STATE OF NEW YORK

5713

2021-2022 Regular Sessions

IN SENATE

March 16, 2021

Introduced by Sen. COMRIE -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public authorities law, in relation to requiring public authorities and public benefit corporations to negotiate with professional firms providing architectural or engineering services in order from the most qualified to the least qualified with regard to the provision of services to the authority or corporation

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

Section 1. Subparagraph (iv) of paragraph (b) of subdivision 3 of section 2879 of the public authorities law, as amended by chapter 383 of the laws of 1994, is amended to read as follows:

(iv) as used in this subparagraph, 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 or surveying.

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

In the procurement of architectural, engineering and surveying services, the corporation is required to encourage professional firms engaged in the lawful practice of the profession to submit an annual statement of qualifications and performance data. The corporation for each proposed project is required to evaluate current statements of qualifications and performance data on file with the corporation. If desired, the corporation may conduct discussions with three or more professional firms regarding anticipated design concepts and proposed methods of approach to the assignment. The corporation is required to select, in order of preference, based upon criteria established by the

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

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corporation, no less than three professional firms deemed to be the most highly qualified to provide the services required.

Every corporation is required to negotiate a contract with the highest qualified professional firm for architectural and/or engineering services and/or surveying services at compensation which the corporation determines in writing to be fair and reasonable to such corporation. In making this decision, the corporation is required to take into account the estimated value of the services to be rendered, including the costs, the scope, complexity and professional nature thereof.

The corporation 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 corporation in the determination of the reasonableness of the estimated cost of services to be rendered by the professional firm, but rather the corporation 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 corporation choose to engage in a qualification based procurement and be unable to negotiate a satisfactory contract with the professional firm considered to be the most qualified, at a fee the corporation determines to be fair and reasonable to the corporation, negotiations with that professional firm shall be formally terminated. The corporation shall then undertake negotiations with the second most qualified professional firm. Failing accord with the second most qualified professional firm, the corporation shall formally terminate negotiations. The corporation shall then undertake negotiations with the third most qualified professional firm. Should the corporation 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 qualifications and it shall continue negotiations in accordance with this section until an agreement is reached. The provisions of this subparagraph shall only apply to engineering and/or architectural services and/or surveying services in excess of twenty-five thousand dollars and shall not apply to the metropolitan transportation authority, the New York city transit authority or the Triborough bridge and tunnel authority or to any of their subsidiaries.

§ 2. This act shall take effect immediately.