

MEMORANDUM

February 13, 2004

TO: Procurement Council Members

FROM: Barrett Russell

SUBJECT: Minutes of the Meeting for January 30, 2004

Enclosed for your review are draft Minutes of the Procurement Council meeting of January 30. The next meeting is tentatively scheduled for Friday, March 26, 2004.

If you have comments or suggested changes, or would like to propose agenda items for the January meeting, please contact Ginny Lazzaro at (518) 486-7323 or e-mail virginia.lazzaro@ogs.state.ny.us.

Enclosures

cc: Commissioner Ringler
R. Fleury
R. Reed
A. Phillips
W. Bikowitz

February 13, 2004

**Minutes of the Meeting
NYS Procurement Council
January 30, 2004 - 10:00 a.m.
29th Floor Conference Room
Corning Tower - Empire State Plaza
Albany, NY**

- I. **Call to Order.** Deputy Commissioner Barrett Russell called the meeting to order.
- II. **Minutes of the Meeting December 1, 2003.** The draft minutes of the meeting dated 12/10/03 were corrected to reflect Jeffrey Boyce's abstention rather than nay vote on the application of IBNYS for Council recommendation to add sandals on the list of preferred source offerings (page 9.) A motion was made to adopt the corrected minutes. Seconded and adopted unanimously.
- III. **Old Business:**

Legal Opinion - Quorum

Richard Reed, OGS Deputy Commissioner and Counsel presented the opinion of Counsel relating to the question of quorum for Council meetings ([attachment 1](#)) raised at the last SPC meeting. Steven Ennis asked if it is within the Council's authority to recommend a change in legislation in order to effect a more reasonable use of quorum for Council meetings. Currently, the requirement for 10 affirmative votes for a motion to be passed has created a difficult situation for applicants to advance recommendations. Since the action of the Council is only to advance a recommendation to the Commissioner of OGS shouldn't a simple majority be sufficient? Lester Cornelius stated that he felt that vacant positions should not be considered when deriving the number needed for a quorum. Mr. Ennis asked if the Council could vote to change its determination of quorum. Walter Bikowitz cited the Council's resolution adopted in 1996 as the governing resolution with regard to the quorum issue. Joanne Fazioli asked if a quorum would be needed adopt a new resolution. Mr. Reed stated that if the Council is considering changing rules about quorum, he would research and provide an opinion as to whether the Council could legally do so in light of current legislation and case law.

Lawrence Barker suggested that if the Council determines that a legislative recommendation is warranted, the Council should also include other initiatives for consideration.

There was a brief discussion of the role of the Council in the process of adding commodities and services to the list of Preferred Source Offerings. Mr. Reed read State Finance Law Article XI section 162.3.b.

Jeffrey Boyce asked the Council to be thoughtful of the issue. Is it a bad thing that the Council reviews applications or is it just inconvenient or not expeditious enough? Joan Sullivan responded that review is good, but not necessarily a good thing for all members of the Council to be involved in the discussion. Since all Council members are interested but not expert in the material presented to the Council it results in inefficiency and confusion.

Mr. Boyce asked if the Council should delegate all approval to OGS and ESD. Mr. Bikowitz stated that the Council has already delegated the authority to approve applications for commodities and services with an annual sales value of less than \$100,000 to OGS. Ms. Sullivan suggested that perhaps the Council should consider raising limit of the authority delegated to OGS. Mr. Boyce added that the review should be conducted in concert with ESD.

Mr. Russell stated that OGS would conduct a review of the legislative mandate and report back to the Council. Mr. Barker asked that the review be as broad as possible even entertaining Ms. Sullivan's suggestion to increase the OGS delegated authority limit.

Legal Opinion - Impact of Preferred Source Approval during the term of an existing State contract.

The opinion of OGS Counsel regarding the impact of preferred source application approval during the term of an existing State contract is included as [attachment 2](#) to the minutes.

IV. New Business

Procurement Council Reports to the Legislature.

Mr. Bikowitz submitted material to the Council relative to legislative reporting requirements ([attachment 3](#).) A report of significant findings is due biennially, as required by SFL § 161.2.k. OGS intends to draft a report that references the Procurement Council Strategic plan with a progress report of the accomplishments of the plan.

