



GEORGE E. PATAKI
GOVERNOR

KENNETH J. RINGLER, JR.
COMMISSIONER

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
OFFICE OF GENERAL SERVICES
MAYOR ERASTUS CORNING 2ND TOWER
THE GOVERNOR NELSON A. ROCKEFELLER EMPIRE STATE PLAZA
ALBANY, NEW YORK 12242

MEMORANDUM

July 28, 2004

TO: Procurement Council Members

FROM: Barrett Russell

SUBJECT: Minutes of the Meeting for July 14, 2004

Enclosed for your review are draft Minutes of the Procurement Council meeting of July 14. The next meeting is tentatively scheduled for Wednesday, November 17, 2004.

If you have comments or suggested changes, or would like to propose agenda items for the November 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

**Minutes of the Meeting
NYS Procurement Council
July 14, 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. Mr. Russell introduced two new members of the SPC, Timothy Holt, Director of Central Services for Rensselaer County and Elliot Shaw of the Business Council.
- II. **Minutes of the Meeting April 7, 2004.** The draft minutes of the meeting dated May 10, 2004 were accepted unanimously.
- III. **Old Business**

Preferred Source Appeal of Denial - Drug Testing Kits, NYSID

[Attachment #1](#) to the minutes is a letter from Commissioner Ringler (dated 5/7/04) approving the application to add certain urine based drug test kits to the List of Preferred Source Offerings. This approval was in response to an appeal from New York State Industries for the Disabled relative to the April 7 denial by the SPC to make a recommendation for approval to the Commissioner of OGS.

Jeffrey Boyce asked if there was an existing state contract for drug test kits. Mr. Russell stated that there is a contract and Commissioner Ringler's letter states that sales will not commence until the expiration of the contract - December 1, 2004. In addition, should OGS elect to extend the contract, the contract extension will include "...language recognizing that same or similar products may be offered under another State contract or a preferred source." Leon Aronowitz suggested that an announcement be made in advance of the expiration of the contract. Mr. Russell agreed that a notification to customers of the drug test kit purchasing options will be made by purchasing memorandum prior to the expiration of the contract and at the time of a contract extension.

OGS Standing Recommendation Revised Resolution

OGS presented a revised resolution ([attachment #2a](#)) raising the level for approval of recommendation of preferred sources applications by the Office of General Services from \$100,000 to \$500,000. The draft resolution will also be amended to change "products" to "commodities" (first paragraph, third line) to be consistent with the statutory language.

Elliot Shaw asked how many approvals were made in a year under the authority delegated to OGS. Jerry Gerard provided statistics for the period May 2003 until May 2004 as follows:

- o 103 applications pertaining to commodities were received in OGS for review

- 29 applications were for new or substantially different commodities
- 19 of the applications for new or substantially different commodities had anticipated annual sales under \$ 100,000
- 7 of the applications for new commodities had anticipated annual sales between \$100,000 and \$250,000
- 3 of the applications for new or substantially different commodities had anticipated annual sales between \$250,000 and \$500,000
- none of the applications for new or substantially different commodities had anticipated annual sales over \$500,000

Joanne Fazioli asked if there was a definition of "new product (commodity) or service." Mr. Russell indicated that certain definitions, as well as, issues pertaining to the preferred sources application process are under discussion by the Preferred Sources Workgroup.

A motion was made and seconded to adopt the revised Resolution for OGS Standing Recommendation of Preferred Source Application Approval as amended. The resolution was adopted unanimously.

Code of Conduct

Mr. Russell stated that the discussion of Procurement Council Code of Conduct would be tabled until the end of the meeting.

IV. New Business

Legislative Update

Anne Phillips provided an overview of procurement activities of the current legislative session. Ms. Phillips stated that proposed procurement legislation occurred in three areas - procurement lobbying, bidder responsibility and preferences. A handout was provided to members listing bills with a procurement impact ([attachment 2b](#)).

Report of Preferred Source recommendations under OGS standing authority

Mr. Gerard provided a list ([attachment #3](#)) of preferred Source recommendations under the OGS standing authority made since the last Council meeting. Steven Ennis noted a correction to the list - PSG item #96 Isolation Gowns is offered by the Central New York Association for the Blind in Utica.

Preferred Source Application - Channelizer Drums, NYSID

A summary of the OGS analysis of the application is [attachment #4](#). Mr. Gerard said that OGS recommends approval of the applications. The price is acceptable and the total direct labor workforce will be 3 FTE's.

Lawrence Barker presented the Council with information pertaining to the NYSID application and provided a handout ([attachment #5](#)) illustrating the drums.

The application was approved by a unanimous vote of 11 ayes among members present with 6 members absent.

Code of Conduct (Old Business Continued from earlier)

Mr. Russell began the discussion by stating that members agreed to adopt the Public Officers Law §74 as the Code of Conduct for the SPC. A motion was made to adopt the draft resolution ([attachment #6](#)).

Mr. Barker asked what the adoption of the Code of Conduct would mean for preferred source facilitating agency members. Ms. Phillips clarified that members could make presentations but if a conflict of interest exists they may not be involved in a discussion or debate and would be required to recuse themselves from voting.

John Dalton expressed concern that non-members would have more rights than members. Mr. Boyce offered that member's opinions and statements would most likely carry more weight at meetings than others.

Mr. Russell stated that although members with a conflict of interest are prevented from participation in a Council discussion they could provide factual information if requested by Council members.

