

# STATE OF NEW YORK

9575--A

## IN ASSEMBLY

March 20, 2024

Introduced by M. of A. HYNDMAN -- read once and referred to the Committee on Corporations, Authorities and Commissions -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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, engineering, geological, landscape architectural or surveying 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:

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

4 (iv) as used in this subparagraph, the term "professional firm" shall  
5 be defined as any individual or sole proprietorship, partnership, corpo-  
6 ration, association, or other legal entity permitted by law to practice  
7 the professions of architecture, engineering or surveying.

8 It is the policy of New York state to negotiate contracts for archi-  
9 tectural services and/or engineering services and/or geological services  
10 and/or landscape architectural services and/or surveying services on the  
11 basis of demonstrated competence and qualification for the type of  
12 professional services required and at fair and reasonable fees.

13 In the procurement of architectural, engineering, geological, land-  
14 scape architectural and surveying services, the corporation is required  
15 to encourage professional firms engaged in the lawful practice of the  
16 profession to submit an annual statement of qualifications and perform-  
17 ance data. The corporation for each proposed project is required to  
18 evaluate current statements of qualifications and performance data on  
19 file with the corporation. If desired, the corporation may conduct  
20 discussions with three or more professional firms regarding anticipated  
21 design concepts and proposed methods of approach to the assignment. The  
22 corporation is required to select, in order of preference, based upon

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

LBD04392-03-4

1 criteria established by the corporation, no less than three professional  
2 firms deemed to be the most highly qualified to provide the services  
3 required.

4 Every corporation is required to negotiate a contract with the highest  
5 qualified professional firm for architectural services and/or engineer-  
6 ing services and/or geological services and/or landscape architectural  
7 services and/or surveying services at compensation which the corporation  
8 determines in writing to be fair and reasonable to such corporation. In  
9 making this decision, the corporation is required to take into account  
10 the estimated value of the services to be rendered, including the costs,  
11 the scope, complexity and professional nature thereof.

12 The corporation shall not refuse to negotiate with a professional firm  
13 solely because the ratio of the "allowable indirect costs" to direct  
14 labor costs of the professional firm or the hourly labor rate in any  
15 labor category of the professional firm exceeds a limitation generally  
16 set by the corporation in the determination of the reasonableness of the  
17 estimated cost of services to be rendered by the professional firm, but  
18 rather the corporation should also consider the reasonableness of cost  
19 based on the total estimated cost of the service of the professional  
20 firm which should include, among other things, all the direct labor  
21 costs of the professional firm for such services plus all "allowable  
22 indirect costs," other direct costs, and negotiated profit of the  
23 professional firm. "Allowable indirect costs" of a professional firm are  
24 defined as those costs generally associated with overhead which cannot  
25 be specifically identified with a single project or contract and are  
26 considered reasonable and allowable under specific state contract or  
27 allowability limits. Should the corporation choose to engage in a qual-  
28 ification based procurement and be unable to negotiate a satisfactory  
29 contract with the professional firm considered to be the most qualified,  
30 at a fee the corporation determines to be fair and reasonable to the  
31 corporation, negotiations with that professional firm shall be formally  
32 terminated. The corporation shall then undertake negotiations with the  
33 second most qualified professional firm. Failing accord with the second  
34 most qualified professional firm, the corporation shall formally termi-  
35 nate negotiations. The corporation shall then undertake negotiations  
36 with the third most qualified professional firm. Should the corporation  
37 be unable to negotiate a satisfactory contract with any of the selected  
38 professional firms, it shall select additional professional firms in  
39 order of their competence and qualifications and it shall continue nego-  
40 tiations in accordance with this section until an agreement is reached.  
41 The provisions of this subparagraph shall only apply to engineering  
42 services and/or architectural services and/or geological services and/or  
43 landscape architectural services and/or surveying services in excess of  
44 twenty-five thousand dollars and shall not apply to the metropolitan  
45 transportation authority, the New York city transit authority or the  
46 Triborough bridge and tunnel authority or to any of their subsidiaries.

47 § 2. This act shall take effect immediately.