

New York State Procurement Council Bulletin: Preferred Source Guidelines

February 2024

(Revised April 2024)

[List of Preferred Source Offerings](#)

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Section I: Overview

1.1 Purpose

To advance special social and economic goals, selected providers shall have “preferred source” status for the purposes of procurement under Section 162 of the New York State Finance Law. The acquisition of approved commodities and/or services from preferred sources is exempted from statutory competitive procurement requirements.

It is the obligation of each State agency, and other purchasers covered by these guidelines, to buy approved commodities and services that meet their form, function, and utility from preferred sources whenever available.

1.2 Applicability and Scope

All State agencies, political subdivisions, and public benefit corporations (which include most public authorities) having their own purchasing agency (each, a “purchasing agency”) are required to purchase approved products and services from preferred sources in accordance with Section 162 and Section 163 of the New York State Finance Law and the procedures and requirements described herein. Purchases of approved products and services from preferred sources take precedence over all other sources of supply and competitive procurement methods. Purchases by the Legislature and the Judiciary are not covered under these guidelines.

Section II: Preferred Source Entities

2.1 Preferred Status

Preferred source status is accorded to the following entities:

- **Commodities** produced by the Correctional Industries Program of the Department of Corrections and Community Supervision (Corcraft). Corcraft also provides services that agencies may elect to purchase. Corcraft’s services do not, however, have preferred source status under the law. Contact Corcraft at info.corcraft@doccs.ny.gov to discuss engaging Corcraft for services.
- **Commodities and services** produced by any qualified, charitable, non-profit-making agency for the blind approved by the Commissioner of the Office of Children and Family Services.
- **Commodities and services** produced by any qualified, charitable, non-profit-making agency for other disabled persons approved by the Commissioner of Education.
- **Commodities and services** produced by a qualified veterans’ entity providing job and employment-skills training to veterans, operated by the United States Department of Veterans Affairs and that is manufacturing products or performing services within New York State and where such entity is approved by the Commissioner of Education.

- **Commodities and services** produced by any qualified charitable non-profit-making entity for veterans approved for such purposes by the Commissioner of Education or incorporated under the laws of New York State and approved for such purposes by the Commissioner of Education.

Private vendors may be accorded preferred source status but only when a proposal to a soliciting agency for commodities or services includes a binding agreement that meets the requirements of Section 162(7) of the New York State Finance Law, with one or more of the entities accorded preferred source status under Section 162.

Although Section 162 of the New York State Finance Law also accords preferred source status to commodities and services produced by special employment programs serving mentally ill persons operated by facilities within the Office of Mental Health, there are currently no such programs in operation at this time.

2.2 Priority Among Preferred Sources

Except as provided in the New York State Printing and Public Documents Law, priority among preferred sources shall be accorded as follows:

- **Commodities** available in the form, function, and utility required by a purchasing agency must be purchased from preferred sources in the following order of priority:

1st – Corcraft

2nd - Approved, charitable, non-profit-making agencies for the blind;

3rd - Equal priority to approved, charitable, non-profit-making agencies for other disabled and qualified veterans' entities; provided, however, the preferred source shall perform 50% or more of the work.

- **Services** available in the form, function, and utility required by a purchasing agency must be purchased from a preferred source. **Equal priority** is accorded to approved, charitable, non-profit-making agencies for the blind, other disabled persons, and qualified veterans' entities; provided, however, the preferred source shall perform 50% or more of the work. If more than one preferred source meets the service requirements and form, function, and utility, costs shall be the determining factor for purchase among the preferred sources.

2.3 Facilitating Agencies/Preferred Sources

Facilitating agencies are non-profit-making agencies established to facilitate the distribution of orders among preferred sources. These facilitating agencies include [New York State Preferred Source Program For New Yorkers Who Are Blind \("NYSPSP"\)](#), managed by Empire State Employment Resources for the Blind, as appointed by the Commissioner of the Office of Children and Family Services to facilitate orders among qualified non-profit-making charitable agencies for the blind; and [New York State Industries for the Disabled, Inc. \("NYSID"\)](#), appointed by the Commissioner of Education to facilitate the distribution of orders among qualified non-profit-making charitable agencies for the other disabled and the veteran's entities.

Facilitating agencies serve the preferred sources as their agents by disseminating

information regarding preferred sources and their approved commodities and services on the List of Preferred Source Offerings, by processing inquiries and orders as a “one-stop” contact for purchasing agencies, and by facilitating the distribution of orders for those commodities and services provided by preferred sources. In the description of the Preferred Source Procurement Process below (Section VI), the activities involving preferred sources will actually be performed by the facilitating agencies where the commodity or service is offered by a blind or other disabled preferred source. Purchasing staff should directly contact the facilitating agencies involved.

