



Alabama State Board of Licensure for
Professional Engineers and Land Surveyors

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MEMORANDUM

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TO: Professional Engineers and Professional Land Surveyors

FROM: Alabama Board of Licensure for Professional Engineers and Land Surveyors

SUBJECT: Qualification Based Selection (QBS) Requirements

DATE: August 31, 2015

Dear Licensee:

The purpose of the Alabama Board of Licensure for Professional Engineers and Land Surveyors is to protect the public through the enforcement of laws and codes that regulate the practices of engineering and land surveying. This protection is provided through two primary procedures: The regulation of who receives the license and the regulation of how they use the license.

The means and methods of how licensees practice are governed by a set of rules that establishes ethical guidelines for that practice, commonly referred to as the Code of Ethics Canons. One of these Canons governs the procedure for selection of engineers and land surveyors. The Alabama Administrative Code rule is commonly referred to as a Mini-Brooks act or Quality Based Selection (QBS) and is similar to the Brooks Act that governs Federal procurement services. The difference in the Brooks Act and the Alabama Administrative Code is, unlike the Brooks Act, the requirements in the Alabama Administrative Code apply to all services procured regardless of dollar value.

The relevant section of the Administrative Code that outlines the proper procedure for procurement is as follows:

“§330-X-14-.05 (f) The engineer or land surveyor shall not participate in or implement 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.

Examples include but are not limited to, simultaneous negotiations or solicitation of fee proposals by the client from two or more engineers or land surveyors constitutes “bidding” and participation by a licensee is prohibited.”

It has come to the attention of the Board that this provision of the Administrative Code is being ignored by some licensees. It is the Board’s opinion that this rule is unambiguous and clear. Professional engineers and land surveyors licensed in the State of Alabama are not allowed to participate in any selection process based on price, as either the primary determination or a partial determination for selection. Additionally, engineers and surveyors are prohibited from soliciting fee proposals that violate the letter or spirit of this Canon. Licensed engineers or land surveyors that solicit bids for their companies or on behalf of their clients for the services of other engineers or land surveyors are violating the Canon and subject to disciplinary action for each occurrence. Respondents to solicitations are likewise subject to disciplinary action. It is the duty of the respondent to verify that any request for proposal is not part of a process that compares prices.

As part of a more proactive program of enforcement, the Board has decided to aggressively seek out and discipline those individuals and firms participating in a procurement processes that violates §330-X-14-.05 (f). Individuals who are aware of licensees that either solicit bids or respond to solicitations for bids are encouraged to file a complaint with the Board. For those companies and agencies that are not regulated by the Board, licensees are encouraged to notify the Board of the practice. The Board will in turn contact the company or agency and advise them that what they are doing, while not illegal, induces engineering or surveying licensees to violate the Administrative Code and put themselves at risk.

The engineering and surveying community in Alabama has the benefit of practicing under rules that protect the public through a qualification based selection process. In order for that protection to be realized, all professional engineers and land surveyors must adhere to those rules and it is the Board’s sworn responsibility to uphold the applicable provisions the Alabama Law Regulating the Practice of Engineering and Land Surveying, Code of Alabama 1975, Title 34, Chapter 11.

FOR THE BOARD

Regina A. Dinger
Executive Director

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330-X-14-.06 Ethics. (Canon V)

The engineer or land surveyor shall contribute to the maintenance, integrity, independence and competency of the engineering or land surveying profession as follows:

The engineer or land surveyor shall not:

14. Participate in procurement procedures for engineering or land surveying services either by providing bids

or in requesting bids from other professional engineers or land surveyors where bidding is the primary consideration.

Frequently Asked Questions

What do I do if a client asks me to submit a bid?

A. Refer them to the QBS information available on the Board's website.

If I have a history with the client and have been pre-qualified, do I still have to follow the QBS process?

A. Yes, but pre-qualification is the QBS process.

Can I give an estimate if I'm solicited by telephone for work?

A. It depends. An estimate is not generally considered the "fee" to perform the professional service, and may be similar to providing a fee schedule for services to be performed.

Contact us if you have questions

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QBS

Qualification Based Selection

It Works!



Intent of QBS

The general intent of QBS is to select a highly-qualified individual or firm because that will produce highly successful results. An important distinction of this process is that price does not become a consideration until the qualifications have been reviewed and have been found highly-qualified or determined to be the most-qualified when several firms or individuals are considered.

“Price is not considered”

The cost of retaining that firm or individual is a factor only if the owner finds the cost unreasonable. Although the specifics of the QBS process may change from agency to agency or state to state, there are three common elements:

- Submittal of qualifications;
- Evaluation of submittals and selection of the most-qualified firm or individuals;
- Negotiation of price, with the possibility of rejection by the owner, who then negotiates with the next most-qualified firm or individual.

Alabama Agency Process

The Alabama Competitive Bid Law (Code of Alabama 1975, section 41-16-21) governs the selection of engineers and surveyors for State government projects.

The Code of Alabama exempts engineering and surveying services from the State Bid Law and specifies a QBS type of selection process.

Section 3 (a) ...the competitive bidding requirements of this article shall not apply to: ...contracts for the securing of services of... engineers or other individuals possessing a high degree of professional skill where the personality of the individual plays a decisive part;

Section 4 ... 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...

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.

Board Requirements

The Board's Administrative Code includes several rules of professional conduct (Code of Ethics, Rule 330-X-14, last amended January 2011) that directly address QBS and bidding on work. One example follows:

“QBS and the Bidding of Work”

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: