

NYS PROCUREMENT BULLETIN PREFERRED SOURCE GUIDELINES

[List of Preferred Source Offerings](#)

[NYS Labeled Wines](#)

I. PURPOSE

To advance special social and economic goals, certain providers have “preferred source” status under the law. The acquisition of commodities and/or services from preferred sources are exempted from statutory competitive procurement requirements.

The following guidelines seek three goals: first, to promote the acquisition of goods and services from special providers given preferred source status; second, to ensure that State agencies and other purchasing agents are able to buy the commodities and services they need to fulfill their respective missions; and third, to provide information to purchasers that will enable them to understand and comply with statutory requirements and State Procurement Council policy. It is the obligation of each State agency and other purchasers covered by these guidelines, to buy from preferred sources whenever possible. Purchases of this nature promote the self sufficiency and self determination of preferred source clients and their families. At the same time preferred source providers are expected to remain business-oriented, one aspect of which is customer service and meeting agency needs. While the following guidelines are intended to advance these goals, ultimate success will rely upon the professional judgment and commitment of both the preferred sources and the staff of purchasing agencies.

II. APPLICABILITY AND SCOPE

All State agencies, political subdivisions and public benefit corporations (which includes most public authorities), are required to purchase approved products and services from preferred sources in accordance with the procedures and requirements described herein. Purchases from preferred sources take precedence over all other sources of supply and competitive procurement methods. The term “purchasing agency,” as used in these guidelines, refers to State agencies, political subdivisions and public benefit corporations.

Purchases by the Legislature and the Judiciary are not covered under these guidelines. The Office of Mental Health has specific provisions governing procurement from that agency’s “Buy OMH” programs.

III. PREFERRED STATUS

Preferred source status is accorded to the following entities:

- **Commodities** produced by the Department of Correctional Services' Correctional Industries Program (CORCRAFT).
- **Commodities and Services** produced by any qualified, charitable, non-profit-making agency for the blind approved by the Commissioner of Social Services.
- **Commodities and Services** produced by any special employment program serving mentally ill persons, operated by facilities within the Office of Mental Health and approved by the Commissioner of Mental Health.
- **Commodities and Services** produced by any qualified, charitable, non-profit-making agency for the other severely disabled persons approved by the Commissioner of Education.
- **Commodities and Services** produced by a qualified veterans' workshop providing job and employment skill training to veterans, operated by the United States Department of Veterans Affairs, that manufactures products or performs services within the State and is approved by the Commissioner of Education.

It should be noted that Correctional Industries also provides services which agencies may elect to purchase. Correctional Industries' services do not, however, have preferred source status under the law.

IV. PRIORITY AMONG PREFERRED SOURCES

- **Commodities** available in the form, function and utility required by a State agency, political subdivision or public benefit corporation (including most public authorities) must be purchased from preferred sources in the following prioritized order:
 - 1st - Department of Correctional Services' Correctional Industries Program.
 - 2nd - Approved, charitable, non-profit making agencies for the blind;
 - 3rd - Equal priority to approved, charitable, non-profit-making agencies for the severely disabled, qualified special employment programs for mentally ill persons, and qualified veterans' workshops.
- **Services** available in the form, function and utility required by a State agency, political subdivision or public benefit corporation must be purchased from a preferred source. **Equal priority** is accorded to approved, charitable, non-profit-making agencies for the blind, other severely disabled persons, qualified special employment programs for mentally ill persons and qualified veterans workshops. If more than one preferred source meets the service requirements, cost shall be the determining factor in selecting among the qualified sources.

V. FACILITATING AGENCIES/PREFERRED SOURCES

Facilitating agencies are non-profit-making corporations established to facilitate the distribution of orders among approved, charitable, non-profit-making preferred sources. These include [Industries for the Blind of New York State](#), appointed by the Commission for the Blind and Visually Handicapped of the Department of Social Services to facilitate orders among agencies for the blind; and [New York State Industries for the Disabled](#), designated by the Commissioner of Education to facilitate orders among agencies for the other severely disabled and the veteran's workshops.

Facilitating agencies serve the preferred sources as their agent by disseminating information regarding preferred sources and their List offerings, by processing inquiries and orders as a "one stop" contact for purchasers, and by facilitating the distribution of those commodities and services provided by preferred sources. In the description of the Preferred Source Procurement Process below (Section VIII), the activities involving preferred sources will actually be performed by the facilitating agencies where the commodity or service is offered by a blind or other severely disabled preferred source. Purchasing staff should directly contact the facilitating agencies involved.

