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I N A S S E M B L Y

May 31, 2016

Introduced by M. of A. BUCHWALD -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the state finance law, in relation to contracts for landscape architecture

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 chapter 746 of the laws of 1982, and subdivision 4 as amended by chapter 383 of the laws of 1994, is amended to read as follows:

2 S 136-a. Contracts for architectural, engineering, LANDSCAPE ARCHITECTURE and surveying services. 1. As used in this section: the term "professional firm" shall be defined as any individual or sole proprietorship, partnership, corporation, association or other legal entity permitted by law to practice the professions of architecture, engineering, LANDSCAPE ARCHITECTURE or surveying.

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

4 2. It is the policy of New York state to negotiate contracts for architectural and/or engineering services AND/OR LANDSCAPE ARCHITECTURE and/or surveying services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable fees.

5 3. In the procurement of architectural, engineering, LANDSCAPE ARCHITECTURE and surveying services, the requiring state department shall encourage professional firms engaged in the lawful practice of the profession to submit an annual statement of qualifications and performance data. The requiring state department for each proposed project shall evaluate current statements of qualifications and performance data on file with the department. If desired, the requiring state department may conduct discussions with three or more professional firms regarding anticipated design concepts and proposed methods of approach to the assignment. The state department shall select, in order of preference, based upon criteria established by the requiring state department, no

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

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1 less than three professional firms deemed to be the most highly quali-
2 fied to provide the services required.

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

40 5. This legislation shall only apply to engineering and/or architec-
41 tural services AND/OR LANDSCAPE ARCHITECTURE and/or surveying services
42 in excess of twenty-five thousand dollars.

43 S 2. This act shall take effect immediately.