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[University Counsel](#)

Other Requirement Title:  
Procurement Lobbying Procedure for State University of New York

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State-Operated Campuses

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## Summary

State Finance Law § §139-j and 139-k, enacted by Ch. 1 L. 2005, as amended by Ch. 596 L. 2005, effective January 1, 2006, constitute a significant legislative effort to regulate lobbying on government procurement, including procurements by State University to obtain commodities and services and to undertake real estate transactions.

Generally, the law restricts communications between a potential vendor or a person acting on behalf of the vendor, including its lobbyist, to communications with the officers and employees of the procuring agency designated in each solicitation to receive such communications. Further, the law prohibits a communication (a “Contact”) which a reasonable person would infer as an attempt to unduly influence the award, denial or amendment of a contract. These restrictions apply to each contract in excess of \$15,000 during the “restricted period” (the time commencing with the earliest written notice of the proposed procurement and ending with the later of approval of the final contract by the agency, or, if applicable, the State Comptroller). The agency must record all Contacts, and, generally, must deny an award of contract to a vendor involved in a knowing and willful Contact. Each agency must develop guidelines and procedures regarding Contacts and procedures for the reporting and investigation of Contacts. The agency’s procurement record must demonstrate compliance with these new requirements.

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## Requirement

The procedure set forth hereafter applies to Governmental Procurements by State University.

## Definitions

Capitalized terms used but not defined herein shall have the meaning ascribed to them in State Finance Law §§139-j and 139-k (copies attached). In addition, the following terms have the following meanings:

“Contact” means an oral, written or electronic communication made with respect to the related Governmental

Procurement by or on behalf of the Offerer during the Restricted Period to a member of the State University Board of Trustees, or officer or employee of the State University or of a Governmental Agency other than the State University, who reasonably infers that the Offerer intends to influence the related Governmental Procurement in any manner, including a manner which violates Public Officers Law §73(5)[offer of a gift of \$75 or more] or §74 (code of ethics for public officers and employees). The term “Contact” does not include (a) a communication described in State Finance Law §139-j(3)(a)(1)[submission of written proposal], (2) [submission of written questions], (3) [participation in bidders conference], (4) [complaints], (5) [contract negotiations subsequent to notice of tentative award], (6) [review of contract award], and (7)(a) [protests, appeals or other review proceedings]; (b) a communication described in Legislative Law §1-t(e) by an Offerer or subcontractor to an Offerer qualified by education, training or experience to provide technical services to explain, clarify or demonstrate the qualities, characteristics or advantages of an article of procurement, who provides information to a Designated Contact to assist the Designated Contact in understanding and assessing the qualities, characteristics or anticipated performance of such article of procurement and who does not recommend or advocate contract provisions; or (c) a communication by which the Offerer seeks generally available information, including clarification and interpretation, with respect to the solicitation documents or the Governmental Procurement process, including the status or timing of steps in the process

“Designated Contact” means one or more officers or employees of State University identified in the solicitation for the related Governmental Procurement, or thereafter designated by the Contract Manager, Office of Business Affairs, in the case of System Administration, or by a campus officer or employee authorized to make such designation.

## **Solicitations**

Each written solicitation by State University for a Procurement Contract shall contain the following:

(1) the name of each Designated Contact, and a statement substantially in the following form:

“Prior to approval by State University, or, if applicable, the State Comptroller, of the contract for which this solicitation has been issued, an Offerer shall not communicate with State University other than with the person identified in this solicitation as Designated Contact, or with a person who the Designated Contact has advised the Offerer is also a Designated Contact”;

(2) a summary of the policy and prohibitions regarding Contacts, in the form attached as Form A, and a copy of this statement of policy and procedure, or in lieu thereof a reference to [www.suny.edu/sunypp/](http://www.suny.edu/sunypp/) at which such documents may be reviewed;

(3) the requirement that each Offerer shall submit with its Proposal a written affirmation of its understanding of State University’s procurement lobbying procedures and agreement to comply with such procedures, in the form attached as Form B; and

(4) the requirement that each Offerer shall submit with its Proposal, in the form attached as Form C, written disclosure whether the Offerer has been determined to be non-responsible within the previous four years by reason of having violated State Finance Law §139-j or having intentionally provided false or incomplete information to a Governmental Entity with respect to its compliance with State Finance Law §139-j; and certification and that the

Offerer has provided accurate and complete information with respect to the Offerer's compliance with State Finance Law §§139-j and 139-k within the previous four years.