"Buy OMH" is a statewide network of job training and employment programs which are approved by the Office of Mental Health as preferred sources. [CORCRAFT](#) (Division of Correctional Industries) is the manufacturing division of the New York State Department of Correctional Services. "Buy OMH" and CORCRAFT are preferred sources which provide direct sales to purchasing agencies.

VI. LIST OF PREFERRED SOURCE OFFERINGS

On, or before, December 31, 1995, the Office of General Services will publish and make available to State agencies, political subdivisions, public benefit corporations, prospective vendors and others, a list of all commodities and services that are available and being provided by preferred sources. This list, referred to as the [List of Preferred Source Offerings](#), will contain generic groups of commodities or services as well as specific items and will reference preferred source catalogs and other literature detailing the specific approved commodities and services offered for sale by preferred sources.

After January 1, 1996, all new or substantially different commodities or services that are to be made available for sale by preferred sources to more than one State agency, political subdivision or public benefit corporation, under the preferred source provisions of the law, must first be added to the List of Preferred Source Offerings. In other words, if the commodity or service is not on the List after January 1996, purchasers may elect to buy the commodity or service from a preferred source but are not required to do so. The addition of new or substantially different commodities or services to the List requires action by the Procurement Council and the Commissioner of General Services. OGS will maintain a current List.

VII. PREFERRED SOURCE COMMODITY AND SERVICE PRICING

A. Correctional Industries Program (CORCRAFT)

1. **Prices-** Prices charged for commodities produced by Correctional Industries are to be established by the Commissioner of Correctional Services based upon costs, but may not exceed a *reasonable fair market price* determined at, or within 90 days before the time of sale. Fair market price means the price at which a vendor of the same or similar product offers to sell such product under similar terms, in the same market.
2. **Appeals** - At any time prior to, or within 30 days of the date of sale, a purchaser of a Correctional Industries product may appeal the purchase price on the basis that it unreasonably exceeds fair market price. Appeals will be decided by a majority vote of a three member review board consisting of the Director of the Budget, the Commissioner of Correctional Services and the Commissioner of General Services, or their representatives. Decisions of the review board are final. Purchasing agencies are encouraged to consult with CORCRAFT on pricing issues prior to a formal appeal.

B. Agencies for the Blind, Other Severely Disabled and Veterans' Workshops

1. **Price Review and Approval** - With the exception of commodities offered by Correctional Industries, and commodities and services provided by "Buy OMH" to the Office of Mental Health, the Commissioner of General Services is responsible for reviewing and approving the prices of all commodities and services provided by preferred sources to State agencies, political subdivisions or public benefit corporations. In determining and revising the prices of commodities and services, consideration will be given to the reasonable costs of labor, materials and overhead necessarily incurred by preferred sources under efficient methods of procurement, production, performance and administration.
2. **Price Standards** - In approving the prices of preferred source commodities and services, OGS will seek to ensure the prices are as close to *prevailing market price* as practicable. Prevailing market price means the price at which a vendor of the same or similar commodity or service offers to sell such commodity or service under similar terms in the same market. Prices may not exceed 15 percent above prevailing market prices among responsive and responsible offers, for the same, or equivalent commodities or services.

VIII. Preferred Source Procurement Process

The procedures below outline a step-by-step process to be performed by purchasing agencies and preferred sources. The 10 day notification requirement detailed in Step 5b for commodities, and in Step 3a and 3b for services, applies only to those commodities that have been approved as a preferred source commodity on a statewide basis, and to those services approved for one or more State agencies, political subdivisions or public benefit corporations as indicated on the List of Preferred Source Offerings. For commodities or services approved for purchase only by a specific purchasing agency(ies), the 10 day notification requirement applies only to the specific agency(ies).

A. Commodities

- Step 1.** The purchasing agency determines and defines its need for particular commodities.
- Step 2.** The purchasing agency reviews the current List of Preferred Source Offerings to determine if the commodity being sought is one provided by one or more preferred sources. Purchasing agencies should broadly interpret the generic listing of commodities.
- Step 3.** a. If the commodity is identified on the List as available from one or more preferred sources, the purchasing agency determines which preferred source has priority and reviews the preferred sources' catalogs to generally determine whether the commodity meets the agency's specific needs.

