

MEMORANDUM

December 10, 2003

TO: Procurement Council Members

FROM: Barrett Russell

SUBJECT: Minutes of the Meeting for December 1, 2003

Enclosed for your review are draft Minutes of the Procurement Council meeting of December 1. The next meeting is tentatively scheduled for Friday, January 30, 2004.

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

Draft December 10, 2003

**Minutes of the Meeting
NYS Procurement Council
December 1, 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 September 26, 2003.** There being no corrections or comments a motion was made to adopt the draft minutes dated Oct. 3, 2003. Seconded and adopted unanimously.
- III. **Old Business:**

Bank Card Services.

Linda Decker, OGS Financial Services provided an overview of the new bank card service transition expected early in 2004. OGS is working with GOER and OSC for efficient conversion to the new system. The contract with Citibank for a VISA card will be for both travel and procurement cards. A pilot will be conducted in December with complete agency roll out beginning in January 2004. Statewide agency training will be conducted. An auto enroll process will be utilized. Instruction on the requirements for agencies will be addressed in training.

Cyber Security Policy.

Mr. Russell followed up on a question from September's meeting about the Cyber Security Policy P03-02 Information Security Policy (April 18, 2003) raised by Deirdre Taylor. Bidders will have an opportunity to enter into a non-disclosure agreement permitting access to the security policy documentation without obligation to purchase.

Preferred Sources Workgroup

Jerry Gerard, Deputy Director, OGS Procurement Services Group provided the Council with an overview of the workgroup's activities. The workgroup has identified 3 major areas that require resolution. Resolution of these issues is the foundation needed for the workgroup to achieve its charge.

Definitions are needed for terms used in the process - especially "product extension" and "new or substantially different" products.

A dichotomy exists on the List of Preferred Sources Offerings. The law references items for sale to two or more state agencies yet the list has 5 sections, two of which are devoted to items that are available for sale to single agency users and one list that includes items that have not been approved for sale. Work is needed to consolidate and possibly eliminate sections of the list.

Single agency use - The question of how to handle requests for single agency use of a preferred source supplier has become a contentious issue for the workgroup to resolve. Mr. Gerard stated that the next step to resolve this issue is to obtain OGS executive management determination.

IV. New Business

Preferred Source Product Approvals.

Mr. Gerard provided a handout ([attachment 1](#)) for the Council members that listed the items approved since the last Council meeting under the authority delegated to OGS for approval of items with an estimated annual sales volume of less than \$100,000. Under its delegated authority OGS, with the concurrence of ESD approved, pre-packaged batteries, liquid spill absorbent, and bagged rock salt for statewide use. Also approved were winter uniforms for the New York City Housing Authority and brigade sweaters for the Department of Correctional Services. The Council unanimously approved OGS recommendations.

Mr. Gerard stated that the practice of single agency approvals for items with estimated annual sales of more than \$100,000 may be subject to a change based on a recent OGS' review of preferred source statutory authorization. Under consideration is adoption of a single process for sales intended for offering to State agencies regardless of whether it is for single agency or multiple agency use. Jeffrey Boyce asked how the change would be communicated. Mr. Gerard responded that if a change is adopted appropriate guidelines will be revised.

Susan Zeronda asked why two processes exist. Steven Ennis responded that the State Finance Law requires approval by the Procurement Council of items for sale to 2 or more agencies. The silence in the law on the sale of items to single agency users indicates an intention not to force a "process" when items are for sale to single agencies. Mr. Ennis added that it is the position of Industries for the Blind that there is no requirement for an item to be listed before it can be sold to agencies by preferred sources. Mr. Gerard stated that it is OGS position that in order to add an item to the list Procurement Council approval is required and that no provision is made for single agency use items. Lawrence Barker noted that this difference of opinion highlights the need for examination and revision of the existing "List of Preferred Source Offerings". Mr. Barker also requested that current practices continue and not be interrupted while these issue are being

discussed. There is a potential for a significant delay and an adverse affect on the preferred sources ability to explore business growth opportunities.

Leon Aronowitz asked if there is a need to propose changes to the statute? Should that be a charge to the workgroup? Mr. Russell stated that agreement must be reached on these issues first. Ms. Zeronda noted that the Council has the authority to establish guidelines and procedures.

John Dalton, OSC Legal Services, read from the Preferred Source Guidelines the following statement "...if the commodity or service is not on the List after January 1996, purchasers may elect to buy the commodity or service from a preferred source but are not required to do so." Mr. Dalton interpreted the Guidelines to imply that agencies may go to preferred sources as an alternative to competitive bidding. That their intention was to support the promotion of business opportunities for preferred sources. Mr. Boyce contends that if that is what the guidelines say they are in conflict with the statute.

Mr. Russell concluded that it is evident that some work remains to be done to resolve these issues and encouraged the workgroup to work to achieve consensus.

Preferred Source Applications.

Several applications for approval were presented to the Council ([attachment 2](#)). Industries for the Disabled applied for the addition of two new items. Electric Hand/Hair Dryers was approved by a vote of 11 in favor, 1 opposed, and 1 abstention with 3 members absent. Drug Test Kits was denied by a vote of 5 in favor, 1 opposed and 7 abstentions with 3 members absent. The vote was followed by a discussion of what constitutes a quorum and majority for business being conducted by a public body. Mr. Ennis and Mr. Barker questioned the number of votes needed for approval for the Drug Test Kits. Anne Phillips, OGS Associate Counsel advised that Section 41 of the General Construction Law addresses this issue.

