

**SOUTH CAROLINA
BOARD OF ARCHITECTURAL EXAMINERS
POLICY ON OFFERING/PROVIDING FREE SERVICES**

The Board of Architectural Examiners takes this opportunity to make clear its interpretation of Regulations regarding the offering of free services. This policy affects all licensed individuals and firms practicing architecture in South Carolina. It was originally adopted on May 7, 2003, as a Board Order and was published in the Board newsletter in October 2003. Follow-up questions and answers follow the policy statement.

Regulations:

Regulation 11-12-(A)(1) provides: “When conditions of compensation are submitted in a proposal for a study, pre-design, or preliminary design service, where future opportunity for additional work on the project is also available to the offerer, such conditions must be representative of the real cost of services to be performed.”

Regulation 11-12(C)(2) provides: “An architect or firm shall neither offer nor make any gift to a government official (whether elected or appointed) with the intent of influencing the official’s judgment in connection with a prospective or existing project.”

Regulation 11-12(C)(3) provides “An architect or firm shall comply with the registration laws, rules, and regulations governing the practice of architecture in this State and in any other jurisdiction.”

Regulation 11-12(D)(2) provides “An architect or firm shall neither offer nor make any gifts, other than gifts of nominal value . . . with the intent of influencing the judgment of an existing or prospective client.”

Interpretation:

1. Under Regulations 11-12(A)(1), 11-12(C)(2), and 11-12(C)(3), neither a firm nor an architect can provide **free** services to a client, unless otherwise expressly excepted by the statutes or regulations governing the practice of architecture or other state law. The prohibition of free services includes any mechanism resulting in no cost to the client including crediting back the cost of the services against any future services or similar accounting practices.
2. For purposes of Regulation 11-12(A)(1), “real cost of services” means the fair market value of the architectural services based upon the architect’s or firm’s prevailing fee schedule.

3. For the purposes of Regulation 11-12(C)(2), an offer to perform work at less than fair market value on a project is not considered to be a gift **to** a government official since the intent of the Regulation was directed at the governmental bodies.
4. For the purposes of Regulation 11(D)(2), the Board will presume that an architect or firm who performs work or offers to perform work at less than fair market value has made a gift to a client with the intent to influence the judgment of the existing or prospective client.

See Follow-up, below

Free Services: A Follow-up

The following questions and answers were originally published in the Board's May 2004 newsletter as follow-up to publication of the Board's policy on offering free services.

- Can an architect prepare sketches as part of a presentation to depict his concept of a proposed project? **The architect may prepare only conceptual designs, not schematic designs.**
- Is it proper to offer initial programming, feasibility studies, conceptual designs, etc., to aid a municipality in budgeting and funding proposed projects with the fee deferred pending approval of funding such as a public vote on bonds? **If there is a procurement procedure to select an architect and all parties know fees will be deferred, that would not be perceived as free services. If there is no procurement procedure and one architect offers to perform a service at no charge to the client, then it would be deemed an offer of free services and could be a violation of the Regulations regarding free services.**
- Does the law prohibit free services to governmental entities and officials, or does it prohibit performing free services for a client? **The law prohibits both.**
- What if I do work for Habitat for Humanity for free or I am approached by a local garden club to help them with a project by donating my time? **If the work is not being done to gain influence for future projects, it is allowed.**
- If a contractor requests that the architect prepare a preliminary site plan and preliminary building design for pricing and/or for a proposal offer to a prospective client, would that constitute a free service? **If the Request for Proposal (RFP) includes a request for sketches and all architects are aware of the request, responding to the request would not be an offer of free services.**