

Advisory Council on Procurement Lobbying

2009 Annual Report

Table of Contents

Executive Summary

I. Introduction

- A. The Advisory Council on Procurement Lobbying
- B. The ACPL's Reporting Obligations Pursuant to Legislative Law §§1-t (d) and (f) (2)

II. ACPL Activities

III. Implementation Issues and Recommendations

- A. Extension of Sunset of State Finance Law §§139-j and 139-k
- B. Discussion of Legislative Efforts Taken Which Would Affect the Law
 - 1. S. 3362
 - 2. A. 314/S. 4085
 - A. Expansion of Permissible Subject Matter Communications
 - B. Expanding Possible Designated Contacts to Permit Non-Procuring Agencies to Designate
 - 3. A.649/S. 4527
 - A. Definition of Restricted Period
 - B. Procedure for Issuing Complaints During Procurement Process
 - C. Creation of a New Advisory Council on Procurement Lobbying

IV. Conclusion

Executive Summary

This document sets forth the Advisory Council on Procurement Lobbying's (the "ACPL") Annual Report for 2009, in compliance with the reporting obligations mandated by §1-t (d) of the Legislative Law. The report provides a summary of the ACPL's activities in 2009, and discusses legislative efforts undertaken during the year which would affect the Law.

In 2009, the ACPL authorized the New York State Office of General Services ("OGS") to advance two legislative proposals on its behalf. The first, which was introduced in the Senate by Senator Kruger as S. 3360, would have extended the sunset of State Finance Law §§139-j and 139-k until July 31, 2011. The second, also introduced in the Senate by Senator Kruger, as S. 3362, was the ACPL's legislative proposal. This bill was the culmination of the ACPL's efforts in 2008 and is discussed more thoroughly in the 2008 Annual Report which can be found on the ACPL's website at <http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/Reports/2008ACPLAnnualReport.pdf>. Neither bill was passed by the Assembly, but the ACPL has asked OGS to reintroduce the provisions in the upcoming legislative session.¹

Several other legislative proposals were introduced in this year's legislative session which would impact the "Procurement Lobbying Law" (the "Law") and the ACPL. This Report discusses those proposals, compares and contrasts them to the ACPL's legislative proposals and provides recommendations from the ACPL.

¹ As will be discussed later in this Report, the State Finance Law provisions of the Law were extended to March 10, 2010.

I. Introduction

The “Procurement Lobbying Law” (the “Law”), which amended the Legislative Law (the “Lobbying Act”) and the State Finance Law, was enacted on August 23, 2005 by Governor George E. Pataki as Chapters 1 and 596 of the Laws of 2005. The Law regulates attempts to influence state and local Governmental Entity procurement contracts in order to increase transparency and accountability in New York State’s procurement process. The Law was subsequently modified in 2005, 2006, 2007 and 2009. The State Finance Law provisions of the Law are due to sunset on March 10, 2010. However, legislation will be proposed for the upcoming legislative session to extend those provisions of the Law through July 31, 2011.

The Lobbying Act regulates the activities of lobbyists and their clients, imposing under certain circumstances, registration and reporting requirements on those who engage in lobbying or lobbying activities. Interpretation and enforcement of those provisions is the responsibility of the New York State Commission on Public Integrity (“Commission”).² The Commission is considering several legislative proposals for the 2010 legislative session which will amend the Lobbying Act. Earlier this year, the Commission held public hearings on its proposals.³

The State Finance Law’s purview is the regulation of Contacts⁴ made by Offerers⁵ and their representatives to a Governmental Entity during a Restricted Period.⁶

² The Commission is the successor, by merger, to the New York Temporary State Commission on Lobbying and the New York State Ethics Commission.

³ Additional information on the Lobbying Act and the Commission activities pertaining to the Lobbying Act can be found on the Commission’s website at <http://www.nyintegrity.org>.

⁴ State Finance Law §139-j(1)(c) defines “Contacts” as “[a]ny oral, written or electronic communication with a Governmental Entity under circumstances where a reasonable person would infer that the communication was intended to influence the governmental procurement.”

⁵ State Finance Law §139-j(1)(h) defines “Offerer” as “the individual or entity, or any employee, agent or consultant or person acting on behalf of such individual or entity, that Contacts a Governmental Entity about a governmental procurement during the restricted period of such governmental procurement”.

⁶ State Finance Law §139-j(1)(f) defines “Restricted Period” as the period of time commencing with the earliest written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method for soliciting a response from Offerers intending to result in a procurement contract with a Governmental Entity and ending with the final contract award and approval by the Governmental Entity and, where applicable, the State Comptroller.

