

# **BIDDING FOR SERVICES POLICY**

## **Pertinent Sections of the Law and Regulations**

*Section of the Law 40-3-300. Prohibition from entering into contract for professional services on any basis other than direct negotiations; exceptions.*

*An architect may not enter into a contract for professional services on any basis other than direct negotiation thereby precluding participation in any system requiring a comparison of compensation. However, an architect may state compensation to a prospective client in direct negotiation where architectural services necessary to protect the public health, safety, and welfare have been defined.*

### **Commentary**

This law governs the conduct of registrants, not clients. Registrants may be asked in a Request for Proposal (RFP) to submit fee proposals, perform conceptual or preliminary design studies as a condition of RFP submission, or other possible requests that may constitute violations of this section. In these instances, registrants are encouraged either to inform the client of this section of the registration law or notify the Board administrator who can then inform the client of the law. The client is under no obligation to delete the requested item, but this item can still lead to responding registrants being found in violation of the law. Registrants are responsible for determining if they believe responding to the questionable portion(s) of the RFP would lead to a violation. Registrants should either refrain from responding to the RFP, or delete those sections from his or her submission that would lead to a violation.

### **Direct Negotiation**

Direct negotiation is a *process*, not a single act. A minimum of three elements must be present to constitute direct negotiation. These elements are as follows:

1. Dialogue, discussions, and/or direct communications between the architect and the potential client for the specific purpose of determining the scope of the project;
2. Evidence of a clear and mutual understanding of the scope of the project and the architectural services that will be necessary to protect public health, safety and welfare; and
3. Documentation of the entire process.

## Frequently Asked Questions

1. May I give my fee to a contractor or engineer who are part of a team responding to an RFP if the team's total fee will be presented without breakout of each discipline's fees?

***So long as the contractor or engineer is made aware of the intent of 40-3-300 and agrees not to list the architectural fee apart from the total proposed fee, you may give a fee.***

2. What is the harm in giving my fee to a client? Everyone wants to know the cost of a project before they undertake it.

***You may give a fee to a client when you have negotiated directly with that client and defined the services to be provided.***

3. What happens if the client development/marketing team in my firm provides responses to RFPs using templates and a fee is included inadvertently—or because they are unaware of the Regulation? I sign a lot of cover sheets for such proposals and don't always check every page.

***In the same way you are responsible for the work of your firm, you would be responsible for being sure that fees are not quoted in response to an RFP.***

4. Am I bound by Section 40-3-300 if the client directly contacts me about a future project and indicates he will hire my firm and not seek prices from other firms?

***No, just as long as you discuss the services to be provided***

5. What happens if an existing client contacts me directly about a future project and makes it sound as if he will hire my firm, but I discover shortly after giving him a fee arrangement that he has also contacted 3 other firms?

***You should notify the client that having submitted a fee proposal that is being compared with other fees may put you and any other firms in violation of the registration law. You could also inform the client that if he rejects the submitted RFP's with fees proposals, you (or one of the other firms) could negotiate with him one-on-one regarding the project and the corresponding fee and not be in violation of the law.***

6. Is there any information that can be given in response to an RFP requesting fees?

***You may provide a range of fees, a history of fees you have charged on projects of similar scope or complexity or hourly rates for your firm's various personnel.***