

**SB309 INTRODUCED**



1 MIFIWW-1  
2 By Senator Chambliss  
3 RFD: County and Municipal Government  
4 First Read: 11-May-23  
5  
6 2023 Regular Session



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

SYNOPSIS:

This bill would require state entities procuring the professional services of architects, landscape architects, engineers, land surveyors, geoscientists, and other similar professionals to procure the contracts based on a qualification-based selection process and would provide for that process.

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:



## SB309 INTRODUCED

29           "§41-4-133

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

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

42           (b) Proposals shall be solicited through a request for  
43 proposals.

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

47           (d) Proposals shall be opened so as to avoid disclosure  
48 of contents to competing offerors prior to contract award. A  
49 register of proposals shall be prepared in accordance with  
50 rules and shall be open for public inspection after award of  
51 the contract.

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

54           (f) Discussions may be conducted with responsible  
55 offerors who submit proposals determined by the Chief  
56 Procurement Officer or purchasing agency to be reasonably



## SB309 INTRODUCED

57 competitive for award to assure full understanding of, and  
58 responsiveness to, the solicitation requirements. The  
59 determination of the Chief Procurement Officer or purchasing  
60 agency is not subject to review. Offerors shall be accorded  
61 fair and equal treatment with respect to any opportunity for  
62 discussion and revision of proposals. Revisions of proposals  
63 may be permitted after submissions and prior to award for the  
64 purpose of obtaining best and final offers. In conducting  
65 discussions, there may not be disclosure of any information  
66 derived from proposals submitted by competing offerors.

67 (g) Contracts shall be awarded to the responsible  
68 offeror whose proposal conforms to the solicitation and is  
69 determined in writing to be the most advantageous to the  
70 state, taking into consideration price and the evaluation  
71 factors set forth in the request for proposals. No other  
72 factors or criteria shall be used in the evaluation. Public  
73 notice of the award of a contract shall be promptly given.

74 (h) The Chief Procurement Officer may provide  
75 debriefings that furnish the basis for the source selection  
76 decision and contract award.

77 (i) (1) Before soliciting proposals, the Chief  
78 Procurement Officer may authorize issuance of a request for  
79 qualifications from prospective offerors. The request shall  
80 contain, at a minimum, a description of the scope of work to  
81 be solicited by the request for proposals, the deadline for  
82 submission of information, and how prospective offerors may  
83 apply for consideration. The request shall require information  
84 concerning the prospective offeror's product specifications,



## SB309 INTRODUCED

85 qualifications, experience, and ability to perform the  
86 requirements of the contract. Adequate public notice of the  
87 request for qualifications shall be given in the same manner  
88 as provided in subsection (c) of Section 41-4-132.

89 (2) After receipt of the responses to the request for  
90 qualifications from prospective offerors, all qualified  
91 offerors, as determined by the Chief Procurement Officer,  
92 shall have an opportunity to submit proposals. The  
93 determination regarding which offerors are qualified is not  
94 subject to review.

95 (3) If a professional service provider is prohibited by  
96 law or policy from submitting proposals in response to a  
97 request for proposals, the Chief Procurement Officer or  
98 purchasing agency ~~may~~shall utilize the request for  
99 qualifications process to determine the awardee.

100 (j) (1) In addition to any requirement adopted by the  
101 the State Board of Licensure for Professional Engineers and  
102 Land Surveyors pursuant to Section 34-11-35.1, or rule of any  
103 other applicable licensing board, the professional services of  
104 architects, landscape architects, engineers, land surveyors,  
105 geoscientists, and other similar professionals shall be  
106 procured in accordance with competitive, qualification-based  
107 selection policies and procedures. Selection shall be based on  
108 factors to be developed by the procuring state entity which  
109 may include, among others, the following:

110 a. Specialized expertise, capabilities, and technical  
111 competence, as demonstrated by the proposed approach and  
112 methodology to meet project requirements.



## SB309 INTRODUCED

113 b. Resources available to perform the work, including  
114 any specialized services within the specified time limits for  
115 the project.

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

118 d. Availability to and familiarity with the project  
119 locale.

120 e. Proposed project management techniques.

121 f. Ability and proven history in handling special  
122 project contracts.

123 (2) Notice of a need for professional services shall be  
124 widely disseminated to the respective professional community  
125 in a full and open manner. Procuring state entities shall  
126 evaluate professionals that respond to the notice of need  
127 based on the state entity's qualification-based selection  
128 process criteria. The procuring state entity shall then make a  
129 good faith effort to negotiate a contract for professional  
130 services from the selected professional after first discussing  
131 and refining the scope of services for the project with the  
132 professional.

133 (3) Where the Division of Construction Management of  
134 the Department of Finance has set a fee schedule for the  
135 professional services sought, the fees shall not exceed the  
136 schedule without approval of the Director of the Division of  
137 Construction Management and the Governor."

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.