



State of New York  
Department of Transportation  
Albany, N.Y. 12232  
<http://www.dot.state.ny.us>

Thomas Madison, Jr.  
Commissioner

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As you know, on January 1, 2006 the Procurement Lobby Law was enacted. This precedent setting law is very complicated and the implementation of the law poses numerous challenges. At the New York State Department of Transportation (NYSDOT) we recognize and appreciate that a number of concerns have been raised and more will likely be raised as we move forward together to comply with the law. The Department will continue to work closely with the Comptroller's Office and fellow members of the Advisory Council on Procurement Lobbying to ensure that there is agreement on the interpretation of the provisions contained in the new law. We will also continue to work closely with our industry partners to clearly define what the provisions mean and to ensure accuracy and consistency in both interpreting and communicating the requirements of the new law.

In order to help ensure compliance, NYSDOT will continue to provide clarifications to improve the general understanding of the law's provisions where needed and to do all we can to help prevent errors from occurring. Accordingly, the following is a summary of the key aspects of the law entitled "Procurement Lobby Law: What does it mean to you?" Please use this as a guideline when interacting with the Department on matters that may be covered by the new law.

Should you have any questions, please don't hesitate to contact Tom Perreault, NYSDOT's General Counsel and a member of the Advisory Council, at (518) 457-2411, or Richard (Turk) Albertin, NYSDOT's Director of Contracts, at (518) 457-2600.

NYSDOT and the construction industry are partners in this effort and we will work closely with you to make sure that the provisions of the law are understood and its requirements are met. We will do all we can to help prevent potentially unlawful and costly errors.

Thank you for your partnership and your patience.

A handwritten signature in black ink, appearing to read 'Tom Madison'.

Thomas J. Madison Jr.  
Commissioner

## **Procurement Lobby Law: What does it mean to you?**

The Procurement Lobbying Law was enacted to limit the potential for impropriety in the bidding process, and limiting and defining contacts with State Agencies is one way to achieve this. The following brief summary of the law is intended to help you differentiate between acceptable contact and prohibited contact. As you read through the summary, it is also important to note that the law is not intended to eliminate contact between contractors, consultants, sales staff, lobbyists and Department staff on some matters that have been previously discussed in the past.

**In general**, enactment of this law means that communication between contractors, consultants, and vendors with State agencies is restricted during the period of time when services for more than \$15,000 have been requested up until the time when the State Comptroller's Office has approved the contract. During this time, communication should be limited to designated contacts identified in the solicitation.

**Prior to any solicitation** contact with the Department is permitted just as it has been previously. There may be no need to record the contact, but in an effort to protect both the Department and the caller, Department staff have been encouraged to ask if the conversation will be about an ongoing solicitation. If the answer is no, there is no change from current practice. If the answer is yes, the conversation can continue **only** if the Department employee is a designated contact. If not, the Department employee is encouraged to refer the caller to a designated contact (identified in the solicitation).

**From advertisement (solicitation) to opening bids/designation** is the critical time period during which existing State Agency and contractor/consultant practices must change in order to comply with the law. With each solicitation every contractor/consultant who will submit a bid or proposal is required to include with it an "attestation" that says they understand the Procurement Lobbying Law and will comply. Forms for submitting this "attestation" are included in our solicitations/ad, construction contract proposal and can also be found on our website. For construction contracts, the bidder affirms their understanding and agreement to comply by signing the bid.

During this critical period it is important to note that **all** communication regarding the contractor/solicitation should be restricted to the designated contacts provided in the notice. This does not mean that a Department employee (who is not a designated contact) cannot provide "factual information" regarding the solicitation (e.g. "What's the status?" "Where Can I find the notice?"), but it does mean that caution should be taken to ensure that the discussion does not cross into solicitation specific issues. In order to prevent any error from occurring during this critical period it is important to note that any contacts made to the Department that a reasonable

person would infer are intended to influence the procurement will be documented and submitted to the Comptrollers Office along with the contract. Such contacts will also be made available at a central website in the Department.

It is equally important to understand that during the critical period it is okay to reach out to a designated contact at the Department to discuss technical clarifications regarding specifications or scopes. Such conversations are permissible, but caution should be taken so that there can be no inference that the discussion is intended to influence the procurement. If such an inference is made, then that conversation must be documented.

It is also important to remember that any discussion that is intended to influence the solicitation with a Department employee who is not the designated contact during this critical phase is impermissible, must be reported as such and will trigger the process for impermissible contacts described below. Again, the key words to always keep in mind or to ask yourself are “... would a reasonable person infer that the communication was intended to influence the procurement...”

**If the Impermissible Contact Process is triggered** the law requires the Department employees to report the contact to the Department’s Ethics Officer or Inspector General. Should this occur, however, there is a process that will allow the firm to respond to the allegation. If there is a determination that no influence was intended the matter will be documented and there will be no penalty assessed. If it is determined that the firm knowingly and willfully violated the Procurement Lobby Law, the firm will be prohibited from competing for this solicitation and a notice will be sent to a central location where all State Agencies will be made aware of the violation. In the case of a **second violation**, the firm will be **banned from competing for all State Agency contracts for four years.**

**During the post bid opening/designation to State Comptroller contract approval** period of time any Department employee may be contacted as necessary to proceed with the development and approval of the contract, but it remains important to keep in mind the rule of thumb regarding inferred intent to influence. In order to protect against any such potential confusion over inferred intent to influence, an expanded list of designated contacts will be provided to the firm along with the bid award. Negotiation discussions are expected and allowed, but they also must be documented every time.

**Post-Award** when the contract has been approved by the Comptroller’s Office, restrictions for that solicitation and contract are essentially lifted.

In summation, it is important to note that, as with any new law, changes may occur in interpreting and understanding the provisions. For example, while originally interpreted differently by some, it is now understood that orders on contract and other routine construction contract administrative activities are **not** covered by this law. As the process continues, the reader is therefore encouraged to check the NYSDOT website, construction ads and proposals, and other such resources, (listed below), to keep up to date on any possible changes or revised interpretations.

The New York State Department of Transportation will do its best to implement these new

requirements with the least possible disruption to our existing business practices and will continue to maintain the highest possible ethical standards for both ourselves and our industry partners. As you review the summary and work through the new requirements please feel free to address questions to Tom Perreault, NYSDOT General Counsel @ [tperreault@dot.state.ny.us](mailto:tperreault@dot.state.ny.us) or Richard Albertin, NYSDOT Director of Contracts @ [ralbertin@dot.state.ny.us](mailto:ralbertin@dot.state.ny.us).

Other available resources are:

<http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/FAQ.htm>

<http://www.nylobby.state.ny.us>

<http://www.nylobby.state.ny.us/lobbying.html>