## **Contracts**

Each Procurement Contract shall contain the following statement in substantially the following form:

“State University reserves the right to terminate this contract in the event it is determined that the certification filed by the Contractor in accordance with State Finance Law §§139-j and 139-k was intentionally false or intentionally incomplete. Upon such determination, State University may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of the contract.”

## **Records of Contacts**

It is not the intention of this Policy and Procedure that State University Trustees, officers and employees shall make a record of every communication received from a vendor or its representative with respect to a Governmental Procurement. Rather, a record shall be made only with respect to a communication which is a Contact, as defined above. If a State University Trustee, officer or employee who is not a Designated Contact with respect to a Governmental Procurement receives a communication from a vendor or its representative, the State University Trustee, officer or employee should refer the vendor or its representative to the related Designated Contact.

Each member of the State University Board of Trustees, or officer or employee of State University shall make a record of each Contact which such person receives or, in the case of a Contact made to another Governmental Entity, of which such person becomes aware, promptly upon the receipt or knowledge of such Contact. Such record shall be made in the form attached as Form D. With respect to multiple Contacts by the same person within five business days, only one record of Contact need be made and forwarded. The recipient shall forward such record of Contact to both the Contract Manager, Office of Business Affairs, and to University Counsel, in the case of System Administration, or to the campus officer or employee authorized for such purpose. All records of Contact shall be made part of the procurement record.

## **Review and Investigation**

Promptly upon receipt of a record of Contact, in the case of System Administration, University Counsel or designee, or in the case of a campus, a campus officer or employee authorized for such purpose (“Reviewer”) shall promptly review and investigate. The Reviewer shall notify the Offerer that an investigation is ongoing, give notice of the allegations of misconduct, and give the Offerer an opportunity to respond promptly in writing or to meet. The Offerer shall not be entitled to representation by counsel. The Reviewer shall determine whether the Offerer has made a Contact willfully and knowingly. The Reviewer shall advise the Offerer and the Contracts Manager, Office of Business Affairs, in the case of System Administration, or a campus officer or employee authorized for such purpose, of the final determination. The determination of the Reviewer shall not be subject to further appeals within the State University. In the event the Reviewer determines that the Offerer has made a Contact with a Governmental Entity other than State University, the Reviewer shall so notify the ethics officer, inspector general or other appropriate official of such other Governmental Entity. In the event the Reviewer determines that in connection with a Contact a member of the University Board of Trustees, or officer or employee of State University has violated the provisions of Public Officers Law §73(5) [prohibition of acceptance of a gift of \$75 or more] or §74 [code of ethics], the Reviewer shall so advise the Chancellor, in the case of System Administration, or the Chief Administrative Officer of the related campus.

## **Determinations of Non-Responsibility**

The Associate Vice Chancellor for Finance and Business, in the case of System Administration, or campus officer

or employee authorized for such purpose, shall determine whether an Offerer has been non-responsible either because (1) the Offerer has made a Contact willfully and knowingly, or (2) the Offerer has failed intentionally to make accurate and complete disclosure of findings of non-responsibility with respect to Governmental Procurements within the previous four years. Upon making a determination of non-responsibility, the Associate Vice Chancellor for Finance and Business, in the case of System Administration, or campus officer or employee authorized for such purpose, shall so notify the Offerer and the Office of General Services.

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## Definitions

Definitions are outlined in the text of the requirement.

