



Office of
General Services

KATHY HOCHUL
Governor

JEANETTE M. MOY
Commissioner

April 4, 2023

Honorable Kathy Hochul
Governor of the State of New York
State Capitol
Albany, NY 12224

Honorable Andrea Stewart-Cousins
Temporary President and Majority Leader
NYS Senate
Legislative Office Building Room 907
Albany, NY 12247

Honorable Carl Heastie
Speaker
NYS Assembly
Legislative Office Building Room 932
Albany, NY 12248

Robert Megna
Director
NYS Division of the Budget
State Capitol
Albany, NY 12224

Dear Governor Hochul, Majority Leader Stewart-Cousins, Speaker Heastie, and Mr. Megna:

In accordance with the requirements of State Finance Law § 161(2)(k), I am pleased to submit on behalf of the New York State Procurement Council (the "Procurement Council") the enclosed biennial report on the Procurement Council's activities for calendar years 2021 and 2022.

The Procurement Council is composed of representatives of State agencies, local governments, and private industry and is charged with continuously striving to improve the State's procurement processes. The activities described in this report include joint efforts of the entire Procurement Council, as well as independent efforts of several member agencies of which the Council was regularly apprised, that affect procurement practices on a statewide basis.

If you would like additional information or have questions, please contact Jennifer Kuhn, Assistant Director of NYS Procurement Services, at (518) 473-3625 or jennifer.kuhn@ogs.ny.gov. Thank you for your continued support of the Procurement Council.

Sincerely,


Jeanette M. Moy

Enclosure

**New York State Procurement Council Biennial Report of Significant Findings
For Calendar Years
2021 through 2022**

Report Date: March 29, 2023

**Prepared by:
NYS Office of General Services Procurement Services, as Staff to the Procurement Council**

In accordance with requirements of State Finance Law § 161(2)(k), the New York State Procurement Council (the "Council") submits the following biennial report to the Governor, the Legislature, and the Director of the Budget. The report addresses significant findings of the Council including, but not limited to, substantial savings generated by Council initiatives and the recommendations of the Council concerning the State's procurement practices.

The Council, in accordance with its statutory obligations under State Finance Law § 161, is charged with improving the procurement process in New York State through a variety of means. The Council is composed of representatives of State agencies, local governments, and private industry (see the Council membership roster at the end of this report). The activities described in this report include joint efforts of the entire Council, as well as independent efforts of Council member agencies, that affect procurement practices on a statewide basis.

2021 Procurement Council Actions

Legislative Updates:

- **Suspension of State Finance Law §§ 112 and 163:** The Council was notified that the suspension of State Finance Law §§ 112 and 163, as provided in Executive Order 202, would continue through January 29, 2021, and was eventually continued through June 25, 2021, when Executive Order 210 rescinded Executive Orders 202-202.111. Executive Order 11 renewed the suspension of State Finance Law §§ 112 and 163 on November 26, 2021.
- **Budget Bills:** The Council was advised of a few items in the proposed Executive Budget that may be of interest to the Council members including:
 - **PPGG Part BB:** Would require that contracts in excess of \$50,000 for personal protective equipment (PPE) and medical supplies would contain a requirement that such commodities must be produced or made in the United States.
 - **PPGG Part FF:** Would authorize ITS to issue comprehensive technology service contracts.
 - **PPGG Part GG:** Would limit unfavorable terms and conditions in State contracts and would ensure transparency about which public officers in each agency may bind State agencies in contracts.
- **Standing Committee on Procurement & Contracts:** The Council was notified that the Senate has established a standing Committee on Procurement & Contracts.
- **Extension of State Finance Law Section 163:** It was reported to the Council that the sunset date of § 163, the section that governs the purchase of commodities, services, and technology, was extended for five years to June 30, 2026.
- **Procurement Lobbying Law Extension:** It was reported to the Council that the sunset dates of §§ 139-j and 139-k, the sections that govern the Procurement Lobbying Law, were extended for five years to July 31, 2026.
- **New York Medical Supplies Act:** The New York Medical Supplies Act was enacted as State Finance Law § 148 and Public Authorities Law § 2978-C. The new law requires that contracts in excess of \$50,000 for PPE and medical supplies contain a requirement that such commodities must be produced or made in the United States.
- **Open Meetings Law:** Executive Orders 202-202.111 declared a Covid-19 emergency and, among other things, superseded Public Officers Law Article 7 and authorized public bodies to meet remotely via conference call or videoconference. Effective June 25, 2021, Executive Order 210 rescinded Executive Orders 202-202.111. Chapter 417 of the Laws

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of 2021, effective September 2, 2021, authorized public bodies to meet remotely via conference call or videoconference.

