

Businesses and Organizations Seeking Government Assistance in COVID-19 Crisis Should Pay Attention to “Procurement Lobbying” Rules

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Because of the current economic and employment crisis, many businesses and nonprofits are likely to seek government contracts and grants. These organizations should be mindful of special “procurement lobbying” rules that impose disclosure obligations and restrictions as a result of efforts to obtain government contracts and grants.

What is Procurement Lobbying?

Generally stated, “procurement lobbying” means communicating with government personnel to influence their actions regarding a government contract or grant. Communications that occur within a formal application or bid process will typically not trigger these rules, but efforts outside the formal process (e.g. communicating with officials in a “sidebar” meeting) may give rise to procurement lobbying registration, reporting, and restrictions.

One challenge that procurement lobbying presents is that many organizations applying for government grants and many businesses that seek to provide goods or services to governments have historically thought of lobbying compliance as a matter for their government relations departments, and not as a relevant concern for their grant-writing, sales, or marketing personnel. Procurement lobbying rules, however, may cover individuals who do not consider themselves as lobbyists.

Which Jurisdictions Regulate Procurement Lobbying?

Businesses and organizations should identify the jurisdictions where procurement-related communications are considered lobbying, and interactions with government entities in those jurisdictions must be monitored. The federal Lobbying Disclosure Act covers certain procurement-related contacts with federal officials. The following states also currently regulate procurement lobbying:

Alabama	Illinois	New Hampshire
Arizona	Indiana	New Jersey
Arkansas	Kansas	New York
California	Kentucky	North Carolina
Connecticut	Louisiana	Ohio
Delaware	Maryland	Pennsylvania
District of Columbia	Massachusetts	Rhode Island
Florida	Michigan	Tennessee
Georgia	Mississippi	Texas
Idaho	Missouri	Virginia

Additionally, various cities and counties regulate procurement lobbying, meaning that effectively and efficiently managing the procurement lobbying regulations and restrictions applicable to a business's activities may

require monitoring and understanding many complex, overlapping, and shifting regulations.

How Should Organizations Manage Risk Related to Procurement Lobbying Regulation?

Once a business or nonprofit identifies the jurisdictions where it might be subject to procurement lobbying regulation, a systematic method for determining in advance whether a communication with a government official or employee constitutes procurement lobbying is essential, because once an employee qualifies as a lobbyist, registration procedures, reporting requirements, and ethics rules must be immediately followed. In some jurisdictions, registration may even be required before engaging in procurement lobbying activity. If registration is necessary in any jurisdiction, the organization should then establish a process for monitoring reporting deadlines and gathering necessary information to populate the disclosure reports.

Activity that does not trigger registration or reporting requirements in one state or locality may nevertheless trigger such requirements in another jurisdiction. Compliance with these requirements can be a challenging and time-consuming undertaking, particularly for entities that seek contracts or grants in multiple states or localities. And organizations must tread carefully, particularly because the legal penalties and reputational costs for violating these rules are potentially severe. For example, contractors who violate the rules may lose existing contracts, incur civil fines, and/or be banned from contracting with a state or locality for an extended period of time.

Caplin & Drysdale's Political Law Practice Group is available to answer any questions that your business or nonprofit has about procurement lobbying regulations at the federal, state, or local level.

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