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June 18, 2014  
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OGS LEGAL

Honorable RoAnn M. Destito  
Commissioner  
New York State Office of General Services  
Corning Tower – 41<sup>st</sup> Floor  
Albany, New York 12242

Re: Notice of Appeal: Denial of NYSID Application for  
Preferred Source Status – Digital Printing Services

Dear Commissioner Destito:

On Wednesday, May 21, 2014 the New York State Procurement Council denied the New York State Industries for the Disabled, Inc. (NYSID) application for Preferred Source status for Digital Printing Services. Please accept this letter as our Notice of Appeal of this action pursuant to New York State Finance Law Section 162(3)(b).

As detailed in the NYSID application originally submitted on April 4, 2013 (with supplemental information provided November 6, 2013 and March 31, 2014 as a result of discussion and the tabling of the application at the regularly scheduled October 30, 2013 Procurement Council meeting), this application completely satisfies the requirements of the Preferred Source Law for adding new services, and is entirely consistent with the goals and intent of the Preferred Source Program in New York State. This application is representative of NYSID's effort to reduce the significant employment gap that exists whereby individuals with disabilities are employed at less than half the rate of those without disabilities.

In response to NYSID's application(s) and in their oversight role the NYS Office of General Services, NYS Procurement (OGS NYSPRO) offered their review and analysis both on October 10, 2013 in preparation for the October 30, 2013 Procurement Council meeting and again on May 12, 2014 in preparation for the May 21, 2014 meeting. The Conclusion reached by OGS NYSPRO on October 10, 2013 was as follows:

**“OGS NYSPro recommends the State Procurement Council approve NYSID’s application to add Digital Printing Services to its List of Preferred Source Offerings for Services.** Where appropriate, NYSPro also recommends that all equipment purchased with state funds become property of the state at the conclusion of the project.” (emphasis supplied)

The May 12, 2014 OGS Recommendation was contrary to the initial conclusion provided on October 10, 2013 and reads as follows:

“Due to the complex nature of printing contracts, with multiple variables such as type of paper, color, ink, binding, stitching, and printing methods, only a competitive bid can truly establish reasonableness of price. Therefore, OGS recommends the State Procurement Council deny NYSID’s application to add Digital Printing Services to its List of Preferred Source Offerings for Services.”

Despite the inconsistent conclusions presented and eventual recommendation by OGS management for denial there was very little discussion by the Procurement Council at the May 21, 2014 meeting prior to their vote to deny the application. Only Mr. Steve Cohen, Deputy Commissioner of Empire State Development reiterated ESD’s objection that “the impact of this offering, if approved, would have a significant impact on a substantial number of NYS printing businesses.” A similar statement was made, without written substantiation, and was the catalyst for the Council to table the application at the October 2013 meeting. Given the lack of discussion by the Council prior to voting, the NYSID appeal is based upon the conclusions provided by OGS NYSPro and the opposition presented by Mr. Cohen, from which the Council cast its vote.

OGS NYSPro provided 10 conclusions per its analysis, many of which were also summarized verbally prior to the Procurement Council vote. These 10 conclusions are summarized into categories noted below and addressed accordingly as follows:

**OGS NYSPro Conclusions 1, 5, 6, 7, 8, 10** - These Conclusions collectively revolve around reasonableness of pricing and the ability of NYSPro to perform its oversight duties with regard to pricing. This was expressly stated in the “CONS” reached by NYSPro in the October 10, 2013 application analysis as follows:

“NYSPro has very limited resources to review the Preferred Source Applications. We expect this service to generate significant business for NYSID (millions of dollars). The end result will be NYSID submission of numerous complex, difficult to benchmark applications which could put additional strain on an already small staff.”

This opinion was further defined by specific comments provided in the May 10, 2014 OGS NYSPro analysis. A synopsis of each of the referenced conclusions relating to pricing (noted above) is as follows:

- Conclusion 1 – Printing is a custom manufacturing business with a diverse set of variables that impact pricing which makes it very difficult to obtain standardized price

lists against which OGS NYSPRro would be able to benchmark future service applications.

