2006 IT Contracting Symposium
‘05 Lobbying Act Amendments

Presented by:
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The Business Council of NYS, Inc.

- We are:
  - New York’s largest statewide employer advocate
  - More than 3,400 businesses, state & local business groups, and related entities
  - More than 1,100 manufacturing firms
  - Albany-based staff of 70
  - Several thousand private sector issue experts
‘05 Lobbying Act Amendments

● Disclaimer:
  - This presentation is an overview only
    ● Act is broad, detailed, nuanced
    ● Some provisions are vague and confusing . . .
  - Lobby Commission guidelines and/or Advisory Opinions will affect applicability and implementation
  - It is highly recommended that you discuss Lobbying Act applicability with legal counsel
Procurement Lobbying Act of ‘05
Two Separate and Distinct Components

- **State Finance Law**
  - Applies to **all vendors**
  - Establishes “restricted contact” period
  - Applies to state agencies, legislature, courts, authorities; large IDAs and local public benefit corps.
  - Violations = 4 year contract debarment

- **Lobbying Act**
  - Legislative Law Article 1-A
  - Applies to **registered lobbyists and their clients**
  - Will require some vendors to register and report
    - Other restrictions apply
  - Distinct “restricted period” restrictions
  - Civil penalties and debarment from lobbying
  - Takes effect 1/1/06
Lobbying Act: Applicability Thresholds

- Procurement Lobbying = “any attempt to influence any determination by a public official related to a government procurement”
  - Applies to state agencies, legislature, unified court system, authorities; certain municipal entities*
  - Government procurement is
    - preparation of bid documents
    - solicitation for bids
    - evaluation and awarding of bids
    - assignment, amendment, renewal, extension or material change of a procurement contract
Lobbying Act: Applicability Thresholds

● “Procurement Lobbying” excludes:
  - activities of “commission salespersons”
  - Activities under SFL Section 162 by “Preferred Sources”
  - Contacts with state legislators
    ● if legislature is not the procuring entity
  - Other miscellaneous categories
    ● Grants, railroad/utility force accounts, eminent domain
“Procurement Lobbying” excludes:
- drafting, advising, offering opinions on contracts
- submission of bids
- comments in response to requests
- “technical” contacts during restricted period
- participation in bid conferences
- negotiations after tentative contract award
- negotiations to extend municipal franchise
- parties to formal complaints
- several other categories of activity
Lobbying Act: Applicability Thresholds

- Definition of “Commission Salesperson”
  - Primary purpose of employment is sales
    - Employee or independent contractor
  - Compensated by payment of percentage of sales
    - Commission cannot be “substantially in excess of” commission payable for non-government procurement
  - Excludes persons subject to registration under other provisions of Lobbying Act
    - i.e., Legislative, regulatory, municipal lobbying
Lobbying Act: Applicability Thresholds

- “Commissioned Salesperson”
  - Lobby Commission proposal
    - Compensated in whole or in part, by the payment of a percentage amount which exceeds the non-commission percentage amount of the sale of all or a substantial part of the sales which such person has caused...
Lobbying Act: Applicability Thresholds

● “15/5” rule
  – you have to count compensation & expenses related to contracts valued > $15,000
  – lobbyist registration applies once you exceed $5000 per year* in all lobbying related compensation and/or expenses
    ● * Lobby Commission’s draft guidelines say $5000 per biennial registration cycle
Lobbying Act: Applicability Thresholds

Lobbying expenses include:

- **Reportable compensation** includes salaries, fees, payments, loans, gifts, etc...
- **Reportable expenses** means expenses incurred by or reimbursed to a lobbyist, such as telephone, support staff, consultants, receptions, gifts, advertising, electronic advocacy, and others, if related to lobbying efforts
Lobbying Act: Registered Lobbyists

**Requirements**
- Biannual registration
- Bimonthly reports
- Annual reports
- Disclosure of contract, expenses, lobbying “targets”
- Statements of termination

**Prohibitions**
- Impermissible contacts during “restricted period”
- Gifts to public officials greater than $75 in value
- Contingent contracts
Lobbying Act

Lobbying “Clients”

● Requirements
  - Semi-annual reporting
    ● Identify the client and lobbyist(s)
    ● Specific matters on which the lobbyist lobbied
    ● Entities lobbied
    ● Lobbying expenses incurred
      - Includes compensation paid or owed to lobbyists

● Prohibitions
  - Impermissible contacts during “restricted period”
  - Gifts to public officials greater than $75 in value
  - Contingent contracts
Lobbying Act: “Restricted Period”

- Extends from first notice* to final approval
- During restricted period, clients and lobbyists are prohibited from engaging in lobbying activities concerning a government procurement by contacting a person other than the designated official
  - Applies to state agencies & authorities, state legislature & courts, IDA in munis > 50,000 populations and local public benefit corps.
    - Exempts schools, most municipal entities

- **Penalties for violations**
  - Apply to individuals and organizations
  - Illegal contacts during “restricted period”
    - 1st violation = civil penalty up to $10,000
    - 2nd violation w/ 4 years = 4 year debarment from procurement lobbying and civil penalty up to $25,000
    - Lobbying while debarred = civil penalty up to $50,000 and forfeiture of compensation
  - Failure to Register
    - includes misdemeanor and felony provisions, civil penalties
    - 1st time filers get 15 day “correction period”
Let's Talk about the “$75 rule”

Gift is “anything of value given to a public official,” except:

- Complementary attendance at widely attended, officially related* events
  - *Commission says this means “reimbursable”
- Transportation, meals, accommodations for panelists, speakers and participants* at informational events
  - * Commission staff says this requires “active” participation
- Charitable/political events, ceremonial & promotional items, gifts from family members
Let’s Talk about the “$75 rule”

- Commission Advisory Opinion #60-A:
  - Incorporates Ethics Commission ruling that establishes $75 as annual threshold

- Commission draft guidelines:
  - Specifically say $75 is aggregate limit on a calendar year basis

- Commission staff:
  - Is enforcing the $75/year interpretation until/unless directed otherwise by Commission or legislature
Lobbying Act
GOING FORWARD

- Finalization of Lobby Commission guidelines
  - Commission meeting on February 23rd
- Continued outreach and education
- Additional Advisory Opinions likely
- Legislative amendments in ‘06?
Lobbying Act
GOING FORWARD

- Key provisions needing clarification
  - Applicability date
  - “Related to” government procurement
  - “Commission salesperson” criteria
  - Applicability to municipalities
  - Commencement of “restricted period”
  - Inconsistencies between SFL and Lobbying Act
Key “Take Aways”

- Need to understand applicability to your business activities
- Pay attention to “regulatory” and legislative activity in 2006
- Your sales-related staff may be subject to registration and reporting under Lobby Law!
  - Consult legal counsel as appropriate
For updated information:

- Go to TBC’s Contract Procurement Council web page:
  - http://www.bcnys.org/inside/contrcom.htm
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