



New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

Preferred Source Contracting

Office of General Services
State Education Department



Report 2014-S-77

June 2016

Executive Summary

Purpose

To determine how State agencies and facilitating agencies are monitoring contracts fulfilled by not-for-profit providers in partnership with private entities to ensure contract requirements are being met; whether the majority of the work is completed by disabled workers as required by law; and whether facilitating entities are awarding contracts in a manner that best meets the purpose of the Preferred Source Program (Program) and is in the best interest of the State. This audit covered the period April 1, 2012 through August 17, 2015.

Background

To advance social and economic goals, certain providers have “Preferred Source” status under the law. The acquisition of commodities and/or services from preferred sources is exempted from statutory competitive procurement requirements. All State agencies, political subdivisions (i.e., local government agencies), and public benefit corporations are required to purchase approved products and services from preferred sources. Purchases from preferred sources take precedence over all other sources of supply and competitive procurement methods.

The Office of General Services (OGS) is the State’s central procurement agency and is responsible for approving pricing for preferred source contracts over \$50,000, and for maintaining, on behalf of the New York State Procurement Council (Procurement Council), a current list of the categories of commodities and services that are available and provided by preferred sources. Our audit focused on contracts for preferred source services, as opposed to commodities, most of which are administered by the New York State Industries for the Disabled (NYSID), a not-for-profit organization appointed by the Commissioner of Education for the purpose of facilitating orders among both agencies employing the severely disabled and veterans’ workshops. NYSID serves and represents a network of over 120 contract-holding preferred source member agencies and their private corporate partners, who must comply with regulations established by Law and applicable standards. The State Education Department (SED) is responsible for monitoring and oversight of preferred source contracts managed by NYSID. The SED Commissioner has assigned NYSID authority to monitor compliance by its member agencies and their partners.

Key Findings

- In general, OGS is appropriately fulfilling its current responsibilities under the Program. Nonetheless, we identified opportunities for OGS to improve its effectiveness by more clearly defining some of the services available under preferred source contracts, and by working with the Procurement Council to consider regulatory changes that would more specifically define the role of facilitating agencies.
- Although SED is responsible for monitoring NYSID’s Program activities, it has provided only minimal oversight. As such, there is little assurance that NYSID is awarding contracts in a manner that best meets the purpose of the Program, that member agencies and corporate partners are meeting contract requirements, and that the majority of the contracted work is being completed by disabled workers.
- NYSID’s own Quality Management Program does not provide adequate assurance that member

agencies and corporate partners maintain compliance with regulations. NYSID relies on self-reported data and insufficient reviews to monitor compliance.

- NYSID's policy for awarding service contracts is designed to avoid the possibility of having more than one of their member agencies compete for the contract opportunity. NYSID's practices generally do not allow member agencies the opportunity to determine whether they can meet the requirements of a particular contract because they are often not made aware of contract opportunities, especially if an existing corporate partnership is already in place. As a result, NYSID cannot be sure that the proposals it arranges come at a lower price than another preferred source may be able to offer, especially when dealing with corporate partners. Moreover, we found nearly no evidence that NYSID follows several key aspects of its own policies for awarding service contracts.
- In the case of NYSID, the Program is extremely vulnerable to possible manipulation and circumvention of the competitive bid process to increase profits for corporate partners and revenue for NYSID itself. Many NYSID contracts awarded for reproduction services appear to have circumvented the competitive process. We found one private printing company, which partnered with a NYSID member agency, had received 89 contracts for reproduction valued at over \$1.5 million. However, it appears that most – if not all – of these contracts were actually for digital printing, a service that the Procurement Council has specifically excluded from the Program. NYSID earned about \$60,000 in administrative fees from these contracts.

Key Recommendations

- OGS should provide clear definitions for the services on its list of preferred source offerings to make it easier for purchasing agencies to determine if the services they need are approved.
- SED needs to implement a strong system of internal control for monitoring and oversight of NYSID that includes procedures for verification of self-reported information, such as contract performance data.
- SED should require that NYSID: limit the detailed information provided to members/partners in advance of its quality reviews, make contract opportunities available to all interested parties, maintain documentation to support the contract award process, and discontinue awarding contracts for digital printing services.

