

South Carolina Board of Architectural Examiners

Policy on Bidding for Services

The South Carolina State Board of Architectural Examiners received an Opinion from the State Attorney General's office regarding the applicability of Section 40-3-165 of the South Carolina Architectural Registration Law. *[Statute changes in 1998 resulted in this section being renumbered as Section 40-3-300. Only the number changed.]*

Section 40-3-300 provides for the following:

“Architects shall not enter into a contract for professional services on any basis other than direct negotiation thereby precluding participation in any system requiring a comparison of compensation. Provided, however, an Architect may state compensation to a prospective client in direct negotiation where architectural services necessary to protect the public health, safety and welfare have been defined.”

The Attorney General's Opinions are stated in response to examples or case studies as presented by the State Board. It is noted by the Attorney General that these Opinions apply expressly to projects not subject to the S.C. Consolidated Procurement code, Section 11-35-10 et seq., since this code provides comprehensive selection procedures for projects subject to it.

Based on the Attorney General's Opinion, the Board has established the following guidelines:

GUIDELINES REGARDING DIRECT NEGOTIATION

Direct negotiation is a process, not a single act. A minimum of three elements must be present to constitute direct negotiation:

1. Dialogue, discussions, and/or direct communications between the architect and the potential client for the specific purpose of determining the scope of the project;
2. Evidence of a clear and mutual understanding of the scope of the project and the architectural services that will be necessary to protect public health, safety and welfare; and
3. Documentation of the entire process.

GUIDELINES REGARDING REGULATION 11-12 (D)(2)

1. A gift is defined as money, property, services, discounts, rebates, loan forgiveness or anything of value if equal or greater value is not given in return.
2. An architect, firm, corporation, professional association/corporation or partnership may give gifts if it is strictly for a charitable cause and is given with no intent to receive something of equal

or greater value at a later time.

3. A fee arrangement submitted in a proposal for a study, pre-design, or preliminary design service, when future opportunities for additional work on the project are also available to the offerer, must be consistent and representative of the real cost of services to be performed.

See also Reg. 11-12(A)(1), effective May 11, 1999.

GUIDELINES REGARDING FEASIBILITY STUDY, STUDY AND OTHER PRE-DESIGN SERVICES

A feasibility study, or study, is a pre-design services offered by many architects and non-architects. The Board distinguishes feasibility study, or study, as architectural practice subject to the Architectural Registration Law and Section 40-3-300 when the following conditions occur:

1. The feasibility study, or study, is provided in combination with architectural services by the same firm.
2. The feasibility study, or study, is provided in anticipation of, or with the expectation of providing architectural services by the same firm.

When a study is undertaken without the intent or ability to provide subsequent architectural services related to the results of the study, it shall not be considered governed by the Architectural Registration Law or its sections.