

Minutes of the Advisory Council on Procurement Lobbying
Meeting of October 15, 2009, 11:00 am
Governor Nelson A. Rockefeller Empire State Plaza, Meeting Room 5
Albany, New York

Call to Order

Chair Anne Phillips called the meeting of the Advisory Council on Procurement Lobbying (“Council”) to order at 11:02 a.m.

Review and Acceptance of Minutes

Chair Phillips asked if there were any changes or comments to the July 8, 2009 Council meeting minutes. No changes or comments were offered and Chair Phillips asked for approval to accept the July 8, 2009 minutes. Bruce Fernald made a motion to accept the minutes and S. John Campanie seconded. All approved.

Old Business

Report- Outreach and Training

Chair Phillips advised that the New York State Office of General Services (“OGS”) has not made any presentations since the last meeting. She indicated that she will be speaking on Procurement Lobbying & Ethics in the Public Sector at the Dormitory Authority of the State of New York’s 24th Annual Minority and Women Business Enterprises Conference on Friday, October 23, 2009. Chair Phillips asked that Council members advise her of any groups that they believe would be interested in a presentation.

Report-Legislative Update

Chair Phillips advised that Chapter 169 of the Laws of 2009, extending the sunset date of State Finance Law §§139-j and 139-k until March 10, 2010, was enacted on July 11, 2009. She explained that despite the fact that the Council proposed legislation extending the sunset date until July 31, 2011, the Assembly chose the March 2010 date in order to necessitate discussion of procurement issues, including procurement lobbying, early in the next legislative session. Chair Phillips stated that OGS has not yet had any meetings with the Assembly on this issue, but indicated that OGS will continue to pursue the matter.

Chair Phillips advised that the Governor’s Office issued its request for State agencies and Public Authorities to submit legislative proposals to the Executive Chamber for review and analysis by the Office of Governor’s Counsel (“Counsel’s Office”), with input from the Division of the Budget, Deputy Secretaries and program staff, prior to approval for submission to the Legislature (the “Call Letter”). She explained that the Council’s legislative proposal, extending the sunset of State Finance Law §§139-j and 139-k (S. 3360), will carryover into the next legislative session, so the Council could continue to pursue that or propose new legislation. Kevin King stated that to the extent the bill accomplishes what the Council wants, the Council should pursue it. Chair Phillips asked if the Council wanted to propose a new sunset date in 2012 because

by the time any legislation was passed the 2011 date would be approaching. Mr. King questioned how the Legislature would react to a later date because they specifically provided for a short extension. Chair Phillips asked if the Council would like to extend an invitation to Assemblywoman DeStito to attend the Council's next meeting. Mr. King responded that it would be helpful to know what the Assembly's concerns are. Chair Phillips indicated that she would extend the invitation to Assemblywoman DeStito, and explained that the March 10th sunset date is risky because at that time the budget takes up most of the Legislature's attention. Mr. Fernald asked if OGS would be meeting with the Assembly before the Council's next meeting. Chair Phillips responded that she hoped so, and stated that she would keep the Council updated on communications with the Assembly. Mr. Fernald asked if OGS was communicating with anyone in the Senate and Chair Phillips answered no.

Chair Phillips then asked if the Council would also like to continue to propose its other legislative proposal (S. 3362). Mr. Fernald stated that the Council felt that the technical amendment was an important piece of legislation. Chair Phillips explained that last year agencies were only allowed to propose six bills, but OGS was allowed to introduce the Council bills without counting them towards OGS' total number of bills. She stated that this year agencies are only allowed to propose three new bills and indicated that OGS would again ask to introduce the Council bills without counting them towards OGS' total number of bills.

Chair Phillips made a motion authorizing OGS to advance legislation, on behalf of the Council, for an extension of the State Finance provisions of the Law and for technical amendments to the Law. Thomas Perreault seconded, and all approved.

Discussion Items

2009 Annual Report

Chair Phillips explained that the Executive Summary would be added once the report was finalized. She then suggested that the Council go through the report page by page. Chair Phillips explained that A. 8314/S. 4085 was proposed because OSC asked for the ability to communicate verbally with Offerers during the contract review process, provided that a written record was subsequently kept of those communications. Mr. King added that typically an initial protest is received by OSC in writing, and explained that this bill would allow OSC to more efficiently deal with communications during the contract review process by making telephone calls instead of proceeding through formal written communications. Chair Phillips stated that A. 8314/S. 4085 was another carryover bill and indicated that the bill would also allow any agency involved in a procurement to designate its own contacts for the procurement. She explained that numerous agencies can be involved in a procurement, such as when OGS does a procurement for dump trucks to be used by the Department of Transportation ("DOT"). She stated that in such instances, DOT often prepares the specifications for the trucks and may also be involved in the evaluation process. The amendment would allow for contacts between Offerers and all governmental entities participating in a procurement. Chair Phillips asked if the Council supported A. 8314/S. 4085. Mr. Campanie and Elisa Velazquez indicated that they did and Chair Phillips indicated the agreement of the Council as a whole.

