

7782

I N S E N A T E

June 18, 2012

Introduced by Sen. ROBACH -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the state finance law, in relation to the cost effectiveness of consultant contracts by the state agencies; and providing for the repeal of such provisions upon expiration thereof

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 163 of the state finance law is amended by adding a
2 new subdivision 15 to read as follows:
3 15. CONSULTANT SERVICES. A. BEFORE A STATE AGENCY ENTERS INTO A
4 CONTRACT FOR CONSULTANT SERVICES WHICH IS ANTICIPATED TO COST MORE THAN
5 FIVE HUNDRED THOUSAND DOLLARS IN A TWELVE MONTH PERIOD THE STATE AGENCY
6 SHALL CONDUCT A COST COMPARISON REVIEW TO DETERMINE WHETHER THE SERVICES
7 TO BE PROVIDED BY THE CONSULTANT CAN BE PERFORMED AT EQUAL OR LOWER COST
8 BY UTILIZING STATE EMPLOYEES, UNLESS THE CONTRACT MEETS ONE OF THE
9 EXCEPTIONS SET FORTH IN PARAGRAPH B OF THIS SUBDIVISION. AS USED IN
10 THIS SECTION, THE TERM "CONSULTANT SERVICES" SHALL MEAN ANY CONTRACT
11 ENTERED INTO BY A STATE AGENCY FOR ANALYSIS, EVALUATION, RESEARCH,
12 TRAINING, DATA PROCESSING, COMPUTER PROGRAMMING, HEALTH SERVICES, MENTAL
13 HEALTH SERVICES, ACCOUNTING, AUDITING, OR SIMILAR SERVICES, BUT SHALL
14 NOT INCLUDE ANY PROFESSIONAL DESIGN SERVICES, LEGAL SERVICES OR SERVICES
15 IN CONNECTION WITH LITIGATION INCLUDING EXPERT WITNESSES AND SHALL NOT
16 INCLUDE CONTRACTS FOR CONSTRUCTION, DESIGN, OR RELATED PROFESSIONAL
17 DESIGN SERVICES OF PUBLIC WORKS. FOR PURPOSES OF THIS SUBDIVISION, THE
18 COSTS OF PERFORMING THE SERVICES BY STATE EMPLOYEES SHALL INCLUDE ANY
19 SALARY, PENSION COSTS, ALL OTHER BENEFIT COSTS, COSTS THAT ARE REQUIRED
20 FOR EQUIPMENT, FACILITIES AND ALL OTHER OVERHEAD. THE COSTS OF CONSULT-
21 ANT SERVICES SHALL INCLUDE THE TOTAL COST OF THE CONTRACT. THE COST
22 COMPARISON SHALL BE EXPRESSED WHERE FEASIBLE AS AN HOURLY RATE, OR WHERE
23 SUCH A CALCULATION IS NOT FEASIBLE, AS A TOTAL ESTIMATED COST FOR THE
24 ANTICIPATED TERM OF THE CONTRACT.
25 B. THE ESTIMATED COST OF A COMPARISON STUDY SHALL INCLUDE THE FINAN-
26 CIAL COSTS TO THE STATE INCLUDING THE DIRECT SALARIES AND BENEFITS OF
27 EMPLOYEES CONDUCTING THE STUDY AS WELL AS ALL OF THEIR RESPECTIVE DIRECT

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

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1 COSTS, INDIRECT COSTS AND ALL OVERHEAD. THE AGENCY SHALL ALSO PREPARE AN
2 EMPLOYEE IMPACT STATEMENT THAT IDENTIFIES WHAT OTHER SERVICES MAY NOT BE
3 COMPLETED AS A RESULT OF EMPLOYEES WORKING ON THESE NEW COMPARISON
4 STUDIES. IF A COMPARISON STUDY IS BEING PERFORMED BY AN OUTSIDE AGENCY
5 OR AUTHORITY, ALL OF THEIR RESPECTIVE COSTS NEED TO BE INCLUDED ALONG
6 WITH THE OVERSIGHT COSTS OF INTERNAL AGENCY STAFF. THE COST OF SUCH
7 STUDY SHALL BE WHOLLY PAID FOR BY THE AGENCY. NO COSTS ASSOCIATED WITH
8 THE STUDY SHALL BE PASSED ALONG TO OR ASSOCIATED WITH THE CONSULTANT.

9 C. A COST COMPARISON SHALL NOT BE REQUIRED IF:

10 (I) THE SERVICES ARE INCIDENTAL TO THE PURCHASE OF REAL OR PERSONAL
11 PROPERTY; OR

12 (II) THE CONTRACT IS NECESSARY IN ORDER TO AVOID A CONFLICT OF INTER-
13 EST ON THE PART OF THE AGENCY OR ITS EMPLOYEES; OR

14 (III) THE SERVICES ARE OF SUCH A HIGHLY SPECIALIZED NATURE THAT IT IS
15 NOT FEASIBLE TO UTILIZE STATE EMPLOYEES TO PERFORM THEM OR REQUIRE
16 SPECIAL EQUIPMENT THAT IS NOT FEASIBLE FOR THE STATE TO PURCHASE OR
17 LEASE; OR

18 (IV) THE SERVICES ARE OF SUCH AN URGENT NATURE THAT IT IS NOT FEASIBLE
19 TO UTILIZE STATE EMPLOYEES; OR

20 (V) THE SERVICES ARE ANTICIPATED TO BE SHORT TERM AND ARE NOT LIKELY
21 TO BE EXTENDED OR REPEATED AFTER THE CONTRACT IS COMPLETED; OR

22 (VI) THE COST OF THE COMPARISON IS ESTIMATED TO BE GREATER THAN FIVE
23 PERCENT OF THE CONTRACT, THE AGENCY IS EXEMPT FROM PERFORMING THE
24 COMPARISON.

25 D. NOTHING IN THIS SECTION SHALL BE DEEMED TO AUTHORIZE A STATE AGENCY
26 TO ENTER INTO A CONTRACT WHICH IS OTHERWISE PROHIBITED BY LAW.

27 E. ALL DOCUMENTS RELATED TO THE COST COMPARISON REQUIRED BY THIS
28 SUBDIVISION SHALL BE PUBLIC RECORDS SUBJECT TO DISCLOSURE PURSUANT TO
29 ARTICLE SIX OF THE PUBLIC OFFICERS LAW.

30 F. THIS ANALYSIS SHALL BE COMPLETED NO MORE THAN FIFTEEN DAYS AFTER IT
31 COMMENCES AND MUST BE INITIATED WITHIN THREE DAYS OF THE CONTRACT BEING
32 IDENTIFIED.

33 S 2. On or before December 31, 2015 the office of general services
34 shall prepare a report, to be delivered to the governor, the temporary
35 president of the senate and the speaker of the assembly. Such report
36 shall include, but need not be limited to, an analysis of the effective-
37 ness of the cost comparison study and an analysis of the costs savings
38 associated with performing such cost comparison.

39 S 3. This act shall take effect on the ninetieth day after it shall
40 have become a law and shall expire and be deemed repealed December 31,
41 2016; provided, however, that the amendments to section 163 of the state
42 finance law made by section one of this act shall not affect the repeal
43 of such section and shall be deemed repealed therewith.