NYS Law with regards to contracting, bids for work, compliance with public disclosure requirements and other rules and regulations to insure that work done by or for this public authority is both in the public interest and conducted in a fair and equitable manner.

The following details some of the requirements that must be followed. It is strongly recommended that anyone seeking to do business with the NYS Bridge Authority discuss his opportunity with our Administrative offices by calling 845-691-7245.

List of Documents

Offerer's Certification of Compliance
with NYS Finance Law §139-k(5)

Offerer's Affirmation of Understanding of and Agreement
pursuant to State Finance Law §139-j (3) and §139-j (6) (b)

Offerer Disclosure of Prior
Non-Responsibility Determinations

Language Required in RFP or Bid documents
by State Finance Law §139

Standard Clauses for
NYS Bridge Authority Contracts

**Offerer's Certification of Compliance
with NYS Finance Law §139-k(5)**

Background:

New York State Finance Law §139-k(5) requires that every Procurement Contract award subject to the provisions of State Finance Law §§139-k or 139-j shall contain a certification by the Offerer that all information provided to the procuring Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

Instructions:

The New York State Bridge Authority must obtain the required certification that the information is complete, true and accurate regarding any prior findings of non-responsibility, such as non-responsibility pursuant to State Finance Law §139-j. The Offerer must agree to the certification and provide it to the procuring Governmental Entity.

New York State Bridge Authority
[Enter Contract number here]
[Enter contract title here]

Offerer's Certification of Compliance with State Finance Law §139-k(5)

Offerer Certification:

I certify that all information provided to the New York State Bridge Authority with respect to State Finance Law §139-k is complete, true and accurate.

By: _____ Date: _____

Name: _____

Title: _____

Contractor Name:

Contractor Address:

Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b)

Background:

State Finance Law §139-j(6)(b) provides that:

Every Governmental Entity shall seek written affirmations from all Offerers as to the Offerer's understanding of and agreement to comply with the Governmental Entity's procedures relating to permissible contacts during a Governmental Procurement pursuant to subdivision three of this section.

Instructions:

A NYS Bridge Authority must obtain the required affirmation of understanding and agreement to comply with procedures on procurement lobbying restrictions regarding permissible Contacts in the restricted period for a procurement contract in accordance with State Finance Law §§139-j and 139-k. It is recommended that this affirmation be obtained as early as possible in the procurement process, such as when the Contractor submits its proposal or bid.

Offerer affirms that it understands and agrees to comply with the procedures of the NYS Bridge Authority relative to permissible Contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

By: _____

Date: _____

Name: _____

Title: _____

Contractor Name:

Contractor Address: _____

Offerer Disclosure of Prior Non-Responsibility Determinations

Background:

New York State Finance Law §139-k(2) obligates a Governmental Entity to obtain specific information regarding prior non-responsibility determinations with respect to State Finance Law §139-j. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law §163(9). In accordance with 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 State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity. The terms “Offerer” and “Governmental Entity” are defined in State Finance Law § 139-k(1). State Finance Law §139-j sets forth detailed requirements about the restrictions on Contacts during the procurement process. A violation of State Finance Law §139-j includes, but is not limited to, an impermissible Contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such Contact does not fall within one of the exemptions).

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 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. See State Finance Law §§139-j (10)(b) and 139-k(3).

Instructions:

The New York State Bridge Authority must include a disclosure request regarding prior non-responsibility determinations in accordance with State Finance Law §139-k in its solicitation of proposals or bid documents or specifications or contract documents, as applicable, for procurement contracts. The attached form is to be completed and submitted by the individual or entity seeking to enter into a Procurement Contract.

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: _____

Language to put into RFP or Bid documents relative to Sec 139.

Pursuant to State Finance Law §§139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between 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 a "Request for Proposal" through final award and approval of the Procurement Contract by the Authority ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated staff, as of the date hereof, is identified in this solicitation. 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 4 year period, the Offerer/bidder is debarred from obtaining governmental Procurement Contracts.

EXHIBIT "A"

STANDARD CLAUSES FOR NEW YORK STATE BRIDGE AUTHORITY CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the Authority, whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. **NON-ASSIGNMENT CLAUSE.** This contract may not be assigned, and no part or portion may be subcontracted, by the Contractor nor may its right, title or interest therein be assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the Authority and any attempts to assign the contract without the Authority's written consent are null and void.

2. **WORKERS' COMPENSATION BENEFITS.** This contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

3. **NON-DISCRIMINATION REQUIREMENTS.** In accordance with Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, sexual orientation, military status, sex, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work, or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract, as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

4. **EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Article 15-A of the Executive Law, if this contract is: (a) a written agreement or purchase order instrument, providing for a total expenditure in

excess of \$25,000, whereby a contracting agency is committed to expend, or does expend, funds in return for labor, services, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (b) a written agreement in excess of \$100,000 whereby a contracting agency is committed to expend, or does expend, funds for the acquisition, construction, demolition, replacement, major repair, or renovation of real property and improvements thereon, or (c) a written agreement in excess of \$100,000 whereby the owner of a State-assisted housing project is committed to expend, or does expend, funds for the acquisition, construction, demolition, replacement, major repair, or renovation of real property and improvements thereon for such project, then:

(1.) The contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination, and rates of pay or other forms of compensation.

(2.) At the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, or marital status, and that agency, union, or representative will affirmatively cooperate in the implementation of the contractor's obligations herein.

