

EXECUTIVE ORDERS

Executive Order No. 127: Providing for Additional State Procurement Disclosure.

WHEREAS, the State of New York and its public authorities have an obligation to carry out their responsibilities in the most efficient and effective manner possible;

WHEREAS, over the past eight and one-half years, we have made tremendous progress in streamlining and improving state government;

WHEREAS, the State of New York and its public authorities enter into numerous procurement contracts and real estate transactions which involve substantial sums of public moneys;

WHEREAS, while the State Legislature has enacted strong laws to regulate the procurement process and maintain its integrity (Procurement Stewardship Act, Chapter 83 of the Laws of 1995) and to regulate persons who appear before state government on certain matters (Lobby Law, Chapter 2 of the Laws of 1999), more can be done to maintain continued public confidence in the State's procurement process; and

WHEREAS, increased disclosure regarding persons and organizations contacting state government regarding procurement and real estate transactions would enhance public confidence in the procurement process.

NOW, THEREFORE, I, George E. Pataki, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and Laws of the State of New York, do hereby order as follows:

I. Definitions

1. "Covered agency or authority" shall mean any State department, office or division, or any board, commission or bureau thereof, and any public benefit corporation, public authority or commission at least one of whose members is appointed by the Governor, and shall include the State University of New York and the City University of New York.

2. "Procurement contract" shall mean any contract or agreement, or subsequent amendment thereto, involving an estimated annualized expenditure in excess of fifteen thousand dollars for: (i) the purchase of goods or services; (ii) the purchase, sale, lease, acquisition or granting of other interests in real property; and (iii) public works. The term "procurement contract" shall not include a contract that, by law, must be awarded to the lowest responsible bidder, or a contract that, by law, must be awarded on the basis of lowest price subsequent to a competitive bid process.

3. "Proposal" shall mean any proposal, quotation, bid, offer or response to a covered agency or authority's solicitation of submissions in expectation of an award of a procurement contract.

4. "Attempt to influence the procurement process" shall mean any attempt to influence any determination of a member, officer or employee of a covered agency or authority by a person other than a member, officer or employee of a covered agency or authority with respect to: (a) the solicitation, evaluation or award of a procurement contract; or (b) the preparation of specifications or request for submissions of proposal for a procurement contract.

5. "Contractor" shall mean bidder, offeror or proposer for a procurement contract and shall include any subcontractor who may be engaged

in the delivery of goods, services or construction pursuant to the procurement contract.

6. "Financial interest in the procurement" shall mean:

(a) owning or exercising direct or indirect control over, or owning a financial interest of more than one percent in, a contractor or other entity that stands to gain or benefit financially from the award of a procurement contract;

(b) receiving, expecting or attempting to receive compensation, fees, remuneration or other financial gain or benefit from a contractor or other individual or entity that stands to benefit financially from a procurement contract;

(c) being compensated by, or being a member of, an entity or organization which is receiving, expecting or attempting to receive compensation, fees, remuneration or other financial gain from a contractor or other individual or entity that stands to benefit financially from a procurement contract;

(d) receiving, expecting or attempting to receive any other financial gain or benefit as a result of the procurement contract;

(e) being a relative of a person with a financial interest in the procurement, as set forth in paragraphs (a) through (d) of this subdivision. For purposes of this paragraph, "relative" shall mean spouse, child, stepchild, stepparent, or any person who is a direct descendant of the grandparents of an individual listed in paragraphs (a) through (d) of this subdivision or of the individual's spouse.

II. Agency and Authority Responsibilities

1. Every covered agency and authority shall ensure that bid or proposal documents for procurement contracts include the name, address, telephone number, place of principal employment and occupation of every person or organization retained, employed or designated by or on behalf of the contractor to attempt to influence the procurement process and whether such person or organization has a financial interest in the procurement.

2. Every covered agency and authority shall ensure that bid or proposal documents for procurement contracts shall include the name, address, telephone number, place of principal employment and occupation of every person or organization subsequently retained, employed or designated by or on behalf of the contractor to attempt to influence the procurement process and whether such person or organization has a financial interest in the procurement. Every covered agency and authority shall ensure that contractors shall inform the agency or authority of the identity of any such persons or organizations prior to such person or organization contacting a covered agency or authority.