The Council is also required to report annually denials of Preferred Source applications or appeals of denials (SFL § 162.8.b). A draft letter to the Governor, legislative fiscal committee leaders and Division of Budget was presented showing Preferred Source applications acted on by the Council, both approvals and denials. Ms. Sullivan asked if the report should also include applications that

were withdrawn to make it more informative. Mr. Bikowitz said that information was not necessary because the statute calls for denials only and approvals have been added, which is above the statutory requirement. It appears that the intent of the legislation is to report on outcomes rather than activity. Mr. Boyce asked where the estimated annual value figure comes from. Mr. Bikowitz stated that the figure is taken from the application. Mr. Boyce expressed concern that the amount is not reflective of actual sales. He suggested that OGS consider including an additional column on the report for actual sales. Mr. Boyce also expressed concern about the lack of estimated sales information for the services listed. He recommended that an additional column be added to the report to reflect estimated overall contract value. Mr. Boyce stated that the Council should offer a more complete report or revert to the legislative mandate to report denials only. Mr. Ennis and Mr. Bikowitz recommended that the Council, if it changes what is reported to the legislature, change the report to what is statutorily mandated since estimated values are so subjective. Mr. Russell added that, as a practical matter, it would be a significant burden for OGS to attempt to develop such detailed estimates. It was also suggested that the \$100,000 ceiling on service offerings could be mentioned in the report so as to describe the potential impact from the approved service.

A motion was made and seconded to change the Council's report to reflect the information required by law. Motion carried unanimously.

Mr. Bikowitz stated that OGS would redraft the reports to the Governor, legislature and DOB. The draft reports will be forwarded to Council members for review. If no comments are received the reports will be finalized and transmitted. If there are questions or concerns they will be addressed at the next Council meeting.

Preferred Source Applications.

Mr. Ennis asked that his comments be included in the minutes ([attachment 4](#)).

Thomas Robertson, Associate Commissioner of the Commission for the Blind and Visually Handicapped (OCVS), spoke briefly. He described the mission of OCFS as providing services to the blind including enhancing employment opportunities. He emphasized the need for the availability of the IBNYS program for employment of many severely disabled individuals. IBNYS is charged with exploring new markets and aggressively pursuing product and service offerings that result in employment training for blind and visually handicapped individuals, especially workshop employment that has the potential for outplacement of trained individuals to private sector employment. Mr. Robertson stated that approximately 0.2% of the total value of government purchasing is spent in procuring products or services from IBNYS which is a relatively slight consideration of the entire value. He requested that the Council be driven not by a

sense of limitation or prohibition but rather by acknowledgement of the virtue and value of the Preferred Sources programs.

Mr. Cornelius refuted some of the statements included in Jeffrey Boyce's memo dated November 24, 2003 ([attachment 5](#)). He stated that remanufactured toner cartridges should be considered differently from "new" toner cartridges. He explained that less than 4% of the market for cartridge purchases is of remanufactured cartridges. Therefore, in his opinion, the IBNYS estimate of \$714,000 is probably optimistic and he felt that the actual annual sales would be less.

A question was raised about Mr. Cornelius ability to address the Council on this matter since he has an interest in the area of remanufactured toner cartridges and therefore his opinion would be biased. Mr. Reed stated that in the absence of a Council conflict of interest policy each case would be handled on an ad hoc basis. Mr. Russell offered that the composition of the Council is designed to collect a variety of individuals bringing varied interests together.

A discussion ensued about the ability of various members to vote on issues before the Council and whether or not their roles and involvement outside of the Council would require their recusal. Mr. Russell asked Mr. Reed to provide a strict statutory interpretation on the question of conflict of interest.

Mr. Boyce raised the question about whether guests at the Council meeting were allowed to speak. Ms. Sullivan stated that it has always been a Council practice to invite interested parties and welcomed their input.

Mr. Ennis asked for a recitation of the voting members present at the meeting. The role was read. Mr. Barker emphasized the purpose of the Preferred Source programs as employment transition programs. He stated that in 2003, 7,000 individuals were employed in NYSID programs. Of those employees, 2,000 were promoted, received raises or were transitioned to private sector employment. He stated that anyone on the Council is likely to have a separate interest or represent the interests of their agency. He acknowledged that the Council seemed fragmented and contentious. He expressed concern that too much time and energy seems to be spent on only one aspect of the Council's responsibilities.

