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*Sent via email, with original sent via 1<sup>st</sup> class mail*

Mr. Kenneth J. Ringler  
President and Chief Executive Officer  
New York State Industries for the Disabled, Inc.  
11 Columbia Circle  
Albany, NY 12203

Dear Ken:

Representatives of the Office of General Services (OGS) and the New York State Industries for the Disabled (NYSID) meet on a routine basis to discuss various aspects of the preferred source program authorized under State Finance Law §162. During the course of meeting, valuable information has been exchanged. As requested, this letter sets forth a written record of our exchange on the manner in which OGS conducts the price review of preferred source applications to add a commodity or service to the List of Preferred Source Offerings.

As you know, State Finance Law §162 and the directives of the State Procurement Council impose certain responsibilities on OGS with respect to the preferred source program. It is the over arching policy of OGS to ensure the integrity of the preferred sources (PS) Program through compliance with the statutory requirements and lawful directives and to ensure it is operated in a manner benefiting the intended populations through the provision of jobs. The secondary policy is to undertake actions to streamline and improve the administration of the PS Program.

State Finance Law §162 obligates OGS to undertake price reviews under certain circumstances. The law obligates various executive branch and local governmental entities to make purchases of approved commodities and services from preferred sources. The Legislature and Judiciary are expressly excluded from the obligations of this statute. Thus, it is the policy of OGS that it shall conduct the price review only for commodities and services to be acquired by those executive branch entities covered by State Finance Law §162. OGS conducts its review in accordance with the factors set forth in State Finance Law §162(6)(b), recognizing the statutory prohibition if the prices are greater than 15% over prevailing market prices.

The first step undertaken by OGS regarding the price review function is a review to determine if the application is complete. Items reviewed include whether there are specifications for the commodity or services, the estimated expenditure, the cost justification and the market analysis. If any of these items are missing or incomplete, the application is returned to the Preferred Source for appropriate follow-up action.

In order to determine whether the preferred source price is within 15% of the prevailing market, OGS's examination of the prevailing market rate is commenced with a review of existing New York State (NYS) centralized contracts. If there is an existing NYS centralized contract for the same or similar commodity or service, the price review would be conducted against the lowest price offering.

If there is no existing NYS centralized contract, PSG staff would continue the process by examining whether there is an existing contract in another similarly situated state or the Federal government. If there is an existing contract for the same or similar commodity or service with a similarly situated state or the Federal government, the price review would be conducted against the lowest price offering.

If no contract is located with an appropriate governmental entity for the same or similar commodity or service, the PSG review next turns to an open market review. The manner for conducting the open market review is dependent upon the nature of commodity or service at issue, but most frequently involves use of an internet-based search. A vendor identified over the internet is considered only if it appears that such vendor would likely be a responsive and responsible bidder in a competitive NYS bid. Generally, PSG will seek to identify at least three vendors, but preferably more, for each commodity in an application. The "rule of three" is used to ensure that the establishment of a prevailing market price does not in any way favor a specific vendor. Based on the information obtained, (unless there are unusual circumstances present, such as an inability to locate a same or similar commodity or service), the price review would be conducted against the lowest price offering located.

If an application involves multiple commodities or service rates, OGS undertakes a separate price review for each commodity or service in an application.

On July 14, 2004, the State Procurement Council (SPC) amended its resolution regarding the circumstances under which it had a standing recommendation of approval for the addition of new commodities or services as a preferred source offering. It charged OGS with the obligation to determine when the circumstances have been satisfied and the standing recommendation should apply.

The resolution obligates OGS to examine three issues: (1) whether the preferred source price is within 10% of the prevailing market; (2) whether the projected annual sales volume is less than \$500,000, (3) whether an application review by Empire State Development (ESD) does not identify objections from the business community. If the price is within 10%, the annual sales volume is less than \$500,000 and there are no

objections from the business community noted by ESD, then the standing recommendation of approval applies.

It is OGS's policy that pricing up to and including 10% over prevailing market rate is included within the scope of the delegation of authority. Any proposed price that exceeds 10% over prevailing market rate would not fall within the delegation of authority and would be presented to the SPC for consideration.

If you have any questions regarding this matter, please don't hesitate to contact me. I look forward to continuing our work on the New York State preferred source program.

Sincerely,

A handwritten signature in black ink, appearing to read "Jerry J. Gerard". The signature is fluid and cursive, with the first name "Jerry" and last name "Gerard" clearly distinguishable.

Jerry J. Gerard

Director

Procurement Services Group

cc: Lisa Fox  
Carla Chiaro

