

Minutes of the Advisory Council on Procurement Lobbying
Meeting of September 16, 2010, 11:00 am
Governor Nelson A. Rockefeller Empire State Plaza, Meeting Room 4
Albany, New York

Call to Order

Chair Anne Phillips called the meeting of the Advisory Council on Procurement Lobbying (“Council”) to order at 11:04 a.m.

Review and Acceptance of Minutes

Chair Phillips asked if there were any changes or comments to the June 14, 2010, Council meeting minutes. No changes or comments were offered and Chair Phillips asked for approval to accept the June 14, 2010, minutes. Gerard Minot-Scheuermann made a motion to accept the minutes and James Henly seconded. All approved.

Old Business

Report-Legislative Update

Chair Phillips advised that there has been no legislative activity since the last Council meeting. She indicated that the New York State Office of General Services (“OGS”) will continue to monitor any legislative activity and will notify the Council when departmental bills are solicited. Chair Phillips explained that in the past OGS has advanced the Council’s legislative proposals as part of its departmental bills. She asked the Council to provide her with any suggestions for future legislation because the next legislative session is the beginning of a new two year cycle and the Council’s previous legislative proposals will no longer be active.

Report- Outreach and Training

Chair Phillips indicated that there has been no outreach or training since the Council’s last meeting and asked Council members to provide her with any suggestions for outreach and training. She stated that OGS would follow-up on all such suggestions and arrange for training sessions with the identified entities.

Revised Frequently Asked Questions

Chair Phillips advised that the Frequently Asked Questions (“FAQ”) that the Council approved in June were posted to the Council’s webpage on the OGS website. She explained that the Council would be revisiting the three questions that were tabled during the June meeting. She asked the Council if there were any questions or comments on FAQ 3.7 which discusses when a governmental procurement begins. Michael Nevins stated that he was concerned with the language in the second paragraph referencing any potential vendor because he felt that it suggested that communicating with one vendor was sufficient. Mr. Nevins proposed removing the word any and changing potential vendor to potential vendors. Kevin King responded that the language “any

potential vendor” was taken directly from the statute. Howard Zwickel responded that the legislative intent was closer to Mr. Nevins suggestion, but agreed that the statute referred to “any potential vendor.” Mr. Nevins stated that it was the Council’s responsibility to provide guidance. Chair Phillips stated that she liked Mr. Nevins suggestion and Mr. King reiterated that the suggestion does not match the statute. Thomas Perreault stated that the statute emphasizes public communication and indicated that there should be some assurance that a private communication will not start a governmental procurement. Ronald Younkens stated that it would be consistent with FAQ 3.8 if the change proposed by Mr. Nevins was made. Mr. Perreault asked how an agency commences a Restricted Period and proposed changing the language in the last section of FAQ 3.7 to require posting notice once a governmental entity has initiated a governmental procurement. Mr. Younkens proposed changing the language to “may wish to post notice of a restricted period once it has initiated a governmental procurement.” The Council agreed to those changes. John Campanie asked if there were any other references to the language “any potential vendor” that needed to be changed and Chair Phillips indicated that OGS would review the FAQs and make them consistent.

The Council then discussed FAQ 3.8 which supplements FAQ 3.7 and asks what constitutes a public announcement. Mr. King asked that the word “all” be stricken from the response. Mr. Perreault asked if the language regarding intent could be changed as he felt uncomfortable reciting what the legislature’s intent was. Mr. Younkens suggested some word changes and the Council agreed to the revisions.

The Council then reviewed FAQ 8.1 which is also intended to compliment FAQ 3.7. Mr. Zwickel indicated that the second paragraph recognizes that the statute creates the potential for a governmental procurement to begin before a restricted period is commenced and the fact that it is important to note that other provisions of law may still apply. Mr. Perreault and Mr. Nevins asked that the last sentence of the response be amended to be consistent with FAQ 3.7. Mr. Henly asked if there were any other FAQs that addressed what restrictions apply. Mr. Zwickel suggested that the question cite to SFL§139-j(2)(b) and Chair Phillips indicated that all other applicable cross-references would be included in the response. The Council agreed to the revisions.

