

## SUMMARY OF AND IMPLEMENTATION GUIDELINES FOR § 139-J OF THE STATE FINANCE LAW

\* This summary is not intended to replace the need for persons to become familiar with the full requirements of the law. Please refer to the full text of the law to resolve any questions you may have with regard to your conduct under it.

Section 139-j of the State Finance Law imposes restrictions on the type of communications that a person may make to a governmental entity, such as the Office of Parks, Recreation and Historic Preservation (hereafter, referred as “OPRHP”), concerning a governmental procurement during a period of time which the law terms the “restricted period.” These new requirements cover a wide range of government contracting transactions, including, the purchase of a commodity, service, technology, public work, construction and revenue contract, or the purchase, sale or lease of real property or the acquisition or the granting of other interests in real property (hereafter referred as “governmental procurement or procurement contract.” Any person in the private sector (hereinafter referred to as “person”) interested in contacting OPRHP concerning anyone of these types of transactions is covered under the provisions of the new law, which limits the way that such person can communicate with OPRHP during the “restricted period”, which is defined broadly as the period of time commencing from the earliest written notice announcing a government procurement all the way until the award is approved by the comptroller.

For each governmental procurement OPRHP will designate an employee or employees that may be contacted by persons concerning all aspects of the governmental procurement. The law requires that each person that contacts (in writing, orally, or via email) OPRHP concerning a governmental procurement may only make what the law terms “permissible contacts”, which means that the person: 1) shall contact only the designated person or persons identified by OPRHP in the governmental procurement documents and 2) shall not attempt to influence the procurement in a manner that would result in violation of §73(5) of the Public Officers Law (Ethical Prohibitions on Gifts to Public Officers and Employees) or in a manner that would result in violation of §74 of the Public Officers Law (The Code of Ethics).

The law specifically permits certain types of contacts by persons to OPRHP concerning the governmental procurement. These are:

- the submission of written proposals in response to a request for proposal, invitation for bids or any other method for soliciting a response from interested parties;
- the submission of written questions to a designated contact, when all written questions and responses are to be disseminated to all persons interested in such procurement;
- participation in a conference where all interested parties are invited to attend;

- written complaints made to the Counsel's Office of OPRHP concerning the timely response to issues posed to the designated person, provided that such written complaints are made part of the procurement record;
- communications where the contract award has been tentatively made and where such communications are necessary to negotiate the terms of the procurement contract;
- requests made to the designated person or persons to review the procurement award;
- written protests, appeals, or other review proceedings to either OPRHP or an outside agency.

All communications which are reasonably inferred by OPRHP to be intended to influence the governmental procurement process or the award of such procurement in violation of the law will be recorded and made a part of the procurement record, whether such communications are made to the designated employee/s or another employee of OPRHP. Contacts made to persons other than the designated OPRHP employee shall also be deemed an impermissible contact.

Any contact which is alleged to be an impermissible contact under the law will be immediately referred to and investigated by OPRHP's Ethics Officer. The Ethics Officer shall promptly investigate the allegation by interviewing all employees reasonably involved or who are believed to have information about the impermissible contact. If sufficient cause exists to believe that such allegation is true, the person being investigated shall be given notice that an investigation is ongoing and such person shall be afforded an opportunity to be heard in response to the allegation either by responding in writing or by providing a statement before the Ethics Officer, who shall record by appropriate means such statement for the record. The Ethics Officer shall keep a record of the investigation and shall make a written finding of the results of such investigation and report these findings to the Commissioner.

In addition, a finding by the Ethics Officer that a person has knowingly and willingly violated the law by making an impermissible contact shall result in a determination of non-responsibility and such person and all associated subsidiaries of such person shall not be awarded the procurement contract. The determination of non-responsibility shall also be forwarded to the Commissioner of the Office of General Services (or his or her designee), which by law is required to keep a list of such determinations for public inspection. Determinations of non-responsibility must be disclosed in all future responses to New York State procurements. With few exceptions, no procurement contract shall be awarded to any person who fails to disclose findings of non-responsibility within the previous four years.

The following is a link to the OGS website for Consultant Opportunities; scroll down a quarter of the page to three additional links related to the procurement lobbying requirements.

<http://www.ogs.state.ny.us/dnc/contractorConsultant/esb/default.html>