

## PROCUREMENT POLICY

The purpose of this Resolution is to outline the procurement policy of the Albany Convention Center Authority (the “Authority”).

1. **SECURING GOODS AND SERVICES.** All goods and services will be secured by use of written requests for proposals, written quotations, verbal quotations, or any other method that assures that goods will be purchased at the lowest price and that unfair preference will be avoided, except in the following circumstances: purchases costing less than \$500; goods purchased from agencies for the blind or severely handicapped pursuant to Section 175-b of the State Finance Law; goods purchased from correctional institutions pursuant to Section 186 of the Correction Law; purchases under State contracts pursuant to Section 104 of the General Municipal Law; purchases under county contracts pursuant to Section 103(3) of the General Municipal Law; or purchases pursuant to paragraph 3 herein.

### 2. METHOD OF PURCHASE.

(A) General. The following method of purchase will be used when required by this policy in order to achieve the highest savings:

<u>Estimated Amount of Purchase Contract<sup>1</sup></u>	<u>Method</u>
\$500-\$2,999	2 verbal quotations
\$3,000 and above	3 written/fax quotations or written request for proposals
<u>Estimated Amount of Public Works Contract<sup>2</sup></u>	<u>Method</u>
\$500-\$2,999	2 verbal quotations
\$3,000-\$4,999	2 written/fax quotations
\$5,000 and above	3 written/fax quotations or written request for proposals

(B) Number of Proposals or Quotations. A good faith effort shall be made to obtain the required number of proposals or quotations. If the purchaser is unable to obtain the required number of proposals or quotations, the purchaser will document the attempt made at obtaining the proposals. So long as a good faith attempt is made to obtain proposals, the failure to obtain the proposals will not be a bar to the procurement.

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<sup>1/</sup> Purchase Contract refers to contracts for the purchase of equipment.

<sup>2/</sup> Public Works Contract refers to contracts for services.

(C) Documentation. (1) Documentation is required of each action taken in connection with each procurement.

(2) Documentation and an explanation is required whenever a contract is awarded to other than the lowest responsible offeror. This documentation will include an explanation of how the reward will achieve savings or how the offeror was not responsible. A determination that the offeror is not responsible shall be made by the purchaser and may not be challenged under any circumstances.

3. CIRCUMSTANCES WHERE SOLICITATION OF ALTERNATIVE PROPOSALS AND QUOTATIONS NOT IN BEST INTEREST. There may be circumstances when, or types of procurements for which, in the sole discretion of the members of the Authority, the solicitation of alternative proposals or quotations will not be in the best interest of the Authority. In the following circumstances, it may not be in the best interests of the Authority to solicit quotations or document the basis for not accepting the lowest bid:

(A) Professional Services. Professional services or services requiring special or technical skill, training or expertise. The individual, company or firm must be chosen based on accountability, reliability, responsibility, skill, conflict of interests, reputation, education and training, judgment, integrity, continuity of service and moral worth. Furthermore, certain professional services to be provided to the Authority, e.g., legal and accounting services, impact liability issues of the Authority and its members, including securities liability in circumstances where the Authority is issuing bonds. These qualifications and the concerns of the Authority regarding its liability and the liability of its members are not necessarily found or addressed in the individual, company or firm that offers the lowest price and the nature of these services are such that they do not readily lend themselves to competitive procurement procedures.

In determining whether a service fits into this category, the Authority shall take into consideration the following guidelines: (a) whether the services are subject to State licensing or testing requirements; (b) whether substantial formal education or training is a necessary prerequisite to the performance of the services; and (c) whether the services require a personal relationship between the individual and Authority members. Professional or technical services shall include but not be limited to the following: services of an attorney (including bond counsel); services of a physician; technical services of an engineer engaged to prepare plans, maps and estimates; securing insurance coverage and/or services of an insurance broker; services of a certified public accountant; investment management services; printing services involving extensive writing, editing or art work; management of municipally owned property; real estate brokerage services; appraisers; and computer software or programming services for customized programs, or services involved in substantial modification and customizing of pre-packaged software.

(B) Emergency Purchases. Due to the nature of this exception, these goods or services must be purchased immediately and a delay in order to seek alternate proposals may threaten the life, health, safety or welfare of the public. This section does not preclude alternate proposals if time permits.