Other Related Audit/Report of Interest

[Department of Taxation and Finance: Processing of Paper Tax Returns \(2013-S-64\)](#)

**State of New York
Office of the State Comptroller**

Division of State Government Accountability

June 28, 2016

Ms. RoAnn M. Destito
Commissioner
Office of General Services
Corning Tower, 41st Floor
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Ms. MaryEllen Elia
Commissioner
State Education Department
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Dear Commissioners Destito and Elia:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our multi-agency audit of the Office of General Services and State Education Department entitled *Preferred Source Contracting*. This audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller
Division of State Government Accountability*

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Background

New York State's Preferred Source Program (Program), established under Section 162 of the New York State Finance Law (Law), grants "preferred source" status to Corcraft and not-for-profit organizations that serve and employ the blind, the severely disabled, and veterans. The intent of the Program is to advance social and economic opportunities for these groups. Under the Program, the acquisition of commodities or services from preferred sources is exempted from statutory competitive procurement requirements. All State agencies, political subdivisions (i.e., local government agencies), and public benefit corporations are required to purchase certain approved products and services from preferred sources if available. Purchases from preferred sources take precedence over all other sources of supply and competitive procurement methods.

As the State's central procurement agency, the Office of General Services (OGS) is responsible for approving pricing for preferred source contracts over \$50,000 and for maintaining, on behalf of the Procurement Council, a current list of the categories of commodities and services that are available and being provided by preferred sources. OGS's List of Preferred Source Offerings (List) contains generic groups of commodities and services as well as specific items, and references preferred source catalogs and other literature detailing the specific approved commodities and services offered for sale by preferred sources. OGS is also responsible for developing and posting the policies approved by the Procurement Council. The Procurement Council is responsible for the study, analysis, and development of recommendations to improve State procurement policy and practices and for the development and issuance of guidelines governing State agency procurement, including the Preferred Source Guidelines (Guidelines).

Facilitating agencies are non-profit corporations established to facilitate the distribution of orders for commodities and services among approved, charitable, non-profit preferred sources. Facilitating agencies serve the preferred sources as their agent by disseminating information regarding preferred sources and their offerings, by processing inquiries and orders as a one-stop contact for purchasers, and by facilitating the distribution of commodities and services provided by preferred sources. The New York State Industries for the Disabled (NYSID) is the facilitating agency designated by the Commissioner of Education to facilitate orders among agencies for the severely disabled and veterans' workshops. The Procurement Council's March 2014 List included 41 approved preferred source services available from NYSID.

NYSID serves a network of more than 120 contract-holding preferred source member agencies and corporate partners. Member agencies are the charitable, not-for-profit organizations serving and employing people with severe disabilities and qualified veterans' workshops, and are the entities granted preferred source status under the Law. Corporate partners are private vendors that partner with member agencies to complete contracts for services or commodities. Both member agencies and corporate partners must be approved by the State Education Department (SED). On behalf of its members, NYSID enters into contracts with State and local government agencies for services (e.g., document imaging, mailing) and goods (e.g., custodial products). NYSID receives a 4 percent administration fee from each preferred source contract.

NYSID's preferred source member agencies and corporate partners must comply with regulations established by the Law and other applicable standards, and the SED Commissioner has assigned NYSID responsibility for monitoring their compliance. Toward this end, NYSID established its Technical Assistance and Quality Management Program (Quality Management Program) to assist members performing on NYSID contracts to maintain compliance with regulations and to help improve operations. NYSID also issued a Member Manual (Manual) that was developed to explain how the Program works, the role of NYSID in the preferred source procurement process, and the rights and responsibilities of NYSID member agencies and corporate partners.

Audit Findings and Recommendations

In general, our audit found OGS is appropriately fulfilling its current responsibilities under the Program. At the same time, our audit also showed that some organizations are providing services under the auspices of the Program that have been specifically excluded by the Procurement Council. We identified opportunities for OGS to improve its effectiveness by more clearly defining some of the services available under preferred source contracts, and by working with the Procurement Council to consider regulatory changes that would more specifically define the role of facilitating agencies.

Conversely, we found that while SED has assigned NYSID authority to oversee individual contract compliance, it has done very little to oversee or monitor the activities of NYSID itself. SED requires only minimal reporting from NYSID and takes no steps to verify the accuracy of the information it receives or otherwise conducts any further monitoring of NYSID. Officials stated they do not have the resources available for this purpose. As a result, NYSID has been functioning with rather limited monitoring and oversight for years.