Corcraft is the manufacturing division of the New York State Department of Corrections and Community Supervision. Corcraft does not utilize a facilitating agency and manages orders for Corcraft products itself. Contact Corcraft at info.corcraft@doccs.ny.gov with any questions regarding ordering Corcraft products.

Section III: Preferred Source Offerings

3.1 List of Preferred Source Offerings

The New York State Office of General Services (“OGS”) maintains and makes available a list of all approved commodities and services that are available and being provided by preferred sources. This list, referred to as the [List of Preferred Source Offerings](#), contains generic groups of commodities and services as well as specific items and service definitions, and it references preferred source catalogs and other literature. The List of Preferred Source Offerings will assist purchasers in identifying preferred source commodities and services that have been approved to be purchased by purchasing agencies.

All new or substantially different commodities or services that are offered for sale by preferred sources to more than one purchasing agency must first be added to the List of Preferred Source Offerings. In other words, if the commodity or service is not on the List of Preferred Source Offerings, purchasers may elect to buy the commodity or service from a preferred source in accordance with the provisions of Section 163 of the State Finance Law but are not required to do so. The addition of new or substantially different services to the List of Preferred Source Offerings requires action by the New York State Procurement Council (the “Procurement Council”) and the Commissioner of OGS. The addition of new or substantially different commodities with an estimated annual sales volume of \$500,000 or more requires action by the Procurement Council and the Commissioner of OGS. The Procurement Council delegated to the Commissioner of OGS the authority to approve additions to the List of Preferred Source Offerings for commodities having an estimated annual sales volume under \$500,000 by resolution dated July 14, 2004. OGS updates and publishes the List of Preferred Source Offerings.

3.2 Preferred Source Commodity and Service Pricing

3.2.1 Correctional Industries Program (Corcraft)

1. **Prices** - Prices charged for commodities produced by Corcraft are to be established by the Commissioner of the Department of Corrections and Community Supervision in accordance with Section 186 of the New York State Correction Law. The prices shall be based upon costs but shall not exceed a reasonable fair market price determined at or within 90 calendar

days before the time of sale. Fair market price means the price at which a vendor of the same or similar product offers to sell such product under similar terms, in the same market.

2. **Appeals** - At any time prior to, or within 30 calendar days of the date of sale, a purchaser of a Corcraft product may appeal the purchase price on the basis that it unreasonably exceeds fair market price. Appeals are to be sent to the Director of the Budget, the Commissioner of the Department of Corrections and Community Supervision, and the Commissioner of OGS. The appeal will be decided by a majority vote of a three-member review board consisting of the Director of the Budget, the Commissioner of the Department of Corrections and Community Supervision and the Commissioner of OGS, or their designees. Decisions of the review board are final. Purchasing agencies are encouraged to consult with Corcraft on pricing issues prior to a formal appeal.

3.2.2 Agencies for the Blind, Other Disabled Persons, and Veterans' Entities

1. **Price Review and Approval** - With the exception of commodities offered by Corcraft, the Commissioner of OGS is responsible for reviewing and approving the prices of all commodities and services provided by preferred sources to purchasing agencies. In determining and revising the prices of commodities and services, consideration will be given to the reasonable costs of labor, materials, and overhead necessarily incurred by preferred sources under efficient methods of procurement, production, performance and administration. Price review and approval by the Commissioner of OGS is not required for any purchases below \$100,000.

If OGS requests additional information for its price review of an application from a preferred source or facilitating entity, the preferred source or facilitating entity shall have 30 calendar days to provide a complete response for commodities and 45 calendar days for services. If a complete response is not received by OGS within these timeframes, the price review application may be returned unapproved to the preferred source or facilitating entity. The determination of a complete response shall be at the discretion of OGS. The preferred source or facilitating entity is not prohibited from submitting a new, complete application for price review to OGS for the same commodity or service.

2. **Price Standards** - In approving the prices of preferred source commodities and services, OGS will seek to ensure the prices are as close to prevailing market price as practicable. Prevailing market price means the price at which a vendor of the same or equivalent commodity or service offers to sell such commodity or service under similar terms in the same market. Prices may not exceed 15% above prevailing market prices among responsive and responsible offers, for the same or equivalent commodities or services.

