

STATE OF NEW YORK

9697

IN SENATE

May 21, 2024

Introduced by Sen. MYRIE -- (at request of the State Comptroller) --
read twice and ordered printed, and when printed to be committed to
the Committee on Elections

AN ACT to amend the election law and the state finance law, in relation
to campaign contributions by vendors

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

1 Section 1. The election law is amended by adding a new section 14-131
2 to read as follows:

3 § 14-131. Restrictions on vendor contributions. 1. For purposes of
4 this section, the following terms will have the following meanings
5 unless specified otherwise:

6 (a) "Procuring entity" shall mean:

7 (i) any state agency, department, board, bureau, division, commission,
8 committee, council, office, state university of New York, city universi-
9 ty of New York, or other governmental entity performing a governmental
10 or proprietary function for the state; and

11 (ii) any covered authority, as defined in section two-a of the state
12 finance law.

13 (b) "Vendor" shall mean any natural or legal person, business corpo-
14 ration, public corporation, professional services corporation, limited
15 liability company, partnership, limited partnership, business trust,
16 association, labor organization, religious corporation, education corpo-
17 ration, or not-for-profit corporation organized under the laws of this
18 state, or any other state or foreign jurisdiction, seeking to enter into
19 a procurement contract with any procuring entity or the legislature
20 including:

21 (i) key employees, which shall mean officers, members of the board of
22 directors and trustees, and shall include the spouse or domestic partner
23 and any dependent children living in the same household as an individual
24 described in this subparagraph;

25 (ii) any subsidiary, parent corporation or affiliated company or enti-
26 ty thereof directly or indirectly controlled by the vendor;

27 (iii) any subcontractor of a vendor; and

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 (iv) any lobbyist hired by a vendor.

2 (c) "Restricted period" shall mean a period during which a vendor is
3 prohibited from making a contribution to a procuring entity.

4 (i) the "restricted period" shall commence the earlier of:

5 (1) when the vendor engages in lobbying, as defined by subdivision (c)
6 of section one-c of the legislative law, to attempt to influence the
7 results of a procurement;

8 (2) at the earliest posting, on a procuring entity's website, in a
9 newspaper of general circulation, or in the procurement opportunities
10 newsletter in accordance with article four-C of the economic development
11 law of written notice, advertisement or solicitation of a request for
12 proposal, invitation for bids, or solicitation of proposals, or any
13 other method provided for by law, regulation or executive order of the
14 governor temporarily suspending any applicable provision of law, pursu-
15 ant to his or her authority under section twenty-nine-a of the executive
16 law, for soliciting a response intending to result in a procurement
17 contract with a procuring entity; or

18 (3) when the procuring entity engages the vendor for the purpose of
19 entering into a non-competitive procurement contract.

20 (ii) the "restricted period" shall end either:

21 (1) where approval by the state comptroller is required: (A) six
22 months after the final procurement contract award and approval by the
23 state comptroller, for the recipient of the final procurement contract;
24 or (B) with the final procurement contract award and approval by the
25 state comptroller, for all others; or

26 (2) where approval by the state comptroller is not required: (A) six
27 months after the final procurement contract award and execution by the
28 procuring entity, for the recipient of the final procurement contract;
29 or (B) with the final procurement contract award and execution by the
30 procuring entity, for all others.

31 (d) "Procurement contract" shall mean any contract or other agreement
32 valued in excess of fifty thousand dollars, including but not limited
33 to, single or sole source contracts, purchase orders, amendment, exten-
34 sion, renewal, or change order to an existing contract, other than
35 amendments, extensions, renewals, or change orders that are authorized
36 and payable under the terms of the contract as it was finally awarded,
37 for an article of procurement.

38 2. It shall be unlawful for a vendor to make, either directly or indi-
39 rectly, any contribution, as defined in section 14-100 of this title, to
40 a statewide elected official, a candidate for a statewide elected
41 office, or their authorized political committee, during the restricted
42 period. Any contributions received by a candidate, officeholder, or
43 political committee during the restricted period, and prohibited by this
44 section, shall be returned or refunded forthwith.

45 3. Every procurement contract shall include a statement, as required
46 by section one hundred thirty-nine-m of the state finance law, certify-
47 ing that the vendor has not made any contributions to, or solicited any
48 contributions on behalf of, any statewide elected official, any candi-
49 date to statewide elected office, or their authorized political commit-
50 tee during the restricted period.

