

THE BROOKS ACT

Federal Government Selection of Architects and Engineers

Public Law 92-582
92nd Congress, H.R. 12807
October 27, 1972

An Act

To amend the Federal Property and Administrative Services Act of 1949 in order to establish Federal policy concerning the selection of firms and individuals to perform architectural, engineering, and related services for the Federal Government. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.) is amended by adding at the end thereof the following new title:

TITLE IX - SELECTION OF ARCHITECTS AND ENGINEERS **DEFINITIONS**

"Sec.901. As used in this title "(1) The term 'firm' means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture or engineering. "(2) The term 'agency head' means the Secretary, Administrator, or head of a department, agency, or bureau of the Federal Government. "(3) The term "architectural and engineering services" means -

1. professional services of an architectural or engineering nature, as defined by State law, if applicable, which are required to be performed or approved by a person licensed, registered, or certified to provide such services as described in this paragraph;
2. professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and
3. such other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operation and maintenance manuals, and other related services.

POLICY

"Sec.902. The Congress hereby declares it to be the policy of the Federal Government to publicly announce all requirements for architectural and engineering services, and to negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices.

REQUESTS FOR DATA ON ARCHITECTURAL AND ENGINEERING SERVICES

"Sec.903. In the procurement of architectural and engineering services, the agency head shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. The agency head, for each proposed project, shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with no less than three firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services and then shall select therefrom, in order of preference, based upon criteria established and published by him, no less than three of the firms deemed to be the most highly qualified to provide the services required.

NEGOTIATIONS OF CONTRACTS FOR ARCHITECTURAL AND ENGINEERING SERVICES

"Sec.904. (a) The agency head shall negotiate a contract with the highest qualified firm for architectural and engineering services at compensation which the agency head determines is fair and reasonable to the Government. In making such determination, the agency head shall take into account the estimated value of the services to be rendered, the scope, complexity, and professional nature thereof. "(b) Should the agency head be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price he determines to be fair and reasonable to the Government, negotiations with that firm should be formally terminated. The agency head should then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the agency head should terminate negotiations. The agency head should then undertake negotiations with the third most qualified firm. "(c) Should the agency head be unable to negotiate a satisfactory contract with any of the selected firms, he shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this section until an agreement is reached."

The Brooks Act:

How to Use Qualifications Based Selection

The Brooks Act (Public Law 92-582), also known as Qualifications Based Selection (QBS), which was enacted on October 18, 1972, establishes the procurement process by which architects and engineers (A/Es) are selected for design contracts with federal design and construction agencies. The Brooks Act establishes a qualifications-based selection process, in which contracts for A/Es are negotiated on the basis of demonstrated competence and qualification for the type of professional services required at a fair and reasonable price. Under QBS procurement procedures, price quotations are not a consideration in the selection process. This QBS process, as established by the Brooks Act, has long been enthusiastically supported by every professional A/E society.

There are seven basic steps involved in pursuing federal design work under QBS:

1. Public solicitation for architectural and engineering services
2. Submission of an annual statement of qualifications and supplemental statements of ability to design specific projects for which public announcements were made
3. Evaluation of both the annual and project-specific statements
4. Development of a short-list of at least three submitting firms in order to conduct interview with them
5. Interviews with the firms
6. Ranking of at least three of the most qualified firms
7. Negotiation with the top ranked firm.

A brief explanation of each of these steps, along with a description of what is involved in each, follows. The user must be reminded that while QBS procedures are mandated by law, agencies may modify the procedures slightly, within the confines of the act and the Federal Acquisition Regulation.

1. Public Announcement

QBS calls for public announcement of opportunities for design contracts. The government fulfills this obligation by publicizing opportunities in the Commerce Business Daily. The Commerce Business Daily, or "CBD," as it is known, is published Monday through Friday by the U.S. Department of Commerce. The CBD lists proposed government procurements, subcontracting leads, and contract awards. A proposed procurement action appears in the CBD only once.

