**Minutes of the Meeting**

**New York State Procurement Council**

**November 26, 2013 - 11:00 A.M.**

**Meeting Room 6**

**North Concourse**

**Empire State Plaza**

**Albany, NY**

1. **Call to Order**

Sergio Paneque, Chief Procurement Officer, OGS NYS Procurement called the meeting to order and thanked everyone for attending.

1. **New Members**

Mr. Paneque introduced Ron Tascarella representing the National Industries for the Blind (NIB) and welcomed Mr. Tascarella to the Procurement Council.



1. **Minutes of Meetings**

Mr. Paneque asked Council members for additions or corrections to the draft minutes from the October 30, 2013 meeting. There being no changes offered, a motion to adopt the draft minutes was made, seconded and passed unanimously.

1. **Procurement Related Legislation**

Anne Phillips, OGS Deputy Counsel & Director of Legislative Affairs, advised that one procurement related amendment had been passed at the end of the last session: Part P chapter 55 of the Laws of 2013. The amendment added an additional category to the discretionary purchase authority ($50,000 to $200,000) to include food, including milk and milk products grown, produced or harvested in New York State (State Finance Law §163(6)). It also adds the requirement that such discretionary purchase be posted on the purchasing agency website in an effort to increase the purchase of locally grown food. As the 2014 Legislative Session has just begun, Ms. Phillips will brief the Council on any procurement related developments at the first meeting in the 2014 Calendar year.

1. **New Business**

NYS Procurement Bulletin – Discretionary Purchasing Guidelines and Contract Reporter Advertising Thresholds and Notice Requirements: These documents have been updated to reflect changes approved at the 2013 Legislative Session and will be posted on the OGS website shortly. Similar changes to the Procurement Guidelines are being made and will be posted on the OGS website as well.

1. **Interagency Committee on Sustainability and Green Procurement**

Kathryn Macri Environmental Policy Coordinator for the Environmental Facilities Corporation provided an overview of Executive Order No. 4 (EO4) Interagency Committee on Sustainability and Green Procurement. As the chair of the EO 4 training committee, Ms. Macri requested assistance in the integration of the published EO4 specifications and other documents, currently published on the OGS website in a separate area from other contract information, as a key resource for procurement officials and the business community. Ms. Macri suggested that the separation presents a barrier to better understanding of green preferences, specifications and green procurement. Integration will provide training to agency purchasing staff and vendors. The EO4 committee is currently co-chaired by OGS Commissioner RoAnn Destito and DEC Commissioner Joe Martens. EO4 directed agencies to “green” their procurements and create agency sustainability programs. Green procurement is defined as the purchase of goods and services that reduce negative impact on the environment and human health as compared to traditional procurement. Ms. Macri requested integration of the EO4 materials into the published guidance materials, specifically, the [New York State Procurement Guidelines](http://ogs.ny.gov/BU/PC/Docs/Guidelines.pdf); [Contract Directories](http://ogs.ny.gov/BU/PC/Directories.asp); [Doing Business with New York State: A Guide to the State’s Procurement Practices](http://ogs.ny.gov/BU/PC/Docs/DoingBusinessWithNY.pdf); and the [Contract Reporter](http://www.nyscr.org/Public/index.aspx). Ms. Macri expressed gratitude for the work done by the EO4 Interagency Committee over the past several years. In response to a question regarding the possible education of purchasing officials, Ms. Macri noted the inclusion of annual classes at the OGS Purchasing Forum, but noted that the integration of the EO4 information into the basic procurement guidance would reach a larger audience than those attending a class dedicated to the topic at the Forum. In response to a question regarding updating the Procurement Guidelines, Ms. Phillips noted that OGS is developing a plan for updates that will be presented to the Council. Mr. Paneque noted the importance of bringing green procurement into practice and thanked Ms. Macri for her presentation. Regarding action in response to Ms. Macri’s request, Mr. Paneque advised that he would like more time to review this material and suggested a motion that the topic be tabled until the first meeting of the 2014 Calendar Year. The motion was made, carried, seconded and approved unanimously.

1. **Preferred Source Recommendations under OGS Standing Approval Authority**

OGS has not approved any applications under its delegated authority from the Procurement Council to approve applications with values under $100,000.00 since the October 30, 2013 meeting.

