

**Minutes of the Meeting
NYS Procurement Council
July 29, 2008, 10am
NY Network Studios
Empire State Plaza, South Concourse
Albany, NY**

I. Call to Order

Carla Chiaro convened the meeting and called for a moment of silence for Larry Barker.

II. Minutes of the February 14, 2008 Meeting

Ms. Chiaro called for a motion to adopt the draft minutes of the meeting of February 14, 2008. The motion was made by David DeMarco and seconded by James Haggerty. The motion passed unanimously.

III. Old Business

Procurement Council Guidelines Workgroup Report

Dave Parkis informed the Council that the workgroup will be in a position to review the full edited document in September, 2008.

NYSID Application – Duty Boots

Subsequent to the Procurement Council Meeting on February 14, 2008, OGS Commissioner John Egan reviewed an appeal of the Council's denial of the NYSID application for Duty Boots. On March 17, 2008 the application for Duty Boots as a Preferred Source Offering was approved ([Attachment #1](#)).

IV. New Business

Legislation

Anne Phillips provided the Legislative update. The Procurement Stewardship Act has been granted a 4 year extension, and will remain in effect until June 30, 2012. The bill that accomplished this extension ([Attachment #2](#)), as well as a Summary of the Amendments to the Procurement Stewardship Act ([Attachment #3](#)), were provided. OGS continues discussion with the Legislature about additional Procurement Stewardship Act Modifications. Procurement Council Members should address any items they have for discussion with the Legislature to Ms. Phillips. Summaries of a number of other bills that impact Procurement were provided ([Attachment #4](#)).

Executive Order #4: Establishing a State Green Procurement and Agency Sustainability Program

OGS and DEC have been working together to comply with the requirements of Executive Order #4 ([Attachment #5](#)). An interagency committee has been developed to discuss specifications for greener product alternatives and sustainability goals for State agencies. Executive Order 142 was repealed and DEC will provide information to State agencies about how sustainability efforts will be continued. The interagency committee has met three times. A tentative list of products and services for which specifications will be developed has been

developed. The final list is due September 1, 2008. OGS and DEC will publish the list on a web page together with summaries of meetings. In addition, all agencies are required to assign an employee to serve as Green Procurement Coordinator. OGS' Green Procurement Coordinator, Audra Herman, was introduced.

Procurement Administrative Fee

Gerald Minot-Scheuermann provided an update on the Procurement Administrative fee ([Attachment #6](#)). This bill was part of the 2008-2009 budget, and established a 0.5% fee on all new centralized contracts for commodities, services, and information technology (excluding construction). The purpose for the fee is to provide revenue for the state's general fund. The Federal Government and other entities also impose administrative fees for centralized contracts. Tax and Finance and OGS will work together to enable contractors to register, report, and remit fees. OGS is finalizing FAQs. Rico Singleton asked if it is anticipated that this may cause contractors to charge higher rates to the state to cover that cost? Mr. Minot-Scheuermann responded that the system is electronic, so it will not be burdensome to the vendors or the state. Since this fee will be included in vendors' bid prices, they will all be on an equal basis during the bid process.

Report of Preferred Source Recommendations Under OGS Standing Authority

Jerry Gerard provided a report of Preferred Source Offerings Approved under OGS Standing Authority since the last Council meeting. OGS approved 6 applications: 5 from NYSID, 1 from IBNYS. Total FTE's 8.25%. ([Attachment #7](#))

V. Open Council Discussion

New Language about Debriefing

Ms. Phillips discussed the new language ([Attachment #8](#)) that OGS will be including in bids and contracts going forward advising prospective contractors as to what they can expect in terms of debriefing. Ms. Phillips asked if the Council felt a bulletin should be developed for state agencies to assist them in developing language for their bid documents.

For commodity contracts that are awarded based on low price, OGS makes tabs available electronically and in hard copy form. For service and technology contracts that are awarded based on best value, OGS offers bidders debriefing with respect to only their proposal during the term of the evaluation, but not in relation to competing vendors. Post award, a larger debriefing is offered to all bidders including the successful bidder. Mr. Gerard stated that this has worked well. It is beneficial for bidders to learn why their proposals were not successful. Mr. Gerard stated that OGS has heard from the vendor community that not all state agencies provide debriefings. Some agencies require FOIL requests, although debriefing falls outside of the FOIL process.

John Moriarty indicated that OSC would be available to participate in developing such a bulletin. In OSC's Fall Conference, there will be a panel discussion with OSC, OGS, and various agencies on this topic; agencies who have a solid debriefing procedure are invited to participate.

John Dalton expressed concerns about using model language that says "prohibited" since the law has been amended to eliminate that term. It's a decision the agency is making. Ms.

Phillips said that the intention of creating a bulletin that addresses debriefing is to give agencies a guideline when establishing their procedures.

It was agreed that this language should be drafted by OGS and OSC, and then presented to the Council. Sandra Pettinato offered to participate since the Department of Health has a successful debriefing procedure.

Mr. Singleton asked that a draft bulletin be distributed for agency review before it comes before the Council for adoption.

Barbara Miller expressed concern with waiting until the next Council meeting to present this bulletin to the Council and asked if it could be agreed to develop something that we can use temporarily as a boilerplate.

A motion for a resolution to create a workgroup to develop a bulletin addressing debriefing procedures with input from other agencies was made by Ms. Pettinato and seconded by Mr. Singleton. The motion passed unanimously.