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## Related Procedures

There is no related procedures relevant to this requirement.

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## Forms

[Form A](#) - Summary: Policy and Procedure of the State University of New York Relating to State Finance Law §§139-j and 139-k

[Form B](#) - Affirmation with respect to State Finance Law §§139-j and 139-k

[Form C](#) - Disclosure and Certification with respect to State Finance Law §§139-j and 139-k

[Form D](#) - State University of New York Procurement Lobbying Law Record of Contact

[Governmental Entity Representation Concerning Compliance with State Finance Law §§139-j and 139-k](#)

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## Other Related Information

### **State Finance Law §139-j**

§ 139-j. Restrictions on contacts during the procurement process. 1. For the 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) 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 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 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 preparation or terms 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 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 for an article of procurement involving an estimated annualized expenditure in excess of fifteen thousand dollars. Grants, article eleven-B state finance law contracts, intergovernmental agreements, railroad and utility force accounts, utility relocation project agreements or orders 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.

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. Every governmental entity that undertakes a governmental procurement shall:

a. designate, with regard to each governmental procurement, a person or persons who may be contacted by offerers relative to the governmental procurement;

b. make any determinations on any governmental procurement: (1) in a manner consistent with the principles provided for under subdivision two of section one hundred sixty-three of this chapter, or, if the governmental entity is a public benefit corporation, as that term is defined in section sixty-six of the general construction law, and the majority of the members consist of persons either appointed by the governor or who serve as members by virtue of holding a civil office of the state, the procurement guidelines adopted pursuant to section twenty-eight hundred seventy-nine of the public authorities law, and (2) free from any conduct that would be prohibited by subdivision five of section seventy-three or section seventy-four of the public officers law, or of other applicable ethics code provisions that are equivalent to subdivision five of section seventy-three or section seventy-four of the public officers law where the public officials that are involved in the governmental procurement are not subject to subdivision five of section seventy-three or section seventy-four of the public officers law;

3. Each offerer that contacts a governmental entity about a governmental procurement shall only make permissible contacts with respect to the governmental procurement, which shall mean that the offerer:

a. shall contact only the persons or persons who may be contacted by offerers as designated by the governmental entity pursuant to paragraph a of subdivision two of this section relative to the governmental procurement, except that the following contacts are exempted from the provisions of this paragraph:

(1) the submission of written proposals in response to a request for proposals, invitation for bids or any other method for soliciting a response from offerers intending to result in a procurement contract;

(2) the submission of written questions to a designated contact set forth in a request for proposals, or invitation for bids, or any other method for soliciting a response from offerers intending to result in a procurement contract, when all written questions and responses are to be disseminated to all offerers who have expressed an interest in the request for proposals, or invitation for bids, or any other method for soliciting a response from offerers intending to result in a procurement contract;

(3) participation in a conference provided for in a request for proposals, invitation for bids, or any other method for soliciting a response from offerers intending to result in a procurement contract;

(4) complaints by an offerer regarding the failure of the person or persons designated by the procuring governmental entity pursuant to this section to respond in a timely manner to authorized offerer contacts made in writing to the office of general counsel of the procuring governmental entity, provided that any such written complaints shall become a part of the procurement record;

(5) offerers who have been tentatively awarded a contract and are engaged in communications with a governmental entity solely for the purpose of negotiating the terms of the procurement contract after being notified of tentative award;

(6) contacts between designated governmental entity staff of the procuring governmental entity and an offerer to request the review of a procurement contract award;

(7) (a) contacts by offerers in protests, appeals or other review proceedings (including the apparent successful bidder or proposer and his or her representatives) before the governmental entity conducting the procurement seeking a final administrative determination, or in a subsequent judicial proceeding; or

(b) complaints of alleged improper conduct in a governmental procurement to the attorney general, inspector general, district attorney, or court of competent jurisdiction; or

