

April 28, 2004

**Minutes of the Meeting
NYS Procurement Council
April 7, 2004 - 10:00 am
Meeting Room 7
Convention Center, Empire State Plaza
Albany, NY**

- I. Call to Order.** Deputy Commissioner Barrett Russell called the meeting to order.
- II. Minutes of the Meeting January 30, 2004.** The draft minutes of the meeting dated February 13, 2004 were accepted unanimously.
- III. Old Business**

Legal Opinion - Quorum Vote ([attachment 1](#))

Attached to the minutes is an opinion by OGS Legal Services on the question of the Procurement Council (Council) ability to adopt a lower quorum requirement and two informal advisory opinions from the State Ethics Commission about conflicts of interest. Steven Ennis noted a point of clarification stating that his appointment to the Procurement Council is a personal appointment and not based on his position as President/Executive Director of Industries for the Blind of New York State. Anne Phillips responded that despite the nature of the appointment it would be impossible for Mr. Ennis to disassociate himself from the organization (IBNYS). Lawrence Barker asked if the Council is required to adopt a code of conduct. Ms. Phillips said that the Council could adopt the Public Officers Law (POL) or adopt its own code of conduct. If the Council decided to adopt its own code, that code could not be in conflict with the POL. State agency Council members are already bound by the provisions of the Public Officers Law and, based on the informal opinion of the Ethics Commission, non-state agency Council members are also bound by the provisions of the POL. Another advantage of reliance on the POL is the history of opinions that exist should controversy arise.

Mr. Russell indicated the Council could establish a work group to address the issue, or it could poll the members regarding how the Council would like to proceed. He recommended adoption of the Code of Ethics in the POL. OGS was tasked with undertaking a poll before the next meeting of the Council.

Leon Aronowitz asked if there was a recent event that had made conflicts of interest a more sensitive issue. Mr. Russell stated there had not been a particular event but rather an observation that the potential for conflicts of interest existed for some members. Ms. Phillips added that recently there has been a heightened sensitivity to the appearance of conflicts of interest in the procurement area. Mr. Aronowitz expressed concern about the implication that individual Council

member's ethics were being questioned. Mr. Russell assured the Council that there is no intention to discredit any individual or to imply any impropriety.

Legal Opinions attachments to minutes:

Meeting teleconference - alternative to attendance ([attachment 2](#))

Opinion from Ethics Commission - Council Members obligations ([attachment 3](#))

There were no questions or comments by the Council members.

Preferred Source Appeal of Denial - Laser Toner Cartridges, IBNYS ([attachment 4](#))

Attached to the minutes is a letter from Commissioner Ringler (dated 3/1/04) approving the application to add remanufactured double life toner cartridges to the list of preferred source offerings. This approval was in response to an appeal from Industries for the Blind of New York State relative to the January 30 denial by the SPC to make a recommendation for approval to the Commissioner of OGS. Jeffrey Boyce asked how often in the past OGS Commissioners have responded to appeals from Preferred Sources. Ms. Phillips responded that this was the first appeal made.

Review of OGS Standing Recommendation Level ([attachment 5](#))

Mr. Russell began the discussion by stating that at the January meeting Joan Sullivan from OSC suggested that the Council consider raising the existing level of the Council's standing recommendation of approval from \$100,000 to \$250,000. Mr. Russell asked the Council to weigh in on the suggestion to amend the existing resolution. Robert Reed proposed that the level be increased to \$500,000. Mr. Barker agreed that \$500,000 would be a beneficial increase. He stated that most of the proposals submitted by his organization are for items with an annual value under \$500,000 therefore the increased level would reduce the burden on the Council. Mr. Ennis stated that he was concerned that the existing resolution includes a provision for Council review of applications when the proposed price will exceed 10% of market price as determined by OGS since this is inconsistent with the statutory provision for up to 15% over market. Mr. Reed reminded the Council that the resolution was set at 10% to afford Council members an opportunity to confer where proposals may have an impact on State agencies budgets. Mr. Boyce offered that since the majority of the applications are less than 10% it seems prudent for the resolution to continue with that provision. Ms. Phillips offered that the purpose of the Council resolution is to establish benchmarks at which the Council will become involved in the process of making recommendations to the Commissioner of OGS.

Mr. Russell suggested that in keeping with the Council's intention to expedite the review process perhaps the language describing ESD's role in the process should be more specifically defined. Mr. Boyce expressed his opinion that the process works with the language as is and therefore is not in need of refinement. Joanne Fazioli stated that she has concerns about what should be considered "significant impact". Does that imply a significant impact on one NYS vendor, a significant

impact on NYS business as a whole or significant global impact? The language of the resolution states "OGS may approve preferred source applications which meet the following criteria: (iii) an application review by Empire State Development does not identify objections from the business community." Mr. Ennis reiterated that without a definition for significant impact the resolution and OGS' standing recommendation authority will still be bogged down by requiring Council review of applications. Lynn Canton suggested that the Council adopt a resolution which includes an increased limit at which applications are currently reviewed and approved for recommendation to the Commissioner by OGS and that the resolution include a provision that the procedure be revisited in one year.

OGS will draft a revised resolution and share it with Council members for consideration of adoption at the July 14 Council meeting.

Mr. Reed stressed that the Council's scrutiny of this issue may uncover the real bottleneck, which is that the number of vacancies on the Council make it difficult for the Council to conduct business effectively.