Chair Phillips then asked the Council to review FAQ 4.14 and indicated that OGS revised, Mr. Henly revised and there was a third option for consideration. Mr. Henly indicated that he did not have a problem with the third option. Chair Phillips then asked if the Council wanted to focus on the third option and indicated that she has received many questions on this issue since the amendments to the Procurement Lobbying Law (the “Law”) were enacted earlier this year. Mr. King indicated that the word “no” should be added to the answer. The Council made some structural changes to the answer and approved. Mr. Henly suggested that subsections D and E of FAQ 4.14 be separated and Chair Phillips agreed. Mr. Campanie made a motion to accept the FAQs as edited, allow OGS to make the edits and any necessary conforming changes and post the FAQs to the ACPL webpage on the OGS website and Mr. Minot-Scheuermann seconded the motion. All were in favor and the motion passed.

Chair Phillips stated that the Council was asked to address two questions by the New York State Office for Technology (“OFT”). She explained that the first question asked about the effect of the amendments to the definition of governmental procurement on the State Finance Law and

Legislative Law. She stated that she believed that the State Finance Law impact was addressed by FAQ 3.7 that the Council just approved and that the Legislative Law implications were the purview of the Commission on Public Integrity. She suggested referring OFT to the Commission on Public Integrity and the Council agreed. Chair Phillips then explained that the second question dealt with interpreting what was meant by oversight role in the recent amendments to the Law. She stated that the statute specifically addresses the impact of exercising an oversight role. Mr. Zwickel asked if the Council can determine when an agency is acting in an oversight role and stated that, as a best practice, agencies that normally do not act in an oversight role should document their actions or issue general policies on when they are acting in an oversight role. Chair Phillips responded that there is no generalized answer to the question. Mr. Perreault stated that the record should be kept in the agency's own records not the procurement record. Mr. Nevins stated that the answer would depend upon where the question came from. It was determined that this question would be referred back to OFT for their own determination.

2010 Annual Report

Chair Phillips stated the Council members were given a draft of the report and asked for comments, but that none were received in advance of the meeting. She explained that the report discussed the recent amendments to the Law, the Council's response to those amendments, other legislative initiatives proposed during the year and the Council's activities in 2010. Mr. Henly asked why the Legislative Law was referenced in the report. Chair Phillips explained that this was done historically because part of the Law is contained within the Legislative Law. Mr. Younkins suggested that the discussion be put in a footnote and Chair Phillips agreed. Mr. Campanie stated that the report discusses findings in the 2007 and 2009 reports regarding the additional burdens created by the Law and asked if a cost-benefit analysis was ever done. Mr. Zwickel responded that the question could be the focus of a future survey, but indicated that the Governor and the Legislature are both very committed to the Law. Chair Phillips agreed that this should be a topic for future discussions. The Council made minor changes to the report. Mr. Henly made a motion to approve submission of the report with the changes made by the Council with the proviso that it be sent to the Council members in advance of being distributed. Mr. Minot-Scheuermann seconded and all approved.

Discussion Items

Open Council Discussion

Chair Phillips asked if there was anything to consider and no issues were raised.

Chair Phillips advised that the next meeting is scheduled to be held on Monday, October 25, 2010, at 11:00 a.m. in Meeting Room 5, but indicated that if that meeting was not necessary it would be cancelled.

Mr. Minot-Scheuermann made a motion to adjourn and Mr. King seconded. The meeting was adjourned at 12:25 p.m.

Attachments

Voting Record Lists (3)

In Attendance

Michael Nevins

Thomas Perreault

James Henly

Anne Phillips

Gerard Minot-Scheuermann

Ronald Younkens (arrived at 11:08)

Kevin King

S. John Campanie

ADVISORY COUNCIL ON PROCUREMENT LOBBYING

VOTING RECORD LIST

DATE: September 16, 2010

MOTION/RESOLUTION: Motion to approve minutes from the June 14, 2010 Council meeting.

