

# Erie County Water Authority Procurement Disclosure Policy

## **Purpose**

As a public benefit corporation, the Erie County Water Authority (the “Authority”) must conduct its operations in a manner that best serves the interests of its customers and the general public. The Authority expects all members, officers, and employees to comply and cause the Authority to adhere to all the laws and regulations governing business transactions, namely State Finance Law 139j and 139k (the “Statutes”) which reform the procurement process for all government entities, including the Authority.

This Procurement Disclosure Policy is intended to conform the Authority’s procurement process to the requirements of the Statutes.

## **Article 1**

### **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 other interest in real property, that is the subject of a Governmental Procurement.

Contact 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 Procurement.

Governmental Entity Any department, board, bureau, commission, division, office, council, committee, or officer of the public authority and or public benefit corporation as the Authority is recognized. The Statute includes other such entities unrelated to our Authority.

Offerer The individual or entity, or any employee, agent, 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 a Governmental Procurement.

Procurement Contract Any contract or other agreement for an Article of Procurement involving an estimated annualized expenditure in excess of Ten Thousand Dollars (\$10,000) The Statute provides some exemptions not normally used by the Authority.

Procurement Officer The authorized contact person for a purchase.

Procurement Record Documentation of contacts during the Restricted Period attached to the Project File, and or the Purchasing System.

Proposal Any bid, quotation, offer, or response to the Authority's solicitation of submissions relating to a procurement.

Restricted Period The period of time commencing from the Authorization by the Board of Commissioners to advertise and/or authorization to solicit a Request for Proposal or bid and/or any other method of soliciting a response from offerers intending to result in a procurement contract, and ending with the contract award by the Board.

Solicitation Materials Any written materials, invitations, electronic or otherwise.

## **Article 2**

### **Ethics Officer**

On an annual basis the Members of the Authority shall appoint a Chairperson of the Ethics Board. The Ethics Board shall be the Members of the Board of Commissioners. For the purpose of this Policy that person shall be the "Ethics Officer."

## **Article 3**

### **Procurement Officers**

For each and every governmental solicitation, subject to this Statute, the Executive Director and/or Director of Administration shall recommend for Board approval a "Procurement Officer," who shall be the designated contact person and Procurement Officer for Offerers to make all contacts during the Restricted Period.

## **Article 4**

### **Contacts by Offerers**

All contacts between an Offerer and the Authority during the Restricted Period for each procurement contract (annualized in excess of \$10,000) shall be made through the applicable Procurement Officer, unless one of the following exception applies:

- (a) submission of written proposals in response to a Request for Proposal, invitation for bid, or any other method of soliciting a response from Offerers intending to result in a procurement contract collectively, solicitation materials.
- (b) The submission of written questions to a designated contact set forth in any solicitation materials.
- (c) Participation in a pre-bid conference set forth in solicitation material.
- (d) Complaints made in writing addressed to any empowered legal authority, or addressed to the Authority as to the Executive Director about the procurement process.
- (e) Offerers who have been tentatively awarded, and have been so notified, for the purpose of communicating with the Authority for the sole purpose of negotiating the contract.
- (f) Contact between the designated Authority staff and an Offerer in which an Offerer requests the review of a procurement award.

- (g) Discussions with the Claims Representative/Risk Manager about insurance, and/or, the Director of Equal Employment Opportunity, regarding certifications, in regard to meeting the terms of the contract before the award to insure that the contract obligations can be met.

## **Article 5 Other Prohibited Offerer Activities**

In addition to utilizing the designated Procurement Officer for all contacts with the Authority, the following additional rules apply to the Offerer:

- (a) Offerer should not attempt to influence the Authority's procurement in a manner that would result in a violation of any State or Authority ethics or conflict of interest statute or policy.
- (b) Offerer is prohibited from contacting any member, officer, or employee of a governmental entity other than the Authority (see Law for exceptions) during the Restricted Period of a pending procurement.

## **Article 6 Procurement Record**

Contacts should be recorded on the designated forms and placed into the Project file with File Retrieval and then (and/or) converted to the Purchasing System using the imaging system indexed to the designated Purchase Order or Master Purchase Order number after the contract is established. All contacts must be sent to the Director of Administration for proper assignment to the archive.

