



MEMORANDUM

To: New York State Procurement Council
From: OGS Preferred Sources Team (as staff to the New York State Procurement Council)
Date: July 14, 2016
Subject: NYS Industries for the Disabled (“NYSID”) Application, dated April 1, 2016, to add Mail Fulfillment Services to the List of Approved Preferred Source Service Offerings

NYSID’s application seeks Procurement Council approval to:

1. Add Mail Fulfillment Services as a new preferred Source Service Offering.
2. Remove the stand-alone previously approved mail related services of Chesire Labeling, Collating, Packaging, Distribution, Folding and Inserting, Inkjet Labeling and Presort, All Classes, if Mail Fulfillment Service is approved as a new service offering.

OVERVIEW

As detailed below, the OGS Preferred Sources Team, acting as staff to the New York State Procurement Council (“Staff”), is recommending approval of the application with two caveats. First, Staff recommends that the Procurement Council approve the application by approving the definition developed through the workgroup formed to review the application. Second, Staff recommends that approval of this service offering be provisional so that the Procurement Council can fully evaluate the effect of the service offering on NYS business and NYS preferred sources.

BACKGROUND

During the Procurement Council Meeting on May 25, 2016, Staff presented its findings regarding NYSID’s application to the Procurement Council. Because Staff found that the application lacked sufficient information on pricing and value added labor and because of opposition to the application from the Printing Industries Alliance (“PIA”), Staff recommended that a vote on the application be deferred and that a workgroup be formed to obtain the necessary information and to explore ways to address the needs and concerns of all stakeholders.

At the May 25, 2016 Meeting, the Procurement Council voted to table the application and send it to a workgroup for further consideration. The workgroup, which included Procurement Council members¹ and representatives from NYSID, the Center for Disability Services, and the PIA, met over the course of five weeks. The workgroup endeavored to arrive at a definition of Mail Fulfillment Services that fairly addresses (i) the needs of customer agencies for mail fulfillment

¹ The members of the Procurement Council serving on the workgroup were representatives of the Division of Budget, Empire State Development, the Office of Mental Health, the Department of Health, the State University of New York, OGS, the Business Council of New York State, and the New York State Preferred Source Program for People Who Are Blind.

services, including document preparation, (ii) the ability of preferred members to provide meaningful opportunities for employment of workers with severe disabilities, and (iii) the concerns of the printing industry.

During the course of the workgroup meetings, representatives of NYSID and the Center for Disability Services explained that customer agencies are requesting document preparation as part of a suite of mail fulfillment services. In the past, form letters could be reproduced using photocopiers, but because of advances in technology, there is now an expectation that letters will be individually addressed. Consequently, document preparation today is largely accomplished by digital printers and not by photocopiers. The intent of NYSID's application is to ensure that its member agencies can continue to provide the mail fulfillment services they have for many years while using current technology to provide those services. The PIA, on the other hand, wants to ensure that the use of digital printers by preferred members will not lead to preferred members taking on printing work that has been traditionally handled by commercial printers.

Much of the work of the workgroup was devoted to crafting a definition of Mail Fulfillment Services that all parties could endorse and present to the Procurement Council as a consensus recommendation. All members had a fair opportunity to make their views known and the deliberations, while lively, were respectful. Representatives of NYSID, the Centers for Disability Services, and the PIA both sought and made concessions in an effort to reach a consensus. While Staff felt that we were very close to a consensus at the last meeting of the workgroup held on July 8, 2016, we are sorry to report that the PIA informed us on July 12, 2016 that it has decided to oppose the application. While we regret that the workgroup was unable to reach a consensus, Staff believes that the definition developed by the workgroup strikes a fair balance between the competing interests of NYSID and the PIA. The definition proposed by Staff is largely based on the definition from the workgroup.

UPDATES TO STAFF FINDINGS

In its recommendation to the Procurement Council on May 25, 2016, Staff outlined several issues that were not addressed by NYSID's application. Some of these issues have been addressed by additional information provided by NYSID. In other cases, the proposed definition of Mail Fulfillment Services has rendered some issues irrelevant.

1. In its initial review, Staff found that it was unable to determine the reasonableness of the costs of this service because of a lack of pricing information within the application. NYSID has since provided pricing information for a sample Mail Fulfillment Services contract, which Staff finds to be reasonable. Staff notes that applications with a value greater than \$50,000 will be reviewed by the OGS Preferred Sources Team for price reasonableness.
2. In its initial review, Staff was unable to quantify the value added labor provided by persons with severe disabilities and found no indication that additional individuals with disabilities will be provided employment opportunities upon approval of this application. NYSID has provided satisfactory information on value added labor for a Mail Fulfillment Services contract. Staff also notes that while it is unclear how many individuals with severe disabilities may be newly employed, NYSID has stated that this application is intended to retain jobs, and if this application is not approved, preferred sources may see a decrease in contracts because customer agencies want to have a single contractor that can both print documents and mail them.

3. In its initial review, Staff was unable to determine how NYSID would establish in a price approval application that the inclusion of digital printing would account for less than 25% of the direct labor cost of the contract. Because the percentage limitations are no longer part of the proposed definition, this concern is no longer relevant. In the workgroup discussion regarding provisional approval of the application, NYSID agreed to provide a report on all Mail Fulfillment Services contracts at every Procurement Council meeting during the provisional period. Such report will include information on the percentage of direct labor dedicated to digital printing, which will allow the Procurement Council to evaluate whether the percentage is reasonable and appropriate.
4. In its initial review, Staff was unclear as to the basis of the 25% limitation and how this limitation will be enforced and reported upon by member agencies. This concern is no longer relevant because NYSID will be reporting on the percentage on a quarterly basis.
5. The initial application indicated that five member agencies are currently “independently offering Mail Fulfillment Services.” Staff raised the concern that the application did not sufficiently explain why those members cannot continue to provide those services without a change in status or the possible inclusion of corporate partners. Representatives of NYSID and the Center for Disability Services expressed concerns that if this application is not approved, the preferred sources may in some cases lose business if they cannot print the documents customers want mailed. With respect to corporate partners, because the proposed definition no longer permits corporate partners to provide digital printing services, the concern over the inclusion of corporate partners is no longer relevant.
6. In its initial review, Staff noted that the application failed to provide a definition of Mail Fulfillment Services. Staff is recommending the approval of the proposed definition attached to this memorandum. The definition was developed with the input of all parties involved in the workgroup.

STAFF RECOMMENDATION

Staff is recommending approval of the application with the following qualifications:

1. Staff recommends that the Procurement Council approve the application by approving the proposed definition attached to this memorandum. In the past, applications for new preferred source offerings were approved on the basis of the application. Now that the Procurement Council is adopting definitions for all service offerings, Staff believes it makes sense to approve a definition for new services, which will allow procuring agencies to readily determine if a preferred source offering meets their form, function, and utility, as required by State Finance Law § 163(4). The definition proposed by staff is largely the product of the workgroup. Staff notes that NYSID has recommended certain changes to the definition, which we have declined to make. The PIA has not commented on the latest definition in light of its opposition to the application, but Staff believes that many of the PIA’s concerns have been addressed in the proposed definition.
2. Staff recommends that the approval be provisional and subject to certain conditions set forth in the definition. Provisional approval will give the Procurement Council an opportunity to fully evaluate the effect of the service offering on NYS businesses and NYS preferred sources. The suggested approval conditions are set forth in the attached definition

and include a requirement that NYSID provide a quarterly report to the Procurement Council on all Mail Fulfillment Services contracts during the provisional period. NYSID has agreed to this requirement.

Attachment