

**Minutes of the Meeting
NYS Procurement Council
October 28, 2008, 1 pm
Meeting Room 6
Empire State Plaza, South Concourse
Albany, NY**

I. Call to Order

II. Minutes of July 29, 2008 Meeting

Ms. Chiaro called for a motion to adopt the draft minutes of the July 29, 2008 meeting. The motion was made by Sandra Pettinato and seconded by Barbara Miller. The motion passed unanimously.

III. Old Business

Procurement Council Guidelines Workgroup Report

Dave Parkis informed the Council that the Guidelines Subcommittee has completed their revision process and are now reviewing their results with the main workgroup: approximately 75 percent of that process is complete. They hope to complete the process within two or three meetings.

Discretionary Purchasing Guidelines Report

Mr. Parkis referred the attendees to the draft copy of the revised discretionary purchasing guidelines ([Attachment #1](#)). The revised guidelines include new language on grouping similar products when making discretionary purchases, an updated link to the M/WBE database available online, sample Contract Reporter language, and language encouraging the purchase of NYS food products. A motion to approve the Discretionary Purchasing Guidelines was made by Barbara Miller, seconded by Thomas Hippchen and passed unanimously.

Debriefing Guidelines Bulletin Workgroup

As a result of language added to the Procurement Stewardship Act requiring State agencies to debrief competitive bid solicitation respondents, OGS has formed a workgroup to draft model language in order to provide agencies with guidance in this area. Input has been received from the Information Technology Procurement Subcommittee. The Health Department and OGS met to discuss current practices. The workgroup will reach out to the Business Council and other interested businesses for their input. The workgroup will draft debriefing guidelines before the next Council meeting. Interested parties were encouraged to contact Ms. Phillips if they would like to participate. Mr. Gerard clarified Council discussion at the last meeting which allows OGS to share the finished product with interested agencies in advance of the Council approving the finished product at a future meeting.

Executive Order No. 4 Update: Establishing a State Green Procurement and Agency Sustainability Program

Ms. Chiaro updated the Council on OGS and DEC efforts to implement directives of EO No. 4 as co-chairs of an interagency committee formed for that purpose. Four new subcommittees have been formed in the areas of training, procurement, reporting and sustainability to assist in carrying out the Order. One of their largest projects is the development of specifications for

36 environmentally sustainable products recommended by the committee. ([Attachment # 2](#)) Numerous participants from multiple agencies are involved in the labor-intensive task of developing these specifications, with a targeted completion date of December 1. There is also a webpage on the OGS website where updated information on the efforts of the committee may be viewed, and where the final versions of the specifications will eventually be available.

IV. New Business

State Finance Law §145

Anne Phillips referred the attendees to the handout in the packet ([Attachment # 3](#)) relating to the formation of a workgroup composed of Procurement Council and Council of Contracting Agency (CCA) members who are charged with reviewing the Contract Reporter and discretionary thresholds and increasing information made available to the bidding community, thereby facilitating access to bidding opportunities. The CCA was formed as a result of EO No. 125 under Governor Cuomo and primarily represents agencies performing public works projects. The CCA is not subject to the Open Meetings Law. Several members serve on both Councils. There is a September 1, 2009 deadline to complete the study and make recommendations to the Governor and the Legislature. Ms. Phillips asked for volunteers to participate in the process, including the Department of Economic Development, as well as other agencies with experience in the agency specific contracting process. OGS will be reaching out to members to ask for participation in the study.

Update on NYS Contract Reporter

Amy Schoch of Empire State Development stated that new legislation directs a number of changes to the Contract Reporter. ESD has begun efforts to improve site security and by January will have the ability to publish notice of grants and fund availability. They are also improving the search function and updating the existing contract award posting feature so that it will be compliant with the legislative changes. Agencies will be able to use this feature on a voluntary basis until it becomes mandated by law at the end of 2009. ESD is designing a scope of work to accompany an RFP for a contractor to redesign the site. Postings will be made daily and access to the service will be free to vendors. There will be improved navigation and the inclusion of tutorials. Enhanced features will be available for vendors electing to pay a subscription, including bidder notification and the ability of contractors with public sector contracts to advertise for subcontractors and suppliers to those contracts. Another feature will be for posting of awarded contracts, with links to the original advertisement. Nancy Fisher has done extensive work on the current category system in an effort to create an integrated coding structure complimentary to other existing systems.

Changes to Appendix A Pursuant to State Finance Law Amendments

Anne Phillips stated that some changes to Appendix A are required as a result of legislative updates to the State Finance Law. The first refers to Section 138 and relates to an existing requirement that before a company can assign a contract, it must acquire pre-approval of the assignment from the agency holding the contract. The current law states that without such preapproval the resulting assignment is null. OGS experience has shown that such preapproval is frequently difficult to obtain and unnecessary, since approval is nearly always granted, so it was recommended that the ability to waive that pre-approval be allowed. With that language added to the statute, OGS is now conferring with the Department of Law to supplement clause 2 of Appendix A language to reflect that addition.

Section 162 4a provided a preference to apparel and textile providers adversely affected by the events of September 11, 2001. That law was extended several times but has lapsed. OGS is proposing to remove that clause from Appendix A.