(c) written protests, appeals or complaints to the state comptroller's office during the process of contract approval, where the state comptroller's approval is required by law, and where such communications and any responses thereto are made in writing and shall be entered in the procurement record pursuant to section one hundred sixty-three of the state finance law; or

(d) complaints of alleged improper conduct in a governmental procurement conducted by a municipal agency or local legislative body to the state comptroller's office; provided, however, that nothing in this subdivision shall be construed as recognizing or creating any new rights, duties or responsibilities or abrogating any existing rights, duties or responsibilities of any governmental entity as it pertains to implementation and enforcement of article eleven of the state finance law or any other provision of law dealing with the governmental procurement process.

b. shall not attempt to influence the governmental procurement in a manner that would result in a violation or an attempted violation of subdivision five of section seventy-three or section seventy-four of the public officers law, or of other applicable ethics code provisions that are equivalent to subdivision five of section seventy-three or section seventy-four of the public officers law where the public officials that are involved in the governmental procurement are

not subject to subdivision five of section seventy-three or section seventy-four of the public officers law;

4. Violations of paragraph a of subdivision three of this section shall include any contacts during the restricted period of a governmental procurement between the offerer and any member, officer or employee of any governmental entity other than the entity conducting the governmental procurement; provided, however, that nothing in this section shall be deemed to prohibit an offerer from communicating with a member of the state legislature or legislative staff about a governmental procurement being conducted by a governmental entity other than the state legislature, or a member of the state legislature or legislative staff contacting a governmental entity about a governmental procurement being conducted by a governmental entity other than the state legislature, provided that the member of the state legislature or legislative staff is acting in their official capacity.

5. Governmental entity staff may consult the model guidelines that may be established by the advisory council on procurement lobbying pursuant to section one-t of the legislative law in implementing this section.

6. a. Every governmental entity shall incorporate a summary of the policy and prohibitions regarding permissible contacts during a governmental procurement pursuant to subdivision three of this section, and copies of rules and regulations and applicable governmental entity guidelines and procedures regarding permissible contacts during a governmental procurement pursuant to subdivision three of this section into their solicitation of proposals or bid documents or specifications for all procurement contracts.

b. 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.

7. Notwithstanding any law to the contrary, prior to conducting an award of a procurement contract, a governmental entity conducting a governmental procurement shall make a final determination of responsibility of the proposed awardee in accordance with paragraph f of subdivision nine of section one hundred sixty-three of this chapter, or, if the governmental entity is a public benefit corporation, as that term is defined in section sixty-six of the general construction law, and the majority of the members consist of persons either appointed by the governor or who serve as members by virtue of holding a civil office of the state, according to the procurement guidelines adopted pursuant to subparagraph (iii) of paragraph (b) of subdivision three of section twenty-eight hundred seventy-nine of the public authorities law; provided, however, that nothing in this subdivision shall be construed as abrogating or diminishing any existing rights, duties or responsibilities of any governmental entity as it pertains to determinations of responsibility.

8. Any member, officer or employee of a governmental entity who becomes aware that an offerer has violated the provisions of subdivision three of this section with regard to permissible contacts during any governmental procurement shall immediately notify the ethics officer, inspector general, if any, or other official of the procuring governmental entity responsible for reviewing or investigating such matters. If an offerer violates the provisions of subdivision three of this section with regard to permissible contacts at a governmental entity other than the governmental entity conducting the governmental procurement, the member, officer or employee who becomes aware of the violation shall notify the ethics officer, inspector general, if any, or other official of the governmental entity responsible for reviewing or investigating such matters where that member, officer or employee works, who shall in turn notify the ethics officer, inspector general, if any, or other official of the procuring governmental entity responsible for reviewing or investigating such matters at the procuring governmental entity.

9. Every governmental entity shall establish a process for review by its ethics officer, inspector general, if any, or other official responsible for reviewing or investigating any allegations of violations of the provisions of subdivision three of this section with regard to permissible contacts on governmental procurements, and for the imposition of sanctions if such violations have been found to exist.