Chair Phillips explained that S. 4527/A. 649 would create another Advisory Council located within the Commission on Public Integrity. She stated that this bill may be caught up in larger ethical issues as there was no action on, or discussion of, this bill by the Legislature. Chair Phillips indicated that the number of legislative proposals introduced shows that there is an interest in procurement lobbying issues, but no real consensus on how to approach those issues. Ronald Younkens said that if the Council is opposed to the creation of a second Advisory Council the report should state that. Mr. Campanie agreed. Mr. Campanie asked who sponsored S. 4527/A. 649, and Chair Phillips stated that information would be added to page 17 of the report. Mr. Perreault asked that the bill numbers for the Council proposals be put in parenthesis when the bills are discussed in the report. Chair Phillips agreed. A discussion ensued regarding the limits that should be placed upon the new permissible subject matter exception category proposed by the Council. Mr. Perreault stated that the Law should not be a barrier to the ability to make complaints and proposed that the exception be expanded to include fraud lines and other similar mechanisms. Chair Phillips stated that at OGS the designated contact would forward the complaint to the appropriate business unit for action. Mr. Perreault suggested adding "other designees for complaints" and Chair Phillips suggested adding "an additional permissible subject matter exception category" on page 16 of the report. Mr. King stated that Chair Phillips' addition would make clear that the exception was in addition to the designated contacts already named, and the Council agreed. Mr. Fernald asked that the Commission on Public Integrity be spelled out on page 17 and Chair Phillips agreed. Chair Phillips asked if there were any other comments on the report. No additional comments were offered and Chair Phillips asked for approval to accept the draft report as amended. Mr. Younkens asked what the process would be for finalizing the report. Chair Phillips stated that a revised draft would be circulated in advance of the November meeting so that the Council could finalize and accept the report at that meeting. Mr. Perreault made a motion authorizing OGS to prepare a revised draft of the 2009 annual report based on today's discussion and make such additional changes as it deems appropriate in order to circulate the draft prior to the November meeting. Gerard Minot-Scheuermann seconded and all approved.

2009 Survey

Chair Phillips explained that based upon the discussion at the last meeting, OGS created a survey regarding the number and nature of investigations and findings regarding the Law. She asked for any questions or comments on the survey. Ms. Velazquez asked if the State Finance Law was the same as the Law and stated that the introduction should reflect the statute. Mr. Younkens stated that sometimes the survey only referred to a part of the statute, so it was important to properly reference those sections. Chair Phillips agreed and indicated that she would prefer to leave in specific references to portions of the statutes because some people will refer back to the particular section of the Law referenced in a question. Ms. Velazquez asked if the questions could just say §139-j and Chair Phillips replied that the survey should include references to both State Finance Law §§ 139-j and 139-k as appropriate. Ms. Velazquez asked if the survey would be sent to procurement people and Chair Phillips stated that it would be sent to Ethics Officers. Ms. Velazquez asked if all agencies have Ethics Officers and Chair Phillips replied yes. Mr. Perreault stated that at DOT the Ethics Officer is an attorney in Counsel's Office, and agreed that including the statutory references would serve a dual function of both educating and allowing for the compilation of data.

Ms. Velazquez asked if a non-responsibility determination was kept in a central location. Chair Phillips indicated that those determinations are to be reported to OGS and then posted on the Council's website. Mr. King said that the survey would be a good way to check and see if the determinations are being reported to OGS. Chair Phillips stated that question seven would be useful in case someone wanted to talk about their experiences. Mr. Younkens asked if question seven was asking if the respondent wanted to discuss with the Council or with OGS staff. Chair Phillips replied that it could be either, and indicated that if there were numerous responses OGS would ask the Council if it wanted OGS to do some preliminary questioning and summarizing for the Council's review. Chair Phillips indicated that § 4 would allow the Council to see if there are unreported determinations. Mr. Minot-Scheuermann stated that question 10 included three thoughts. Chair Phillips replied that a dialogue box was provided in order to allow for explanations. Mr. King suggested removing allegations from that question. Ms. Velazquez said that there can be different things and indicated that the question may provoke discussion. She did, however, state that it may not hurt to separate question 10 into two questions. Mr. Younkens asked if "discussion" was the right heading for §5 and indicated that §3 was also referred to as a discussion section. He explained that §5 discusses further actions and suggested that the title be changed to "recommendations for action." Mr. Younkens asked that the exit boxes be explained and Chair Phillips stated that the software allowed respondents to exit the survey and come back. Ms. Velazquez asked for the time period of the survey and Chair Phillips stated that respondents would have ten days to respond and a reminder would be sent after five days. She explained that most responses come in within the first forty-eight hours, but said that the reminder notice does produce some additional responses. Mr. Younkens asked that question seven not be mandatory and Ms. Velazquez asked that questions three and six be mandatory. Mr. Campanie said that people may disregard the survey if too many questions are mandatory. Mr. King agreed. Ms. Velazquez reiterated her requests and stated that question 14 should not be mandatory. Chair Phillips said that OGS would revise the survey as discussed. Mr. Younkens made a motion authorizing OGS to revise the survey based on today's discussion and release. Mr. Perreault seconded and all approved.

