Model Language to Obtain the Offerer Disclosure of Prior Non-Responsibility Determinations

Note: Government Entities may wish to consider integrating this language in their existing forms.

Background:

New York State Finance Law §139-k(2) obligates a Governmental Entity to obtain specific information regarding prior non-responsibility determinations with respect to State Finance Law §139-j. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law §163(9). In accordance with State Finance Law §139-k, an Offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (a) a violation of State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity. The terms “Offerer” and “Governmental Entity” are defined in State Finance Law § 139-k(1). State Finance Law §139-j sets forth detailed requirements about the restrictions on Contacts during the procurement process. A violation of State Finance Law §139-j includes, but is not limited to, an impermissible Contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such Contact does not fall within one of the exemptions).

As part of its responsibility determination, State Finance Law §139-k(3) mandates consideration of whether an Offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no Procurement Contract shall be awarded to any Offerer that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the Offerer is necessary to protect public property or public health safety, and that the Offerer is the only source capable of supplying the required Article of Procurement within the necessary timeframe. See State Finance Law §§139-j (10)(b) and 139-k(3).

Instructions:

A Governmental Entity must include a disclosure request regarding prior non-responsibility determinations in accordance with State Finance Law §139-k in its solicitation of proposals or bid documents or specifications or contract documents, as applicable, for procurement contracts. The attached form is to be completed and submitted by the individual or entity seeking to enter into a Procurement Contract. It shall be submitted to the Governmental Entity conducting the Governmental Procurement.

As an alternative to this form, the Governmental Entity may elect to incorporate this disclosure question into its procurement questionnaire, such as the New York State
Standard Vendor Responsibility Questionnaire set out at
http://www.ogs.state.ny.us/procurecounc/pdfdoc/BestPractice.pdf.
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:  ________________________________
_______________________________________________________________________

Contract Procurement Number:  _____________________________________________

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 Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

By:_____________________________ Date:_____________________________

Signature

Name:___________________________

Title:___________________________