



NY GovBuy

co-sponsored by



Ethics for Procurement Officials

April 30 & May 1, 2019

#2019NYGovBuy  @NYSPRO  @nysprocurement

Ethics for Procurement Officials

Purpose

Ethics laws are enacted to prevent both actual and apparent conflicts of interest. Today, we will introduce these laws and talk about how they impact you as a procurement officer.



Agenda

- Ethics and Procurement
- Laws and Regulations
- Gifts
- Conflicts of Interest
- Post-Employment Restrictions
- Political Activities and Outside Employment
- Ethics and the Office of the New York State Inspector General

Introduction and Overview

Goals of Today's Presentation:

- Raising Awareness
- Giving You the Ability to See Red Flags

** Not to Make You Experts!*

Introduction and Overview

Why Does it Matter?

- Public Expectation:
 - Efficient, Effective and Accountable
 - Is there a tension between Efficient and Effective and Accountable?
- Headlines and Enforcement Actions:
 - Today we will see real life ethics fails

Ethics and Procurement

#2019NYGovBuy  @NYSPRO  @nysprocurement



NY GovBuy

Ethics and Procurement

Ethical considerations in all stages of the procurement:

- Planning
- Solicitation & Selection
- Post Selection
- Protests and Debriefings
- Contract Administration

Planning

- Challenges
 - Relationships
 - Confidential Information
- Solutions
 - Recusal
 - Plan for objectivity and communication



Solicitation

- Challenges
 - Conflict of Interest
 - Gifts
 - Confidential Information
- Solutions
 - Plan for open and level process
 - Limit changes to documents

Post Selection (Evaluation and Award)

- Challenges
 - Conflict of Interest
 - Gifts
 - Confidential Information
- Solutions
 - Plan for open and level process
 - Objective Panel/Review

Protests and Debriefings

- Challenges
 - Conflict of Interest
 - Confidential Information
- Solutions
 - Plan for communication
 - Objective Panel/Review

Contract Administration

- Challenges
 - Conflict of Interest
 - Gifts
 - Confidential Information
- Solutions
 - Recusal
 - Plan for open and level process

Why Ethics matters:

- Perception of you, your agency, and government
- People will find out
- Duty to protect and respect the trust placed in us by the public

Where Are We Today?

- Public corruption exists
- A recent study reports over 7,000 State and local officials charged with corruption in the United States
- Costs taxpayers
- Diverts resources

State Integrity Rank

State

#1	Alaska
#2	California
#3	Connecticut
#4	Hawaii
#5	Rhode Island
#5	Ohio
#30	New York

Laws and Regulations

#2019NYGovBuy  @NYSPRO  @nysprocurement



NY GovBuy

- **Public Officers Law § 73:** Outside employment and professional activities, restriction on political activities, nepotism, gifts, honorarium, travel, negotiations on future employment, and post employment restrictions.
 - JCOPE Regulations: 19 NYCRR Part 930: Honoraria, 19 NYCRR Part 931: Official Activity Expense Payments, 19 NYCRR Part 932: Outside Activities, 19 NYCRR Part 933: Gift Regulations, 19 NYCRR Part 940 Public Service Announcements with Covered Officials and 19 NYCRR Part 941: Adjudicatory Proceeding Regulations
- **Public Officers Law § 74:** The Code of Ethics
- **State Finance Law Article 11:** Procurement Activities
- **Civil Service Law § 107:** Political Activity

Gifts

#2019NYGovBuy  @NYSPRO  @nysprocurement



NY GovBuy

Gifts

What is a gift?

Simple Answer: Anything more than “nominal value”



Gifts

JCOPE Gift Analysis: The main idea of the gift analysis revolves around two central questions:

- Is it a gift?
- Who is offering it to me?

Once you have answered those questions, you need to determine :

- Whether accepting the gift is a conflict of interest; and/or
- Whether the gift is intended to reward or influence you.

If the answer to either is yes, then you cannot accept the gift.



Gifts

Who is offering the gift?

Interested Sources: A person or entity that:

- Is regulated by or appears before you or your agency;
- Has contracts with, or seeks contracts with, you or your agency;
- Is a registered lobbyist or client of a lobbyist that lobbies your agency;
- Is the spouse or the minor child of a registered lobbyist or client of a lobbyist that lobbies your agency;
- Is involved in ongoing litigation that is adverse to you or your agency;
- Has received or applied for funds from your agency at any time during the previous year up to and including the date of the proposed or actual receipt of the gift;
- Attempts to influence you or your agency in an official action.

