

# STATE OF NEW YORK

129

2017-2018 Regular Sessions

## IN ASSEMBLY

(Prefiled)

January 4, 2017

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

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

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 chap-  
2 ter 746 of the laws of 1982, subdivision 4 as amended by chapter 383 of  
3 the laws of 1994, is amended to read as follows:

4 § 136-a. Contracts for architectural, engineering, interior design,  
5 and surveying services. 1. As used in this section: the term "profes-  
6 sional firm" shall be defined as any individual or sole proprietorship,  
7 partnership, corporation, association or other legal entity permitted by  
8 law to practice the professions of architecture, engineering, interior  
9 design, or surveying.

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

13 2. It is the policy of New York state to negotiate contracts for  
14 architectural and/or engineering services and/or interior design  
15 services and/or surveying services on the basis of demonstrated compe-  
16 tence and qualification for the type of professional services required  
17 and at fair and reasonable fees.

18 3. (i) In the procurement of architectural, engineering, interior  
19 design, and surveying services, the requiring state department shall  
20 encourage professional firms engaged in the lawful practice of the  
21 profession to submit an annual statement of qualifications and perform-  
22 ance data. The requiring state department for each proposed project  
23 shall evaluate current statements of qualifications and performance data  
24 on file with the department. If desired, the requiring state department

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

LBD01498-01-7

1 may conduct discussions with three or more professional firms regarding  
2 anticipated design concepts and proposed methods of approach to the  
3 assignment. The state department shall select, in order of preference,  
4 based upon criteria established by the requiring state department, no  
5 less than three professional firms deemed to be the most highly quali-  
6 fied to provide the services required.

7 (ii) The annual statement of qualifications for interior design  
8 services shall include information demonstrating that such services are  
9 provided by an interior designer possessing certification pursuant to  
10 article one hundred sixty-one of the education law or provided under the  
11 supervision of a certified interior designer.

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

49 5. This legislation shall only apply to engineering and/or architec-  
50 tural services and/or interior design services and/or surveying services  
51 in excess of twenty-five thousand dollars.

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