Section IV: Preferred Source Procurement Process

The procedures below outline a step-by-step process to be performed by purchasing agencies and preferred sources. The 10-day notification detailed in Step 5b for commodities, and in Steps 3a and 3b for services, applies only to those commodities that have been

approved as a preferred source commodity on a statewide basis, and to those services approved for one or more purchasing agencies as indicated on the List of Preferred Source Offerings. For services approved for purchase only by a specific purchasing agency, the 10-day notification requirement applies only to the specific purchasing agency.

4.1 Commodities

Step 1 The purchasing agency determines and defines its need for particular commodities.

Step 2 The purchasing agency reviews the current List of Preferred Source Offerings to determine if the commodity being sought has been approved as a preferred source offering and is provided by one or more preferred sources. Purchasing agencies should broadly interpret the generic listing of commodities.

Step 3

- a. If the commodity is identified on the List of Preferred Source Offerings as approved and available from one or more preferred sources, the purchasing agency determines which preferred source has priority and reviews the facilitating entities' catalogs and websites to generally determine whether the commodity meets the purchasing agency's form, function, and utility needs.

Purchasing agencies should consult directly with the preferred sources facilitating entities to gain additional information and/or clarification regarding catalog or website descriptions.

If necessary, the purchasing agency should review each of the offerings in the catalog or on the website of the facilitating entity (ies) that, based on the List of Preferred Source Offerings, offer the commodity being sought to locate one that meets the form, function, and utility needs of the purchasing agency. If one is identified, proceed to Step 4.

- b. If the commodity is not identified on the List of Preferred Source Offerings as being available from a preferred source, the purchasing agency may proceed with an appropriate procurement method in accordance with the applicable law.

Step 4 If the commodity is on the List of Preferred Source Offerings, and in an approved facilitating entity's catalog or on its website, the purchasing agency shall determine whether the commodity is in the form, function, and utility required.

To apply the form, function and utility standard, the purchasing agency should define the commodity in terms of the **minimum essential requirements** that will meet its needs. Every effort should be made to purchase an approved commodity from the preferred source so long as the item meets the purchasing agency's needs. Requirements may include quality, quantity, delivery, packaging, performance standards, and compatibility, among others. Requirements should not be inflated or overstated to eliminate preferred source suppliers, nor should the purchasing agency acquire a preferred source product that is materially unsuited to the needs of the purchasing agency.

In making the form, function, and utility determination, purchasing agencies should at

least consider the following:

- Does the commodity offered by the preferred source meet all purchasing agency specifications or industry standards that are applicable, including green purchasing requirements?
- If there are deviations from specifications, will the commodity suffice or substantially meet the minimum requirements for function and performance?
- Are the delivery schedules, installation requirements and performance standards reasonable, necessary, and within accepted commercial practices? For example, is the divergence between the purchasing agency's desired delivery date and the expected actual delivery date within reason or so great as to impede the purchasing agency from accomplishing its goals (i.e., six weeks vs. six months)?
- Has the preferred source or facilitating entity been consulted with? Can the preferred source make necessary accommodations to meet the purchasing agency's needs?

Step 5

- a. If the commodity meets the form, function, and utility required by the purchasing agency, the purchasing agency completes the purchase from the preferred source through the facilitating entity at the price determined by OGS or established by the Department of Corrections and Community Supervision. If a state agency is purchasing a commodity valued at \$50,000 or more (or \$75,000 for SUNY campuses, \$85,000 for OGS, \$150,000 for SUNY healthcare facilities), the state agency must also obtain approval from the Office of the New York State Comptroller ("OSC"). The purchasing agency **may not** put the commodity out to bid to determine prevailing market price.
- b. If the purchasing agency determines that the commodity does not meet the form, function or utility required, as a recommended best practice, the purchasing agency may provide a written notification to the preferred source or the applicable facilitating entity (i) describing the basis for its finding; (ii) providing the name, address and phone number of the responsible purchasing agency purchasing official; and (iii) indicating the date on which the purchasing agency intends to publish an advertisement in the New York State Contract Reporter (if required), or the date on which competitive solicitations will be made by the purchasing agency. This notification is recommended to be received by the preferred source at the address provided in the List of Preferred Source Offerings at least 10 calendar days prior to the date indicated in (iii) above. Proof of notification, if given, should be retained by the purchasing agency.

Step 6 If the notice in Step 5 above is given, the preferred source or facilitating entity may do the following within the 10 or more calendar days provided:

- a. Contact the purchasing agency procurement officer, in writing or other form, indicating agreement with the purchasing agency;
- b. Provide no response to the procurement officer; or
- c. Contact the purchasing agency procurement officer, in writing or other form, indicating disagreement with the purchasing agency's finding.

