



MEMORANDUM

To: New York State Procurement Council
From: OGS Preferred Sources Team (as staff to the New York State Procurement Council)
Date: May 23, 2014
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, because the application lacks sufficient information on pricing and value added labor and because of opposition to the application from the Printing Industries Alliance, staff recommends that a vote on the application be deferred and that a working group made up of representatives of preferred sources, the printing industry, and the Procurement Council be formed to obtain the necessary information and to explore ways to address the needs and concerns of all stakeholders.

BACKGROUND

NYSID has previously been approved to provide the following services as a preferred source offering in relation to mail services: Collating, Packaging, Distribution; Folding & Inserting; Chesire and Inkjet Labeling; Onsite and Offsite Mailroom Services and Presort, all classes. In addition, NYSID has approval to provide Photocopying and Reproduction services. Historically, government entities would provide NYSID with all of the original printed documents to be mailed or a single original document, which NYSID would then photocopy or reproduce to make exact duplicates of the original and then mail out under one of the approved service categories.

The application indicates that government entities now require a complete turnkey solution for mail fulfillment services, including the production of the documents to be mailed. NYSID states that the production component of mailing contracts is a highly automated process that will require a minimal amount of manual labor and that the bulk of the direct labor provided by disabled workers is contained within the above-identified sub-components of a mailing service (labeling, collating, packaging, distribution, folding and inserting and presort-all classes).

NYSID does not currently have preferred source status to provide any type of printing (other than Chesire and Inkjet labeling) or to bind printed documents.

In 2014, NYSID requested approval by the New York State Procurement Council (the "Procurement Council") to add digital printing to the List of Approved Preferred Source Service Offerings (the "List"). This request was denied by the Procurement Council and that denial was upheld by the Commissioner of General Services. Following that denial, NYSID advised that the Center for Disability Services ("CFDS") had been processing Medicaid notice letters for the New York State Department of Health ("DOH") for many years and needed authorization to also print those letters (each letter would contain the same content; the only change would be the recipient's information included on each letter) to be able to meet the form, function, and utility requirements of DOH.

More recently, the Procurement Council established a subcommittee to revise existing definitions and propose new definitions for all approved preferred source offerings and all services excluded from the Preferred Source Program (set forth on Part E of the List). In the course of discussing the definition of Digital Printing, an excluded service, some members of the subcommittee suggested that there may be a way to allow the limited use of digital printing by preferred members for certain kinds of mail services, such as where a customer agency needs to mail standard form letters to recipients. Such members recognize that the advent of mail merge capabilities has created an expectation by customers that such standard form letters will be personally addressed, which means that such letters are no longer produced by the duplication of a single original but instead are printed from electronic files. In essence, the work once performed by preferred members using photocopiers is now largely performed using computers and printers.

LEGAL AUTHORITY

State Finance Law § 162(3)(b) provides that the Procurement Council may recommend the addition of services to the List based upon a review of relevant factors as determined by the Procurement Council "including costs and benefits to be derived from such addition and shall include an analysis by the Office of General Services."

In addition, the Preferred Source Guidelines adopted by the Procurement Council contain detailed requirements for applications to add services to the List, set forth in Section X.D., Application Requirements. Such requirements include, among other things: (i) information on the potential market for new service; (ii) the nature of the tasks workers with disabilities will perform; (iii) the identities of any corporate partners the preferred sources will be working with to provide the services; (iv) the value added by the preferred source client labor to the service; (v) the number and hours of direct labor to be performed by people with disabilities; (vi) the percentage of direct labor workers with disabilities; (vii) the projected costs/benefits expected to accrue to the State and the preferred sources, as well broader social and economic impacts on client employment and government costs; (viii) the identities of the current suppliers or contract holders of the proposed service, if known; (ix) information sufficient for OGS to approve the price data and confirm that no individual service component will exceed 15% above prevailing market price. Applicants are also encouraged to provide independent market analyses to be considered in the OGS determination of prevailing market price.

NYSID APPLICATION INFORMATION

1. NYSID currently has five members independently offering Mail Fulfillment Services:

Center for Disability Services in Albany
Fedcap Rehabilitation Services, Inc. in New York City

Southeast Works in Depew (Erie County)
Warren, Washington & Albany Counties Chapter of NYSARC in Albany
Westchester County ARC in White Plains