1. **Procurement Source Recommendations requiring Procurement Council Approval**

**DIGITAL PRINTING UPDATE**

Ms. Irvine advised that OGS NYSPro continues working to collect additional data about the application as well as information from NYSID to respond to the concerns presented at the last Council meeting. All of the necessary data is not yet collected, but NYSPro hopes to present more information at the next Council meeting.

Ron Romano, President & CEO of the NYS Industries for the Disabled (NYSID) advised that NYSID has been working with OGS to provide information. NYSID has additional benchmarking information to document that the proposed pricing is within 15% of the prevailing market and is also acquiring copies of contracts and associated purchasing orders to further validate the pricing. OGS confirmed that ESD is involved in the conversations and NYSID advised that they would like to participate in those discussions as well.

**DRUG TEST KITS**

Carrie Laney, Executive Director for the National Industries for the Blind (NIB) d/b/a NYS Preferred Source Program for Persons who are Blind (NYSPSP) addressed the Council to highlight the application for inclusion of three separate Drug Testing Kits to the NIB Preferred Source product catalog (two on-site urine based tests and one oral test).

This product line is manufactured by a Minnesota Company, Express Diagnostics (ED), noting that ED representatives were present to respond to questions if necessary. NIB has partnered with a supplier, TX Lighthouse for the Blind, Fort Worth, Texas to provide best pricing.

Direct labor will be performed by Northeastern Association of the Blind at Albany (NABA) located in Albany, NY and will consist of repackaging. One-hundred percent (100%) of the duties will be performed by people who are blind or visually impaired. In response to a concern raised about overlap between preferred source entities with regard to commodities, Ms. Laney noted several differences between these drug kits and those offered by NYSID, including the fact that the new NIB offerings are customizable. Therefore, an agency’s choice of an NIB or NYSID product would be based on the form, function, and utility needs of the purchasing agency. As a whole NIB’s offering is equal to or lower in costs to those offered by other Preferred Source entities.

* In the application NIB talks about work being done in New York and Texas. Can you provide the ratio between the staff in those states and explain how this will benefit New York versus Texas.
* The projection is based on total Albany labor; the 1.1 FTE is based on an initial sales estimate. Repackaging and customizing kits is all New York labor being done just for the New York State sales. NIB is partnering with Fort Worth for the buying power only, not the labor.
* The application mentioned “continued employment.” Will any new people be gaining employment or will this application provide something different to do.
* It is more of the latter. This application will offer different types of work where we can move people to different projects in order to maximize the amount of labor hours.
* This is the second application in a row where some of the work is currently done by the Industries for the Disabled. There is a concern that we are taking a small piece of the pie and cutting it into smaller pieces. When we make an allowance for Industries for the Disabled I assume they incur some sort of investment to ramp up for these projects. We want to be sure we are not doing any harm to the Industries for the Disabled in doing this.
* Ms. Laney deferred to Mr. Romano for a direct answer to the question, but responded that there had been a statewide contract for drug and alcohol screening products that was valid through November of 2012. The NIB is looking to provide a commodity for a contract that is no longer in effect. While the total pie is not getting bigger, the amount of pieces we are getting allows us to provide additional [employment] options that had not been offered through the statewide contract. We are not taking business away; this is a different type of offering.

Mr. Romano responded that the pie is only so big; some pricing conflicts directly with what Industries for the Disabled offers. NYSID employs 1500 people on commodity contracts; based on our sales it comes to about $26,000 in sales per individual based on the hours worked. These are the most severely disabled people who have the most challenges; they work about five hours a week, in many cases that is all the work they have. So when you talk about $600,000 or $1 million in sales affects a considerable number of people that are potentially affected because if you have one person at $26,000 that’s almost four people per $100,000 and almost 40 people at $1 million. There is an impact on the agencies that provide drug test kits, as they have invested in equipment, training, etc. This does not negate the statute’s allowance for overlap. The people employed, regardless of their disability, are equally important. It is unfortunate that one individual working on a Preferred Source contract may gain employment at the expense of another, however, that’s the environment that we’re in these days. It is important to look at new opportunities so that Preferred Sources are not directly competing.

