

Minutes of the Meeting
New York State Procurement Council
January 28, 2014 - 11:00 A.M.
Meeting Room 6
North Concourse
Empire State Plaza
Albany, NY

I. Call to Order

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

Mr. Paneque took a moment to recognize Nancy Fisher, thanking her for her many contributions to the Procurement Council during her tenure with Empire State Development and wished her the best during her upcoming retirement.

II. Minutes of Meetings

Mr. Paneque asked Council members for additions or corrections to the draft minutes from the December 18, 2013 meeting. There being no additional changes offered, a motion to accept the minutes as presented was made, seconded and passed unanimously.

III. New Business

Report of Significant Findings:

OGS is required to submit to the Governor and members of the Legislature a biennial report to address significant findings, activities, and recommendations of the Council from calendar year 2012 and 2013. The draft report was reviewed by the Council. With the exception of some modifications to the contact information found at the end of the report, no other changes were recommended. A motion to accept the Report with the aforementioned modifications was made, seconded and approved unanimously.

Report of Preferred Source Approval and Denials:

OGS is required to submit to the Governor and members of the Legislature a biennial report on Preferred Source Approvals and Denials covering calendar year 2012 and 2013. This report was sent to the members for review. There being no suggested changes a motion was made to accept the Preferred Source Report, seconded, and approved unanimously.

IV. Procurement Related Legislation

Anne Phillips, OGS Deputy Counsel & Director of Legislative Affairs, advised that presently no procurement related legislation has been introduced. If any items are introduced that may be of concern to members, Ms. Phillips will share with the Council for further consideration.

Appendix A – Standard Clauses for NYS Contracts

Ms. Phillips brought the Council's attention to Appendix A revision to language related to the Iran Divestment Act. Language had previously been drafted and circulated for use in all contract documents. However, agencies were not consistent in the use of this language which caused delays in the contract approval process. OGS worked with the Office of the Attorney General (OAG) to revise the language. Upon approval by the OAG this language has been added to Appendix A as Clause 26. Iran Divestment Act. This addition will ensure consistency of the Iran Divestment Act text within solicitations and contracts. Additionally, the website link for the Minority-Women-owned Business Enterprise Directory hosted by Empire State Development, Division of Minority and Women's Business Development has been updated. There being no questions, a motion to approve these amendments was made, seconded and approved.

OGS is looking for a motion to provide blanket approval to documents normally approved by the Council whenever minor administrative changes are required to include Appendix A; Procurement Bulletins; and Procurement and Preferred Source Guidelines. Margaret Becker Deputy Comptroller, Office of the State Comptroller made a motion to empower OGS to take actions to update these documents to reflect changes in procurement law; discretionary thresholds; web links and any other administrative actions without the prior approval of the Council, as long as there are no changes in direction or policy. This motion was seconded and approved unanimously by the Council.

V. **Procurement Guidelines**

Noreen VanDoren, OGS Associate Attorney, brought the Council's attention to the revised Procurement Guidelines. These guidelines had been shared with members prior to the meeting for review and we have been asked to provide additional time for review and comment. Michael Hurt, Director Division of Industries, Department of Corrections & Community Supervision (DOCCS) raised a concern that the language in the document is silent on remediation for those agencies that do not follow these guidelines. Should this document incorporate a remediation process for these agencies? Ms. VanDoren advised that the statute is silent on those issues; therefore the document is silent as well. Mr. Hurt will share this concern in writing and look to the formal response for review by the Council. Members were asked to review the document and send their comments either to Ms. VanDoren or to the Procurement Council Mailbox. A final draft will be prepared and put to the members for a vote at the May 21st meeting.

Preferred Source Training:

Questions were raised at the December 18, 2013 meeting regarding training for Council members to facilitate the review of the preferred source applications. A checklist outlining the process was prepared and shared with the Council for review and comment. Council members were asked to submit any specific questions they may have related to this training based on the elements contained in the checklist. MaryBeth Hefner, Assistant Director Fiscal Management Group, NYS Department of Health (DOH) advised that the question had to do with the process itself. How do we measure progress? What path do we take to accept or reject an application? When a preferred source application comes to the Council with a partnership, how was that partnership developed/formed? Is the Council accepting the partnerships as well as the application? Is the Council able to make changes to partnerships now or at any point in the future? What is the Council's authority when accepting or not accepting an application?

David Russo, Director Consolidated Business Office – Office of Mental Health (OMH) advised that OMH goes through the process of bidding and awarding contracts for a five year period and then repeats the process. Preferred Source contracts do not limit amount of time when this approval is granted. When a preferred source agency partners with someone how is this done? Is the partnership revisited or changed in the future? When an application is submitted to OGS how much information is OGS getting on that partnership and how much of this is reviewed before the Council sees the offering?