All intended procurement actions of \$25,000 or more, whether for military or civilian agencies, are published in the CBD. Also, this publication identifies contracts that have been awarded, if the contract amount exceeds \$25,000 for civilian agencies and \$100,000 for the Department of Defense. The CBD does not list procurements that are:

- Classified for reasons of national security
- For perishable items
- For certain utility services
- Required within 15 days
- Placed under existing contracts
- For personal professional services
- Made only from foreign sources
- Not to be given advance publicity, as determined by the Small Business Administration

These notices in the CBD give the location and scope of a project and may also contain such information as:

- Estimated construction contract award range
- Project schedule and the date and time limit for receiving replies
- Categories of evaluation criteria and weight factors
- Any requirements for submitting supplemental information.

Usually, opportunities for A/E services are listed under the "R" section. However, design opportunities can be included in other sections, such as those for design/build services (listed under "Y," Construction of Structures and Facilities).

2. Statements of Qualification

A/E firms with an interest in being considered for design services contracts must submit the required statements of qualifications to each agency with which the A/E wants to contract. The Standard Form 254 (SF 254), Architect-Engineer and Related Services Questionnaire, may be filed each year with a field office of each agency with which the architect intends to do business. This form can also be updated and resubmitted at any time. A completed form furnishes the federal agency with general information on the size, capabilities, personnel, and past experience of an interested firm. Many federal agencies keep the SF 254 on file and review this file for prospective design firms if they have a small project that will not be advertised. The A/E firm can submit this form at the same time as the required project-specific form is submitted. The next statement of qualifications that a firm is to submit is the Standard Form 255 (SF 255), Architect-Engineer and Related Services Questionnaire for Specific Project. Following the review of the notices in the CBD, if an A/E firm wants to be considered for a specific project listed in it, then it must submit Standard Form 255, Architect-Engineer and Related Services Questionnaire for Specific Project. This form is submitted in response to a specific solicitation and, when completed, contains the data relative to the specific project.

When a project is advertised in the CBD, the agency does not usually notify firms directly that have filed a SF 254. The project advertisements, or notices, that appear in the CBD are tailored

to each specific project and invite interested firms to submit both the SF 254 and the SF 255, along with any supplemental data requested in the announcement. Firms that have a current SF 254 on file with the listed procurement office are not required to resubmit that form; however, they must submit a SF 255, Architect-Engineer and Related Services Questionnaire for Specific Project, to be considered for each separate project. Instructions on how to complete Standard Forms 254 and 255, which include substantial guidance on what information to add to your 254 and 255 and what information to add, are contained in the forms. For example, the instruction in Standard Form 254 stress that additional data, brochures, photos, etc. should not accompany this form unless specifically requires. On the other hand, the instructions for Standard Form 255 state that when appropriate, respondents may supplement this proposal with graphic material and photographs that best demonstrate design capabilities of the proposer for the specific project.

3. Evaluation of Statements

The evaluation/selection process for architectural/engineering evaluation boards composed of members who, collectively, have experience in architecture, engineering, construction, and government and related acquisition matters. The members of the boards are usually appointed from among the professional employees of the agency or other agencies. In some situations, private practitioners sit on these boards if authorized by agency procedures. Of course, when these private practitioners sit on an evaluation board, they or their firms are not eligible for award of a design contract.

The evaluation boards then review the statements of qualifications (Standard For 254 and 255). The boards must evaluate them in accordance with the criteria contained in the CBD notice. For example, some of the criteria in the CBD notice may include the following: professional qualifications and experience of the firm with design of a specific type of project; experience and professional qualifications of the firm's staff to be assigned to the project; location of the main office of the proposing firm and its consultants; overall performance record of the firm; and analysis of the firm's current workload.

