

## **SUBCHAPTER 30D - STATE BUILDING COMMISSION DESIGNER AND CONSULTANT SELECTION POLICY**

### **SECTION .0100 - GENERAL PROVISIONS**

#### **01 NCAC 30D .0101 AUTHORITY**

The State Building Commission, hereinafter referred to as SBC, is a statutory body, empowered by Public Law to perform a multiplicity of duties with regard to the State's Capital Facilities Development and Management Program. In the specific area of state capital improvement project design selection, the SBC is empowered to adopt rules establishing standard procedures and criteria to assure that the designer selected for each state capital improvement project and the consultant selected for planning and studies of an architectural and engineering nature associated with a capital improvement project or a future capital improvement project has the qualifications and experience necessary for that capital improvement project or the proposed planning or study project. The SBC is responsible and accountable for the final selection of the designer and the final selection of the consultant. The exceptions are The University of North Carolina and the General Assembly which shall be responsible and accountable for the final selection of designers and the final selection of consultants for capital projects in which they are the funded agencies.

*History Note: Authority G.S. 143-135.25; 143-135.26;  
Eff. January 1, 1988;  
Amended Eff. May 1, 1990;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

#### **01 NCAC 30D .0102 POLICY**

It is the policy of the SBC to select designers and consultants for capital improvement projects as defined in G.S. 143-135.27, based on criteria contained herein and to make available to every designer and consultant duly licensed to practice in North Carolina, the opportunity to be considered for providing professional services for those departments and agencies under its jurisdiction. The SBC considers that the selection of competent designers and consultants is vital to providing the State of North Carolina with best and most appropriate facilities consistent with authorized funds. These procedures are intended to provide a basis for the fair and uniform selection of designers and consultants. These procedures for defined projects are intended to be consistent with the 1987 N.C. Session Laws 102. Projects not covered by this policy shall also be consistent with the 1987 N.C. Session Laws 102.

*History Note: Authority G.S. 143-135.25; 143-135.26;  
Eff. January 1, 1988;  
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#### **01 NCAC 30D .0103 DEFINITIONS**

For purposes of this Subchapter, the following definitions shall apply:

- (1) "Annual Service Agreement" means an open end agreement for professional services with a designer or consultant, subject to the limitations of the Rule in this Subchapter.
- (2) "Capital Projects Coordinator" means the individual authorized by each funded agency to coordinate all capital improvement projects and related matters with the State Construction Office and to represent that agency on all matters presented to the SBC. The individual so designated for purposes of the Rules in this Subchapter may have other titles within his agency but shall carry out the duties assigned herein to the Capital Projects Coordinator. Whenever the Capital Projects Coordinator is referenced herein, it shall be understood to include a designated assistant or representative.
- (3) "Consultant" means any individual, firm, partnership, corporation, association or other legal entity selected for planning and studies of an architectural and engineering nature associated with a capital improvement project. The consultant must be licensed to practice architecture or engineering in the State of North Carolina.

- (4) "Contact person" means the person named in the public advertisement who shall be the Capital Projects Coordinator or his designee.
- (5) "Designer" means any individual, firm, partnership, corporation, association or other legal entity licensed to practice architecture, engineering, or landscaping architecture in the State of North Carolina.
- (6) "Funded agency" means the department, agency, authority, or office that is named in the legislation appropriating funds for the design and/or or construction project.
- (7) "Major projects" means those capital improvement projects whose authorized funding or estimated cost is greater than five hundred thousand dollars (\$500,000.00) or a planning study activity whose authorized funding is greater than fifty thousand dollars (\$50,000.00).
- (8) "Minor projects" means those capital improvement projects whose authorized funding or estimated cost is five hundred thousand dollars (\$500,000.00) or less or a planning or study activity whose authorized funding is fifty thousand dollars (\$50,000.00) or less. Minor projects may also include a grouping of small non-specified or anticipated projects whose aggregate total falls within the minor project cost limitations.
- (9) "Professional services" means those services within the scope of the practice of architecture, engineering or landscape architecture as defined by the public laws of North Carolina.
- (10) "Special inspections" means detailed inspections of materials, installation, fabrication, erection or placement of components and connections requiring special expertise to ensure compliance with construction documents and referenced standards as per Section 1704 of the NC State Building Code.
- (11) "Using agency" means the sub-division of the funded agency for whose use the project is to be provided. If the funded agency is so subdivided for administrative control, the using agency would be a division, geographically self-contained facility, campus, or similar body, as determined by the administrative head of the funded agency.