Gifts

Other considerations:

- Gifts to Third Parties
- Multiple Gifts from the Same Source
- Code of Ethics Still Applies

Gifts

These things are NOT considered to be gifts by JCOPE:

- Awards or plaques given in recognition of public service;
- Honorary degrees;
- Promotional items with no resale value;
- Discounts available to the general public;
- Gifts from those with whom there is a demonstrated familial or personal relationship;
- Contributions reportable under the Election Law;
- Meals and beverages provided to participants at professional and educational programs;
- Local travel payments for tours related to one's official activity; and
- Food or beverage valued at \$15 or less per event.

Gifts

Allowable Events – Complimentary Attendance at:

- Bona Fide Charitable Event
- Bona Fide Political Event
- Widely Attended Event
- Informational Event



Gifts – Real Life Example

A representative at the Department of Motor Vehicles (DMV) used confidential DMV records to obtain information on tickets that were being dismissed because the charging police officer resigned or retired. Using that information, the employee solicited and received money from motorists to “take care” of their ticket. The employee also received money and other items from attorneys in exchange for referring motorists to those attorneys.



Gifts

What was wrong with the employee's actions?

Gifts

- Were the items a gift?
- Were they intended to influence the DMV employee or intended as a reward for official action?



Gifts

Consequences:

The DMV employee paid a \$2,000 fine and admitted he violated Public Officers Law § 74(3)(d), which prohibits a State employee from using their State position to secure unwarranted privileges or exemptions and Public Officers Law § 73(5)(a), which prohibits State employees from soliciting or accepting a gift where it could reasonably be inferred that the gift was intended to influence him or could influence him.

Gifts – Real Life Example 2

Over a period of several years, two Department of Public Service (DPS) employees accepted rounds of golf and meals from an employee of National Grid, a regulated utility and client of a registered lobbyist. The rounds of golf and meals ranged in value from \$8 to \$88.

Gifts

- Some of the items received were valued at \$8. Was it permissible for the employees to accept those items?
- Was it permissible for the employees to accept all of the rounds of golf and meals?



Gifts

- Were the items a gift?
- Were they from an interested source?
- Were they intended or expected to influence the DPS employees or intended as a reward for official action?



Gifts

Consequences

The DPS employees resigned, one paid a \$1,000 fine and the other a \$1,500 fine, and admitted to violating Public Officers Law § 73(5)(a), which prohibits a State employee from soliciting, accepting, or receiving a gift having more than nominal value in a situation where it could reasonably be inferred that the gift was intended to influence or could be expected to influence the employee in the performance of their official duties or as a reward for official action.



Gifts

Consequences cont'd

National Grid acknowledged that it violated Legislative Law § 1-m in providing the rounds of golf and meals to the two DPS employees, paid the Commission a \$25,000 fine, and agreed to provide an ethics training course to its employees on an annual basis for 4 years.