(3.) The Contractor shall state, in all solicitations or advertisements for employees, that in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status.

5. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

6. NON-COLLUSIVE BIDDING REQUIREMENT. In accordance with Public Authorities Law Section 2878, if this contract was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at

independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the Authority a non-collusive bidding certification on Contractor's behalf.

7. **INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of this contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership, or corporation has participated, is participating, or shall participate in an international boycott in violation of the Federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the Authority within five (5) business days of such conviction, determination or disposition of appeal.

8. **SET-OFF RIGHTS.** The Authority shall have rights of set-off. These rights shall include, but not be limited to, the Authority's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing by the contractor to the Authority with regard to this contract, or any other contract with the Authority, including any contract for a term commencing prior to the term of this contract. This also includes amounts due and owing the Authority for any other reason including, without limitation, monetary penalties, adjustments, fees, or claims for damages by the Authority and third parties in connection therewith.

9. **RECORD-KEEPING REQUIREMENT.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts or other evidence directly pertinent to performance under this contract (the "Records") for a period of six (6) years following final payment or to the termination of this contract, whichever is later, and any extensions thereto. The Authority and Attorney General or any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to such Records during the contract term, extensions thereof and said six (6) year period thereafter for the purposes of inspection, auditing and copying. "Termination of the contract", as used in this clause 9, shall mean the later of completion of the work of the contract or the end date of the term stated in the contract. The Authority shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform the Authority's Executive Director with a copy to its Records Access Officer, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the Authority's right to discovery in any pending or future litigation.

10. **LIABILITY.** Contractor shall be responsible for all damage to life and property due to negligent or otherwise tortious acts, errors or omissions of Contractor, in connection with their services under this contract. Further, it is expressly understood that Contractor shall indemnify and save harmless the Authority and/or the State of New York, as their interests may appear, from claims, suits, actions, damages, and costs of every name and description resulting from the negligent performance of the services of Contractor under this contract, and such indemnity shall not be limited by reasons of enumeration of any insurance coverage herein provided.

11. **GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal Supremacy clause requires otherwise.

12. **LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Public Authorities Law Section 2880.

13. **NO ARBITRATION AND SERVICE OF PROCESS.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized) but must, instead, be heard in a court of competent jurisdiction of the State of New York. In addition to the methods of service allowed by the State Civil Practice Law & Rules, Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the Authority's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the Authority, in writing, of each and every change of address to which service of process can be made. Service by the Authority to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

14. **OBSERVANCE OF LAWS.** The Contractor agrees to observe all Federal, State and local laws and regulations and to procure all necessary licenses and permits.

15. **IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.**

Federal Employer Identification Number and/or Federal Social Security Number:

All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's, i.e., the seller's or lessor's, identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both when the payee has both such numbers. Failure to include the number or numbers may delay payment. Where the payee does not have such number or numbers, the payee must give, on his or her invoice or New York State standard voucher, the reason or reasons why the payee does not have such number or numbers.

Privacy Notification:

(1.) The authority to request the above personal information from a seller of goods or services, or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses, and others who have been delinquent in filing tax returns or may have understated their tax liabilities, and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes, and for any other purpose authorized by law.

(2.) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. This information is maintained in New York State's Central Accounting System by the Director of State Accounts, Office of the State Comptroller, AESOB, Albany, New York 12236.

16. **DISQUALIFICATION TO CONTRACT WITH PUBLIC AUTHORITY.** The Contractor has not been disqualified from selling to or submitting bids to or receiving awards from or entering into any contracts with any public authority or any official of any public authority created by the state or any political subdivision, for goods, work or services pursuant to Section 2876 of the Public Authorities Law.

Upon the refusal by a person, when called before a grand jury, head of a state department, temporary state commission or other state agency, the organized crime task force in the department of law, head of a city department, or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation concerning any transaction or contract had with the state, any political subdivision thereof, a public authority or with any public department, agency or official of the state or of any political subdivision thereof or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract, (a) such person, and any firm, partnership or corporation of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any public authority or official thereof, for goods, work or services, for a period of five years after such refusal, and (b) any and all contracts made with any public authority or official thereof, since the effective date of Section 2875 of the Public Authorities Law, by such person and by any firm, partnership or corporation of which he is a member, partner, director or officer may be cancelled or terminated by the public authority without incurring any penalty or damages on account of such cancellation or termination, but any monies owing by the public authority for goods delivered or work done prior to the cancellation or termination shall be paid.

17. **PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165. (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

18. **CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Exhibit, the terms of this Exhibit shall control, except that to the extent required for the purpose of obtaining Federal Aid in connection with this contract, any contract provisions required for Federal Aid projects shall supersede any conflicting provisions.

19. **STATE FINANCE LAW SECTION 139-k.** The Contractor hereby certifies that all information provided to the Authority with respect to State Finance Law Section 139-k is complete, true and accurate. The Authority reserves the right to terminate this Contract in the event it is found that the certification filed by the Contractor in accordance with New York State Finance Law Section 139-k, was intentionally false or intentionally incomplete. Upon such finding, the Authority may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of the Contract.

20. **ENTIRE AGREEMENT.** This contract, together with this Exhibit, constitutes the entire understanding between the parties and there are no other oral or extrinsic understandings of any kind between the parties. This contract may not be changed or modified in any manner except by a subsequent writing, duly executed by the parties hereto.