*History Note: Authority G.S. 143-135.25; 143-135.26;  
Eff. January 1, 1988;  
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## **SECTION .0200 - PROJECT INFORMATION**

### **01 NCAC 30D .0201 PROJECT DESCRIPTION**

It shall be the responsibility of each Capital Projects Coordinator to provide the State Construction Office with a written description of the professional services desired, the program or scope of work, schedule requirements, amount of authorized funds and other appropriate information for each project requiring professional services. This information should be provided to the State Construction Office seven days prior to the publication dates of the first and fifteenth of each month for the North Carolina Purchase Directory. The Capital Projects Coordinator is responsible for prompt initiation of the designer or consultant selection process to enable the completion of designer or consultant selection with 60 days of the date funds are appropriated for a project by the General Assembly or the date of project authorization by the Director of the Budget. The State Building Commission may grant an exception to this requirement upon written request of the funded agency if:

- (1) no site was selected for the project before the funds were appropriated; or
- (2) funds were appropriated for advance planning only.

*History Note: Authority G.S. 143-135.25; 143-135.26;  
Eff. January 1, 1988;  
Amended Eff. May 1, 1990;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

### **01 NCAC 30D .0202 PUBLIC ANNOUNCEMENT**

Based upon project information furnished by a Capital Projects Coordinator, the State Construction Office shall publish an announcement of the need for professional services, a designated contact person in the using agency and

the closing date in the North Carolina Purchase Directory. Public announcement is required prior to designer or consultant selection except in the event of emergency. In the event of an emergency, public announcement is not required and the procedure outlined in Rule .0302 (4) of this policy will be followed.

On projects, the closing date for being considered for professional services shall not be less than ten days for minor projects and 15 days for major projects nor more than 21 days from date of publication in the Purchase Directory.

A letter of interest for each project must be received by the contact person prior to a designer's being considered for professional services.

*History Note: Authority G.S. 143-135.25; 143-135.26;  
Eff. January 1, 1988;  
Amended Eff. May 1, 1990;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

## **SECTION .0300 - SELECTION OF DESIGNERS OR CONSULTANTS**

### **01 NCAC 30D .0301 DESIGNER OR CONSULTANT QUALIFICATIONS**

All designers or consultants desiring to provide professional services shall file with the State Construction Office a Federal Standard Form 254 by January 1 of each year. Qualifications may be submitted any time during the year; but, during January of each year, all submissions older than 12 months may be destroyed.

In response to a specific project announcement, the designer or consultant may submit a new or updated Standard Form 254 or other information requested by the State Construction Office. Designer or consultant qualifications must be on file or submitted to the State Construction Office prior to being considered by the pre-selection committee.

*History Note: Authority G.S. 143-135.25; 143-135.26;  
Eff. January 1, 1988;  
Amended Eff. May 1, 1990;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

### **01 NCAC 30D .0302 PRE-SELECTION**

(a) A pre-selection committee shall be established for all projects requiring professional service. On minor projects the pre-selection committee shall consist of at least the Capital Projects Coordinator, a representative of the using agency and one representative from the State Construction Office. On major projects the pre-selection committee shall consist of at least the Capital Projects Coordinator, a representative of the using agency and two representatives from the State Construction Office. At least one member of all pre-selection committees shall be a licensed design professional.

(b) General Procedure for All Projects: The Capital Projects Coordinator shall review with the using agency the requirements of the project. This step shall take place prior to public advertisement in the Purchase Directory, because designers and consultants have a significant need to know in advance the program intent of a project in order to demonstrate their qualifications for the project in their letter of interest. The Capital Projects Coordinator shall receive all letters of interest and other qualification information either directly or from the designated contact person. After a pre-selection priority list is prepared, the list shall remain confidential except to the Secretary of the SBC. If fewer than three letters of interest are received on major projects, the project shall be re-advertised in the Purchase Directory. If fewer than three letters of interest are received following the re-advertisement, the Capital Projects Coordinator may proceed with the selection process using the data received or may advertise again.

(c) Special Procedures for Minor Projects: The Capital Projects Coordinator shall review with the using agency the requirements of the project and the qualifications of all firms expressing interest in a specific project. The Capital Projects Coordinator and a representative of the using agency shall meet with the representative from the State Construction Office for the evaluation of each firm and development of a list of three firms in priority order to be presented to the SBC. The Capital Projects Coordinator may institute the interview procedures in Paragraph (d) of this Rule if he deems it beneficial in evaluating the firms. The Capital Projects Coordinator shall submit to the Secretary of the SBC the list of three firms in priority order, including pre-selection information and written recommendations, to be presented to the SBC. The Capital Projects Coordinator shall state in the submission to the SBC that the rules for public announcement and pre-selection have been followed.

