

[Passed Both Houses]

[Second Reprint]

SENATE, No. 2194

STATE OF NEW JERSEY

INTRODUCED JUNE 12, 1997

**By Senators MARTIN, CIESLA, Matheussen,
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.).
4

5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*
7

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 ¹[practice architecture,] provide professional architectural.¹

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:

¹ Senate STR committee amendments adopted December 18, 1997.

² Senate amendments adopted in accordance with Governor's recommendations January 12, 1998.

1 engineering, or land surveying ¹services¹ in this State;

2 "professional architectural, engineering and land surveying services"
3 means those services, including planning, environmental, and
4 construction inspection services required for the development and
5 construction of projects, within the scope of practice of architecture,
6 professional engineering or professional land surveying as defined by
7 the laws of this State or those performed by an architect, professional
8 engineer or professional land surveyor in connection with his
9 professional employment practice.

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11 3. A professional firm which wishes to be considered qualified to
12 provide professional architectural, engineering, or land surveying
13 services to an agency seeking to negotiate a contract or agreement for
14 the performance of such services shall file or shall have filed with the
15 agency a current statement of qualifications and supporting data. Such
16 a statement may be filed at any time during a calendar year. The
17 content of any such statement shall conform to such regulations with
18 respect thereto as the State Treasurer, in accordance with the
19 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
20 seq.), shall promulgate. For the purposes of this section and section
21 5 of this act, no statement which shall have been filed more than ¹[one
22 year] two years¹ prior to the publication of an advertisement pursuant
23 to the provisions of section 4 of this act shall be deemed to be a
24 current statement with respect to qualification of the firm which shall
25 have filed the statement to provide professional architectural,
26 engineering, or land surveying services under any contract or
27 agreement of which notice is given through that advertisement.

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

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32 4. Notwithstanding the provisions of sections 2 through 4 of
33 P.L.1954, c.48 (C.52:34-7 through 52:34-9), a contract or agreement
34 with an agency for the procurement of professional architectural,
35 engineering, or land surveying services shall be ¹[made, negotiated, or
36 awarded only after public advertisement of notice that such a contract
37 or agreement is to be made or awarded] publicly advertised prior to
38 the solicitation of proposals or expressions of interest from interested
39 firms¹. To the extent consistent with the purposes and provisions of
40 this section, the ¹[notice] advertisement¹ shall conform to the
41 requirements applicable under subsections (a) and (b) of section 7 of
42 P.L.1954, c.48 (C.52:34-12) ¹[to an advertisement for bids] or may be
43 publicly advertised through electronic means¹. The advertisement shall
44 include a statement of the criteria ¹[, established as provided under
45 subsection b. of section 5 of this act,]¹ by which the agency seeking to
46 procure those professional services shall ¹evaluate the technical

1 qualifications of professional firms and¹ determine the order of
2 preference to be used in designating the firms most highly qualified to
3 perform the services; this statement shall either set forth explicitly and
4 in full the terms of those criteria or identify them by reference to the
5 regulation or regulations in which those criteria shall have been
6 promulgated as required by subsection c. of ¹[that]¹ section 5 ¹of this
7 act¹. In addition, the advertisement shall include notice that
8 professional firms wishing to be considered for selection as a potential
9 provider of such services in connection with a proposed project must
10 have submitted to the agency a current statement of qualifications and
11 supporting data as prescribed in section 3 of this act.

12
13 5. a. In the procurement of architectural, engineering and land
14 surveying services, no agency shall make, negotiate, or award a
15 contract or agreement for the performance of such services with or to
16 any professional firm which has not filed with the agency a current
17 statement of qualifications and supporting data as prescribed under
18 section 3 of this act.

19 b. For each proposed project, an agency shall evaluate current
20 statements of qualifications and supporting data on file with the
21 agency. ¹[If desired, the] The ¹agency may solicit [¹statements of
22 qualifications] proposals or expressions of interest¹ unique to the
23 specific project which would in narrative form outline design concepts
24 and proposed methods of approach to the assignment. The agency
25 shall select, in order of preference, based upon ¹the¹ criteria
26 ¹[established by the agency, no fewer than] included in the
27 advertisement required by section 4 of this act, at least¹ three
28 professional firms deemed to be the most highly qualified to provide
29 the services required ¹, except that the agency may select fewer
30 professional firms if fewer such firms responded to the solicitation or
31 meet the qualifications required for the project¹.

32 c. An agency which intends or expects to make, negotiate or award
33 a contract or agreement for the procurement of professional
34 architectural, engineering, or land surveying services shall, before
35 publishing an advertisement of notice with respect to any such
36 contract or agreement, have adopted by regulation and have
37 promulgated, in accordance with the "Administrative Procedure Act,"
38 P.L.1968, c.410 (C.52:14B-1 et seq.), the criteria by which it shall
39 with respect to any such contract or agreement make the selection of
40 qualified firms as prescribed by subsection b. of this section. The
41 provisions of this subsection shall not be construed to require the
42 adoption by an agency of regulations regarding the selection criteria
43 to be applicable with respect to a particular contract if such
44 regulations were previously promulgated and remain in effect with
45 respect to such a contract.

1 6. ²[An] Once the top three or more ranked firms have been
2 identified, each firm, at the request of the agency, shall submit a fee
3 proposal. The firms shall not be told of their ranking position at that
4 time. Using the three fee proposals to provide a general guideline, an²
5 agency shall negotiate a contract with the most ¹technically¹ qualified
6 professional firm for architectural, engineering or land surveying
7 services at compensation which the agency determines to be fair and
8 reasonable to the State of New Jersey. In making this ¹[decision]
9 determination¹, the agency shall take into account the estimated value
10 of the services to be rendered and the scope, complexity, and
11 professional nature thereof. Should the agency be unable to negotiate
12 a satisfactory contract with the professional firm considered to be the
13 most qualified at a fee the agency determines to be fair and reasonable,
14 negotiations with that professional firm shall be formally terminated.
15 The agency shall then undertake negotiations with the second most
16 qualified professional firm. Failing accord with the second most
17 qualified professional firm, the agency shall formally terminate
18 negotiations. The agency shall then undertake negotiations with the
19 third most qualified professional firm. Should the agency be unable to
20 negotiate a satisfactory contract with any of the selected professional
21 firms, it shall select additional professional firms in order of their
22 competence and qualifications and it shall continue negotiations in
23 accordance with this section until an agreement is reached.

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25 7. ¹[The] Notwithstanding the provisions of section 2 of P.L.1954,
26 c.48 (C.52:34-7) to the contrary, the¹ provisions of this act shall only
27 apply to contracts for architectural, engineering and land surveying
28 services in excess of \$25,000. Nothing in this act shall preclude a
29 State agency from using procurement processes other than those
30 prescribed herein if those processes have been approved by the federal
31 government ¹or other State statute¹ or if an emergency has been
32 declared by the chief executive officer of the agency.

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34 8. This act shall take effect ¹[immediately] on the 360th day after
35 enactment but an agency may take such anticipatory administrative
36 action in advance as shall be necessary for the implementation of the
37 act¹.

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