- Conclusion 5 – Printing equipment is very expensive and if this application is approved, each service application will include amortization and maintenance fees and it will be difficult to determine reasonableness of such fees...
- Conclusion 6 – NYSPro spent a great deal of time trying to determine the reasonable of price on NYSID's application and has concluded that it is unable to do so based upon the complex and varied nature of printing applications.
- Conclusion 7 – NYSPro would not be able to conduct an apples-to-apples comparison of pricing contained within each application when submitted, as there is no standardized pricing for this service upon which NYSPro could determine reasonableness of price. The variety of factors to be considered within printing offerings has led to the conclusion that a competitive process for printing services is in the best interest of the state.
- Conclusion 8 – If this application for Digital Printing was approved, governmental entities may be paying digital printing prices for the entire job, rather than receiving a lower priced blended rate for the printing job.
- Conclusion 10 – Based on the OGS pricing review, competition is essential to establish reasonableness of price, and to offer the lowest pricing, which is in the best interest of the state. Creating a Digital Printing offering as a Preferred Source offering will not promote competition sufficiently to ensure lower pricing for the State.

### NYSID Response to Conclusions 1,5,6,7,8,10

Respectfully, Section 162 of the State Finance Law does not contemplate complexity or lack of resources as rationale to deny an application. Rather it provides that in determining price OGS NYSPro must consider, assuming "efficient methods of procurement, production, performance and administration" the proposed provider's:

- reasonable cost of labor;
- reasonable cost of material: and
- overhead necessarily incurred under efficient methods of procurement;

NYSID set forth in the April 4, 2013 application (page 7) the variables involved in digital printing pricing including: paper stock, quantity of items printed, paper size, finishing/binding, and black and white versus color. Despite this variability, NYSID provided sample pricing by region which included these variables and were found by OGS NYSPro in their October 10, 2013 analysis to be "within 15% of the prevailing market pricing **and in many cases less expensive than those charged by the State Print Shops/Open Market Competitors**" (emphasis supplied). This pricing was further supplemented by NYSID on November 6, 2013, with the completion of IFB Bid Sheets supplied by OGS for specific categories including:

Business Cards, Fact Sheets, Brochures, Post Cards, and Guides. In the final analysis, OGS NYSPro did not indicate that the pricing within the IFB Bid sheets was not competitive. More importantly, in the absence of any new proof submitted to and considered by OGS NYSPro the record is clear on this issue as recognized by them on October 10, 2013.

In terms of a customer's needs, the types of printing, production impacts and changing technologies, etc. would be determined by the customer at the time they prepare their specifications for bid. The purpose of form, function and utility as set forth in the Preferred Source Statute is to allow customers to compare contractor specifications and make a determination as to whether the Preferred Source can meet expectations and should have no bearing on the approval of the service for the Preferred Source List.

Lastly, the conclusion that "competition is essential to establish reasonableness of price, to offer the lowest pricing, which is in the best interest of the State" and that the lowest price can be achieved only through competitive bidding is directly contrary to the Preferred Source statute. Section 162 of the State Finance Law (Preferred Sources) was intentionally set apart from Section 163 (Purchasing Services and Commodities) with a number of significant differences including promotion of a particular social purpose. In Section 163 the criteria for selection of a competitive bid for services specifies that "service contracts shall be awarded on the basis of best value" which is defined as "the basis for awarding contracts for services to the offerer which optimizes quality, cost and efficiency."

Section 162 specifies that "consideration shall be given to the reasonable costs of labor, materials and overhead necessarily incurred by such Preferred Sources under efficient methods of procurement, production, performance and administration; however, the prices of such products and services shall be as close to prevailing market price as practicable, but in no event greater than fifteen percent above, the prevailing market prices among responsive offerors for the same or equivalent commodities or services". Hence it is cost, form, function and utility, public benefit and prevailing market price that are the criteria for consideration, and not lowest price or even the "best value."

With regard the reference to "the best interest of the State", this too is terminology applied for purchases of commodities or services under Section 163, but not referenced for Preferred Source offerings. Rather, the Legislature upon enacting Section 162 explicitly and necessarily determined that it is in the best interest of the State to advance special social and economic goals for individuals with disabilities and thereby established the preference. Stated simply, adherence to the requirements of the Preferred Source Program is, as a matter of law, in the best interest of the state.