S 41. Quorum and majority. Whenever three or more public officers are given any power or authority, or three or more persons are charged with any public duty to be performed or exercised by them jointly or as a board or similar body, a majority of the whole number of such persons or officers, gathered together in the presence of each other or through the use of videoconferencing, at a meeting duly held at a time fixed by law, or by any by-law duly adopted by such board or body, or at any duly adjourned meeting of such meeting, or at any meeting duly held upon reasonable notice to all of them, shall constitute a quorum and not less than a majority of the whole number may perform and exercise such power, authority or duty. For the purpose of this provision the words "whole number" shall be construed to mean the total number which the board, commission, body or other group of persons or officers would have were there no vacancies and were none of the persons or officers disqualified from acting.

For purposes of the State Procurement Council, which is a 19-member body, this means that a quorum is met with 10 members. Moreover, a majority is constituted by 10 members voting positively for the Procurement Council to take an official action such as approving the addition of a commodity or service to the List of Approved Preferred Sources Commodities and Services.

Mr. Dalton inquired as to whether the fact that the Council has vacancies would reduce the numbers for quorum and majority. Section 41, however, states that the “whole number” of members means all authorized members without consideration for any vacancies.

Industries for the Blind applied for the addition of sandals and received approval by a vote of 12 in favor and 1 opposed with 3 members absent. Industries for the Blind also had two other applications under consideration: plastic pavement marking materials and double life laser toner cartridges. Both were withdrawn by the Industries for the Blind and will be submitted at a later date for Council consideration.

The application for drug test kits led to a lengthy Council discussion that highlighted several issues. There seemed to be a lack of clear understanding of the potential dollar value of this contract. There is also concern about how the approval of a preferred source item to the List will impact an existing state contract. There may be legal exposure for OGS if sales under the existing contract diminish because of the establishment of a preferred source preference. The discussion about the double life laser toner cartridges raised the issue of potential sales volume extending beyond the initial intended market. Once a product is approved for addition to the list the Council does is not revisit the matter. The original applications may represent only a small part of the market with subsequent increases that may have a larger impact on NYS business.

VI. Next Meeting. The next Council meeting will be scheduled for January 30, 2004.

Attachments

Members/Designees

Attending:	Lawrence Barker	Steven Ennis	Robert Reed
	Jeff Boyce	Joanne Fazioli	Lucy Roberson
	Lynn Canton	Stewart Kidder	Barrett Russell
	Lester Cornelius	Barbara Miller	Deirdre Taylor
	Frank DiDomenico		Susan Zeronda

Members absent: Karen Gordon, Robert Pape, John Pfiefer

Also attending: Linda Decker, Walt Bikowitz, Jerry Gerard, Anne Phillips

NYS PROCUREMENT COUNCIL - VOTING RECORD

Date: December 1, 2003

QUESTION, MOTION OR ISSUE: To adopt the draft Minutes of the Meeting for Sept. 26, 2003

<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 Deirdre Taylor	X			
COMMISSIONER OF ECONOMIC DEVELOPMENT Jeffrey Boyce	X			
Thomas Lindberg – 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 (Susan Zeronda)	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			
NON-VOTING MEMBERS:				
Lawrence Barker				
Karen Gordon				

NYS PROCUREMENT COUNCIL - VOTING RECORD

Date: December 1, 2003

QUESTION, MOTION OR ISSUE: To accept preferred source item additions as approved by OGS - prepackaged batteries, liquid spill absorbent, rock salt (bags), winter uniforms (NYCHA), and brigade sweaters (DOCS) (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 Deirdre Taylor	X			
COMMISSIONER OF ECONOMIC DEVELOPMENT Jeffrey Boyce	X			
Thomas Lindberg – 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 (Susan Zeronda)	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			
NON-VOTING MEMBERS:				
Lawrence Barker				
Karen Gordon				

NYS PROCUREMENT COUNCIL - VOTING RECORD

Date: December 1, 2003

QUESTION, MOTION OR ISSUE: Application for addition to the list of preferred source offerings - Electric Hair Dryers (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 Deirdre Taylor	X			
COMMISSIONER OF ECONOMIC DEVELOPMENT Jeffrey Boyce		X		
Thomas Lindberg – 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 (Susan Zeronda)	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			
NON-VOTING MEMBERS:				
Lawrence Barker				
Karen Gordon				

NYS PROCUREMENT COUNCIL - VOTING RECORD

Date: December 1, 2003

QUESTION, MOTION OR ISSUE: Application for addition to the list of preferred sources 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 Deirdre Taylor			X	
COMMISSIONER OF ECONOMIC DEVELOPMENT Jeffrey Boyce		X		
Thomas Lindberg – 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 (Susan Zeronda)			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	
NON-VOTING MEMBERS:				
Lawrence Barker				
Karen Gordon				

NYS PROCUREMENT COUNCIL - VOTING RECORD

Date: December 1, 2003

QUESTION, MOTION OR ISSUE: Application for addition to the List of Preferred Source Offerings - Sandals (IBNYS)

<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 Deirdre Taylor	X			
COMMISSIONER OF ECONOMIC DEVELOPMENT Jeffrey Boyce		X		
Thomas Lindberg – 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 (Susan Zeronda)	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			
NON-VOTING MEMBERS:				
Lawrence Barker				
Karen Gordon				