(d) Special Procedures for Major Projects: The pre-selection committee shall review the requirements of a specific project and the qualification of all firms expressing interest in that project and shall select from that list not more than six nor less than three firms to be interviewed and evaluated. The pre-selection committee shall interview each of the selected firms, evaluate each firm interviewed, and rank in order three firms. The Capital Projects Coordinator shall state in his submission that the rules for public announcement and pre-selection have been followed.

(e) Special Procedures for Emergency Projects: On occasion, emergency design or consultation services may be required for restoration or correction of a facility condition which by its nature poses a hazard to persons or property, or when an emergency exists. Should this situation occur, in all likelihood there will not be sufficient time to follow the normal procedures described in this Rule. The Capital Projects Coordinator on these occasions may declare an emergency, notify the State Construction Office and then obtain the services of a designer or consultant for consultation or design of the corrective action. In all cases, such uses of these emergency powers shall involve a written description of the condition and rationale for employing this special authority signed by the head of the agency and presented to the SBC at its next normal meeting. Timeliness for obligation of funds or other non-hazardous or non-emergency situations do not constitute sufficient grounds for invoking this special authority.

(f) Fixed Term Contract: A Funded Agency or a Using Agency may require the services of designer(s) or consultant(s) for projects under three hundred thousand dollars (\$300,000) on a fixed term basis for one year. In such cases, designer(s) or consultant(s) for fixed term contracts shall be selected in accordance with the procedures for minor projects in Paragraph (c). In addition, no fixed term contract fee under the jurisdiction of the State Building Commission shall exceed one hundred fifty thousand dollars (\$150,000) in total volume per year regardless of the number of projects. No fee shall exceed thirty-six thousand dollars (\$36,000) per project. Fixed term contracts may be extended for a term of one additional year. Total fees shall not exceed one hundred fifty thousand dollars (\$150,000) for the first year or three hundred thousand dollars (\$300,000) for the two-year period regardless of the number of projects.

(g) Special Procedures for Department of Environment and Natural Resources: For Division of Water Quality projects under the Wetlands Restoration Program, the Funded Agency may require the services of multiple designer(s) or consultant(s) for design and construction management of wetland, stream and riparian buffer restoration projects on a routine basis. In such cases, designer(s) or consultant(s) for such open-ended contracts shall be selected in accordance with the procedures described for minor projects. This does not preclude the Funded Agency's use of the designer selection procedures specified for major or minor projects if it elects to do so. The total volume of business in terms of negotiated design fee shall not exceed seven hundred thousand dollars (\$700,000) for the biannual contract term and no single project fee shall exceed three hundred fifty thousand dollars (\$350,000). In no case shall individual projects exceeding one million five hundred thousand dollars (\$1,500,000) in total costs be assigned for design under an open-end agreement. Open-end agreements under this procedure shall not be extended beyond a two-year term. The funded agency must readvertise on a biannual basis.

(h) Special Procedures for Special Inspections: Special Inspections professional services may be selected utilizing any one of the following methods:

- (1) The special inspections services may be performed as part of the project design services rendered by the project designer selected in accordance with Paragraphs (a) through (d) of this Rule.
- (2) The special inspections services may be performed, independent of the project design services contract, by:
  - (A) a firm selected in accordance with Paragraphs (a) through (d) of this Rule.
  - (B) a firm selected via in accordance with Paragraph (f) of this Rule. Firms for such open-ended contracts shall be selected in accordance with the procedures described for minor projects. This does not preclude the Funded Agency's use of the designer selection procedures specified for major or minor projects if it elects to do so. In addition, no annual contract fee shall exceed three hundred thousand dollars (\$300,000.00) in total volume and no single fee shall exceed one hundred thousand dollars (\$100,000.00). Annual contracts may be extended for one additional year. However, if extended for an additional one-year period, the designer may not be selected for the next annual contract. Total annual fees shall not exceed three hundred thousand dollars (\$300,000.00) for first year or six hundred thousand dollars (\$600,000.00) for two-year period. If and when these fees are used to limit, the agency must readvertise.
  - (C) a firm selected from the consultants formally identified in Article 13 of the Standard Form of Agreement Between Owner and Designer.
  - (D) a firm initially selected using a qualifications based selection process, currently under contract for that project, and qualified to perform special inspections services.

