

SB309 ENROLLED



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



SB309 Enrolled

1 Enrolled, An Act,

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

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

16 "§41-4-133

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

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



SB309 Enrolled

29 (b) Proposals shall be solicited through a request for
30 proposals.

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

34 (d) Proposals shall be opened so as to avoid disclosure
35 of contents to competing offerors prior to contract award. A
36 register of proposals shall be prepared in accordance with
37 rules and shall be open for public inspection after award of
38 the contract.

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

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

54 (g) Contracts shall be awarded to the responsible
55 offeror whose proposal conforms to the solicitation and is
56 determined in writing to be the most advantageous to the



SB309 Enrolled

57 state, taking into consideration price and the evaluation
58 factors set forth in the request for proposals. No other
59 factors or criteria shall be used in the evaluation. Public
60 notice of the award of a contract shall be promptly given.

61 (h) The Chief Procurement Officer may provide
62 debriefings that furnish the basis for the source selection
63 decision and contract award.

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

76 (2) After receipt of the responses to the request for
77 qualifications from prospective offerors, all qualified
78 offerors, as determined by the Chief Procurement Officer,
79 shall have an opportunity to submit proposals. The
80 determination regarding which offerors are qualified is not
81 subject to review.

82 (3) If a professional service provider is prohibited by
83 law or policy from submitting proposals in response to a
84 request for proposals, the Chief Procurement Officer or



SB309 Enrolled

85 purchasing agency ~~may~~shall utilize the request for
86 qualifications process to determine the awardee.

87 (j) (1) In addition to the requirements of Section
88 34-11-35.1(d) or any rule adopted thereunder, the professional
89 services of engineers, land surveyors, and geoscientists shall
90 be procured in accordance with competitive,
91 qualification-based selection policies and procedures.
92 Selection shall be based on factors to be developed by the
93 procuring state entity which may include, among others, the
94 following:

95 a. Specialized expertise, capabilities, and technical
96 competence, as demonstrated by the proposed approach and
97 methodology to meet project requirements.

98 b. Resources available to perform the work, including
99 any specialized services within the specified time limits for
100 the project.

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

103 d. Availability to and familiarity with the project
104 locale.

105 e. Proposed project management techniques.

106 f. Ability and proven history in handling special
107 project contracts.

108 (2) A request for qualifications may be submitted to an
109 architect for his or her professional services; provided, upon
110 a determination by the procuring entity that the architect is
111 adequately qualified to perform the contract, the architect's
112 character, reputation, aptitude, location to the project site,



113 and personality may play a decisive part in awarding the
114 contract.

115 (3) Only a licensed design professional, as defined
116 under Section 41-9A-3, may be permitted to assemble
117 construction bid documents under this article or under Chapter
118 16 of Title 41.

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

129 (5) For those governmental bodies subject to the
130 requirements of this article, where the Division of
131 Construction Management of the Department of Finance has set a
132 fee schedule for the professional services sought, the fees
133 shall not exceed the schedule without approval of the Director
134 of the Division of Construction Management and the Governor.

135 (6) A governmental body identified in Section 41-4-124
136 shall not be subject to this article or its requirements as it
137 relates to the purchase and procurement of professional
138 services, but shall adopt rules or board policies to promote
139 fairness, competition, transparency, integrity, and value in
140 the procurement of engineers, land surveyors, and



SB309 Enrolled

141 [geoscientists.](#)"

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



SB309 Enrolled

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB309
Senate 18-May-23
I hereby certify that the within Act originated in and passed
the Senate, as amended.

Patrick Harris,
Secretary.

House of Representatives
Amended and passed: 31-May-23

Senate concurred in House amendment 31-May-23

By: Senator Chambliss