

New York Adds to Procurement Requirements

September 2003

Governor George Pataki of New York issued Executive Order 127 (EO 127) on June 16, 2003, which added disclosure and other requirements to the state's procurement process. On August 1, 2003, the state's Office of General Services issued guidelines to help agencies (and, hence, contractors) comply with EO 127. The requirements of EO 127 apply to certain procurements on or after August 14, 2003.

In brief, EO 127 and the guidelines require a contractor to provide four different types of information, which must be updated and supplemented on an ongoing basis. The categories of required information are as follows:

- (i) Those persons retained, employed or designated by the contractor to attempt to influence the procurement process and known to the contractor at the time of the bid/proposal or offer, including information regarding the financial interest in the procurement of identified persons.
- (ii) Those persons subsequently retained, employed or designated by the contractor to attempt to influence the procurement process.
- (iii) Information about findings of non-responsibility against the contractor in the previous five years.
- (iv) Certification by the contractor that the information provided is true and correct.

In addition, certain contracts will be required to include a termination provision based upon the failure to disclose all required information.

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Failure by a contractor to abide by the requirements of EO 127 and the guidelines will result in a finding of non-responsibility. Those contractors found to be non-responsible will be precluded from receiving a procurement contract unless the agency makes a finding on the record that such a contract is in the best interest of the state notwithstanding the prior finding of non-responsibility.

EO 127 and the guidelines apply to contracts in excess of \$15,000 with any New York state department, office or division, board, commission or bureau thereof, or with any public benefit corporation, public authority or commission, at least one of whose members is appointed by the Governor, including the State University of New York and the City University of New York. Furthermore, the Office of General Services also is encouraging voluntary compliance with EO 127 by other agencies, such as the Department of Law, the Office of the State Comptroller and the State Education Department. The requirements also apply to amendments that change the scope of the contract. Some renewal options may be considered by the contracting agencies to fall under the requirements of EO 127.

On the other hand, EO 127 and the guidelines do not apply to procurement contracts that by law must be awarded to the lowest responsible bidder or that must be awarded on the basis of lowest price subsequent to a competitive bidding process.