

NEW REGULATION ON PROCUREMENT LOBBYING

ADOPTED: OCTOBER 15, 2014

REGULATIONS OF THE BALTIMORE CITY ETHICS BOARD

CHAPTER 08. LOBBYING

PART I. {RESERVED}

PART II. REGISTRATION REQUIRED

Authority: City Code Article 8, § 3-6(a)

R 8-8.1. to 8-8.2 *{Reserved}*

R 8-8.3. Executive Lobbying - Procurement.

A. In general.

(1) Background.

Subject to certain exceptions [*see* Section B of this regulation], Ethics Code § 8-8(c)(1) requires registration as an executive lobbyist by any person who:

- (i) communicates with any public servant “for the purpose of *influencing executive action on a procurement contract* that exceeds \$50,000”; and
- (ii) in furtherance of or in connection with all communications, and all related activities, for that or any other executive action, either:
 - (A) is compensated, in any amount, for his or her services; or
 - (B) whether or not compensated, expends \$100 or more for gifts (including meals, beverage, or special events) to 1 or more public servants.

(2) Purpose of this regulation.

This regulation is intended to clarify certain distinctions between:

- (i) communications and related activities undertaken to “influence” a procurement; and

- (ii) those that might have some relationship to a procurement but do not “influence” or seek to “influence” that procurement.

B. *Statutory Exemptions.*

(1) *Exemption for in-house salesperson or agency.*

- (i) Ethics Code § 8-8(c)(2) exempts from the procurement-lobbyist registration requirement a “bona fide salesperson or commercial selling agency employed or maintained by an employer for [procurement] purposes”.
- (ii) However, this exception only applies if, during the reporting period, the salesperson or agency “engages in no other acts ... that require registration”.

(2) *General exemptions.*

- (i) Ethics Code § 8-31 lists certain specific activities that are exempt from any requirement to register as a legislative or executive lobbyist.
- (ii) These exemptions apply to procurement activities as well.

(3) *Qualified exemptions – Appearance on request.*

- (i) Ethics Code § 8-32(a) lists two qualified exemptions from any requirement to register as a legislative or executive lobbyist:
 - (A) appearances by an individual before a City agency “at the specific request” of that agency; and
 - (B) appearances by an individual before a City agency “at the specific request of a [registered] lobbyist, if the [individual] notifies the [agency] that he or she is testifying at the request of the lobbyist”.
- (ii) Either of these exemptions can apply to procurement activities – e.g., an appearance before a procuring agency (including the Board of Estimates) during a protest or challenge, at the “specific request” of that body or at the “specific request” of a registered lobbyist who is also appearing before that body.
- (iii) However, neither exemption applies to any person unless, during the reporting period, the person “engages in no other acts ... that require registration”.

(4) *Qualified exemptions – Student activities.*

See Ethics Code § 8-32(b) for certain exemptions applicable to student activities.

(5) *Dispelling myths.*

The Ethics Code extends no *per se* exemption to lawyers.

C. *Procurement-related activities that constitute lobbying.*

Except as exempted under Section B of this regulation or as otherwise provided in Section D of this regulation, the following communications (whether oral or written) and other related activities by or on behalf of a vendor or contractor (including an affected subcontractor) constitute activities “for the purpose of *influencing* executive action on a procurement contract”:

- (1) any communication by or on behalf of a potential vendor or contractor that is designed or intended to implicate or affect any of the following factors:
 - (i) the ultimate identification or choice of the vendor or contractor to be awarded the contract;
 - (ii) the definition or application of contract specifications (including any requirement for MBE, WBE, or other subcontractor involvement); or
 - (iii) the creation or modification of contract terms and conditions;
- (2) participation by or on behalf of a vendor or contractor in a bid protest or challenge that is designed or intended to implicate or affect any of the factors described in item (1) of this Section C;
- (3) any *ex parte* communication by or on behalf of a potential vendor or contractor to an City official or employee involved in the procurement process that is made at any time during the selection process or during any bid protest or challenge; and
- (4) during the course of an awarded contract, any communication by or on behalf of the vendor or contractor that is designed or intended to significantly change the terms and conditions of that contract.

D. *Procurement-related activities that do not constitute lobbying.*

The following communications and other related activities do not constitute activities “for the purpose of *influencing* executive action on a procurement contract”— but only if the vendor or contractor (or its representative) engages in no other communication or act that requires registration:

- (1) providing limited factual, technical, and objective information at the request of the procuring agency (e.g., providing price quotes for a specific product or service);
- (2) requesting information on or clarification of the procurement process and its requirements (e.g., deadlines, form of documentation, and other procedural matters) or information on or clarification of collateral, but clearly separate regulatory matters – but only if that request and consequent communications are made in a manner and within the scope available to all potential vendors or contractors;
- (3) participation in a formal bid protest or challenge by or on behalf of a person who has no direct or indirect financial interest in the contract or in the ultimate outcome of the protest or challenge;
- (4) any formal bid protest or challenge made to the Board of Estimates by or on behalf of a potential vendor or contractor, as long as that protest or challenge is limited solely to technical legal issues;
- (5) participation in a bid protest or challenge by or on behalf of the proposed vendor or contractor at the specific request of the procuring agency defending the protest or challenge; or
- (6) during the course of an awarded contract, any communication by or on behalf of the vendor or contractor that is limited to contract implementation or separate regulatory matters.

Effective Date: January 1, 2015 (subject, however, to the following application provisions).

Application: This Regulation and the applicable registration and reporting requirements of the Ethics Code apply to all procurement-lobbying activities occurring on or after January 1, 2013. Late fees will be waived for registrations for and reports on procurement-lobbying activities that occurred on or after January 1, 2013, but before the effective date of this Regulation, as long as the registrations and reports have been filed with the Board on or before April 30, 2015.