We visited NYSID to determine what policies and monitoring tools it has in place to guide its oversight of member agencies and corporate partners. We found NYSID's management exercises minimal oversight over actual contract operations to ensure that policies are adhered to and enforced, or that monitoring processes are implemented purposefully and effectively. We identified systemic patterns of inadequate oversight over member agencies' and corporate partners' reporting, jeopardizing NYSID's ability to achieve Program goals. Specifically, we determined that:

- NYSID's Quality Management Program does not provide adequate assurance that member agencies and corporate partners maintain compliance with regulations. To monitor compliance, NYSID relies on members' and corporate partners' self-reported data and its own insufficient methods of data verification;
- NYSID's policy for awarding service contracts actually has the effect of limiting the number of opportunities available to its member agencies because it is designed to avoid the possibility of having more than one agency compete for the contract opportunity. NYSID's practices generally do not allow member agencies the opportunity to determine whether they can meet the requirements of a particular contract because they are frequently not made aware of contract opportunities, particularly if an existing corporate partnership is already in place;
- There was very little evidence that NYSID actually follows its policy for awarding service contracts. As a result, because the internally competitive scenarios described in its guidelines are rarely used to award contracts, NYSID cannot be sure that the proposals it arranges with corporate partners are offered at a lower price than another preferred source may be able to offer, as required; and
- Many NYSID contracts awarded for reproduction services appear to have circumvented the competitive bidding process. We found one private printing company, which partnered with a NYSID member agency, received 89 contracts for reproduction valued at over \$1.5 million. However, it appears that most – if not all – of these contracts were actually for

digital printing, a service that the Procurement Council has specifically excluded from the Program. NYSID earned over \$60,000 in administrative fees on these contracts.

As the appointing agency, SED is responsible for monitoring NYSID's Program activities; however, we found SED has been providing minimal oversight in this area. As such, there is little assurance that NYSID is awarding contracts in a manner that best meets the purpose of the Program, member agencies and corporate partners are meeting contract requirements, and the majority of the contracted work is being completed by disabled workers.

Government programs that operate with insufficient oversight and inadequate controls are inherently at risk of misuse and abuse. In the case of NYSID, the Program is very vulnerable to possible manipulation and circumvention of the competitive bid process to increase profits for corporate partners and revenue for NYSID itself. We made several recommendations to both SED and OGS to ensure NYSID's ability to effectively carry out its Program responsibilities.

NYSID Quality Management

NYSID developed its Quality Management Program to assist member agencies and corporate partners in maintaining compliance with preferred source regulations and to help improve operations. Two primary components of this program are quarterly employment reports (QER), which contain only self-reported data, and quality reviews. Overall, we found that NYSID doesn't utilize these tools effectively to ensure that member agencies and corporate partners maintain compliance with regulations.

Quarterly Employment Reports

NYSID uses the QER to collect employment data from all contract-holding member agencies and corporate partner organizations and to verify their compliance with preferred source regulations. The QER serves as a progress report on the disabled labor ratios for each contract as well as the agency's overall disabled labor ratio for all of its NYSID contracts. According to the Manual, all contract-holding member agencies and corporate partner organizations are required to submit a QER within 30 days after each quarter end. Member agencies and corporate partner organizations holding contracts are required to maintain a ratio of disabled labor of more than 50 percent of the employees performing contract work. Those that fall out of compliance with disabled labor requirements will receive an exception notice informing them of their non-compliance and requesting a corrective action plan to become compliant. Member agencies and corporate partners have six months from issuance of an exception notice to bring the disabled labor ratios on affected contracts into compliance. NYSID will remove such members from the guaranteed payment program and may reassign contracts that remain out of compliance with disabled labor requirements.

Because the QER serves as the cornerstone for NYSID's oversight, accurate data is essential. We found the data submitted on the QERs is self-reported and NYSID's verification of QER data is insufficient. In response to our findings, NYSID equated its acceptance of self-reported data with

that of tax returns submitted to the Department of Taxation and Finance. However, this is not a valid comparison because tax return information is supported by W2 forms (or 1099s) and tax return filers are required to sign a certification that the form is true and accurate under penalty of perjury. NYSID requires members and corporate partners to maintain documentation to support their QERs; however, we found this documentation is not always maintained. NYSID also requires members to certify annually that they are in compliance with the Law, regulations, Procurement Council Guidelines, and all other relevant statutory requirements. However, we found that this annual certification includes no penalty for incorrect and/or dishonest assertions.

Furthermore, we found NYSID failed to exercise proper oversight to ensure all member agencies and corporate partners submit QERs. We matched a listing of all active NYSID contracts from April 1, 2012 to April 15, 2015 with a spreadsheet of QER reports submitted to NYSID (2001–partial third quarter 2015) to determine whether a QER had been submitted for each contract. For 29 contracts, we found no QER has been submitted by the member agency or corporate partner. NYSID states it uses QERs to verify compliance with preferred source regulations, but was unaware these reports had not been submitted. Consequently, NYSID’s efforts to verify compliance were limited.