Q Mr. Romano asked NIB when this application was submitted to OGS. NYSID submitted an application to OGS in April for price reductions and product line extensions on this commodity, matching additional kits to their current offerings, and noted that it has been with OGS over 240 days, more than two times the 120 day requirement provided in statute for recommendation and approval. NYSID had received no questions or communications from OGS on the NYSID application until 6:12 last night, other than the weekly status reports they receive that said OGS was preparing for final review. However at 6:12 last night NYSID received a completed review and price comparison on the NYSID application. NYSID asked about the rationale for price comparison, as the process appears different in the two applications. The NIB application uses comparisons from the State of Iowa, the GSA, and the NYSID revised pricing that has not yet been approved. Price comparisons for NYSID application uses the states of California, Ohio, and Pennsylvania, all of which are in the top ten spend states, which may have something to do with the pricing. NYSID would like to know if contracts and terms &conditions from various contracts used for pricing comparisons were reviewed by OGS to ensure comparable and consistent comparison. Lastly the review of NYSID application concluded that NYSID needed to reduce pricing to be equal to or lower than comparable product pricing provided rather than 15% of market price. Mr. Romano stated that it seemed there is inconsistency as to what is used for pricing comparison and in applying the statutes. Given the uncertainty as to when the NIB application was submitted, which would appear to be after the NYSID application since the NYSID revised pricing was used. In adding a new product to the list at this time it would only be reasonable and fair that the NYSID price reductions and additions be approved by OGS prior to or simultaneously with the Council taking action on this application, especially given the reference to the revised NYSID pricing by the NIB analysis. More importantly, the same criteria should be used for price comparisons and for contract terms & conditions. Ron requested that the NIB application be tabled until the issues and concerns can be sorted out, and consistency applied, and then acted upon by OGS accordingly.

Q Do the drug kits differences affect the analysis that Mr. Romano has alluded to?

* Ms. Irvine advised that a number of points have been raised that OGS has not had the benefit to prepare for. It was OGS’ intention to have the NYSID application finished before the Council meeting, but they noticed that some things were not quite right. OGS has in excess of 200 applications from NYSID being worked on, in addition to having back to back Council meetings. The NIB may be able to indicate when the application was received (per Ms. Laney, it was submitted in 2011).

Michael Hurt, Director, Division of Industries, DOCCS said that with all due respect to Mr. Romano, the Council has none of the information shared today to facilitate making a determination. A number of statements have been made with regard to the OGS pricing analysis; Mr. Hurt would like a response from OGS to help make a determination.

Ms. Irvine advised that OGS is committed to best pricing and stands by their analysis. NYSID‘s concerns should be addressed at their monthly meeting.

* A question was raised about the rate of testing accuracy. False positives can be problem for those that use these kinds of tests. What is the rate of accuracy offered?
	+ On average, kits have an accuracy rate of 98%; all positives are sent to the lab for verification so there should not be any issues related to false positives.

Q David Milstein, OMH representative asked how are projected sales forecasted? The application states that sales may be over $1 million and also mentioned OMH as a potential buyer. OMH has its own in house laboratory and all testing for all of its facilities is done directly at the facility. We need to be accurate in terms of what the expectations are.

* + OGS advised that our analysis looked at the last five years in state spend; the average was $1.2 million.

Q A question was raised as to whether any new jobs would actually be created as a result of this application.

A This additional service will add additional responsibility, which will result in additional employment opportunities for already employed workers.

Q In the recommendation and conclusions, OGS recommends not approving eight items whose pricing includes a customization option at no additional cost. Wouldn’t customization be a value in the marketplace? To have a list of items available to our customers that excluded eight items already provided by NYSID would be confusing and eliminate form, function and utility considerations.

* + OGS is being sensitive to the Council’s concerns expressed last month that new items which appear duplicative of already approved items be priced lower. These eight items were priced slightly higher than those offered by NYSID. NIB stated that having a customization option does add value and therefore they continue to present these eight kits and find this favorable. Using the form, function & utility preference could include price variations. Our customers may be able to save money depending on their requirements. That is a decision of the customer.