10. a. Upon notification of any allegation of a violation of the provisions of subdivision three of this section with regard to permissible contacts on governmental procurements, the governmental entity's ethics officer, inspector general, if any, or other official of the procuring governmental entity responsible for reviewing or investigating such

matters shall immediately investigate such allegation and, if sufficient cause exists to believe that such allegation is true, shall give the offerer reasonable notice that an investigation is ongoing and an opportunity to be heard in response to the allegation.

b. A finding that an offerer has knowingly and willfully violated the provisions of subdivision three of this section shall result in a determination of non-responsibility for such offerer, and such offerer and 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 paragraph "offerer"), shall not be awarded the procurement contract, 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. Any subsequent determination of non-responsibility due to violation of this section within four years of a determination of non-responsibility due to a violation of this section shall result in the offerer being rendered ineligible to submit a proposal on or be awarded any procurement contract for a period of four years from the date of the second final determination. Every governmental entity shall ensure that its solicitations of proposals for procurement contracts require offerers to disclose findings of non-responsibility due to violations of the provisions of subdivision three of this section within the previous four years by any governmental entity. The failure of offerers to timely disclose accurate and complete information or otherwise cooperate with the governmental entity in administering this provision shall be considered by the governmental entity in its determination of responsibility; provided, further, that the governmental entity shall not award a contract to an offerer who fails to timely disclose accurate and complete information or otherwise cooperate with the governmental entity in administering this provision 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. Upon a determinational entity shall notify the office of general services, which shall keep a list of all offerers who have been determined to be nonresponsible bidders or debarred due to violations of this section; the office of general services shall make publicly available such list and shall publish such list on its web site.

c. If a violation of the provisions of subdivision three of this section is found to have knowingly and willfully occurred, then the ethics officer or inspector general, if any, or other official of the procuring governmental entity responsible for reviewing or investigating such matters shall report instances of employee violation of the guidelines and procedures regarding implementation of subdivision two of this section to the governmental entity's head.

11. Nothing in this section shall be deemed to prevent: (a) contacts by offerers in protests, appeals or other review proceedings (including the apparent successful bidder or proposer and his or her representatives) before the governmental entity conducting the procurement seeking a final administrative determination, or in a subsequent judicial proceeding; or

(b) complaints of alleged improper conduct in a governmental procurement to the attorney general, inspector general, district attorney, or court of competent jurisdiction; or

(c) written protests, appeals or complaints to the state comptroller's office during the process of contract approval, where the state comptroller's approval is required by law, and where such communications and any responses thereto are made in writing and shall be entered in the procurement record pursuant to section one hundred sixty-three of the state finance law; or

(d) complaints of alleged improper conduct in a governmental procurement conducted by a municipal agency or local legislative body to the state comptroller's office; provided, however, that nothing in this subdivision shall be construed as recognizing or creating any new rights, duties or responsibilities or abrogating any existing rights, duties or responsibilities of any governmental entity as it pertains to implementation and enforcement of article eleven of the state finance law or any other provision of law dealing with the governmental procurement process.

## State Finance Law §139-k

§ 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 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 preparation or terms 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 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 for an article of procurement involving an estimated annualized expenditure in excess of fifteen thousand dollars. Grants, article

eleven-B state finance law contracts, intergovernmental agreements, railroad and utility force accounts, utility relocation project agreements or orders 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.

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.

The following links to FindLaw's [New York State Laws](#) are provided for users' convenience; it is not the official site for the State of New York laws.

NYS Public Officers Law

[§73\(5\)](#) [offer of a gift of \$75 or more]

[§74](#) [code of ethics for public officers and employees]

In case of questions, readers are advised to refer to the New York State Legislature site for the menu of [New York State Consolidated](#).

NYS [Legislative Law §1-t\(e\)](#) [Advisory council on procurement lobbying]

Procurement and Disbursement Guidelines [[Bulletin No. G-224](#)]

Appendicies

There are no appendicies relevant to this requirement.