Quality Reviews

The Manual outlines NYSID’s current procedure for conducting quality reviews at member agencies and corporate partners. In addition, NYSID’s Quality Review Process and Procedure, issued in February 2015, provides more specific detailed procedures for conducting these reviews. According to NYSID’s Quality Assurance (QA) Manager, prior to February 2015, the Manual was their only source for guidance on quality reviews, but it wasn’t always followed. Further, the Manual did not address the corrective action plan requirement in cases of non-compliance; this appears only in the February 2015 procedure. NYSID’s QA Manager confirmed that this requirement is fairly new, and previously NYSID may have asked for corrective plans, but there was no procedure in place to ensure this step was actually taken.

According to the Manual, a new member agency receives its initial review within six months to one year after approval of its first preferred source contract. Existing members are selected for review on a rotating basis, with a frequency goal of once every two to three years. The Manual outlines the components of these reviews, including validation of disability records (within payroll records), review of time and attendance records, verification of QERs, and verification of cost analysis. When visiting a member agency or corporate partner, NYSID must select a minimum of two contracts for review.

NYSID officials stated they complete approximately 40 reviews a year; however, records provided to us showed only 65 reviews were completed for a three-year period. Further, we found that NYSID gives member agencies and corporate partners advance notification of the review, including the date, the scope period of QERs, documents needed, and the sample of employees included in the review. Advance notice of these reviews can significantly compromise their quality and the validity of results. During our site visits, for example, we found one instance where a member agency obtained disability documentation for an employee two years after the individual was

hired – action which the agency took in anticipation of an impending quality review. When employee files can be altered in advance of NYSID’s review, the review might not yield a true representation of the level of compliance being maintained by the member agency or corporate partner. Thus, NYSID’s quality reviews provide limited assurance that members and corporate partners maintain compliance with regulations.

We conducted a detailed analysis of 20 judgmentally selected NYSID quality reviews and found four (20 percent) with unresolved issues. In one instance, NYSID sent a letter to a member agency congratulating them on not having any findings during their review. However, we found that in its quality review NYSID had, in fact, identified discrepancies on nine of 21 time sheets, but officials did not include these in their final report to the member agency. When we brought this to NYSID’s attention, officials conceded the discrepancies would have gone unaddressed by the member agency.

In another instance, we found that during a quality review NYSID and a member agency made adjustments to disability percentages that ultimately brought the member agency into compliance. Adjustments were made to increase the percentage of direct labor for disabled crew leaders and decrease the percentage of direct labor for non-disabled crew leaders and then to reclassify direct labor hours for non-disabled employees as training hours. For example, the member agency originally submitted 334 hours of non-disabled labor on the QER, but during the quality review 183.75 of these hours were reclassified from direct labor hours to training hours, causing the disabled labor ratio to increase and be in compliance. All of these adjustments were made based on conversations during the review – with no documentation to support the reason for the changes. The final management letter for this review (dated April 9, 2013) indicated that changes were made while on site and during post-review, and that these changes were to be used going forward.

NYSID Contract Award Process

According to the Manual, it is NYSID’s policy to identify, respond to, and equitably distribute, to as broad a base of members as possible, all relevant contract opportunities. NYSID’s policy for awarding service contract opportunities identifies several different factors in its decision making process. For example, when a customer specifically requests a member, the contract is awarded to that member, and when a lead is initiated by a member, the opportunity shall be assigned to that member unless it conflicts with a pre-existing customer relationship. Other factors that NYSID states it takes into consideration include: existing customer relationships; geographic proximity; level of interest expressed; demonstrated ability to perform the requirements of the contract; and opportunity for a new or underrepresented member. When no other criteria clearly suggest priority, an open lottery or mini-bid will be held among interested members. However, NYSID officials stated such mini-bid scenarios seldom occur.

We found nearly no evidence that NYSID actually follows its policy for awarding service contracts. Of 30 NYSID contract files for newly awarded contracts that we reviewed, 29 did not contain any documentation to support the contract award decision, either showing the mini-bid scenarios described in the Manual or explaining why the new contract was awarded to a specific member

and, where applicable, the corporate partner. For the remaining contract, we found an email from the contracting agency thanking NYSID for presenting proposals and stating they selected the proposal that best meets their business requirements and significantly reduces their pricing structure. The contract file also contained a business requirements document, which outlined all of the requirements the contractor must meet, and the selected proposal, which addressed these requirements. NYSID officials provided us with what they stated was a second proposal received for this contract, but we noted that it did not address the requirements in the business requirements document and appeared to be more of a summary. Nevertheless, officials maintained this is the proposal they received.

