# STATE OF NEW YORK

7768

2017-2018 Regular Sessions

# IN ASSEMBLY

May 15, 2017

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

AN ACT to amend the state finance law, in relation to state contracts for geological services

**The People of the State of New York, represented in Senate and Assembly, do enact as follows:**

Section 1. Section 136-a of the state finance law, as amended by chapter 746 of the laws of 1982, subdivision 4 as amended by chapter 383 of the laws of 1994, is amended to read as follows:

§ 136-a. Contracts for architectural, engineering**, geological** 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**, geology** or surveying.

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.

2. It is the policy of New York state to negotiate contracts for architectural and/or engineering services and/or **geological 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.

3. In the procurement of architectural, engineering**, geological** 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

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

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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 less than three professional firms deemed to be the most highly qualified to provide the services required.

4. The requiring state department shall negotiate a contract with the highest qualified professional firm for architectural and/or engineering services and/or **geological service and/or** surveying services at compensation which the department determines in writing to be fair and reasonable to the state of New York. In making this decision, the department shall take into account the estimated value of the services to be rendered, including the costs, the scope, complexity, and professional nature thereof. The department 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 department in the determination of the reasonableness of the estimated cost of services to be rendered by the professional firm, but rather the department 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 requiring state department be unable to negotiate a satisfactory contract with the professional firm considered to be the most qualified, at a fee the department determines to be fair and reasonable to the state of New York, negotiations with that professional firm shall be formally terminated. The requiring state department shall then undertake negotiations with the second most qualified professional firm. Failing accord with the second most qualified professional firm, the department shall formally terminate negotiations. The requiring state department shall then undertake negotiations with the third most qualified professional firm. Should the requiring state department 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 qualification and it shall continue negotiations in accordance with this section until an agreement is reached.

5. This legislation shall only apply to engineering and/or architectural services and/or **geological and/or** surveying services in excess of twenty-five thousand dollars.

§ 2. This act shall take effect on the sixtieth day after it shall have become a law.