5128--B

Cal. No. 176

2011-2012 Regular Sessions

I N   A S S E M B L Y

February 14, 2011
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Introduced by M. of A. BRONSON, LUPARDO, JAFFEE, MAISEL, GALEF, COLTON,
  ROBERTS, N. RIVERA, BOYLAND -- Multi-Sponsored by -- M. of A. JACOBS,
  McENENY, P. RIVERA, SWEENEY -- read once and referred to the Committee
  on Governmental Operations -- committee discharged, bill amended,
  ordered reprinted as amended and recommitted to said committee --
  ordered to a third reading -- advanced to a third reading, amended and
  ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the state finance law, in relation to the cost effec-
  tiveness of consultant contracts by state agencies

  THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, 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, ENGINEERING, ARCHITEC-
13 TURE, ENVIRONMENTAL, HEALTH SERVICES, MENTAL HEALTH SERVICES, ACCOUNT-
14 ING, AUDITING, OR SIMILAR SERVICES, BUT SHALL NOT INCLUDE LEGAL SERVICES
15 OR SERVICES IN CONNECTION WITH LITIGATION INCLUDING EXPERT WITNESSES AND
16 SHALL NOT INCLUDE CONTRACTS FOR CONSTRUCTION OF PUBLIC WORKS. FOR
17 PURPOSES OF THIS SUBDIVISION, THE COSTS OF PERFORMING THE SERVICES BY
18 STATE EMPLOYEES SHALL INCLUDE ANY SALARY, PENSION COSTS, OR OTHER BENE-
19 FITS INCLUDING ANY INCREMENTAL COSTS THAT ARE REQUIRED FOR EQUIPMENT,
20 FACILITIES OR OTHER OVERHEAD. THE COSTS OF CONSULTANT SERVICES SHALL

1 INCLUDE THE TOTAL COST OF THE CONTRACT PLUS ANY COSTS INCURRED BY THE
2 AGENCY IN ADMINISTERING THE CONTRACT OVER AND ABOVE THE COSTS WHICH
3 WOULD HAVE BEEN INCURRED BY THE AGENCY IF SUCH SERVICES HAD BEEN
4 PERFORMED BY STATE EMPLOYEES. THE COST COMPARISON SHALL BE EXPRESSED
5 WHERE FEASIBLE AS AN HOURLY RATE, OR WHERE SUCH A CALCULATION IS NOT
6 FEASIBLE, AS A TOTAL ESTIMATED COST FOR THE ANTICIPATED TERM OF THE
7 CONTRACT.
8   B. A COST COMPARISON SHALL NOT BE REQUIRED IF:
9   (I) THE SERVICES ARE INCIDENTAL TO THE PURCHASE OF REAL OR PERSONAL
10 PROPERTY; OR
11   (II) THE CONTRACT IS NECESSARY IN ORDER TO AVOID A CONFLICT OF INTER-
12 EST ON THE PART OF THE AGENCY OR ITS EMPLOYEES; OR
13   (III) THE SERVICES ARE OF SUCH A HIGHLY SPECIALIZED NATURE THAT IT IS
14 NOT FEASIBLE TO UTILIZE STATE EMPLOYEES TO PERFORM THEM OR REQUIRE
15 SPECIAL EQUIPMENT THAT IS NOT FEASIBLE FOR THE STATE TO PURCHASE OR
16 LEASE; OR
17   (IV) THE SERVICES ARE OF SUCH AN URGENT NATURE THAT IT IS NOT FEASIBLE
18 TO UTILIZE STATE EMPLOYEES; OR
19   (V) THE SERVICES ARE ANTICIPATED TO BE SHORT TERM AND ARE NOT LIKELY
20 TO BE EXTENDED OR REPEATED AFTER THE CONTRACT IS COMPLETED.
21   C. NOTHING IN THIS SECTION SHALL BE DEEMED TO AUTHORIZE A STATE AGENCY
22 TO ENTER INTO A CONTRACT WHICH IS OTHERWISE PROHIBITED BY LAW.
23   D. ALL DOCUMENTS RELATED TO THE COST COMPARISON REQUIRED BY THIS
24 SUBDIVISION SHALL BE PUBLIC RECORDS SUBJECT TO DISCLOSURE PURSUANT TO
25 ARTICLE SIX OF THE PUBLIC OFFICERS LAW.
26   S 2. This act shall take effect on the ninetieth day after it shall
27 have become a law; provided, however, that the amendments to section 163
28 of the state finance law made by section one of this act shall not
29 affect the repeal of such section and shall be deemed to repeal there-
30 with.