3. Prior to making an award of a procurement contract, each covered agency or authority shall make a determination of responsibility of the proposed awardee. Every covered agency and authority shall ensure that bid or proposal documents for procurement contracts shall require bidders, offerors or proposers to disclose findings of non-responsibility made within the previous five years by any covered agency or authority where such prior finding of non-responsibility was due to intentional provision of false or incomplete information to a covered agency or

authority with respect to this Order. In making a determination of responsibility, covered agencies and authorities shall take into account any such prior finding and shall not award a contract to such bidder, offeror or proposer unless the covered agency or authority finds that the procurement contract would be in the best interests of the State notwithstanding the prior finding of non-responsibility, and such agency or authority shall include in its procurement record a statement describing its basis for such determination.

4. Every covered agency and authority shall ensure that any contacts that reasonably appear to be an attempt to influence the procurement process by persons and organizations other than those identified in bid or proposal documents or supplemental bid or proposal documents shall be recorded by the agency. Upon any such contact, the covered agency or authority shall obtain the same information required in bid or proposal documents pursuant to subdivisions 1 and 2 of this Part and inquire, determine and record whether the person or organization making such contact was retained, employed or designated by or on behalf of the contractor to attempt to influence the procurement process and whether such person or organization has a financial interest in the procurement.

5. Every covered agency and authority shall, for each procurement contract, maintain a written record of all persons and organizations identified in subdivision 1, 2 and 4 of this Part. Such record shall be open to inspection by the public.

6. The failure of a contractor to timely disclose accurate and complete information or to otherwise cooperate with a covered agency or authority in the implementation of this Order shall be considered by such agency or authority in its determination of the responsibility of such contractor, and no procurement contract shall be awarded to any such contractor unless the procurement record contains a written determination by such agency or authority that the contract award would be in the best interests of the State notwithstanding the failure of the contractor to provide such information or to otherwise cooperate.

7. Every procurement contract made subject to this Order shall contain a certification by the awardee that all information provided to the soliciting agency or authority with respect to this Order is complete, true and accurate and each such procurement contract shall contain a provision authorizing the covered agency or authority to terminate such contract in the event such certification is found to be intentionally false or intentionally incomplete.

III. Remedial Action; Guidance; Applicability

1. Any member, officer or employee of a covered agency or authority who fails to comply with the provisions of this Order shall be subject to appropriate disciplinary action by such agency or authority. In addition, where such conduct violates the Public Officers Law, such matter shall be referred to the State Inspector General and the State Ethics Commission, as may be appropriate.

2. Within 45 days of this Order, the Office of General Services shall issue written guidance to covered agencies and authorities regarding the implementation of this Order. Such guidance shall be deemed to be incorporated in this Order to the extent not inconsistent herewith.

3. The provisions of this Order shall be applicable to procurement contracts with respect to which a solicitation for bids, offers or proposals is made 60 days or more after this Order has taken effect.

4. Nothing in this Order shall be deemed to allow contacts or communications regarding a procurement contract where otherwise prohibited by law, rule, regulation or agency or authority policy.

5. Nothing in this Order shall affect the requirement that members, officers and employees of covered agencies and authorities to report allegations of impropriety involving procurement contracts to appropriate agency personnel, the agency or authority Inspector General, if applicable, and the State Inspector General and the State Ethics Commission, as appropriate.

(L.S.)

GIVEN under my hand and the Privy Seal of the State in the City of Albany, this sixteenth day of June in the year two thousand three.

BY THE GOVERNOR

/S/ George E. Pataki

/s/ John C. Cahill

Secretary to the Governor

Executive Order No. 128: Designation of Lower Manhattan Development Corporation to Carry Out Environmental Impact Review and to Fulfill Requirements for Receipt of Federal Assistance in Connection with the Redevelopment of Lower Manhattan Following the Terrorists Attacks of September 11, 2001.

