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Ethics for Procurement Officials

What You Need to Know About the Law

May 18 & 19, 2016

Ethics for Procurement Officials

Purpose

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

Ethics for Procurement Officials

Introduction and Overview

- Laws and Regulations;
- Gifts;
- Conflicts of Interest;
- Post Employment Restrictions;
- Political Activities and Outside Employment;
- Procurement Lobbying;
- The State's System for Ethics, Risk and Compliance in Agencies and Authorities.

Ethics for Procurement Officials

Applicable Ethics Laws and Regulations

- **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

Ethics for Procurement Officials

Gifts

- In 2014, The NYS Joint Commission on Public Ethics ("JCOPE") issued changes to its regulations regarding the acceptance of gifts (19 NYCRR Part 933). These are in addition to the laws already in place. (Public Officers Law Sections 73 and 74.)

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Gifts

- What is a Gift?
  - Anything of more than nominal value. Nominal Value is not specifically defined, but JCOPE generally considers anything with a fair market value of $15.00 or less to be of nominal value.
    - Gifts include, but are not limited to: money, services, loans, travel, lodging, meals, refreshments, entertainment, restraining from exercising a legal right or a promise having a monetary value.

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Gifts

- Accepting gifts from “Interested Sources” is prohibited.
  - An Interested Source is 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 minor child of a registered lobbyist or the 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; or
    - Attempts to influence you or your agency in an official action.

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Gifts

- Under the JCOPE regulations the following items are acceptable and not considered to be gifts.
  - Awards or plaques in recognition of public service;
  - Honorary degrees;
  - Promotional items with no resale value;
  - Discounts available to the general public, or a broad segment thereof;
  - 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.

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Gifts

- Other things that are acceptable and considered gifts are
  - Travel, food and lodging expenses for speakers at informational events;
  - Complimentary attendance, including food and beverage, at a Bona Fide Charitable Event or a Bona Fide Political Event; and
  - Complimentary attendance at a widely attended event.

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Gifts

- Consideration should always be given to Public Officers' Law Section 74. So, even if accepting an item or service seems permissible under the rules just discussed, you may not accept them if acceptance would create an actual or apparent conflict of interest or give the impression of improper influence.

Ethics for Procurement Officials

Gifts

- Gifts cannot be redirected or given to someone else in order to make them permissible.
- Accepting multiple gifts from the same source could be an ethics problem.

Ethics for Procurement Officials
Gifts

Real Life Example:

An employee of the State University of New York (SUNY) at Cortland admitted to violating State gift restrictions by accepting thousands of dollars in sports apparel, tickets, and cash tips in connection with his official duties as a State employee. The employee paid a fine of $4,672, simultaneously settling disciplinary charges with SUNY as well as the investigation by the Commission. The fine represents the value of the improper gifts received between 2009 and 2013. As part of the settlement, the employee was also required to complete supplemental ethics training with the Commission.

Public Officer's Law Section (73)(5) prohibits State employees from receiving any gift of more than nominal value – including cash, travel and meals – that was intended as a reward for performing their official duties.

Ethics for Procurement Officials
Conflicts of Interest

- Public Officers Law Section 74- The Code of Ethics
  - The Code of Ethics is intended to prevent the use of your official position or authority for the benefit of yourself or another.
    - It addresses both actual conflicts of interest and the appearance of conflicts of interest.
  - The Code of Ethics represents the principles of impartiality, confidentiality, stewardship of State resources and integrity.

Ethics for Procurement Officials
Conflicts of Interest

- Rule: New York State officers and employees and Legislative members and employees shall not “have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of their duties in the public interest.”

Ethics for Procurement Officials
Conflicts of Interest

- Other rules:
  - Don’t accept other employment that will impair your independence in the exercise of your official duties.
  - Don’t accept outside employment or engage in outside activities that will require you to disclose confidential information gained through your official position.
  - Don’t disclose confidential information gained through your official position or use such information to further your own interests.
  - Don’t use or attempt to use your position to secure unwarranted privileges or exemptions for yourself or others.
  - Don’t misappropriate State property, services or resources for your own purposes.

Ethics for Procurement Officials
Conflicts of Interest

- Other rules, continued:
  - Don’t engage in transactions with any entity with which you have a financial interest that might conflict with the proper discharge of your duties.
  - Don’t give the impression that you can be improperly influenced or that others can unduly enjoy your favor or that you are affected by an relationship or position.
  - Don’t personally invest in enterprises that may be directly involved in decisions made by you or which will create a substantial conflict of interest.
  - Don’t engage in activities that will raise suspicion among the public that you are engaged in acts that are in violation of their trust.
  - Don’t sell goods or services for entities that contract with or are licensed or regulated by your agency.

Ethics for Procurement Officials
Conflicts of Interest

- Violations of Section 74 of the Public Officers Law can result in civil penalties and/or agency disciplinary action.