The Law does not direct facilitating agencies to use a particular method of awarding contracts to the preferred source agencies they serve. However, it does require purchasing agents to use cost as the determining factor if more than one preferred source or facilitating agency submits notification of intent and meets the requirements of the contract. The Law also requires that corporate partner proposals offer the services at a lower price than what would otherwise be charged by a preferred source.

NYSID's policy for awarding service contracts is designed to avoid the possibility of having more than one of their member agencies compete for a service contract opportunity. NYSID's policy does not allow for its member agencies to determine whether they can meet the requirements of the contract because they are frequently not made aware of contract opportunities. Those preferred sources that have been approved to provide a service (e.g., janitorial) should be given equal opportunity to receive State contracts for that service, if they can meet the requirements of the contract.

Furthermore, because mini-bid scenarios rarely occur, NYSID cannot be sure that corporate partner proposals are offered at a price lower than a preferred source proposal. It is in the State's best interest to consider cost for services and to include competition where possible to ensure the best price. We recommend OGS work with the Procurement Council to consider regulatory changes that would include specific criteria that facilitating agencies would be required to use in awarding contracts among the qualified preferred sources they serve.

NYSID officials stated private vendors can contact NYSID directly to express interest in becoming corporate partners. The NYSID sales team explains to all potential corporate partners the responsibilities involved in being a corporate partner. NYSID officials also stated private vendors that contact them directly receive a list of member agencies to partner with. However, we found that this process is not always followed. We reviewed communication between NYSID and a private vendor expressing interest in becoming a corporate partner. NYSID did not provide the vendor any information on the process and stated they had no need for new vendors in this area. By not affording all private vendors the same opportunity to become corporate partners, NYSID is limiting the opportunity for companies who are interested in putting the disabled to work and limiting competition in certain service areas.

Awarding of Non-Approved Preferred Source Services

We found NYSID was improperly awarding preferred source contracts to a corporate partner for a non-approved service. During our scope period, we found a printing company received 89 contracts valued at more than \$1.5 million for “reproduction” – an approved service included on the List under document processing. However, it appears that most – if not all – of these contracts are actually for digital printing, a service that is not an approved preferred source offering. We visited the printing company where officials confirmed that 95 percent of the work they do is digital printing, including the three preferred source contracts we reviewed and all of the State Fair ticket printing. We also received a tour and observed the digital printers being used. In addition, we reviewed the manuals and other available information found online for each printer listed in the printing company contracts we reviewed and determined that two of the printers used are digital printers and the other is a digital press.

We also found that NYSID was clearly aware that digital printing was not an approved service and did not fall under the scope of reproduction services. In April 2013, NYSID applied to have digital printing added as a preferred source service. However, their application was denied by the Procurement Council in May 2014, and the denial was upheld by the Commissioner of OGS as the chair of the Procurement Council in July 2014. NYSID’s original application provided the following highly specific description of digital printing:

A physical process that transfers an image stored in a digital format on a computer to a printable material. It does not use metal printing plates as the mechanical means to affix the image to the paper and does not include a press set-up process. The term expressly does not include the mechanical processes of offset lithography and offset printing (traditional printing). Digital printing uses computerized processes enabled by new digital technologies, resulting in faster, lower-cost printing. It is generally used for short-run print jobs, since it does not require a press-set-up process.

In its memo to the Procurement Council recommending denial of NYSID’s digital printing application, OGS stated that a government employee would not know the type of print required for the project and, in many instances, a combination of digital and offset printing is utilized to produce the best product possible. Therefore, it is clear that OGS was aware of the complications of purchasing agencies entering into printing contracts with preferred sources, yet provided no clarification or guidance as to what types of services are actually approved within the photocopying and reproduction categories.

The List contains approved services by title only (e.g., “photocopying” or “reproduction”) and does not provide any description to more clearly define what the service does and does not include. Without clear guidelines, there is less assurance that only approved services are being fulfilled through preferred source contracts. OGS officials stated it is up to the purchasing agency to determine its needs and whether the service it needs is photocopying, reproduction, or digital printing. However, they also acknowledged that it is more difficult for agency officials to know whether the service is covered or available on the List without definitions accompanying the

titles. During our audit, OGS officials began to address this issue and have initiated the process of developing a subcommittee to define services on the List, starting with photocopying and reproduction.