- **State Finance Law Section 163 and 112 Amendments:** The Council was informed that Chapter 257 of the Laws of 2021 amended State Finance Law §§ 163 and 112 to extend the OGS discretionary spending threshold of \$85,000 to agencies that are hosted by the OGS Business Services Center.

Preferred Source Application Denials Report: A report was submitted to the Governor on December 31, 2020, stating that the Council did not deny any Preferred Source applications during the 2020 calendar year.

The Procurement Council Biennial Report of Significant Findings: On December 31, 2020, a report was submitted to the Governor that addressed significant findings of the Council concerning the State's procurement process.

NYSID Report on Mail Fulfillment: The reports by NYSID on mail fulfillment engagements were submitted to the Council at each meeting and were distributed to the Council members during this year.

OGS Procurement Services Report on Preferred Source Commodity Applications: OGS Procurement Services reported during Council meetings in 2021 that from November 5, 2020, to November 2, 2021, OGS did not approve any items under its standing authority.

Procurement Council Rules: The Rules Workgroup continued to meet, and review draft rules provided by OGS staff. The Rules Workgroup provided multiple documents to the Council including a draft of the Procurement Council Rules. The Council reviewed the Procurement Council Rules documents and passed the Procurement Council Rules on November 3, 2021.

CCA Insurance Guidelines: The Council voted to approve revisions to the Insurance Guidelines established by the Council on Contracting Agencies. The revisions were made to provide standardization between insurance requirements and contracts.

2022 Procurement Council Actions

Legislative Updates:

- **Open Meetings Law:** The Council was informed of the enactment of Chapter 1 of the Laws of 2022, which extended the authorization of public bodies such as the Council to meet remotely via conference call or videoconference and amended the expiration date under Chapter 417 of the Laws of 2021 to the termination of the State Covid-19 disaster emergency declared pursuant to Executive Order 11 or any continuations thereof. Chapter 56 of the Laws of 2022, effective April 9, 2022, created § 103-a of the Public Officers Law to make permanent the expanded use of videoconferencing by public bodies to conduct open meetings, under extraordinary circumstances, regardless of a declaration of an emergency. As of June 8, 2022, public bodies would be authorized, after the passage of a resolution and written guidelines, to allow members to participate remotely by videoconference under extraordinary circumstances. The statute sets further rules and parameters for the use of videoconferencing by public bodies.
- **Executive Order 11 through Executive Order 11.9:** The Council was informed of Executive Order 11 through Executive Order 11.9, which suspended State Finance Law §§ 112, 163, and 97-g through September 12, 2022.

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- **Contracts Involving Low Embodied Carbon Concrete:** The Council was made aware of Chapter 724 of the Laws of 2021, which created State Finance Law § 136-d, effective June 20, 2022, that requires OGS to establish a stakeholder advisory group to develop guidelines and minimum standards for the use of low embodied carbon concrete on State contracts.
- **Executive Order 16:** The Council was advised of Governor Hochul's Executive Order 16, which prohibits State agencies and authorities from contracting with businesses conducting business in Russia.
- **Veterans' Services:** It was reported to the Council that effective on April 1, 2023, the various provisions that are currently in Executive Law that relate to veterans' services and Service-Disabled Veteran-Owned Businesses are going to be repealed and codified in a new chapter of the Consolidated Laws called Veterans' Services Law.
- **Executive Order 22:** The Council was advised of Governor Hochul's Executive Order 22, entitled "Leading by Example: Directing State Agencies to Adopt a Sustainability and Decarbonization Program." The Executive Order consolidates all of the previous sustainability-related executive orders and revokes and supersedes them (EO4, EO18, EO88, and EO166), establishes the GreenNY Council, continues the green procurement specifications and program established under EO4, requires waste diversion and fleet decarbonization plans from all covered agencies and authorities, requires the use of reduced embodied carbon building materials in new construction, and requires that by 2030, 100% of electricity used by covered agencies and authorities come from renewable sources.
- **New York Textile Act:** The Act, signed into law on October 14, 2022, is intended to accelerate the growth of the animal and plant fiber growing, processing, and textile manufacturing industry in New York State. The Act establishes a new category of discretionary spending authority for purchases of animal or plant fiber products or textile products manufactured from animal or plant fiber grown or produced prominently in New York State with a discretionary threshold of up to \$200,000.
- **Preferred Sources Amendment:** State Finance Law § 162, which governs purchases from preferred sources, was amended to create new thresholds for the percentage of the work under a preferred source contract that must be performed by disabled or otherwise qualified persons, and new thresholds for the price reviews and approvals by OGS.

