

[First Reprint]  
ASSEMBLY, No. 2035

STATE OF NEW JERSEY

INTRODUCED MAY 20, 1996<sup>1</sup>

By Assemblymen DiGAETANO and FELICE

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

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

**<sup>1</sup> Assembly AAP committee amendments adopted June 9, 1997.**

1 the laws of this State or those performed by an architect, professional  
2 engineer or professional land surveyor in connection with his  
3 professional employment practice.

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

22 A statement of qualifications and supporting data filed with an  
23 agency under this section shall be a public record for all purposes of  
24 P.L.1963, c.73 (C.47:1A-1 et seq.).

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26 4. Notwithstanding the provisions of sections 2 through 4 of  
27 P.L.1954, c.48 (C.52:34-7 through 52:34-9), a contract or agreement  
28 with an agency for the procurement of professional architectural,  
29 engineering, or land surveying services shall be <sup>1</sup>[made, negotiated, or  
30 awarded only after public advertisement of notice that such a contract  
31 or agreement is to be made or awarded] publicly advertised prior to  
32 the solicitation of proposals from interested firms<sup>1</sup>. To the extent  
33 consistent with the purposes and provisions of this section, the  
34 <sup>1</sup>[notice] advertisement<sup>1</sup> shall conform to the requirements applicable  
35 under subsections (a) and (b) of section 7 of P.L.1954, c.48  
36 (C.52:34-12) to an advertisement for bids. The advertisement shall  
37 include a statement of the criteria, established as provided under  
38 subsection b. of section 5 of this act, by which the agency seeking to  
39 procure those professional services shall determine the order of  
40 preference to be used in designating the firms most highly qualified to  
41 perform the services; this statement shall either set forth explicitly and  
42 in full the terms of those criteria or identify them by reference to the  
43 regulation or regulations in which those criteria shall have been  
44 promulgated as required by subsection c. of that section 5. In  
45 addition, the advertisement shall include notice that professional firms  
46 wishing to be considered for selection as a potential provider of such

1 services in connection with a proposed project must have submitted to  
2 the agency a current statement of qualifications and supporting data as  
3 prescribed in section 3 of this act.

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5 5. a. In the procurement of architectural, engineering and land  
6 surveying services, no agency shall make, negotiate, or award a  
7 contract or agreement for the performance of such services with or to  
8 any professional firm which has not filed with the agency a current  
9 statement of qualifications and supporting data as prescribed under  
10 section 3 of this act.

11 b. For each proposed project, an agency shall evaluate current  
12 statements of qualifications and supporting data on file with the  
13 agency. <sup>1</sup>[If desired, the] The<sup>1</sup> agency may solicit statements of  
14 qualifications unique to the specific project which would in narrative  
15 form outline design concepts and proposed methods of approach to  
16 the assignment. The agency shall select, in order of preference, based  
17 upon criteria established by the agency, no fewer than three  
18 professional firms deemed to be the most highly qualified to provide  
19 the services required <sup>1</sup>, except that the agency may select two  
20 professional firms if only two such firms responded to the solicitation  
21 of proposals or meet the qualifications required for the project<sup>1</sup>.

22 c. An agency which intends or expects to make, negotiate or award  
23 a contract or agreement for the procurement of professional  
24 architectural, engineering, or land surveying services shall, before  
25 publishing an advertisement of notice with respect to any such  
26 contract or agreement, have adopted by regulation and have  
27 promulgated, in accordance with the "Administrative Procedure Act,"  
28 P.L.1968, c.410 (C.52:14B-1 et seq.), the <sup>1</sup>[criteria] procedure<sup>1</sup> by  
29 which it shall with respect to any such contract or agreement make the  
30 selection of qualified firms as prescribed by subsection b. of this  
31 section. The provisions of this subsection shall not be construed to  
32 require the adoption by an agency of regulations regarding the  
33 selection criteria to be applicable with respect to a particular contract  
34 if such regulations were previously promulgated and remain in effect  
35 with respect to such a contract.

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37 6. An agency shall negotiate a contract with the most qualified  
38 professional firm for architectural, engineering or land surveying  
39 services at compensation which the agency determines to be fair and  
40 reasonable to the State of New Jersey. In making this decision, the  
41 agency shall take into account the estimated value of the services to be  
42 rendered and the scope, complexity, and professional nature thereof.  
43 Should the agency be unable to negotiate a satisfactory contract with  
44 the professional firm considered to be the most qualified at a fee the  
45 agency determines to be fair and reasonable, negotiations with that  
46 professional firm shall be formally terminated. The agency shall then

1 undertake negotiations with the second most qualified professional  
2 firm. Failing accord with the second most qualified professional firm,  
3 the agency shall formally terminate negotiations. The agency shall  
4 then undertake negotiations with the third most qualified professional  
5 firm. Should the agency be unable to negotiate a satisfactory contract  
6 with any of the selected professional firms, it shall select additional  
7 professional firms in order of their competence and qualifications and  
8 it shall continue negotiations in accordance with this section until an  
9 agreement is reached.

10

11 7. <sup>1</sup>[The] Notwithstanding the provisions of section 2 of P.L.1954,  
12 c.48 (C.52:34-7) to the contrary, the<sup>1</sup> provisions of this act shall only  
13 apply to contracts for architectural, engineering and land surveying  
14 services in excess of \$25,000. Nothing in this act shall preclude a  
15 State agency from using procurement processes other than those  
16 prescribed herein if those processes have been approved by the federal  
17 government or if an emergency has been declared by the chief  
18 executive officer of the agency.

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20 8. This act shall take effect immediately.

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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 with the most qualified professional firm.