WHEREAS, the destruction of the World Trade Center and damage to surrounding property, businesses and transportation infrastructure as a result of the terrorist attacks of September 11, 2001, has created a compelling public need for a coordinated revitalization effort in downtown Manhattan;

WHEREAS, the goals of the redevelopment of Lower Manhattan include the restoration of the area to its position as one of the nation's leading commercial, residential and cultural destinations; the restoration and enhancement of transportation facilities in the area; and the provision of an appropriate setting for a memorial to the lives lost in the terrorist attacks of September 11;

WHEREAS, planning and redevelopment of Lower Manhattan is an undertaking of statewide importance demanding close collaboration among local, state and federal agencies and requiring consideration of an array of redevelopment alternatives;

WHEREAS, the Lower Manhattan Development Corporation ("LMDC") was created at the request of the Governor of the State of New York as a subsidiary of the New York State Urban Development Corporation d/b/a Empire State Development Corporation ("ESDC"), a public benefit corporation and political subdivision of the State of New York, to coordinate the revitalization and rebuilding of Lower Manhattan south of Houston Street;

WHEREAS, LMDC works in cooperation with the public and private sectors to coordinate long-term planning for the World Trade Center site and surrounding communities, while pursuing short-term initiatives to improve the quality of life in Lower Manhattan during the revitalization effort;

WHEREAS, LMDC, working closely with the Port Authority of New York and New Jersey, has overseen several stages of planning, studies and competitions relating to the World Trade Center site and surrounding areas, including extensive public outreach and consultation with affected public and private entities, for the purpose of preparing a memorial and redevelopment project plan for the World Trade Center site subject to review under the National Environmental Policy Act ("NEPA") and the State Environmental Quality Review Act ("SEQRA");

WHEREAS, LMDC's activities and programs are funded through federal appropriations administered by the United States Department of Housing and Urban Development ("HUD") as part of its Community Development Block Grant ("CDBG") Program pursuant to the Defense Appropriations Act of 2002 (Public Law 107-117) and the Supplemental Appropriations Act of 2002 for Further Recovery from and Response to Terrorist Attacks on the United States (Public Law 107-206);

WHEREAS, the State of New York is the recipient through LMDC of federal funding administered by HUD for the purpose of redevelopment of the World Trade Center site and other areas in Lower Manhattan;

WHEREAS, LMDC is the appropriate instrumentality of the State of New York to serve as lead agency to conduct environmental reviews

under SEQRA and NEPA relating to the proposed redevelopment of the World Trade Center site and other areas in Lower Manhattan;

NOW, THEREFORE, I, GEORGE E. PATAKI, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and the Laws of the State of New York, do hereby designate LMDC as the instrumentality of the State responsible for carrying out all required environmental reviews of Lower Manhattan redevelopment plans for which the State is the recipient of assistance from HUD pursuant to the CDBG program.

FURTHER, I do hereby establish the position of Special Assistant for Lower Manhattan Development within the Executive Department and hereby designate the President of the Lower Manhattan Development Corporation to serve in such position and hereby delegate to such individual all authority necessary to act as a public officer of the State to carry out all environmental reviews that may be required by NEPA and/or related laws or regulations for Lower Manhattan redevelopment projects funded by HUD; and to serve as the Certifying Officer for the State of New York under Section 104(g) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. § 5304(g)) ("HCD Act"), in connection with the receipt of assistance from HUD under Title I of the HCD Act made available under Public Law 107-38, Public Law 107-73 at 115 Stat. 669, Public Law 107-117 at 115 Stat. 2336, and subsequent federal appropriations related to the September 11, 2001, terrorist attacks on New York City. Such authority hereby delegated includes the authority to execute the certification required under Section 104(g) of the HCD Act; the authority to specify when appropriate that the State of New York has fully carried out its responsibilities for environmental review, decision-making and action under Section 104(g)(1) of the HCD Act; the authority to consent to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 and other provisions of law specified in the regulations of HUD in 24 CFR Part 58; and the authority to consent on behalf of the State of New York and himself to acceptance of the jurisdiction of the Federal courts for the purpose of enforcement of his or her responsibilities as a responsible Federal official for these purposes.

All State agencies, departments, offices, divisions, public authorities, boards, bureaus, commissions and any other entities over which I have executive power are hereby directed to cooperate fully with both the Special Assistant for Lower Manhattan Development and LMDC and to provide any assistance necessary to fulfill the purposes of this Order.

(L.S.)

GIVEN under my hand and the Privy Seal of the State in the City of Albany, this sixteenth day of June in the year two thousand three.

BY THE GOVERNOR

/S/ George E. Pataki

/s/ John C. Cahill

Secretary to the Governor

