

APPROVED MEETING MINUTES
New York State Procurement Council
May 25, 2016 - 11:00 A.M.
Meeting Room 6 | North Concourse | Empire State Plaza | Albany, NY

I. Welcome and Introduction

Susan Filburn (OGS) called the meeting to order at 11:23 a.m. She introduced Kenneth Schultz (OGS Legal Services) to the Procurement Council as the new counsel to the Procurement Council, taking over for Anne Phillips, who retired from state service. Ms. Filburn also introduced Noreen VanDoren (OGS) who would be assisting Ms. Filburn with the meeting as there would be so many votes and business to discuss.

Ms. Filburn also addressed concerns over the sign-in sheets that had been posted outside of the meeting. The sign-in sheet contained a column where attendees could indicate if the attendee would be addressing the Procurement Council. Ms. Filburn reminded attendees of the Procurement Council's prior decision that there would be no public comment accepted during meetings. However, this issue will be discussed at the end of this meeting.

II. Approval of Meeting Minutes

Ms. Filburn asked for a motion to approve the Meeting Minutes of the November 17, 2015 Procurement Council. A motion was made, seconded and unanimously approved.

Ms. Filburn asked for a motion to approve the Meeting Minutes of the January 14, 2016 Procurement Council. A motion was made, seconded and unanimously approved.

III. Legislative Updates

Mr. Schultz provided the Legislative Update for the Procurement Council. Highlights included:

- Amendment to Public Officers Law §103, requiring that all open meetings be web streamed in real time to the extent practicable.
- Amendments to State Finance Law §163, Procurement Stewardship Act. The following changes took effect on April 1, 2016:
 - Extending the sunset date to June 30, 2021;
 - Substantive changes to subdivision 9(c) to set out specific requirements for debriefings;
 - Changes to subdivision 12 to authorize OSC approval of an awarded contract where the procuring agency determines that the non-compliance is a non-material deviation from the Article 11 provision.
- Amendments to State Finance Law §139-j and §139-k, Procurement Lobbying Law. The following changes took effect on April 1, 2016:
 - Extending the sunset date to July 31, 2021;

- Substantive changes to the §139-j definition of “restricted period” to clarify that the restricted period starts “with the earliest posting of written notice” on the agency website, a newspaper or the Contract Reporter.
- Due to oversight, the identical definition in §139-k was not so amended. There are 2 bills to fix the oversight, S7722 which is pending in the Senate Finance Committee and A10296 which is pending in Assembly Governmental Operations Committee;
- Amendment to State Finance Law §112, subdivision 3 to increase the Comptroller approval threshold for revenue contracts from \$10,000 to \$25,000.

IV. Preferred Source Definitions

Ms. VanDoren shared a quick overview of Roberts Rules of Order to assist the Procurement Council in making motions and voting during the course of the meeting. She advised that when definitions are approved, they will be posted on the Preferred Source List of Approved Offerings to provide guidance and clarity on what is an approved preferred Source Offering. In addition, Procurement Council members Ron Romano of New York State Industries for the Disabled (NYSID) and Ron Tascarella of the New York State Preferred Source Program for people who are blind (NYSPSP) agreed to recuse themselves from voting on the motions relating to the service categories for which their respective organizations are approved to offer that service. Reference to the recusals are indicated for each motion.

Ms. Filburn began the process of asking for a motion on each of the following definitions and title changes, followed by a second to the motion. A time to discuss the proposed definitions and title changes were provided followed by a vote. The definitions document as proposed is attached hereto as Exhibit A. The outcome of each motion follows:

