



Matthew J. Driscoll, President and CEO

MEMORANDUM

TO: All Staff

FROM: Matthew J. Driscoll, President and CEO 

DATE: June 28, 2011

SUBJECT: Controls to Prohibit Improper Lobbying Influence

In compliance with State Finance Law Section 139-j and Section 2987 of the Public Authorities Law, the Deputy Director of Corporate Operations has been designated as EFC's Procurement Integrity Officer (PIO) and record officer responsible for reviewing and investigating violations of the provisions of the statutes with regard to all lobbying contacts made with EFC. This Policy Memorandum is hereby implemented to prevent any exposure of EFC to improper lobbying influence under State Finance Law Sections 139-j and 139-k and Section 2987 of the Public Authorities Law.

POLICY

It is EFC's policy that decisions on the award of procurement contracts shall be based solely on the merits of the proposals and free from improper lobbying influence. In addition, it is EFC's policy that decisions regarding the adoption or rejection of any rule or regulation of EFC or the outcome of any rate making proceeding by EFC shall be free from improper lobbying influence.

DUTIES OF PROCUREMENT INTEGRITY OFFICER (PIO)

The PIO shall be responsible for ensuring the consistent and effective observance of this policy.

The PIO shall review and immediately investigate any and all allegations of improper lobbying influence or attempt thereof, or any attempt by any person to influence the procurement process in accordance with the Process for Review and Investigation of Impermissible Contacts. In addition, the PIO shall receive, compile and maintain records relating to lobbying in accordance with Section 2987 of the Public Authorities Law.

PART A. PROCUREMENT LOBBYING

IMPROPER LOBBYING INFLUENCE DEFINED

“Improper lobbying influence” shall mean any attempt to influence the procurement, during the restricted period, in a manner that would result in a violation or an attempted violation of subdivision five of Section 73 or Section 74 of the Public Officers Law, or of other applicable ethics code provisions that are equivalent to subdivision five of Section 73 or Section 74 of the Public Officers Law where the officials that are involved in the procurement are not subject to subdivision five of Section 73 or Section 74 of the Public Officers Law.

PROCUREMENT RESTRICTED PERIOD DEFINED

“Procurement restricted period” shall mean 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 the Corporation and ending with the final contract award and approval by the Corporation and, where applicable, the State Comptroller.

The term “procurement contact” shall mean any oral, written or electronic communication with the Corporation under circumstances where a reasonable person will infer that the communication was intended to influence the procurement.

The PIO shall notify all EFC employees of the commencement of the restricted period and the procurement to which such period relates.

PROHIBITED AND APPROPRIATE CONTACTS

Procurement contacts between any EFC employee (a) involved in the determination and/or award of a procurement contract and employees, agents, or consultants of a potential proposer or proposer (hereinafter collectively referred to as “proposer”) relating to a proposal being considered by EFC, or (b) any contact with anyone in EFC in any attempt to influence the procurement process, during the procurement restricted period, is prohibited, except:

- (i) in the ordinary course of business where the proposer is already under contract with EFC;
- (ii) those authorized in the Request for Proposal (see Pre-Award section below); or

- (iii) those authorized in writing by the PIO subsequent to the submission of proposals by firms for the purpose of providing information to EFC personnel to assist them in understanding and assessing the qualities, characteristics and anticipated performance of a product or service offered by the proposer. Such authorized contacts may only be between EFC personnel involved in the determination of a procurement contract and employees, agents or consultants of a proposer who are qualified by technical or professional training, education or experience to explain, clarify, or demonstrate the characteristics and advantages of a product or service offered by a proposer.

