# MONROE COUNTY AIRPORT AUTHORITY
# PROCUREMENT DISCLOSURE POLICY
# (ADOPTED AUGUST 16, 2006)

## PURPOSE

This Procurement Disclosure Policy is adopted to bring the Monroe County Airport Authority (Authority) into compliance with State Finance Law Sections 139-j and 139-k (the "Statutes") and to provide for the implementation of such Statutes by the Authority.

## ARTICLE 1
## DEFINITIONS

As used herein, the following terms shall have the meanings set forth below:

### 1. 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.

### 2. Contacts

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.

### 3. Governmental Entity

(a) Any department, board, bureau, commission, division, office, council, committee or officer of the state, whether permanent or temporary; (b) each house of the state legislature; (c) the unified court system; (d) any public authority, public benefit corporation or commission created by or existing pursuant to the public authorities law; (e) 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; (f) a municipal agency, as that term is defined in paragraph (ii) of subdivision (s) of section one-c of the legislative law; or (g) a subsidiary or affiliate of such a public authority.

### 4. Governmental Procurement

(a) The preparation or terms of the specifications, bid documents, request for proposals, or evaluation criteria for a Procurement Contract, (b) solicitation for a Procurement Contract, (c) evaluation of a Procurement Contract, (d) award, approval, denial or disapproval of a Procurement Contract, or (e) 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.

5. **Impermissible Contacts**

Contacts made by an Offerer shall be considered impermissible if the Offerer fails to satisfy the requirements of Article 4 and Article 5 hereof.

6. **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.

7. **Permissible Contacts**

Contacts made by an Offerer shall be considered permissible if the Offerer satisfies the requirements of Article 4 and Article 5 hereof.

8. **Procurement Contract**

Any contract or other agreement for an Article of Procurement involving an estimated annualized expenditure in excess of Fifteen Thousand Dollars ($15,000). Grants, article eleven-B state finance law contracts (i.e., any contract providing for a payment under a program appropriation to a not-for-profit corporation), intergovernmental agreements, railroad and utility force accounts, utility relocation project agreements or orders and eminent domain transactions shall not be deemed Procurement Contracts.

9. **Procurement Officer**

This term shall have the meaning set forth in Article 3 hereof.

10. **Procurement Record**

This term shall have the meaning set forth in Article 6 hereof.

11. **Proposal**

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

12. **Restricted Period**

The period of time commencing with the earliest written notice, advertisement or solicitation of a proposal or bid, or any other method for soliciting a response from offerers intending to result in a procurement contract and ending with the final contract award and approval by the appropriate entity.

13. **Solicitation Materials**

This term shall have the meaning set forth in paragraph (a) of Article 4 hereof.

## ARTICLE 2
## INVESTIGATING OFFICER

The Monroe County Attorney, Legal Advisor to the Authority, is hereby appointed as the Officer responsible for reviewing and investigating any allegations of violation of this policy or of the Statutes.

## ARTICLE 3
## PROCUREMENT OFFICERS
## (AUTHORIZED AUTHORITY CONTACT PERSONS)

The Members of the Authority hereby delegate to the Administrative Director the power to select a "Procurement Officer" for each and every Governmental Procurement (collectively, the "Procurement Officers"). The Administrative Director may either select the Procurement Officer at the time the Governmental Procurement commences or select a Procurement Officer in advance for each type or category of Governmental Procurement. Such Procurement Officer(s) shall be the designated "contact" person for Offerers during the Restricted Period surrounding each Governmental Procurement.

## ARTICLE 4
## CONTACTS BY OFFERERS

All Contacts between an Offerer and the Authority during the Restricted Period for each Governmental Procurement shall be made through the applicable Procurement Officer, unless one of the following exceptions applies:

(a) The submission of written proposals in response to a request for proposals, invitation for bids or any other method of soliciting a response from Offerers intending to result in a Procurement Contract (collectively, "Solicitation Materials");

(b) The submission of written questions to a designated contact set forth in any Solicitation Materials, when all written questions and responses are to be disseminated to all Offerers who have expressed interest in the Solicitation Materials;

(c) Participation in a conference provided for in any Solicitation Materials;

(d) Complaints made in writing to the Administrative Director by an Offerer regarding the failure of the applicable Procurement Officer to respond in a timely manner to authorized Offerer Contacts, provided that such written complaints become part of the Procurement Record;

(e) Offerers who have been tentatively awarded a contract and are communicating with the Authority for the sole purpose of negotiating the contract, so long as the Contact occurs after the Offerer has received notice of the tentative award;

(f) Contact between designated Authority staff and an Offerer in which the Offerer requests the review of a procurement award;

(g) Contacts by Offerers in protests, appeals or other review proceedings before the Authority seeking a final administrative determination, or in a subsequent judicial proceeding;

(h) Complaints of alleged improper conduct in a Governmental Procurement to the Attorney General, Inspector General, District Attorney, or court of competent jurisdiction; or

(i) Written complaints to the State Comptroller's Office during the process of contract approval, when the State Comptroller's approval is required by law, provided that such written complaints become part of the Procurement Record; and

(j) Complaints of improper conduct in a Governmental Procurement conducted by a municipal agency or local legislative body to the State Comptroller's Office.