Mr. Barker again voiced concern that the adoption of the strict interpretation of the Public Officers Law would have an adverse effect on the Preferred Sources members of the Council. Mr. Russell assured the Council that the adoption of the Code of Conduct would not stifle members' ability to present information before the Council.

Leon Aronowitz asked if the proposed Code of Conduct resolution had been reviewed by the Ethics Commission. Lisa Fox stated that it had not. Mr. Russell proposed that the Council adopt the resolution pending review by the Ethics Commission. Ms. Phillips added that it was at the suggestion of the Ethics Commission that the Code of Conduct for the Procurement Council include interpretation examples and illustrations beyond a simple reference to the Public Officers Law § 74.

Mr. Ennis asked if State agencies affected by an increase in costs resulting from the approval of preferred sources applications would be considered to have a conflict of interest. Mr. Russell said that members vote based on the understanding of the Legislative intention to support the preferred sources program and not based on an impact on their agencies budget. Mr. Barker asked if it was not in fact a conflict of interest for the preferred sources members to be involved in the discussion of changing the standing authority of OGS to approve preferred sources applications. Mr. Russell clarified that administrative and procedural matters do not create the same conflict of interest that arises from specific applications where an entity has the potential to realize a profit.

There being a motion to adopt the resolution as proposed a vote was called. The resolution failed to receive the requisite number of votes for approval.

Lucy Roberson suggested that the resolution be abbreviated to the first 6 and the last paragraph of the proposed resolution only since only those paragraphs reflect the language in Public Officer's Law and a second document be developed as a guidance document. A motion was made to adopt the abbreviated version of the Code of Conduct and that the proposed Code be sent to the Ethics Commission for their approval. The Council vote resulted in passage of adoption of the resolution, as revised.

V. Open Council Discussion

Mr. Aronowitz asked for a presentation of the OGS Equipment Maintenance Program at the next Council meeting. For the benefit of members unfamiliar with the program Ms. Phillips explained that a recent Budget bulletin instructed State agencies to participate in the OGS Equipment Insurance Program, which includes a provision for equipment maintenance. Ms. Phillips also stated that the program is available to other state agencies under the terms of an MOU. The program is not available to other than state agencies at this time.

There being no further business, the meeting was adjourned.

VI. Next Council Meeting November 17, 2004

Attachments

In attendance:

Leon Aronowitz
Lawrence Barker
Jeff Boyce
Frank DiDomenico
Steven Ennis

Joanne Fazioli
Timothy Holt
Stewart Kidder
Virginia Miller
David Pettit

Robert Reed
Lucy Roberson
Barrett Russell
Elliot Shaw

John Moriarty and John Dalton represented OSC although neither has the authority to vote.

Members absent: Lynne Canton, Lester Cornelius, Joseph Girven, Robert Pape, John Pfeifer

**NYS PROCUREMENT COUNCIL
VOTING RECORD**

Date: July 14, 2004

QUESTION, MOTION OR ISSUE: To adopt draft minutes of the meeting of April 7, 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 (Leon Aronowitz)	X			
AT LARGE MEMBERS:				
Lester Cornelius				X
Steven Ennis	X			
Joseph Girven				X
Robert Pape				X
John Pfeifer				X
Elliot Shaw	X			
COMMISSIONER OF GENERAL SERVICES Barrett Russell	X			

**NYS PROCUREMENT COUNCIL
VOTING RECORD**

Date: July 14, 2004

QUESTION, MOTION OR ISSUE: To adopt draft resolution for OGS standing recommendation of Preferred Source application approval, 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 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 (Leon Aronowitz)	X			
AT LARGE MEMBERS:				
Lester Cornelius				X
Steven Ennis	X			
Joseph Girven				X
Robert Pape				X
John Pfeifer				X
Elliot Shaw	X			
COMMISSIONER OF GENERAL SERVICES Barrett Russell	X			

**NYS PROCUREMENT COUNCIL
VOTING RECORD**

Date: July 14, 2004

QUESTION, MOTION OR ISSUE: To approve application for addition to the list of preferred source offerings - Traffic Safety Channelizer Drums (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 (Leon Aronowitz)	X			
AT LARGE MEMBERS:				
Lester Cornelius				X
Steven Ennis	X			
Joseph Girven				X
Robert Pape				X
John Pfeifer				X
Elliot Shaw	X			
COMMISSIONER OF GENERAL SERVICES Barrett Russell	X			

**NYS PROCUREMENT COUNCIL
VOTING RECORD**

Date: July 14, 2004

QUESTION, MOTION OR ISSUE: To adopt Code of Conduct for the State Procurement Council (revised July 13, 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 (Leon Aronowitz)		X		
AT LARGE MEMBERS:				
Lester Cornelius				X
Steven Ennis		X		
Joseph Girven				X
Robert Pape				X
John Pfeifer				X
Elliot Shaw	X			
COMMISSIONER OF GENERAL SERVICES Barrett Russell	X			

**NYS PROCUREMENT COUNCIL
VOTING RECORD**

Date: July 14, 2004

QUESTION, MOTION OR ISSUE: Motion to adopt proposed Code of Conduct (paragraphs 1-6 and last paragraph of draft Code of Conduct dated July 13, 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 (Robert Barnes)	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 (Leon Aronowitz)	X			
AT LARGE MEMBERS:				
Lester Cornelius				X
Steven Ennis	X			
Joseph Girven				X
Robert Pape				X
John Pfeifer				X
Elliot Shaw	X			
COMMISSIONER OF GENERAL SERVICES Barrett Russell	X			