(C) Purchases of Secondhand Goods. Purchases of surplus and second-hand goods from any source. It is difficult to try to compare prices of used goods and a lower price may indicate an older product.

(D) Goods or Services Under \$500. The time and documentation required to purchase through this policy may be more costly than the item itself and would therefore not be in the best interests of the taxpayer. In addition, it is not likely that such de minimis contracts would be awarded based on unfair preference.

(E) Special Findings. In the event the Authority determines that the solicitation of alternative proposals or quotations is not in the best interests of the Authority, the Authority must make such determination by resolution duly adopted and entered into the minutes of the Authority. Such resolution should include any findings described in this paragraph supporting such determination.

4. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN. (A) All Authority documents soliciting bids or proposals for Authority contracts shall contain or make reference to the following provisions:

1. The Authority 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. For purposes of this Section, affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation; and

2. The Authority shall state, in all solicitations or advertisements for employees, that, in the performance of the Authority 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.

(B) Any contract awarded by the Authority will include the provisions of 4(A) hereof in any subcontract, in such a manner that the provisions will be binding upon each subcontractor as to work in connection with the Authority contract.

(C) The provisions of this Paragraph 4 shall not be binding upon contractors or subcontractors in the performance of work or the provision of services or any other activity that are unrelated, separate or distinct from the Authority contract as expressed by its terms.

(D) In the implementation of this Paragraph 4, the Authority shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this Paragraph. The Authority shall determine whether the imposition of the requirements of the provisions hereof duplicate or

conflict with any such law and if such duplication or conflict exists, the Authority shall waive the applicability of this Paragraph 4 to the extent of such duplication or conflict.

(E) The Authority shall ensure that “certified businesses” (as defined in Section 310 of the Executive Law of the State of New York) shall be given the opportunity for meaningful participation in the performance of Authority contracts and to identify those Authority contracts for which certified businesses may best bid to actively and affirmatively promote and assist their participation in the performance of Authority contracts so as to facilitate the award of a fair share of Authority contracts to such businesses.

## 5. PROCUREMENT LOBBYING LAW

(A) Chapter 1 of the Laws of 2005, as amended, commonly referred to as the Procurement Lobbying Law, restricts contacts by offerers that are intended to influence a procurement during the time period commencing when the Authority issues its first written document soliciting a response from offerers through the contract award and approval, defined as the Restrictive Period. Such contacts must only be made to specifically designated persons of the Authority. The Authority is required to collect and record certain information pertaining to such contacts in order to be made part of the procurement record. In addition, the Authority is required to notify offers of the permissible contacts provisions in its solicitation materials and to obtain prior non-responsibility determinations from such offerers. Furthermore, the Authority is required to make determinations of non-responsibility if it is found that any offerer knowingly and willfully made an impermissible contact or failed to timely disclose accurate and complete information or otherwise cooperate in providing the required information. Such determinations of non-responsibility preclude the Authority from awarding the procurement contracts to such offerers. Offerers that are determined to be non-responsible for a second time within a four year period are rendered ineligible to submit a proposal on or be awarded any procurement contract for a period of 4 years from the date of the second final determination. Lastly, the Authority must report all such findings of non-responsibility to the NYS Office of General Services, which will maintain a publicly available list.

(B) An Impermissible Contact is a contact, which is reasonably interpreted as an attempt to influence a procurement, made to someone other than the Designated Contact Person for Procurements during the Restrictive Period. A Permissible Contact is (i) a contact made to anyone, where such contact is not reasonably interpreted as an attempt to influence the procurement or, (ii) a contact that is intended to influence that is made to the Designated Contact Person for Procurements or, (iii) a contact that is intended to influence the procurement made to anyone outside of the Restrictive Period.

## 6. DESIGNATED CONTACT PERSON FOR PROCUREMENTS

(A) Al Sorrentino, the Authority’s Project Manager, is designated as the person who may be contacted during the Restrictive Period by offerers where such contact is intended to influence a procurement. However, the Executive Director may from time to time designate

another person or persons as the Designated Contact Person(s) for Procurements as he/she may deem necessary or desirable.

## 7. PROCEDURES FOR THE RECORDING OF CONTACTS

### (A) Process

(1) All contacts regarding procurements of the Authority should be referred to the Designated Contact Person for Procurements.

