



## THE CODE OF ALABAMA 1975

### Section 41-16-72

#### **Procurement of professional services.**

Any other provision of law notwithstanding, the procurement of professional services by any agency, department, board, bureau, commission, authority, public corporation, or instrumentality of the State of Alabama shall be conducted through the following selection process:

(3) Professional services of architects, landscape architects, engineers, land surveyors, geoscience, and other similar professionals shall be procured in accordance with competitive, qualification-based selection policies and procedures. Selection shall be based on factors to be developed by the procuring state entity which may include, among others, the following:

- a. Specialized expertise, capabilities, and technical competence, as demonstrated by the proposed approach and methodology to meet project requirements.
- b. Resources available to perform the work, including any specialized services within the specified time limits for the project.
- c. Record of past performance, quality of work, ability to meet schedules, cost control, and contract administration.
- d. Availability to and familiarity with the project locale.
- e. Proposed project management techniques.
- f. Ability and proven history in handling special project contracts.

Notice of need for professional services shall be widely disseminated to the professional community in a full and open manner. Procuring state entities shall evaluate such professionals that respond to the notice of need based on such state entity's qualification-based selection process criteria. Any such procuring state entity shall then make a good faith effort to negotiate a contract for professional services from the selected professional after first discussing and refining the scope of services for the project with such professional. Where the Alabama Building Commission has set a fee schedule for the professional services sought, fees shall not exceed the schedule without approval of the Director of the Alabama Building Commission and the Governor.

## ADMINISTRATIVE CODE OF ALABAMA

### Alabama Board of Licensure for Professional Engineers and Land Surveyors

#### Rules of Professional Conduct – Practice

**330-X-14-.05 Practice. (Canon IV)** The engineer or land surveyor shall endeavor to build a practice and professional reputation on the merit of his or her services as follows:

(f) The engineer or land surveyor shall not participate in procurement practices (bid submittals) which do not first determine the qualifications of the engineer or land surveyor prior to entering into fee negotiations for services being sought. An engineer or land surveyor having submitted a statement of qualification and performance data, and having first been judged as the qualified individual or firm to provide the services required for the proposed project, may proceed to negotiate a contract with a client and establish compensation or fees for the required services. Should the engineer or land surveyor be unable to negotiate a satisfactory contract with the client for any reason, the engineer or land surveyor shall withdraw from further consideration for the engineering or land surveying services. Another engineer or land surveyor may then be selected for negotiations of a contract for the services on the stated project.



AMERICAN COUNCIL OF ENGINEERING COMPANIES OF ALABAMA

## The Brooks Act: Federal Government Selection of Architects and Engineers

Public Law 92-582

92nd Congress, H.R. 12807

October 27, 1972

### An Act

To amend the Federal Property and Administrative Services Act of 1949 in order to establish Federal policy concerning the selection of firms and individuals to perform architectural, engineering, and related services for the Federal Government.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.) is amended by adding at the end thereof the following new title:

### "TITLE IX – SELECTION OF ARCHITECTS AND ENGINEERS

#### "DEFINITIONS

"Sec.901. As used in this title

"(1) The term 'firm' means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture or engineering.

"(2) The term 'agency head' means the Secretary, Administrator, or head of a department, agency, or bureau of the Federal Government.

"(3) The term "architectural and engineering services" means –

1. professional services of an architectural or engineering nature, as defined by State law, if applicable, which are required to be performed or approved by a person licensed, registered, or certified to provide such services as described in this paragraph;
2. professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and
3. such other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operation and maintenance manuals, and other related services.

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531 Herron Street | Montgomery, Alabama 36104 | Phone: 334.264.1500 | Fax: 334.264.0099 | [www.aceca.org](http://www.aceca.org)



AMERICAN COUNCIL OF ENGINEERING COMPANIES OF ALABAMA

**"POLICY**

"Sec.902. The Congress hereby declares it to be the policy of the Federal Government to publicly announce all requirements for architectural and engineering services, and to negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices.

**"REQUESTS FOR DATA ON ARCHITECTURAL AND ENGINEERING SERVICES**

"Sec.903. In the procurement of architectural and engineering services, the agency head shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. The agency head, for each proposed project, shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with no less than three firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services and then shall select therefrom, in order of preference, based upon criteria established and published by him, no less than three of the firms deemed to be the most highly qualified to provide the services required.

**"NEGOTIATIONS OF CONTRACTS FOR ARCHITECTURAL AND ENGINEERING SERVICES**

"Sec.904. (a) The agency head shall negotiate a contract with the highest qualified firm for architectural and engineering services at compensation which the agency head determines is fair and reasonable to the Government. In making such determination, the agency head shall take into account the estimated value of the services to be rendered, the scope, complexity, and professional nature thereof.

"(b) Should the agency head be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price he determines to be fair and reasonable to the Government, negotiations with that firm should be formally terminated. The agency head should then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the agency head should terminate negotiations. The agency head should then undertake negotiations with the third most qualified firm.

"(c) Should the agency head be unable to negotiate a satisfactory contract with any of the selected firms, he shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this section until an agreement is reached."