The Statutes and this Policy permit communications between Offerers and the Authority prior to the Restricted Period in the form of a request for information ("RFI") by the Authority and the response thereto by the Offerer. The RFI must be used as a means to collect information upon which to base a decision by the Authority to proceed with a Governmental Procurement and not as a tool employed to award a Procurement Contract.

## ARTICLE 5
## OTHER PROHIBITED OFFERER ACTIVITIES

In addition to utilizing the designated Procurement Officer for all Contacts with the Authority, the following additional rules shall apply to all Offerers:

(a) Offerers shall not attempt to influence the Authority's Governmental Procurement in a manner that would result in a violation of any State ethics/conflict of interest statute or the Authority's Code of Ethics or Conflict of Interest Policies; and

(b) Offerers are prohibited from contacting any member, officer or employee of a governmental entity other than the Authority[1], during the Restricted Period of a Governmental Procurement, regarding the Authority's pending procurement.

## ARTICLE 6
## PROCUREMENT RECORD

For each Governmental Procurement of the Authority, the applicable Procurement Officer shall maintain a procurement record (the "Procurement Record"), including all written materials pertaining to the specific Governmental Procurement. Upon any Contact in the Restricted Period, the Procurement Officer shall obtain the name, address, telephone number, place of principal employment and occupation of the person or organization making the Contact and inquire and record whether the person or organization making such contact was the Offerer or was retained, employed or designated by or on behalf of the Offerer to appear before or contact the Authority about the Governmental Procurement. The Procurement Record shall include all recorded Contacts described in the prior sentence, whether such Contacts are Permissible Contacts or Impermissible Contacts. The Procurement Record shall not include Contacts with certain public officials as described in the footnote to item (b) of Article 5 hereof.

[1] This prohibition is not applicable to Contacts between an Offerer and a member of the state legislature or legislative staff about a governmental entity other than the State Legislature, or a member of the state legislature or legislative staff contacting a governmental entity about a Governmental Procurement being conducted by a governmental entity other than the state legislature, provided that the member of the state legislature or legislative staff is acting in their official capacity.

In addition, the Procurement Record shall not include communications that a reasonable person would infer are not intended to influence a Governmental Procurement. The Authority shall keep a written or electronic copy of the Procurement Record for a period of six years from the end of the Restricted Period for each Governmental Procurement.

## ARTICLE 7
## REQUIRED DISCLOSURE

In general, all Solicitation Materials shall incorporate a summary of the policy and prohibitions of the Statutes as well as include copies of rules, regulations and the Authority's guidelines and procedures regarding Permissible Contacts during a Governmental Procurement. The following provisions offer specific methods for satisfying such requirements.

1. In all Authority Solicitation Materials, the following statement shall appear:

   *Pursuant to State Finance Law §§139-j and 139-k, this solicitation [or other applicable identifier, i.e. "Invitation for Bid" or "Request for Proposal," etc.] includes and imposes certain restrictions on communications between a Governmental Entity (including the Authority) and an Offerer during the procurement process. An Offerer/bidder is restricted from making contacts from the earliest notice of intent to solicit offers through final award and approval of the Procurement Contract by the Authority and, if applicable, the Office of the State Comptroller [the Authority may delete the reference to Comptroller approval when not applicable] ("restricted period"), to other than the Authority's Procurement Officer unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). The Authority's Procurement Officer(s) for this Governmental Procurement, as of the date hereof, is identified on the first page of this solicitation [or wherever in the bid documents it is identified]. Authority employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four (4) year period, the Offerer/bidder is debarred from obtaining government Procurement Contracts. Further information about these requirements may be obtained from the Procurement Officer.*

2. In all Authority Procurement Contracts, the following provision shall appear:

   *The Authority reserves the right to terminate this contract in the event it is found that the certification filed by the Offerer in accordance with State Finance Law §139-k (5) was intentionally false or intentionally incomplete. Upon such finding, the Authority may exercise its termination right by providing written notification*

*to the Offerer in accordance with the written notice terms of this contract."*

3. In each response to any Solicitation Materials, the Offerer shall complete the following in a timely and accurate fashion:

(a) "Offerer Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j(3) and 139-j (6)(b)" in the manner discussed in Appendix "A" hereto;

(b) " Offerer Certification of Compliance with State Finance Law § 139-k (5)" in the manner discussed in Appendix "B" hereto; and

(c) "Offerer Disclosure of Prior Non-Responsibility Determinations" in the form provided as Appendix "C" hereto.

The failure of an Offerer to comply with such disclosure requirements will subject the Offerer to the sanctions described in Article 10 hereof, as well as any other penalties permitted by law.