2. These five members employ 294 people with a diversity of functional abilities being paid between \$9.00 and \$21.00 per hour.
3. NYSID member agencies have been providing mailing services to a multitude of government agency customers for the past 25 years.
4. In 2015, NYSID contracts for Mail Fulfillment provided 104,141 labor hours for New Yorkers with disabilities.
5. The government agency customers now require a turnkey solution in which all aspects of the job from letter to label to envelope to mailing are performed by the contractor.
6. The government agency customers no longer seek to have NYSID strictly process their mail, which includes collating, folding, inserting, labeling, packaging, presorting of all classes, distribution, etc., but now also require production of the documents to be mailed.
7. The production component of mailing contracts is a highly automated process that will require a minimal amount of manual labor.
8. The bulk of the direct labor in a mail fulfillment service is contained within the sub-categories already approved for NYSID by the Procurement Council such as collating, folding, inserting, labeling, packaging, and presorting of all classes and distribution.
9. As described in greater detail in the application, the labor steps included in the proposed service offering of Mail Fulfillment Services are as follows:
 - a. Production (prepare and process electronic files, including digital printing when it accounts for less than 25% of the direct labor cost of the contract)
 - b. Folding and inserting (by hand or machine)
 - c. Metering
 - d. Mail Presort Services
 - e. Finishing (by hand or machine)
 - f. Collating, packaging, distribution (by hand)
 - g. Post-mailing services (provide data cleansing services including tracking mail electronically)
 - h. Deliver mail to post office (messenger/courier services)
 - i. Onsite Mailroom Services
 - j. Offsite Mailroom Services
10. Mail Fulfillment Services will not include calendars, offset printing, perfect binding, custom-printed carbonless forms, typesetting, engraved stationery or engraved business cards, silk screen reproduction and map printing:
11. Contracts for Mail Fulfillment Services will comply with disabled labor ratios identified within the Preferred Source Guidelines and in State Finance Law § 162(7)(i).

12. The application identifies nine government customers. Because NYSID believes that future contracts will exceed \$50,000 per year, OGS will be required to determine the reasonableness of price for each such Mail Fulfillment contract.

13. The application includes a chart showing NYSID Mail Fulfillment Contracts from 2011-2016 and two letters from OGS in 2015 approving the pricing for NYSID mail service contracts.

STAFF COMMENTS ON THE APPLICATION

As noted above, facilitating agencies submitting applications to the Procurement Council for new preferred source offerings are required by State Finance Law § 162(3)(b) and Section X.D. of the Preferred Source Guidelines to provide, among other things, a cost/benefit analysis and information sufficient to enable OGS to approve price data. While the application contains information on the value of recent Mail Fulfillment contracts, staff notes that it does not include information on the prices charged for such services in the past. The pricing information submitted should be sufficient to enable OGS to approve the price data in accordance with the statute, which requires OGS to give consideration to the reasonable costs of labor, materials and overhead necessarily incurred by the preferred source under efficient methods of procurement, production, performance and administration while ensuring the prices are as close to prevailing market price as practicable, but in no event greater than 15% above the prevailing market prices among responsive offerors for the same or equivalent services. By way of example the application does not quantify any values for or percentages of costs for production versus post-mailing services versus courier and finishing services.

The application states that any digital printing would be included only if it accounts for less than 25% of the direct labor cost of the contract. While the labor steps are identified in the application, there is no identification of the steps anticipated to be performed by workers with a disability versus workers without a disability or the costs for the various labor steps.

There is no discussion in the application as to the basis for the threshold of 25% of the direct labor cost of the contract nor information on the number of individuals required to process a mail fulfillment contract. Does the number of workers remain the same for all “turnkey projects” with the only increase being the number of hours necessary to perform the project, as well as costs for additional materials, ink, envelopes, etc.?

The application states that NYSID will comply with State Finance Law § 162(7)(i), which is the section of the law applicable to corporate partnerships. When NYSID sought approval to add digital printing to the List as a stand-alone service, OGS received four letters in support of and 11 letters in opposition to NYSID’s Digital Printing application from members of the State Legislature as well as six letters in opposition to the application from printing industry representatives. A main focus of opposition was the inclusion of corporate partners to perform the service.

The New York State Printing Industries Alliance has submitted a letter dated May 5, 2015 (copy attached) expressing its strong opposition to the application. The letter claims that Mail Fulfillment Services is simply another way for NYSID to obtain approval to provide Digital Printing and that approval of the application will have a significant negative effect on a substantial number of printing and print-related companies in New York State.

NYS Empire State Development (“ESD”) has not provided comments on the application at the time of this writing. ESD’s comments will be shared with the Procurement Council when they are received.

STAFF FINDINGS

1. 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.
2. Based upon a lack of pricing information within the application, staff is unable to determine the reasonableness of the costs of this service as proposed.
3. Staff is unable to quantify the value added labor provided by persons with severe disabilities and finds no indication that additional individuals with disabilities will be provided employment opportunities upon approval of this application.
4. Staff is 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.
5. Staff is unclear as to the basis of the 25% limitation and how this limitation will be enforced and reported upon by member agencies.
6. The application indicates that five member agencies are currently “independently offering Mail Fulfillment Services,” and the application does not sufficiently explain why those members cannot continue to provide those services without a change in status or the possible inclusion of corporate partners.
7. Opposition to the application from the Printing Industries Alliance reiterates many of the same concerns that were raised in opposition to NYSID’s application to add Digital Printing to the List in 2014, which was denied by the Procurement Council.

STAFF RECOMMENDATION

Due to the open questions detailed above, staff does not believe the application is sufficiently complete to be advanced for a vote of approval. Staff therefore recommends that a workgroup be established to obtain sufficient information on pricing and value added labor and to assess the effect that approval of the application could have on printing and print-related companies. Such a workgroup should explore ways in which a compromise could be reached that addresses (i) the needs of customer agencies for mail fulfillment 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. Staff expects that such a workgroup could complete its evaluation in time for the next Procurement Council meeting in September 2016.