A. The Advisory Council on Procurement Lobbying

The Law added §1-t to the Lobbying Act which established the Advisory Council on Procurement Lobbying (the “ACPL”). The ACPL is an eleven member board responsible for examining the effects of the Law and providing guidance to assist Governmental Entities and the Vendor/business community with compliance. In an effort to meet these responsibilities, the ACPL issued model language and forms for use by affected entities. The ACPL also developed responses to Frequently Asked Questions (“FAQs”) submitted by Governmental Entities and the Vendor/business community. This information is available on the ACPL website.⁷

B. The ACPL’s Reporting Obligations Pursuant to Sections 1-t(d) and (f)(2) of the Legislative Law

In compliance with the mandates of the Law, the ACPL periodically reports to the Governor and the Legislature on implementation issues and the effects of the Law. These reports can be accessed on the ACPL’s website.⁸

This document sets forth the ACPL’s annual report for 2009. It summarizes the ACPL’s activities during the year, and discusses legislative efforts undertaken which would affect the Law.

II. ACPL Activities During 2009

The ACPL’s meetings are webcast in compliance with 9A NYCRR Section 6.3 and information on upcoming webcasts can be found at www.ogs.state.ny.us. The minutes from the ACPL’s 2009 meetings are available on the ACPL’s website⁹ and webcasts from those meetings can be found at <http://www.ogs.state.ny.us/WebcastArchive.htm>.

⁷ <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>

⁸ <http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/MtgReportTable.htm>.

⁹ <http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/MtgReportTable.htm>

Presentations for Governmental Entities and the Vendor/business community also continued to be held in 2009. The ACPL posts PowerPoint presentations from some of these training sessions on its website¹⁰ in an effort to increase the availability of training information to the public. In addition, in May 2009, over 1,200 people attended the annual State Purchasing Forum, where training workshops were held on procurement and the State Finance Law aspects of the Law. The PowerPoint presentations and/or webcasts of these presentations can be found at <http://www.ogs.state.ny.us/purchase/snt/overviews/SPFpps.asp>.

The ACPL continues to consider new means to provide training and information to those subject to the Law. In addition, the ACPL is always looking for suggestions on ways to provide training and information to groups that would benefit from such training.

III. Legislative Activities Pertaining to the Law

A. Extension of Sunset of State Finance Law §§139-j and 139-k

State Finance Law §§139-j and 139-k were scheduled to sunset on July 31, 2009. The ACPL believes that the extension of these provisions is important in order to maintain the integrity of the public procurement process and ensure that the process is competitive, open and transparent. Accordingly, during its November 2008 meeting, the ACPL authorized the New York State Office of General Services (“OGS”) to advance legislation, on its behalf, extending the provisions of the State Finance Law until July 31, 2011. That legislation was introduced in the Senate by Senator Kruger as S. 3360. S. 3360 was not introduced in the Assembly.

Assemblywoman Destito introduced legislation known as A. 8423 extending State Finance Law §§139-j and 139-k until March 10, 2010. This bill was also introduced in the

¹⁰ See, <http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/TrainingandOpportunities.html>

Senate (S. 60428) as Governor's Program Bill #124, and was signed by the Governor on July 11, 2009 as Chapter 169 of the Laws of 2008.

The ACPL authorized OGS to advance its legislative proposals, to amend the Law and to extend the provisions of the Law until July 31, 2011, in the upcoming legislative session.

B. Discussion of Legislative Efforts That Could Affect the Law

Several legislative proposals were introduced during the 2009 legislative session which addressed the issue of procurement lobbying and would affect the Law. The following is a discussion of those proposals and their anticipated impact on the Law.

1. S. 3362

In its previous reports, the ACPL discussed the misunderstandings about the Law and reported that Governmental Entities and Vendors feel burdened by the Law's requirements, stating the Law made the procurement process more complicated, costly and confusing, and also lengthened its duration.

The ACPL is mindful of the fact that these responses take on a greater significance as Governmental Entities are being asked to do more with less funding and staff. Accordingly, a priority of the ACPL in 2009 was to take affirmative steps to assist those subject to the Law's mandates. During the fall of 2008 and the spring of 2009, the ACPL undertook careful deliberations into the issues that Governmental Entities and Vendors presented since the Law's enactment. The result was a proposed legislative amendment designed to bring greater clarity to the Law and assist those persons and entities that are subject to its requirements by providing an increased understanding of the Law's requirements and applicability, thereby making its administration less burdensome.

