

Introduction

This interpretation bulletin discusses the rules in the City’s Lobbying By-law ([Chapter 140 of the Toronto Municipal Code](#)) that apply to lobbying about a procurement process. The Lobbying By-law prohibits lobbying about a procurement process unless permitted by the applicable procurement policies and procurement documents.

The City’s Procurement Processes Policy provides that all communications with respect to a procurement process must be made to an official point of contact named in the procurement document, and that any communication with respect to a procurement process with any other City staff, City official or member of City Council is prohibited from the time the procurement document is issued until the contract has been awarded.

Provisions of the Lobbying By-law that apply to procurements are found below:

§ 140-1. Definitions.

LOBBY – To communicate with a public office holder on any of the following subject matters:

- B. (2) Procurement of goods, services or construction and awarding a contract.*

§ 140-5. Restriction on application (communication).

This chapter does not apply in respect of:

- G. Submitting a bid or proposal as part of the procurement process, and any communication with designated employees of the City, a local board (restricted definition) or the Board of Health (including a City employee when working as a designated employee for a board), as permitted in the procurement policies and procurement documents of the City, local board (restricted definition) or Board of Health.*

§ 140-41. Compliance with policies restricting communication.

- A. Lobbyists shall not communicate in relation to a procurement process except as permitted by applicable procurement policies and procurement documents.*

...

- C. In the event of a conflict or inconsistency between Subsection A and any other provision of this chapter, Subsection A prevails.*

What is a procurement process?

A procurement process is the process used by the City and its local boards to purchase or otherwise acquire goods or services.

A specific procurement process is generally referred to by the procurement document issued requesting bids or proposals for the goods or services, typically referred to as “calls” or “requests” for:

- pre-qualification;
- expressions of interest;
- tenders;
- quotations (both formal and informal); and
- proposals, including unsolicited quotations or proposals.

What communications about a procurement process must a lobbyist report to the Lobbyist Registry?

Generally, the Lobbying By-law requires lobbyists to register and report communications with public office holders about procurement of goods, services or construction and awarding of a contract. These communications are considered to be lobbying. However, there are some exemptions from this requirement. See below.

What communications do not need to be reported to the Lobbyist Registry?

The Lobbying By-law does not apply to, and registration is not required for communications permitted by applicable procurement policies and procurement documents, including but not limited to the following:

- submitting a bid or proposal as part of a procurement process (this includes submitting an unsolicited quotation or proposal); and
- communicating with a designated employee as permitted by the applicable procurement policies and documents.

When is lobbying about a procurement process permitted and when is lobbying prohibited?

A registered lobbyist may lobby about a procurement process only if the communication is permitted under the applicable procurement policies and documents.

Section 140-41A prohibits lobbyists from communicating about a procurement process *except* as permitted by the applicable procurement policies and documents.

It is important to check the applicable procurement policies and documents to see what communications are permitted.

For example, under the City's Policy on "[Procurement Processes](#)", from the time a call or request is issued until the announcement of the award, only communication with an official point of contact named in the call is permitted. All other communications are strictly prohibited during this period, which is sometimes referred to as the "blackout period".

Do any exemptions apply when communication about a procurement is restricted?

Subsection 140-41C states that in the event of a conflict, the restriction of communications in § 140-41A prevails over all other provisions of the Lobbying By-law. So for example, the exemptions in § 140-5 do not apply when communication about a procurement is restricted under § 140-41A. As a result, communications such as requests for information and compliments or complaints about a service or program are not exempt from the restrictions in § 140-41A.

However, during periods of restricted communication related to a procurement, lobbyists continue to have the right as members of the public "to participate in the decision-making process by writing to Council or committee, by submitting a public petition, or by making a public presentation, as the procedures by-law describes".¹

Unsolicited Proposals

Unsolicited proposals are governed by the City's [Unsolicited Quotations or Proposals Policy](#) adopted by Council on June 19, 20 and 22, 2007 (the Policy). In January 2008, the Toronto Office of Partnerships issued procedures under this policy, entitled *Process for Receiving and Reviewing Unsolicited Quotations and Proposals* (the TOP process document). Section 1.4 of the TOP process document provides "Staff Guidelines" as follows:

Section 1(b) of the Policy states that an unsolicited quotation or proposal is not to be considered if "it requires substantial assistance from the city to complete the quotation or proposal."

To ensure that proponents do not contravene this section, thereby invalidating the unsolicited offer, **all initial inquiries relating to unsolicited quotations or proposals are to be referred to the Toronto Office of Partnerships (TOP). The Office is to be the sole point of contact prior to the submission of any documentation. The TOP will serve as a liaison for a potential proponent and will, as required, consult directly with the relevant Division(s) to**

¹ Please refer to Toronto Municipal Code, Chapter 27, Council Procedures, Council Procedures By-law, § 27-11. Section 27-4 of Chapter 27 provides: "In the case of a conflict, the procedures by-law has a higher priority than any other City by-law or Municipal Code Chapter, and will apply to the extent of any conflict."

coordinate the appropriate advice and guidance requested by the proponent. (Emphasis added)

Offences and Penalties

Lobbying contrary to the Lobbying By-law is an offence for which a person is liable to a maximum fine of \$25,000 on a first conviction and \$100,000 on each subsequent conviction.

The Lobbyist Registrar may suspend or revoke a registration that is found not to comply with the requirements of the by-law.

In addition, the applicable procurement policies and documents may prescribe penalties for lobbying in breach of the policy. For example, the City's "[Procurement Processes Policy](#)" provides that any vendor found to be in breach of the policy will be subject to disqualification from the call or a future call or calls in the discretion of Council.

Contact for More Information

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www.toronto.ca/lobbying

IMPORTANT NOTE: *This Interpretation Bulletin provides information only and does not constitute legal advice. For more information, please contact the Office of the Lobbyist Registrar by email at lobbyistregistrar@toronto.ca or call 416-338-5858 to speak to a Lobbyist Registry Advisor.*