

DRAFT MEETING MINUTES
New York State Procurement Council
July 14, 2016 - 11:00 A.M.
Meeting Room 6 | North Concourse | Empire State Plaza | Albany, NY

I. Welcome and Introduction

Susan Filburn (OGS) called the meeting to order at 11:08 a.m. She reminded the Procurement Council members and all of the attendees that the meeting is livestreamed and recorded. Ms. Filburn introduced Steven Kasarda (Legislative Appointee) and John Behrle (DOCCS) as the two newest members to be appointed to the Procurement Council.

II. Approval of Meeting Minutes

Ms. Filburn asked for a motion to approve the Meeting Minutes of the May 25, 2016 Procurement Council. A motion was made and seconded. The motion was approved with 11 members voting in favor and one abstention.

III. Legislative Updates

Kenneth Schultz provided the Legislative Updates for the Procurement Council. Highlights included:

- Amendment to State Finance Law (“SFL”) §139-k.
 - S7722 and A10296 have been delivered to the Governor and are awaiting his signature;
 - If enacted, there will be an immediate effective date;
 - This amendment makes substantive changes to SFL §139-k defining restricted period to clarify when the restricted period starts. The definition now states that the restricted period starts “with the earliest posting of written notice” on the agency website, a newspaper or the Contract Reporter.
 - This amendment mirrors the amendment made last year to the definition of restricted period as set forth in SFL §139-j.
- Amendments to SFL §§ 112, and 160, 161, 163.
 - S7893 (introduced 5/23/16) and A10688 (introduced 6/13/16). Both bills have passed both houses, but have not yet been delivered to the Governor;
 - Addition of a new SFL §163-c requiring all state agencies to (1) enroll with and use OSC’s electronic vendor responsibility system, (2) notify bidders for the agency’s procurements that they are to submit their vendor responsibility questionnaire via OSC’s system, (3) provide bidders with instructions on how to access the system, and (4) use the comptroller’s electronic system to access and evaluate bidder responsibility; information. This section would take effect 6 months after enactment.
 - Clarifying the definition of “technology” by updating the term to “information technology,” and substituting the term “information technology” for the term “technology” wherever it appears in SFL §§160, 161, and 163;

- Addition of new language to SFL §163 to allow agencies to request best and final offers from bidders when provided for in the solicitation;
- Addition of new language to clarify the use of piggyback contracts;
- Clarifying the determination of the threshold amount in SFL §112 for contracts with little or no actual cash consideration by using the intrinsic value of the contract.

IV. Preferred Source Definitions

Noreen VanDoren began the discussion by advising the Procurement Council that voting would occur in the same manner as the May 25, 2016 meeting. She quickly reviewed Roberts Rules of Order and reminded the Procurement Council that member Ron Romano of New York State Industries for the Disabled (NYSID) has recused himself from voting on the motions relating to the service categories for which his organization is approved to offer that service. Reference to the recusals are indicated on each definition page.

Before motions and voting began Ms. Filburn addressed two remaining concerns regarding the definitions. She reminded members that the creation of definitions is in response to the OSC's recent audit that directed OGS to define the service offerings on the List of Preferred Source Offerings. She also addressed some concerns that had been raised regarding DOCCS being allowed to vote and discuss the definitions. The question was whether there was a conflict of interest posed by the fact that Corcraft is operated by DOCCS. Ms. Filburn and Ms. VanDoren explained that because DOCCS is a state agency, and Corcraft is a division of DOCCS, its employees do not derive a direct benefit from the decisions made regarding Corcraft. This distinction sets DOCCS apart from NYSID and the New York State Preferred Source Program for People who are Blind (NYSPSP). Therefore, the person appointed to the Procurement Council from DOCCS does not receive a direct benefit from any decisions that are made regarding Corcraft, and that person may participate in discussions and vote on matters affecting Corcraft.

Ms. Filburn began the process of asking for a motion on each of the following definitions and title changes, followed by a second to the motion. A time to discuss the proposed definitions and title changes were provided followed by a vote. The definitions document as proposed is attached hereto as Exhibit A. The outcome of each motion follows:

- Motion to approve the definition of Electronics Recycling as written on Page 1 was made. The motion passed unanimously with Mr. Romano recused.
- Motion to approve the definition of Data Imaging Services as written on Page 2 was made. The motion passed unanimously with Mr. Romano recused.
- Motion to approve the definition of Microfilm and changing the title of Microfilm to Microfilm Conversion as written on Page 3 was made. The motion passed unanimously with Mr. Romano recused.

