

52:34-6

LEGISLATIVE HISTORY CHECKLIST
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(State contracts—architectural, engineering services)

NJSA: 52:34-6

LAWS OF: 1997 CHAPTER: 399

BILL NO: S2194

SPONSOR(S): Martin

DATE INTRODUCED: June 12, 1997

COMMITTEE: ASSEMBLY: ---

SENATE: Transportation

AMENDED DURING PASSAGE: Yes Amendments during passage denoted
Second reprint enacted by superscript numbers

DATE OF PASSAGE: ASSEMBLY: January 12, 1998 Re-enacted 1-12-98

SENATE: January 8, 1998 Re-enacted 1-12-98

DATE OF APPROVAL: January 19, 1998

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: No

SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: ~~No~~ Yes

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:
REPORTS: No

HEARINGS: No

KBP:pp

§§1-7
C. 52:34-9.1
To
52:34-9.7
§8
Note To §§1-7

P.L. 1997, CHAPTER 399, *approved January 19, 1998*
Senate, No. 2194 (*Second Reprint*)

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 ¹[practice architecture,] provide professional architectural,
27 engineering, or land surveying ¹services¹ in this State;

28 "professional architectural, engineering and land surveying services"
29 means those services, including planning, environmental, and

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

7
8 3. A professional firm which wishes to be considered qualified to
9 provide professional architectural, engineering, or land surveying
10 services to an agency seeking to negotiate a contract or agreement for
11 the performance of such services shall file or shall have filed with the
12 agency a current statement of qualifications and supporting data. Such
13 a statement may be filed at any time during a calendar year. The
14 content of any such statement shall conform to such regulations with
15 respect thereto as the State Treasurer, in accordance with the
16 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
17 seq.), shall promulgate. For the purposes of this section and section
18 5 of this act, no statement which shall have been filed more than ¹[one
19 year] two years¹ prior to the publication of an advertisement pursuant
20 to the provisions of section 4 of this act shall be deemed to be a
21 current statement with respect to qualification of the firm which shall
22 have filed the statement to provide professional architectural,
23 engineering, or land surveying services under any contract or
24 agreement of which notice is given through that advertisement.

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

28
29 4. Notwithstanding the provisions of sections 2 through 4 of
30 P.L.1954, c.48 (C.52:34-7 through 52:34-9), a contract or agreement
31 with an agency for the procurement of professional architectural,
32 engineering, or land surveying services shall be ¹[made, negotiated, or
33 awarded only after public advertisement of notice that such a contract
34 or agreement is to be made or awarded] publicly advertised prior to
35 the solicitation of proposals or expressions of interest from interested
36 firms¹. To the extent consistent with the purposes and provisions of
37 this section, the ¹[notice] advertisement¹ shall conform to the
38 requirements applicable under subsections (a) and (b) of section 7 of
39 P.L.1954, c.48 (C.52:34-12) ¹[to an advertisement for bids] or may be
40 publicly advertised through electronic means¹. The advertisement shall
41 include a statement of the criteria ¹[, established as provided under
42 subsection b. of section 5 of this act,]¹ by which the agency seeking to
43 procure those professional services shall evaluate the technical
44 qualifications of professional firms and¹ determine the order of
45 preference to be used in designating the firms most highly qualified to
46 perform the services; this statement shall either set forth explicitly and

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

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

16 b. For each proposed project, an agency shall evaluate current
17 statements of qualifications and supporting data on file with the
18 agency. ¹[If desired, the] The¹ agency may solicit ¹[statements of
19 qualifications] proposals or expressions of interest¹ unique to the
20 specific project which would in narrative form outline design concepts
21 and proposed methods of approach to the assignment. The agency
22 shall select, in order of preference, based upon ¹the¹ criteria
23 ¹[established by the agency, no fewer than] included in the
24 advertisement required by section 4 of this act, at least¹ three
25 professional firms deemed to be the most highly qualified to provide
26 the services required ¹, except that the agency may select fewer
27 professional firms if fewer such firms responded to the solicitation or
28 meet the qualifications required for the project¹.

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

43
44 6. ²[An] Once the top three or more ranked firms have been
45 identified, each firm, at the request of the agency, shall submit a fee
46 proposal. The firms shall not be told of their ranking position at that

1 time. Using the three fee proposals to provide a general guideline, an²
2 agency shall negotiate a contract with the most technically¹ qualified
3 professional firm for architectural, engineering or land surveying
4 services at compensation which the agency determines to be fair and
5 reasonable to the State of New Jersey. In making this ¹[decision]
6 determination¹, the agency shall take into account the estimated value
7 of the services to be rendered and the scope, complexity, and
8 professional nature thereof. Should the agency be unable to negotiate
9 a satisfactory contract with the professional firm considered to be the
10 most qualified at a fee the agency determines to be fair and reasonable,
11 negotiations with that professional firm shall be formally terminated.
12 The agency shall then undertake negotiations with the second most
13 qualified professional firm. Failing accord with the second most
14 qualified professional firm, the agency shall formally terminate
15 negotiations. The agency shall then undertake negotiations with the
16 third most qualified professional firm. Should the agency be unable to
17 negotiate a satisfactory contract with any of the selected professional
18 firms, it shall select additional professional firms in order of their
19 competence and qualifications and it shall continue negotiations in
20 accordance with this section until an agreement is reached.

21

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

30

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

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38

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

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.

8

9 8. This act shall take effect immediately.

10

11

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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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22

23

24

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.

