

# STATE OF NEW YORK

1330

2017-2018 Regular Sessions

## IN SENATE

January 9, 2017

Introduced by Sen. VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

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 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, landscape architec-  
5 ture and surveying services. 1. As used in this section: the term  
6 "professional firm" shall be defined as any individual or sole proprie-  
7 torship, partnership, corporation, association or other legal entity  
8 permitted by law to practice the professions of architecture, engineer-  
9 ing, landscape architecture 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 landscaping architec-  
15 ture and/or surveying services on the basis of demonstrated competence  
16 and qualification for the type of professional services required and at  
17 fair and reasonable fees.

18 3. In the procurement of architectural, engineering, landscape archi-  
19 ecture 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  
25 may conduct discussions with three or more professional firms regarding

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

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

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

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

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