Ethics for Procurement Officials
Conflicts of Interest

- **Real Life Example:**

A former employee of the New York State Homes and Community Renewal agency admitted to violating the Public Officers Law by using her official agency letterhead when writing letters advocating on her own behalf and for personal friends in private landlord-tenant matters which were not related to official agency business. Under the settlement agreement with the Commission, the employee was fined $1,500. Public Officers Law §74(3)(d) provides that no officer or employee of a State agency should use his or her official position to secure unwarranted privileges for him or herself or others.

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Conflicts of Interest-Nepotism

- **Real Life Example :**
- An assistant chief officer in the MTA's track engineering division was fined $2,000 in a settlement with the Commission for violating the State's ban on disclosing confidential information acquired as part of his employment. The fine is an addition to a demotion and cut in pay by the MTA. The employee provided confidential information to a company responding to an MTA request for information. Public Officers Law §74(3)(c) prohibits an employee from disclosing confidential information gained by reason of his official position.

Ethics for Procurement Officials
Conflicts of Interest-Nepotism

- State employees are banned from participating in any decision to hire, promote, discipline or discharge a relative.
- State employees are prohibited from awarding contracts to a relative or investing public funds in any security in which a relative has a financial interest.
  - Relative is broadly defined.

Ethics for Procurement Officials
Conflicts of Interest-Nepotism

- **Real Life Example:**

- A former New York City Transit Authority manager admitted to violating the Public Officers Law prohibiting nepotism when he enlisted the assistance of subordinates in securing a Transit Authority job for his son. Under the settlement agreement with the Commission, the employee was fined $1,500. Public Officers Law §73(14) prohibits State officials from participating in any decision to hire, promote, discipline or discharge a relative for any compensated position.

Ethics for Procurement Officials
Post Employment Restrictions

- Two Year Bar;
- Lifetime Bar;
- Reverse Two Year Bar; and
- Negotiations of Future Employment;

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Post Employment Restrictions

- The rules regarding post employment restrictions are contained in Public Officers Law Section 73(8)(a).
  - Apply to even part-time and seasonal employees;
  - Apply from day one.

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Post Employment Restrictions-Two Year Bar

- For two years immediately following separation from State Service:
  - You may not appear or practice before your former agency; and
  - You may not be paid to perform backroom services.

- Special rules for Executive Chamber employees.
- Waiver for laid off employees.

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Post Employment Restrictions-Lifetime Bar

- Directly concerned and personally participated; or
- Under your active consideration.

  - Is a specific case, proceeding, application or transaction that your participated in while in State services before any New York State agency?
    - If so, you cannot participate in it regardless or compensation.
    - If it is not before a New York State agency, you may perform services on the matter provided you receive no compensation.

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Post Employment Restrictions-Exceptions

- Government to Government
- Continuity of Care for Health Care Professionals
- Certificate of Exemption from JCOPE

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Post Employment Restrictions-Reverse Two Year Bar

- Coming into State service from the private sector-you may need to recuse yourself from matters directly involving your former private sector employer.
  - This prevents the appearance that you, in the performance of your State duties, may give preferential treatment to, or be unduly influenced by your former private sector employer.
  - Runs for two years from the date that you terminated employment with the private sector employer.

Ethics for Procurement Officials

Post Employment Restrictions-Negotiation of Future Employment

- If you receive an unsolicited job offer from an entity or individual that has a specific matter pending before you, or if you are interested in soliciting an employment opportunity with such an entity or individual, you may only pursue an employment opportunity after waiting 30 days from:
    - The date the matter before you closed; or
    - The date on which you notified your supervisor and Ethics Officer of your intent to pursue a job offer and recused yourself from the matter and any further contact with the entity or individual.
- Duty to notify.
- Risk of Violating Public Officers Law Section 74 and/or the gift restrictions set forth in Public Officers Law Section 73(5).

Ethics for Procurement Officials

Post Employment Restrictions-Negotiation of Future Employment

A former assistant vice president for the Roswell Park Cancer Institute (RPCI) paid $2,500 under a settlement with the Commission for violations of the State's two-year bar on appearing or practicing before the employee's former agency. Shortly after leaving RPCI, RPCI contracted with the former State employee to work on several projects all within two years of leaving service as a State employee with RPCI. Public Officer's Law §73(8) prohibits former State employees from appearing or practicing before his or her State agency within two years of leaving State service.

Ethics for Procurement Officials
Political Activities and Outside Employment

- Public Officers Law Sections 73 and 74
  - The general rule is that prior to engaging in any outside activities consult with your agency's ethics officer or JCOPE concerning the propriety of your activities.
    - Policy makers need approval as follows:
      - Annual compensation greater than $1,000.00 requires agency approval;
      - Annual compensation greater than $5,000.00 requires JCOPE approval, agency prior approval and submission to JCOPE on the Outside Activity Report.

      * These rules do not apply to policy makers in unpaid or per diem positions.

Ethics for Procurement Officials
Political Activities and Outside Employment

- For the following activities policy makers must also seek JCOPE approval:
  - Holding an elected or appointed public office;
  - Private or public employment or activities where the annual compensation is more than $5,000.00
  - Serving as the director or officer of a for-profit corporation or institution, regardless of compensation.