Preferred Source Application Denials Report: A report was submitted to the Governor on December 28, 2021, stating that the Council did not deny any Preferred Source applications during the 2021 calendar year.

NYSID Report on Mail Fulfillment: The reports by NYSID on mail fulfillment engagements were submitted to the Council and distributed to the Council members.

OGS Procurement Services Report on Preferred Source Commodity Applications: OGS Procurement Services reported during Procurement Council meetings in 2022 that from November 4, 2021, to November 8, 2022, OGS approved one item under its standing authority: NYSID's Echo Baggies, which are resealable sandwich bags. This product is biodegradable, recyclable, compostable, microwavable, 100% US-made, and produced in New York by a New York State-certified MWBE.

Changes to Vendor Responsibility Questionnaires and Definition List: At the January 26, 2022 Council meeting, the Council voted to approve changes to the Vendor Responsibility Questionnaires and Definition List.

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NYSPSP Application to Offer Temporary Personnel Office Services as a Preferred Source:

At the September 14, 2022 Council meeting, the Council voted to allow NYSPSP to offer temporary personnel office services as a preferred source.

Rules for Remote Attendance: At the September 14, 2022 Council Meeting, OGS Legal Counsel briefed the Council on the changes to Public Officers Law regarding videoconferencing by public bodies. The Council then voted to approve rules for Council members to attend meetings remotely in extraordinary circumstances. Members attending Council meetings remotely will not count toward quorum.

Procurement Guidelines: The Procurement Guidelines Workgroup met and worked to create a new Procurement Guidelines document that is consistent with current legislation. The draft was sent to Council members for their review.

Presentations to the Procurement Council Members: During each Procurement Council meeting, OGS, as Staff to the Procurement Council, arranged presentations to educate the members of the Council with presentations such as:

- Department of Labor: Effects of an Increase in Minimum Wage (January 27, 2021, Council meeting)
- State Archives: Document Maintenance and Document Requirements (April 22, 2021, Council meeting)
- OGS Procurement Services: COMeT (April 26, 2022, Council meeting)
- OGS Procurement Services: GovBuy (April 26, 2022, Council meeting)
- OGS Business Service Center: Purchase Cards (September 14, 2022, Council meeting)

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PROCUREMENT COUNCIL MEMBERSHIP ROSTER

MARCH 2023

Ex-Officio Members

Patricia Warrington Deputy Comptroller Office of the State Comptroller	Elizabeth Lusskin Executive VP Small Business & Technology Department
Julissa Gutierrez Chief Diversity Office Office of Governor Kathy Hochul	Jason DiGianni Assistant Unit Chief Division of the Budget
Sean Carroll Chair – Procurement Council Chief Procurement Officer (CPO) Office of General Services	

Legislative Appointees

Julie Suarez Associate Dean for Government & Community Relations Cornell University	Jaclyn A. Brillig Attorney Jaclyn A. Brillig, Attorney at Law
Carra Wallace Optimized Diversity Solutions, LLC	Shawn Cullinane Board Member Village of Lindenhurst Business Improvement District
Steven C. Kasarda Attorney The Kasarda Law Group, LLC	Winifred Schiff Interagency Council of Developmental Disability Agencies
Honorable George H. Madison The Business Council of New York State, Inc.	

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Agency Designees

Lisa Brooks Director of Fiscal Management NYS Department of Agriculture & Markets	Thomas Hippchen Assistant Vice Chancellor for Procurement State University of New York
Paul Guenette Director, Division of Support Services NYS Department of Health	Paul Murray Director, Bureau of Procurement Enterprise Services NYS Office of Mental Health
Andrew Ruby Director, Fiscal Management Group NYS Department of Health	Marc Kleinhenz Director, Contracts and Grants NYS Office for People with Developmental Disabilities
Elaine Blanchet Contract Manager/Team Leader NYS Information Technology Services	

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