## 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



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:
- 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.



- 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.

- (d) Proposals shall be opened so as to avoid disclosure of contents to competing offerors prior to contract award. A register of proposals shall be prepared in accordance with rules and shall be open for public inspection after award of the contract.
  - (e) A request for proposals shall state the relative importance of price and other factors and subfactors, if any.
  - (f) Discussions may be conducted with responsible offerors who submit proposals determined by the Chief Procurement Officer or purchasing agency to be reasonably competitive for award to assure full understanding of, and responsiveness to, the solicitation requirements. The determination of the Chief Procurement Officer or purchasing agency is not subject to review. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals. Revisions of proposals may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there may not be disclosure of any information derived from proposals submitted by competing offerors.
  - (g) Contracts shall be awarded to the responsible offeror whose proposal conforms to the solicitation and is determined in writing to be the most advantageous to the



- 57 state, taking into consideration price and the evaluation
- factors set forth in the request for proposals. No other
- 59 factors or criteria shall be used in the evaluation. Public
- notice of the award of a contract shall be promptly given.
- (h) The Chief Procurement Officer may provide
- debriefings that furnish the basis for the source selection
- 63 decision and contract award.
- (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
- 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



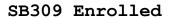
85	purchasing agency <pre>may shall utilize the request for</pre>					
86	qualifications process to determine the awardee.					
87	(j)(1) In addition to the requirements of Section					
88	34-11-35.1(d) or any rule adopted thereunder, the professional					
89	services of engineers, land surveyors, and 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	<pre>locale.</pre>					
105	e. Proposed project management techniques.					
106	f. Ability and proven history in handling special					
107	<pre>project contracts.</pre>					
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					

adequately qualified to perform the contract, the architect's 111 character, reputation, aptitude, location to the project site, 112



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

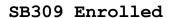
140 the procurement of engineers, land surveyors, and





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





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