

# LONG ISLAND POWER AUTHORITY

## Lobbying Guidelines

### Regarding Procurements, Rules, Regulations or Ratemaking

March 24, 2011

#### I. INTRODUCTION

In furtherance of the Long Island Power Authority's ("LIPA") commitment to ensure the transparency and accountability of its operations, the following guidelines (the "Guidelines") set forth LIPA's policy on recording attempts to influence the outcome of LIPA's (a) Procurements and (b) Rules, Regulations or Ratemaking activity. These Guidelines are applicable to all employees, officers and trustees of LIPA and are in compliance with the requirements of the "Procurement Lobbying Law" found in the State Finance Law and the "Lobbying Contacts" provisions of the Public Authorities Reform Act. The restrictions and/or reporting requirements associated with both types of lobbying activity are outlined below.

#### II. PROCUREMENT LOBBYING

This section of the Guidelines has been issued pursuant to the State Finance Law, which generally prohibits, with limited exception, individuals or entities from communicating with anyone other than the person(s) designated by LIPA to communicate with such individuals or entities about a procurement for a prescribed period of time during the procurement process. LIPA is required to collect and record certain information pertaining to attempts to influence the procurement (a "**Contact**," defined below) during the procurement period from the earliest solicitation of a proposal to the final approval of the procurement (the "**Restricted Period**," defined below). The specific requirements related to these activities are set forth as follows:

##### A. Statutory Definitions<sup>1</sup>

###### **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 an interest in real property that is the subject of a governmental procurement.

###### **Contact**<sup>2</sup>

Any oral, written or electronic communication with LIPA staff or its consultants about LIPA

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<sup>1</sup> Defined terms are in bold.

procurement under circumstances where a reasonable person would infer that the communication was intended to influence the procurement.

**Governmental Entity**

All New York State agencies and authorities; both houses of the Legislature; the Unified Court System; municipal agencies and their respective employees.

**LIPA Procurement**

shall mean (i) the preparation or terms of the specifications, bid documents, requests for proposals, or evaluation criteria for a procurement contract, (ii) solicitation for a procurement contract, (iii) evaluation of a procurement contract, (iv) award, approval, denial or disapproval of a procurement contract, or (v) 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**.

**Offerer**

The individual or entity, or any employee agent or consultant or person acting on behalf of such individual or entity, that **Contacts** LIPA about a **LIPA Procurement** during the restricted period of the procurement.

**Procurement Contract**

Any contract or other agreement for an **Article of Procurement** involving an estimated annualized expenditure in excess of \$15,000. Grants, State Finance Law Article XI-B contracts, intergovernmental agreements, railroad and utility force accounts, utility relocation project agreements or orders, and eminent domain transactions shall not be deemed **Procurement Contracts**.

**Restricted Period**

The period of time commencing with the earliest date of written notice, advertisement or solicitation of a request for proposal, invitation for bids, or

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<sup>2</sup> Note that the statutory definition for “Contact” is different for Procurement Lobbying and for Rule, Regulation or Ratemaking Lobbying.

solicitation of proposals, or any other method for soliciting a response from **Offerers** intending to result in a **Procurement Contract** with LIPA and ending with the final contract award and approval by LIPA, and where applicable, the Office of the State Comptroller.

**B. Exemptions**

Certain communications are exempt from the Guidelines. These include: (i) submissions in response to an invitation for bid, a request for proposal or other solicitation, (ii) submissions of written questions to an invitation for bid, a request for proposal or other solicitation, (ii) submissions of written questions to a designated contact set forth in an invitation for bid, request for proposal or other solicitation, (iii) participation in a conference provided for in an invitation for bid, request for proposal or other solicitation, (iv) contract negotiations, (v) inquiries regarding the factual status of a **Procurement Contract**, and (vi) complaints and protests regarding the procurement process and outcome.

In addition, any communication received by LIPA from members of the New York State Legislature or the Legislative Staff, when acting in their official capacity, shall not be considered a **Contact** for recording purposes.

**C. Violations**

A violation of these Guidelines occurs when there is a **Contact** during the **Restricted Period** between the **Offerer** and someone other than the person(s) designated by LIPA to receive communications for the particular **LIPA Procurement**. This includes instances where the **Offerer Contacts** LIPA regarding a procurement of another **Governmental Entity**.

Attempts by an **Offerer** to influence a **LIPA Procurement** in a manner that would result in a violation of the Public Officers Law or any other applicable ethics code shall also be a violation of these Guidelines

**D. Procedures**

**a. Notifying Vendors of Procurement Lobbying Guidelines**

- i.** For each **Procurement Contract**, LIPA will designate a person or persons to receive communications from **Offerers** concerning the **LIPA Procurement**.
- ii.** LIPA will incorporate a summary of the policy governing lobbying during a **LIPA Procurement** in its documents relating to the **Procurement Contract** and provide a copy of

the policy and prohibitions regarding permissible communications to **Offerers**.