Mr. Romano advised that NYSID would have come forward and shared information to talk about at the meeting had the OGS response been received prior to 6:30 last night. He apologized for not being able to before the meeting but would have shown the price comparisons if they had been received sooner. NYSID appreciates the sensitivity but does not agree with proceedings from the last Procurement Council meeting on the Incontinent Briefs and the price disparity and preference among Preferred Sources, and doesn’t think that the opinion that’s expressed in this conclusion was actually reached by the Council. This is a form, function, & utility issue regarding multiple offers among multiple preferred source providers and differing prices, and at the last meeting the Council determined that pricing would be a factor in determining form, function, and utility. Mr. Romano doesn’t see any need to exclude the eight items because the customer would have the opportunity to do just that under the provisions of form, function, and utility. NYSID opposes the recommendation that these eight items where NYSID has lower pricing be removed. Mr. Romano then summarized the reasons for this opposition as follows:

The characterization of the discussion at the last meeting is not accurate, and the action taken with regard to the application under consideration at that time was not influenced or decided as implied; and conflicts with statutory provisions and requirements as well as precedent. The statute clearly provides for overlap of offerings by multiple preferred source providers without regard to price differences as long as price is within 15% of prevailing market price. The Statute clearly addresses the order of precedence for purchases where multiple preferred source providers offer the same or similar commodities or services. The Statute clearly provides for form, function and utility determinations to address the overlap of Preferred Source offerings. Eliminating items in the manner recommended reduces agency purchasing alternatives unnecessarily and is not consistent with statutory provisions and intent. Unnecessarily eliminating items from the list reduces agency purchasing choices where form, function and utility determinations would be based upon criteria other than price (e.g. supply/demand, delivery, compatibility, etc.). The recommendation would establish precedent that will introduce additional workload on an already burdened staff and contention for all parties if price comparisons between providers become a basis for ongoing price revisions and item eliminations amongst competing preferred source providers. NYSID suggests the recommendation for the motion to approve this application be revised to remove that statement regarding elimination of the either items, and further, that the application be tabled so that the NYSID application for price review is reviewed simultaneously with the approval of this addition to the list.

Mr. Paneque stated that the two preferred source applications stand on their own.

Ms. Fisher made a motion to approve this application inclusive of the eight items. This motion was seconded but the roll call vote failed.

A motion was then made to table this item until such time as OGS has had an opportunity to address the questions raised at the meeting, and that both applications be presented to the Council simultaneously. The motion was seconded and carried. The NIB application for drug test kits will be tabled and reviewed at the December meeting. OGS will look collectively at the applications and bring a recommendation to the body.

1. **Open Council Discussion**

Mr. Paneque reported that Michael Hurt, Director – Division of Industries, Department of Corrections & Community Supervision (DOCCS) had requested a briefing on the E-Procurement process and how it will affect preferred sources purchasing. Sergio advised that OGS is in the planning stages of this solicitation and will release more information at a future meeting. Mr. Hurt asked for future clarification regarding how Preferred Sources are expected to be included in the E-Procurement process.

Mr. Bays reiterated the importance of incorporating the green procurement standards and guidance into the standard procurement offerings on the OGS website and Ms. Breeyear agreed that when material is separate it can appear to be temporary.

There being no additional questions a motion was made to adjourn the meeting; seconded and approved. The meeting adjourned at12:18 p.m.

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| **Members in Attendance on November 26, 2013:** |
| James Bays – Ag & Mkts | Thomas Hippchen - SUNY |
| Andrew Bechard – ITS | Michael Hurt – DOCCS |
| Charlotte Breeyear – OSC | David Milstein – OMH |
| Nancy Fisher – ESD | Gerard Minot-Scheurmann – DOB |
| Mary Beth Hefner – DOH | Sergio Paneque – OGS |
| Kelly S. Higgins – OPWDD | Mecca Santana – Chief Diversity Officer |

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| **At-Large Members in Attendance:**  |
| James Haggerty – NYS Council of Veterans OrganizationsRonald Romano – NYSID |  |
| Richard St. Paul – Local Government RepresentativeRonald Tascarella – NIB |
|  |
| **At Large Members Absent:** |
| Edul Ahmad – The Ahmad GroupRashida Mendes – RM Capital, LLC |  |
| Gregory Weston – Pillsbury, Winthrop, Shaw, Pittman LLP |  |
| **Also in Attendance:** |
| Christine Irvine – OGS | Noreen VanDoren - OGS |
| Anne G. Phillips – OGS | Carrie Laney – NIB |

