

[Passed Both Houses]

[Second Reprint]

**SENATE, No. 2194**

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**STATE OF NEW JERSEY**

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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.  
14

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 <sup>1</sup>[practice architecture,] provide professional architectural.<sup>1</sup>

**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> Senate STR committee amendments adopted December 18, 1997.

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

1 engineering, or land surveying <sup>1</sup>services<sup>1</sup> 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.

10

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 <sup>1</sup>[one  
22 year] two years<sup>1</sup> 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.

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

31

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 <sup>1</sup>[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 firms<sup>1</sup>. To the extent consistent with the purposes and provisions of  
40 this section, the <sup>1</sup>[notice] advertisement<sup>1</sup> 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) <sup>1</sup>[to an advertisement for bids] or may be  
43 publicly advertised through electronic means<sup>1</sup>. The advertisement shall  
44 include a statement of the criteria <sup>1</sup>[, established as provided under  
45 subsection b. of section 5 of this act,]<sup>1</sup> by which the agency seeking to  
46 procure those professional services shall <sup>1</sup>evaluate the technical

1 qualifications of professional firms and<sup>1</sup> 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 <sup>1</sup>[that]<sup>1</sup> section 5 <sup>1</sup>of this  
7 act<sup>1</sup>. 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.

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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. <sup>1</sup>[If desired, the] The <sup>1</sup>agency may solicit [<sup>1</sup>statements of  
22 qualifications] proposals or expressions of interest<sup>1</sup> 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 <sup>1</sup>the<sup>1</sup> criteria  
26 <sup>1</sup>[established by the agency, no fewer than] included in the  
27 advertisement required by section 4 of this act, at least<sup>1</sup> three  
28 professional firms deemed to be the most highly qualified to provide  
29 the services required <sup>1</sup>, 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 project<sup>1</sup>.

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. <sup>2</sup>[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, an<sup>2</sup>  
5 agency shall negotiate a contract with the most <sup>1</sup>technically<sup>1</sup> 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 <sup>1</sup>[decision]  
9 determination<sup>1</sup>, 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. <sup>1</sup>[The] Notwithstanding the provisions of section 2 of P.L.1954,  
26 c.48 (C.52:34-7) to the contrary, the<sup>1</sup> 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 <sup>1</sup>or other State statute<sup>1</sup> 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 <sup>1</sup>[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 act<sup>1</sup>.

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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.