

ASSEMBLY, No. 2035

STATE OF NEW JERSEY

INTRODUCED MAY 20, 1996^

By Assemblyman DiGAETANO

1 **AN ACT** concerning policies and procedures for contracting for certain
2 professional services by State agencies, and supplementing
3 P.L.1954, c.48 (C.52:34-6 et seq.).
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5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

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8 1. It is the policy of this State that State contracts for architectural,
9 engineering and land surveying services shall be publicly announced
10 prior to being awarded and that contracts for these services shall be
11 negotiated on the basis of demonstrated competence and qualifications
12 for the type of professional services required and at fair and reasonable
13 compensation.

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15 2. As used in this act:

16 "agency" means any of the principal departments in the Executive
17 Branch of State Government, and any division, board, bureau, office,
18 commission or other instrumentality created by a principal department
19 and any independent State authority, commission, instrumentality or
20 agency, which is authorized by law to contract for professional
21 architectural, engineering or land surveying services;

22 "compensation" means the basis of payment by an agency for
23 professional architectural, engineering or land surveying services;

24 "professional firm" means any individual, firm, partnership,
25 corporation, association or other legal entity permitted by law to
26 practice architecture, engineering, or land surveying in this State;

27 "professional architectural, engineering and land surveying services"
28 means those services, including planning, environmental, and
29 construction inspection services required for the development and
30 construction of projects, within the scope of practice of architecture,
31 professional engineering or professional land surveying as defined by
32 the laws of this State or those performed by an architect, professional
33 engineer or professional land surveyor in connection with his
34 professional employment practice.

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36 3. A professional firm which wishes to be considered qualified to
37 provide professional architectural, engineering, or land surveying

1 services to an agency seeking to negotiate a contract or agreement for
2 the performance of such services shall file or shall have filed with the
3 agency a current statement of qualifications and supporting data. Such
4 a statement may be filed at any time during a calendar year. The
5 content of any such statement shall conform to such regulations with
6 respect thereto as the State Treasurer, in accordance with the
7 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
8 seq.), shall promulgate. For the purposes of this section and section
9 5 of this act, no statement which shall have been filed more than one
10 year prior to the publication of an advertisement pursuant to the
11 provisions of section 4 of this act shall be deemed to be a current
12 statement with respect to qualification of the firm which shall have
13 filed the statement to provide professional architectural, engineering,
14 or land surveying services under any contract or agreement of which
15 notice is given through that advertisement.

16 A statement of qualifications and supporting data filed with an
17 agency under this section shall be a public record for all purposes of
18 P.L.1963, c.73 (C.47:1A-1 et seq.).
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20 4. Notwithstanding the provisions of sections 2 through 4 of
21 P.L.1954, c.48 (C.52:34-7 through 52:34-9), a contract or agreement
22 with an agency for the procurement of professional architectural,
23 engineering, or land surveying services shall be made, negotiated, or
24 awarded only after public advertisement of notice that such a contract
25 or agreement is to be made or awarded. To the extent consistent with
26 the purposes and provisions of this section, the notice shall conform
27 to the requirements applicable under subsections (a) and (b) of section
28 7 of P.L.1954, c.48 (C.52:34-12) to an advertisement for bids. The
29 advertisement shall include a statement of the criteria, established as
30 provided under subsection b. of section 5 of this act, by which the
31 agency seeking to procure those professional services shall determine
32 the order of preference to be used in designating the firms most highly
33 qualified to perform the services; this statement shall either set forth
34 explicitly and in full the terms of those criteria or identify them by
35 reference to the regulation or regulations in which those criteria shall
36 have been promulgated as required by subsection c. of that section 5.
37 In addition, the advertisement shall include notice that professional
38 firms wishing to be considered for selection as a potential provider of
39 such services in connection with a proposed project must have
40 submitted to the agency a current statement of qualifications and
41 supporting data as prescribed in section 3 of this act.
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43 5. a. In the procurement of architectural, engineering and land
44 surveying services, no agency shall make, negotiate, or award a
45 contract or agreement for the performance of such services with or to
46 any professional firm which has not filed with the agency a current

1 statement of qualifications and supporting data as prescribed under
2 section 3 of this act.

3 b. For each proposed project, an agency shall evaluate current
4 statements of qualifications and supporting data on file with the
5 agency. If desired, the agency may solicit statements of qualifications
6 unique to the specific project which would in narrative form outline
7 design concepts and proposed methods of approach to the assignment.
8 The agency shall select, in order of preference, based upon criteria
9 established by the agency, no fewer than three professional firms
10 deemed to be the most highly qualified to provide the services
11 required.

