S T A T E O F N E W Y O R K

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I N A S S E M B L Y

February 12, 2010

Introduced by M. of A. JOHN -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the state finance law, in relation to contracts by state agencies for consultant services

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

Section 1. Legislative findings. The legislature finds that state agencies must enter into contracts for services from private businesses to perform work on behalf of the state. The legislature finds further that the people of the state also employ a skilled experienced work force who should perform work the state requires whenever possible. The legislature finds further that a regularized transparent process would enhance public confidence in the expenditure of public money to private entities for the performance of public services.

S 2. The state finance law is amended by adding a new section 148 to read as follows:

S 148. CONTRACTS BY STATE AGENCIES FOR CONSULTANT SERVICES. 1. AS USED IN THIS SECTION THE TERM "STATE AGENCY" SHALL MEAN ANY DEPARTMENT, STATE UNIVERSITY OF NEW YORK, BOARD, BUREAU, DIVISION, COMMISSION, COMMITTEE, COUNCIL OR OFFICE OF THE STATE, BUT SHALL NOT INCLUDE THE LEGISLATURE OR JUDICIARY.

2. AS USED IN THIS SECTION THE TERM "CONSULTANT SERVICES" SHALL MEAN ANY CONTRACT ENTERED INTO BY A STATE AGENCY FOR ANALYSIS, EVALUATION, RESEARCH, TRAINING, DATA PROCESSING, COMPUTER PROGRAMMING, ENGINEERING, ARCHITECTURE, ENVIRONMENTAL, HEALTH AND MENTAL HEALTH SERVICES, ACCOUNTING, AUDITING, OR SIMILAR SERVICES, BUT SHALL NOT INCLUDE LEGAL SERVICES OR SERVICES IN CONNECTION WITH LITIGATION INCLUDING EXPERT WITNESSES AND SHALL NOT INCLUDE CONTRACTS FOR CONSTRUCTION OF PUBLIC WORKS.

3. NO STATE AGENCY SHALL ENTER INTO A CONTRACT FOR CONSULTANT SERVICES WHICH IS ANTICIPATED TO COST MORE THAN FIVE HUNDRED THOUSAND DOLLARS IN A TWELVE-MONTH PERIOD UNLESS THE STATE AGENCY HAS FIRST CONDUCTED A REVIEW TO DETERMINE WHETHER STATE EMPLOYEES CAN PRACTICABLY MEET THE SAME NEED BY PROVIDING SERVICES OF THE SAME OR BETTER QUALITY FOR EQUIV-

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

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ALENT OR LOWER COST. SUCH REQUIREMENT SHALL NOT APPLY IF THE CONTRACT MEETS ONE OF THE FOLLOWING CONDITIONS:

(A) THE SERVICES ARE INCIDENTAL TO A CONTRACT FOR THE PURCHASE OR LEASE OF REAL OR PERSONAL PROPERTY, SUCH AS A CONTRACT TO SERVICE OR MAINTAIN OFFICE EQUIPMENT;

(B) THE CONTRACT IS NECESSARY TO AVOID A CONFLICT OF INTEREST ON THE PART OF A STATE AGENCY OR AGENCY PERSONNEL;

(C) THE SERVICES ARE OF SUCH A HIGHLY SPECIALIZED OR TECHNICAL NATURE THAT IT IS NOT FEASIBLE TO HIRE STATE EMPLOYEES TO PERFORM THEM, OR REQUIRE SPECIALIZED EQUIPMENT THAT IT IS NOT FEASIBLE FOR THE STATE TO PURCHASE OR LEASE;

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

(E) THE CONTRACT PROVIDES SERVICES OF A TYPE THAT ARE ANTICIPATED TO BE SHORT TERM AND ARE NOT LIKELY TO BE REPEATED OR EXTENDED AFTER THE CONTRACT IS COMPLETED.

4. IN CONDUCTING THE REVIEW OF COSTS REQUIRED BY SUBDIVISION THREE OF THIS SECTION, A STATE AGENCY SHALL COMPARE THE ANTICIPATED COST OF CONSULTANT SERVICES WITH THE ANTICIPATED COST OF PROVIDING SIMILAR SERVICES BY STATE EMPLOYEES INCLUDING THE COST OF SALARIES AND BENEFITS OF ANY ADDITIONAL EMPLOYEES THAT WOULD BE REQUIRED TO PERFORM THE SERVICES. THE ANTICIPATED COST OF CONSULTANT SERVICES SHALL INCLUDE ALL COSTS ASSOCIATED WITH THE CONTRACT INCLUDING THE COST TO THE STATE AGENCY OF ADMINISTRATING THE CONTRACT.

5. NOTHING IN THIS SECTION SHALL BE DEEMED TO AUTHORIZE A STATE AGENCY TO CONTRACT FOR CONSULTANT SERVICES WHICH ARE OF SUCH AN INHERENTLY GOVERNMENTAL OR REGULATORY NATURE THAT IT IS NOT IN THE PUBLIC INTEREST TO PROVIDE SUCH SERVICES BY PERSONNEL OTHER THAN STATE EMPLOYEES.

6. ANY STATE AGENCY THAT ENTERS INTO A CONTRACT FOR CONSULTANT SERVICES WITH AN ANTICIPATED COST OF MORE THAN ONE HUNDRED THOUSAND DOLLARS SHALL MAKE AVAILABLE ON ITS WEBSITE A LIST OF SUCH CONTRACTS WITH THE IDENTITY OF THE CONSULTANT, THE ESTIMATED AMOUNT, A DESCRIPTION OF THE SERVICES AND A DESCRIPTION OF THE REASONS FOR ENTERING INTO THE CONTRACT. THE STATE AGENCY SHALL MAKE AVAILABLE TO THE PUBLIC COPIES OF ALL SUCH CONTRACTS AND THE FINDINGS OF ANY REVIEW CONDUCTED BY THE STATE AGENCY PURSUANT TO THIS SECTION. IN MAKING SUCH DISCLOSURE A STATE AGENCY SHALL REDACT THE NAME AND SOCIAL SECURITY NUMBER OF ANY EMPLOYEE OF THE CONSULTANT AND ANY INFORMATION THAT SHOULD NOT BE DISCLOSED PURSUANT TO ARTICLE SIX OF THE PUBLIC OFFICERS LAW.

7. AN AGENCY THAT ENTERS INTO A CONTRACT FOR CONSULTANT SERVICES SHALL RETAIN ALL DATA, INCLUDING WRITTEN FINDINGS, RELEVANT TO THE CONTRACTS AND NECESSARY FOR A SPECIFIC APPLICATION OF THE STANDARDS SET FORTH IN THIS SECTION AS AN AGENCY RECORD PURSUANT TO ARTICLE SIX OF THE PUBLIC OFFICERS LAW.

S 3. This act shall take effect on the ninetieth day after it shall have become a law.