MEMBER NAME	APPOINTING AUTHORITY	AYE	NO	ABSTAIN	ABSENT
Campanie, S. John, Madison County Attorney	Governor, Representing Local Governments	X			
Henly, James, General Counsel, Metropolitan Transportation Authority	Governor representing Public Authorities	X			
Jacobson, Richard P.,	Temporary President of the Senate				X
King, Kevin, Supervising Attorney Office of the State Comptroller	State Comptroller	X			
Minot-Scheuermann, Gerard, Division of the Budget	Director of the Division of the Budget	X			
Nevins, Michael J., Senior Vice President, JP Morgan Chase	Governor, Representing the Contracting Community	X			
Perreault, Thomas D., First Assistant Counsel, Dept. of Transportation	Commissioner of Transportation	X			
Phillips, Anne G., (Chair), Associate Counsel, Office of General Services	Commissioner of General Services	X			
Velazquez, Elisa, General Counsel, NYC Mayor's Office of Contract Services	Mayor of the City of New York				X
*Younkins, Ronald P., Chief of Operations Office of Court Administration	Chief Judge of the Court of Appeals				X
Vacant	Speaker of the Assembly				

TOTALS:

AYES: 7

NOES: 0

ABSTENTIONS: 0

ABSENCES: 3

*Arrived late, not present for this vote

ADVISORY COUNCIL ON PROCUREMENT LOBBYING

VOTING RECORD LIST

DATE: September 16, 2010

MOTION/RESOLUTION: Motion to accept the FAQs as edited, allow OGS to make the edits and any necessary conforming changes and post the FAQs to the ACPL webpage on the OGS website.

MEMBER NAME	APPOINTING AUTHORITY	AYE	NO	ABSTAIN	ABSENT
Campanie, S. John, Madison County Attorney	Governor, Representing Local Governments	X			
Henly, James, General Counsel, Metropolitan Transportation Authority	Governor representing Public Authorities	X			
Jacobson, Richard P.,	Temporary President of the Senate				X
King, Kevin, Supervising Attorney Office of the State Comptroller	State Comptroller	X			
Minot-Scheuermann, Gerard, Division of the Budget	Director of the Division of the Budget	X			
Nevins, Michael J., Senior Vice President, JP Morgan Chase	Governor, Representing the Contracting Community	X			
Perreault, Thomas D., First Assistant Counsel, Dept. of Transportation	Commissioner of Transportation	X			
Phillips, Anne G., (Chair), Associate Counsel, Office of General Services	Commissioner of General Services	X			
Velazquez, Elisa, General Counsel, NYC Mayor's Office of Contract Services	Mayor of the City of New York				X
Younkins, Ronald P., Chief of Operations Office of Court Administration	Chief Judge of the Court of Appeals	X			
Vacant	Speaker of the Assembly				

TOTALS:

AYES: 8

NOES: 0

ABSTENTIONS: 0

ABSENCES: 2

ADVISORY COUNCIL ON PROCUREMENT LOBBYING

VOTING RECORD LIST

DATE: September 16, 2010

MOTION/RESOLUTION: Motion to approve submission of the report with the changes made by the Council with the proviso that it be sent to the Council members in advance of being distributed.

MEMBER NAME	APPOINTING AUTHORITY	AYE	NO	ABSTAIN	ABSENT
Campanie, S. John, Madison County Attorney	Governor, Representing Local Governments	X			
Henly, James, General Counsel, Metropolitan Transportation Authority	Governor representing Public Authorities	X			
Jacobson, Richard P.,	Temporary President of the Senate				X
King, Kevin, Supervising Attorney Office of the State Comptroller	State Comptroller	X			
Minot-Scheuermann, Gerard, Division of the Budget	Director of the Division of the Budget	X			
Nevins, Michael J., Senior Vice President, JP Morgan Chase	Governor, Representing the Contracting Community	X			
Perreault, Thomas D., First Assistant Counsel, Dept. of Transportation	Commissioner of Transportation	X			
Phillips, Anne G., (Chair), Associate Counsel, Office of General Services	Commissioner of General Services	X			
Velazquez, Elisa, General Counsel, NYC Mayor's Office of Contract Services	Mayor of the City of New York				X
Younkins, Ronald P., Chief of Operations Office of Court Administration	Chief Judge of the Court of Appeals	X			
Vacant	Speaker of the Assembly				

TOTALS:

AYES: 8

NOES: 0

ABSTENTIONS: 0

ABSENCES: 2