

\* § 139-k. Disclosure of contacts and responsibility of offerers. 1. For purposes of this section, the following terms will have the following meanings unless specified otherwise.

a. "Governmental entity" shall mean: (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) a 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) 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 a public authority.

b. "Article of procurement" shall mean a commodity, service, technology, public work, construction, revenue contract, the purchase, sale or lease of real property or an acquisition or granting of other interest in real property, that is the subject of a governmental procurement.

c. "Contacts" shall mean 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.

d. "Proposal" shall mean any bid, quotation, offer or response to a governmental entity's solicitation of submissions relating to a procurement.

e. "Governmental procurement" shall mean: (i) the public announcement, public notice, or public communication to any potential vendor of a determination of a 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.

f. "Restricted period" shall mean the period of time commencing with the earliest 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 a governmental entity and ending with the final contract award and approval by the governmental entity and, where applicable, the state comptroller.

g. "Procurement contract" shall mean 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 a trade show, and eminent domain transactions shall not be deemed procurement contracts.

h. "Offerer" shall mean 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.

i. "Revenue contract" shall mean any written agreement between a governmental entity, as that term is defined in subparagraphs one, four, five, six or seven of paragraph a of this subdivision, and an offerer whereby the governmental entity gives or grants a concession or a franchise.

j. "Unified court system" shall, for the purposes of this section only, mean the unified court system of the state of New York, or the office of court administration, where appropriate, other than town and village justice courts in jurisdictions with a population under fifty thousand, when it acts solely in an administrative capacity to engage in governmental procurements and shall not include the unified court system or any court of the state judiciary when it acts to hear and decide cases of original or appellate jurisdiction or otherwise acts in its judicial, as opposed to administrative, capacity.

2. Each governmental entity shall ensure that solicitation of proposals or bid documents or specifications, or contract documents, as applicable, for procurement contracts shall require offerers to disclose findings of non-responsibility made within the previous four years by any governmental entity where such prior finding of non-responsibility was due to: (a) a violation of section one hundred thirty-nine-j of this article, or (b) the intentional provision of false or incomplete information to a governmental entity.

3. The failure of an offerer to timely disclose accurate or complete information to a governmental entity pursuant to subdivision two of this section shall be considered by such governmental entity in its determination of the responsibility of such offerer. No procurement contract shall be awarded to any such offerer, its subsidiaries, and any related or successor entity with substantially similar function, management, board of directors, officers and shareholders (hereinafter, for the purposes of this subdivision, "offerer"), unless the governmental entity finds 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 timeframe, provided, that the governmental entity shall include in the procurement record a statement describing the basis for such a finding.

4. Upon any contact in the restricted period, the governmental entity shall obtain the name, address, telephone number, place of principal employment and occupation of the person or organization making the contact and inquire and record whether the person or organization making such contact was the offerer or was retained, employed or designated by or on behalf of the offerer to appear before or contact the governmental entity about the governmental procurement. All recorded contacts shall be included in the procurement record for the procurement contract.

5. Any procurement contract award subject to the provisions of this section and section one hundred thirty-nine-j of this article shall

contain a certification by the offerer that all information provided to the procuring governmental entity with respect to this section is complete, true and accurate, and each such procurement contract shall contain a provision authorizing the governmental entity to terminate such contract in the event such certification is found to be intentionally false or intentionally incomplete. The governmental entity shall include in the procurement record a statement describing the basis for any action taken pursuant to such termination provision.

6. Any communications received by a governmental entity from members of the state legislature, or legislative staffs, when acting in their official capacity, shall not be considered to be a "contact" within the meaning of this section and shall not be recorded by a governmental entity pursuant to this section.

\* NB Repealed July 31, 2014