

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED SPINAL ASSOCIATION, a :
nonprofit organization, et al., :

Plaintiffs, :

10 Civ. 5653 (DAB) (HBP)

-against- :

ORDER

BOARD OF ELECTIONS IN THE CITY :
OF NEW YORK, et al., :

Defendants. :

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PITMAN, United States Magistrate Judge:

Paragraph 8 of Judge Batts' October 18, 2012 Order directed defendants to retain an independent third-party expert with expertise in polling-place accessibility to conduct surveys of the polling sites in New York City. Paragraph 8 further provided that if the parties could not agree on the independent third-party expert, I was to designate such an expert after receiving recommendations from the parties.

Unfortunately, the parties have not been able to agree on an expert. Plaintiff has submitted the names of three consulting firms, ranked in order of preference; defendant has submitted the name of one consulting firm. Both sides have submitted background materials in support of their respective

candidates with information about the firms, their expertise, experience and the services each would provide if selected.

All of the candidate firms appear well qualified to perform the tasks identified by Judge Batts. All have personnel with the training and experience to perform accessibility studies, to report on whether the a polling site can be made accessible and, if so, to make recommendations concerning the necessary remedial steps. In addition, the prices quoted by plaintiffs' first choice and defendants' choice are not materially different.

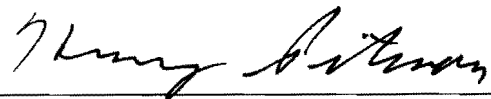
Nevertheless, after considering the parties' submissions, I conclude that Evan Terry Associates, P.C. ("ETA"), plaintiff's first choice, is best suited to perform the tasks identified by Judge Batts. Its staff has performed similar surveys in all fifty states and the District of Columbia. The facilities of which ETA has performed surveys include the United States Capitol, the House and Senate Office Buildings, the United States Supreme Court, the Library of Congress, Madison Square Garden, Radio City Music Hall, the Duane Reade drug store chain, the old Yankee Stadium, the Shubert Theaters and the Metropolitan Opera House. ETA's staff has published numerous books and conducted numerous seminars concerning ADA compliance issues. ETA's clients have included the United States Department of Justice, the Administrative Office of the United States Courts,

CVS Caremark, Kaiser Permanente and Sutter Health. ETA's firm biography reports that ETA has conducted surveys of businesses with multiple branches such as drug store, chains, banks and health care chains; this experience is particularly appropriate to the survey work identified by Judge Batts which consists of visiting and surveying multiple polling places throughout New York City.

Although I am confident that all the candidate firms could complete the assignment, I conclude that ETA is the most qualified, and, pursuant to paragraph 8 of Judge Batts' October 18, 2012 Order, I designate it as the Third Party Expert.

Dated: New York, New York
January 28, 2013

SO ORDERED



HENRY PITMAN
United States Magistrate Judge

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