

# STATE OF NEW YORK

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7819--A

2017-2018 Regular Sessions

## IN ASSEMBLY

May 16, 2017

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Introduced by M. of A. BUCHWALD -- read once and referred to the Committee on Governmental Operations -- recommitted to the Committee on Governmental Operations 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 state finance law, in relation to state 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 388 of the laws of 2017, is amended to read as follows:

2 § 136-a. Contracts for architectural, engineering, geological, land-  
3 scape architecture and surveying services. 1. As used in this section:  
4 the term "professional firm" shall be defined as any individual or sole  
5 proprietorship, partnership, corporation, association or other legal  
6 entity permitted by law to practice the professions of architecture,  
7 engineering, geology, landscape architecture or surveying.

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

11 2. It is the policy of New York state to negotiate contracts for  
12 architectural and/or engineering services and/or geological and/or land-  
13 scape architecture and/or surveying services on the basis of demon-  
14 strated competence and qualification for the type of professional  
15 services required and at fair and reasonable fees.

16 3. In the procurement of architectural, engineering, geological, land-  
17 scape architecture and surveying services, the requiring state depart-  
18 ment shall encourage professional firms engaged in the lawful practice  
19 of the profession to submit an annual statement of qualifications and  
20 performance data. The requiring state department for each proposed  
21 project shall evaluate current statements of qualifications and perform-  
22

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

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1   ance data on file with the department. If desired, the requiring state  
2   department may conduct discussions with three or more professional firms  
3   regarding anticipated design concepts and proposed methods of approach  
4   to the assignment. The state department shall select, in order of pref-  
5   erence, based upon criteria established by the requiring state depart-  
6   ment, no less than three professional firms deemed to be the most highly  
7   qualified to provide the services required.

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

45   5. This legislation shall only apply to engineering and/or architec-  
46  tural services and/or geological and/or landscape architecture and/or  
47  surveying services in excess of twenty-five thousand dollars.

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