(2) Upon receiving a contact, subsequent to the Authority issuing a written document soliciting a response from offers and prior to the contract being awarded and approved (the Restrictive Period), which is reasonably interpret as an attempt to influence the procurement, you must obtain the name, address, telephone number, place of principal employment and occupation of the person making the contact and inquire and record whether such person was the offerer or was retained, employed or designated by or on behalf of the offerer to appear before the Authority. Such information should be recorded on the attached Report of Contact form (see attachment #1).

(3) Such recorded information must be immediately sent to the Designated Contact Person for Procurements for inclusion in the procurement record for such procurement contract and, if applicable, for the initiation of an investigation regarding potential violations of the permissible contacts provisions of the Procurement Lobbying Law.

## 8. PROCEDURES FOR REVIEW AND INVESTIGATION OF ALLEGED IMPERMISSIBLE CONTACTS

### (A) Process

(1) Any Member, Officer, or Employee of the Authority who becomes aware that an Offerer may have made an impermissible contact shall immediately notify the Designated Contact Person for Procurements (the "Reviewer").

(2) Upon receipt, the Reviewer shall immediately commence an internal review of the allegations to determine if sufficient cause exists to believe the allegation is true.

(3) If sufficient cause does not exist to believe that such allegation is true, the Reviewer shall advise the person that reported the allegation of the determination and close the matter. A written report shall be prepared and maintained in the Reviewer's files. Such written report shall not be maintained in the procurement record.

(4) If the Reviewer determines that sufficient cause exists to believe that such allegations are true, the Reviewer shall refer the matter, including all relevant information, to the Authority's general counsel for handling.

(5) The Authority's general counsel shall provide the Offerer with written notification regarding the allegation, including but not limited to, (i) the nature and details of the alleged impermissible contact, (ii) that an investigation has been commenced, (iii) that the Offerer is provided with an opportunity to be heard, (iv) that the Offerer may be represented by an attorney but one is not required, (v) that the Offerer may elect to submit documents rather than appear in person to respond to the allegations, and (vi) a date certain for the Offerer to respond to the allegations. Failure to respond may be deemed a failure to cooperate.

(6) The exact scope and nature of the investigation depends upon the nature of the allegation. The focus of the investigation will be to determine (i) whether an impermissible contact occurred, (ii) whether the contact was made by the Offerer (offerers include employees, agents, consultants, or any other person acting on the Offerer's behalf), and (iii) whether the Offerer knowingly and willfully violated the permissible contact provisions.

## 9. NOTICES

### (A) To Offerer:

(1) The Authority must incorporate a summary of the policy and prohibitions regarding permissible contacts during a procurement as well as copies of all rules, regulations and guidelines concerning permissible contacts into the authority's solicitation of proposals or bid documents or specifications for all procurements. Such information should be provided in substantially the same form as the attached (see attachment #2).

### (B) From the Offerer:

(1) Must seek written affirmation from all offerers as to the offerer's understanding of and agreement to comply with the authority's procedures relating to permissible contacts. Such affirmation should be provided in substantially the same form as the attached (see attachment #3).

(2) Must require offerers to disclose findings of non-responsibility due to violations of the permissible contacts provisions or the intentional provision of false or inaccurate information to a governmental entity within the previous 4 years in the entity's solicitations for proposals. Such disclosure should be provided in substantially the same form as the attached (see attachment #4).

(3) All procurement contract awards must require offerers to certify that all

information provided to the Authority is complete, true and accurate. Such certification should be provided in substantially the same form as the attached (see attachment #5).

## 10. FINDINGS AND RESULTS

(A). The failure of the offerer to timely disclose accurate and complete information or otherwise cooperate with the governmental entity must be considered it the governmental entity's determination of responsibility. The Authority shall not award a contract to an offerer who fails to timely disclose accurate and complete information or otherwise cooperate with the Authority unless the Authority finds that the award 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. The Authority entity must include in the procurement record a statement describing the basis of the finding.

(B) A finding that an offerer has knowingly and willfully violated the permissible contact provisions shall result in a determination of non-responsibility for such offerer and such offerer shall not be awarded the procurement contract unless the Authority finds that the award 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. The Authority must include in the procurement record a statement describing the basis of the finding. Any subsequent finding of non-responsibility due to a violation of the permissible contacts provisions within 4 years of a determination shall result in the offerer being rendered ineligible to submit a proposal on or be awarded any procurement contract for a period of 4 years from the date of the second final determination for any procurement contract (Debarment).