This legislative proposal was introduced by Senator Kruger as S. 3362 and addresses the following issues:

- Clarification of the definition of the term Contacts;
- Clarification of the definition of the term Governmental Procurement;
- Clarification of the definition of the term Procurement Contract;
- Clarification of the definition of the term Offerer;
- Expansion of the Permissible Subject Matter Communication Categories; and
- Clarification of the recording requirements imposed by State Finance Law §139-k (4).

Analysis and discussions surrounding the development of each of these proposals can be found in the ACPL's prior reports.¹¹

S. 3362 was not introduced in the Assembly. The 2009 legislative session, however, began a two year legislative session. Therefore, this bill will carry over. The ACPL also authorized OGS to advance this legislative proposal in the upcoming legislative session.

2. A. 8314/S. 4085

State Finance Law §139-j (2)(a) requires a Governmental Entity to designate staff that may be contacted by Offerers during the Restricted Period. Pursuant to the Law, Offerers must limit their contacts to those designated staff members unless the communication falls within one of the statute's specifically enumerated permissible subject matter exemption categories. One of those permissible subject matter exemption categories allows for written protests, appeals or complaints to the Office of the State Comptroller ("OSC") during the contract approval process.¹² The exception requires that such communications and any responses thereto, are made in writing and entered into the procurement record. The restrictions placed upon this exception limit OSC's

¹¹ <http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/MtgReportTable.htm>

¹² See, State Finance Law §139-j(3)(a)(7)(c)

ability to address disputes in a timely manner, because of the slower pace involved with formal written communications.

A. 8314/S. 4085, introduced by Assemblywoman Destito and Senator Stachowski, includes certain statutory changes in order to allow for efficient use of the funding provided by the American Recovery and Reinvestment Act of 2009 (“ARRA”). The ARRA provided money to states in order to reduce their need to raise taxes or cut government spending to meet their constitutional balanced-budget requirements. The caveat is that in order to receive the loans and grants available through the program, the states must use the money for projects that are “shovel-ready.” To be “shovel-ready” the project must have, among other things, contracts awarded or be under construction within 12 months. Some opined that compliance with this tight timeframe could be impeded by the stringent requirements of State Finance Law §139-j (3)(a)(7)(c).

A. Expansion of Permissible Subject Matter Communications

Accordingly, OSC requested that the Law be amended to allow it to communicate orally with Offerers during the contract review process. A. 8314/S. 4085 would allow such oral communications, provided a written record is kept of the same. It was stated by OSC that allowing oral communications would facilitate the approval process because it would allow OSC to speak with Offerers about their protests, appeals or complaints rather than being required to adhere to the more time consuming process of issuing a written response.

B. Expanding Possible Designated Contacts to Permit Non-Procuring Agencies to Designate

The bill would also allow any agency involved in a procurement to designate its own contacts for the procurement, and allows for those individuals to be contacted relative to the procurement as necessary. This amendment is designed to address the situation created by State

Finance Law §139-j (4) which provides that Contacts during the Restricted Period between an Offerer and any Governmental Entity other than the entity conducting the procurement are a violation of the Law. These limitations complicate procurements because often numerous agencies are involved with a procurement and the natural inclination for an Offerer would be to contact the individual with the expertise to address a particular issue. Pursuant to the Law, such Contacts may be impermissible. With respect to the ARRA, the projects that are eligible for money are typically multi-agency projects, and given the tight timeframes for award of contracts under the ARRA, such restrictions on contacts were stated to be detrimental to the ARRA's goals.

In its previous reports, the ACPL discussed this issue, and addressed the fact that the Law does not provide permissible subject matter communication categories that accurately reflect the components of the procurement process. Specifically, the ACPL discussed and recommended that State Finance Law §139-j (3)(a)(3) be amended to expressly provide that Contacts between an Offerer and the procuring Governmental Entity for the purpose of evaluating bids fall within the permissible subject matter communication categories. The State Finance Law requires the exchange of information between the procuring Governmental Entity and Offerers in order to maintain an open and competitive procurement process that is fair to all. The Law, despite being intended to promote the integrity of the procurement process and create greater transparency, by its very terms, limits this flow of information by regulating Contacts made by Offerers and their representatives to a Governmental Entity during the Restricted Period. This dichotomy adds to the administrative burdens placed upon a Governmental Entity during the procurement process, and is counterintuitive to the goals of the State Finance Law. One of the specific problems discussed in the ACPL's prior reports is how the Law's requirements impede the evaluation

process. These discussions mirror the statements made in support of A. 8314/S. 4085 and the concerns articulated by OSC.

