



Office of Information Technology Services

State Capitol P.O. Box 2062
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Office of Information Technology Services Guideline	No: ITS-G20-001
ITS Guideline: Legal and Ethical Considerations for Vendor Communications	Updated: 12/07/2020
	Issued By: NYS Office of Information Technology Services Owner: Division of Legal Affairs

1.0 Purpose and Benefits

This guideline provides guidance to employees on appropriate and permissible communications with vendors.

2.0 Authority

*Section 1 of Executive Order No. 117*¹, issued January 2002, charges the State Chief Information Officer with overseeing and supervising the management and operations of the Office of Information Technology Services (ITS). *Section 102(2) of the State Technology Law* gives the Director of ITS responsibility for the administration of ITS. Details regarding this authority can be found in NYS ITS Policy, [NYS-P08-002 Authority to Establish Enterprise Information Technology \(IT\) Policies, Standards, and Guidelines](#).

3.0 Scope

This policy document applies to ITS and its employees (including full-time, part-time, and temporary employees), contractors, consultants, volunteers, interns, and ITS supported agencies (“Client Agency”).

¹ All references to Executive Order 117 refer to that which was originally issued by Governor George E. Pataki on January 28, 2002 and continued by Executive Order 5 issued by Governor Eliot Spitzer on January 1, 2007, Executive Order 9 issued by Governor David A. Patterson on June 18, 2008, Executive Order 2 issued by Governor Andrew M. Cuomo on January 1, 2011 and Executive Order 6 issued by Governor Kathy Hochul on October 8, 2021.

4.0 Information Statement

All vendor communications must be routed through the ITS Vendor Sourcing and Management Organization (VSMO) pursuant to ITS Vendor Communication Policy, ITS-P18-005. While working within the framework established by that policy, ITS Personnel must also understand that the Public Officers Law (POL), the State Finance Law (SFL), and various other policies and provisions further restrict how State employees and personnel may interact with potential, current, and former vendors. While it is generally permissible to communicate with vendors on a variety of topics, ITS Personnel should keep the following guidelines in mind:

4.1 Confidentiality

Pursuant to the POL, ITS Personnel may not disclose confidential ITS information to vendors. This includes, but is not limited to, possible or planned future procurements, and details of ITS or State information technology infrastructure or cybersecurity systems.

4.2 Conflicts of Interest

ITS Personnel must also avoid any conduct that may create the appearance of a conflict of interest in their interactions with vendors. A conflict of interest could potentially arise if ITS Personnel appear to: a) favor a specific vendor over other vendors; b) be unduly influenced by a specific vendor; or c) be engaged in activities that violate the public trust.

To avoid a potential conflict of interest, ITS Personnel should be sure to offer the same opportunities for meetings and discussions to all relevant vendors. When possible, multiple ITS employees should participate in vendor meetings to avoid any inference of impropriety.

ITS Personnel should also be aware that they are prohibited by both the POL and the regulations of the Joint Committee on Public Ethics (JCOPE) from accepting any “gifts” (generally, items valued at over \$15) from vendors. However, items offered by a vendor that do not meet the legal definition of a “gift,” such as food and drink valued at \$15 or less, and promotional items without substantial resale value, may be accepted under circumstances that do not give rise to an actual or apparent conflict of interest. ITS employees who receive any gifts from current or potential vendors should immediately seek guidance from the Division of Legal Affairs (DLA).

4.3 Procurement Lobbying Law

If a procurement is in a restricted period, ALL vendor communications regarding that procurement must be directed to the agency’s Designated Contacts for the procurement. The agency’s Designated Contacts for each procurement will be a staff member of the VSMO. Any emails sent to ITS Personnel regarding the procurement must be forwarded to the Designated Contacts.

ITS Personnel should consult the ITS website or contact ITS VSMO regarding whether a procurement is in a restricted period as defined by the SFL. A restricted period begins with the posting of a solicitation and continues until the final award, which may require contract approval by the Office of the State Comptroller.

Approved ITS Personnel may meet with vendors that are involved in a procurement during a restricted period **but must** limit such conversations to topics other than that particular procurement. ITS Personnel should create or request an agenda prior to such meetings to help limit conversations that may improperly involve the restricted period.

If an employee is unsure whether a topic of conversation is prohibited by the restricted period, the employee should contact the DLA and PACS prior to any such communications with the vendor.

For more information about the Procurement Lobbying Law, please refer to the guidance issued by the Advisory Council on Procurement Lobbying, at <https://ogs.ny.gov/ACPL/>.

5.0 Compliance

This guideline shall take effect upon publication. Compliance with ITS guidelines is not compulsory, but strongly suggested. ITS may amend its guidelines at any time; compliance with amended guidelines is not compulsory, but strongly suggested.

6.0 Definitions of Key Terms

Except for terms defined in this guideline, all terms shall have the meanings found in <http://www.its.ny.gov/glossary>.

7.0 Contact Information

Submit all inquiries and requests for future enhancements to the policy owner at:

Division of Legal Affairs
Reference: ITS-G20-001
NYS Office of Information Technology Services
State Capitol, PO Box 2062
Albany, NY 12220-0062
Telephone: (518) 473-5115
Email: its.sm.dla@its.ny.gov

Statewide technology policies, standards, and guidelines may be found at the following website: <https://its.ny.gov/policies>

8.0 Revision History

This policy should be reviewed consistent with the requirements set forth in [NYS-P09-003 Process for Establishing Information Technology Policies, Standards and Guidelines](#).

Date	Description of Change	Reviewer
12/07/2020	Issued guideline	Division of Legal Affairs

9.0 Related Documents

ITS-P08-005 Vendor Communications

Applicable Statutes

[State Finance Law §139-j. Restrictions on contacts during the procurement process](#)

[State Finance Law §139-k. Disclosure of contacts and responsibility of offerors](#)

Public Officers Law §73(5) and §74. Gifts

Information

[Guidelines on Procurement Lobbying \(Frequently Asked Questions\)](#) Revised February 16, 2006 and replaces previously released version in its entirety. Last updated September 16, 2010.