Gifts

Travel Reimbursement

- Gift analysis
- Travel policy applies
- Optics
- Disclosure Requirements

Conflicts of Interest

#2019NYGovBuy  @NYSPro  @nysprocurement



NY GovBuy

Conflicts of Interest

This is the foundation of the State Ethics Laws

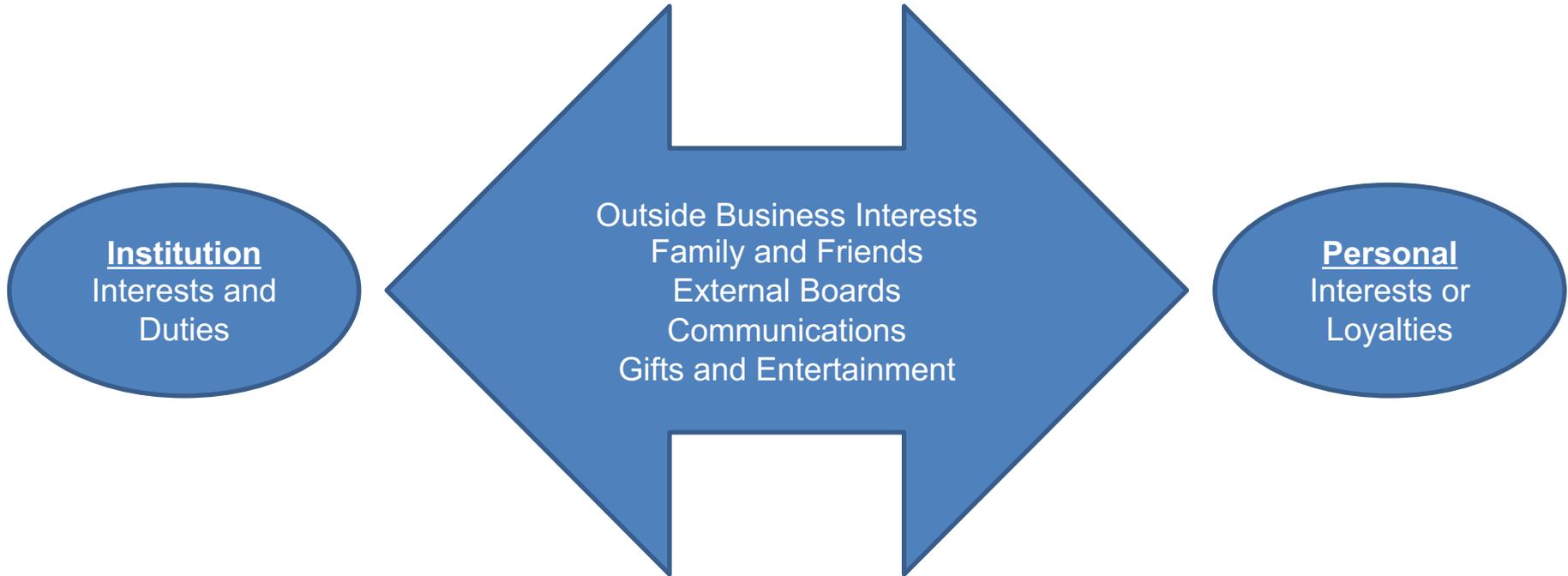
- Includes actual and apparent conflicts

Conflicts of Interest

Considerations and Potential Pitfalls:

- Impartiality
- Confidentiality
- Misuse of Position/Resources
- Business with the State
- Integrity
- Financial Conflicts

Conflicts of Interest





Conflicts of Interest

Things to Consider:

- Financial Interest
 - No financial interest (direct or indirect) in matters you are working on
 - Cannot privately profit from the performance of your official duties
- Assisting in Transaction That You Have a Relationship With
 - Fairness/Confidentiality



Conflicts of Interest – Real Life Example

An Executive Chamber employee was also the President of The Museum of Women, the Leadership Center (the “Museum”). She was compensated for her role as President. During a four-year period, while she was an Executive Chamber employee, she appeared before the Office of Parks, Recreation and Historic Preservation (“Parks”) to obtain grants of money for the Museum. She orally communicated with Parks in her efforts to obtain the grants. After leaving State service, the employee again appeared before Parks in relation to the Museum grant administered by Parks.



Conflicts of Interest – Real Life Example

Under New York State law and rules, would there be any issues with this scenario?

Conflicts of Interest – Real Life Example

The employee paid a \$15,000 fine and admitted to violating Public Officers Law §§ 73(7)(a) and 73(12), which prohibit certain appearances for compensation by State employees before State agencies in connection to obtaining grants of money as well as communications by State employees who are members of a firm, association, or corporation to employees of a State agency involved in a matter regarding the merits of said matter, namely obtaining grants of money.

Conflicts of Interest – Real Life Example 2

A former Director of the Office of Emergency Management in the New York State Division of Homeland Security and Emergency Services assisted in the recovery efforts following Hurricane Sandy. As Director, he directed an emergency response crew to his personal residence to remove portions of a fallen tree that blocked access to his house. The emergency response crew halted their efforts in clearing fallen trees that were blocking public roads and impeding emergency response efforts to clear portions of the tree from the Director's residence.

Conflicts of Interest – Real Life Example 2

- Are the actions of the employee legal?
- Are the actions of the employee ethical?



Conflicts of Interest – Real Life Example 2

The State employee was terminated from his position with the Division of Homeland Security, paid a \$4,000 fine, and admitted to violating Public Officers Law § 74(3)(d), which prohibits State employees from using their official position to secure unwarranted privileges for their personal benefit.



Post-Employment Restrictions

#2019NYGovBuy  @NYSPRO  @nysprocurement



NY GovBuy

Post-Employment Restrictions

Apply to:

- Statewide elected officials
- Members and employees of the State Legislature
- Officers/Employees of New York State agencies, departments, boards, etc.
- Members, directors and employees of New York State public authorities and public benefit corporations

Post-Employment Restrictions

Two Year Bar:

- Appearing/practicing before former agency
- Rendering services for compensation for any case or matter before your former agency.