12 c. An agency which intends or expects to make, negotiate or award
13 a contract or agreement for the procurement of professional
14 architectural, engineering, or land surveying services shall, before
15 publishing an advertisement of notice with respect to any such
16 contract or agreement, have adopted by regulation and have
17 promulgated, in accordance with the "Administrative Procedure Act,"
18 P.L.1968, c.410 (C.52:14B-1 et seq.), the criteria by which it shall
19 with respect to any such contract or agreement make the selection of
20 qualified firms as prescribed by subsection b. of this section. The
21 provisions of this subsection shall not be construed to require the
22 adoption by an agency of regulations regarding the selection criteria
23 to be applicable with respect to a particular contract if such
24 regulations were previously promulgated and remain in effect with
25 respect to such a contract.

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27 6. An agency shall negotiate a contract with the most qualified
28 professional firm for architectural, engineering or land surveying
29 services at compensation which the agency determines to be fair and
30 reasonable to the State of New Jersey. In making this decision, the
31 agency shall take into account the estimated value of the services to be
32 rendered and the scope, complexity, and professional nature thereof.
33 Should the agency be unable to negotiate a satisfactory contract with
34 the professional firm considered to be the most qualified at a fee the
35 agency determines to be fair and reasonable, negotiations with that
36 professional firm shall be formally terminated. The agency shall then
37 undertake negotiations with the second most qualified professional
38 firm. Failing accord with the second most qualified professional firm,
39 the agency shall formally terminate negotiations. The agency shall
40 then undertake negotiations with the third most qualified professional
41 firm. Should the agency be unable to negotiate a satisfactory contract
42 with any of the selected professional firms, it shall select additional
43 professional firms in order of their competence and qualifications and
44 it shall continue negotiations in accordance with this section until an
45 agreement is reached.

1 7. The provisions of this act shall only apply to contracts for
2 architectural, engineering and land surveying services in excess of
3 \$25,000. Nothing in this act shall preclude a State agency from using
4 procurement processes other than those prescribed herein if those
5 processes have been approved by the federal government or if an
6 emergency has been declared by the chief executive officer of the
7 agency.

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9 8. This act shall take effect immediately.

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STATEMENT

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14 This bill provides that the selection of persons to perform
15 architectural, engineering, and land surveying services, including
16 planning, environmental, and construction inspection services, required
17 for the development and construction of projects (hereafter,
18 "professional services") for the State shall be based upon professional
19 qualification. The provisions of the bill continue the current
20 exemption of contracts for such professional services from the regular
21 competitive bidding process, but establish certain uniform statutory
22 procedures to govern both the qualification of professional service
23 firms wishing to provide such services and the awarding of such
24 contracts to firms so determined to be qualified.

25 The provisions of the bill may be summarized as follows:

26 (1) A State agency that undertakes a project requiring the
27 employment of a firm to provide professional services (as defined
28 above) in connection with the project is to negotiate any agreement for
29 the performance of those services with the most qualified firm.

30 (2) For each proposed project, an agency shall select, in order of
31 preference and based upon criteria established by the agency, at least
32 three professional firms deemed to be the most highly qualified to
33 provide the services required. This preference-ordered designation of
34 qualified firms is to be based on an evaluation of statements of
35 qualifications and supporting data which professional service providers
36 have filed with the agency within the preceding year, and "no agency
37 shall make, negotiate, or award a contract or agreement for the
38 performance of such services with or to any professional firm which
39 has not filed with the agency a current statement of qualifications and
40 supporting data." The State Treasurer is to specify by regulation the
41 content of these statements. The agency may solicit narrative
42 statements of qualifications unique to the specific project which would
43 outline design concepts and proposed methods of approach to the
44 assignment.

45 (3) State agencies are required to advertise their intention to award
46 a contract for professional services. The advertisement is to conform,

1 so far as consistent with the use of a qualification-based selection
2 process, to the standard form of notice applicable to an advertisement
3 for bids. The advertisement is to include a statement of criteria by
4 which the order of qualification preference is determined. Before
5 publishing such an advertisement, the agency is to adopt and
6 promulgate the criteria by which it shall make the selection of qualified
7 firms; this requirement, however, "shall not be construed to require the
8 adoption by an agency of regulations regarding the selection criteria
9 to be applicable with respect to a particular contract if such
10 regulations were previously promulgated and remain in effect with
11 respect to such a contract."

12 (4) The contract which an agency negotiates with the "most
13 qualified professional firm" as prescribed under (1) above shall be "at
14 compensation which the agency determines to be fair and reasonable
15 to the State of New Jersey", taking into account "the estimated value
16 of the services to be rendered and the scope, complexity, and
17 professional nature thereof." If these negotiations fail, negotiations
18 are to be attempted with the next most qualified firm, and so on.

19 The bill does not apply to professional services contracts of
20 \$25,000 or less.

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25 Provides that State contracts for architectural, engineering and land
26 surveying services would be subject to a process of competitive
27 negotiation and would not be publicly bid.