In an effort to clarify the Law, and assist procuring Governmental Entities, the ACPL's legislative proposal (S. 3362) would add a permissible subject matter category for oral, written or electronic communications between the procuring Governmental Entity and an Offerer who has submitted a bid, or responded to a solicitation, that is in response to the request of a Governmental Entity and that pertains solely to an evaluation of the Offerer's bid or response made prior to an award of a Procurement Contract. This narrow exception would allow Governmental Entities to obtain information from Offerers for purposes of evaluation without running afoul of the requirements of the Law.

In S. 3362, the ACPL proposed another clarifying amendment to expressly state that participation in demonstrations, interviews, or other means of exchanging information provided for in a solicitation are permissible subject matter category exceptions to the Law. The current exception allows for participation in a conference provided for in a solicitation, and has been interpreted by the ACPL, as noted in one of its Frequently Asked Questions, to permit demonstrations, interviews or other communication methods. Governmental Entities need to participate in these types of exchanges in order to adequately evaluate Offerers and their products and services.

The need for interaction between Governmental Entities and Offerers during the procurement process becomes increasingly important as the ARRA is implemented. The need to award a contract, or start construction, within twelve months, necessitates a smooth, efficient procurement process that is only possible if there is clear communication between all interested parties. While the ARRA highlights the discord between the Law and the procurement process,

it is an issue that extends to all procurements. Enactment of A. 8314/S. 4085 would apply to all future procurements and would benefit all Governmental Entities, not just those charged with enacting the ARRA. Accordingly, the ACPL supports that passage of A. 8314/S. 4085.

3. S. 4527/A. 649

This legislative proposal, introduced by Assemblyman Kavanagh and Senator Krueger, would amend the Lobbying Act in an attempt to address issues that have arisen since the Law's enactment. As the ACPL's body of work shows, implementation of the Law created a number of challenges for Governmental Entities and the Vendor community. As the ACPL continually strives to address those challenges, it applauds the efforts of the Legislature to join in this effort.

A. Definition of Restricted Period

In its 2006 report, the ACPL discussed the need for establishing uniformity in the definition of the term "Restricted Period" within the Lobbying Act and the State Finance Law provisions of the Law. While the Legislative Law §1-c (m) and State Finance Law §§139-j (1)(f) and 139-k (1)(f) all define the term, the definitions are not identical. It is during the Restricted Period that Offerers and Governmental Entities need to be concerned about determining if their communications rise to the level of Contacts and be mindful of the obligations placed upon them in such situations. Therefore, it is imperative that both the Vendor/business community and Governmental Entities have a clear understanding of what the term means.

Under the Lobbying Act, regulation begins at the time that a Governmental Entity makes a determination of need, while under the State Finance Law it begins with the commencement of the Restricted Period. This discrepancy is compounded further by the fact that the Lobbying Act does not define the term "Determination of Need." Vendors and Governmental Entities are,

therefore, left to determine what that term means, and then must comply with two competing timeframes.

When the Law was enacted, the Lobbying Act's definition of the term "Restricted Period" included a definitive termination point, but the definitions in State Finance Law §§139-j (1)(f) and 139-k (1)(f) lacked such language. Offerers and Governmental Entities were left to infer that the Restricted Period, as defined in the State Finance Law, also ended with the final contract award and approval by the Governmental Entity and, where applicable, OSC. This created confusion for all parties. Chapter 56 of the Laws of 2006 partially addressed this issue by, in pertinent part, making technical corrections to §139-j (1)(f) of the State Finance Law and stating that in fact the Restricted Period ended with the final contract award and approval by the Governmental Entity and, where applicable, OSC. Chapter 56, however, did not make conforming corrections to State Finance Law §139-k (1)(f). Accordingly, the ACPL has consistently recommended that State Finance Law §139-k (1)(f) be amended to add the phrase "and ending" consistent with State Finance Law §139-j (1)(f).

S. 4527/A. 649 would amend the definition of the term "Restricted Period" in §1-c (m) of the Legislative Law but would not resolve the discrepancies that exist between the definitions of the term in the Lobbying Act and the State Finance Law. Currently, Legislative Law §1-c (m) reads as follows:

(m) The term "restricted period" shall mean the period of time commencing with the earliest written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method for soliciting a response from Offerers intending to result in a procurement contract with a state agency, either house of the state legislature, the unified court system, or a municipal agency, as that term is defined by paragraph (ii) of subdivision (s) of this section, and ending with the final contract award and approval by the state agency, either house of the state legislature, the unified court system, or a municipal agency, as that term is

defined by paragraph (ii) of subdivision (s) of this section, and, where applicable, the state comptroller.