- iii. LIPA shall seek written affirmation from all **Offerers** indicating that they understand and agree to comply with these Guidelines (*See Attachment 1*).

b. Making Determinations of Responsibility

- i. Prior to award of a **Procurement Contract**, LIPA must make a responsibility determination with respect to the **Offerer** to be recommended for the award of the contract based upon, among other things, the information supplied by that **Offerer**, using the **Offerer** Disclosure of Prior Non-Responsibility Determinations Form ( *See Attachment 2*), whether it has been found non-responsible within the last four years by any **Governmental Entity** for: (1) failure to comply with State Finance Law § 139 j, or (2) the intentional provision of false or incomplete information. This disclosure must be certified by the **Offerer** and must affirmatively state that the information supplied by the **Offerer** to LIPA is complete, true and accurate.
- ii. The **Procurement Contract** must include a provision allowing LIPA to terminate the contract if the certification is subsequently found to be incomplete, false or inaccurate. Admissions by the **Offerer** of past findings of non-responsibility may constitute a basis for rejection of the **Offerer** by LIPA. LIPA can award a contract to the **Offerer** despite the past findings of non-responsibility if it determines that the award of the **Procurement Contract** to the **Offerer** is necessary to protect public property or public health or safety, and that the **Offerer** is the only source capable of supplying the required **Article of Procurement** within the necessary time frame. The basis of such a finding must be included in procurement record of the **LIPA Procurement**.

c. Recording Contacts

- i. All LIPA employees must record any **Contact** from any person or entity. **Contacts** may be initiated by parties with an interest in the **LIPA Procurement** that are not necessarily connected directly to the **Offerer**. **Contacts** may come in the form of telephone conversations, correspondence, electronic mail and person-to-person discussions. The Record of Contact Form (*See Attachment 3*) should be used to record all **Contacts**. The form is also available to employees on the LIPA Intranet.

ii. Examples of **Contacts** for which a Record of Contact must be completed include:

1. During the **Restricted Period**, an **Offerer Contacts** a LIPA employee (other than the employee designated to receive such communications) to discuss the **Offerer's** cost, competitiveness or its suitability to be selected for a contract.
2. A court reporter, expert witness or any other vendor offers a LIPA employee a gift of any monetary value during the **Restricted Period**.

iii. Examples of permissible communications which may be directed to persons other than those designated by LIPA to receive communications from **Offerers** concerning the **LIPA Procurement** include:

1. Inquiries as to the status of the procurement process.
2. Requests to be included on LIPA's **Offerer** list.
3. Receipt of advertising material.
4. Intra-agency communications of administrative details concerning the procurement.
5. Responses to LIPA-issued Requests for Information.
6. Written questions submitted by **Offerers** regarding a solicitation during the allowable time period of a competitive procurement.
7. Complaints about the procurement process or outcome.
8. Participation in an **Offerer's** conference as provided for in a Request for Proposals of Invitation for Bids.
9. Submission of a proposal or bid in response to a Request for Proposals or Invitation for Bids.
10. Contract negotiations.

11. Debriefing of an **Offerer** after a contract award has been made.

None of the above communications require the preparation of a Record of Contact unless such communication constitutes an attempt to influence the **LIPA Procurement**.

- iv. If a LIPA employee is in doubt about whether a communication was intended to influence the **LIPA Procurement**, he or she should record the communication on the Record of Contact Form and submit it to the Director of Corporate Contracts and Procurement for further investigation.
- v. The LIPA Officer responsible for the procurement, or his or her designee, will be required to ensure that all Records of Contacts are included in the procurement record for the related **Procurement Contract**.

**E. Investigation of Contacts/Penalties for Violations**

- a. All reported **Contacts** will be immediately investigated by the Director of Corporate Contracts and Procurement, or his or her designee. If the Director of Corporate Contracts and Procurement finds sufficient cause to believe that an **Offerer** has violated these Guidelines, the **Offerer** will be notified in writing of the investigation and will be afforded an opportunity to respond to the alleged violation. Investigations will be completed as soon as practicable so as not to delay the progress of the **LIPA Procurement**.
- b. If the Director of Corporate Contracts and Procurement should find at the conclusion of the investigation that the **Offerer** knowingly and willfully made a prohibited **Contact** in violation of these Guidelines, then the **Offerer** shall be disqualified as non responsible, unless LIPA makes a finding that the award of the **Procurement Contract** to the **Offerer** is necessary to protect public property or public health or safety, and that the **Offerer** is the only source capable of supplying the required **Article of Procurement** within the necessary time frame. The basis of such a finding must be included in the procurement record of the **Procurement Contract**.

### III. RULE, REGULATION OR RATEMAKING LOBBYING

This section of the Guidelines has been issued pursuant to the Public Authorities Law, and establishes measures to create and maintain records of any attempt by a “**Lobbyist**” (as defined below) to influence: (a) the adoption or rejection of any rule or regulation by LIPA, and/or (b) the outcome of any ratemaking proceeding by LIPA, as follows:

#### A. Statutory Definitions<sup>3</sup>

**Contact** Any conversation, in person or by telephonic or other remote means, or correspondence between any **Lobbyist** engaged in the act of **Lobbying** and any employee, officer or trustee within LIPA who can make or influence a decision on the subject of the **Lobbying** on behalf of the LIPA.