Mr. Paneque advised that when something is added to [preferred source] list it goes into perpetuity. We are working collaboratively with our preferred source agencies on our process with both the documentation and standardization. OGS is embedding the application process within the whole NYSPRO team rather than just having one team tasked with reviewing these applications because of their complexity. OGS is doing this both to address the backlog and to provide more transparency in the way the applications are reviewed and presented to this body. The training will help all of you and help us to significantly manage this program.

Ms. Hefner stated that historically, when partnering with an organization it is one that has the same mission as theirs, serving similar clientele. With the new applications, the Council is seeing more and more partnering with for-profit entities; they may not have the same mission. When those for-profits are brought in for partnerships it is as a life time member of the process. Are there any changes to be made to affect this process? Is there flexibility in the law to allow for any process changes at all? These are my concerns with the process.

Ron Romano, President & CEO, NYS Industries for the Disabled (NYSID) advised that a partnership is only approved for a single contract. Each contract where a partnership exists is approved independently. The Council approves the overall category to be added; individual contracts that NYSID or NIB apply for, the partnership is only approved for that specific contract. There may be a time when a preferred source applies for another contract with the same partner; however this new application has to be approved with this partner. It is strictly a one to one basis.

Ms. Hefner asked if OSC gets involved in the review of these contracts. Mr. Romano advised that when a contract reaches OSC it gets the same review as any other contract. Ms. Irvine stated that OGS reviews for cost analysis; generally OGS does not see the entire contract, just pieces. OSC does look at the contracts; this is another piece of the process. NYSID does a vendor responsibility review on each partnership. Ms. Becker concurred that this vendor review is being done at OSC.

Ms. VanDoren asked members to email any comments, suggestions, thoughts they may have to help develop a training program. Any questions specific to this outline should be provided to the Procurement Council mailbox as well for review prior to the May 21, 2014 meeting.

VI. 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 \$500,000.00 since the December 18, 2013 meeting.

VII. Procurement Source Recommendations requiring Procurement Council Approval

DIGITAL PRINTING:

Ms. Irvine advised the Council that Mr. Romano has asked that the revisit of the digital printing application be postponed until the May 21, 2014 meeting. There will be an internal meeting with OGS and NYSID soon to discuss.

VIII. State Purchasing Forum

The 2014 State Purchasing Forum is scheduled for May 14th and 15th. OGS is partnering again with OSC on training aspects and expanding the exhibitors to accommodate non-contract MWBE, Small businesses and other entities eligible for increased discretionary spend. OGS looks forward to seeing Council members again at this year's event. Mr. Paneque advised that the agricultural sector will also be invited for agricultural products; OGS will work with Agriculture & Markets to populate that part of the concourse.

Mr. Russo asked if there are expectations that the BSC and other entities be partners at this event. OGS is going to have classes specifically dedicated to discretionary spending and will also be working with OSC and the BSC to develop a class; at that class procedures will be clarified. OGS will also invite all state agencies to exhibit and conduct classes as well. Mr. Paneque advised that OGS is also looking to provide training on discretionary spend to the vendor community to help them understand how these rules play in the world of procurement. OGS is looking at developing a curriculum for vendors in order to provide value for them as well. One of the goals is to try to create bilateral cooperation between vendors and state and local governments. Mr. Romano advised that typically preferred sources provide a training session during this Forum. This is an opportunity for council members to learn more about the process. The Preferred Sources will be invited to provide training this year.

IX. Open Council Discussion

Ms. Becker advised that agencies are being encouraged to do business with MWBE's to attain goals, with no objection. However, OSC is receiving questions as to how this is to be implemented; how should agencies score this when doing RFP's and BIDs? To the degree that NY is seen to benefit from its own businesses OSC wants to be sure not to be on the other end of a discriminatory practice. Ms. Fisher advised that NYS contracts encourage the use of NYS companies in the performance of contracts; this memorandum reinforces that. Ms. Becker advised that OSC did not see this practice as discriminatory however, agencies are asking if points should be offered for those vendors that use NYS businesses. Can this point system be used as an evaluation tool? OSC does not see this as problematic but a degree of uncertainty exists. OSC wants to make sure that if there is guidance to offer or some way to clarify, then this clarification should be done. Ms. Fisher advised that with respect to best value, the technical aspect has components in the language that speaks to a definition from the Executive Law rather than the Economic Development Law for small business being from any state. If the executive law states that small business can be from any state is there some legal language to determine if it is strictly targeting MWBE's or if small businesses are also included. OSC will leave the decision to whoever is responsible for creating guidance. The Council may want to look at this also as another set of eyes. Ms. Hefner advised that this policy would best be addressed in the Guidelines since there are many opportunities for people to get tripped up on this. Mr. Paneque advised that to the body, these requirements are strictly for reporting that these entities are NYS companies and using NYS subcontractors; this needs to be highlighted within the Guidelines. Going forward Mr. Paneque proposed this clarification be included in the draft guidelines which will be ready for review by the next meeting.

