

STATE OF NEW YORK

5356

2021-2022 Regular Sessions

IN SENATE

March 2, 2021

Introduced by Sen. BRESLIN -- 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 the cost effectiveness of consultant contracts by state agencies and ensuring the efficient and effective use of state tax dollars

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

1 Section 1. Section 163 of the state finance law is amended by adding
2 a new subdivision 16 to read as follows:

3 16. Consultant services. a. Before a state agency enters into a
4 contract for consultant services which is anticipated to cost more than
5 one million dollars in a twelve month period the state agency shall
6 conduct a cost comparison review to determine whether the services to be
7 provided by the consultant can be performed at equal or lower cost by
8 utilizing state employees, unless the contract meets one of the
9 exceptions set forth in paragraph g of this subdivision. As used in this
10 section, the term "consultant services" shall mean any contract entered
11 into by a state agency for analysis, evaluation, research, training,
12 data processing, computer programming, the design, development and
13 implementation of technology, communications or telecommunications
14 systems or the infrastructure pertaining thereto, including hardware and
15 software, engineering including inspection and professional design
16 services, health services, mental health services, accounting, auditing,
17 or similar services and such services that are substantially similar to
18 and in lieu of services provided, in whole or in part, by state employ-
19 ees, but shall not include legal services or services in connection with
20 litigation including expert witnesses and shall not include contracts
21 for construction of public works. For purposes of this subdivision, the
22 costs of performing the services by state employees shall include any
23 salary, pension costs, all other benefit costs, costs that are required
24 for equipment, facilities and all other overhead. The costs of consult-

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

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1 ant services shall include the total cost of the contract including
2 costs that are required for equipment, facilities and all other overhead
3 and any continuing state costs directly associated with a contractor
4 providing a contracted function including, but not limited to, those
5 costs for inspection, supervision, monitoring of the contractor's work
6 and any pro rata share of existing costs or expenses, including adminis-
7 trative salaries and benefits, rent, equipment costs, utilities and
8 materials. The cost comparison shall be expressed where feasible as an
9 hourly rate, or where such a calculation is not feasible, as a total
10 estimated cost for the anticipated term of the contract.

11 b. Prior to entering any consultation services contract for the priva-
12 tization of a state service that is not currently privatized, the state
13 agency shall develop a cost comparison review in accordance with the
14 provisions of paragraph a of this subdivision.

15 c. (i) If such cost comparison review identifies a cost savings to the
16 state of ten percent or more, and such consultant services contract will
17 not diminish the quality of such service, the state agency shall develop
18 a business plan, in accordance with the provisions of paragraph d of
19 this subdivision, in order to evaluate the feasibility of entering any
20 such contract and to identify the potential results, effectiveness and
21 efficiency of such contract.

22 (ii) If such cost comparison review identifies a cost savings of less
23 than ten percent to the state and such consultant services contract will
24 not diminish the quality of such service, the state agency may develop a
25 business plan, in order to evaluate the feasibility of entering any such
26 contract and to identify the potential results, effectiveness and effi-
27 ciency of such contract, provided there is a significant public policy
28 reason to enter into such consultant services contract.

29 (iii) If any such proposed consultant services contract would result
30 in the layoff, transfer or reassignment of fifty or more state agency
31 employees, after consulting with the potentially affected bargaining
32 units, if any, the state agency shall notify the state employees of such
33 bargaining unit, after such cost comparison review is completed. Such
34 state agency shall provide an opportunity for said employees to reduce
35 the costs of conducting the operations to be privatized and provide
36 reasonable resources for the purpose of encouraging and assisting such
37 state employees to organize and submit a bid to provide the services
38 that are the subject of the potential consultant services contact.