- Motion to approve the definition of Repair, Re-upholstery, and Stripping & Refinishing and changing the titles of Repair to Furniture Repair, Re-upholstery to Furniture Re-upholstery, and Stripping & Refinishing to Furniture Stripping & Refinishing as written on Page 3 was made. The motion passed unanimously with Mr. Romano recused.
- Motion to approve the definitions under the Heading of Messenger Services defining Foot Messenger, Package & Document Pick Up & Delivery, and Vehicular Messenger Services as written on Page 4 was made. The motion passed unanimously with Mr. Romano recused.
- Motion to approve the definition of Warehousing/Distribution and changing the title of Warehousing/Distribution to Warehousing, Storage & Distribution (Non-food) as written on Page 5 was made. The motion passed unanimously with Mr. Romano recused.
- Motion to approve the definition of Data Entry as written on Page 6 was made. The motion passed unanimously with Mr. Romano recused.
- There was brief discussion regarding the comment provided by OSC relating to the definition of CD Replication regarding the location where the service could take place. Procurement

Council Staff replied that the customer or agency would be able to make that determination as part of its form, function, and utility analysis. Motion to approve the definition of CD Replication as written on Page 7 was made. Motion passed with 12 votes in favor, one abstention and Mr. Tascarella recused.

- Motion to approve the definition of Transcription as written on Page 8 was made. Motion passed unanimously with Mr. Romano recused.
- Motion to remove the Heading of Resource Management as written on Page 9 was made. Motion passed with 12 votes in favor, one abstention and Mr. Romano recused.
- Motion to approve the definitions of Garbage Pickup and Recycling as written on Page 9 was made. Motion passed unanimously with Mr. Romano recused.
- Motion to approve the definition of Inventory Control Services as written on Page 10 was made. Motion passed unanimously with Mr. Romano recused.
- Motion to approve the definition of Secure Document Destruction as written on Page 11 was made. Motion passed unanimously with Mr. Romano recused.
- Motion to approve the definition of Electronics Recycling as written on Page 12 was made. There was a discussion regarding the removal of data by state agencies before the equipment is sent for recycling. The discussion highlighted the issue of who takes responsibility if sensitive data is still on the equipment and that sensitive data falls into the wrong hands. A motion was then made to table the vote on the approval of the definition and send it back to the definitions workgroup for further clarification. The motion passed unanimously with Mr. Romano recused.
- Ms. Filburn reported that there had been a request before the meeting to table the definition of Data Imaging Services as written on Page 13. Mr. Romano stated that Ms. Filburn should disregard their earlier conversation and that the definition should go forward to the Procurement Council. Ms. Filburn called for a motion on the definition of Data Imaging Services as written on Page 13. There was a brief discussion as to why NYSID had originally requested that this definition be tabled. Mr. Romano responded that they wanted clarification on warehousing/storage at the end of the project. Ms. VanDoren responded that warehousing is approved as a separate service offering and should remain separate for clarity of scope and pricing. There was discussion regarding the need to store or maintain files on a temporary basis and how that need could conflict with the warehousing definition. There were questions posed relative to defining a time frame to differentiate long term storage/warehousing versus short term when completing a data imaging project. A motion was made to table the definition and send it back to the definitions workgroup for further clarification. The motion passed unanimously with Mr. Romano recused.