Mr. Russell stated that Commissioner Ringler has voiced support for the intended purpose of the Preferred Source Program. Commissioner Ringler has also raised questions about whether the goals that are expressed in Preferred Source applications are actually being met. The Commissioner asks that the Council be aware of capabilities and expects there to be a definitive relationship between the number of disabled/blind individuals involved in production and the resultant sales.

Mr. Boyce thanked Mr. Barker and Mr. Ennis and acknowledged the value of the programs that they represent. He emphasized that he is not anti-Preferred Source and in the four years he has served on the Council he has supported many of the applications that have been presented. His concern is the impact of any application on New York State businesses.

Lawrence Clever presented the application ([attachment 7](#)) for the IBNYS to sell remanufactured double life toner cartridges. An analysis of the application was prepared by OGS ([attachment 6](#)) Mr. Boyce asked which year the annual sales volume on the OGS analysis represented. Jerry Gerard responded that the sales figures for office supplies were from calendar year 2002 and sales figures for printers were from calendar year 2003. Mr. Boyce shared copies of letters from three State contract holders and the Business Council of New York State stating their opposition to the proposal (included in attachment 5.) Mr. Gerard asked about the production capacity of the IBNYS workshop producing the cartridges. Mr. Ennis stated that a workforce of 5 employees would be assigned to this initiative. He said that the workforce could increase to 10 depending on the demand. He reminded the members that IBNYS must meet the test of form, function and utility imposed by buyers. He believes that this established criteria for sales mitigates the effect of the imposition of Preferred Source mandated status. Mr. Boyce reiterated his concern that once approval is granted Preferred Source mandated product applications are not revisited to investigate the impact of the mandate. Joseph Rogan from Clarity, the firm manufacturing the cartridges, spoke briefly about the manufacture of the double life cartridges. He indicated that to the extent possible the materials for the cartridges would be purchased from New York State firms. He stated that the manufacture of OEM (new) cartridges is almost exclusively done outside of the United States. Mr. Aronowitz asked about remedies for problems arising from the use of the cartridges. Mr. Ennis stated that IBNYS has business partners who will assist with remedies. IBNYS has made every effort to include NYS firms in the process. Seema Nepal of S&B Computer and Office Products, a contractor for miscellaneous office supplies contract, stated that the profit margin on toner cartridges is very low and that reduction of the purchase of cartridges through the contract will negatively impact her business. A motion was made and seconded to approve the application. A vote of 9 in favor, 1 opposed with 3 abstentions and 3 members absent failed to obtain the necessary majority of 10 votes to be approved. Mr. Ennis asked that the vote, a non-binding resolution, be communicated to Commissioner Ringler. The Council agreed by vote of 11 in favor, 1 opposed, with 4 members absent to forward the results of the application vote to Commissioner Ringler.

Several Council members expressed their frustration with the Council's inability to achieve resolution. Recognition that absences and vacancies contribute to the problem, Mr. Russell stated that OGS would again ask the legislature to act on filling vacant positions. The possibility of teleconference attendance at Council meetings was mentioned. Mr. Russell offered to explore the possibility of

teleconference member attendance. Mr. Boyce asked for OGS Counsel to provide guidance to Council members about their roles and responsibilities as members.

VI. Next Meeting. The next Council meeting will be scheduled for March 26, 2004.

Attachments

Members/Designees

Attending:	Leon Aronwitz	Frank DiDomenico	Dave Pettit
	Lawrence Barker	Steven Ennis	Robert Reed
	Robert Barnes	Joanne Fazioli	Lucy Roberson
	Jeff Boyce	Stewart Kidder	Barrett Russell
	Lester Cornelius		Joan Sullivan

Members absent: Joseph Girven, Karen Gordon, Robert Pape, John Pfiefer

Also attending: Richard Reed, Walt Bikowitz, Jerry Gerard

NYS PROCUREMENT COUNCIL - VOTING RECORD

Date: January 30, 2004

QUESTION, MOTION OR ISSUE: To adopt the draft Minutes of the Meeting for December 1, 2003 as corrected.

