

Omnibus Procurement Act
Standard 15-Day Notification Form
For Proposed Contracts of \$1 Million or More
To Out-Of-State/Foreign Firms

In compliance with Section 2879 subdivision 5 of the Public Authorities Law and Section 139-i of the State Finance Law, each public authority, public benefit corporation, state agency and department shall notify the Commissioner of Economic Development of the award of a procurement contract for the purchase of goods or services from a foreign business enterprise in an amount equal to or greater than one million dollars simultaneously with notifying the successful bidder. No State agency, department or corporation shall enter into a procurement contract for said goods or services until at least fifteen days has passed

CONTRACTING AGENCY: _____

ADDRESS: _____

TELEPHONE NUMBER: _____ **FAX NUMBER:** _____

CONTACT PERSON AT AGENCY: _____

E-MAIL: _____

is preparing to enter into a contract on or about _____ with the following out-of-state/foreign firm:

FIRM NAME: _____

ADDRESS: _____

TELEPHONE NUMBER: _____ **FAX NUMBER:** _____

CONTACT PERSON AT FIRM: _____

E-MAIL: _____

FIRM'S PRINCIPAL PLACE OF BUSINESS: STATE OF _____

LOCATION WHERE GOODS/SERVICES SUBSTANTIALLY PRODUCED/PERFORMED:
STATE OF: _____

CONTRACT AMOUNT: _____ **CONTRACT TERM:** _____

BRIEF DESCRIPTION OF GOODS OR SERVICES BEING OBTAINED: _____

DATE NOTICE SENT TO DED: _____

For immediate notice to DED, please fax form to:

Department of Economic Development
Procurement Unit
30 South Pearl Street, 7th Floor
Albany, NY 12245
Telephone: 518-292-5220
Fax: 518-292-5884

(ESD- 2009)

~~MEMORANDUM~~

~~TO: All Agency, Department, Public Authority and Public Benefit Corporation Heads~~
~~FROM: Ken Schoetz, Executive Deputy Commissioner, Department of Economic Development~~
~~DATE: June 16 July 8, 2008~~
~~SUBJECT: Omnibus Procurement Act Requirement~~ **OMNIBUS PROCURMENT ACT REQUIREMENTS**

The Omnibus Procurement Act has several statutory provisions that require action on the part of State Agencies, Public Authorities and Public Benefit Corporations in awarding contracts. ~~These provisions include notification to the NYS Department of Economic Development when entering into contracts of \$1 million or more with a “foreign business enterprise”. The law specifically outlines this process, and this year DED has updated the forms for DED notification. Outlined below are OPA statutory requirements, and forms are provided to facilitate compliance with these requirements.~~

These new forms have been designed to assist agencies with proper notification. Please discard any forms dated prior to 2008.

If you have questions about this memo or the notification forms, please contact Nancy Fisher, DED Procurement Unit, 30 So. Pearl Street, Albany, NY 12245; email: nfisher@empire.state.ny.us; phone: 518-292-5220.

Discriminatory Jurisdictions

Section 165(6)(b) of the State Finance Law requires the Commissioner of the Department of Economic Development to develop a list of discriminatory jurisdictions. This is a list of states, provinces, countries or other political subdivisions that employ preferences or price distorting mechanisms on or discriminate against New York state businesses in the procurement of commodities or services in their jurisdiction.

The current list of discriminatory jurisdictions identifies the following jurisdictions as continuing their discriminatory policies against New York State bidders: **Alaska, Hawaii, Louisiana, South Carolina, West Virginia and Wyoming.**

Section 165(6)(d) of the State Finance Law requires all State agencies, and Section 2879(5)(d) of the Public Authorities Law requires all public authorities and public benefit corporations, to deny to a business in a jurisdiction that discriminates against New York State businesses an award of a contract if two conditions are met:

- the businesses’ “principal place of business” is in a jurisdiction that discriminates against New York businesses, and
- the goods and services being offered are substantially produced or performed anywhere outside New York State.

In addition, section 165(6)(c) of the State Finance Law requires state agencies and section 2879(5)(c) of the Public Authorities Law requires public authorities and public corporations to deny businesses from discriminatory jurisdictions placement on bidders lists.

Please note that the bar against contracting with any businesses from a jurisdiction that discriminates against New York state businesses applies to all contracts, even those with a de minimis dollar value. Also, a construction contractor must only have its principal place of business in a state on the discriminatory list in order to require imposition of the sanctions.

Sanctions may be waived by the head of a State agency, public authority or public benefit corporation if it is determined in writing to be “in the best interests of the state” to do so.

A standard waiver notification form designed to meet the requirements of Section 2879(5) of the Public Authorities Law and Section 165(6) of the State Finance Law is attached for your use. Please complete this form in full. Waiver notifications may be faxed to the Commissioner of the Department of Economic Development, to the attention of the Procurement Assistance Unit, at (518) 292-5884.

Annual Procurement Contract Reports

Please note that Section 139-i(2)(c) of the State Finance Law and Public Authorities Law sections 2879(7) and (8) require state agencies and public authorities to file annual contract reports by June 1 of each year.

