



Alabama State Board of Licensure for
Professional Engineers and Land Surveyors

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April 6, 2017

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Ms. Heather Whorton Page, PE
Whorton Engineering Inc
P.O. Box 5190
Anniston, Alabama 36205

RE: Declaratory Ruling: Procurement of Services / Rule Number: 330-X-14-.05(f)

Dear Ms. Page:

This Declaratory Ruling of the Board is issued in response to your written request dated March 15, 2017.

QUESTION

If a client, through a past professional relationship with a professional engineer or land surveyor, has previously determined that the professional engineer or professional land surveyor is qualified to perform the services needed for a project, can that professional provide the client a price for the required services when the client has not sought qualifications or prices from multiple professionals?

FACTS, LAW, AND ANALYSIS

In your request, you state as follows:

I am respectfully requesting a declaratory ruling for a question brought up at the public hearing for Senate Bill 174 on February 22, 2017.

In order to better understand qualifications based selection, an example was given by one of the Senators. He noted that he was a farmer and had a land surveyor that he had used for many years to do multiple past surveys. He asked if his land surveyor should not be able to give him a price due to QBS requirements. Based on what he indicated, he was not obtaining prices/bids, was pleased with past performance, and had no intentions of obtaining prices from others.

I noted that in my opinion the example described earlier met the definition of QBS if he was already a client of this land surveyor, had originally chosen this land surveyor years ago because of his qualifications, had been pleased with his work, and he was not obtaining multiple pricing.

I am requesting a declaratory ruling to determine if this example would violate QBS whether it involves a land surveyor or an engineer.

Your question was presented to the full Board for its consideration at its regularly advertised public meeting on March 23, 1997. After discussing this question, the Board unanimously agreed that the following is the opinion of the Board.

ALA. ADMIN. CODE REG. 330-X-14-.05(f) states: "The engineer or land surveyor shall not participate in or implement procurement practices (bid submittals) which do not first determine the qualifications of the engineer or land surveyor 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 or fees for the required services." Under the scenario that you present, a determination of qualifications has been established based on a past professional relationship. Because the client has already established that the professional engineer or professional land surveyor is qualified and there is no need to seek the qualifications of others. Also, because the client in your scenario is not seeking multiple quotes, the professional is at liberty to negotiate a contract with the client and establish compensation or fees for the required services.

CONCLUSION

It is the opinion of the Board that there is no violation of ALA. ADMIN. CODE REG. 330-X-14-.05(f) when a client seeks a price for services from a single licensed professional engineer or professional land surveyor that has previously been deemed qualified by the client based on an established professional relationship,


A. Frazier Christy, PLS, PE
Board Chair