**Lobby Law Information Summarized**

The State of New York, including the State University of New York, through the NYS Finance Law and related policy, promulgates procedures that govern the procurement of goods and services by the SUNY Delhi. In addition, College employees, including those who participate in the procurement process, are required by the Public Officers Law and its provisions, commonly known as the Ethics Law, to adhere to a level of conduct consistent with maintaining the public’s confidence.

That said, in the procurement process the College and vendors each have a proper and distinct role to play which requires active communication, both written and verbal. For its part, the College strives to procure the right goods or services from a responsible vendor at the best price. Vendors, on the other hand, typically are interested in making their wares known to potential customers and presenting them in the best light in order to influence a sale. While these may be competing interests, neither is inherently inappropriate and both are inextricable factors in the procurement process. Properly managed, contact and communication between the College and the vendor community are both appropriate and necessary to a successful procurement transaction.

To enhance public confidence in New York State’s procurement process the Procurement Lobbying Act (the "Act") was adopted in 2005 and amended in 2010. The Act was established to increase public disclosure regarding persons and organizations contacting State government in order to influence the determination of procurement and/or real estate transactions. New York State Finance Law Section 139-j covers the permissible and impermissible contacts and New York State Finance Law Section 139-k covers the disclosure responsibilities of the vendors.

Generally, the Act distinguishes between permissible and impermissible contacts between a potential vendor or a person acting on behalf of the vendor, including its lobbyist, and designated officers or employees of the College. An impermissible contact is an attempt to influence the award or amendment of a contract with an annualized value in excess of $15,000, or contact with personnel other than a contact person designated by the College (see definitions), during the "restricted period" (the time commencing with the earliest written notice of the proposed procurement and ending with the final contract award). A permissible contact involves the normal flow of information between an agency and all competing vendors. The College must record all contacts, both permissible and impermissible, which occur during the restricted period, and, generally, must deny an award of contract to a vendor involved in a knowing and willful impermissible contact.

The Procurement Lobbying Act is intended to document and publicly disclose all permissible and impermissible contacts intended to influence procurement, whether in a positive informational context or not, thereby increasing public confidence in the actions of state officials and employees.

 **What it Means to the University Employee:**

The Procurement Lobbying Act ("The Act") pertains to an individual employed at the University if they are involved in the development of a procurement document (i.e. bid quote, bid specification, request for proposal, etc.), or in the evaluation of a vendor’s response to a procurement document, or are in a position to cause a procurement document to be written or a procurement decision to be made.

All written, verbal and electronic communications, in both business and social situations, intended to influence a specific planned procurement must be documented and made part of the procurement record.

The Act applies if the procurement is for goods or services when the estimated annualized value is in excess of $15,000.

The Act does not apply to the routine receipt of advertising materials received through normal distribution channels.

The Act applies from the moment a public announcement to any potential vendor is made up to the time the Office of the State Comptroller approves the transaction.

So, the responsibility of an individual employed at the College who:

 a. is or may be involved in the development of a procurement document, or

b. is involved in the evaluation of a vendor’s response to a procurement document, or

c. is in a position to cause a procurement document to be written or a procurement decision to be made is to do the following in order for the procurement to proceed to a final, successful conclusion:

If involved in procurement with an annualized value in excess of $15,000 and if contacted by anyone with regard to that procurement, whether permissible or impermissible, the employee must complete the form entitled Report of Contact under the Procurement Lobbying Act, providing only the information requested by the form. The form must be completed for each contact. However, it is not necessary to complete multiple forms for duplicate contacts from the same individual, as the dates of the contacts may be listed.

If the employee is engaged in the procurement process with an estimated annualized value in excess of $15,000 and is contacted by anyone in regards to that procurement, they must, prior to final approval, submit to the Office of Purchasing and Contracts one or more completed Report of Contact under the Procurement Lobbying Act forms.

**What it Means for a Vendor:**

 1. During the restricted period, the vendor is to only contact College personnel listed as designated contacts.

2. At the time of bid or proposal submission the vendor will need to provide a completed Procurement Lobbying Act Compliance form. Failure to provide the Procurement Lobbying Act Compliance form will result in the submission being considered non-responsible and the submission will be rejected.

3. Vendor is required to timely disclose accurate and complete information and the failure to cooperate equals no award.

4. A second finding of non-responsibility equals debarment absent compelling governmental interest (public property, public health, or safety) and sole source status.

 **The Responsibility of the vendor is:**

a. Only contact College designated personnel during the restricted period

b. Submit a completed Procurement Lobbying Act Compliance formwith bid or proposal submission.

**Definitions:**

***Procurement contract***: Any contract or agreement (including a Purchase Order) or subsequent amendment, extension, renewal or change order to an existing contract thereto, involving an estimated annualized expenditure in excess of fifteen thousand dollars ($15,000) for the purchase of goods or services; public works; or the purchase, sale, lease, acquisition of interests in real property.

***Restricted Period***: the period of time commencing with the earliest written notice, advertisement or solicitation of a procurement document (i. e. bid quote, specification, request for proposal, etc.) intending to result in a procurement contract with the College and ending with the final contract award and approval by the College and, where applicable, the state comptroller.

***Offerer***: the individual or entity, or any employee, agent or consultant or person acting on behalf of such individual or entity, whether or not the caller has a financial outcome in the procurement, that contacts the College about a procurement during the restricted period of such procurement.

***Permissible Contact***: the normal flow of information between an agency and all competing vendors.

***Impermissible Contact***: an attempt to influence the award or amendment of a contract, or contact with personnel other than a contact person designated by the College, during the "restricted period".

***Contact/Designated Person:*** A person or persons appointed by the College to act on behalf of the procuring department. Typically, a Contact /Designated Person is assigned by the department that initiated the procurement process. A person from the Office of Purchasing and Contracts, usually the Purchasing Associate responsible for the procurement, is also a Contact/Designated Person. State Finance Law does not restrict the number of Contact/Designated Persons as long as there is at least one. This information should be discussed with the Purchasing Associate during the initial planning stages of the procurement.

**Links:**

New York State Finance Law Section 139-j

New York State Finance Law Section 139-k

Frequently Asked Questions

College Personnel Report of Contact Form

Vendor Procurement Lobbying Act Compliance form

Guidelines to the New York State Lobbying Act

Advisory Council on Procurement Lobbying

New York State Commission on Public Integrity

Procurement Lobbying Legislation New York State Bar Association (December 9, 2005) (Slideshow)

Procurement Lobbying Legislation State Finance Law Provisions (February 2, 2006) (Slideshow)

Questions may also be directed to The Office of Purchasing and Contracts at 746-4502.