IV. New Business

A report of preferred Source recommendations under the OGS standing authority made since the last Council meeting is attached. There were no questions or comments by the Council members ([attachment 6](#))

Preferred Source Application - Drug Testing Kits, NYSID ([attachment 7](#))

A summary of the OGS analysis of the application is attached. Jerry Gerard said that OGS recommends approval of the application stating that the option of a third source for drug testing kits (state contract, the Minnesota Multi-State Contract Alliance for Pharmacy MMCAP, and the preferred source offering) will provide an advantage to state purchasers. Also, the employment opportunity for 19 individuals resulting from the 5 FTE's supported by this initiative satisfies the Commissioner's concern about substantial employment opportunities.

Mr. Barker presented the Council members with information pertaining to the NYSID application to add drug test kits as a preferred source offering. Mr. Barker stated that NYSID agreed to accept and comply with the three conditions as outlined by the OGS recommendation.

John Dalton asked if it was permissible for OGS to extend a contract if the commodity is available from a preferred source. Mr. Russell indicated that past practice exists and OGS will put language in the contract extension informing users of the option to use preferred source. Mr. Boyce asked what factors would be considered in OGS decision to extend the contract. Mr. Gerard responded that the need to provide the continuing advantage of three sources for the drug testing kits would be the main consideration. It was stated that the current contract

holder is a New York State company whose manufacturing plant is in New Jersey with repackaging performed in New York State. Stewart Kidder questioned the price per kit for one item listed in the OGS summary stating that DOCS pays less than the listed contract price. Mr. Gerard responded that it is possible that DOCS, as a large volume purchaser, may enjoy an additional discount from the usual contract price. Mr. Barker stated that NYSID would agree to hold the pricing for one year. If warranted NYSID may, in the future, consider reducing the price to be more competitive.

A vote on the application resulted in 8 ayes and 4 abstentions. The application failed to receive the required 10 consenting votes necessary for the Council to make a favorable recommendation to the Commissioner. Mr. Barker asked that the Council consider a non-binding resolution to the Commissioner since the application did receive a majority of support. A vote on Mr. Barker's request resulted in 9 ayes and 3 nays.

V. Open Council Discussion

Ms. Fazioli asked if an OGS Program Bill was issued. Ms. Phillips responded that a program bill was submitted to the Governor's Counsel's office but has not been released.

Joseph Girven asked if New York State has a position on outsourcing. Mr. Boyce responded that this topic has come up in the budget process and ESD has some concerns. However, the best situation is a level playing field supporting free trade. There is no official position on retaliatory provisions and ESD encourages a focus on New York State business. Mr. Russell offered that New York also competes in the global market therefore it is important to balance New York's procurement power with its export interest. It was also mentioned that there is discriminatory jurisdiction information at the ESD website at www.empire.state.ny.us.

There being no further business, the meeting was adjourned.

VI. Next Council Meeting July __, 2004

Attachments

In attendance:

Lawrence Barker	Steven Ennis	Virginia Miller
Jeff Boyce	Joanne Fazioli	David Pettit
Lynn Canton	Stewart Kidder	Robert Reed
Frank DiDomenico	Barbara Miller	Barrett Russell

Members absent: Lester Cornelius, Thomas Lindberg, Robert Pape, John Pfeifer

**NYS PROCUREMENT COUNCIL
VOTING RECORD**

Date: April 7, 2004

QUESTION, MOTION OR ISSUE: To adopt draft minutes of the meeting of Jan. 30, 2004

<u>MEMBER</u>	<u>VOTE</u>			
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
OFFICE OF THE STATE COMPTROLLER Lynn Canton	X			
DIRECTOR OF THE BUDGET Virginia Miller	X			
COMMISSIONER OF ECONOMIC DEVELOPMENT Jeffrey Boyce	X			
AGENCY REPRESENTATIVES:				
Thomas Lindberg – Ag. & Mkts. (Lucy Roberson)				X
Stewart Kidder – Corrections	X			
Joanne Fazioli – SUNY	X			
Frank DiDomenico – OMR/DD	X			
Robert Reed – Health	X			
Susan Zeronda-OFT (David Pettit)	X			
Barbara Miller – OMH	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			

**NYS PROCUREMENT COUNCIL
VOTING RECORD**

Date: April 7, 2004

QUESTION, MOTION OR ISSUE: Application for addition to the list of preferred source offerings - Drug Test Kits (NYSID)

<u>MEMBER</u>	<u>VOTE</u>			
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
OFFICE OF THE STATE COMPTROLLER Lynn Canton	X			
DIRECTOR OF THE BUDGET Virginia Miller	X			
COMMISSIONER OF ECONOMIC DEVELOPMENT Jeffrey Boyce			X	
AGENCY REPRESENTATIVES:				
Thomas Lindberg – Ag. & Mkts. (Lucy Roberson)				X
Stewart Kidder – Corrections			X	
Joanne Fazioli – SUNY	X			
Frank DiDomenico – OMR/DD	X			
Robert Reed – Health	X			
Susan Zeronda-OFT (David Pettit)			X	
Barbara Miller – OMH	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			

**NYS PROCUREMENT COUNCIL
VOTING RECORD**

Date: April 7, 2004

QUESTION, MOTION OR ISSUE: To advance as a non-binding resolution the results of the vote on the application to add Drug Test Kits to the List of Preferred Source 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 Lynn Canton	X			
DIRECTOR OF THE BUDGET Virginia Miller	X			
COMMISSIONER OF ECONOMIC DEVELOPMENT Jeffrey Boyce		X		
AGENCY REPRESENTATIVES:				
Thomas Lindberg – Ag. & Mkts. (Lucy Roberson)				X
Stewart Kidder – Corrections	X			
Joanne Fazioli – SUNY	X			
Frank DiDomenico – OMR/DD	X			
Robert Reed – Health	X			
Susan Zeronda-OFT (David Pettit)	X			
Barbara Miller – OMH		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			