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I N S E N A T E

February 21, 2014

Introduced by Sens. DeFRANCISCO, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public authorities law, in relation to requiring public authorities and public benefit corporations to negotiate with professional firms providing architectural or engineering services in order from the most qualified to the least qualified with regard to the provision of services to the authority or corporation

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

1 Section 1. Subparagraph (iv) of paragraph (b) of subdivision 3 of
2 section 2879 of the public authorities law, as amended by chapter 383 of
3 the laws of 1994, is amended to read as follows:
4 (iv) as used in this subparagraph, the term "professional firm" shall
5 be defined as any individual or sole proprietorship, partnership, corpo-
6 ration, association, or other legal entity permitted by law to practice
7 the professions of architecture, engineering or surveying.
8 IT IS THE POLICY OF NEW YORK STATE TO NEGOTIATE CONTRACTS FOR ARCHI-
9 TECTURAL AND/OR ENGINEERING SERVICES AND/OR SURVEYING SERVICES ON THE
10 BASIS OF DEMONSTRATED COMPETENCE AND QUALIFICATION FOR THE TYPE OF
11 PROFESSIONAL SERVICES REQUIRED AND AT FAIR AND REASONABLE FEES.
12 IN THE PROCUREMENT OF ARCHITECTURAL, ENGINEERING AND SURVEYING
13 SERVICES, THE CORPORATION SHALL ENCOURAGE PROFESSIONAL FIRMS ENGAGED IN
14 THE LAWFUL PRACTICE OF THE PROFESSION TO SUBMIT AN ANNUAL STATEMENT OF
15 QUALIFICATIONS AND PERFORMANCE DATA. THE CORPORATION FOR EACH PROPOSED
16 PROJECT SHALL EVALUATE CURRENT STATEMENTS OF QUALIFICATIONS AND PERFORM-
17 ANCE DATA ON FILE WITH THE CORPORATION. IF DESIRED, THE CORPORATION MAY
18 CONDUCT DISCUSSIONS WITH THREE OR MORE PROFESSIONAL FIRMS REGARDING
19 ANTICIPATED DESIGN CONCEPTS AND PROPOSED METHODS OF APPROACH TO THE
20 ASSIGNMENT. THE CORPORATION SHALL SELECT, IN ORDER OF PREFERENCE, BASED
21 UPON CRITERIA ESTABLISHED BY THE CORPORATION, NO LESS THAN THREE PROFES-
22 SIONAL FIRMS DEEMED TO BE THE MOST HIGHLY QUALIFIED TO PROVIDE THE
23 SERVICES REQUIRED.

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

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1 EVERY CORPORATION SHALL NEGOTIATE A CONTRACT WITH THE HIGHEST QUALI-
2 FIED PROFESSIONAL FIRM FOR ARCHITECTURAL AND/OR ENGINEERING SERVICES
3 AND/OR SURVEYING SERVICES AT COMPENSATION WHICH THE CORPORATION DETER-
4 MINES IN WRITING TO BE FAIR AND REASONABLE TO SUCH CORPORATION. IN
5 MAKING THIS DECISION, THE CORPORATION SHALL TAKE INTO ACCOUNT THE ESTI-
6 MATED VALUE OF THE SERVICES TO BE RENDERED, INCLUDING THE COSTS, THE
7 SCOPE, COMPLEXITY AND PROFESSIONAL NATURE THEREOF.

8 The corporation shall not refuse to negotiate with a professional firm
9 solely because the ratio of the "allowable indirect costs" to direct
10 labor costs of the professional firm or the hourly labor rate in any
11 labor category of the professional firm exceeds a limitation generally
12 set by the corporation in the determination of the reasonableness of the
13 estimated cost of services to be rendered by the professional firm, but
14 rather the corporation should also consider the reasonableness of cost
15 based on the total estimated cost of the service of the professional
16 firm which should include, among other things, all the direct labor
17 costs of the professional firm for such services plus all "allowable
18 indirect costs," other direct costs, and negotiated profit of the
19 professional firm. "Allowable indirect costs" of a professional firm are
20 defined as those costs generally associated with overhead which cannot
21 be specifically identified with a single project or contract and are
22 considered reasonable and allowable under specific state contract or
23 allowability limits. SHOULD THE CORPORATION BE UNABLE TO NEGOTIATE A
24 SATISFACTORY CONTRACT WITH THE PROFESSIONAL FIRM CONSIDERED TO BE THE
25 MOST QUALIFIED, AT A FEE THE CORPORATION DETERMINES TO BE FAIR AND
26 REASONABLE TO THE CORPORATION, NEGOTIATIONS WITH THAT PROFESSIONAL FIRM
27 SHALL BE FORMALLY TERMINATED. THE CORPORATION SHALL THEN UNDERTAKE
28 NEGOTIATIONS WITH THE SECOND MOST QUALIFIED PROFESSIONAL FIRM. FAILING
29 ACCORD WITH THE SECOND MOST QUALIFIED PROFESSIONAL FIRM, THE CORPORATION
30 SHALL FORMALLY TERMINATE NEGOTIATIONS. THE CORPORATION SHALL THEN UNDER-
31 TAKE NEGOTIATIONS WITH THE THIRD MOST QUALIFIED PROFESSIONAL FIRM.
32 SHOULD THE CORPORATION BE UNABLE TO NEGOTIATE A SATISFACTORY CONTRACT
33 WITH ANY OF THE SELECTED PROFESSIONAL FIRMS, IT SHALL SELECT ADDITIONAL
34 PROFESSIONAL FIRMS IN ORDER OF THEIR COMPETENCE AND QUALIFICATIONS AND
35 IT SHALL CONTINUE NEGOTIATIONS IN ACCORDANCE WITH THIS SECTION UNTIL AN
36 AGREEMENT IS REACHED. THE PROVISIONS OF THIS SUBPARAGRAPH SHALL ONLY
37 APPLY TO ENGINEERING AND/OR ARCHITECTURAL SERVICES AND/OR SURVEYING
38 SERVICES IN EXCESS OF TWENTY-FIVE THOUSAND DOLLARS AND SHALL NOT APPLY
39 TO THE METROPOLITAN TRANSPORTATION AUTHORITY, THE NEW YORK CITY TRANSIT
40 AUTHORITY OR THE TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY OR TO ANY OF
41 THEIR SUBSIDIARIES.

42 S 2. This act shall take effect immediately.