

## **Questions & Answers – Part 2**

*Issued September 28, 2011*

### **Invitation to Submit Qualifications and Proposals**

#### **PUBLIC ART INSTALLATION**

#### **Buffalo, New York**

Solicitation Issue Date: September 1, 2011  
Qualifications Due Date: October 6, 2011, 12:00PM EST

The following questions have been submitted;

- a. Can you confirm that the artist will be free from any and all liability once the sculpture has been installed and ownership of the artwork has been transferred to the ECHDC (assuming they are the actual purchaser of the artwork)? It would be helpful to discuss this element now, as it is of great importance to us and to the artist.  
**No. Artists would be liable for any design/construction defects in accordance with New York law. In addition, the artist will be required to warrant the work in accordance with standard construction industry standards.**
- b. In addition to JPEG images of our work, may we also submit video files electronically? We feel video is critical to understanding our work, which involves light and movement.  
**Yes. As long as the video file is no more than 3mb. The video file is to be on the disc that accompanies the hard copies of the Qualifications.**
- c. It appears that the required forms listed under #5 in submission requirements are not available on the referenced website. Please confirm where we may obtain these, and/or whether we may still obtain them from Ms. McGee.  
**The forms can be found at <http://www.esd.ny.gov/CorporateInformation/RFPs.html> at the bottom of the website under "Required Forms for Vendors". The 139 J&K form is required with the submission of Qualifications. If this form is not present with the submitted materials, the submission will be deemed non-responsive and will not be**

***considered for review. The required forms are included in this Questions & Answers as Attachment A.***

- d. Will we have access to the proposed designs for the Buffalo Harbor Bridge, as well as updates as those designs develop?

***Yes.***

- e. What power is available at either site? If additional power is required, will that installation be considered part of this project budget?

***Assume there is no available power for either site at this point. If additional power is required, it will be considered a part of the budget.***

**Attachment A**  
**Required Forms: State Finance Law 139 J & K**

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

### **Background:**

Under New York State Finance Law § 139-k(2), covered governmental entities are obligated to obtain specific information regarding prior non-responsibility determinations. 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 an 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, a covered governmental entity must consider 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.

### **Instructions:**

A Governmental Entity must include a disclosure request regarding prior non-responsibility determinations 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.

**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: \_\_\_\_\_

**Model Language to Obtain Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law § 139-j (3) and § 139-j (6) (b)**

**Background:**

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

Every Governmental Entity shall seek written affirmations from all Offerers as to the Offerer's understanding of and agreement to comply with the Governmental Entity's procedures relating to permissible contacts during a Governmental Procurement pursuant to subdivision three of this section.

**Instructions:**

A Governmental Entity must obtain the required 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. It is recommended that this affirmation be obtained as early as possible in the procurement process, such as when the Offerer submits its proposal or bid. The following language can be used to obtain the affirmation.

Offerer affirms that it understands and agrees to comply with the procedures of the Government Entity relative to permissible Contacts as required by State Finance Law § 139-j (3) and § 139-j (6) (b).

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Contractor Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_