Post-Employment Restrictions

Backroom Services Clause:

- Prohibits you from receiving payment to assist in developing a work product that will be reviewed and submitted to your former agency.
- No physical appearance necessary
- Doing work for free is permitted

Post-Employment Restrictions

Lifetime Bar

- Prohibits assisting with any projects you directly participated in while in State service for your lifetime.
- Were you an “active participant or decision maker?”

Post-Employment Restrictions

- 30-day rule
 - Inform Supervisor and Ethics Officer
 - Recusal
 - Wait 30 calendar days
- Two Year Reverse Bar/Cooling Off Period

Post-Employment Restrictions

Exceptions

- Not applicable if new position is with another government
- Certificate of Exemption
- Employee as a “resource person”

Post-Employment Restrictions

Violation of Employment Restrictions:

- Must be knowing and intentional
- Maximum of \$40,000 in civil penalties
- Value of any gift, compensation, or benefit received

Post-Employment Restrictions – Real Life Example

- John Sieber was employed by Roswell Park Cancer Institute (“RPCI”) as the Assistant Vice President of Finance from January 3, 2006 until January 26, 2011. As Assistant Vice President, Mr. Sieber was part of a team that reviewed contracts in response to a RFP to find an outside auditor. The team recommended approval of Freed Maxick CPAs, P.C. as an outside auditor and in September 2007, the RPCI Audit Committee approved a contract with Freed Maxick for an initial three-year term with an option to extend for another three years.
- Mr. Sieber left RPCI in January 2011 and joined Palladian Health LLC as CFO. Shortly thereafter, RPCI reached out to Mr. Sieber and retained him to train the new Assistant Vice President of Finance.

Post-Employment Restrictions – Real Life Example

- Mr. Sieber became self-employed in early 2012 and in April 2012, RPCI again retained Mr. Sieber, this time to coordinate a RFP for a national consultant for RPCI's restructuring project.
- Mr. Sieber then joined Freed Maxick in May 2012 as a director and shareholder. RPCI reached out to Freed Maxick and retained Mr. Sieber to work on RPCI's budget. During that time, Mr. Sieber continued to work on the RPCI restructuring project at Freed Maxick and RPCI paid Freed Maxick for the work. Mr. Sieber's compensation at Freed Maxick was a fixed amount and was not contingent on business he brought in. Additionally, Mr. Sieber's compensation did not include any net revenues from the 2007 RPCI-Freed Maxick auditing contract or extensions of that contract.

Post-Employment Restrictions – Real Life Example

Are there any problems with the employee's actions under New York State laws and rules?

Post-Employment Restrictions – Real Life Example

- Mr. Sieber agreed to pay a \$2,500 fine and acknowledged that Public Officers Law § 73(8)(a)(i) prohibits a former State employee from appearing or practicing before the employee's former State agency or receive compensation for any services rendered on behalf of any firm in relation to any case, proceeding, or application before that agency for a period of two years after termination of service or employment.
- Additionally, Mr. Sieber agreed he would not receive any net revenues from the 2014-2015 extension of the RPCI-Freed Maxick contract.

Post-Employment Restrictions – Real Life Example

- Mr. Sieber agreed to seek advice and/or approval from the Commission if RPCI later sought to engage his services or if he was to receive net revenues from work done by Freed Maxick for RPCI in relation to any matter Mr. Sieber personally participated while he was employed by RPCI.
- The Commission noted Mr. Sieber would not be prohibited from working on assignments that commenced in 2014 or later so long as those project did not involve matters that Mr. Sieber worked on while employed by RPCI.

Political Activities/ Outside Employment

#2019NYGovBuy  @NYSPro  @nysprocurement



NY GovBuy

Political Activities/Outside Employment

These are other areas that sometimes lead to conflicts of interest.

- Broad application (jobs, membership on a board, volunteer work, etc.)
- Separation of time and resources
- Be aware of approval processes
- Additional rules apply if outside activities involve doing business with the State.



Political Activities/Outside Employment – Real Life Example

A former Affirmative Action and Equal Employment Opportunity Officer for the Office of Temporary and Disability Assistance (OTDA) had outside employment as an independent contractor for the National Coalition Building Institute (NCBI), a non-profit group where he conducted private training programs regarding sexual harassment and diversity matters. After a few years, he also launched his own business doing the same training programs while still employed at OTDA and NCBI. Forty of the private trainings were conducted during the State work day.



Political Activities/Outside Employment – Real Life Example

Are there any problems with the employee's actions under New York State laws and rules?