<u>MEMBER</u>	<u>VOTE</u>			
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
OFFICE OF THE STATE COMPTROLLER Joan Sullivan	X			
DIRECTOR OF THE BUDGET Robert Barnes	X			
COMMISSIONER OF ECONOMIC DEVELOPMENT Jeffrey Boyce	X			
Thomas Lindberg – Ag. & Mkts. (Lucy Roberson)	X			
Stewart Kidder – Corrections	X			
Joanne Fazioli – SUNY	X			
Frank DiDomenico – OMR/DD	X			
Robert Reed – Health	X			
Michael McCormack-OFT (David Pettit)	X			
Barbara Miller – OMH (Leon Aronowitz)	X			
AT LARGE MEMBERS:				
Lester Cornelius	X			
Steven Ennis	X			
Joseph Girven				X
Robert Pape				X
John Pfeifer				X
COMMISSIONER OF GENERAL SERVICES Barrett Russell	X			
NON-VOTING MEMBERS:				
Lawrence Barker				
Karen Gordon				X

NYS PROCUREMENT COUNCIL - VOTING RECORD

Date: January 30, 2004

QUESTION, MOTION OR ISSUE: To report only what is statutorily required by SFL § 162.8.b

<u>MEMBER</u>	<u>VOTE</u>			
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
OFFICE OF THE STATE COMPTROLLER Joan Sullivan	X			
DIRECTOR OF THE BUDGET Robert Barnes	X			
COMMISSIONER OF ECONOMIC DEVELOPMENT Jeffrey Boyce	X			
Thomas Lindberg – Ag. & Mkts. (Lucy Roberson)	X			
Stewart Kidder – Corrections	X			
Joanne Fazioli – SUNY	X			
Frank DiDomenico – OMR/DD	X			
Robert Reed – Health	X			
Michael McCormack-OFT (David Pettit)	X			
Barbara Miller – OMH (Leon Aronowitz)	X			
AT LARGE MEMBERS:				
Lester Cornelius	X			
Steven Ennis	X			
Joseph Girven				X
Robert Pape				X
John Pfeifer				X
COMMISSIONER OF GENERAL SERVICES Barrett Russell	X			
NON-VOTING MEMBERS:				
Lawrence Barker				
Karen Gordon				X

NYS PROCUREMENT COUNCIL - VOTING RECORD

Date: January 30, 2004

QUESTION, MOTION OR ISSUE: Application by IBNYS for addition to the List of Preferred Source offerings - Double Life Toner Cartridges

<u>MEMBER</u>	<u>VOTE</u>			
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
OFFICE OF THE STATE COMPTROLLER Joan Sullivan	X			
DIRECTOR OF THE BUDGET Robert Barnes			X	
COMMISSIONER OF ECONOMIC DEVELOPMENT Jeffrey Boyce		X		
Thomas Lindberg – Ag. & Mkts. (Lucy Roberson)	X			
Stewart Kidder – Corrections	X			
Joanne Fazioli – SUNY	X			
Frank DiDomenico – OMR/DD	X			
Robert Reed – Health	X			
Michael McCormack-OFT (David Pettit)	X			
Barbara Miller – OMH (Leon Aronowitz)			X	
AT LARGE MEMBERS:				
Lester Cornelius			X	
Steven Ennis	X			
Joseph Girven				X
Robert Pape				X
John Pfeifer				X
COMMISSIONER OF GENERAL SERVICES Barrett Russell	X			
NON-VOTING MEMBERS:				
Lawrence Barker				
Karen Gordon				X

NYS PROCUREMENT COUNCIL - VOTING RECORD

Date: January 30, 2004

QUESTION, MOTION OR ISSUE: To advance as a non-binding resolution the results of the vote on the application to add Laser Toner Cartridges to the List of Preferred Sources Offerings to Commissioner Ringler

<u>MEMBER</u>	<u>VOTE</u>			
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
OFFICE OF THE STATE COMPTROLLER Joan Sullivan	X			
DIRECTOR OF THE BUDGET Robert Barnes	X			
COMMISSIONER OF ECONOMIC DEVELOPMENT Jeffrey Boyce		X		
Thomas Lindberg – Ag. & Mkts. (Lucy Roberson)	X			
Stewart Kidder – Corrections				X
Joanne Fazioli – SUNY	X			
Frank DiDomenico – OMR/DD	X			
Robert Reed – Health	X			
Michael McCormack-OFT (David Pettit)	X			
Barbara Miller – OMH (Leon Aronowitz)	X			
AT LARGE MEMBERS:				
Lester Cornelius	X			
Steven Ennis	X			
Joseph Girven				X
Robert Pape				X
John Pfeifer				X
COMMISSIONER OF GENERAL SERVICES Barrett Russell	X			
NON-VOTING MEMBERS:				
Lawrence Barker				
Karen Gordon				X