

**FEE BIDDING – a.k.a. Mini Brooks Act**

Article 3D.

Procurement of Architectural, Engineering, and Surveying Services.

**§ 143-64.31. Declaration of public policy.**

(a) It is the public policy of this State and all public subdivisions and Local Governmental Units thereof, except in cases of special emergency involving the health and safety of the people or their property, to announce all requirements for architectural, engineering, surveying and construction management at risk services, to select firms qualified to provide such services on the basis of demonstrated competence and qualification for the type of professional services required without regard to fee other than unit price information at this stage, and thereafter to negotiate a contract for those services at a fair and reasonable fee with the best qualified firm. If a contract cannot be negotiated with the best qualified firm, negotiations with that firm shall be terminated and initiated with the next best qualified firm. Selection of a firm under this Article shall include the use of good faith efforts by the public entity to notify minority firms of the opportunity to submit qualifications for consideration by the public entity.

(b) Public entities that contract with a construction manager at risk under this section shall report to the Secretary of Administration the following information on all projects where a construction manager at risk is utilized:

- (1) A detailed explanation of the reason why the particular construction manager at risk was selected.
- (2) The terms of the contract with the construction manager at risk.
- (3) A list of all other firms considered but not selected as the construction manager at risk and the amount of their proposed fees for services.
- (4) A report on the form of bidding utilized by the construction manager at risk on the project.

The Secretary of Administration shall adopt rules to implement the provisions of this subsection including the format and frequency of reporting. (1987, c. 102, s. 1; 1989, c. 230, s. 2; 2001-496, s. 1.)

**§ 143-64.32. Written exemption of particular contracts.**

Units of local government or the North Carolina Department of Transportation may in writing exempt particular projects from the provisions of this Article in the case of:

- (a) Proposed projects where an estimated professional fee is in an amount less than thirty thousand dollars (\$30,000),  
or
- (b) Other particular projects exempted in the sole discretion of the Department of Transportation or the unit of local government, stating the reasons therefore and the circumstances attendant thereto. (1987, c. 102, s. 2.)

***Bidding Design Services for your next publicly funded project?***

Requesting a set fee other than hourly rate for a project prior to negotiations with the best qualified firm is not consistent with the stated public policy.

History

This policy was enacted in 1987 and permits only narrow exemptions to its requirements. Further, an architect is bound by the rules and laws governing the practice of architecture in this State. Board Rule 21 NCAC 02.0209 (9) states that an architect shall not knowingly cooperate in a violation of any provision of § 143-64.31.

The law was enacted to help ensure that the public's best interest is served by having those in responsible charge of the public funds make decisions based on the best qualified architectural and/or engineering firms and not based on the lowest price. Since this is a general statutory pronouncement of public policy exemptions and exceptions must be construed narrowly. Clearly, perceived "cost savings" would not justify setting aside an unambiguous public protection policy. Similarly, justifications of an exemption after fee bidding has been solicited are not permitted under the law. Further, fee proposals submitted before determinations of a projects scope and details are often unreliable estimates of the actual final design costs.

The Board of Architecture is charged with protecting the health, safety and welfare of the public. It has the power to enact rules consistent with and not contrary to the law. It also has the authority to discipline any licensee who is complicit in efforts to circumvent this or any other statute.

It is in the spirit of cooperation among government agencies that this policy is issued. It is the hope of this Board that, with this information, those involved help in consistently enforcing the public policies of this State.