Step 7

- a. If (a) or (b) in Step 6 occurs, the purchasing agency may proceed with the procurement using OGS centralized commodity contracts or with another appropriate procurement method in accordance with the applicable law.
- b. If (c) occurs, the preferred source or facilitating entity may consult or negotiate with the purchasing agency regarding procurement options including, but not limited to, the commodity offered, a modified version of the required commodity, delivery schedules, etc.

Step 8

- a. If the procurement is negotiated to the satisfaction of the purchasing agency, the purchasing agency shall proceed with the procurement from the preferred source.
- b. If negotiations are unsuccessful, the purchasing agency will so advise the preferred source or applicable facilitating entity and proceed with an appropriate procurement method in accordance with the applicable law, including New York State Contract Reporter publication, if required.

Step 9 The preferred source or facilitating entity may elect to inform the Commissioner or other chief executive of the purchasing agency as to its objection to the purchasing agency's decision. A copy of such objection must be included with contract documents, purchase orders, or vouchers sent by State agencies to OSC.

Step 10 All documentation of findings, actions, decisions, and objections are to be retained by the purchasing agency in conformance with standard records retention schedules as part of the procurement record for that acquisition.

4.2 Services

Step 1 The purchasing agency determines and defines its need for services.

Step 2 The purchasing agency reviews the List of Preferred Source Offerings to determine if the service being sought is provided by one or more preferred sources. Agencies should carefully review the approved definitions on the generic listing of services. If the service is clearly not on the List of Preferred Source Offerings, the purchasing agency may proceed with an appropriate procurement method in accordance with the applicable law.

Step 3

- a. The purchasing agency must make reasonable efforts to notify preferred sources or their facilitating entities of the need for services appearing on the List of Preferred Source Offerings. Notification, including a description of the purchasing agency's requirements, should be provided to the preferred source(s) at the address provided in the List of Preferred Source Offerings. Proof of notification should be retained by the purchasing agency.
- b. If a preferred source or facilitating entity responds within 10 calendar days of the

notification with a notice of intent to provide the service in the form, function, and utility required, identifying the specific preferred source that will be performing the service, either independently or with a corporate partner, the purchasing agency shall proceed with the procurement as indicated in Step (4) below. If more than one preferred source or facilitating entity submits notice of intent to provide the service and all meet the requirements, the cost shall be the determining factor.

- c. If no preferred source or facilitating entity responds within the 10-day period with a notice of intent, or the preferred source or facilitating entity provides a notice that they have no interest in providing the required service, the purchasing agency must next determine if there is an OGS centralized contract that meets its form, function, and utility needs before it may proceed with a competitive procurement. If the purchasing agency decides to pursue a competitive procurement, and one or more preferred source or facilitating entity elects to “bid” on that procurement, the purchasing agency shall treat the preferred source or facilitating entity as any other vendor.

Step 4 Once a service has been identified as an approved preferred source offering that is available from a preferred source, the purchasing agency shall determine whether the service is in the form, function, and utility required by the purchasing agency.

To apply the form, function, and utility standard, the purchasing agency should define its service requirements in terms of the **minimum essential requirements**. In other words, every effort should be made to purchase an approved offering from the preferred source so long as the service meets the purchasing agency’s needs. Requirements may include quality, timeliness, and performance standards, among others. Requirements should not be inflated or overstated to eliminate preferred source suppliers, nor should the purchasing agency acquire a preferred source service that is materially unsuited to the needs of the purchasing agency.

In making the form, function, and utility determination, purchasing agencies should consider the following:

- Does the service meet either purchasing agency specifications or industry standards that may be applicable, including green purchasing requirements?
- Are deviations from specifications minor? Will the service suffice or substantially meet the minimum requirements for function and performance, or could the service be made to meet the minimum requirements?
- Are start-up lead times and performance standards reasonable, necessary, and within accepted commercial practices?
- Has the preferred source been consulted? Can the preferred source make necessary accommodations to meet the purchasing agency’s needs?

