

## **CHAPTER 54-44.7 ARCHITECT, ENGINEER, AND LAND SURVEYING SERVICES**

### **54-44.7-01. Definition.**

"Architect, engineer, construction management, and land surveying services" are those professional services associated with the practice of architecture, professional engineering, professional land surveying, landscape architecture, interior design pertaining to construction, and construction management, as defined by the laws of this state, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform, including studies, investigations, surveys, evaluations, consultations, planning, programming, conceptual designs, plans and specifications, cost estimates, inspections, construction management, shop drawing reviews, sample recommendations, preparation of operating and maintenance manuals, and other related services, except for professional services related to prefabricated steel for bridge purposes.

### **54-44.7-02. Applicability - Policy.**

Architect, engineer, construction management, and land surveying services must be procured as provided in this chapter. It is the policy of this state that all North Dakota state agencies shall negotiate contracts for services on the basis of demonstrated competence and qualification for the particular type of services required.

### **54-44.7-03. Procurement procedures.**

1. Each using agency shall establish its own architect, engineer, construction management, and land surveying services selection committee hereinafter referred to as the agency selection committee, which must be composed of those individuals whom the agency head determines to be qualified to make an informed decision as to the most competent and qualified firm for the proposed project. The head of the using agency or that person's qualified, responsible designee shall sit as a member of the agency selection committee for the purpose of coordinating and accounting for the committee's work.
2. The agency selection committee is responsible for all of the following:
  - a. Developing a description of the proposed project.
  - b. Enumerating all required professional services for that project.
  - c. Preparing a formal invitation to firms for submission of information. The invitation must include, but not be limited to, the project title, the general scope of work, a description of all professional services required for that project, and the submission deadline. The invitation or notice thereof must be published. Upon written request, the agency shall also mail copies of the invitation to any interested party. The manner in which this must be published, the content of the publication, and the frequency of the publication, must be established by regulation of the agency selection committee.
3. The date for submission of information from interested persons or firms in response to an invitation must be not less than twenty-one days after publication of the invitation. Interested architect, engineer, and land surveying persons or firms must be required to respond to the invitation with the submission of the information required in general services administration forms SF 254 and SF 255, architect-engineer related services questionnaire for specific project, or such similar information as the agency selection committee may prescribe by rule.
4. Following receipt of information from all interested persons and firms, the agency selection committee shall hold interviews with at least three persons or firms who have responded to the committee's advertisement and who are deemed most qualified on the basis of information available prior to the interviews. If less than three persons or firms have responded to the advertisement, the committee shall readvertise or hold interviews with those who did respond. The agency selection committee's determination as to which will be interviewed must be in writing and must be based

upon its review and evaluation of all submitted materials. The written report of the committee must specifically list the names of all persons and firms that responded to the advertisement and enumerate the reasons of the committee for selecting those to be interviewed. This written report must be available to the public upon written request. The purpose of the interviews must be to provide such further information as may be required by the agency selection committee to fully acquaint itself with the relative qualifications of the several interested persons or firms.

5. The agency selection committee shall evaluate each of the persons or firms interviewed on the basis of the following criteria:
  - a. Past performance.
  - b. The ability of professional personnel.
  - c. Willingness to meet time and budget requirements.
  - d. Location, with higher priority given to firms headquartered in North Dakota.
  - e. Recent, current, and projected workloads of the persons or firms.
  - f. Related experience on similar projects.
  - g. Recent and current work for the agency.

Based upon these evaluations, the agency selection committee shall select the three which, in its judgment, are most qualified, ranking the three in priority order. The agency selection committee's report ranking the interviewed persons or firms must be in writing and must include data substantiating its determinations. This data must be available to the public upon written request.

6. The agency selection committee shall submit its written report ranking the interviewed persons or firms to the governing body of the using agency for its evaluation and approval. When it is determined that the ranking report is final by the agency, written notification of the selection and order of preference must be immediately sent to all of those that responded to the agency selection committee's invitation to submit information.
7. The governing body of the using agency or its designee shall negotiate a contract for services with the most qualified person or firm, at a compensation which is fair and reasonable to the state, after notice of selection and ranking. Should the governing body of the using agency or its designee be unable to negotiate a satisfactory contract with this person or firm, negotiations must be formally terminated. Negotiations must commence in the same manner with the second and then the third most qualified until a satisfactory contract has been negotiated. If no agreement is reached, three additional persons or firms in order of their competence and qualifications must be selected after consultation with the agency selection committee, and negotiations must be continued in the same manner until agreement is reached.

**54-44.7-04. Exception.**

1. All state agencies securing architect, engineer, construction management, or land surveying services for projects for which the fees are estimated not to exceed twenty-five thousand dollars may employ the architects, engineers, construction managers, and land surveyors by direct negotiation and selection, taking into account all of the following:
  - a. The nature of the project.
  - b. The proximity of the architect, engineer, construction management, or land surveying services to the project.
  - c. The capability of the architect, engineer, construction manager, or land surveyor to produce the required services within a reasonable time.
  - d. Past performance.
  - e. Ability to meet project budget requirements.This procedure shall still follow state policy set forth above.
2. Fees paid pursuant to this section during the twelve-month period immediately preceding negotiation of the contract by any single state agency for professional services performed by any one architectural, engineering, or land surveying person or firm may not exceed fifty thousand dollars. All persons or firms seeking to render

professional services pursuant to this section shall furnish the state agency with which the firm is negotiating a list of professional services, including the fees paid, performed for the state agency during the twelve months immediately preceding the contract being negotiated.

**54-44.7-05. Splitting projects or services contracts prohibited.**

No using agency may separate service contracts or split or break projects for the purpose of circumventing the provisions of this chapter.