

SB309 ENGROSSED



1 MIFIWW-2
2 By Senator Chambliss
3 RFD: County and Municipal Government
4 First Read: 11-May-23
5 2023 Regular Session



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A BILL
TO BE ENTITLED
AN ACT

Relating to contracts for professional services; to amend Section 41-4-133, Code of Alabama 1975, as last amended by Act 2022-357, to provide for the procurement of certain professional service contracts based on competitive, qualification-based policies and procedures; to provide for the advertisement of such contracts; and to subject such contracts to a fee schedule established by the Division of Construction Management of the Department of Finance, with exception.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 41-4-133, Code of Alabama 1975, as last amended by Act 2022-357, is amended to read as follows:

"§41-4-133

(a) (1) A contract may be entered into by competitive sealed proposals when the Chief Procurement Officer or the head of a purchasing agency, in accordance with rules, determines that the use of competitive sealed bidding is either not practicable or not advantageous to the state. Unless determined otherwise by the Chief Procurement Officer, professional services shall be procured by competitive sealed



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29 proposals.

30 (2) The Chief Procurement Officer may determine by rule
31 when it is either not practicable or advantageous to the state
32 to procure specified types of supplies or services by
33 competitive sealed bidding.

34 (b) Proposals shall be solicited through a request for
35 proposals.

36 (c) Adequate public notice of the request for proposals
37 shall be given in the same manner as provided in subsection
38 (c) of Section 41-4-132.

39 (d) Proposals shall be opened so as to avoid disclosure
40 of contents to competing offerors prior to contract award. A
41 register of proposals shall be prepared in accordance with
42 rules and shall be open for public inspection after award of
43 the contract.

44 (e) A request for proposals shall state the relative
45 importance of price and other factors and subfactors, if any.

46 (f) Discussions may be conducted with responsible
47 offerors who submit proposals determined by the Chief
48 Procurement Officer or purchasing agency to be reasonably
49 competitive for award to assure full understanding of, and
50 responsiveness to, the solicitation requirements. The
51 determination of the Chief Procurement Officer or purchasing
52 agency is not subject to review. Offerors shall be accorded
53 fair and equal treatment with respect to any opportunity for
54 discussion and revision of proposals. Revisions of proposals
55 may be permitted after submissions and prior to award for the
56 purpose of obtaining best and final offers. In conducting



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57 discussions, there may not be disclosure of any information
58 derived from proposals submitted by competing offerors.

59 (g) Contracts shall be awarded to the responsible
60 offeror whose proposal conforms to the solicitation and is
61 determined in writing to be the most advantageous to the
62 state, taking into consideration price and the evaluation
63 factors set forth in the request for proposals. No other
64 factors or criteria shall be used in the evaluation. Public
65 notice of the award of a contract shall be promptly given.

66 (h) The Chief Procurement Officer may provide
67 debriefings that furnish the basis for the source selection
68 decision and contract award.

69 (i) (1) Before soliciting proposals, the Chief
70 Procurement Officer may authorize issuance of a request for
71 qualifications from prospective offerors. The request shall
72 contain, at a minimum, a description of the scope of work to
73 be solicited by the request for proposals, the deadline for
74 submission of information, and how prospective offerors may
75 apply for consideration. The request shall require information
76 concerning the prospective offeror's product specifications,
77 qualifications, experience, and ability to perform the
78 requirements of the contract. Adequate public notice of the
79 request for qualifications shall be given in the same manner
80 as provided in subsection (c) of Section 41-4-132.

81 (2) After receipt of the responses to the request for
82 qualifications from prospective offerors, all qualified
83 offerors, as determined by the Chief Procurement Officer,
84 shall have an opportunity to submit proposals. The



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85 determination regarding which offerors are qualified is not
86 subject to review.

87 (3) If a professional service provider is prohibited by
88 law or policy from submitting proposals in response to a
89 request for proposals, the Chief Procurement Officer or
90 purchasing agency ~~may~~shall utilize the request for
91 qualifications process to determine the awardee.

92 (j) (1) In addition to the requirements of Section
93 34-11-35.1(d) or any rule adopted thereunder, the professional
94 services of architects, landscape architects, engineers, land
95 surveyors, geoscientists, and other similar professionals
96 shall be procured in accordance with competitive,
97 qualification-based selection policies and procedures.
98 Selection shall be based on factors to be developed by the
99 procuring state entity which may include, among others, the
100 following:

101 a. Specialized expertise, capabilities, and technical
102 competence, as demonstrated by the proposed approach and
103 methodology to meet project requirements.

104 b. Resources available to perform the work, including
105 any specialized services within the specified time limits for
106 the project.

107 c. Record of past performance, quality of work, ability
108 to meet schedules, cost control, and contract administration.

109 d. Availability to and familiarity with the project
110 locale.

111 e. Proposed project management techniques.

112 f. Ability and proven history in handling special



113 project contracts.

114 (2) Notice of a need for professional services shall be
115 widely disseminated to the respective professional community
116 in a full and open manner. Procuring state entities shall
117 evaluate professionals that respond to the notice of need
118 based on the state entity's qualification-based selection
119 process criteria. The procuring state entity shall then make a
120 good faith effort to negotiate a contract for professional
121 services from the selected professional after first discussing
122 and refining the scope of services for the project with the
123 professional.

124 (3) For those governmental bodies subject to the
125 requirements of this article, where the Division of
126 Construction Management of the Department of Finance has set a
127 fee schedule for the professional services sought, the fees
128 shall not exceed the schedule without approval of the Director
129 of the Division of Construction Management and the Governor.

130 (4) A governmental body identified in Section 41-4-124
131 shall not be subject to this article or its requirements as it
132 relates to the purchase and procurement of professional
133 services, but shall adopt rules or board policies to promote
134 fairness, competition, transparency, integrity, and value in
135 the procurement of architects, landscape architects,
136 engineers, land surveyors, geoscientists, and interior
137 designers."

138 Section 2. This act shall become effective on the first
139 day of the third month following its passage and approval by
140 the Governor, or its otherwise becoming law.



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143 Senate

144 Read for the first time and referred11-May-23
145 to the Senate committee on County
146 and Municipal Government

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148 Read for the second time and placed16-May-23
149 on the calendar:
150 2 amendments

151
152 Read for the third time and passed18-May-23
153 as amended
154 Yeas 33
155 Nays 0
156 Abstains 0

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159 Patrick Harris,
160 Secretary.
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