Step 5

- a. If the service meets the form, function, and utility needs of the purchasing agency and costs \$100,000 or more, the preferred source or facilitating entity must obtain OGS price approval before the purchasing agency completes the purchase. All price review applications submitted to OGS for approved preferred source services must utilize the [Electronic Service Application](#). In the event that the total cost of a service will be \$100,000 or more because of an extension, the preferred source or facilitating entity must obtain OGS price approval before the purchasing agency completes the

extension. In addition, if the service is valued at \$50,000 or more (or \$75,000 for SUNY campuses, \$85,000 for OGS, \$150,000 for SUNY healthcare facilities) and the purchase is by a state agency, the state agency must provide OSC with price justification and obtain OSC approval. The price of services shall be approved by OGS as being as close as practicable to prevailing market price but may not be greater than 15% above prevailing market price among responsive and responsible offers for equivalent service. The purchasing agency **may not** put the service out to bid for the purpose of determining prevailing market price. OGS shall follow the requirements of Section 162 of the State Finance Law and ensure that the price of services offered by preferred sources is within 15% of prevailing market price based on the purchasing agency's detailed specification. To assist OGS, purchasing agencies should provide any price information they have available to ensure that prevailing market price is accurately identified for the purchasing agency's specific services.

- b. If the purchasing agency determines that the service does not meet its form, function, or utility needs, the purchasing agency must first determine if there is an OGS centralized contract that meets its form, function, and utility needs before it may proceed with a competitive procurement. If a preferred source or facilitating entity elects to "bid" on such procurement, the purchasing agency shall treat the preferred source or facilitating entity as any other vendor.

Step 6. The preferred source or facilitating entity may elect to inform the purchasing agency's Commissioner or other chief executive as to its objection to the purchasing agency's decision. A copy of such objection must be included with contract documents, purchase orders, or vouchers sent by State agencies to OSC.

Step 7. All documentation of findings, actions, decisions, and objections are to be retained by the purchasing agency in conformance with standard records retention schedules as part of the procurement record for that acquisition.

Section V: Compliance Review

It is a purchasing agency's responsibility to purchase from preferred source suppliers whenever possible after determining that the form, function, and utility of preferred source products and services meet the purchasing agency's requirements. If, in the opinion of a preferred source or its facilitating entity, a purchasing agency shows a pattern of extended or repeated failure to purchase from the preferred source, the preferred source or facilitating entity may protest such purported practice to the Procurement Council. The Procurement Council, or a subcommittee thereof, may request to review the purchasing agency's relevant procurement records and, based upon that review, may either concur with the purchasing agency's procurement decisions or advise the purchasing agency of the need to take corrective action on future procurements consistent with statutory requirements and Procurement Council policy. A copy of the Procurement Council's decision shall be sent to OSC.

Section VI: Adding a New or Substantially Different Commodity or Service to the List of Preferred Source Offerings

New or substantially different commodities and services may be made available as approved preferred source offerings for purchase by more than one purchasing agency only after such commodity or service has been approved by the State Procurement Council, or OGS under its delegated authority, and added to the List of Preferred Source Offerings.

6.1 Statutory Responsibilities

The Procurement Council is responsible for recommending the addition of new or substantially different commodities and services to the List of Preferred Source Offerings to the Commissioner of OGS for formal action. One reason for rendering such a recommendation is to provide a public forum for the discussion of those proposed new commodity/service offerings of preferred sources given preferred status under the law. The Procurement Council shall consider all relevant factors, including costs and benefits, in making its recommendations. The Procurement Council may also recommend the deletion of commodities or services from the List of Preferred Source Offerings at the request of a preferred source or facilitating entity, and may make a non-binding recommendation to a preferred source or facilitating entity to delete a commodity or service from the List of Preferred Source Offerings.

The Commissioner of OGS maintains the List of Preferred Source Offerings, adds commodities and services to the List of Preferred Source Offerings after receiving a recommendation from the Procurement Council, and reviews and approves the price of preferred source services and commodities other than commodities produced by Corcraft. The Commissioner of OGS also renders decisions on appeals made by preferred sources or facilitating entities should the Procurement Council deny recommendation of any application to make available a new or substantially different commodity or service.

The filing of an application to the Procurement Council to add new or substantially different commodities or services to the List of Preferred Source Offerings may be made by the Commissioners of the Department of Corrections and Community Supervision, the Office of Children and Family Services and the Education Department, or the non-profit facilitating entity designated by one of the Commissioners.

