

TITLE 40--PUBLIC BUILDINGS, PROPERTY, AND WORKS

SUBTITLE I--FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES

CHAPTER 11--SELECTION OF ARCHITECTS AND ENGINEERS

Sec. 1101. Policy

The policy of the Federal Government is to publicly announce all requirements for architectural and engineering services and to negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices.

(Pub. L. 107-217, Aug. 21, 2002, 116 Stat. 1129.)

Historical and Revision Notes

Revised Section	Source (U.S. Code)
Source (Statutes at Large)	
1101.....	40:542.
June 30, 1949, ch. 288, title IX, Sec. 902, as added Pub. L. 92-582, Oct. 27, 1972, 86 Stat. 1279.	

The words ``The Congress hereby declares'' are omitted as unnecessary.

Sec. 1102. Definitions

In this chapter, the following definitions apply:

(1) Agency head.--The term ``agency head'' means the head of a department, agency, or bureau of the Federal Government.

(2) Architectural and engineering services.--The term ``architectural and engineering services'' means--

(A) professional services of an architectural or engineering nature, as defined by state law, if applicable, that are required to be performed or approved by a person licensed, registered, or certified to provide the services described in this paragraph;

(B) professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and

(C) other professional services of an architectural or engineering nature, or incidental services, which members of

the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.

(3) Firm.--The term ``firm'' means an individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the profession of architecture or engineering.

(Pub. L. 107-217, Aug. 21, 2002, 116 Stat. 1129.)

Historical and Revision Notes

Revised Section	Source (U.S. Code)
Source (Statutes at Large)	
1102.....	40:541.
June 30, 1949, ch. 288, title IX, Sec. 901, as added Pub. L. 92-582, Oct. 27, 1972, 86 Stat. 1278; Pub. L. 100-656, title VII, Sec. 742, Nov. 15, 1988, 102 Stat. 3897; Pub. L. 100-679, Sec. 8, Nov. 17, 1988, 102 Stat. 4068.	

In clause (1), the words ``Secretary, Administrator, or'' are omitted as unnecessary.

Sec. 1103. Selection procedure

(a) In General.--These procedures apply to the procurement of architectural and engineering services by an agency head.

(b) Annual Statements.--The agency head shall encourage firms to submit annually a statement of qualifications and performance data.

(c) Evaluation.--For each proposed project, the agency head shall evaluate current statements of qualifications and performance data on file with the agency, together with statements submitted by other firms regarding the proposed project. The agency head shall conduct discussions with at least 3 firms to consider anticipated concepts and compare alternative methods for furnishing services.

(d) Selection.--From the firms with which discussions have been conducted, the agency head shall select, in order of preference, at least 3 firms that the agency head considers most highly qualified to provide the services required. Selection shall be based on criteria established and published by the

agency head.

(Pub. L. 107-217, Aug. 21, 2002, 116 Stat. 1130.)

Historical and Revision Notes

Revised Section	Source (U.S. Code)
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Source (Statutes at Large)	
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1103.....	40:543.
June 30, 1949, ch. 288, title IX, Sec.	
903, as added Pub. L. 92-582, Oct. 27,	
1972, 86 Stat. 1279.	
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In subsection (b), the words ``engaged in the lawful practice of their profession'' are omitted as unnecessary because of the definition of ``firm'' in section 1102 of the revised title.

In subsection (c), the words ``compare alternative methods for furnishing services'' are substituted for ``the relative utility of alternative methods of approach for furnishing the required services'' to eliminate unnecessary words.

Architectural and Engineering Services

Pub. L. 108-136, div. A, title XIV, Sec. 1427(b), Nov. 24, 2003, 117 Stat. 1670, provided that: ``Architectural and engineering services (as defined in section 1102 of title 40, United States Code) shall not be offered under multiple-award schedule contracts entered into by the Administrator of General Services or under Government wide task and delivery order contracts entered into under sections 2304a and 2304b of title 10, United States Code, or sections 303H and 303I of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253h and 253i) unless such services--

``(1) are performed under the direct supervision of a professional architect or engineer licensed, registered, or certified in the State, territory (including the Commonwealth of Puerto Rico), possession, or Federal District in which the services are to be performed; and

``(2) are awarded in accordance with the selection procedures set forth in chapter 11 of title 40, United States Code.''

Sec. 1104. Negotiation of contract

(a) In General.--The agency head shall negotiate a contract for architectural and engineering services at compensation which the agency head determines is fair and reasonable to the Federal Government. In determining fair and reasonable compensation, the

agency head shall consider the scope, complexity, professional nature, and estimated value of the services to be rendered.

(b) Order of Negotiation.--The agency head shall attempt to negotiate a contract, as provided in subsection (a), with the most highly qualified firm selected under section 1103 of this title. If the agency head is unable to negotiate a satisfactory contract with the firm, the agency head shall formally terminate negotiations and then undertake negotiations with the next most qualified of the selected firms, continuing the process until an agreement is reached. If the agency head is unable to negotiate a satisfactory contract with any of the selected firms, the agency head shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this section until an agreement is reached.

(Pub. L. 107-217, Aug. 21, 2002, 116 Stat. 1130.)

Historical and Revision Notes

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Revised Section	Source (U.S. Code)
Source (Statutes at Large)	
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1104.....	40:544.
June 30, 1949, ch. 288, title IX, Sec. 904, as added Pub. L. 92-582, Oct. 27, 1972, 86 Stat. 1279.	
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