

MEMORANDUM

October 3, 2003

TO: Procurement Council Members

FROM: Barrett Russell

SUBJECT: Minutes of the Meeting for September 26, 2003

Enclosed for your review are draft Minutes of the Procurement Council meeting of September 26. The next meeting is tentatively scheduled for Friday, December 5.

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

October 3, 2003

**Minutes of the Meeting
NYS Procurement Council
September 26, 2003 - 10:30 a.m.
29th Floor Conference Room
Corning Tower - Empire State Plaza
Albany, NY**

- I. Call to Order.** Deputy Commissioner Barrett Russell called the meeting to order.
- II. Minutes of the Meeting May 6, 2003.** There being no corrections or comments a motion was made to adopt the draft minutes dated May 23, 2003. Seconded and adopted unanimously.
- III. Workgroup to establish preferred source application procedures.**

Jerry Gerard, Deputy Director, Procurement Services Group provided the Council with a brief overview of the workgroup. A handout ([attachment 1](#)) was distributed describing workgroup activities. Workgroup members are currently reviewing existing procedures, forms, policies and other documentation. The workgroup's immediate priority is to come to resolution with respect to several issues impeding the consistent processing of preferred source applications for approval. Resolution reached by the workgroup will be presented at the next Council for approval.

- IV. Legislative Update.** Anne Phillips provided an overview of recent legislative activity of interest to the Council.

S2109 makes a technical correction to § 162 of the State Finance Law. The facilitating agency for the preference for the blind had been erroneously listed as the Office of Children and Family Services this bill corrects the facilitating agency to the Office of Temporary and Disability Assistance.

A5088/S2675 provides in § 165 of the State Finance Law an option to SUNY & CUNY to reject offers received for the purchase of sports equipment, if the purchasing entity determines that products are produced by a manufacturer who employs unfair labor practices.

A8676/S4177 proposed to amend § 165 of the State Finance Law requiring that bids for goods would have to be rejected if the bidder could not certify that its products had been produced in conformance with fair labor practices and laws. This bill has been vetoed.

S5684 extends the provisions of Article 15A of the Executive Law for an additional 15 years. This bill was delivered to the Governor on September 18. A9062/S5696 are two separate bills that were drafted addressing the disclosure by vendors of lobbying activities with respect to procurement contracts. Both bills were passed in their respective houses. They will be active in the 2004 session.

Executive Order 127 was signed on June 16, 2003 imposing additional disclosure requirements for procurement contracting. The OGS role in the implementation of EO127 was to draft guidelines for State agencies, public authorities and public benefit corporations. Copies of the Executive Order and the guidelines issued on August 1, 2003 were distributed ([attachment 2](#)) to Council members. The guidelines are in a question/answer format and are posted on the OGS website. As additional questions arise, those with general application will be included in the guidelines. The target date for this posting is January 1, 2004. Those questions, which are more specific to the operation of an individual State agency, will not be included in the guidelines. State agencies have been provided model language and forms for compliance with the Executive Order. Information gathered under the provisions of EO127 will become a part of the procurement record and maintained by transaction.

Joanne Fazioli asked if the documentation should be included as part of the procurement package sent to OSC. Lynn Canton responded that the documentation will be required as part of the submission to OSC. Guidelines from OSC will be forthcoming.

Lawrence Barker asked if OGS or OSC has a role in monitoring compliance with EO127. Ms. Phillips stated that each agency is responsible for compliance. OGS will provide guidance but does not have enforcement responsibilities.

Ruth Walters asked if backdrop contracts were covered by EO127. Ms. Phillips responded that disclosure would be required at the mini-bid phase.

Ms. Phillips stated that it is anticipated that as issues are scrutinized additional requirements may be identified.

Ms. Fazioli asked if it could be assumed that all OGS commodity contracts are low bid and therefore exempt from the provisions of EO127. Mr. Bikowitz and Mr. Russell emphasized that all OGS commodity contracts are not necessarily low bid awards. OGS is working on a system for identifying the award method for each contract. It is anticipated that the identification will be prominently displayed on each contract award on the OGS website.

Mr. Bikowitz mentioned that OGS is also looking at Small Business Initiatives and Filed Price Agreements. Services and technology contracts where best and final choices are used will also require EO127 compliance.

Ms. Phillips invited Council members to call OGS Legal Services (518-474-5607) with specific questions. Questions may also be directed to Ms. Phillips at anne.phillips@ogs.state.ny.us. OGS agreed to keep the Council informed of its findings and actions regarding Executive Order 127.

OSC Bulletin G203 - Prohibited Transactions - Terrorists and Terrorist Organizations. Ms. Phillips asked if others are having difficulty complying with the requirements of this Presidential Executive Order 13224 ([attachment 3](#)). Ms. Walters stated that a problem with compliance is that there is no centralized contractor file. OSC cross checks payment files against the list of terrorists and terrorist organizations and will communicate to agencies when red flags are discovered. Ms. Fazioli asked if compliance is actually OGS role as part of the responsibility determination. Ms. Phillips responded that OGS does a check at the point of contract award also other methods of due diligence are employed, however, compliance remains difficult. OSC will take the lead on compliance with Executive Order #13224.

