



**Office of
General Services**

Procurement Lobbying Law Refresher

**What does the Procurement Lobbying
Law seek to achieve?**

Why is there a Procurement Lobbying Law in NYS?

- State Finance Law sections 139-j and k was enacted in 2005 in order to regulate communications between vendors, (“offerers”) and governmental entities.
- The goal is to encourage the open, level and transparent playing field envisioned by State Finance Law section 163.

Why is there a Procurement Lobbying Law in NYS?

- Builds on the pre-existing requirements
- Formalizes and standardizes practices already in place documenting the procurement process and clarifies responsibilities and expectations

Why is there a Procurement Lobbying Law in NYS?

- PLL recognizes that communications are necessary to the conduct of Government Procurement

But ...

- There are different kinds of communications with differing obligations based on the **timing** and **kind** of the communication

So How Does PLL Impact the procurement Process?

PLL imposes four key requirements:

1. Adds specific contractual obligations;
2. Imposes formal rules on the exchange of information;
3. Requires creation of records and location for housing such records; and
4. Imposes penalties for violations.

Contractual Requirements

- Affirmation of understanding
- Certification
- Summary of PLL policy
- Question on prior non-responsibility determination
- State's reserved termination right

Formal Rules on the Exchange of Information

- Formalizes the process for the exchange of information
 - during specific periods of time
 - establishes who can talk about a procurement
 - defines where a vendor can locate the information
- *An Offerer is limited in who it can Contact*

When does the PLL apply?

The more formalized rules apply during the Restricted Period.

PLL applies upon the public announcement, public notice or public communication to **any** potential vendor of a determination of need for a procurement

Who can the Vendor Contact during the Restricted Period?

- Designated Contact(s)
- Permissible Subject Matter Communications and other exempted categories

***Any other Contacts are Impermissible
Contacts prohibited by SFL § 139-j(4)***

Who is a Designated Contact?

- Person(s) identified by Procuring Governmental Entity as authorized to receive communications and Contacts
- Must be knowledgeable about transaction
- Identified in the solicitation
- Can always refer a caller to the Designated Contacts

Are all Communications Subject to the PLL?

- No. Only communications that are an “attempt to influence” a Governmental Entity’s conduct or decisions (referred to as Contacts) are subject to these specific rules.
- Not all communications are Contacts!

What is a Contact?

- An oral, written or electronic communication
- With a Governmental Entity
- Made under circumstances where a reasonable person would infer
- That the communication was intended to influence the Governmental Entity's conduct or decisions on the Governmental Procurement

So what do you do with a Contact?

- Obligation is to record ALL Contacts
- Record of Contact is submitted for inclusion in the Procurement Record
- If it is an impermissible Contact, must refer for review and investigation by the Procuring Governmental Entity

What Happens if You Think There was an “Impermissible Contact”?

- You must record and refer to the Governmental Entity conducting the procurement
- Procuring Government Entity is obligated to review and investigate the “Contact” in accordance with the law

What Happens if You Think There was an “Impermissible Contact”?

- If, after a due process meeting, it is determined that the offerer made a “knowing and willful” violation, such offerer is found to be “non-responsible” and placed on list
- If 2nd violation occurs within 4 years, the vendor is debarred and placed on list

Net Result

- Offerer can **always** Contact Designated Contact
- Offerer cannot Contact other employees or governmental entities **unless** falls within one of the permissible subject matters (SFL §139-j(4))
 - For example, okay to file protest or complaint with OSC about the procurement, but not to otherwise Contact
 - Cannot Contact DOB to complain about a procurement (SFL 139-j(4))

What if a vendor wants more information?

- Refer to: <http://www.ogs.ny.gov/ACPL/>, which sets forth guidance from the Advisory Council on Procurement Lobbying, including FAQs.