Ethics for Procurement Officials
Political Activities and Outside Employment

- Policy makers (including those serving in unpaid or per diem positions):
  - Cannot serve as an officer of any political party or political organization;
  - Cannot serve as a member of any political party committee (e.g., political party district leader or member of a party's national committee).

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Political Activities and Outside Employment

- Other Rules:
  - Don’t sell goods or services worth more than $25.00 to any State agency unless sold through a competitive procurement.
  - Cannot receive compensation from any State agency in relation to:
    - The purchase, sale, rental or lease of real property, goods or services;
    - Rate making proceedings;
    - Rule or regulation making or repeal of the same;
    - Rendering consulting, representation, advisory or other services in connection with proposed legislation;
    - Obtaining grants of money or loans;
    - Licensing or permitting; or
    - Public Service Law franchises.

Ethics for Procurement Officials

Political Activities and Outside Employment

A former Empire State Development Corporation (ESDC) employee admitted to violating State Public Officers Law §73(7)(a) and agreed to pay a $5,000 fine as part of a settlement with the Joint Commission. The employee admitted that in 2009 they entered into a $15,000 contract with a New York City-based health care software company, to represent them before State government. The contract was for the employee to help obtain State grants and contracts through the executive and legislative branches of State government.

Procurement Lobbying

- Restricted
- Record
- Offerer
- Contact

Procurement Lobbying

- The purpose of the Procurement Lobbying Law is to encourage the open, level and transparent playing field envisioned by Section 163 of the State Finance Law.
  - The Law is codified in State Finance Law Sections 139-j and 139-k.
  - Applies to contracts with an estimated annualized expenditure of $15,000.00 or more.
    - Certain exemptions in statute (State Finance Law Section 139-j(1)(g))

Procurement Lobbying

- Violations = investigation
  - Sufficient cause;
  - Opportunity to be heard;
  - Knowing and willful;
  - Non-responsibility determination;
  - Report to OGS/Posting on the OGS website.

Procurement Lobbying

- The Advisory Council on Procurement Lobbying is composed of members from State and local government and the vendor community.
  - http://www.ogs.ny.gov/acpl/

Risk Management in New York State

- New York's government includes:
  - $94.25 billion operating budget for FY 2016
  - 110 executive agencies and authorities
  - 224,000 employees
  - $198 billion in contracts
  - $35 billion in federal benefits programs

- The size, scope and complexity of New York's operations, underscore the importance of a statewide system for ethics, risk and compliance.

Risk Management in New York State

- On January 21, 2015, Governor Cuomo announced the creation of New York's first statewide system for ethics, risk and compliance in agencies and authorities.
  - Designed to identify, manage and mitigate vulnerabilities in state agencies and authorities *and* identify opportunities for improvements statewide in the areas of ethics, risk and compliance.
  - System helps ensure that efficient and responsive government services are provided to New York's almost 20 million residents.

Chief Risk Officer

- On June 3, 2015, Governor Cuomo appointed the State's first Chief Risk Officer to:
  - Oversee this cutting-edge program that is the first of its kind in the country.
  - Design and implement the State's multi-layered and proactive approach to risk management.
  - Supervise the State's 21 Special Counsels for Ethics, Risk and Compliance.

Special Counsels

- As of April 2016, Special Counsels serve in 25 agencies and authorities in areas ranging from:
  - Agriculture, Markets & Alcoholic Beverages
  - Civil Rights, Labor & Workforce
  - Economic Development & Housing
  - Financial Services
  - Government Operations
  - Health & Human services
  - Public Safety
  - Recreation & Environment
  - Transportation
  - Utilities

Special Counsels

- Promote the highest levels of integrity by connecting with all members of the executive team to institute best practices and reduce risk.

- This is achieved by:

  - Engaging with General Counsels on various risk-related legal issues and supporting crisis management efforts.

  - Collaborating with Public Information Officers to provide assistance with public information management to promote transparency and public trust.

  - Working with internal controls and audit staff on matters relating to the organization's legal and ethical compliance, policy reviews, and risk analyses.

Special Counsels

- Special Counsels function on two planes:
  - Collaborate with key staff on matters that significantly affect operations.
  - Review proposed programs and initiatives to identify inherent and emerging risks.

- Communicate with each other in real-time on matters of statewide significance.
  - This dual approach builds risk management into agency and authority program design and promotes the development of statewide best practices.

Statewide Reach

- Special Counsels are also focused on statewide challenges driven by a desire to implement best practices across the State.
- On November 19, 2015, Governor Cuomo announced a partnership with the Office of the Attorney General to reduce litigation risk impacting State agencies and authorities.
- The partnership focuses on improving government efficiency and its ability to serve the residents of New York State by:
  - Reducing the costly and disruptive effects of continuing litigation on State operations.
  - Analyzing prior and recurring lawsuits.
  - Looking for ways to avoid future litigation.

Risk Management in New York State

- For further information about the program please visit:

  www.ny.gov/ethics-risk-compliance

- Contact Information:

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