The amendment proposed in S. 4527/A. 649 would revise the provision to read as follows:

(m) The term "restricted period" shall mean the period of time beginning with the issuance of a request for proposal, invitation for bids, or solicitation of proposals, or any other method for soliciting a response from potential contractors intending to result in a contract with a state agency, municipality, the state legislature, or state judiciary and ending with the tentative award of the contract.

In addition to leaving an inconsistency between the Legislative Law and the State Finance Law provisions, this amendment may actually create a greater dichotomy. Presently, the Legislative Law and State Finance Law §139-j (1)(f) both clearly contemplate the termination of the Restricted Period as the point in time at which OSC approves the contract. This amendment would leave §139-j (1)(f) envisioning termination at that time, leave §139-k (1)(f) with an uncertain standard which is believed to terminate at the point at which OSC approves a contract, but allow the Restricted Period to end, for purposes of the Lobbying Act, before the contract is even sent to OSC for approval.

If this amendment were enacted, Offerers would be able to lobby OSC and other Governmental Entities regarding the procurement as soon as the procuring entity issued a tentative award and not be subject to repercussions under the Lobbying Act. Such actions, however, would still constitute a violation of the State Finance Law. This proposal generates additional confusion for Offerers and creates a situation where they are inevitably going to, perhaps unknowingly, violate the Law. That is not the goal of the Law, and accordingly, the ACPL recommends that this proposal be reconsidered and amended to bring uniformity to the definitions of the term Restricted Period contained in the Law.

In its 2008 report, the ACPL discussed that the confusion created by the conflicting definitions of the term Restricted Period is further compounded by the fact that the definition of the term “Governmental Procurement” in the State Finance Law could be construed as beginning at a point in time that precedes the timeframe set forth in the State Finance Law’s definition of the term “Restricted Period.” These discrepancies create the possibility of unintentional non-compliance with the Law on the part of both Vendors and Governmental Entities and the ACPL requested clarification. Subsequently, the ACPL proposed, in its 2009 legislative proposal (S. 3362) , that the definition of the term “Governmental Procurement” be amended by removing the phrase “the preparation or terms of” and allowing the provision to read as follows: “Governmental Procurement shall mean: (i) ~~the preparation or terms of~~ the specifications, bid documents, request for proposals, or evaluation criteria for a procurement contract, (ii) solicitation for a procurement contract, (iii) evaluation of a procurement contract, (iv) award, approval, denial or disapproval of a procurement contract, or (v) approval or denial of an assignment, amendment (other than amendments that are authorized or payable under the terms of the procurement contract as it was finally awarded or approved by the comptroller, as applicable), renewal or extension of a procurement contract, or any other material change in the procurement contract resulting in a financial benefit to the Offerer.” This amendment would reconcile the timeframes in this definition and the State Finance Law’s definitions of the term “Restricted Period” so that under both definitions the requirements of the Law begin with the actual written notification of the solicitation. The phrase “and ending” would still need to be added to State Finance Law §139-k (1)(f) in order to make the statute consistent with State Finance Law §139-j (1)(f).

Those two amendments would create consistency within the State Finance Law provisions of the Law, and would align the definitions of the term Governmental Procurement contained in the State Finance Law and Lobbying Act. They would also eliminate most of the discrepancies which exist between the State Finance Law and the Legislative Law in relation to the meaning of the Restricted Period.¹³

B. Procedure for Issuing Complaints During Procurement Process

S. 4527/A. 649 also attempts to outline a procedure for making complaints during the procurement process. As discussed above, this is an issue that has been discussed by the ACPL and OSC.

The goals of the procurement process are to maintain a fair, balanced and open playing field, and this includes allowing participants a forum within which to voice their concerns and/or complaints without fear of running afoul of the provisions of the Law. S. 4527/A. 649 creates a permissible subject matter exception category which would allow complaints by potential contractors or their representative regarding the contracting process to be made in writing to the procuring entity's General Counsel's office. In turn, the General Counsel's office has five business days to issue a written response to the complainant. This process does not negate the ability of an individual or entity from submitting a complaint or appeal to OSC, the Inspector General, the Attorney General, a District Attorney or any other law enforcement agency.