Pre-Award: All Requests for Proposals must designate an EFC contact person for any and all inquiries/contacts from the proposer and must request that proposers also designate a procurement contact person. Proposers will also be required, in their bid or proposal documents, to include the name, address, telephone number, place of principal employment and occupation of every person or organization retained or subsequently retained, employed or designated by or on behalf of the proposer to attempt to influence the procurement process and whether such person or organization has a financial interest in the procurement. The EFC contact person will document all procurement contacts from and to the proposer to EFC on the **Report of Contact Form** which is attached as **Exhibit 1** and will forward it to the PIO as requested, but no less than monthly. The PIO, or PIO's designee, will be responsible for responding to any inquiry. In addition, any procurement contacts from any source that reasonably appear to be an attempt to influence the procurement process shall be recorded by EFC. Upon any such procurement contact, the above-referenced information, required to be submitted in the bid or proposal documents, will be obtained. EFC shall maintain a written record of all persons or organizations identified in bid or proposal documents or noted on the **Report of Contact Form** and such record shall be open to inspection by the public. All RFPs must contain the language as detailed in **Exhibit 2** attached to this memorandum.

Prior to making an award of a procurement contract, EFC shall make a determination of responsibility of the proposed awardee. Potential contractors will be required, in their bid or proposal documents, to disclose findings of non-responsibility made within the previous five years.

No procurement contract shall be awarded to a contractor who has not timely disclosed accurate and complete information with respect to State Finance Law Section 139-j unless the procurement record contains a written determination by EFC that the contract award would be in its best interests.

Contract Award: Once a Vendor(s) has been selected, contact with that Vendor(s) pertaining to the negotiation of the terms and conditions of the contract is limited to the President, Executive Vice President, General Counsel, PIO and staff designated by any of the foregoing, whose involvement is necessary and appropriate. Contact by any other staff relating to the terms and conditions of the contract being negotiated shall be prohibited.

Every procurement contract made subject to State Finance Law Sections 139-j and 139-k shall contain a certification by the awardee that all information provided to EFC with

respect thereto is complete, true and accurate, and a provision authorizing EFC to terminate such contract in the event such certification is found to be intentionally false or intentionally incomplete.

REPORTING DUTIES AND PENALTIES

EFC personnel are required to notify the PIO of all procurement contacts with employees, agents or consultants of any proposer competing for the contract award or any attempt by any person to influence the procurement process when the contact relates to a proposal being considered by EFC during the restricted period. **Exhibit 1, Report of Contact Form**, is attached and is to be used for such notification.

Any EFC officer or employee who becomes aware of any improper lobbying influence or attempt thereof, or any attempt to influence the procurement process shall immediately notify the PIO. The **Report of Contact Form** is to be used for such notification. Additionally, every proposer must report to the Corporation any contact by any employee, agent or consultant of the proposer with any EFC employee or State employee regarding the contract under consideration. **Exhibit 2, Language to be Incorporated into all RFPs**, underscores this policy. If, upon review, the PIO determines that an improper lobbying influence or attempt thereof, or any attempt to influence the procurement process occurred, then EFC reserves the right to impose such sanctions as it deems appropriate, which may include but shall not be limited to the elimination of the proposal from consideration with respect to that contract award.

Engaging in improper lobbying influence or failure to report any attempt to influence the procurement process is a violation of EFC policy. Any employee violating this policy may be subjected to disciplinary action and, depending on the circumstances, may be in violation of Public Officers Law Section 73(5) or 74, and subject, without limitation, to enforcement by the appropriate ethics regulatory body. In addition, where such conduct violates the Public Officers Law, such matter shall be referred to the State Inspector General and the appropriate ethics regulatory body.

REPORTS BY PIO

The PIO shall maintain lists of: (i) all allegations of improper lobbying influence or attempts thereof, and all attempts to influence the procurement process including the results of the PIO's investigation of such allegations, and (ii) all contacts between EFC personnel involved in the determination of the procurement contract and employees, agents or consultants of any proposer competing for the contract as well as any other individuals attempting to influence the procurement process. These lists shall be incorporated into EFC's Annual Report on Procurement Contracts, which shall be submitted to the President of EFC.

PART B. LOBBYING REGARDING REGULATIONS AND RATE MAKING

DEFINITIONS

“Lobbying” shall mean and include any attempt to influence: (i) the adoption or rejection of any rule or regulation having the force and effect of law by EFC; and (ii) the outcome of any rate making proceeding by EFC.