Political Activities/Outside Employment – Real Life Example

What if:

- OTDA previously denied the employee permission to conduct the trainings because the work was “virtually identical” to his OTDA job.
- The employee did not use personal time to conduct the trainings but instead reported on his timesheets that he was doing OTDA work.

Political Activities/Outside Employment – Real Life Example

Outcome:

- The State Inspector General's Office forwarded its findings to the New York State District Attorney's Office for handling and recommended that OTDA take disciplinary action against the employee.
- The employee was terminated from employment at OTDA.

Office of the New York State Inspector General

#2019NYGovBuy  @NYSPRO  @nysprocurement



NY GovBuy

Office of the New York State Inspector General

Executive Law Article 4-A gives the State Inspector General authority to investigate allegations of corruption, fraud, criminal activity, conflicts of interest or abuse in “covered agencies,” i.e.:

- Executive branch agencies, departments, divisions, officers, boards and commissions
- Certain public authorities and public benefit corporations

Office of the New York State Inspector General

The State Inspector General also has the power to:

- Recommend remedial action to prevent or eliminate corruption, fraud, criminal activity, conflicts of interest or abuse
- Establish training programs for state officers and employees
- Review and examine policies and procedures of covered agencies

Office of the New York State Inspector General

- Section 55 orders all New York State employees and officers in covered agencies to report corruption, fraud, criminal activity, conflicts of interest or abuse by another state employee or officer, or by a person having business dealings with a covered agency
- The knowing failure of any state employee/officer to report shall be cause for removal from office or employment

Office of the New York State Inspector General

The Office of the New York State Inspector General has locations in Albany, New York City, Buffalo, Syracuse, and Hauppauge, and employs:

- Investigators
- Auditors
- Attorneys
- Forensic Accountants
- Information Technology Specialists

Office of the New York State Inspector General – Complaints

- State employees, concerned citizens, entities doing business with New York State, and anyone else who would like to make a complaint to the Inspector General can do so by phone, email, regular mail, through a web portal, or in person
- Complaints are handled by the Inspector General's Case Management Unit
- All complaints are reviewed by the Inspector General, her Executive Staff, and senior management

Office of the New York State Inspector General

The Inspector General investigates:

- Theft/Misuse of State Property
- Irregularities in awarding contracts/grants
- Falsification of records and making material misrepresentations of fact
- Giving/receiving bribes or unlawful gifts
- Disclosing confidential information
- Conflicts of interest

Office of the New York State Inspector General

The Inspector General also reviews and comments on:

- Policies
- Procedures
- Manuals
- Time Management Systems
- Vehicle Use Logs

Office of the New York State Inspector General

There are a variety of different outcomes at the end of an Inspector General investigation, including:

- Reports with findings and recommendations
- Policy changes/corrective action
- Training
- Ethics referrals and sanctions
- Disciplinary actions
- Referrals to prosecutors/arrests
- Debarment of contractors

Office of the New York State Inspector General – Sample Case 1

- Office of Medicaid Inspector General employee oversaw contract with a publicly traded company
- State contract was valued at up to \$120 million
- Employee accepted meals and alcoholic beverages from the company, including a bottle of Jim Beam
- Employee used his official position to provide the company with testimonials on the internet and elsewhere

Office of the New York State Inspector General – Sample Case 1

- Company paid to fly employee to and from Texas for an interview and offered him a job
- Employee accepted the offer – at a salary of \$135,000 per year plus a bonus – without consulting his agency, even though he was still overseeing the agency’s contract with the company
- Agency placed employee on leave and he eventually retired, forfeiting 15 vacation days

Office of the New York State Inspector General – Sample Case 1

- The Inspector General issued a public report and the matter was also referred to JCOPE
- JCOPE settled with both the employee and the company
- The company paid \$75,000 to resolve the case
- The employee paid \$14,000 to resolve his case

Office of the New York State Inspector General – Sample Case 2

- Two employees of the Public Service Commission, a five-person board that regulates New York State utilities, accepted thousands of dollars in gifts from utility executives
- The gifts included 30 games of golf
- Both employees resigned, and one of the utilities involved was fined \$1.6 million dollars

Questions?



Contact Information

Elizabeth Katagiri
Senior Attorney
New York State
Office of General Services
Empire State Plaza, 36th Floor
Albany, New York 12242
518-474-0571
elizabeth.katagiri@ogs.ny.gov

Jessica Silver
Deputy Inspector General for Infrastructure
Offices of the New York State
Inspector General
61 Broadway, 21st Floor
New York, New York 10009
212-635-3150
Jessica.silver@ig.ny.gov