**NYS PROCUREMENT COUNCIL**

**VOTING RECORD**

Meeting Date: November 26, 2013

Question, Motion or Issue: Meeting Minutes – October 30, 2013

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| **MEMBER** | **VOTE** |
| **AYE** | **NAY** | **ABSTAIN** | **ABSENT** |
| **COMMISSIONER OF GENERAL SERVICES** |  |  | X |  |
| Sergio Paneque | (Anne Phillips)(Christine Irvine) |
| **Chief Diversity Officer** | x |  |  |  |
| Mecca E. Santana | (Ashley Harrington) |
| **Office of the State Comptroller** | x |  |  |  |
| Margaret Becker | (Charlotte Breeyear)(Diane Taylor) |
| **Director of the Budget** | x |  |  |  |
| Susan Knapp | (Jerry Minot-Scheurmann) |
| **Commissioner of Economic Development** | x |  |  |  |
| Steven Cohen | (Nancy Fisher) |
| **NY Apple Association** |  |  |  |  |  |
| Jim Allen |  |  |  |  | x |
| **AGENCY REPRESENTATIVES** |  |  |  |  |
|  **Ag & Mkts**James B. Bays  | (Lucy Roberson)(Carol Casale) | x |  |  |  |
| **DOCCS**Michael Hurt | (Michael Elmendorf) | x |  |  |  |
| **SUNY**Thomas Hippchen | (Kellie Dupuis) | x |  |  |  |
| **OPWDD**Kelly S. Higgins | (John F. Smith) | x |  |  |  |
| **DOH**Marybeth Hefner | (Joseph Zeccolo) | x |  |  |  |
| **ITS**Andrew Bechard | (Theresa Papa)(John Cody) | x |  |  |  |
| **OMH**David Russo | (David Milstein) | x |  |  |  |
| **AT-LARGE MEMBERS** |  |  |  |  |
| James Haggerty | x |  |  |  |
| Ronald Tascarella – NIB (not yet confirmed) |  |  | x |  |
| Rashida Mendes |  |  |  | x |
| Richard St. Paul | x |  |  |  |
| Gregory Weston |  |  |  | x |

**NYS PROCUREMENT COUNCIL**

**VOTING RECORD**

Meeting Date: November 26, 2013

Question, Motion or Issue: Interagency Committee on Sustainability and Green Procurement

Motion to Table discussion until 2014 Calendar Year

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| **MEMBER** | **VOTE** |
| **AYE** | **NAY** | **ABSTAIN** | **ABSENT** |
| **COMMISSIONER OF GENERAL SERVICES** |  |  | x |  |
| Sergio Paneque | (Anne Phillips)(Christine Irvine) |
| **Chief Diversity Officer** | X |  |  |  |
| Mecca E. Santana | (Ashley Harrington) |
| **Office of the State Comptroller** | X |  |  |  |
| Margaret Becker | (Charlotte Breeyear)(Diane Taylor) |
| **Director of the Budget** | X |  |  |  |
| Susan Knapp | (Jerry Minot-Scheurmann) |
| **Commissioner of Economic Development** | X |  |  |  |
| Steven Cohen | (Nancy Fisher) |
| **NY Apple Association** |  |  |  |  |  |
| Jim Allen |  |  |  |  | X |
| **AGENCY REPRESENTATIVES** |  |  |  |  |
|  **Ag & Mkts**James B. Bays  | (Lucy Roberson)(Carol Casale) | X |  |  |  |
| **DOCCS**Michael Hurt | (Michael Elmendorf) | X |  |  |  |
| **SUNY**Thomas Hippchen | (Kellie Dupuis) | X |  |  |  |
| **OPWDD**Kelly S. Higgins | (John F. Smith) | X |  |  |  |
| **DOH**Marybeth Hefner | (Joseph Zeccolo) | X |  |  |  |
| **ITS**Andrew Bechard | (Theresa Papa)(John Cody) | X |  |  |  |
| **OMH**David Russo | (David Milstein) | X |  |  |  |
| **AT-LARGE MEMBERS** |  |  |  |  |
| James Haggerty | X |  |  |  |
| Ronald Tascarella – NIB (not yet confirmed) |  |  | x |  |
| Rashida Mendes |  |  |  | X |
| Richard St. Paul | X |  |  |  |
| Gregory Weston |  |  |  | X |