- Motion to approve the definitions of Microfilm & Microfiche and changing the title of Microfilm to Microfilm Conversion and Microfiche to Microfiche Conversion as written on Page 13 was made. The discussion centered on several issues (1) the storage of files being converted to microfilm and microfiche; (2) the storage of the microfilm and microfiche itself; and (3) decreased applications due to changes in technology. Lisa Davis suggested the definition should define the service (act of doing it), making storage unnecessary. A motion was made to table the motion to approve the definition and send it back to the definitions workgroup for further clarification. The motion passed with 12 votes in favor, one opposed and Mr. Romano recused.
- Motion to approve the definition of Food Warehousing, Storage & Distribution Service as written on Page 14 was made. There was discussion regarding the confusing wording of the last sentence. Mr. Hurt made a motion to amend the definition and strike the last sentence. The motion did not receive a second, so the motion did not advance. Motion to approve passed with 12 votes in favor, one abstention and Mr. Romano recused.
- Ms. Filburn advised that we had been asked to table the definition of Meal Preparation and Delivery as written on Page 14. Mr. Romano stated that Ms. Filburn should disregard their earlier conversation and that the definition should go forward to the Procurement Council. Motion to approve the definition of Meal Preparation and Delivery as written on Page 14 was made. The motion passed unanimously with Mr. Romano recused.
- Motion to approve the definition of Inbound Tele-response & Fulfillment & changing the title of Inbound Tele-response & Fulfillment to Call Center Services – Inbound as written on Page 15 was made. There was a discussion regarding the comment provided by OSC which raised an issue regarding the location where the service could take place. Procurement Council Staff replied that the customer or agency would be able to make that determination as part of its form, function, and utility analysis. Mr. Hippchen made a motion to strike the sentence reading “Services may be performed at the Preferred Source or customer location.” The motion to amend the definition passed with 9 votes in favor, 3 opposed, one abstention and Mr. Tascarella recused. Alexandra Greene then made a motion to recall the previous vote. The discussion on the recall motion focused on the definitions’ impact on agency call centers and Information Technology (IT). No competitive bid is required if agencies use their own or other agency staff. The motion to recall was defeated as it received one vote in favor, 11 opposed, one abstention and Mr. Tascarella recused. The motion to approve the definition as amended was approved by a vote of 11 in favor, two abstentions and Mr. Tascarella recused.
- Ms. Filburn called for a motion on the definition of Outbound Telephone Survey & Fulfillment & changing of the title of Outbound Telephone Survey & Fulfillment to Call Center Services – Outbound as written on Page 16. Mr. Hippchen made a motion to strike out the sentence “Services may be performed at the Preferred Source location or at the customer location.” There was a discussion regarding the need for HIPPA language. Procurement Council Staff replied that the customer or agency would be able to include that language in its scope of services plan as part of its form, function, and utility requirements. Ms. Filburn called for a

vote. The motion to amend the definition passed with 9 votes in favor, 3 opposed, 2 abstentions and Mr. Tascarella recused. A motion to approve the definition as amended was then made. The motion passed with 12 in favor, one abstention and Mr. Tascarella recused.

- Motion to approve the definition of Electronic Assembly as written on Page 18 was made. The motion passed unanimously with Mr. Romano recused.
- Motion on the definition of Kit Assembly & Maintenance as written on Page 19 was made. There was a lengthy discussion regarding the application of this definition to commodities needing assembly such as furniture. A motion was made to table the motion to approve and send this definition back to the definitions workgroup for further clarification. The motion passed unanimously with Mr. Romano recused.

Ms. Filburn announced that the time allotted to the review of the Preferred Source Service Offerings definitions had expired and that the remaining definitions would be tabled until the next meeting. She also stated that the definitions workgroup would reach out for clarifications regarding the tabled definitions and the new proposed definitions would be presented at a future meeting.

V. Preferred Source Applications for Procurement Council Consideration

The Procurement Council considered NYSID's application to add Mail Fulfillment services to the List of Preferred Source Offerings. Corey Heritage (NYSID) gave a presentation, highlights included:

- A video produced by NYSID highlighting the services provided by the Center for Disability Services in Albany, New York;
- Presentation by Ron Patterson from the Center for Disability Services highlighting the various technologies used by the center;
- Brief statements from Joe Scorza and Rich Haley who are both disabled individuals currently working at the Center for Disability Services; and
- A brief statement from Mr. Lidell Ritchie from Fedcap in New York City highlighting the work done at their facility.

All presentations highlighted the fact that mailing services have been provided for 25 years and that this type of work provides meaningful employment to the individuals being served by the member agencies. Each of the presentations stated that if this service is not approved, this employment opportunity would be lost to the disabled.