4. Development of a Short-list

Following the evaluation of the statements of qualifications, the boards prepare reports that recommend the firms to be on the short-list. The reports rank at least three of the firms for the purpose of discussing the project with them. The boards are not limited in the number of firms that they can select for these "interviews"; it is left to the discretion of the boards.

5. Interviews/Discussions With Firms

The interviews usually involve discussions on project concepts and the relative utility of alternative methods of furnishing the required services. Before the interview, some agencies send detailed selection criteria and other information about the project to the firms recommended for further consideration. Under the system established by QBS, the architect-engineer designer does not produce any design product in competing for the project. Usually these interviews are held at the agency's office. Occasionally, and in special circumstances, phone interviews are conducted. The interviews are brief, usually lasting only 30 to 60 minutes.

6. Ranking of the "Top Three" Firms

Following the interviews, the boards' reports are presented to the agency head or a person who is designated to act in the head of the agency's behalf. The reports list, in order of preference, at

least three firms that are considered to be the most highly qualified to perform the services. This is considered to be the final selection of the competing firms. If the firm listed as the most preferred is not the firm that was recommended as the most highly qualified by the evaluation board, the head of the agency must provide a written explanation for the reason for the preference. The head of the agency, or that person's designate, may not add names of other firms to the final report. The report reviews the recommendations of the evaluation board and, from that, the agency head makes the final selection.

7. Negotiation with the Top-Ranked Firm

When the final selection is made by the agency head, the contracting officer is authorized to begin negotiations with the top-ranked firm. The negotiations are conducted pursuant to the procedures set forth in the FAR. Usually, the firm is requested to submit a fee proposal listing direct and indirect costs as the basis for contract negotiations. Contract negotiations are conducted following an evaluation of the fee proposal and an audit when the proposed design fee is more than \$100,000. If a fee is not agreed upon within a reasonable time, the contracting officer will conclude negotiations with the top-ranked firm and initiate negotiations with the second-ranked firm. If a satisfactory contract is not worked out with this firm, then this procedure will be continued until a mutually satisfactory contract is negotiated. If negotiations fail with all selected firms, the contracting firms, which are ranked by competence and qualifications, are identified. The negotiation process will then continue until an agreement is reached and a contract awarded. As a practical note, it is rare that a contract is not successfully negotiated with the top-ranked firm.

The 6 Percent Fee Limitation on Federal Design Contracts Since 1939, federal construction agencies have been required by law to limit the fee payable to an architect or engineer to 6 percent of the estimated construction cost. Presently, there are at least four statutes that prescribe limitations on architect-engineer fees and apply to all civilian and military construction agencies with the exception of the U.S. Department of State. Federal agencies have interpreted the statutory fee limitations as applying only to the part of the fee that covers the production and delivery of "designs, plans, drawings, and specifications." The agencies, therefore, consider that the 6 percent fee limitation does not apply to the cost of field investigation, surveys, topographical work, soil borings, inspection of construction, master planning, and similar services not involving the production and delivery of designs, plans, drawings, and specifications. Most direct federal awarding agencies have, as a part of their supplement to the Federal Acquisition Regulation, a list of those items exempt from the 6 percent fee limitation.

STATE OF ALABAMA Administrative Code Alabama Board of Licensure for Professional Engineers & Professional Land Surveyors

Rules of Professional Conduct - Practice (Canon IV) (Rule 330-14.05)

The engineer or land surveyor shall endeavor to build a practice and professional reputation on the merit of his or her services as follows:

...(f) The engineer or land surveyor, in the public interest, shall not participate in fee determination procedures (bid submittals or contract negotiations) which contribute to an inferior quality of workmanship. The engineer or land surveyor shall refrain from participating in procurement practices which do not first determine the qualifications of the engineering and land surveying services contractor prior to entering into fee negotiations for services being sought. An engineer or land surveyor having submitted a statement of qualification and performance data, and having first been judged as the qualified individual or firm to provide the services required for the proposed project, may proceed to negotiate a contract with a client and establish compensation for the required services.....

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