39 d. Any business plan developed by a state agency for the purpose of
40 complying with paragraph c of this subdivision shall include: (i) the
41 cost comparison review as described in paragraph b of this subdivision,
42 (ii) a detailed description of the service or activity that is the
43 subject of such business plan, (iii) a description and analysis of the
44 state agency's current performance of such service or activity, (iv) the
45 goals to be achieved through the proposed consultant services contract
46 and the rationale for such goals, (v) a description of available options
47 for achieving such goals, (vi) an analysis of the advantages and disad-
48 vantages of each option, including, at a minimum, potential performance
49 improvements and risks attendant to termination of the contract or
50 rescission of such contract, (vii) a description of the current market
51 for the services or activities that are the subject of such business
52 plan, (viii) an analysis of the quality of services as gauged by stand-
53 ardized measures and key performance requirements including compen-
54 sation, turnover, and staffing ratios, (ix) a description of the specif-
55 ic results based performance standards that shall, at a minimum be met,
56 to ensure adequate performance by any party performing such service or

1 activity, (x) the projected time frame for key events from the beginning
2 of the procurement process through the expiration of a contract, if
3 applicable, (xi) a specific and feasible contingency plan that addresses
4 contractor nonperformance and a description of the tasks involved in and
5 costs required for implementation of such plan, and (xii) a transition
6 plan, if appropriate, for addressing changes in the number of agency
7 personnel, affected business processes, employee transition issues, and
8 communications with affected stakeholders, such as agency clients and
9 members of the public, if applicable. Such transition plan shall contain
10 a reemployment and retraining assistance plan for employees who are not
11 retained by the state or employed by the contractor. If any part of such
12 business plan is based upon evidence that the state agency is not suffi-
13 ciently staffed to provide the services required by the consultant
14 services contract, the state agency shall also include within such busi-
15 ness plan a recommendation for remediation of the understaffing to allow
16 such services to be provided directly by the state agency in the future.

17 e. Upon the completion of such business plan, the state agency shall
18 submit the business plan to the state comptroller.

19 f. (i) Not later than sixty days after receipt of any business plan,
20 the state comptroller shall transmit a report detailing its review,
21 evaluation and disposition regarding such business plan to the state
22 agency that submitted such cost comparison review. Such sixty-day period
23 may be extended for an additional thirty days upon a showing of good
24 cause.

25 (ii) The state comptroller's report shall include the business plan
26 prepared by the state agency, the reasons for approval or disapproval,
27 any recommendations or other information to assist the state agency in
28 determining if additional steps are necessary to move forward with a
29 consultant services contract.

30 (iii) If the state comptroller does not act on a business plan submit-
31 ted by a state agency within ninety days of receipt of such business
32 plan, such business plan shall be deemed approved.

33 g. A cost comparison shall not be required if the contracting agency
34 demonstrates:

35 (i) the services are incidental to the purchase of real or personal
36 property; or

37 (ii) the contract is necessary in order to avoid a conflict of inter-
38 est on the part of the agency or its employees; or

39 (iii) the services are of such a highly specialized nature that it is
40 not feasible to utilize state employees to perform them or require
41 special equipment that is not feasible for the state to purchase or
42 lease; or

43 (iv) the services are of such an urgent nature that it is not feasible
44 to utilize state employees; or

45 (v) the services are anticipated to be short term and are not likely
46 to be extended or repeated after the contract is completed; or

47 (vi) a quantifiable improvement in services that cannot be reasonably
48 duplicated.

49 h. Nothing in this section shall be deemed to authorize a state agency
50 to enter into a contract which is otherwise prohibited by law.

51 i. All documents related to the cost comparison and business plan
52 required by this subdivision and the determinations made pursuant to
53 paragraph g of this subdivision shall be public records subject to
54 disclosure pursuant to article six of the public officers law.

55 § 2. On or before December 31, 2023 the state comptroller shall
56 prepare a report, to be delivered to the governor, the temporary presi-

1 dent of the senate and the speaker of the assembly. Such report shall
2 include, but need not be limited to, an analysis of the effectiveness of
3 the cost comparison review program and an analysis of the cost savings
4 associated with performing such cost comparison.

5 § 3. This act shall take effect on the ninetieth day after it shall
6 have become a law and shall apply to all contracts solicited or entered
7 into by state agencies after the effective date of this act; provided,
8 however, the amendments to section 163 of the state finance law made by
9 section one of this act shall not affect the repeal of such section and
10 shall be deemed repealed therewith.