

7268--A

2013-2014 Regular Sessions

I N A S S E M B L Y

May 8, 2013

Introduced by M. of A. BENEDETTO, BRINDISI, TENNEY, MAGNARELLI, ROBERTS, McDONALD -- Multi-Sponsored by -- M. of A. BARCLAY, CROUCH, WALTER -- read once and referred to the Committee on Corporations, Authorities and Commissions -- recommitted to the Committee on Corporations, Authorities and Commissions in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 IS AUTHORIZED TO ENCOURAGE PROFESSIONAL FIRMS
14 ENGAGED IN THE LAWFUL PRACTICE OF THE PROFESSION TO SUBMIT AN ANNUAL
15 STATEMENT OF QUALIFICATIONS AND PERFORMANCE DATA. THE CORPORATION FOR
16 EACH PROPOSED PROJECT IS AUTHORIZED TO EVALUATE CURRENT STATEMENTS OF
17 QUALIFICATIONS AND PERFORMANCE DATA ON FILE WITH THE CORPORATION. IF

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

LBD00703-02-4

1 DESIRED, THE CORPORATION MAY CONDUCT DISCUSSIONS WITH THREE OR MORE
2 PROFESSIONAL FIRMS REGARDING ANTICIPATED DESIGN CONCEPTS AND PROPOSED
3 METHODS OF APPROACH TO THE ASSIGNMENT. THE CORPORATION IS AUTHORIZED TO
4 SELECT, IN ORDER OF PREFERENCE, BASED UPON CRITERIA ESTABLISHED BY THE
5 CORPORATION, NO LESS THAN THREE PROFESSIONAL FIRMS DEEMED TO BE THE MOST
6 HIGHLY QUALIFIED TO PROVIDE THE SERVICES REQUIRED.

7 EVERY CORPORATION IS AUTHORIZED TO NEGOTIATE A CONTRACT WITH THE HIGH-
8 EST QUALIFIED PROFESSIONAL FIRM FOR ARCHITECTURAL AND/OR ENGINEERING
9 SERVICES AND/OR SURVEYING SERVICES AT COMPENSATION WHICH THE CORPORATION
10 DETERMINES IN WRITING TO BE FAIR AND REASONABLE TO SUCH CORPORATION. IN
11 MAKING THIS DECISION, THE CORPORATION IS AUTHORIZED TO TAKE INTO ACCOUNT
12 THE ESTIMATED VALUE OF THE SERVICES TO BE RENDERED, INCLUDING THE COSTS,
13 THE SCOPE, COMPLEXITY AND PROFESSIONAL NATURE THEREOF.

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

48 S 2. This act shall take effect immediately.