## ARTICLE 8
## REQUIREMENTS OF THE AUTHORITY PRIOR TO AWARDING PROCUREMENT CONTRACTS

Prior to conducting an award of a Procurement Contract, the Members of the Authority shall:

1. Make a final determination of responsibility of the proposed awardee in accordance with the Authority's existing procedures;

2. Make a final determination of responsibility of the proposed awardee that measures compliance with the State Finance law provisions regarding (i) Permissible Contacts and (ii) disclosure of all information required in any Solicitation Materials (including, but not limited to, prior findings of non-responsibility by a Governmental Entity); and

3. Make a final determination that the procurement process for such proposed award was free from any conduct prohibited under the Public Officers Law as well as the applicable provisions of the Authority's Code of Ethics and/or Conflict of Interest Policies.

## ARTICLE 9
## ALLEGED VIOLATION; PROCEDURE

1. Any Member, officer or employee of the Authority who becomes aware that an Offerer has violated this Policy or the Statutes shall:

(a) Immediately notify the County Attorney, who shall immediately investigate the alleged violation(s).

(b) If, after commencing the investigation, the County Attorney finds that there is sufficient cause to believe the alleged violation has occurred, s/he shall give the alleged violating Offerer reasonable notice (in the form of a certified letter, return receipt requested) informing

him/her of the allegations and providing him/her with an opportunity to be heard regarding the allegations.

(c) If, following the opportunity to be heard, the County Attorney determines that the Offerer has knowingly and willfully violated this Policy, the Statutes or any other applicable procurement disclosure standards affecting Members, Officers or employees of the Authority, the Offerer shall be subject to sanctions described in Article 10 hereof.

2. The County Attorney shall report to the Investigating Officer of another Governmental Entity any violation of the statutes by an Offerer or by such other Governmental Entity's employees. The County Attorney shall be the person designated to receive similar communications coming from another Governmental Entity.

## ARTICLE 10
## SANCTIONS

1. Upon a finding by the County Attorney that an Offerer has knowingly and willfully violated this Policy, the Statutes or any other applicable procurement disclosure standards affecting Members, officers or employees of the Authority, the Offerer shall be subject to the following sanctions, as well as any other penalty permitted by law:

(a) The Offerer shall be deemed "non-responsible" and such Offerer (along with its subsidiaries and any other related or successor entity) shall not be awarded the Procurement Contract, unless the Authority finds that the following special circumstances exist:

(i) The award to the offending Offerer is necessary to protect public property or public health or safety; and

(ii) The offending Offerer is the only source capable of supplying the required Article of Procurement within the necessary timeframe.

(b) In addition, the County Attorney shall notify the State Office of General Services of the finding of non-responsibility[2].

2. Upon a finding that a Member, officer or employee of the Authority has knowingly and willfully violated this Policy, the Statutes or any other applicable procurement disclosure standards affecting Members, officers or employees of the Authority, the County Attorney shall immediately notify the Administrative Director of the Authority or the Chair of the Board of the Authority.

## DISTRIBUTION OF THIS POLICY

This Policy shall be distributed annually to the Authority's Members and officers. It shall also be distributed annually to those employees that have the ability to affect any Procurement. It shall also be distributed to each new Member, officer and applicable employee as soon as practicable following commencement of such position.

[2] A second finding of non-responsibility under the Statutes within four (4) years will render the Offerer (along with its subsidiaries and any other related or successor entities) ineligible to submit a proposal on or be awarded any Procurement Contract for four (4) years from the date of the second final determination of non-responsibility, unless the special circumstances outlined in Section (a) of this Article 10 exist.

## APPENDIX A

### OFFERER'S AFFIRMATION OF UNDERSTANDING OF AND AGREEMENT PURSUANT TO STATE FINANCE LAW §139-j(6)(b)

**Background:**

State Finance Law §139-j(6)(b) provides that:

> Every Governmental Entity (including the Monroe County Airport Authority, the "Authority") shall seek written affirmations from all Offerers as to the Offerer's understanding of and agreement to comply with the Authority's procedures relating to permissible contracts during a Governmental Procurement pursuant to State Finance Law §139-j(3).

**Instructions:**

In connection with all proposals, bids, RFP's, etc., the Authority must obtain the following affirmation of understanding and agreement to comply with procedures on procurement lobbying restrictions regarding permissible contacts in the Restricted Period for a Procurement Contract in accordance with State Finance Law §139-j and §139-k:

*Offerer affirms that it understands and agrees to comply with the Monroe County Airport Authority's Procurement Disclosure Policy as required by State Finance Law §139-j (3) and §139-j(6)(b).*

# APPENDIX B

## OFFERER CERTIFICATION OF COMPLIANCE WITH STATE FINANCE LAW §139-K(5)

The Authority shall obtain the following Offerer certification in connection with all proposals, bids, RFP's, etc.:

*I certify that all information provided to the Monroe County Airport Authority with respect to State Finance Law §139-k is complete, true and accurate.*

## APPENDIX C

### FORM OF OFFERER DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATION

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 Government 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 Government 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 Monroe County Airport Authority with respect to State Finance Law §139-k is complete, true and accurate.

By: _____ Date: _____

Signature: _____