6.2 General Criteria for the Addition of New or Substantially Different Commodity or Service Offerings

In evaluating the costs and benefits of an application to add either commodities or services to the List of Preferred Source Offerings, the Procurement Council shall apply the following criteria:

1. **Commodities** must be produced, manufactured, assembled, or repackaged by an appropriately certified preferred source, or by Corcraft in New York State, with preferred source employee participation and with “value added” to the finished commodity by employees of the preferred source. “Value added” means that the commodity or product:

- a. Has undergone a change in physical state which enhances its value or has been altered or processed in a manner that increases its value and provides a customer with benefits that appeal to his or her immediate needs; and
 - b. Is not simply a pass-through from the private sector without meaningful participation by the incarcerated or disabled.
2. **Services** must be performed by employees of an appropriately certified or approved New York State preferred source, either independently or with a corporate partner.
3. **Commodities or services** must be new to the List of Preferred Source Offerings or substantially different from commodities or services already included on the List of Preferred Source Offerings by the preferred source applicant and must be intended for offering for sale to more than one purchaser.
4. **Commodities or services** must meet appropriate quality standards and specifications.
5. **The cost/price data for commodities or services** submitted with the application must have been reviewed and approved by OGS. Applications submitted by, or on behalf of, the Commissioner of the Department of Corrections and Community Supervision shall contain a price established by the Commissioner of the Department of Corrections and Community Supervision. Service and commodity additions may not represent an attempt by a private vendor to obtain an unfair advantage over competitors.

6.3 Impact Assessment on NYS Vendors/Suppliers

It is essential that the decision to add a commodity or service to the List of Preferred Source Offerings is sensitive to the business environment within which the State operates. The New York State Department of Economic Development d/b/a Empire State Development (ESD) will review applications to add new or substantially different commodities and services to the List of Preferred Source Offerings to determine if adding the commodity or service will have a significant impact on a substantial number of NYS businesses. Nothing in these guidelines prevents any preferred source or facilitating entity from contacting ESD prior to filing the application with the Procurement Council to consult with and/or receive input from ESD on the application. ESD is also available to assist the preferred source or facilitating entity in identifying NYS suppliers and/or partners if requested by the preferred source during the development of an offering. Information collected during this assessment, and efforts made to secure NYS businesses as suppliers for all components, including packaging, should be included in the cost/benefit analysis section of the application to be considered by the Procurement Council. ESD review shall run concurrent with OGS review and be completed within 90 calendar days of receipt of the application.

6.4 Application Requirements to Add a New or Substantially Different Commodity or Service to the List of Preferred Source Offerings

The application made by the Commissioners of the Department of Corrections and Community Supervision, the Office of Children and Family Services, the Education Department, or the facilitating entities must provide the following information for both commodities and services:

1. **Commodity Specification/Service Description** – The application shall include the

name of the commodity or service along with a description (either by specification or narrative explanation), including a recitation as to how it is new or substantially different from the commodities/services already offered by the preferred source.

2. **Market Information** – The applicant should provide information on the scope of the potential market for the commodity or service.
3. **Client Employment** – The applicant should identify the nature of the tasks the clients of the preferred source will perform in the preparation of the commodity or in providing the service. Projected employment opportunities for clients should be quantified.
4. **Preferred Source** – The applicant should identify the specific preferred source that will provide the commodity or service along with evidence of the preferred source's qualifications and expertise to manufacture, produce, or assemble the commodity or provide the service. If applicable, the applicant shall also identify the corporate partner the preferred source will be working with to provide the commodity or service.
5. **Value Added** – The application must specifically address the value added by preferred source client labor to the finished commodity or service.
6. **Direct Labor Workforce** – The application must specifically detail the number and hours of the direct labor employed in the provision of each preferred source commodity and service agreement and reflect the objective that 50% or more of the direct labor be provided by the preferred source. These workforce standards will apply to all new commodity and service requests and to all requests for changes in, or renewal of, approved commodities and services. Direct labor includes all labor other than non-working supervisors.
7. **Cost/Benefits Analysis** – The application will provide a summary of projected costs and benefits expected to accrue to the State, its agency(ies), political subdivision(s), public benefit corporations(s), or the preferred source, as well as any broader social and economic impacts on client employment and government costs. (For example, will a successful application maintain client employment, create employment opportunities for new clients, or result in reduced governmental support being provided to clients through other government programs?) The analysis should have a quantitative basis but may include qualitative factors.
8. **Cost/Price Data** – The application must include information sufficient to enable OGS to approve the price data on the commodity or service in accordance with Section 162 of the New York State Finance Law. In the case of Corcraft, the application should include its price for the offered Corcraft commodity. For applications involving multiple commodities (e.g., complete product line, various sizes and packaging, etc.) and individual service rates (e.g., wage rates), the price of each commodity or individual service component may not exceed 15% above prevailing market price. Preferred source facilitating entities are encouraged to provide independent market analyses to be considered during the OGS determination of prevailing market price.
9. **Current Suppliers** – If the commodity or service is already being purchased by State agencies, public benefit corporations or political subdivisions, the application will list the current suppliers or contract holders if they are known to the applicant.
10. **Preferred Source Suppliers** – The application must contain the projected first-year value of anticipated contracts and the name(s) and location(s) of the contractor(s) who would supply raw materials and semi-finished or finished products required by

the preferred source, including any information as to methods employed in selecting such suppliers, if appropriate.