**OGS NYSPro Conclusion 2** – NYSPro claimed that NYSID's statement that "with minimal training digital printing can offer employment opportunities to individuals with disabilities"..... could not be substantiated. The use of disabled labor required to make this a Preferred Source offering does not appear to be sustainable for this type of service. "In fact, during the site visit to Camelot, OGS was advised that the disabled workers provide less than 15% of the total workforce and that no work was segregated or held for the disabled workers. This would not meet State Finance Law requirements".

## **NYSID Response to Conclusion 2**

To conclude, summarily and with no objective criteria, that individuals with disabilities cannot be trained to perform work in the digital printing industry is quite frankly discriminatory and not a valid consideration or conclusion. Non-disabled individuals are hired with no experience and receive training to perform their duties (minimal or not) and there is no reason why individuals with disabilities could not do the same. In fact, a number of the partners we have proposed, as well as the member agencies that currently provide digital printing services directly, are already employing individuals with disabilities that have been trained to perform digital printing services.

In addition, the conclusion drawn from the site visit to Camelot Consulting by OGS NYSPRO that only 15 percent of the work is performed by individuals with disabilities is completely incorrect. What the owner of Camelot stated during the tour is that 15 percent of his overall workforce is comprised of individuals with disabilities and that he reaches out to Northeast Career Planning (a NYSID Member Agency) for prospective workers whenever there are openings at his facility. This would further belie the OGS NYSPRO claim that individuals with disabilities cannot perform this type of work. In terms of NYSID Preferred Source contracts, Camelot is and has been at or above the required valued added disabled labor percentage for all of its NYSID contracts.

**OGS NYSPRO Conclusion 3** – There is no evidence that the pricing provided by NYSID through use of the corporate partners would be less than otherwise charged by Preferred Source members alone in accordance with State Finance Law Section 162(7). NYSID did not provide pricing from its eight member agencies that perform digital printing to demonstrate that their pricing conforms to State Finance Law.

## **NYSID Response to Conclusion 3**

The NYSPRO conclusion specifically references failure on the part of NYSID to provide pricing from its eight member agencies that perform digital printing. In fact, as specified in the application, there are currently only 3 member agencies that provide digital printing directly, which NYSPRO determined in their October 10, 2013 analysis to be “within 15% of the prevailing market pricing and in many cases less expensive than those charged by the State Print Shops and Open Market Competitors”. With regard to the other 5 member agencies, they do not currently provide digital printing directly, nor does the application indicate that they would without establishing a partnership with the proposed digital printing vendor. However, NYSID has provided pricing for the offerings of these member agencies utilizing the proposed partners, which again was determined by NYSPRO in their October 10, 2013 analysis to satisfy pricing requirements. It would appear that any pricing information for these proposed partners without a NYSID Member Agency partnership could only be established and evaluated within the provisions of Section 163 of the SFL, since it would require a competitive procurement or discretionary buying. Clearly, this would appear to present a conflict between the provisions of SFL Sections 162 and 163.

**OGS NYSPRO Conclusion 4** - ..... NYSID's estimate of one (1) full time disabled labor FTE for each \$100,000 in sales cannot be substantiated.

**NYSID Response to Conclusion 4**

The April 4, 2013 NYSID application provided the rule of thumb that our Corporate Partners (industry experts) use in terms of the sales to employment ratio which was calculated at \$100,000 in sales would add 40 hours per week of work or essentially one full time job. This information was supplemented in the NYSID March 31, 2014 application update utilizing industry demographics from the Printing Industry Alliance (PIA) for the Graphic Communications industry. Data provided on the PIA website for New York State Sales is \$9.9 billion employing 65,253 employees or approximately \$153,000 per employee. The update provided by the PIA and in turn to the Procurement Council at the May 21, 2014 meeting denoted one job for every \$120,000 to \$150,000 in sales. Based upon the multiple points of reference provided, the estimate of \$100,000 in sales for one full time job is a reasonable approximation of the number of jobs that will be created for individuals with disabilities. Conclusion number 4 provided by OGS does not support the basis for an application denial.

**OGS NYSPRO Conclusion 9** – Printing is often requested on an emergency basis and the 10 day time frame for NYSID to accept or decline a new printing inquiry will create hardships for many state agencies.