A copy of OSC G-bulletin 232, Contract Award Protest Procedures, as well as the OGS Procurement Services Group's (PSG) Dispute Resolution Procedures for Vendors was provided ([Attachment #9](#)). Mr. Gerard discussed this dispute process, which allows vendors to first file an appeal with PSG, second to appeal with the commissioner or deputy commissioner of OGS who makes a final determination on behalf of PSG, and if necessary, the pursuit of legal action. The OSC bulletin states that vendors can appeal directly to OSC prior to a final determination ([Attachment #10](#)).

Mr. Moriarty clarified that OSC expects the vendors to exhaust agency dispute resolution procedures prior to appealing to OSC. OSC will look at their bulletin and see if wording needs to be changed. Mr. Dalton clarified that there is a two tier process because some agencies do not have clear dispute resolution policies so they need to go directly to OSC. When this occurs, OSC will go to the agency and ask them if they want to review the protest.

Walter Edwards asked if there is any monitoring that occurs to be sure smaller vendors receive equal treatment. Ms. Phillips said that oversight comes through the contract approval process, the Attorney General's Office review process, and the OSC review process.

Procurement Stewardship Act Report

Mr. Moriarty distributed a CD detailing the 2007-2008 report to the Procurement Council of data concerning active procurement contracts over \$15,000 as required by the Procurement Stewardship Act.

MWBE Update

Mr. Singleton reported that OGS, the Office of the Chief Information Officer (CIO), and the Governor's Office of MWBE Development have been working on strategies for reaching out to the vendor community and agencies with regard to increasing opportunities for doing business with MWBE companies specifically in Technology. Agencies are asked to develop target goals for doing business with MWBE companies for technology and vendors are being asked to develop goals with regard to subcontracting with MWBE companies.

CIO, OGS, and others hosted the well received MWBE Jump Start program which connected MWBE vendors with contractors in the hopes of promoting contracting opportunities. It was recommended that this type of activity be continued.

Ms. Phillips reported that a disparity study is underway, and Michael Jones-Bay expects the results of this study in the summer of 2009.

General Comment

Mr. DeMarco asked if anyone is looking at simplifying and streamlining the procurement process. Ms. Chiaro mentioned that OGS is doing an internal Business Process Improvement Project (BPI). Franklin Hecht said that BPI is working with the FMS team; hopefully what is learned from the FMS project will be helpful across the state.

Ms. Pettinato said that she is a member of an advisory committee for not-for-profit contractors who face the same issues that vendors and agencies face. The committee had their first meeting that included State Agencies, not-for-profits, contractors, vendors, advocates, the Senate, and the Assembly. FMS will be attending the next meeting, and the issues and ideas raised can be reported at the next Procurement Council Meeting.

VI. Closure

There being no further business, the meeting was adjourned.

Members in attendance on July 29, 2008

Carla Chiaro
Robert Coyner
David DeMarco
Walter Edwards
James Haggerty
Richard Healey

Timothy Holt
Stewart Kidder
Barbara Miller
John Moriarty
Robert Pape
Gerard Minot-Scheuremann

Sandra Pettinato
Amy Schoch
Mindy Scott
Rico Singleton

Members Absent

George Oros
Robert Pape

Also in Attendance

Leon Aronowitz
John Dalton
Nancy Fisher
Jerry Gerard

Franklin Hecht
Audra Herman
David Parkis

Anne Phillips
Monica Wilkes

**NYS PROCUREMENT COUNCIL
VOTING RECORD**

Date: July 29, 2008

QUESTION, MOTION OR ISSUE: **Motion to approve the minutes from the
February 14, 2008 meeting.**

<u>MEMBER</u>	<u>VOTE</u>			
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
COMMISSIONER OF GENERAL SERVICES Carla Chiaro	X			
OFFICE OF THE STATE COMPTROLLER John Moriarty	X			
DIRECTOR OF THE BUDGET Susan Knapp (Gerard Minot-Scheurman)	X			
COMMISSIONER OF ECONOMIC DEVELOPMENT Amy Schoch				X
AGENCY REPRESENTATIVES:				
Bob Haggerty – Ag. & Mkts. (Mindy Scott)	X			
Stewart Kidder – Corrections	X			
David DeMarco – SUNY	X			
Frank DiDomenico – OMR/DD (Robert Coyner)	X			
Robert Reed – Health (Sandra Pettinato)	X			
Rico Singleton – OFT	X			
Barbara Miller – OMH	X			
AT LARGE MEMBERS:				
Walter Edwards	X			
James Haggerty	X			
Richard Healey	X			
Timothy Holt	X			
Robert Pape				X

**NYS PROCUREMENT COUNCIL
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Date: July 29, 2008

QUESTION, MOTION OR ISSUE: **Motion for a resolution to create a workgroup to develop a bulletin addressing debriefing procedures.**

<u>MEMBER</u>	<u>VOTE</u>			
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
COMMISSIONER OF GENERAL SERVICES Carla Chiaro	X			
OFFICE OF THE STATE COMPTROLLER John Moriarty	X			
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AGENCY REPRESENTATIVES:				
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David DeMarco – SUNY	X			
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AT LARGE MEMBERS:				
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James Haggerty	X			
Richard Healey	X			
Timothy Holt	X			
Robert Pape				X