**Lobbying** Any attempt to influence: (a) the adoption or rejection of any rule or regulation by LIPA, and/or (b) the outcome of any ratemaking proceeding by LIPA.

**Lobbyist** Every person or organization retained, employed or designated by any client to engage in **Lobbying**. **Lobbyist** does not include any officer, director, trustee, employee, counsel or agent of the state, or of any municipality or subdivision of New York State, when such persons are discharging their official duties.<sup>4</sup>

#### B. Responsibilities

- a. An employee, officer or trustee who is contacted by a **Lobbyist** shall make a contemporaneous record of such **Contact** on a form including the day and time of the **Contact**, the identity of the **Lobbyist** and a summary of the substance of the **Contact**. The employee, officer or trustee shall notify and deliver the completed form to the General Counsel and Secretary.
- b. The General Counsel and Secretary shall prescribe such form to be used by all employees, officers and trustees to record such lobbying **Contacts** under these Guidelines. (Attachment 4)
- c. Upon receipt of a record of **Contact**, the General Counsel and Secretary shall maintain or cause to be maintained such record for a period of not less than seven (7) years in a filing system that is indexed or otherwise organized in a manner in which such records

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<sup>3</sup> Defined terms are in bold.

<sup>4</sup> Officers, directors, trustees, employees, counsels or agents of colleges as defined by New York Education law §2(2) are considered lobbyists for purposes of PAL §2987.

are readily identifiable and referenced to LIPA decisions regarding  
(a) the adoption or rejection of any rule or regulation by LIPA and  
(b) the outcome of any ratemaking proceeding by LIPA.

Any questions regarding the Guidelines and/or interpretation of the Guidelines should be directed to LIPA's General Counsel and Secretary.

**PROCUREMENT LOBBYING FORM**

**OFFERER AFFIRMATION OF UNDERSTANDING AND COMPLIANCE**

Contract Number Related to Offer:

\_\_\_\_\_ hereby affirms that it/he/she has read and understands the Long Island Power Authority's ("LIPA") Lobbying Guidelines governing Procurement Lobbying and agrees to comply with LIPA's procedures relating to permissible Contacts during a LIPA Procurement.

Date: \_\_\_\_\_, 201\_\_

Name of Offerer:

Address:

\_\_\_\_\_  
Signature of Offerer

**PROCUREMENT LOBBYING FORM**

**Offerer Disclosure of Prior Non-Responsibility Determinations**

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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
2. If yes, 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 yes, please provide details regarding the finding of non-responsibility below. Governmental Entity:
Date of Finding of Non-Responsibility:
Basis of Finding of Non-Responsibility:

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:

Offerer certifies that all information provided to the Long Island Power Authority with respect to State Finance Law § 139-k is complete, true and accurate.

By:

Date:

Signature

Name:

Title:

**PROCUREMENT LOBBYING FORM****Record of Contact  
Under State Finance Law §139-k(4)**

Was the person making the Contact informed that the Contact would be documented?

 Yes No

To: Procurement Record Regarding
Procurement Contract Number:
From:
(Name and title)
Date:
Subject: Record of Contact under State Finance Law §139-k(4)
I had Contact with the below named individual regarding the above identified procurement. The term "Contact" is defined in State Finance Law §139-k (1)(c). In accordance with State Finance Law §139-k (4), the following information was obtained.
Name:
Address:
Telephone Number:
Place of Principal Employment:
Occupation:

Is the above named person or organization the "Offerer" in this governmental procurement? (Please circle)      yes                      no

List date(s) of Contact:

(add additional pages as necessary)

*Optional*

Summarize the form (e.g., email, letter, conversation) and topic of the communication on each date of Contact:

(add additional pages or copies of written communications as necessary)

**NON-PROCUREMENT LOBBYING FORM**

**Report of Lobbying Contact  
(Public Authorities Law § 2987)**

Any Contact by a "Lobbyist"<sup>1</sup> regarding the adoption or rejection of any rule or regulation of the Long Island Power Authority ("LIPA"), and/or the outcome of any ratemaking proceeding by LIPA shall be recorded on this form.

To: General Counsel and Secretary

From:

\_\_\_\_\_  
(Name and Title)

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

Subject: Record of Contact

I was contacted by the below-named individual regarding the adoption or rejection of a rule or regulation of LIPA or regarding the outcome of a ratemaking proceeding of LIPA as follows:

Name of Lobbyist:

Address:

Telephone Number:

Date and Time of Contact:

<sup>1</sup> Every person or organization retained, employed or designated by any client to engage in lobbying. Lobbyist does not include any officer, director, trustee, employee, counsel or agent of the state, or of any municipality or subdivision of New York state, when such person are discharging their official duties.