Purchasing agencies should consult directly with the preferred sources/facilitating agencies to gain additional information and/or clarify catalog descriptions.

If necessary, the purchasing agency should proceed through each of the preferred sources' catalogs that, based on the List, offer the commodity being sought to locate one which meets the specific needs. If one is identified, proceed to Step 4.

- b. If the commodity is not identified on the List as being available from a preferred source, State agencies should, and local governments and public benefit corporations may, consult OGS Centralized Contracts to determine if the commodity is covered by such a contract. If not, the purchasing agency may proceed with an appropriate competitive procurement in accordance with the applicable law.

- Step 4.** If the commodity is on the list, and in the preferred source catalog, the purchasing agency shall determine whether the commodity is in the form, function and utility required.

To apply the form, function and utility standard, the agency should define the commodity in terms of the **minimum essential requirements** which will meet its needs. Every effort should be made to purchase from the preferred source so long as the item meets the agency's needs. Requirements may include quality, quantity, delivery, packaging, performance standards and compatibility, among others. Requirements should not be inflated or overstated to eliminate preferred source suppliers; nor, should the purchasing agency acquire a preferred source product which is materially unsuited to the needs of the agency.

In making the form, function and utility determination, purchasing agencies should at least consider the following:

- * Does the commodity offered by the preferred source meet either agency specifications or industry standards which may be applicable?
- * If there are deviations from specifications will the commodity suffice, or substantially meet the minimum requirements for function and performance?
- Are delivery schedules, installation requirements, performance standards reasonable, necessary and within accepted commercial practices? For example, is the divergence between the purchasing agency's desired delivery date and the preferred source's delivery date within reason or so great as to impede the agency from accomplishing its goals (i.e. six weeks vs. six months)?
- Has the preferred source been consulted with? Can the preferred source make necessary accommodations to meet the purchasing agency's needs?

- Step 5.** a. If the commodity meets the form, function and utility required by the purchasing agency, the agency completes the purchase from the preferred source at the price determined by OGS or established by the Dept. of Correctional Services. The purchasing agency, **should not** put the commodity out to bid to determine prevailing market price.

- b. If the purchasing agency determines that the commodity does not meet the form, function or utility required, the agency shall provide a written notification to the preferred source or the applicable facilitating agency (i) describing the basis for its finding; (ii) providing the name address and phone number of the responsible agency purchasing official; and (iii) indicating the date on which the Contract Reporter insertion form (if required) will be submitted, or the date on which competitive solicitations will be made by the agency. This notification must be received by the preferred source at the address provided in the List of Preferred Source Offerings at least 10 days prior to the date indicated in (iii) above. Proof of notification should be retained by the agency.

Step 6. Within the 10 days provided, the preferred source may:

- a. Contact, in writing or other form, the agency purchasing officer indicating agreement with the agency;
- b. Provide no response to the purchasing officer; or
- c. Contact in writing or other form, the agency purchasing officer indicating disagreement with the agency's finding.

Step 7. a. If (a) or (b) in Step 6 occurs, the purchasing agency may proceed with the procurement from OGS Centralized Commodity Contracts or with an appropriate competitive procurement in accordance with the applicable law.

- b. If the preferred source or the applicable facilitating agency notifies the purchasing agency that it disagrees with the agency decision, the preferred source may consult or negotiate with the agency regarding procurement options including, but not limited to, the commodity offered, a modified version of the required commodity, delivery schedules etc.

Step 8. a. If the procurement is negotiated to the satisfaction of the purchasing agency, the agency shall proceed with the procurement from the preferred source.

- b. If negotiations are unsuccessful, the purchasing agency will so advise the preferred source or applicable facilitating agency and proceed with alternative procurement procedures, including Contract Reporter notification, if required.

Step 9. The preferred source may elect to inform the Commissioner or other chief executive of the purchasing agency as to its objection to the agency decision. A copy of such objection must be included with contract documents or vouchers sent by State agencies to the Office of the State Comptroller.

Step 10. All documentation of findings, actions, decisions and objections are to be retained by the purchasing agency, in conformance with standard records retention schedules, as part of the Procurement Record for that acquisition.

B. Services

Step 1. The Purchasing agency determines and defines its need for services.

Step 2. The Purchasing agency reviews the List of Preferred Source Offerings to determine if the service being sought is one provided by one or more preferred sources. Agencies should broadly interpret the generic listing of services. If the service is clearly not on the List the agency may proceed with a competitive procurement.

