

5477

2009-2010 Regular Sessions

I N S E N A T E

May 11, 2009

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

AN ACT to amend the state finance law, in relation to state contracts for interior design services

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

1 Section 1. Section 136-a of the state finance law, as amended by chap-
2 ter 746 of the laws of 1982, subdivision 4 as amended by chapter 383 of
3 the laws of 1994, is amended to read as follows:

4 S 136-a. Contracts for architectural, engineering, INTERIOR DESIGN,
5 and surveying services. 1. As used in this section: the term "profes-
6 sional firm" shall be defined as any individual or sole proprietorship,
7 partnership, corporation, association or other legal entity permitted by
8 law to practice the professions of architecture, engineering, INTERIOR
9 DESIGN, or surveying.

10 The term "state department" shall be defined as those state government
11 departments, divisions or commissions empowered by the state to enter
12 into contractual agreements on behalf of the state of New York.

13 2. It is the policy of New York state to negotiate contracts for
14 architectural and/or engineering services AND/OR INTERIOR DESIGN
15 SERVICES and/or surveying services on the basis of demonstrated compe-
16 tence and qualification for the type of professional services required
17 and at fair and reasonable fees.

18 3. (I) In the procurement of architectural, engineering, INTERIOR
19 DESIGN, and surveying services, the requiring state department shall
20 encourage professional firms engaged in the lawful practice of the
21 profession to submit an annual statement of qualifications and perform-
22 ance data. The requiring state department for each proposed project
23 shall evaluate current statements of qualifications and performance data
24 on file with the department. If desired, the requiring state department
25 may conduct discussions with three or more professional firms regarding

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

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1 anticipated design concepts and proposed methods of approach to the
2 assignment. The state department shall select, in order of preference,
3 based upon criteria established by the requiring state department, no
4 less than three professional firms deemed to be the most highly quali-
5 fied to provide the services required.

6 (II) THE ANNUAL STATEMENT OF QUALIFICATIONS FOR INTERIOR DESIGN
7 SERVICES SHALL INCLUDE INFORMATION DEMONSTRATING THAT SUCH SERVICES ARE
8 PROVIDED BY AN INTERIOR DESIGNER POSSESSING CERTIFICATION PURSUANT TO
9 ARTICLE ONE HUNDRED SIXTY-ONE OF THE EDUCATION LAW OR PROVIDED UNDER THE
10 SUPERVISION OF A CERTIFIED INTERIOR DESIGNER.

11 4. The requiring state department shall negotiate a contract with the
12 highest qualified professional firm for architectural and/or engineering
13 services AND/OR INTERIOR DESIGN SERVICES and/or surveying services at
14 compensation which the department determines in writing to be fair and
15 reasonable to the state of New York. In making this decision, the
16 department shall take into account the estimated value of the services
17 to be rendered, including the costs, the scope, complexity, and profes-
18 sional nature thereof. The department shall not refuse to negotiate
19 with a professional firm solely because the ratio of the "allowable
20 indirect costs" to direct labor costs of the professional firm or the
21 hourly labor rate in any labor category of the professional firm exceeds
22 a limitation generally set by the department in the determination of the
23 reasonableness of the estimated cost of services to be rendered by the
24 professional firm, but rather the department should also consider the
25 reasonableness of cost based on the total estimated cost of the service
26 of the professional firm which should include, among other things, all
27 the direct labor costs of the professional firm for such services plus
28 all "allowable indirect costs," other direct costs, and negotiated
29 profit of the professional firm. "Allowable indirect costs" of a profes-
30 sional firm are defined as those costs generally associated with over-
31 head which cannot be specifically identified with a single project or
32 contract and are considered reasonable and allowable under specific
33 state contract or allowability limits. Should the requiring state
34 department be unable to negotiate a satisfactory contract with the
35 professional firm considered to be the most qualified, at a fee the
36 department determines to be fair and reasonable to the state of New
37 York, negotiations with that professional firm shall be formally termi-
38 nated. The requiring state department shall then undertake negotiations
39 with the second most qualified professional firm. Failing accord with
40 the second most qualified professional firm, the department shall
41 formally terminate negotiations. The requiring state department shall
42 then undertake negotiations with the third most qualified professional
43 firm. Should the requiring state department be unable to negotiate a
44 satisfactory contract with any of the selected professional firms, it
45 shall select additional professional firms in order of their competence
46 and qualification and it shall continue negotiations in accordance with
47 this section until an agreement is reached.

48 5. This legislation shall only apply to engineering and/or architec-
49 tural services AND/OR INTERIOR DESIGN SERVICES and/or surveying services
50 in excess of twenty-five thousand dollars.

51 S 2. This act shall take effect on the ninetieth day after it shall
52 have become a law.