

7268

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
-- Multi-Sponsored by -- M. of A. BARCLAY -- read once and referred to
the Committee on Corporations, Authorities and Commissions

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 ASSEM-
BLY, 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 SHALL ENCOURAGE PROFESSIONAL FIRMS ENGAGED IN
14 THE LAWFUL PRACTICE OF THE PROFESSION TO SUBMIT AN ANNUAL STATEMENT OF
15 QUALIFICATIONS AND PERFORMANCE DATA. THE CORPORATION FOR EACH PROPOSED
16 PROJECT SHALL EVALUATE CURRENT STATEMENTS OF QUALIFICATIONS AND PERFORM-
17 ANCE DATA ON FILE WITH THE CORPORATION. IF DESIRED, THE CORPORATION MAY
18 CONDUCT DISCUSSIONS WITH THREE OR MORE PROFESSIONAL FIRMS REGARDING
19 ANTICIPATED DESIGN CONCEPTS AND PROPOSED METHODS OF APPROACH TO THE
20 ASSIGNMENT. THE CORPORATION SHALL SELECT, IN ORDER OF PREFERENCE, BASED
21 UPON CRITERIA ESTABLISHED BY THE CORPORATION, NO LESS THAN THREE PROFES-

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

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SIONAL FIRMS DEEMED TO BE THE MOST HIGHLY QUALIFIED TO PROVIDE THE SERVICES REQUIRED.

EVERY CORPORATION SHALL NEGOTIATE A CONTRACT WITH THE HIGHEST QUALIFIED PROFESSIONAL FIRM FOR ARCHITECTURAL AND/OR ENGINEERING SERVICES AND/OR SURVEYING SERVICES AT COMPENSATION WHICH THE CORPORATION DETERMINES IN WRITING TO BE FAIR AND REASONABLE TO SUCH CORPORATION. IN MAKING THIS DECISION, THE CORPORATION SHALL TAKE INTO ACCOUNT THE ESTIMATED VALUE OF THE SERVICES TO BE RENDERED, INCLUDING THE COSTS, THE SCOPE, COMPLEXITY AND PROFESSIONAL NATURE THEREOF.

The corporation shall not refuse to negotiate with a professional firm solely because the ratio of the "allowable indirect costs" to direct labor costs of the professional firm or the hourly labor rate in any labor category of the professional firm exceeds a limitation generally set by the corporation in the determination of the reasonableness of the estimated cost of services to be rendered by the professional firm, but rather the corporation should also consider the reasonableness of cost based on the total estimated cost of the service of the professional firm which should include, among other things, all the direct labor costs of the professional firm for such services plus all "allowable indirect costs," other direct costs, and negotiated profit of the professional firm. "Allowable indirect costs" of a professional firm are defined as those costs generally associated with overhead which cannot be specifically identified with a single project or contract and are considered reasonable and allowable under specific state contract or allowability limits. SHOULD THE CORPORATION BE UNABLE TO NEGOTIATE A SATISFACTORY CONTRACT WITH THE PROFESSIONAL FIRM CONSIDERED TO BE THE MOST QUALIFIED, AT A FEE THE CORPORATION DETERMINES TO BE FAIR AND REASONABLE TO THE CORPORATION, NEGOTIATIONS WITH THAT PROFESSIONAL FIRM SHALL BE FORMALLY TERMINATED. THE CORPORATION SHALL THEN UNDERTAKE NEGOTIATIONS WITH THE SECOND MOST QUALIFIED PROFESSIONAL FIRM. FAILING ACCORD WITH THE SECOND MOST QUALIFIED PROFESSIONAL FIRM, THE CORPORATION SHALL FORMALLY TERMINATE NEGOTIATIONS. THE CORPORATION SHALL THEN UNDERTAKE NEGOTIATIONS WITH THE THIRD MOST QUALIFIED PROFESSIONAL FIRM. SHOULD THE CORPORATION BE UNABLE TO NEGOTIATE A SATISFACTORY CONTRACT WITH ANY OF THE SELECTED PROFESSIONAL FIRMS, IT SHALL SELECT ADDITIONAL PROFESSIONAL FIRMS IN ORDER OF THEIR COMPETENCE AND QUALIFICATIONS AND IT SHALL CONTINUE NEGOTIATIONS IN ACCORDANCE WITH THIS SECTION UNTIL AN AGREEMENT IS REACHED. THE PROVISIONS OF THIS SUBPARAGRAPH SHALL ONLY APPLY TO ENGINEERING AND/OR ARCHITECTURAL SERVICES AND/OR SURVEYING SERVICES IN EXCESS OF TWENTY-FIVE THOUSAND DOLLARS AND SHALL NOT APPLY TO THE METROPOLITAN TRANSPORTATION AUTHORITY, THE NEW YORK CITY TRANSIT AUTHORITY OR THE TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY OR TO ANY OF THEIR SUBSIDIARIES.

S 2. This act shall take effect immediately.