The Department of Law has proposed some changes to Appendix A as well, including contractor compliance with the NYS Information Breach and Security Notification Act and new reporting requirements for contractors performing consulting with NYS agencies. OGS will compile all of these proposed changes into one packet and provide them to the Council for review.

Ms. Miller asked about difficulties enforcing the requirements of OSC bulletin G-226 Consultant Disclosure Legislation since there is no penalty to the vendor for noncompliance. Anne Phillips said that it would depend on context, but could become a responsibility issue. John Moriarty agreed that is a performance monitoring issue and encouraged agencies to use available tools to ensure compliance, stating that it is ultimately a vendor responsibility issue since it is a requirement pursuant to law.

Procurement Related Legislation

Ms. Phillips stated that OGS is not planning on doing a procurement bill this year unless the Council has an issue they would like to address. There will be procurement related proposals on behalf of the Advisory Council on Procurement Lobbying. Sections 139-j and k relating to restrictions during procurement is due to expire 7/31/09, so OGS will be looking for an extender bill as well as clarification to make it easier for vendors and agencies to comply with the law.

Report of Preferred Source Recommendations Under OGS Standing Authority

Mr. Gerard provided a report of Preferred Source Offerings approved under OGS standing authority since the last Council meeting. OGS approved 20 applications: 18 from NYSID, two from IBNYS, with total FTEs of nearly six member agency constituents ([Attachment # 4](#)).

IBNYS Applications—Remanufactured Color Toner Cartridges

Ms. Amanda Jones of IBNYS gave a presentation on the addition of remanufactured single-life color toner cartridges to the list of Preferred Source offerings. Ms. Jones reviewed costs and benefits, attesting that all of the direct labor will be performed at the Elmira work center. She stated that the addition of this product line will help to ensure the continued employment of the seven existing full-time workers in Elmira, whose work load is dropping due to the reduced orders for the black and white color toner cartridges now being supplied by that facility. This is a re-submission of an application that was before the Council last year, during which time IBNYS has conducted more research to support their position. Ms. Jones handed out an evaluation report of the product conducted by the Rochester Institute of Technology attesting to the quality of the product as well as a survey conducted by Clarity Imaging Products to show that most State agencies are now purchasing color toner cartridges from the OGS Miscellaneous Office Supply contractors, and those cartridges are new, not remanufactured. ([Attachment # 5](#)) Ms. Jones stated that the introduction of the high quality remanufactured color toner cartridges as a preferred source item will help agencies comply with the directives of EO No. 4 related to the purchase of environmentally sustainable commodities and services. She also expressed concern that IBNYS may become an obsolete

provider of toner cartridges since the market is shifting from black and white to color cartridges.

Ms. Schoch (ESD) reiterated ESD's concerns regarding the addition of this product line, particularly a potential adverse impact on NYS small business. Nancy Fisher had identified at least two color toner remanufacturers in NYS, one of which holds a contract with the Federal government and assisted the Rochester Institute of Technology in establishing the product evaluation process for toner cartridges. The other remanufacturer sells primarily to companies in the NYC area. Both of these companies would welcome NYS business. Ms. Schoch stated that one of the intents of EO No. 4 is to increase public sector demand for remanufactured toner cartridges and that hopefully this will be an expanding market in NYS. Therefore, ESD has concerns about a preferred source contract being given to an out-of-State firm, as is being proposed. Ms. Jones responded that given the limited staff at IBNYS she does not expect the size of the contract to be a threat to NYS industries.

Regarding the survey Ms. Jones provided to the Council, Mr. Gerard asked for clarification of the market which would be affected by this preferred source product addition (Miscellaneous Office Supply contractors). Mr. Kevin Barry of Clarity Imaging responded that the purpose of the survey had been to determine the extent of current remanufactured toner cartridge purchases being made by NYS agencies. Mr. Gerard stated that the practice of the Council in reviewing these applications has been to not disadvantage current contractor business via the addition of preferred source items.

Ms. Fisher stated that ESD's research with the NYS small businesses indicated that they do directly manufacture similar items so the addition of this product as a preferred source item would directly affect these companies. Mr. Healey responded that the companies referred to by ESD will not be substantially impacted because they are not currently doing business with NYS agencies.

Mr. Edwards stated that Rochester is being positioned as a remanufacturing center for the state and there is an M/WBE selling remanufactured cartridges to Columbia University. He suggested there may be an opportunity to connect IBNYS with this company.

Ms. Chiaro asked for a motion to bring this item before the council for a vote, which was made by Mr. Coyner and seconded by Ms. Pettinato. The application was defeated by a vote of 5 in favor, 6 opposed, 3 members absent.

IBNYS Applications—Cook Chill Bags

Ms. Jones next gave a presentation on the addition of cook chill plastic bags to the list of Preferred Source offerings. ([Attachment # 6](#)) These bags are used in food service for bulk preparation and individualized portioning, allowing them to be frozen and reheated in the same packaging, thereby reducing the risk of contamination. The IBNYS Utica facility would be providing the repackaging, with the possible addition of more labor steps in the future. Price comparisons are based on a 2005-06 bid let by DOCS and IBNYS pricing is 8-13% above that pricing. Similar bags are available in the market, but few of them meet the standards needed for this item because of the proprietary blend needed for cook chill bags. Ms. Jones also stated that there appears to be no movement toward this market among surveyed NYS small businesses.