State Finance Law §§139-j (3)(a)(4), (7)(b) and (7)(c) create permissible subject matter exception categories for complaints by an Offerer to the procuring entity's General Counsel's office regarding the failure of a designated contact to respond in a timely manner; complaints of alleged improper conduct in a procurement to the Inspector General, the Attorney General, a

¹³ The only remaining discrepancy which would exist is the use of the concept of Determination of Need by the Commission.

District Attorney or any other law enforcement agency; and written protests, appeals or complaints to OSC during the process of contract approval. Comparable provisions are presently contained in Legislative Law §1-n.

The fundamental change made in S. 4527/A. 649 is the requirement of a response within five business days from a procuring entity's General Counsel's office. While this is a laudable goal, and would prevent the complaint process from serving as an impediment to the procurement process, it may not be practical. Most governmental entities have a formalized process for dealing with complaints which involves the provision of due process. When a complaint is filed, the General Counsel's office typically reviews the complaint, obtains any additional information necessary from the complainant and then discusses the matter with the staff member(s) mentioned in the complaint. Whether or not this can be accomplished within five business days and result in a substantive written response to the complainant is uncertain. The proposed statute does not include any procedure through which an extension on this timeframe can be granted, nor does it discuss what happens if the timeframe is not met.

An alternative to the imposition of such a timeframe would be the creation of a mechanism through which oral communications regarding complaints could be handled, as long as those communications are ultimately documented in the procurement record. As discussed above, the ability to communicate orally about complaints is perhaps a much more effective means of achieving resolution. It certainly would expedite matters, as opposed to use of the traditional formal written communication processes. Consequently, the ACPL recommends that an additional permissible subject matter exception category be created in the Lobbying Act and State Finance Law provisions of the Law to also allow for oral complaints to the procuring

entity's General Counsel, OSC, the Inspector General, the Attorney General, a District Attorney or any other law enforcement agency.

C. Creation of a New Advisory Council on Procurement Lobbying

In S. 4527/A. 649, Assemblyman Kavanagh and Senator Krueger proposed creating a new Advisory Council on Procurement Lobbying (the "Advisory Council") that would be housed within the Commission on Public Integrity (the "Commission"). Chapter 1 of the Laws of 2005 created the ACPL, but did not locate it within the Commission. The current ACPL is comprised of eleven members, charged with providing advice to the Commission with respect to the implementation of the Lobbying Act provisions of the Law and, in accordance with statute, is chaired by the Commissioner of the Office of General Services. The ACPL is also responsible for reporting to the Governor and the Legislature on any problems with the implementation of the Law and provide recommendations for increasing the effectiveness of that implementation, and for developing training materials on the Law.

The new Advisory Council would be composed of nine members,¹⁴ would no longer be obligated to develop and provide training materials on the Law and would only need to submit one report to the Legislature on the effects of the Law, by October 30, 2011.

The ACPL opposes the creation of a new Advisory Council. The ACPL provides valuable training materials and programs to those subject to the Law. As the ACPL's prior reports demonstrate, confusion still exists about the Law and it is only through continued training that this confusion can be eliminated. These programs and materials would also become more

¹⁴ The Advisory Council membership would not include the Commissioner of the State Department of Transportation, or his or her designee; the Director of the Division of the Budget, or his or her designee; the Mayor of the City of New York's appointee; the Governor's appointee representing local governments and the Governor's appointee representing the contracting community. Instead the Advisory Council membership would include the Attorney General, or his or her designee; a member appointed by the Senate Minority Leader and a member appointed by the Assembly Minority Leader.

important if amendments are made to the Law, as they will be an invaluable means through which the implications of those amendments could be communicated to the public.

In addition, the distribution of the ACPL's reports to the Governor and the Legislature inform these branches of government of the implementation issues and recommendations presented in order to work together to resolve such issues. Distribution to only the Legislature would remove the Governor's office and the Executive branch in general from this process, creating further obstacles to improving the Law. Finally, it is recommended that the proposed changes to membership be reconsidered. The New York State Department of Transportation is a major procuring agency, whose input to the ACPL is extremely useful. In addition, it is important to obtain the perspective of local governments (because of the Law's application to certain local public benefit corporations) and the contracting community.

IV. Conclusion

Several legislative efforts were undertaken in 2009 in an effort to increase the effectiveness of the Law. All of these efforts are commendable, but it is important that each be reviewed to ensure such proposals promote consistency among the various provisions of the Law and ensure the usefulness of the additional requirements. For these reasons, we ask that the Governor and the Legislature consider the recommendations set forth in this report and the ACPL's previous reports.