**NYS PROCUREMENT COUNCIL**

**VOTING RECORD**

Meeting Date: November 26, 2013

Question, Motion or Issue: Motion to approve Drug Test Kit with inclusion of eight overlapping items

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| **MEMBER** | **VOTE** |
| **AYE** | **NAY** | **ABSTAIN** | **ABSENT** |
| **COMMISSIONER OF GENERAL SERVICES** |  |  | x |  |
| Sergio Paneque | (Anne Phillips)(Christine Irvine) |
| **Chief Diversity Officer** |  | X |  |  |
| Mecca E. Santana | (Ashley Harrington) |
| **Office of the State Comptroller** | X |  |  |  |
| Margaret Becker | (Charlotte Breeyear)(Diane Taylor) |
| **Director of the Budget** |  | X |  |  |
| Susan Knapp | (Jerry Minot-Scheurmann) |
| **Commissioner of Economic Development** | X |  |  |  |
| Steven Cohen | (Nancy Fisher) |
| **NY Apple Association** |  |  |  |  |  |
| Jim Allen |  |  |  |  | X |
| **AGENCY REPRESENTATIVES** |  |  |  |  |
|  **Ag & Mkts**James B. Bays  | (Lucy Roberson)(Carol Casale) |  | X |  |  |
| **DOCCS**Michael Hurt | (Michael Elmendorf) | x |  |  |  |
| **SUNY**Thomas Hippchen | (Kellie Dupuis) | x |  |  |  |
| **OPWDD**Kelly S. Higgins | (John F. Smith) |  | X |  |  |
| **DOH**Marybeth Hefner | (Joseph Zeccolo) |  | X |  |  |
| **ITS**Andrew Bechard | (Theresa Papa)(John Cody) |  | X |  |  |
| **OMH**David Russo | (David Milstein) |  | X |  |  |
| **AT-LARGE MEMBERS** |  |  |  |  |
| James Haggerty |  | X |  |  |
| Ronald Tascarella – NIB (not yet confirmed) |  |  | X |  |
| Rashida Mendes |  |  |  | X |
| Richard St. Paul |  | X |  |  |
| Gregory Weston |  |  |  | X |

**NYS PROCUREMENT COUNCIL**

**VOTING RECORD**

Meeting Date: November 26, 2013

Question, Motion or Issue: Drug Test Kit – NIB

Motion to table item until additional verification can be completed

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| **MEMBER** | **VOTE** |
| **AYE** | **NAY** | **ABSTAIN** | **ABSENT** |
| **COMMISSIONER OF GENERAL SERVICES** |  |  | X |  |
| Sergio Paneque | (Anne Phillips)(Christine Irvine) |
| **Chief Diversity Officer** | X |  |  |  |
| Mecca E. Santana | (Ashley Harrington) |
| **Office of the State Comptroller** | X |  |  |  |
| Margaret Becker | (Charlotte Breeyear)(Diane Taylor) |
| **Director of the Budget** | X |  |  |  |
| Susan Knapp | (Jerry Minot-Scheurmann) |
| **Commissioner of Economic Development** | X |  |  |  |
| Steven Cohen | (Nancy Fisher) |
| **NY Apple Association** |  |  |  |  |  |
| Jim Allen |  |  |  |  | X |
| **AGENCY REPRESENTATIVES** |  |  |  |  |
|  **Ag & Mkts**James B. Bays  | (Lucy Roberson)(Carol Casale) | X |  |  |  |
| **DOCCS**Michael Hurt | (Michael Elmendorf) | X |  |  |  |
| **SUNY**Thomas Hippchen | (Kellie Dupuis) | X |  |  |  |
| **OPWDD**Kelly S. Higgins | (John F. Smith) | X |  |  |  |
| **DOH**Marybeth Hefner | (Joseph Zeccolo) | X |  |  |  |
| **ITS**Andrew Bechard | (Theresa Papa)(John Cody) | X |  |  |  |
| **OMH**David Russo | (David Milstein) | X |  |  |  |
| **AT-LARGE MEMBERS** |  |  |  |  |
| James Haggerty | X |  |  |  |
| Ronald Tascarella – NIB (not yet confirmed) |  |  | X |  |
| Rashida Mendes |  |  |  | X |
| Richard St. Paul | X |  |  |  |
| Gregory Weston |  |  |  | X |