As the facilitating agency, it is NYSID's role to properly process inquiries and orders from purchasers, to verify that the goods and services requested are eligible preferred source offerings, and to distribute orders among approved preferred sources that can perform the work. When NYSID facilitates a contract for a non-approved service that would otherwise need to be competitively offered, it gives the corporate partner an unfair advantage by circumventing the competitive bidding process. Without competitive bidding, there is no way to ensure the purchasing agency received the best price. The Law requires prices to be as close to prevailing market price as practicable, but in no event greater than 15 percent above market price. Therefore, the purchasing agencies likely paid more than they would have if the contract had been competitively bid. Furthermore, NYSID receives a 4 percent administration fee for each preferred source contract, and as a result inappropriately received approximately \$60,000 for digital printing contracts erroneously awarded as preferred source.

Monitoring and Oversight

As the appointing agency, SED is responsible for monitoring and oversight of NYSID and for ensuring NYSID is in compliance with all applicable regulations. SED officials stated they have been meeting with OGS to discuss ways to increase oversight of NYSID. Beginning in 2014, SED required NYSID to submit a yearly report of member agencies and corporate partners that were not in compliance with disabled labor requirements. NYSID compiles this report based on member agencies' and corporate partners' QERs. However, SED does not perform any tests to verify the accuracy of the information in this report or conduct any further monitoring of NYSID. Officials stated they do not have the resources available for this purpose. Thus, other than fulfilling a requirement to submit this report and obtaining price approvals provided by OGS, NYSID has been functioning with rather limited monitoring and oversight.

Government programs that operate with insufficient oversight and inadequate controls are inherently at risk of misuse and abuse. In the case of NYSID, the Program is extremely vulnerable to possible manipulation and circumvention of the competitive bid process. As the appointing agency, SED has fiduciary responsibilities to protect the intent and integrity of the Program. It is critical that SED establish and implement a strong system of monitoring and oversight to strengthen NYSID's operations, ensure transparent decision making, and ensure that NYSID's procurement and contracting activities best meet the purpose of the Program and are in the best interest of the State.

Recommendations

To OGS:

1. Provide clear definitions for the services on the List to make it easier for purchasing agencies

to determine if the services they need are approved preferred source offerings.

2. Communicate with purchasing entities to clarify the definition of digital printing and that this service has not been approved as a preferred source offering.
3. Work with the Procurement Council to consider regulatory changes that would include specific criteria that facilitating agencies would be required to use in awarding contracts among the qualified preferred sources they serve.

To SED:

4. Implement a strong system for monitoring and oversight of NYSID that includes procedures for verification of self-reported information, such as review of contract performance data.
5. Require NYSID to:
 - Limit the detailed information provided to members/partners in advance of quality reviews;
 - Maintain documentation to support the contract award process;
 - Make contract opportunities available to all member agencies and give all private vendors expressing an interest equal opportunity to become corporate partners; and
 - Discontinue awarding reproduction contracts for digital printing services.

Audit Scope and Methodology

We audited preferred source contracting for the period April 1, 2012 through August 17, 2015. The objectives of our audit were to determine: how State agencies and facilitating agencies are monitoring contracts fulfilled in partnership with private entities to ensure contract requirements are being met; whether the majority of the work is completed by disabled workers as required by law; and whether facilitating entities are awarding contracts in a manner that best meets the purpose of the Program and is in the best interest of the State.

To accomplish our objectives, we reviewed applicable laws, regulations, policies, and procedures that define the Program and assessed the internal controls related to the award and monitoring of preferred source contracts. We also performed certain tests to assess the sufficiency of these controls for the period April 1, 2012 through August 17, 2015. We interviewed pertinent officials from OGS, SED, and NYSID, as well as officials from several agencies that have recently utilized preferred source contracts and from several private firms that have established corporate partnerships with preferred source entities. Our audit focused on contracts for preferred source services, as opposed to commodities. As a result, our audit testing was done at NYSID, which held 99 percent of these contracts during our audit period. We selected a judgmental sample of NYSID quality reviews. We chose the sample of quality reviews from the various services, the preferred source organizations, and corporate partners. We also selected a judgmental sample of NYSID contract awards. We chose the sample of contract awards by only including newly awarded

contracts (not contract renewals). We also chose the sample based on a mix of member-only contracts and contracts with corporate partners. We also visited subcontractors for six NYSID contracts to determine whether sufficient supporting documentation could be provided to show compliance with required disability percentages, payroll, and QERs.

