

SUMMARY OF AND IMPLEMENTATION GUIDELINES FOR
§ 139-J and §139-K OF THE STATE FINANCE LAW

*** This summary is not intended to replace the need for persons to become familiar with the full requirements of the law. Please refer to the full text of the law to resolve any questions you may have with regard to your conduct under it.**

Section 139-j of the State Finance Law imposes restrictions on how a person may communicate with a governmental entity, such as the Niagara River Greenway Commission (hereafter, referred as “NRGC”), concerning a governmental procurement during a period of time called the “restricted period,” which is defined broadly as the period of time commencing from the earliest written notice announcing a government procurement until the award is approved by the comptroller.

These new requirements cover a wide range of government contracting transactions, including the purchase of a commodity, service, technology, public work, construction and revenue contract, or the purchase, sale or lease of real property or the acquisition or the granting of other interests in real property (hereafter referred as “governmental procurement or procurement contract.” Any person in the private sector (hereinafter referred to as “person”) interested in contacting NRGC concerning anyone of these types of transactions is covered under the provisions of the new law, which limits the way that such person can communicate with NRGC during the “restricted period.”

For each governmental procurement, NRGC will designate an employee or employees that may be contacted by persons concerning all aspects of the governmental procurement. With very few statutory exceptions, you are required to communicate during the restricted period with this designated person or persons. If your communication can be inferred by a reasonable person to be an attempt to influence the procurement, by law you are required to only communicate with the designated person or persons. If your communication is interpreted as an attempt to influence the procurement, the designated person is required to record your name, address, telephone number, place of principle employment, and occupation of the person making the contact and inquire and record whether the person making the contact is a principle or was hired by the principle to make the contact. This recorded information must be retained in the procurement record.

If, however, you communicate with someone other than the designated person or persons and your communication can be construed by a reasonable person to be an attempt to influence the governmental procurement, and the communication is not otherwise listed as an exception to the law, this communication will be deemed impermissible per the terms of the law which requires that the communication be reported to NRGC’s Ethics Officer for investigation. If a communication during the “restricted period” may be deemed an attempt to influence the procurement such communication may only be with the individuals designated by NRGC.

It is the policy of NRGC to interpret as broadly as possible what communications are intended to influence the governmental procurement, and are not just those attempts to influence the procurement in such a manner that would be in violation of the ethical

prohibitions against gifts or which would result in any violation of the Ethics Law. Communications of a nature that are in violation of the Ethics Law will be immediately reported to the Ethics Officer for investigation regardless of whether the contact was made to the designated person or persons or someone else.

As referenced before, the law specifically permits certain types of contacts by persons to NRCG concerning the governmental procurement. These are:

- the submission of written proposals in response to a request for proposal, invitation for bids or any other method for soliciting a response from interested parties;
- the submission of written questions to a designated contact, when all written questions and responses are to be disseminated to all persons interested in such procurement;
- participation in a conference where all interested parties are invited to attend;
- written complaints made to the General Counsel's Office of NRCG concerning the timely response to issues posed to the designated person, provided that such written complaints are made part of the procurement record;
- communications where the contract award has been tentatively made and where such communications are necessary to negotiate the terms of the procurement contract;
- requests made to the designated person or persons to review the procurement award;
- written protests, appeals, or other review proceedings to either NRCG or an outside agency.

Any contact alleged to be an impermissible contact under the law will be immediately referred to and investigated by NRCG's Ethics Officer. The Ethics Officer shall promptly investigate the allegation by interviewing all employees or persons involved or who are believed to have information about the impermissible contact. If sufficient cause exists to believe that such allegation is true, the person being investigated shall be given notice that an investigation is ongoing and such person shall be afforded an opportunity to be heard in response to the allegation either by responding in writing or by providing a statement before the Ethics Officer, who shall record by appropriate means such statement for the record. The Ethics Officer shall keep a record of the investigation and shall make a written finding of the results of such investigation and report these findings to the Chairman.

In addition, a finding by the Ethics Officer that a person has knowingly and willingly violated the law by making an impermissible contact shall result in a determination of non-responsibility and such person and all associated subsidiaries of such person shall not be awarded the procurement contract. The determination of non-responsibility shall also be forwarded to the Commissioner of the Office of General Services (or his or her designee), which by law is required to keep a list of such determinations for public inspection. Determinations of non-responsibility must be disclosed in all future responses to New York State procurements. With few exceptions, no procurement contract shall be awarded to any person who fails to disclose findings of non-responsibility within the previous four years.