"Lobbyist" has the same meaning as defined in Section 1-c of the Legislative Law.

"Lobbying Contact" means any conversation, in person or by telephonic or other remote means, or correspondence between any lobbyist engaged in the act of lobbying and any board member, officer or employee of EFC who can make or influence a decision on the subject of the lobbying on behalf of EFC.

PROCEDURES

Every board member, officer or employee of EFC who is contacted by a lobbyist shall make a contemporaneous record of such contact which contains: (i) the day and time of the lobbying contact; (ii) the identity of the lobbyist; and (iii) a general summary of the substance of the lobbying contact. The record shall be forwarded to the PIO as the record officer for such contacts. The PIO shall maintain such records for at least 7 years.

PART C. GENERAL MATTERS

ANNUAL REVIEW OF PROCEDURAL CONTROLS

The PIO shall conduct at least annually a review of the procedural controls set forth in this Memorandum. The review will be conducted in accordance with State law, rules and regulations. The review shall be completed prior to the annual meeting of the EFC Board of Directors each June so that the outcome may be incorporated in the procurement contract guidelines.

The review of procedural controls shall be completed by an annual memorandum from the PIO, which:

- Reminds all officers and employees that (a) the PIO must be notified immediately of any lobbying contact, improper lobbying influence or attempt thereof and all attempts to influence the procurement process, regulatory matters or rate making proceedings; (b) that submitting to improper lobbying influence is a violation of EFC policy; and (c) that employee violations of EFC procedures with regard to improper lobbying influence or attempt thereof and all attempts to influence the procurement process, regulatory matters or rate making proceedings may be the basis for disciplinary action and, depending on the circumstances, may be a violation of Public Officers Law Section 73(5) or 74, subject to enforcement by the New York State Commission on Public Integrity or other appropriate regulatory bodies; and
- Seeks recommendation from employees involved in the procurement process, regulatory matters or rate making proceedings for improvements in EFC's procedural controls designed to prevent any exposure of EFC's contracting process to improper lobbying influence.

Alternatively, the review of procedural controls shall take place by any other method that the PIO and President deem appropriate.

Copies of the sections of law cited herein may be obtained from the PIO upon request and are also available on the Legal Matters section of EFC's intranet site.

Attachments

EXHIBIT 1

New York State Environmental Facilities Corporation
Report of Contact Form

TO: Procurement Integrity Officer for the Procurement Record

FROM: _____

RE: RFP for _____ Dated _____

DATE: _____

RECORD OF CONTACT:

On _____, 20__, I was contacted by the below named individual regarding the above-identified procurement. The contact took the form of:

() correspondence () in person () by telephone () electronic mail
() other [_____] and the reason for the contact was:

Name: _____

Address: _____

Telephone Number: _____

Place of Principal Employment: _____

Occupation: _____

() It reasonably appears that this contact was an attempt to influence the procurement process as defined in State Finance Law Sections 139-j and 139-k (EFC Administrative Policy Memorandum – Controls to Prohibit Improper Lobbying Influence) for the following reasons (please be specific): _____

Does the above named person or organization have a financial interest in the procurement? (please circle)

Yes

No

Unknown

EXHIBIT 2
LANGUAGE TO BE INCORPORATED INTO ALL RFPs

Controls to Prohibit Improper Lobbying Influence

Pursuant to State Finance Law Sections 139-j and 139-k (effective January 1, 2006), this RFP includes and imposes certain restrictions on communications between EFC and any responding vendor during the procurement process. Any responding vendor is restricted from making contacts from the earliest notice of this RFP through final award and approval of the procurement contract by EFC and, if applicable, Office of the State Comptroller (“restricted period”) to other than the designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law Section 139-j (3)(a). The vendor may contact only the persons identified, and in the manner specified, by EFC on the cover page and in Section 5 of this RFP.

Violations of this provision may be grounds for immediate disqualification. Further information about this restriction may be found at:

Procurement Lobbying Law FAQ, Section 7: Designated Contacts:
<https://www3.ogs.state.ny.us/legal/lobbyinglawfaq/default.asp>