Mr. Russo stated that this memorandum is written as though agencies are gathering information from potential bidders and reporting this information. Is there intent that agencies provide proof that this has actually been done in the contract or is this information just being gathered when the proposal is being submitted? What are the requirements once the contract is awarded? Mr. Paneque advised that this follow-up is not a requirement at this point.

Ms. Fisher advised that ESD has faced hurdles in getting NYS suppliers involved, particularly with regard to construction contracts. There are no specific guidelines to include NYS companies on bid specifications. As OGS works with the Council on Contracting Agencies (CCA), could the CCA be asked to look toward making sure NYS suppliers are included in bid specifications? Not to the exclusion of other qualified specified products but to include whenever appropriate? Ms. Phillips will take this back to the CCA to see what their stance is on this and report back to the Council. There will be a meeting between now and the next Council meeting.

Mr. Russo asked if there is a definition of NYS Business, will there be a directory to use as to what is considered to be a NYS business. OGS will look into that as well.

There being no other business to discuss, a motion to adjourn was made. The meeting adjourned at 11:55 a.m.

Members in Attendance on December 18, 2013:

James Bays – Ag & Mkts	Thomas Hippchen – SUNY
Andrew Bechard – ITS	Michael Hurt – DOCCS
Margaret Becker – OSC	Gerard Minot-Scheurmann – DOB
Nancy Fisher – ESD	Sergio Paneque – OGS
Mary Beth Hefner – DOH	David Russo – OMH
Kelly S. Higgins – OPWDD	Mecca Santana – Chief Diversity Officer

At-Large Members in Attendance:

James Haggerty – NYS Council of Veterans Organizations	Richard St.Paul – Local Governments
Ronald Romano – NYSID	

At Large Members Absent:

Edul Ahmad – The Ahmad Group	Gregory Weston – Pillsbury, Winthrop, Shaw, Pittman LLP
Rashida Mendes – RM Capital, LLC	

Also in Attendance:

Christine Irvine – OGS	Noreen VanDoren - OGS
Anne G. Phillips – OGS	Anne Samson – OGS

**NYS PROCUREMENT COUNCIL
VOTING RECORD**

Meeting Date:

January 28, 2014

Question, Motion or Issue:

Meeting Minutes – December 18, 2013

MEMBER	VOTE			
	AYE	NAY	ABSTAIN	ABSENT
COMMISSIONER OF GENERAL SERVICES Sergio Paneque (Anne Phillips) (Christine Irvine)			x	
Chief Diversity Officer Mecca E. Santana (Ashley Harrington)	X			
Office of the State Comptroller Margaret Becker (Charlotte Breeyear) (Diane Taylor)	X			
Director of the Budget Susan Knapp (Jerry Minot-Scheurmann)	X			
Commissioner of Economic Development Steven Cohen (Nancy Fisher)	X			
NY Apple Association Jim Allen	X			
AGENCY REPRESENTATIVES				
Ag & Mkts (Lucy Roberson) James B. Bays (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 (Theresa Papa) Andrew Bechard (John Cody)	X			
OMH David Russo (to be named)	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: January 28, 2014
 Question, Motion or Issue: Report of Significant Findings

MEMBER	VOTE			
	AYE	NAY	ABSTAIN	ABSENT
COMMISSIONER OF GENERAL SERVICES Sergio Paneque (Anne Phillips) (Christine Irvine)			x	
Chief Diversity Officer Mecca E. Santana (Ashley Harrington)	X			
Office of the State Comptroller Margaret Becker (Charlotte Breeyear) (Diane Taylor)	X			
Director of the Budget Susan Knapp (Jerry Minot-Scheurmann)	X			
Commissioner of Economic Development Steven Cohen (Nancy Fisher)	X			
NY Apple Association Jim Allen				X
AGENCY REPRESENTATIVES				
Ag & Mkts (Lucy Roberson) James B. Bays (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 (Theresa Papa) Andrew Bechard (John Cody)	X			
OMH David Russo (tbd)	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: January 28, 2014
Report of Preferred Source Approvals and Denials

MEMBER	VOTE			
	AYE	NAY	ABSTAIN	ABSENT
COMMISSIONER OF GENERAL SERVICES Sergio Paneque (Anne Phillips) (Christine Irvine)			x	
Chief Diversity Officer Mecca E. Santana (Ashley Harrington)	X			
Office of the State Comptroller Margaret Becker (Charlotte Breeyear) (Diane Taylor)	X			
Director of the Budget Susan Knapp (Jerry Minot-Scheurmann)	X			
Commissioner of Economic Development Steven Cohen (Nancy Fisher)	X			
NY Apple Association Jim Allen				X
AGENCY REPRESENTATIVES				
Ag & Mkts (Lucy Roberson) James B. Bays (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 (Theresa Papa) Andrew Bechard (John Cody)	X			
OMH David Russo (to be determined)	X			
AT-LARGE MEMBERS				
James Haggerty			X	
Ronald Tascarella – NIB (not yet confirmed)			X	
Rashida Mendes				X
Richard St. Paul	X			
Gregory Weston				X