The presentations also highlighted the changing technologies in Mailing Services, stating that historically, agencies would physically deliver pieces to be mailed and the agencies wanted to deliver the documents electronically and have them produced digitally by the disabled. This digital component has to be carefully weighed against the ban on digital printing. NYSID is proposing a 25% threshold on the digital reproduction aspect of its Mail Fulfillment Services application. NYSID stated that this application will allow the offerings to move into the 21st Century. NYSID reiterated many times in its presentation that this was not an application for digital printing. NYSID asked the

Procurement Council not to table the application as it would cut off opportunities. NYSID requested that the Procurement Council approve the application.

There was a lengthy question and answer period between NYSID and the Procurement Council. The questions related to the digital printing ban based upon the prior Procurement Council determination, the types of documents being reproduced, the 25% cap on the labor for digital reproduction, the financial impact to NYSID if the application was denied, the lack of pricing information in the application, the value add of disabled labor, the incomplete nature of the application, issues expressed by private sector printing companies, the use of corporate partnerships, and the nature of the documents being mailed.

A motion was made by Mr. Hurt to follow the OGS recommendation to table the application and create a workgroup for NYSID to provide more information regarding the application. Mr. Minot-Scheurmann seconded the motion. Ms. Filburn called for a discussion. There was a discussion regarding the makeup of the work group and the work to be performed. There was a lengthy discussion regarding the need to have the application approved before the next scheduled Procurement Council meeting on September 14, 2016. Ms. Filburn called for a vote. The motion to table the application and form a work group was passed unanimously. Mr. Romano recused himself from voting.

Following the vote Ms. Hefner made a motion for the Procurement Council to meet within 45 days and for the workgroup to present its findings at that time. Ms. Filburn called for a second. Mr. Hippchen gave a second. Ms. Filburn called for a discussion. There was a discussion regarding the quick turnaround, the need for group participation, including the private sector, and the need to have a quorum for the Council to meet within the 45 days. The motion passed with 8 votes in favor, 5 opposed and one abstention.

Ms. Filburn stated that Procurement Council Staff would be reaching out to members regarding the work group and the new date for the Procurement Council Meeting.

VI. Preferred Source Applications under OGS Standing Authority

Ms. Filburn stated that there was nothing to report at this time.

VII. Open Council Discussion

Ms. Filburn then reminded the members that the Procurement Council has had a policy of not allowing public comments during Procurement Council Meetings. She advised that for 20 years there have been no spoken public comments permitted, however OGS often receives letters from the public in advance of the meetings that are then shared with the Council. She asked if the Procurement Council was interested in changing this policy of not allowing public comments during the meeting. There was a lengthy discussion regarding the pros and cons of allowing spoken public comments. Some of the key points included time limits, promoting topical discussions related to state

procurement issues, legislative restrictions such as Procurement Lobbying and Sunshine Laws, and logistical considerations.

Mr. Hurt suggested that Procurement Council members send comments and ideas to Procurement Council Staff on this issue and Procurement Council Staff could develop a public comment policy and distribute it to Procurement Council Members for suggestions and comments.

VIII. Closing

Ms. Filburn said she would let everyone know when the next meeting will be held and the motion to end the meeting was passed unanimously.

The meeting concluded at approximately 1:41 p.m.

Members in attendance:

Susan Filburn – OGS	Lisa Brooks – Ag & Markets	Andrew Bechard – ITS
Alexandra Greene – DOL	Michael Hurt – DOCCS	David Russo – OMH
Charlotte Davis – OSC	Thomas Hippchen – SUNY	Sonia Lindell
Gerry Minot-Scheurmann – DOB	Lisa Davis – OPWDD	Ronald Romano
Christine McCann – ESD	Marybeth Hefner – DOH	Ronald Tascarella

Also in attendance:

Kenneth Schultz – OGS	Noreen VanDoren – OGS
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Members not in attendance:

Robert Drummond	Rashida Mendes	Richard St. Paul
Edul Ahmad		