The application and supporting documentation must be submitted to the Procurement Council coordinating office via the Procurement Services division of OGS. If Procurement Services determines that the application is a new offering, the preferred source will be instructed to submit the application to ESD for review.

6.5 Office of General Services Review

OGS will review the application to ensure that it is complete and, except for applications made by Corcraft, to render the required pricing determinations. OGS may seek to verify or clarify any information included in the application and may contact the applicant to obtain additional information OGS deems necessary to properly evaluate the application. If, in the judgment of OGS, adequate information on which to make an evaluation has not been provided, the application may be returned to the applicant for additional documentation. The 90-day review period is suspended in the event that additional information is required and will restart once the applicant submits the required additional information. OGS may request one or more State agencies represented on the Procurement Council to provide staff assistance to OGS.

6.6 Application Lead Times

Applications for the addition of new or substantially different commodities or services to the List of Preferred Source Offerings should be received at least 90 calendar days prior to a scheduled meeting date of the Procurement Council to receive consideration at that meeting. The Procurement Council typically meets on a quarterly basis. When a commodity or service is currently offered on a State contract, applications should be submitted at least 6 months in advance of the expiration date of the State contract. Dates of upcoming meetings can be found on the [Procurement Council website](#).

6.7 Procurement Council Meeting/Application Review

The appropriate Commissioner or facilitating entity making the application as well as OGS, or the agency assisting OGS, may present an assessment of the application at the Procurement Council meeting upon its own request or upon request of the Procurement Council. Additionally, any other interested party may request to offer comments in support of, or in opposition to, the application.

6.8 Procurement Council Decisions

A quorum of the Procurement Council members (or their designees) must be present at a meeting to conduct business. Applications shall be decided by a majority vote of the Procurement Council, and in the case of tie votes, an application shall be held over until the next scheduled meeting of the Procurement Council. Applications are deemed to have been received by the Procurement Council on the date the application is received by OGS in accordance with these guidelines. (If the application has been returned to the applicant by OGS for further completion, the application shall be deemed received by the Procurement Council when it is resubmitted to OGS.) If the Procurement Council does not make a

recommendation to the Commissioner of OGS within 120 calendar days of that date, the application shall be deemed recommended.

6.9 Appeals

In the event that the Procurement Council denies an application, the Commissioner or facilitating entity that submitted the application may appeal the denial to the Commissioner of OGS within 30 calendar days of such denial.

The Commissioner of OGS shall review all materials submitted to the Procurement Council regarding the application and may request additional information or material as deemed necessary. Within 60 calendar days of receiving all the information or material deemed necessary, the Commissioner of OGS shall render a final written decision on the appeal. The Commissioner of OGS's decision is final and binding upon the applicant and upon the Procurement Council.

Section VII: Application Requirements for Product Line Extension

Preferred sources or facilitating entities may submit requests to OGS for a product line extension of a commodity that is currently on the List of Preferred Source Offerings. The item(s) included in the request for product line extension must not be new or substantially different from the approved preferred source commodity used as the basis for the product line extension. The request must also include documentation demonstrating the correlation between the proposed commodity and the approved preferred source commodity used as the basis for the product line extension. Prices for product line extensions must be within 10% of prevailing market price, consistent with the authority for price review of new items delegated to OGS by the Procurement Council by resolution dated July 14, 2004 (this resolution was amended in a [resolution dated April 17, 2019](#)).

Section VIII: Amending an Approved Service Definition

Due to changes in technology, industry standards, and other relevant factors, it may be appropriate from time to time to amend approved preferred source service definitions on the List of Preferred Source Offerings. The Office of Children and Family Services, the Education Department, or the facilitating entities may file an application to amend an approved preferred source service definition.

8.1 Application Requirements for Amending an Approved Preferred Source Service Definition

An application to amend an approved preferred source service definition must provide the following information:

1. **Proposed Amended Service Definition** - The application shall include the proposed amended service definition and a recitation as to how it is different from the existing approved service definition.