**NYSID Response to Conclusion 9**

The 10 day time frame established by statute is utilized by the procuring agency to notify the Preferred Source of their requirements, and for the Preferred Source or in this case NYSID to respond as to their ability and intent to provide the service. It provides an opportunity to respond to a solicitation in accordance with Section 162 for a service on the list of Preferred Source Offerings. If NYSID does not respond to the solicitation, or responds that they are unable to meet the customer requirements (form, function and utility) then the customer shall procure in accordance with Section 163 of the Procurement Law by means of the competitive bid process. This 10 day time frame has been utilized for decades by state agencies and NYSID without any undue hardship to either entity. As for procuring Digital Printing on an emergency basis, the State Purchasing Law Section 163 defines "Emergency" as an urgent and unexpected requirement where health and public safety or the conservation of public resources is at risk." Regular procurement of digital printing services on an emergency basis appears contrary to the definition and would not be the most economical method of procurement for these services.

Lastly, in order to completely address the considerations raised prior to the Council's vote, I offer the following with regard to Empire State Development's (ESD) conclusion that if approved, this offering would have significant impact on a substantial number of NYS printing businesses as follows:

The information offered by ESD at the May 2014 meeting is consistent with what was stated by ESD at the October 2013 Procurement Council meeting which was the impetus for the application to be tabled in order for NYSID, OGS and ESD to work collaboratively towards a resolution. The primary source of ESD's data is the Printing Industry Alliance (PIA), which as noted previously claims 2,591 printing firms are based in New York employing 65,253 workers. According to ESD and the PIA the government marketplace for printing is huge and valued at \$600 million and growing. ESD also claimed 194 MWBE firms offering 268 printing products to state agencies and authorities in their May 14, 2014 comments on NYSID's Digital Printing application. A similar claim for 268 MWBE firms was first made at the October 2013 Procurement Council meeting. The discrepancy of 72 MWBE businesses is unexplained and both numbers are inconsistent with NYSID's findings using the MWBE Directory on the Empire State Development website as documented in our application update dated May 21, 2014. A search of the MWBE directory for both printing and reproduction identified 43 Certified MWBE's, 5 of which are both M & W for a net total of 38 different MWBE companies. Of the 38 firms, 9 are located in other states, so it is likely they have operations elsewhere where NYSID would not compete, and hence not significantly impact their business. Of the 38 companies, only 5 actually have NYS contracts per OSC Open Book, with a contract value of \$5.1 million. Guilderland Printing holds a contract for offset printing totaling \$3.2 million, J.D. Media Marketing and Planning holds a contract with Alfred College (for Media Buying and Sponsored Events) with a contract value of \$1.2 million dollars, and a third firm is Camelot Consulting (a NYSID Partner) which holds a contract for document reproduction services for \$267,000. NYSID would not compete for any of these contracts, since they are for printing services we have specified are outside the scope of our offering, which total \$4.67 million and represent 92 percent of the contract value identified. Respectfully, Digital Printing as a Preferred Source service would not have any negative impact on the MWBE community.

In terms of the printing industry as a whole, as noted at the May 21, 2014 Procurement Council meeting, the claim of a \$600 million market for the digital printing industry in NYS dwarfs NYSID's annual sales for all products and services combined. Even so, at the request of the Procurement Council at the October 30, 2013 meeting, NYSID reviewed its application in order to clearly define and therefore limit its digital printing offerings within this market and as a result requested the following for consideration at the time the application was denied:

- Short-run printing and on-demand printing processes including variable data printing.
- Materials digitally printed including quick print, (copying), business cards, fact sheets, brochures, post cards, and guides.

Based upon this clearly defined niche within what is described as a huge and growing market it is difficult to understand the PIA and ESD rationale that if approved this application "would have a significant impact on a substantial number of businesses". This is further substantiated by a survey provided by the Printing Industries Alliance for the May 21, 2014 Procurement Council meeting. The survey identifies a representative sample of 19 companies and was intended to show the significant impact NYSID would have on PIA members and the printing industry if digital printing is approved. However, it does exactly the opposite. The survey identifies 19 PIA members with total sales volume of \$150,650,000 of which \$24,086,000 or 16% is from NYS Taxpayer Funded Work, the Digital Portion of which is identified as \$4.83 million or

approximately 3% of the total overall sales of these companies. Therefore, if NYSID was successful in “cornering the market” and could gain 100% of the digital portion identified in the PIA survey it would garner 3% of the overall sales of these companies. Since NYSID seldom enjoys sales that exceed 20% of the purchases made by state and local government for its Preferred Source offerings, it is difficult to contemplate that NYSID would have a significant impact on this industry especially given the narrowly defined niche for which NYSID has requested approval.

