



The Procurement Lobbying Law: Coming Soon to a Contract Near You...



Larry Barker

President and CEO

New York State Industries for the Disabled, Inc.

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The Procurement Lobbying Law

What is it?

- ✓ It was designed to reform contracting lobbying practices by imposing similar requirements as on legislative lobbying.

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When did it start?

- ✓ The statute was enacted in June 2005 (Chapter 1, Laws of 2005).
- ✓ It went into effect on December 31, 2005.

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How is it Structured?

- ✓ **Two sets of laws changed:**
 - ✓ Legislative Law (Lobbying Commission)
 - ✓ Finance Law (OGS)
- ✓ **Two new sections were added to the Finance Law:**
 - ✓ Section 139J - Registration
 - ✓ Section 139K - Prohibitions
- ✓ **The Advisory Council on Procurement Lobbying was created.**
- ✓ **Executive order No. 127 has been rescinded.**

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What are the General Requirements?

- ✓ “Restricted Period” begins when government agency determines need – prepares solicitation
- ✓ Procuring Agencies must identify single point of contact for restricted period.
- ✓ NYSID cannot contact anyone other than the designated individual.
- ✓ “Restricted period” ends upon agency and/or OSC approval of contract.

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What are the Buying Agency's Requirements?

- ✓ Agency must record all Contacts
- ✓ Agency must report “impermissible” contacts
- ✓ Contractors must:
 - ✓ Identify representatives
 - ✓ Certify knowledge of law
 - ✓ Certify truthfulness of information

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What are NYSID's Requirements?

- ✓ NYSID must make multiple certifications:
 - ✓ Awareness and compliance
 - ✓ No prior determinations of non-responsibility
 - ✓ New contract clauses

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Are there any Exemptions?

- ✓ NYSID (Preferred Sources) EXEMPTED from Legislative Law (do not have to register.)
- ✓ NYSID **NOT EXEMPTED** from Finance Law
- ✓ Law also extends to “Affiliated Organizations”

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What can we do?

- ✓ NYSID can make “permissible contacts,” e.g., factual questions, transmittal of proposals, etc. during restricted period.
- ✓ NYSID may agree to participate in a competitive procurement, and is then bound by the Lobbying Law.

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What can't we do?

- ✓ NYSID cannot make “impermissible contacts,” e.g. attempts to influence the procurement decision during the restricted period

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Penalties for noncompliance:

- ✓ Cancellation of contract award
- ✓ Contract termination
- ✓ Debarment from bidding

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Implications for NYSID Member Agencies:

- ✓ Member agencies are **not** exempt, from **either** law
- ✓ NYSID exemption applies **only** to Preferred Source procurements (NYSID on behalf of members)
- ✓ Members acting on a non-preferred source procurement must comply
- ✓ Members who competitively bid must comply
- ✓ Members **cannot** make direct contact with purchasing agencies on Preferred Source Contracts

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Observations:

- ✓ NYSID may obtain an exemption either administratively (OGS Counsel Opinion) or Statutorily (an amendment to the new law).
- ✓ In the meantime, NYSID must comply.
- ✓ NYSID is still exempt from the OSC Vendor Responsibility requirements. – See OSC “Frequently Asked Questions” No. 51

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Observations:

- ✓ Each agency will implement the law differently.
- ✓ NYSID is seeking a Finance Law exemption based on the following:
 - ✓ NYSID operates under the Preferred Source Law (Art. XI, § 162, NYSFL).
 - ✓ NYSID is already exempt from competitive bidding.
 - ✓ NYSID does not lobby for contracts.
 - ✓ NYSID seeks compliance with the Preferred Source Law.
 - ✓ NYSID is the first procurement option, prior to competitive procurement.

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Our Responsibilities:

- ✓ Be aware of all customer requirements.
- ✓ Review every document carefully for Procurement Lobbying requirements.
- ✓ Do not initiate contact with purchasing agency staff.
- ✓ If contact must be made to the designated individual, it should be:
 - ✓ In response to a question; or
 - ✓ To transmit factual information; or
 - ✓ To transmit a requested proposal.
- ✓ Do not, in any way, attempt to influence the award process.
- ✓ Communicate through NYSID.

If in Doubt, Consult NYSID Management

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Additional Information:

- ✓ New York State Office of General Services:
www.ogs.state.ny.us
- ✓ Advisory Council on Procurement Lobbying:
<http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>
- ✓ New York State Temporary Commission on Lobbying:
www.nylobby.state.ny.us
- ✓ NYS Office of the State Comptroller:
www.osc.state.ny.us