*History Note:* Authority G.S. 143-135.25; 143-135.26; S.L. 2001-442, Sec. 6(c);  
Eff. January 1, 1988;  
Amended Eff. July 1, 1993; May 1, 1990;  
Temporary Amendment Eff. May 15, 2002;  
Amended Eff. June 1, 2005, November 1, 2004; August 1, 2004;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22,  
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#### **01 NCAC 30D .0303 SELECTING CRITERIA**

In selecting the three firms to be presented to the SBC, the pre-selection committee should take into consideration such factors as:

- (1) Specialized or appropriate expertise in the type of project.
- (2) Past performance on similar projects.
- (3) Adequate staff and proposed design or consultant team for the project.
- (4) Current workload and State projects awarded.
- (5) Proposed design approach for the project including design team and consultants.
- (6) Recent experience with project costs and schedules.
- (7) Construction administration capabilities.
- (8) Proximity to and familiarity with the area where project is located.
- (9) Record of successfully completed projects without major legal or technical problems.
- (10) Other factors that may be appropriate for the project.

*History Note:* Authority G.S. 143-135.25; 143-135.26;  
Eff. January 1, 1988;  
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#### **01 NCAC 30D .0304 DESIGNER OR CONSULTANT SELECTION FOR UNC SYSTEM PROJECTS**

In selecting designers or consultants for its projects, the UNC system shall comply with the preceding policies and pre-selection procedures, except that pre-selection committees need not include a representative of the State Construction Office. The UNC system shall establish its own procedures for final designer or consultant selection. These procedures shall correspond in form to those established below for other than UNC system projects and shall be filed with and approved by the SBC.

*History Note:* Authority G.S. 143-135.25; 143-135.26;  
Eff. January 1, 1988;  
Amended Eff. May 1, 1990;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22,  
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#### **01 NCAC 30D .0305 DESIGNER/CONSULTANT SELECTION FOR OTHER THAN UNC SYS PROJECTS**

Upon receipt of a letter from the Capital Projects Coordinator listing three firms in priority order along with recommendations and pre-selection information, as requested by the SBC, the Secretary of SBC, upon determination that all information has been submitted, will place the request for consideration on the agenda for the next SBC meeting.

The Capital Projects Coordinator shall make a report to the SBC outlining the procedures that were followed and justification for the priority list of three firms. Upon a determination by the SBC that the standard procedures and criteria have been properly followed, the SBC will:

- (1) Select the firms in the priority order recommended by the state or agency; or
- (2) Select the firms in a different priority order from that recommended by the funded agency and give justification for such selection; or
- (3) Request a new priority list and give justification for such request.

*History Note:* Authority G.S. 143-315.25; 143-135.26;  
Eff. January 1, 1988;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22,  
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#### **01 NCAC 30D .0306 CONTRACT NEGOTIATION**

After the three have been notified of the selection action by The University of North Carolina or the SBC, a representative from the State Construction Office, the Capital Projects Coordinator, and a representative from the using agency will discuss with the selected designer or consultant appropriate information about the project, the scope of services to be provided and the state design/review/construction process.

The State Construction Office will request in writing a detailed fee proposal from the selected designer or consultant. The State Construction Office in coordination with the Capital Projects Coordinator and the using agency will attempt to negotiate a fair and equitable fee consistent with the project program and the professional services required for the specific project. In the event a fee cannot be agreed upon, the State Construction Office shall terminate the negotiations and shall repeat the notification and negotiation process with the next ranked firm on the selection list. In the event a fee cannot be agreed upon with the second-ranked designer or consultant, the process will be repeated with the third-ranked designer or consultant. If a fee still cannot be agreed to, the SBC shall review the history of negotiations and make appropriate determinations including program adjustments so as to lead to a negotiated contract with one of the original three firms selected. Such renegotiation with the firms shall be carried out in the original selection order, or call for the Capital Projects Coordinator to submit another list of three firms in priority order to the SBC or to the UNC system. The negotiation process will continue until a fee has been determined that is agreed to by the State Construction Office, the using agency, and the designer or consultant. Annual contracts are subject to special management procedures described herein. Normally, the initial fee negotiation for this type of work will involve mutual agreement in unit costs for time, materials, and overhead; a final lump sum price for each discrete project will be negotiated in advance as each project is ordered.

Following execution of the contract, the State Construction Office will publish in the North Carolina Purchase Directory the list of three firms selected in priority order, the firm to be contracted with, and the fee negotiated.

*History Note:* Authority G.S. 143-135.25; 143-135.26;  
Eff. January 1, 1988;  
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