SENATE TRANSPORTATION COMMITTEE

STATEMENT TO

SENATE, No. 2194

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 18, 1997

The Senate Transportation Committee reports favorably Senate Bill No. 2194 with committee amendments.

This amended bill concerns the award of certain professional service contracts in connection with State construction projects. The bill requires that the selection by a State agency of a person or firm to perform architectural, engineering, or land surveying services, including planning, environmental, and construction inspection services (or "construction-related professional services"), shall be based upon professional qualification. The bill does not alter the current provision of the State public contracts law (N.J.S.A.52:34-9(a)) that exempts professional services contracts from the regular competitive bidding process. Rather, it establishes certain uniform statutory procedures to govern both the qualification of firms wishing to provide construction-related professional services and the awarding of contracts for such services to firms meeting those qualifications.

State contracts for construction-related professional services are to be negotiated on the basis of demonstrated competence and qualifications and at fair and reasonable compensation.

Firms wishing to be considered are required to file with the agency a "statement of qualification and supporting data". To retain this qualification, a firm would have to file such a statement at least once every two years. The content of the statement would have to conform to regulations promulgated by the State Treasurer and be deemed to be a public record under the "right-to-know" law. No State agency could negotiate or award a contract for construction-related professional services with or to a professional firm that does not have a current statement of qualifications and supporting data on file with the agency.

A State agency which anticipates engaging in the procurement of these services would first be required to promulgate by regulation the criteria by which the agency will select firms qualified to perform any such contract.

Before a State agency makes, negotiates, or awards a contract for these services, public notice would have to be given that the contract

is to be made, negotiated, or awarded. This notice would have to conform to the existing content and publication requirements applicable to an advertisement for bids or may be publicly advertised through electronic means. The advertisement would include a statement of the criteria by which the agency will evaluate the technical qualifications of the professional firms and determine the order of preference to be used in designating the firms most highly qualified to perform the service.

For each proposed State project, an agency shall, before contracting for those services, select in order of preference and based upon criteria established by the agency at least three professional firms deemed to be most qualified, except that the agency may select fewer than three professional firms if fewer than three such firms respond to the solicitation or meet the qualifications required for the project. This designation is to be based on an evaluation of current statements of qualifications and supporting data on file with the agency.

The agency is then to undertake negotiation of the contract with the most technically qualified firm, taking into account "the estimated value of the services to be rendered and the scope, complexity, and professional nature thereof." If these negotiations fail, negotiations are to be attempted with the next most qualified firm, and so on.

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

The amendments make several technical changes and provide an exception to the minimum requirement of three professional firms to permit an agency to select from fewer professional firms if fewer such firms responded to the solicitation of proposals or meet the qualifications required for a project. The amendments change the requirement that a firm file a "statement of qualification and supporting data" from at least once annually to at least once every two years. The amendments allow an agency to advertise for solicitations of proposals or expressions of interest through electronic means. The amendments require that an advertisement include the criteria an agency will use to evaluate the technical qualifications of professional firms. The amendments require an agency to negotiate a contract with the most technically qualified professional firm. Finally, the amendments change the effective date of the act to the 360th day after enactment and provide that an agency may take any anticipatory administrative action in advance of the effective date as may be necessary for the implementation of the act.

SENATE BILL NO. 2194 (FIRST REPRINT)

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Bill No. 2194 (First Reprint) with my recommendations for reconsideration.

A. Summary of the Bill

This bill provides a uniform standard of procedures for the qualification and awarding of professional service State contracts, i.e., architectural, engineering and land surveying.

The procurement process outlined by the bill is as follows: first, the bill requires all firms wishing to be considered for such contracts to file with the applicable State agency a current statement of qualifications with supporting data. Statements are considered current for a period of two years.

Second, the bill requires that all contracts for the procurement of professional architectural, engineering or land surveying services be publicly advertised prior to the solicitation of proposals or expressions of interest from interested firms. The advertisement shall conform to established statutory requirements or may be advertised electronically. The advertisement shall include a statement of the criteria by which the agency shall evaluate the firm's technical qualifications and determine the order of preference to be used in designating the firms most highly qualified. The criteria shall be promulgated through regulations by the agency before publication of the public advertisement.

In making its initial selection, the agency shall select, in order of preference, at least three professional firms deemed to be the most qualified. The agency may select fewer firms if fewer firms meet the qualifications.

Third, the agency shall proceed to negotiations with the most technically qualified firm. If negotiations with the most qualified firm fail, the agency shall then undertake negotiations with the second most qualified firm. If the agency is unable to negotiate a satisfactory contract with any of the selected firms, it shall select additional firms in order of competence and continue negotiations until agreement is reached.

B. Recommended Action

I commend the sponsors for seeking to ensure that the State obtains the services of the most qualified professional service firms. The process as outlined by this bill, however, eliminates price competition on professional service contracts.

In brief, the bill does not conform with present State practices which require the three most qualified firms to submit a price proposal after they have been selected as the most qualified firms. The elimination of this requirement precludes State agencies from a price comparison of the selected firms.

I recommend that the bill be amended to provide for price competition to enable the State to receive the best professional services at the lowest costs.

Therefore, I herewith return Senate Bill No. 2194 (First Reprint) and recommend that it be amended as follows:

Page 3, Section 6, Line 42:

Delete "An" and insert the following: "Once the top three or more ranked firms have been identified, each firm, at the request of the agency, shall submit a fee proposal. The firms shall not be told of their ranking position at that time. Using the three fee proposals to provide a general guideline, an"

Respectfully,

Christine Todd Whitman
Governor

Attest:

Michael P. Torpey
Chief Counsel to the Governor