Step 3. a. The agency must make reasonable efforts to notify preferred sources or their facilitating agency of the need for services appearing on the List. Notification, including a description of the purchasing agency's requirements, should be provided to the preferred source(s) at the address provided in the List of Preferred Source Offerings. Proof of notification should be retained by the agency.

b. If a preferred source responds within 10 days of the notification, with a notice of intent to provide the service in the form, function and utility required, identifying a specific workcenter, the agency shall proceed with the procurement as indicated in Step (4) below. If more than one preferred source submits notice of intent to provide the service and all meet the requirements, cost shall be the determining factor.

c. If no preferred source responds within the 10 day period with a notice of intent, or the preferred source(s)/facilitating agency provides a notice that it has no interest in providing the required service, the purchasing agency may proceed with either an OGS Centralized Services and Technology Contract or a competitive procurement. **If** the purchasing agency decides to pursue a

competitive procurement, and one or more preferred sources elects to “bid” on that procurement, the purchasing agency must award on the basis of “best value”, or, in instances involving a political subdivision, to the lowest responsible bidder, **irrespective** of the preferred sources’ special status. In other words, in such a case, preferred sources are treated as any other vendor.

- Step 4.** Once a service has been identified as available from a preferred source, the purchasing agency shall determine whether the service is in the form, function and utility required by the agency.

To apply the form, function and utility standard, the agency should define its service requirements in terms of the **minimum essential requirements**. In other words, every effort should be made to purchase from the preferred source so long as the service meets the agency’s needs. Requirements may include quality, timeliness, and performance standards, among others. Requirements should not be inflated or overstated to eliminate preferred source suppliers; nor, should the purchasing agency acquire a preferred source service which is materially unsuited to the needs of the agency.

In making the form, function and utility determination agencies should consider the following:

- * Does the service meet either agency specifications or industry standards which may be applicable?
- * Are deviations from specifications minor? Will the service, or could the service be made to suffice, or substantially meet the minimum requirements for function and performance?
- Are start-up lead times and performance standards reasonable, necessary and within accepted commercial practices?
- Has the preferred source been consulted with? Can the preferred source make necessary accommodations to meet agency’s needs?

- Step 5.** a. If the service meets the form, function and utility needs of the agency, the preferred source must obtain OGS price approval before the agency completes the purchase from the preferred source. The price of services shall be approved by OGS as being as close as practicable to prevailing market price but may not be greater than 15 percent above prevailing market price among responsive and responsible offers for equivalent service. The purchasing agency **should not** put the service out to bid to determine prevailing market

price. The Office of General Services shall ensure that the price of services offered by preferred sources are within the 15% cap based on the agency's detailed specification. To assist the Office of General Services, agencies should provide any price information they have available in order to ensure that the prevailing market price is accurately identified for the agency's specific services.

- b. If the purchasing agency determines that the service does not meet its form, function or utility needs, the agency may proceed with either, an OGS Centralized Services and Technology contract or a competitive procurement. Again, if a preferred source/facilitating agency elects to "bid" on such a procurement, the purchasing agency shall make the award on the basis of best value, or, in instances involving a political subdivision, to the lowest responsible bidder, treating preferred sources as any other vendor.

Step 6. The preferred source may elect to inform the Commissioner, or other chief executive of the purchasing agency as to its objection to the agency decision. A copy of such objection must be included with contract documents or vouchers sent by State agencies to the Office of the State Comptroller.

Step 7. All documentation of findings, actions, decisions and objections are to be retained by the purchasing agency, in conformance with standard records retention schedules, as part of the Procurement Record for that acquisition.

IX. COMPLIANCE REVIEW

It is a purchasing agency's responsibility to purchase from preferred source suppliers whenever possible, after determining the form, function and utility of preferred source products and services meet the agency's requirements. If, in the opinion of a preferred source or its facilitating agency, a purchasing agency shows a pattern of extended or repeated failure to purchase from the preferred source, the preferred source/facilitating agency may protest such purported practice to the State Procurement Council. The Council, or a subcommittee thereof, may request to review the purchasing agency's relevant Procurement Records and based upon that review, may either concur with the purchasing agency's procurement decisions, or advise the agency of the need to take corrective action on future procurements consistent with statutory requirements and Council policy. A copy of the Council's decision shall be sent to the Comptroller's Office.