**Contacts, that a reasonable person would infer are not intended to influence the governmental procurement process, shall not be entered into the Procurement Record.**

The Authority will retain these records for a period no less than six (6) years.

## **Article 7 Required Disclosure**

The Authority shall incorporate into its Solicitation Materials a summary or the policy and prohibitions of the Statutes as well as any and all rules, regulations and the standard Authority Policies and Procedures for said RFP, quotations or bid.

## **Article 8 Requirements of the Authority Prior to Awarding Procurement Contracts**

The Authority will make the final determination and award based in accordance with its existing procedures, in compliance with State Finance Law provisions, and free of any conduct prohibited under the Public Officers Law, as well as the applicable provisions of the Authority's Code of Ethics and Conflict of Interest Policy.

## **Article 9 Procedure for Alleged Violation**

Any member, officer, or employee of the Authority, who becomes aware that an Offerer has violated this Policy or the Statutes shall:

- (a) Immediately notify the Ethics Officer who shall immediately investigate
- (b) If after the investigation the Ethics Officer finds there is sufficient cause to believe the alleged violation has occurred, he/she shall give the violating Offerer reasonable notice ( in the form of a certified letter, return receipt requested) informing them of the allegations and providing them with the opportunity to be heard regarding the allegations.
- (c) If following the opportunity to be heard, the Ethics Officer determines that the Offerer, has knowingly and willfully violated this Policy, the aforementioned Statutes, or any other applicable procurement disclosure standards affecting Members, Officers, or employees of the Authority, the Offerer shall be subject to sanctions described in Article 10 hereof.
- (d) The Ethics Officer shall report to the ethics officer of another Governmental Entity the violation and be designated as the person to receive similar communications.

## **Article 10 Sanctions**

Upon finding by the Ethics Officer that and Offerer has knowingly and willfully violated this Policy, the Statutes or any other applicable procurement disclosure standards affecting Members, officers or employees of the Authority, the Offerer shall be subject to the following sanctions, as well as any other penalty permitted by law:

- (a) The Offerer shall be deemed “non-responsible” and not be awarded the Procurement contract unless the Authority finds that special circumstances exist:
  - (i) The award to the offending Offerer is necessary to protect the public property or public health or safety; and
  - (ii) The offending Offerer is the only source capable of supplying the required article of procurement within the necessary timeframe.
- (b) In addition the Ethics Officer shall notify the State Office of General Services of the finding of non-responsibility. ( it should be noted that a second finding of non-responsibility in a four year period will render the Offerer and all its subsidiaries ineligible to submit a proposal on or be awarded any Procurement Contract for a four (4) years from the date of the second final determination of non-responsibility, unless a special circumstance outlined in Section A of the State Finance Law or Article 10 in this Policy.)

## **Distribution of This Policy**

This Policy should be incorporated, as a revision, into the Erie County Water Authority Purchasing Guidelines Policy and Procedures following adoption by the Board of Commissioners by resolution.

## **Procedure**

All Requests for Proposals, and formal bids (for the purpose of this policy in excess of an estimated Ten Thousand Dollars \$10,000) must be authorized for solicitation or advertisement by the Board of Commissioners. Authorization commences the Restricted Period.

A Procurement Officer (contact person) should be assigned to such solicitations at the time of Authorization to Advertise or Solicit. This individual is the only contact person for the Authority during the Restricted Period.

A contact form is the official document to record the discussion and should be presented to the Director of Administration for archiving, and or determination for investigation by the Ethics Officer.

The Director of Administration shall keep a chronicle of all solicitations currently in the Restricted Period and notify all Members, officials and employees by way of a broadcast notice on the 5250 screen of the Purchasing System. An e-mail will be forwarded to the Board of Commissioners and will be posted in staff meeting minutes and included in the Board of Commissioners meeting packets. The list should be posted and updated on the ECWA website. The Director of Administration will be available for consultation on the current listing of solicitations in the Restricted Period.

**Employee Responsibility: It is the responsibility of all Erie County Water Authority employees to understand the Policy and State statutes on Procurement Lobbying and recognize that during the Restricted Period all contacts with vendors must be through the designated contact person or Procurement Officer exclusively.**

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