We conducted our performance audit in accordance with generally accepted government auditing standards. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained during the audit provides a reasonable basis for our findings and conclusions based on our audit objectives.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, including the Procurement Council, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

Authority

The audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

Reporting Requirements

Draft copies of this report were provided to OGS and SED officials for their review and formal comment. Their comments were considered in preparing this final report and are attached at the end in their entirety. OGS and SED officials generally agreed with our recommendations and indicated that they have taken and will be taking steps to implement them.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Office of General Services and the Commissioner of the State Education Department shall each report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

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Vision

A team of accountability experts respected for providing information that decision makers value.

Mission

To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

Agency Comments - Office of General Services



Office of General Services

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ROANN M. DESTITO
Commissioner

April 14, 2016

Mr. John Buyce, Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236-0001

Dear Mr. Buyce:

In accordance with Section 170 of the Executive Law, the Office of General Services ("OGS") is responding to your draft Report 2014-S-77, which examined the New York State's Preferred Source Program (the "Program") established under Section 162 of the New York State Finance Law ("SFL").

Background

As noted in the report, the New York State Industries for the Disabled ("NYSID") is the facilitating agency designated by the Commissioner of Education under the Program established in accordance with SFL §162(2). NYSID facilitates orders for services requested by State and local governments among qualified charitable not-for-profit organizations serving people with severe disabilities (member agencies) and corporate partners. When a State agency or local government needs an approved preferred source service, the government entity contacts NYSID who identifies the preferred source member agencies capable of performing the necessary services (either alone or in conjunction with a corporate partner) and enters into contracts with the government contracting agency for the provision of those services. NYSID subcontracts the work to the preferred source member agency or to a member agency participating in a partnership agreement with a corporate partner.

OGS's involvement in the Program occurs by virtue of the New York State Procurement Council's ("Procurement Council") delegation to the OGS Procurement Services Preferred Source Team (the "Preferred Source Team") the responsibility for maintaining the List of Preferred Source Offerings (the "List"). The List is posted on the Procurement Council section of the OGS website in accordance with SFL § 162(3). In addition, on my behalf, the Preferred Source Team approves the price of all preferred source service contracts having a value over \$50,000 to ensure that prices are reasonable and that individuals who are blind or disabled are providing sufficient value-added labor on such contracts in accordance with SFL § 162(6). OGS is not responsible for overseeing the provision of services by the preferred source member agencies and corporate partners acting as subcontractors to NYSID during the course of its contracts with other government entities.

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OGS Responses to OSC's "Key Recommendations"

1. *Provide clear definitions for the services on the List to make it easier for purchasing agencies to determine if the services they need are approved preferred source offerings.*

Since the commencement of the audit, the Preferred Source Team has been actively working with the preferred sources and representatives of the Procurement Council to create definitions of all service offerings on the List. The first set of definitions for janitorial and grounds maintenance services was submitted to and approved by the Procurement Council in September 2015. The Preferred Source Team expects to present to the Procurement Council all remaining definitions for the approved services, as well as those not approved, including digital printing, at the May 2016 meeting. Following approval, all definitions will be displayed next to each service offering on the List, which is posted on the Procurement Council section of the OGS website.

2. *Communicate with purchasing entities to clarify the definition of digital printing and that this service has not been approved as a preferred source offering.*

Sufficient information is already available to purchasing entities regarding the definition of digital printing and the fact that it is not an approved service offering. OGS has regularly communicated this position with purchasing entities.

Further, as OSC is aware, this issue has already been addressed with NYSID when it submitted its application to the Procurement Council to add digital printing as a preferred source offering. OGS provided a detailed memorandum which clearly addressed the parameters for denying the application and described in detail the various types of activities that constitute printing generally and digital printing specifically. In May 2014 the Procurement Council denied NYSID's application. NYSID appealed the decision, but the Commissioner of General Services upheld the denial in July 2014. The NYSID application, OGS's recommendation memo, the Procurement Council's meeting minutes, letters in support and opposition, NYSID's appeal, and the Commissioner's decision on the appeal are posted on the Procurement Council section of the OGS website under "Meeting Minutes and Documents." All of this information was made available to all Procurement Council members for sharing with their respective agencies, and this information has been publicly available to all purchasing entities, as well as to NYSID and its member agencies and corporate partners, since the decisions were made. Accordingly, information was made available to purchasing entities that clearly reflects that digital printing is not an approved service offering.