- Motion to approve the definition of Microfiche and changing the title of Microfiche to Microfiche Conversion as written on Page 4 was made. The motion passed unanimously with Mr. Romano recused.
- Motion to approve the definition of Kit Assembly & Maintenance as written on Page 5 was made. There was a brief discussion as to whether or not the revised draft of the definition addressed the concerns raised by Corcraft at the last meeting. Mr. Behrle (DOCCS) affirmed that the revised definition met Corcraft's concerns. The motion passed unanimously with Mr. Romano recused.
- Motion to recommend removal of all category headings from Section D on the List of Preferred Source Offerings was made. The motion passed unanimously.
- Motion to remove Chesire Labeling from Section D was made. The motion passed unanimously.
- Motion to remove Freight & Trucking, Optical Imaging, and Temporary Personnel – Office from Section E was made. The motion passed unanimously.
- Motion to approve the definition of Collating and changing the title of Collating to Mail Collating as written on Page 8 was made. The motion passed unanimously with Mr. Romano recused.
- Motion to approve the definition of Distribution and changing the title of Distribution to Mail Distribution as written on Page 9 was made. The motion passed unanimously with Mr. Romano recused.
- Motion to approve the definition of Folding & Inserting and changing the title of Folding & Inserting to Mail Folding & Inserting as written on Page 10 was made. The motion passed unanimously with Mr. Romano recused.
- Motion to approve the definition of Inkjet Labeling and changing the title of Inkjet Labeling to Mail Inkjet Labeling as written on Page 11 was made. The motion passed unanimously with Mr. Romano recused.
- Motion to approve the definition of Packaging and changing the title of Packaging to Mail Packaging as written on Page 12 was made. The motion passed unanimously with Mr. Romano recused.
- Motion to approve the definition of Presort, All Classes and changing the title of Presort, All Classes to Mail Presort as written on Page 13 was made. The motion passed unanimously with Mr. Romano recused.

- Motion to approve the definition of Offsite Mailroom, Services and changing the title of Offsite Mailroom, Services to Mailroom Service – Offsite as written on Page 14 was made. The motion passed unanimously with Mr. Romano recused.
- Motion to approve the definition of Onsite Mailroom Services and changing the title of Onsite Mailroom Services to Mailroom Service – Onsite as written on Page 16 was made. The motion passed unanimously with Mr. Romano recused.
- Motion to approve the definition of Laundry Service (Industrial) as written on Page 18 was made. The discussion centered on (1) if the cleaning of the laundry facilities would be considered part of the direct labor; (2) if cleaning of the equipment and floors are essential for the work to be performed to meet the requirements of HLAC; (3) if direct labor is touching the laundry and cleaning the surfaces the laundry touches; (4) what is indirect labor and when would cleaning be considered indirect labor; (5) what is the value added labor and would cleaning be considered value added labor; and (6) how current contracts are treating this issue. A motion was made to table the motion to approve the definition and send it back to the definitions workgroup for further clarification. The motion passed unanimously with Mr. Romano recused.
- Motion to approve the definition of Office under the category heading of Temporary Personnel and changing the title of Office to Temporary Personnel – Office as written on Page 20 was made. The discussion centered on (1) if professionals, trade workers, and IT workers should be included in the definition; (2) how the inclusion of professionals, trade workers, and IT workers would affect current state contracts, specifically HBITS, PBITS, and Umbrella; and (3) how the exclusion of professionals, trade workers, and IT workers would affect current Preferred Source contracts. A motion was made to table the motion to approve the definition and send it back to the definitions workgroup for further clarification. The motion passed unanimously with Mr. Romano recused.
- Motion to approve the definition of Warehouse under the category heading of Temporary Personnel and changing the title of Warehouse to Temporary Personnel – Warehouse as written on Page 22 was made. The motion passed unanimously with Mr. Romano recused.
- Motion to approve the definition of Photocopying as written on Page 23 was made. The motion passed unanimously with Mr. Romano recused.
- Motion to approve the definition of Reproduction as written on Page 24 was made. The motion passed unanimously with Mr. Romano recused.
- Motion to recommend removal of Section C and Section E on the List of Preferred Source Offerings was made. The discussion centered on (1) whether Sections create confusion for purchasers; (2) whether purchasers are not complying with State Finance Law as a result of

their confusion; and (3) the ability of the Preferred Sources to compete on the open market. A motion was made to table the motion to recommend the removal and send it back to the definitions workgroup for further clarification. The motion passed unanimously with Mr. Romano recused.