2. **Market Information** – The applicant should provide information on the scope of the potential market and explain any anticipated expansion of the market due to amending the currently approved service definition, or anticipated loss of the market due to not amending the currently approved service definition. The application must contain the projected first-year value of anticipated contracts and should also include sufficient information to demonstrate the proposed service definition meets industry standards, including any green purchasing requirements, for the service.
3. **Client Employment** – The applicant should identify the nature of the tasks the clients of the preferred source will perform in providing the service. Projected employment opportunities for clients should be quantified.
4. **Preferred Source** – The applicant should identify the specific preferred source that will provide the service and provide evidence of the preferred source’s qualifications and expertise to provide the service. If applicable, the applicant shall also identify the corporate partner the preferred source will be working with to provide the service.
5. **Value Added** – The application must specifically address the value added by preferred source client labor in performing the service.
6. **Direct Labor Workforce** – The application must specifically detail how the objective that 50% or more of the direct labor be provided by the preferred source will continue to be met. Direct labor includes all labor other than non-working supervisors.
7. **Cost/Benefits Analysis** – The application will provide a summary of projected costs and benefits expected to accrue to the State, its agency(ies), political subdivision(s), public benefit corporations(s), or the preferred source, as well as any broader social and economic impacts on client employment and government costs. (For example, will a successful application maintain client employment, create employment opportunities for new clients, or result in reduced governmental support being provided to clients through other government programs?) The analysis should have a quantitative basis but may include qualitative factors.
8. **Cost/Price Data** – The application must include information sufficient to demonstrate that the pricing structure will not significantly change from the currently approved service and will remain compliant with Section 162 of the New York State Finance Law. The price of each individual service component may not exceed 15% above prevailing market price. Preferred source facilitating entities are encouraged to provide independent market analyses to be considered by OGS in the determination of prevailing market price.
9. **Current Suppliers** – If the amended service is already being purchased by state agencies, public benefit corporations, or political subdivisions, the application shall list the current contract holders if they are known to the applicant.

The application and supporting documentation must be submitted to the Procurement Council coordinating office via the Procurement Services division of OGS. If Procurement Services determines that the application is for an amended service definition and not a new service offering, the preferred source will be instructed to submit the application to ESD for review. If Procurement Services determines the proposed amended service definition is

substantially different from the currently approved service definition, the application will be returned to the applicant, and they will be instructed to submit an application to add a new or substantially different service to the List of Preferred Source Offerings.

8.2 Impact Assessment on NYS Vendors/Suppliers

It is essential that the decision to amend a service definition on the List of Preferred Source Offerings is sensitive to the business environment within which the State operates. ESD will review applications to amend service definitions to determine if amending the current service definition will have a significant impact on a substantial number of NYS businesses. ESD review shall run concurrent with OGS review and be completed within 90 calendar days of receipt of the application.

8.3 Office of General Services Review

OGS will review the application to ensure that it is complete and will render the required pricing determinations. OGS may seek to verify or clarify any information included in the application and may contact the applicant to obtain additional information OGS deems necessary to properly evaluate the application. If, in the judgment of OGS, adequate information on which to make an evaluation has not been provided, the application may be returned to the applicant for additional documentation. The 90-day review period is suspended if it is determined that additional information is required and will restart once the applicant submits the additional information. OGS may request one or more state agencies represented on the Procurement Council to provide staff assistance to OGS for this review.

8.4 Application Lead Times

Applications for amending service definitions on the List of Preferred Source Offerings should be received at least 90 calendar days prior to a scheduled meeting date of the Procurement Council to receive consideration at that meeting. The Procurement Council typically meets on a quarterly basis. Dates of upcoming meetings can be found on the [Procurement Council website](#).

8.5 Procurement Council Meeting/Application Review

The appropriate Commissioner or facilitating entity making the application as well as OGS, or the agency assisting OGS, may present an assessment of the application at the Procurement Council meeting upon its own request or upon request of the Procurement Council. Additionally, any other interested party may request to offer comments in support of, or in opposition to, the application.

8.6 Procurement Council Decisions

A quorum of the Procurement Council members (or their designees) must be present at a meeting to conduct business. Applications shall be decided by a majority vote of the Procurement Council, and, in the case of tie votes, an application shall be held over until the next scheduled meeting of the Procurement Council. Applications are deemed to have been received by the Procurement Council on the date the application is received by OGS in accordance with these guidelines. (If the application has been returned to the applicant by

OGS for further completion, the application shall be deemed received by the Procurement Council when it is resubmitted to OGS).

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