Further, the Preferred Source Team is taking additional steps to provide clarification and information to purchasing entities. In May 2016, the Preferred Source Team will be presenting definitions for digital printing, reproduction, and photocopying to the Procurement Council that will provide detailed descriptions of which services are and which services are not approved as service offerings on

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the List. Once approved, these definitions will be published and disseminated via the OGS Purchaser Notification System (PNS) to purchasing entities and, if approved, will be presented as part of the training on preferred sources offered at the State Purchasing Forum on May 18 and 19, 2016. In addition, once approved, the definitions will be posted on the Procurement Council section of the OGS website. The List and the Preferred Source Guidelines will also be updated to reflect the new definitions.

3. *Work with the Procurement Council to consider regulatory changes that would include specific criteria that facilitating agencies would be required to use in awarding contracts among the qualified preferred sources they serve.*

OGS routinely works with the Procurement Council to consider both statutory and regulatory changes that would improve the Program. OGS will continue to consult with the Procurement Council to consider statutory or regulatory amendments, which may include providing specific criteria for the selection of preferred source member agencies and corporate partners by the facilitating agencies and providing more detailed guidance to ensure that workers who are blind or severely disabled are providing direct labor on each contract. In the interim, changes to the Preferred Source Guidelines will be proposed to the Procurement Council for adoption. These changes will provide further information on the definitions of the various service categories and reiterate the obligations of NYSID and the purchasing agencies to monitor the preferred source member agencies and corporate partners for compliance with the terms and conditions of their contracts.

Conclusion

OGS is committed to the success of the Program and as explained above, continues to take steps to create detailed definitions of all preferred source service offerings. We expect these definitions to be adopted in the near future. OGS has also developed a plan for sharing the approved definitions with the purchasing agencies utilizing preferred sources for their service needs. We will continue to look for ways to improve the Program through the Preferred Source Guidelines and statutory or regulatory changes to our processes and consider this to be an ongoing exercise in total quality management.

If you have additional questions or comment please contact Theresa Bonneau at (518) 402-5846 or theresa.bonneau@ogs.ny.gov

Sincerely,



Karen Tyler
Executive Deputy Commissioner

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cc: Commissioner Destito
S. Filburn
B. Allen
N. VanDoren
C. Irvine
T. Bonneau

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Agency Comments - State Education Department



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

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April 15, 2016

Mr. John Buyce
Audit Director
Division of State Government Accountability
Office of the State Comptroller
110 State Street – 11th Floor
Albany, NY 12236-0001

Re: Response to Draft Report 2014-S-77 OGS/SED

Dear Mr. Buyce:

The following is the New York State Education Department's (Department) response to the draft audit report, 2014-S-77 OGS/SED Preferred Source Contracting.

Recommendation 1: Implement a strong system for monitoring and oversight of NYSID that includes procedures for verification of self-reported information, such as review of contract performance data.

We agree with the need for a strong system of monitoring and oversight of New York State Industries for the Disabled (NYSID). The Department intends to address Recommendation 1 through a new preferred source designation letter with NYSID. The designation letter will require that NYSID revise its quality assurance procedures to maintain the documentation necessary to verify compliance with the preferred source requirements. Such procedures will require review and approval by the Department.

Recommendation 2: Require NYSID to:

- Limit the detailed information provided to members/partners in advance of quality reviews;
- Maintain documentation to support the contract award process;
- Make contract opportunities available to all member agencies and give all private vendors expressing an interest equal opportunity to become corporate partners; and
- Discontinue awarding reproduction contracts for digital printing services.

We agree with this recommendation. The Department also intends to address each of the requirements in Recommendation 2 through the designation letter with NYSID. The designation letter will require that NYSID revise its quality assurance and contract award procedures in order to address bullets 1 - 3 noted above. Such procedures will require approval by the Department. NYSID, in cooperation with OGS, has already discontinued awarding reproduction contracts for digital printing services.

In addition to the actions described above, the Department will closely examine the circumstances that led to the findings in the audit report. This examination will include an assessment of the programmatic oversight and fiscal management employed at NYSID. The Department will continue to communicate periodically with OGS to ensure that proper compliance measures are sustained through our respective roles within the preferred source program.

If you have any questions regarding this response, please contact Harold Matott, Director of Operations at (518) 473-7696.

Sincerely,



Sharon Cates-Williams

c: Debora Brown-Johnson
Harold Matott
John Walters
Frank Coco
Thalia Melendez