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

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:

Section 1. Section 163 of the state finance law is amended by adding a new subdivision 15 to read as follows:

15. CONSULTANT SERVICES. A. BEFORE A STATE AGENCY ENTERS INTO A CONTRACT FOR CONSULTANT SERVICES WHICH IS ANTICIPATED TO COST MORE THAN FIVE HUNDRED THOUSAND DOLLARS IN A TWELVE MONTH PERIOD THE STATE AGENCY SHALL CONDUCT A COST COMPARISON REVIEW TO DETERMINE WHETHER THE SERVICES TO BE PROVIDED BY THE CONSULTANT CAN BE PERFORMED AT EQUAL OR LOWER COST BY UTILIZING STATE EMPLOYEES, UNLESS THE CONTRACT MEETS ONE OF THE EXCEPTIONS SET FORTH IN PARAGRAPH B OF THIS SUBDIVISION. 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, HEALTH SERVICES, MENTAL HEALTH SERVICES, ACCOUNTING, AUDITING, OR SIMILAR SERVICES, BUT SHALL NOT INCLUDE ANY PROFESSIONAL DESIGN SERVICES, LEGAL SERVICES OR SERVICES IN CONNECTION WITH LITIGATION INCLUDING EXPERT WITNESSES AND SHALL NOT INCLUDE CONTRACTS FOR CONSTRUCTION, DESIGN, OR RELATED PROFESSIONAL DESIGN SERVICES OF PUBLIC WORKS. FOR PURPOSES OF THIS SUBDIVISION, THE COSTS OF PERFORMING THE SERVICES BY STATE EMPLOYEES SHALL INCLUDE ANY SALARY, PENSION COSTS, ALL OTHER BENEFIT COSTS, COSTS THAT ARE REQUIRED FOR EQUIPMENT, FACILITIES AND ALL OTHER OVERHEAD. THE COSTS OF CONSULTANT SERVICES SHALL INCLUDE THE TOTAL COST OF THE CONTRACT. THE COST COMPARISON SHALL BE EXPRESSED WHERE FEASIBLE AS AN HOURLY RATE, OR WHERE SUCH A CALCULATION IS NOT FEASIBLE, AS A TOTAL ESTIMATED COST FOR THE ANTICIPATED TERM OF THE CONTRACT.

B. THE ESTIMATED COST OF A COMPARISON STUDY SHALL INCLUDE THE FINANCIAL COSTS TO THE STATE INCLUDING THE DIRECT SALARIES AND BENEFITS OF 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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COSTS, INDIRECT COSTS AND ALL OVERHEAD. THE AGENCY SHALL ALSO PREPARE AN EMPLOYEE IMPACT STATEMENT THAT IDENTIFIES WHAT OTHER SERVICES MAY NOT BE COMPLETED AS A RESULT OF EMPLOYEES WORKING ON THESE NEW COMPARISON STUDIES. IF A COMPARISON STUDY IS BEING PERFORMED BY AN OUTSIDE AGENCY OR AUTHORITY, ALL OF THEIR RESPECTIVE COSTS NEED TO BE INCLUDED ALONG WITH THE OVERSIGHT COSTS OF INTERNAL AGENCY STAFF. THE COST OF SUCH STUDY SHALL BE WHOLLY PAID FOR BY THE AGENCY. NO COSTS ASSOCIATED WITH THE STUDY SHALL BE PASSED ALONG TO OR ASSOCIATED WITH THE CONSULTANT.

C. A COST COMPARISON SHALL NOT BE REQUIRED IF:

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

(II) THE CONTRACT IS NECESSARY IN ORDER TO AVOID A CONFLICT OF INTEREST ON THE PART OF THE AGENCY OR ITS EMPLOYEES; OR

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

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

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

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

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

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

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

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

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