

**Reference :** EXECUTIVE  
**Section :** GOVERNANCE  
**Title :** REVIEW PROCESS FOR ALLEGATIONS OF VIOLATIONS OF STATE  
FINANCE LAW SECTION 139-j (3)  
**Policy Number :** 01-04-06  
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## **I PURPOSE**

The purpose of this policy is to set forth the Review Process for Allegations of Violations of State Finance Law section 139-j (3).

## **II APPLICABILITY**

This policy applies to all NFTA/NFT Metro board members and employees.

## **III POLICY**

### **Review Process for Allegations of Violations of State Finance Law section 139-j (3)**

Section 139-j (3) of the State Finance Law provides that Offerors\* Capitalized terms are defined at the end of this document. that Contact NFTA/Metro about a Governmental Procurement shall only make permissible Contacts with respect to the Governmental Procurement, which shall mean that the Offeror:

(a) shall contact only the person or persons who may be contacted by Offerors as designated by NFTA/Metro relative to the Governmental Procurement, except for the following Contacts which are exempt:

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 Offerors intending to result in a Procurement Contract;
2. the submission of written questions by a method set forth in a request for proposals, or invitation for bids, or any other method for soliciting a response from Offerors intending to result in a Procurement Contract, when all written questions and responses are to be disseminated to all Offerors who have expressed an interest in the request for proposals, or invitation for bids, or any other method for soliciting a response from Offerors intending to result in a Procurement Contract;
3. participation in a demonstration, conference or other means for exchange of information in a setting open to all potential bidders provided for in a request for proposals, invitation for bids, or any other method for soliciting a response from Offerors intending to result in a Procurement Contract;
4. complaints by an Offeror regarding the failure of the persons designated by NFTA/Metro to respond in a timely manner to authorized Offeror contacts made in writing to the Office of General Counsel, provided that any such written complaints shall become a part of the procurement record.
5. Offerors who have been tentatively awarded a contract and are engaged in communications with NFTA/Metro solely for the purpose of negotiating the terms of the Procurement Contract after being notified of tentative award;
6. Contacts between designated NFTA/Metro staff and an Offeror to request the review of a

Procurement Contract award;

7. (a) Contacts by Offerors in protests, appeals or other review proceedings before NFTA/Metro seeking a final administrative determination, or in a subsequent judicial proceeding; or (b) complaints of alleged improper conduct in an NFTA/Metro procurement to the Attorney General, Inspector General, District Attorney or court of competent jurisdiction;
8. Communications between Offerors and NFTA/Metro that solely address the determination of responsibility by NFTA/Metro of an Offeror;
9. Any communications relating to a Governmental Procurement made under section 162 of the State Finance Law undertaken by the non-profit-making agencies appointed pursuant to paragraph e of subdivision six of section 162 of the State Finance Law by the Commissioner of the Office of Children and Family Services, the Commission for the Blind and Visually Handicapped, or the Commissioner of Education, and the qualified charitable non-profit-making agencies for the blind, and qualified charitable non-profit-making agencies of other severely disabled persons as identified in subdivision two of section 162 of the State Finance Law.

(b) shall not attempt to influence the Governmental Procurement in a manner that would result in a violation or an attempted violation of Public Officers Law sections 73 (5) and (74).

Any violations of the foregoing provisions must be reported immediately to the NFTA/Metro Ethics Officer. A violation shall include any contact during the Restricted Period of a Governmental Procurement between the Offeror and any member, officer or employee of any Governmental Entity other than NFTA/Metro. The Ethics Officer shall be responsible for notifying any other Governmental Entity of violations regarding that Governmental Entity's Governmental Procurement.

Each reported violation for an NFTA/Metro Governmental Procurement will be reviewed and investigated immediately by the NFTA/Metro Ethics Officer to determine whether an impermissible contact was made. If sufficient cause exists to believe that such allegation is true, the Ethics Officer shall give the Offeror reasonable notice that an investigation is ongoing and an opportunity to be heard in response to the allegations.

If the Ethics Officer finds that the Offeror knowingly and willfully violated the permissible contacts requirements set forth above the Ethics Officer shall issue a written determination of non-responsibility for such Offeror, and such Offeror and its subsidiaries, and any related or successor entity with substantially similar function, management, board of directors, officers and shareholders shall not be awarded the Procurement Contract, unless NFTA/Metro finds that the award of the Procurement Contract to the Offeror is necessary to protect public property or public health or safety, and that the Offeror is the only source capable of supplying the required Article of Procurement within the necessary timeframe. Such a finding requires Board approval and must be documented in the procurement record. A copy of the determination of non-responsibility shall be sent to the Offeror and the Office of General Services.

Any subsequent determination that the Offeror knowingly and willfully violated the permissible contacts requirements set forth above within four years shall result in the Offeror 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. The Office of General Services shall be notified of all debarred Offerors.

If during the course of an investigation pursuant to this Process the Ethics Officer finds a knowing and willful violation of the permissible contacts requirements set forth above, the Ethics Officer shall further investigate whether the NFTA/Metro employee(s) involved in the procurement complied the requirements of the Procurement Guidelines and this Process. Any violations shall be reported to the Executive Director.

#### Defined Terms

*Article of Procurement* means 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 Governmental Procurement.

*Contacts* means any oral, written or electronic communication with NFTA/Metro under circumstances where a reasonable person would infer that the communication was intended to influence NFTA/Metro's conduct or decision regarding the Governmental Procurement.

Governmental Entity means (i) any department, board, bureau, commission, division, office, council, committee or officer of the state, whether permanent or temporary; (ii) any public authority, public benefit corporation or commission created by or existing pursuant to the public authorities law; (iii) 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; (iv) a municipal agency; or (v) a subsidiary or affiliate of such a public authority.

*Governmental Procurement* means: (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, renewal or extension of a Procurement Contract, or any other material change in the Procurement Contract resulting in a financial benefit to the Offeror.

*Offeror* means the individual or entity, or any employee, agent or consultant or person acting on behalf of such individual or entity, that contacts the NFTA/Metro about a Governmental Procurement during the Restricted Period 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 NFTA/Metro regarding a Governmental Procurement in the exercise of its oversight duties shall not be considered an Offeror.

*Procurement Contract* means 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 \$15,000. Grants, intergovernmental agreements, utility relocation project agreements or orders and eminent domain transactions shall not be deemed Procurement Contracts.

*Proposal* means any bid, quotation, offer or response to an NFTA/Metro solicitation of submissions relating to a procurement.

*Restricted Period* means 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 Offerors intending to result in a Procurement Contract.

*Revenue Contract* means any written agreement between NFTA/Metro and an Offeror whereby NFTA/Metro gives or grants a concession or a franchise.