Ms. Filburn announced that the time allotted to definitions had expired and that the remaining definitions would be tabled until the next meeting. She also stated that the definitions workgroup would reach out for clarifications regarding the tabled definitions.

V. Mail Fulfillment Services Application

Ms. Filburn then introduced Christine McCann (ESD).

A. Empire State Development Perspective

Ms. McCann stated that during the last council meeting that NYSID and the Center for Disability Services were allowed to give a presentation on the Mail Fulfillment Services Application. However, a critical part of the application is the effect on small businesses and specifically commercial printers. She then introduced Timothy Freeman, President of the Printing Industry Alliance (PIA) for a presentation. Mr. Freeman's presentation included the following:

- An overview of the PIA and its members;
- The projected effect on the printing industry, including job and revenue loss if Mail Fulfillment Services are approved as a Preferred Source service offering;
- The perceived shortcomings of the NYSID application, including a lack of transparency, lack of control, and lack of trust; and
- A video highlighting the work done by disabled individuals at Quality Bindery in Buffalo, New York, evidencing there is no need for Preferred Source status to provide jobs for persons with disabilities.

There were no questions for Mr. Freeman following his presentation.

B. Workgroup Findings

Marybeth Hefner (DOH) gave a brief presentation on the Mail Fulfillment Workgroup, highlights included:

- The work completed by the workgroup;
- The need to strike a balance between NYSID's interests and the PIA's interests;
- The proposed definition; and
- The conditional approval.

The presentation highlighted the fact that there had been a consensus by the end of the workgroup meetings, however, after the last meeting of the workgroup the PIA withdrew its support. The

workgroup produced a definition that boxed in the printing that NYSID would be allowed to do under the proposed service. There were also conditions placed on the approval such as a quarterly presentation to the Procurement Council by NYSID on all approved applications and this would include information about the percentage of labor being performed by persons with disabilities related to the actual task of digital printing and the percentage of the value of the printing component of any mail fulfillment contract.

C. OGS as Procurement Council Staff Recommendation

Bradley Allen (OGS) presented OGS's recommendation, which incorporated many of the findings from the workgroup. The recommendation as proposed is attached hereto as Exhibit B. He stated that the definition would not satisfy everyone. Mr. Allen highlighted that the approval would be provisional until the spring of 2018 and that NYSID would have to give quarterly presentations regarding the percentage of printing performed by persons with disabilities and the value of the printing component of any mail fulfillment contract. .

The discussion following the presentation centered on the following: (1) the recent OSC audit; (2) the prior digital printing application of NYSID; (3) the effect of approval on the PIA and other small businesses; and (4) monitoring NYSID's actions to avoid expanding the types of materials printed. There was a motion to table any approval of the application and to send the application back to the workgroup for further clarification and review. 9 members voted in favor, 2 members voted against, with Ron Romano abstained.

The discussion following the vote centered on the information that the Procurement Council members need to decide prior to approval. They requested the following:

- (1) What is the effect on the PIA?
- (2) How will the evaluation period work?
- (3) How will agencies implement the definition?
- (4) How will agencies be able to understand the definition?
- (5) What are the 18 month forward projections for NYSID?
- (6) What are the 18 month forward projected effects on the PIA?

Concerns were raised that there would not be enough time to get this additional information to the Procurement Council members in time for the next scheduled meeting on September 14, 2016.

VI. Preferred Source Applications under OGS Standing Authority

Ms. Filburn stated that there was nothing to report at this time.

VII. Closing

Ms. Filburn said the next meeting will be held on September 14, 2016 and the motion to end the meeting was passed unanimously.

The meeting concluded at approximately 1:09 p.m.

Members in attendance:

Susan Filburn – OGS
Alexandra Greene – DOL
Charlotte Davis – OSC
Gerry Minot-Scheurmann –
DOB

Christine McCann – ESD
John Behrle – DOCCS
Thomas Hippchen – SUNY
Marybeth Hefner – DOH
Andrew Bechard – ITS

David Russo – OMH
Sonia Lindell
Steven Kasarda
Ronald Romano

Members not in attendance:

Phil Giltner – AG &
MARKETS
Lisa Davis – OPWDD

Robert Drummond
Richard St. Paul

Ronald Tascarella

Also in attendance:

Kenneth Schultz – OGS

Noreen VanDoren – OGS

Bradley Allen – OGS