Mr. Edwards asked about FDA certification and gas production of the bags while heating. Ms. Jones responded stating that the products meet ASTM testing standards and other environmental concerns.

Ms. Schoch stated that ESD did not find any adverse impact on NYS business, but they declined to approve the original submission because it appeared that IBNYS was partnering with a business that had not successful in a recent bid for this item. Mr. Gerard stated that there is nothing in statute to preclude such a partnership. The current contract, however, would be allowed to run through its course and any allowable extensions.

Ms. Ferri stated that the current DOCS contract contains a clause which requires reimbursement for food lost as the result of defective bags and asked if IBNYS would include the same. Ms. Jones stated that since the Utica facility bid on that contract, she was hopeful that they would be in compliance with that requirement.

Mr. Minot-Scheuremann noted that the IBNYS price comparison was based on a 2005-06 contract. Since a contract has been awarded since that time, the price analysis should be updated. Ms. Jones stated that IBNYS would do so and that she expected a more favorable price comparison would result. Mr. Gerard stated that OGS used the bid done last June for the price evaluation for these bags and IBNYS only met the criteria for four of the five items.

Ms. Chiaro stated that OGS would like to bring a motion before the Council to allow the current DOCS contract to remain in effect for the life of the contract but also accepted the cook chill bags as a preferred source item subject to an updated price list. Ms. Pettinato suggested the Council delay the vote until more pricing information was available. Ms. Chiaro asked for a motion to table the vote, which was made by Sandra Pettinato and seconded by Mr. Minot-Scheuremann. The motion was passed unanimously. Ms. Chiaro clarified that the Council will address this issue at the next meeting on December 4, and Ms. Jones will provide the requested updates.

IBNYS Applications—Sheets and Towels

Mr. Healey spoke about an addition to the textile line IBNYS has provided to the NYC Health and Hospitals Corporation for over 50 years. ([Attachment # 7](#)) Utica, Brooklyn & Buffalo IBNYS facilities share the work for these products. Health and Hospitals has asked for a lighter weight sheet which IBNYS is prepared to supply. IBNYS plans to begin phasing out the heavier sheet formerly provided and substituting the lighter weight sheet where requested.

A motion was made by Mr. Hippchen to bring the matter before the Council for a vote and seconded by Mr. Edwards. As there was no discussion, the Council voted and the motion passed unanimously.

V. Open Council Discussion

Ms. Chiaro welcomed Thomas Hippchen representing the State University of New York and acknowledged Barbara Miller's departure from the Council. Ms. Miller stated that she was sorry to be leaving the Council, but is transitioning to a new position in Marcy. She introduced David Russo, who will be the official liaison effective November 1.

VI. Closure

There being no further business, the meeting was adjourned.

Attachments

Members in attendance on October 28, 2008

Carla Chiaro	Thomas Hippchen	Sandra Pettinato
Robert Coyner	Timothy Holt	Amy Schoch
Walter Edwards	Barbara Miller	Rico Singleton
Nanette Ferri	Gerard Minot-Scheuremann	
Richard Healey	John Moriarty	

Members Absent

James Haggerty
Bob Haggerty
George Oros
Robert Pape

Also in Attendance

Kevin Barry
Nancy Fisher
Jerry Gerard
Amanda Jones
Sue Menia
David Parkis
Anne Phillips
David Russo

**NYS PROCUREMENT COUNCIL
VOTING RECORD**

Date: October 28, 2008

QUESTION, MOTION OR ISSUE: **Motion to approve the minutes from the
July 29, 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.				X
Stewart Kidder – Corrections (Nanette Ferri)	X			
David DeMarco – SUNY (Thomas Hippchen)	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
VOTING RECORD**

Date: October 28, 2008

QUESTION, MOTION OR ISSUE: **Motion to approve the addition of remanufactured color toner cartridges as an IBNYS preferred source item.**

<u>MEMBER</u>	<u>VOTE</u>			
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
COMMISSIONER OF GENERAL SERVICES Carla Chiaro				
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				X
Stewart Kidder – Corrections (Nanette Ferri)		X		
David DeMarco – SUNY (Thomas Hippchen)		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
VOTING RECORD**

Date: October 28, 2008

QUESTION, MOTION OR ISSUE: **Motion to table the vote on cook chill bags as an IBNYS preferred source item.**

<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				X
Stewart Kidder – Corrections (Nanette Ferri)	X			
David DeMarco – SUNY (Thomas Hippchen)	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				
Timothy Holt				
Robert Pape				X

**NYS PROCUREMENT COUNCIL
VOTING RECORD**

Date: October 28, 2008

QUESTION, MOTION OR ISSUE: **Motion to add sheets & towels as IBNYS preferred source items.**

<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.				X
Stewart Kidder – Corrections (Nanette Ferri)	X			
David DeMarco – SUNY (Thomas Hippchen)	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