



Office of
General Services

ANDREW M. CUOMO
Governor

ROANN M. DESTITO
Commissioner

December 11, 2018

Ms. Carrie Laney
Executive Director
New York State Preferred Source Program
for New Yorkers who are Blind
136 State Street
2nd Floor
Albany, NY 12207

Re: Appeal of Denial by the State Procurement Council of the
DAUTRRS Application.

Dear Ms: Laney

This is in response to your October 11, 2018 appeal, which seeks to overturn the September 13, 2018 action by the New York State Procurement Council (the "Council") denying the application by the NYS Preferred Source Program for New Yorkers Who Are Blind ("NYSPSP") to provide Digital Accessibility and Usability Testing and Remediation Reporting Services ("DAUTRRS") as a preferred source service offering under State Finance Law § 162. After a careful review of the application, the meeting minutes, and the materials you submitted, I am granting your appeal. This represents a final agency determination.

This determination is based solely upon application of State Finance Law §162(3)(b) and the Council's Preferred Source Guidelines outlining the procedures for appeal of such decisions. State Finance Law §162(3)(b) states in pertinent part

In the event that the state procurement council shall deny any such application, the commissioner or non-profit-making agency which submitted such application may, within thirty days of such denial, appeal such denial to the commissioner of general services who shall review all materials submitted to the state procurement council with respect to such application and who may request such further information or material as is deemed necessary.

The section of the Council's Guidelines entitled "Adding a Commodity or Service to the List of Preferred Source Offerings" provides that "[i]n the event that the Council denies an application, the Commissioner or facilitating agency that submitted the application may, within 30 days of such denial, appeal the denial to the Commissioner of General Services."

Since its creation in 1995, the Council has been supportive of the preferred source program in recognition of the social and economic benefits the program achieves. The State Finance Law sets forth an oversight role for the Council as part of its responsibilities relative to public procurement policy regarding review and recommendations on proposed additions to the List of Preferred Source

Offerings (the "List"). The review process provides the opportunity for member State agencies, the preferred sources, and other members of the Council to assess and balance the competing interests and missions that may be presented by any such additions to the List. While the preferred sources have historically benefited from favorable determinations, the Council clearly has the authority to recommend denials of additions to the List, as occurred in this instance.

At the September 13, 2018 Council meeting, NYSPSP made a presentation in support of its application to provide DAUTRRS as a preferred source service offering. In accordance with the Council Guidelines, the Office of General Services ("OGS") and the New York State Department of Economic Development, d/b/a Empire State Development ("ESD"), reviewed and provided their respective recommendations on the application.

OGS recommended approval of NYSPSP's application for the following reasons, among others:

1. The application will provide NYSPSP and its Member Agencies with a basis to provide new opportunities for ongoing employment for people that are blind and visually impaired.
2. Based on the estimated first year sales and its proposed hourly bill rate, NYSPSP estimates 5,067 direct labor hours will be created in the first year through the addition of this service, equating to approximately 2.7 Full-Time Equivalent ("FTEs").
3. All DAUTRRS engagements will meet the required ratio for blind and visually impaired labor. NYSPSP maintains that DAUTRRS applications will utilize a blind direct labor ratio of at least 75%, which exceeds the Preferred Source Guidelines requirement for applications involving less than 10 FTEs.
4. There will be six new My Blind Spot employees if this new service is approved (one Project Manager, two Usability Testers, one Software Engineer, one Knowledge Transference Specialist, and one Accessibility/Usability Support Specialist).

ESD recommended denial of NYSPSP's application based on the information from the State agencies and small businesses that were surveyed by ESD. ESD concluded that approving the application would have "a strong negative impact" on businesses, including MWBEs, currently providing these services in the active and growing State government marketplace.

Following a very exhaustive and vigorous discussion, the Council approved the definition of DAUTRRS as a preferred source offering by a vote of 14 in favor and 2 opposed, but the Council denied NYSPSP's application to offer that service by a vote of 10 in favor, 4 opposed, 1 recusal, and 1 abstention.

NYSPSP submitted an extensive appeal and record in support of its application to overturn the Council's denial of NYSPSP's application to provide DAUTRRS. The appeal rejects the points made by ESD at the Council meeting regarding the impact on New York State small businesses. In support of overturning the Council's denial, the appeal also cites, among other things, the increased employment opportunities for the blind.

Ms. Carey Laney
Page 3
December 11, 2018

The Council's vote clearly evidences that the majority of the members at the meeting (and a plurality of all Council members) are in favor of approving NYSPSP's application to provide DAUTRRS.

Based upon the record on appeal, the findings set forth herein, and the largely favorable vote of the Council, the NYSPSP application to provide DAUTRRS as a preferred source service is approved, and the NYSPSP appeal in this matter is granted. This final determination is binding upon NYSPSP and the Council. I have directed my staff to update the List and carry out any other administrative actions necessary to authorize NYSPSP to provide DAUTRRS as a preferred source service. A summary of this determination and disposition of the appeal shall be presented at the next Council meeting.

Sincerely

A handwritten signature in cursive script that reads "RoAnn M. Destito". The signature is written in black ink and is positioned above the printed name.

RoAnn Destito

cc: Sean Carroll
Bradley Allen