51 4. (a) Upon notification that a vendor has violated subdivision two of
52 this section or has failed to timely disclose accurate or complete
53 information to a procuring entity pursuant to section one hundred thir-
54 ty-nine-m of the state finance law, the vendor shall be presumed to be
55 non-responsible and the procuring entity shall consider this presumption

1 as part of their determination of responsibility, pursuant to subdivi-
2 sion nine of section one hundred sixty-three of the state finance law.

3 (b) The procuring entity shall, in its determination of vendor respon-
4 sibility, notify the vendor of the presumption in paragraph (a) of this
5 subdivision and provide the vendor with an opportunity to be heard prior
6 to making a final determination of responsibility.

7 (c) A procuring entity shall not award a procurement contract to a
8 vendor that is found non-responsible, unless the procuring entity deter-
9 mines that the award of the procurement contract to the vendor is neces-
10 sary to protect public property or public health or safety, and that the
11 vendor is the only source capable of supplying the required article of
12 procurement within the necessary timeframe, provided, that the procuring
13 entity shall include in the procurement record a statement describing
14 the basis for such a finding.

15 (d) Any award of a procurement contract subject to the provisions of
16 this section shall contain a provision authorizing the procuring entity
17 to terminate such contract in the event that the statement required in
18 section one hundred thirty-nine-m of the state finance law is found to
19 be intentionally false or intentionally incomplete. The governmental
20 entity shall include in the procurement record a statement describing
21 the basis for any action taken pursuant to such termination provision.

22 5. Notwithstanding the foregoing, the provisions of this section shall
23 not apply to a procurement contract between a procuring entity and a
24 vendor where the procurement contract results from such vendor being
25 designated by the legislature to receive funding for a specific program
26 purpose.

27 § 2. The state finance law is amended by adding a new section 139-m to
28 read as follows:

29 § 139-m. Statement on vendor contributions. 1. For purposes of this
30 section, the following terms shall have the following meanings:

31 (a) "Procurement contract" shall have the same meaning as defined in
32 paragraph (d) of subdivision one of section 14-131 of the election law.

33 (b) "Procuring entity" shall have the same meaning as defined in para-
34 graph (a) of subdivision one of section 14-131 of the election law.

35 (c) "Restricted period" shall have the same meaning as defined in
36 paragraph (c) of subdivision one of section 14-131 of the election law.

37 (d) "Vendor" shall have the same meaning as defined in paragraph (b)
38 of subdivision one of section 14-131 of the election law.

39 2. Every procurement contract entered into between the state or any
40 procuring entity thereof and a vendor, shall contain the following
41 statement subscribed by the vendor and affirmed by such vendor as true
42 under the penalties of perjury:

43 "By submission of this procurement contract, each person signing on
44 behalf of any vendor certifies, that the vendor has not made any
45 contributions to, or solicited any contributions on behalf of, any
46 statewide elected official, any candidate to statewide elected office,
47 or candidates authorized political committee or any political committee
48 the officeholder or candidate exerts operational control over, during
49 the restricted period and as of the date of submission of this state-
50 ment."

51 3. Notwithstanding the foregoing, the statement required by subdivi-
52 sion two of this section may be submitted electronically in accordance
53 with the provisions of subdivision seven of section one hundred sixty-
54 three of this chapter.

1 4. A procurement contract shall not be considered for award, nor shall
2 any award be made to a vendor who has not complied with subdivision two
3 of this section.

4 § 3. Paragraph f of subdivision 9 of section 163 of the state finance
5 law, as amended by chapter 1 of the laws of 2005, is amended to read as
6 follows:

7 f. Prior to making an award of contract, each state agency shall make
8 a determination of responsibility of the proposed contractor which shall
9 supplement, as appropriate, but not supersede the determination of
10 responsibility that may be required pursuant to section one hundred
11 thirty-nine-k of this chapter or section 14-131 of the election law.

12 § 4. This act shall take effect immediately; provided, however, that:

13 (a) procurement contracts for which bid solicitations have been issued
14 prior to the effective date of this act shall not be subject to the
15 provisions of this act; and

16 (b) the amendments to section 163 of the state finance law made by
17 section three of this act shall not affect the repeal of such section
18 and shall be deemed repealed therewith.