Preferred Source Product Approval. Walter Bikowitz informed the Council about three approvals for new preferred source items made under the authority delegated to OGS to approve items with an anticipated annual sales volume of less than \$100,000 ([attachment 4](#)). Those items were: Computer Cleaning Products, Hand Sanitizing Gel and Liquid Spill Absorbent. Mr. Bikowitz explained that the Computer Cleaning Products were actually submitted as 33 separate applications with values ranging from \$1,000 to \$30,000. Although, no one application exceeded the \$100,000 limit collectively the annual sales volume is expected to exceed the limit. Mr. Bikowitz asked for Council guidance on this matter.

Mr. Russell stated that he had received communication from Jeffrey Boyce, ESD expressing his concern about this issue. Mr. Boyce feels that these items should be considered one product line and as such should have been presented to the Council for approval. Mr. Barker reassured the Council that submission of the applications in this manner was not an attempt to circumvent the approval process. There were no objections or issues raised by other Council members regarding OGS approval of these applications.

Mr. Gerard explained that recent personnel changes in PSG as well as some reassignments of responsibility resulted in some doubt about which preferred source applications were to be sent to ESD for review. He reassured the Council that the OGS PSG process has been reviewed, and that going forward, all applications to add commodities or services, which are new or substantially different, would be forwarded to ESD. Mr. Gerard stated that the lengthy response time taken by ESD is an issue under discussion by the workgroup. Since the time frame is not addressed in statute or existing procedure, Mr. Gerard asked whether the Council had any input about what should be considered a reasonable response time. Dianna Ehrlich of the Business Council stated that the Business

Council receives the applications from ESD and usually returns them within a day or two. Mr. Russell asked the workgroup to continue to negotiate this issue and report back to the Council with a recommendation.

- V. Open Council Discussion.** Deirdre Taylor, Division of Budget shared Cyber Security Policy P03-02 Information Security Policy dated April 18, 2003 ([attachment 5](#)). Vendors will be expected to comply with ISO/IEC standards and must affirm such compliance at the time of bidding on state contracts. ISO/IEC material will be made available to government agencies and may be made available to contractors (post award). Ms. Phillips asked if bid documents will have to include language to address this requirement. Mr. Russell and Ms. Phillips will discuss this matter with the Office for Technology and report back to the Council.

Joanne Fazioli asked if provisions are being made for the transition from AmEx to the new bankcard service. Mr. Bikowitz explained that the contract award for both the travel card and procurement card will be with Citibank and will be a VISA card. The contract administrator for the travel card is Craig Dickinson of GOER. The contract administrator for the procurement card is Franklin Hecht of OGS. There will be a phased in transition with the travel card first and the procurement card to follow. Mr. Russell agreed to follow up on the specifics of the transition and report to the Council at the next Council meeting.

Joanne Fazioli asked if the 9/11 registry has been created yet. Ms. Phillips answered that the registry is not yet established. The Department of Labor has proposed regulations, which include the registry, and are in the public comment phase. The proposed regulations may be viewed in the State Registry.

- VI. Next Meeting.** The next Council meeting will be scheduled for early December.

Attachments

Members/Designees

Attending:	Lawrence Barker	Joanne Fazioli	Robert Reed
	Robert Barnes	Joseph Girven	Lucy Roberson
	Lynn Canton	Stewart Kidder	Barrett Russell
	Lester Cornelius	Barbara Miller	Deirdre Taylor
	Frank DiDomenico		

Members absent:	Jeffrey Boyce	Michael McCormack
	Steven Ennis	Robert Pape
	Karen Gordon	John Pfiefer

Also attending:	Walt Bikowitz
	Jerry Gerard
	Anne Phillips

NYS PROCUREMENT COUNCIL - VOTING RECORD

Date: September 26, 2003

QUESTION, MOTION OR ISSUE: To adopt the draft Minutes of the Meeting for May 6, 2003

<u>MEMBER</u>	<u>VOTE</u>			
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
COMMISSIONER OF GENERAL SERVICES Barrett Russell	X			
OFFICE OF THE STATE COMPTROLLER Lynn Canton	X			
DIRECTOR OF THE BUDGET Deirdre Taylor (Robert Barnes)	X			
COMMISSIONER OF ECONOMIC DEVELOPMENT Jeffrey Boyce				X
Margaret Becker – Ag. & Mkts. (Lucy Roberson)	X			
Stewart Kidder – Corrections	X			
Joanne Fazioli – SUNY	X			
Frank DiDomenico – OMR/DD	X			
Robert Reed – Health	X			
Michael McCormack-OFT				X
Barbara Miller – OMH	X			
AT LARGE MEMBERS:				
Lester Cornelius	X			
Steven Ennis				X
Joseph Girven	X			
Robert Pape				X
Karen Gordon				X
John Pfeifer				X
NON-VOTING MEMBERS:				
Lawrence Barker				
Karen Gordon				