## 11.) REPORTING

(A) Upon a finding of non-responsibility or debarment, the Authority shall notify the New York State Offices of General Services, which maintains a publicly available list.

ATTACHMENT #1

ALBANY CONVENTION CENTER AUTHORITY  
Record of Contact

Was the person making the Contact informed that the Contact would be documented?

Yes

No

To: Procurement Record Regarding \_\_\_\_\_  
\_\_\_\_\_

From: \_\_\_\_\_  
(Name and title)

Date: \_\_\_\_\_

Subject: Record of Contact under State Finance Law §139-k(4)

I had Contact with the below named individual regarding the above identified procurement.

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone Number: \_\_\_\_\_

Place of Principal Employment: \_\_\_\_\_

Occupation: \_\_\_\_\_

Is the above named person or organization the "Offerer" in the Authority's procurement? (Please circle)  
yes                      no

If no, was the above named person or organization retained, employed or designated by the "Offerer" to:

- appear before the Authority about the procurement?  
(Please circle)      yes                      no

- Contact the Authority about the procurement?  
(Please circle)      yes                      no

List date(s) of Contact: \_\_\_\_\_  
\_\_\_\_\_

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(add additional pages as necessary)

*Optional*

Summarize the form (e.g., email, letter, conversation) and topic of the communication on each date of Contact: \_\_\_\_\_

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(add additional pages or copies of written communications as necessary)

## **ATTACHMENT #2**

### **ALBANY CONVENTION CENTER AUTHORITY**

#### **Summary of Permissible Contacts Policy**

Pursuant to State Finance Law §§139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between the Albany Convention Center Authority (“Authority”) and an Offerer/bidder during the procurement process. An Offerer/bidder is restricted from making contacts during the Restrictive Period that are reasonably interpreted as an attempt to influence the procurement to any person at the Authority or another Governmental Entity other than the Designated Contact Person of the Authority, unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). The Restrictive Period commences with the earliest written notice of an intent to solicit offers, such as this “Request for Proposal”, and terminates with the final award and approval of the procurement contract by the Authority. The Designated Staff Person of the Authority, as of the date hereof, has been identified in this solicitation. In addition, Authority employees are required to obtain certain information when contacted during the Restricted Period where such contact is reasonably interpreted as an attempt to influence the procurement. Such information will be made part of the procurement record and used to make a determination of the responsibility of the Offerer/bidder. If the Authority determines that the offerer knowingly and willfully made a contact during the Restrictive Period to any person other than the Designated Staff Person of the Authority and such contact was reasonably interpreted as an attempt to influence the procurement, the Authority is required to make a finding of non-responsibility. In addition, the failure to timely disclose accurate or complete information or otherwise cooperate with the Authority shall be considered in the determination of responsibility of the offerer. A finding of non-responsibility may result in rejection for contract award and in the event of two findings within a 4 year period, the Offerer/bidder may be rendered ineligible to submit a proposal on or be awarded any procurement contract by a Governmental Entity for a 4 year period from the date of the second final determination. Further information about these requirements can be found in Sections 139-j and 139-k of the State Finance Law. It is the offer’s responsibility to adhere to the provisions therein.

**ATTACHMENT #3**

**ALBANY CONVENTION CENTER AUTHORITY**

Offerer affirms that it understands and agrees to comply with the procedures of the 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: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**ATTACHMENT #4**

**ALBANY CONVENTION CENTER AUTHORITY**

**Offerer Disclosure of Prior Non-Responsibility Determinations**

Name of Individual or Entity Seeking to Enter into the Procurement Contract:

\_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Name and Title of Person Submitting this Form: \_\_\_\_\_

\_\_\_\_\_

Name of Procurement: \_\_\_\_\_

Date: \_\_\_\_\_

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle):

No Yes

If yes, please answer the next questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please circle):

No Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle):

No Yes

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity: \_\_\_\_\_

Date of Finding of Non-responsibility: \_\_\_\_\_

Basis of Finding of Non-Responsibility: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Add additional pages as necessary)

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 Authority is complete, true and accurate.

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Signature

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTACHMENT #5**

**ALBANY CONVENTION CENTER AUTHORITY**

**Procurement Contract Award  
Required Certification of Compliance**

Offerer Certification:

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

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Contractor Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_