Section 139-i(2)(c) of the State Finance Law states:“...in every State agency and department, the chief executive officer shall: (c) provide annually, on or before the first business day of June of each year, to the Department of Economic Development information pertaining to procurement contracts entered into in an amount equal to or greater than \$100,000 by such agency or department during the previous year. Such information shall include the subject matter and value of such contracts, designation of each contractor as a New York state business enterprise or a foreign business enterprise, the process used to select such contractors, as well as the status of such contracts...”

Public Authorities Law Section 2879(7) states:

“Each corporation shall annually prepare and approve a report on procurement contracts...”
Public Authorities Law Section 2879(8) states: “Each corporation shall annually submit its report on procurement contracts to...the Department of Economic Development...” Such information shall include the subject matter and value of such contracts, designation of each contractor as a New York state business enterprise or a foreign business enterprise, the process used to select such contractors, and the status of such contracts.

Annual reports from State agencies and public authorities must be submitted by June 1 of each year to the New York State Department of Economic Development, Division for Small Business, 30 South Pearl Street, Albany, New York 12245. You may also fax the report to (518) 292-5884 or e-mail it to nfisher@empire.state.ny.us If your agency has not yet filed the annual report with our office, we ask that it do so as soon as possible.

Contracts with Foreign Business Enterprises

A foreign business enterprise is a business that offers for sale goods or services that are substantially produced or performed *outside* New York State. Under the terms of Section 139(i)(2)(a) of the State Finance Law and Section 2879(5) of the Public Authorities Law "...every State agency, department and corporation shall notify the commissioner of economic development of the award of a procurement contract for the purchase of goods or services from a foreign business enterprise in an amount equal to or greater than one million dollars simultaneously with notifying the successful bidder therefor." "No State agency, department or corporation shall enter into a procurement contract for said goods or services until at least fifteen days has elapsed..."

A 15 day notification form designed to meet the requirements of Section 2879(5) of the Public Authorities Law and Section 139(i) of the State Finance Law is attached for your use. Under the Public Authorities Law and the State Finance Law you may seek a waiver of this 15 day notification requirement from the Commissioner of Economic Development. A 15 day notification waiver request form is attached for your use.

These Omnibus Procurement Act requirements were designed to achieve a level playing field for New York companies; your compliance with these measures helps maintain a competitive marketplace for New York State businesses.

If you have questions about how to implement these provisions of law, please contact the Department's Procurement Assistance Unit at (518) 292-5220.

Attachments (3)

Omnibus Procurement Act - Waiver Notification Form

In compliance with State Finance Law Section 165(6) and Public Authorities Law Section 2879(5) a state agency, public authority or public benefit corporation shall not enter into a contract with a foreign business enterprise which has its principal place of business located in a discriminatory jurisdiction contained on the list prepared by the Commissioner of Economic Development. The head of a state agency or authority may waive this requirement by filing this form with the Commissioner of Economic Development, stating why the waiver of sanctions is in the best interests of the State of New York.

Contracting Agency: _____

Contact Person at Agency: _____ E-mail: _____

Address: _____

Telephone Number: _____ Fax Number: _____

Firm Name: _____

Firm Address: _____

Contact Person at Firm: _____

Telephone Number: _____ Fax Number: _____

Location where goods/services substantially produced/performed: _____

Firm Principal Place of Business: _____

Contract Amount: \$ _____ Contract Term: _____

Brief description of goods/services to be obtained: _____

Explanation of why waiver of sanctions is in the best interest of the state (*attach additional sheets if necessary*). _____

Date _____ Signature of Agency Head / Authority Chief Executive Officer (*or designee*) _____

Print/type Name and Title of Signer

For immediate notice to DED, please fax to:
Department of Economic Development - Procurement Unit
30 South Pearl Street – 7th Floor
Albany, NY 12245
Tel 518/292-5220 Fax 518/292-5884

Omnibus Procurement Act - Form to request Waiver from 15 Day Notification

In compliance with State Finance Law Section 139-i 2(a) and Public Authorities Law Section 2879(5)(a) a state agency, public authority or public benefit corporation must notify the commissioner of economic development of the award of a procurement contract for the purchase of goods or services from a foreign business enterprise in an amount equal to or greater than one million dollars simultaneously with notifying the successful bidder. A contract shall not be awarded until at least fifteen days has elapsed, except for procurement contracts awarded on an emergency or critical basis.

These provisions may be waived by the Commission of Economic Development. This form is used to request a waiver from the 15 day notification requirement.

Contracting Agency: _____

Contact Person at Agency: _____ E-mail: _____

Address: _____

Telephone Number: _____ Fax Number: _____

Firm Name: _____

Firm Address: _____

Contact Person at Firm: _____

Telephone Number: _____ Fax Number: _____

Location where goods/services substantially produced/performed: _____

Firm Principal Place of Business: _____

Contract Amount: \$ _____ Contract Term: _____

Brief description of goods/services to be obtained: _____

Explanation of why waiver of 15 day notification is requested:

Date

Agency Head / Authority Chief Executive Officer (*or designee*)

Print name and title of Agency signer

For immediate notice to DED, please fax to:
Department of Economic Development - Procurement Unit
30 South Pearl Street – 7th Floor
Albany, NY 12245
Tel 518/292-5220 Fax 518/292-5884

Approved Denied Date: _____ Authorized Signature: _____