In summary, the application submitted by NYSID in conjunction with eight member agencies throughout the State, including five who partner with NYS small businesses in Corporate Partnerships, more than satisfies the requirements of the Preferred Source Law for adding a new service. The NYSID application clearly defines the digital print offerings as requested by the Procurement Council at the October meeting, by adding these services under the already established category of document processing which currently includes Photocopying and Reproduction. The requested offerings all of which would complement our mail fulfillment service offerings would include: short-run printing, flexible and on-demand printing processes including variable data printing which would include printing with different names and addresses. Examples of the materials disabled New Yorkers could digitally print include: quick print (copying), business cards, fact sheets, brochures, post cards, and guides. The NYSID application does not seek to include: offset printing, custom-printed carbonless forms, typesetting, engraved stationary or engraved business cards, silk screen reproduction, map printing, envelopes, pocket folders, or posters over 14 by 26 inches in size.

**The approval of the application would create 12 new full time jobs for New York State residents with disabilities.** Their role in the digital printing process would include electronically manipulating files to prepare for digital printing, loading and unloading paper from machines, performing several binding processes (stapling, folding, tape binding, perfect binding drilling, cutting and inserting) as well as product quality control, packaging and preparing for delivery or shipment. **These individuals would be trained accordingly and would earn a starting average wage of \$10.50 per hour**

NYSID’s application highlighted the experience of both its Members and Corporate Partners by providing a summary of both public and private Digital Printing customers that have been awarded through competitive bid.

**The OGS NYSPRO analysis dated October 10, 2013 confirmed that the April 4, 2013 NYSID application pricing was equal to or lower than the pricing of comparable public and private entities and within 15% of prevailing market pricing.** This pricing included the aforementioned complex variables of paper stock, quantity of items printed, paper size, finishing/binding, and black and white versus color.

As presented to the Procurement Council, much has been made about the size of the **market in New York State** which is estimated by the Printing Industries Alliance at **\$10 Billion** for the **Graphics Communication Industry** with **65,000 employees** which includes **\$600**



**Million for digital printing with 2,500 companies.** It is also noted that the market is growing and estimated to reach **\$900 million over 10 years.** Given those numbers, it is difficult to accept that approval of this application will threaten the industry in New York State, or more specifically that it “would have a significant impact on a substantial number of NYS printing businesses.”

As a point of reference, NYSID will celebrate its 40<sup>th</sup> anniversary this July and its total sales combining all products and services do not approach a fraction of the market quoted for Digital Printing. NYSID has never tried to “corner the market”, and never will because that is not its mission. NYSID’s philosophy is to work with small business – that is the essence of the Corporate Partnering Program. **Rather than a source of harmful competition, there is the potential for NYSID to be an asset to the State in helping to provide a diversified workforce.**

NYSID is currently approved to perform photocopy/reproduction and mailing services. In many instances these two services are performed together as a brochure is produced and then stuffed in an envelope and mailed. Technology has changed greatly since NYSID was approved for these services over two decades ago and now Digital printing plays a larger part of providing document processing needs of our customers.

**It has been approximately 8 years since a service has been approved to be added to the list of Preferred Source Offerings provided by NYSID. The Bureau of Labor Statistics’ Jobs Report released on Friday, June 6, 2014, reveals that Americans with disabilities continue to be left out of the economy’s job growth.** The employment-to-population ratio decreased from 27.2 percent in May 2013 to 25.8 percent in May 2014 for working-age people with disabilities as opposed to the increase from 70.8 percent to 71.7 percent during the same time period for people without disabilities. The current application meets the requirements of the Preferred Source Statute. Adding this service to the list of Preferred Source offerings will provide valuable and integrated jobs for New Yorkers with disabilities in the communities in which they live.

Thank you for your consideration.

Sincerely,



Ronald Romano  
President and CEO

cc: Mark McCarthy, Harris Beach, PLLC  
Anne Phillips, OGS ←