



Hudson River Park Trust

PROCUREMENT LOBBYING GUIDELINES

1. Introduction

Pursuant to Chapter 1 of the Laws of 2005 (“Procurement Lobbying Legislation”), communications between Offerers and the Trust during the Restricted Period of a Governmental Procurement must be limited to designated contact persons and in accordance with prescribed means.

New York State’s recently enacted Procurement Lobbying Legislation obligates the Trust to collect and record information from contractors seeking a Procurement Contract, and those who advocate on behalf of the contractors to influence Procurement Contracts. Among other things, the Procurement Lobbying Guidelines:

- Requires the Trust to designate person/s to act as primary contact regarding a Trust procurement during a Restricted Period.
- Requires the Trust to record all contacts made by lobbyists and contractors about a governmental procurement so that the public knows who is contacting governmental entities about procurements.
- Authorizes New York State to impose penalties against persons/organizations engaging in impermissible contacts about a governmental procurement and provides for the debarment of repeat violators.
- Directs the New York State Office of General Services to disclose and maintain a list of non-responsible bidders pursuant to this new law and those who have been disbarred and publish such a list on its website.
- Requires the timely disclosure of accurate and complete information from bidders/Offerers with respect to determinations of non-responsibility and debarment.

Covered Transactions

Any Trust procurements or transactions involving an estimated value in excess of \$15,000 for:

- commodity
- service
- technology
- public work
- construction
- revenue contract
- the purchase, sale or lease of real property
- the acquisition or granting of other interest in real property

Restricted Period

These Guidelines restrict Contacts between the Trust and an Offerer/bidder from the point in time when the Trust issues its first written document soliciting a response from Offerers which is intended to result in a Procurement Contract or covered real estate transactions until such contract is completed or otherwise closed. The communications between Offerers and the Trust prior to such issuance, including during the preparation of specifications, bid documents, and RFPs, are not covered by such restrictions not governed by this law.

2. Statutory 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

(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.

Governmental Procurement

(1) the preparation or terms of the specifications, bid documents, request for proposals, or evaluation criteria for a procurement contract, (2) solicitation for a procurement contract, (3) evaluation of a procurement contract, (4) award, approval, denial or disapproval of a procurement contract, or (5) 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.

Offerer

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.

Procurement Contract

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.

Proposal

Any bid, quotation, offer or response to a governmental entity's solicitation of submissions relating to a procurement.

Restricted Period

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.

3. Procedures

a. Notification of Procurement Lobbying Guidelines

For each Procurement Contract, the Trust shall designate a person or persons to receive communications from Offerers of such contracts. The contact person/s designated by the Trust shall have knowledge of the specifications or other technical requirements of the procurement.

The Trust shall incorporate a summary of its procurement lobbying procedures in its solicitation documents relating to a Procurement Contract and shall provide a copy of these procedures in its bid packages.

The Trust shall require a written affirmation from all Offerers as to the Offerer's understanding of and agreement to comply with New York State's Procurement Lobbying Law.

b. Determinations of Responsibility by the Trust

Prior to the award of a Procurement Contract, the Trust must make a responsibility determination with respect to the Offerer to be recommended for the award of the contract based upon, among other things, the information supplied by that offer. The Offerer must disclose whether it has been found non-responsible within the last four years by any Governmental Entity for: (1) failure to comply with State Finance Law § 139-j, or (2) the intentional provision of false or incomplete information. This disclosure must be certified by the Offerer and must affirmatively state that the information supplied by the Offerer to the Trust is complete, true and accurate.

The Procurement Contract must include a provision allowing the Trust to terminate the contract if the certification is subsequently found to be incomplete, false or inaccurate. Admissions by

the Offerer of past findings of non-responsibility may constitute a basis for rejection of the Offerer by the Trust.

The Trust can award a contract to the Offerer despite the past findings of non-responsibility if it determines 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 time frame. The basis of such findings must be included in the procurement record of the Procurement Contract.

c. Record Keeping of Prohibited Communications

The Trust shall maintain a Procurement Record, detailing any Contact from any person or entity. Note that, as defined in Section III.A.(2), above, a “Contact” means any oral, written, or electronic communication that a reasonable person would interpret as a communication intending to influence any Trust procurement.

The Procurement Record must contain the following information:

- Name, address, telephone number, place of principal employment and occupation of the person or organization making the Contact.
- Whether the person or organization making the Contact was the Offerer or a lobbyist.
- If applicable, a statement providing the basis for termination of a procurement contract award due to the failure of the Offerer to provide a certification that all information provided relating to the requirements of State Finance Law § 139 are complete, true and accurate.
- A statement describing the basis for any award to an Offerer in which the Trust determines to be non-responsible or have failed to disclose a previous determination of non-responsibility.

Permissible/Non-Permissible Communications

These Guidelines restrict “contacts” between the Trust and potential vendors. However, please refer to this Section’s definitions, as the term “contacts” has a very specific meaning.

Permissible communications do not have to be recorded in the Trust’s Procurement Record.

Permissible communications include any communications that a reasonable person would infer are not intended to influence a Governmental Procurement. Such permissible communications include:

- Inquiries as to the status of the procurement process.
- Requests to be included on the Trust's Offerer's list.
- Receipt of advertising material.
- Intra-agency communications of administrative details concerning the procurement.
- Responses to Trust-issued Requests for Information.
- Written questions submitted by Offerers regarding a solicitation during the allowable time period of a competitive procurement.
- Complaints about the procurement process or outcome.
- Participation in an Offerer's conference as provided in a request for proposal.
- Submission of a bid in response to a request for proposal.
- Contract negotiations.
- Debriefing of an Offerer after a contract award has been made.

All reported Contacts will be submitted to Trust's legal department for review. If after review the Legal Department finds sufficient cause to believe that an Offerer may have violated the Procurement Lobbying restrictions, the Offerer will be notified in writing of the investigation and will be afforded an opportunity to respond to the alleged violation.

If, after investigation, the Legal Department does find that the Offerer knowingly and willfully made prohibited Contact in violation of these procedures, then the Offerer shall be disqualified.

If Trust personnel is in doubt as to whether a communication is intended to influence the Governmental Procurement, he or she should record the communication and contact HRPT's Legal Department for further guidance and possible investigation. All records of Contacts must be maintained in the procurement record for the related Procurement Contract.