Open Council Discussion

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

Chair Phillips advised that the Council's next meeting is scheduled for November 12, 2009 in Meeting Room 4. Mr. Campanie indicated that he could not attend. Chair Phillips stated that the November meeting would probably be the last meeting of the year if the report was approved. She said that the Council does not have an obligation to have a specific number of meetings, but that it has tried to meet quarterly. She indicated that OGS would send the Council members the dates for the 2010 meetings.

Elisa Velazquez made a motion to adjourn and Kevin King seconded. The meeting was adjourned at 12:15 p.m.

Attachments

Voting Record Lists (4)

In Attendance

S. John Campanie	Bruce Fernald	Kevin King
Anne Phillips	Thomas Perreault	Gerard Minot-Scheuermann (arrived at 11:05 a.m.)
Elisa Velazquez (arrived at 11:22 a.m.)		Ronald Younkins

Absent:

Michael Nevins

ADVISORY COUNCIL ON PROCUREMENT LOBBYING

VOTING RECORD LIST

DATE: October 15, 2009

MOTION/RESOLUTION: Motion to approve minutes from the July 8, 2009 Council meeting.

MEMBER NAME	APPOINTING AUTHORITY	AYE	NO	ABSTAIN	ABSENT
Campanie, S. John, Madison County Attorney	Governor, Representing Local Governments	X			
Fernald, Bruce, Special Assistant to the Secretary of the Senate, New York State Senate	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	Governor representing Public Authorities				
Vacant	Speaker of the Assembly				

TOTALS:

AYES: 7

NOES: 0

ABSTENTIONS: 0

ABSENCES: 2

* Arrived late, not present for this vote.

ADVISORY COUNCIL ON PROCUREMENT LOBBYING

VOTING RECORD LIST

DATE: October 15, 2009

MOTION/RESOLUTION: Motion authorizing OGS to advance legislation, on behalf of the Council, for an extension of the State Finance provisions of the Law and for technical amendments to the Law.

MEMBER NAME	APPOINTING AUTHORITY	AYE	NO	ABSTAIN	ABSENT
Campanie, S. John, Madison County Attorney	Governor, Representing Local Governments	X			
Fernald, Bruce, Special Assistant to the Secretary of the Senate, New York State Senate	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	Governor representing Public Authorities				
Vacant	Speaker of the Assembly				

TOTALS:

AYES: 8

NOES: 0

ABSTENTIONS: 0

ABSENCES: 1

ADVISORY COUNCIL ON PROCUREMENT LOBBYING

VOTING RECORD LIST

DATE: October 15, 2009

MOTION/RESOLUTION: Motion authorizing OGS to prepare a revised draft of the 2009 annual report based on today's discussion and make such additional changes as it deems appropriate in order to circulate the draft prior to the November meeting.

MEMBER NAME	APPOINTING AUTHORITY	AYE	NO	ABSTAIN	ABSENT
Campanie, S. John, Madison County Attorney	Governor, Representing Local Governments	X			
Fernald, Bruce, Special Assistant to the Secretary of the Senate, New York State Senate	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			
Nevens, 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	Governor representing Public Authorities				
Vacant	Speaker of the Assembly				

TOTALS:

AYES: 8

NOES: 0

ABSTENTIONS: 0

ABSENCES: 1

ADVISORY COUNCIL ON PROCUREMENT LOBBYING

VOTING RECORD LIST

DATE: October 15, 2009

MOTION/RESOLUTION: Motion authorizing OGS to revise the survey based on today's discussion and release.

MEMBER NAME	APPOINTING AUTHORITY	AYE	NO	ABSTAIN	ABSENT
Campanie, S. John, Madison County Attorney	Governor, Representing Local Governments	X			
Fernald, Bruce, Special Assistant to the Secretary of the Senate, New York State Senate	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	Governor representing Public Authorities				
Vacant	Speaker of the Assembly				

TOTALS:

AYES: 8

NOES: 0

ABSTENTIONS: 0

ABSENCES: 1

