

APA -1
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TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Board of Licensure for Professional

Control 330 Department or Agency Engineers & Land Surveyors

Rule No. 330-X-14-.05

Rule Title: Practice (Canon IV)

 New; X Amend; Repeal; Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, safety, or welfare? Yes

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? Yes

Is there another, less restrictive method of regulation available that could adequately protect the public? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? No

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? No

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

Does the proposed rule have any economic impact? Yes

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

.....
Certification of Authorized Official

I certify that the attached rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama, 1975 and that it conforms to all applicable filing requirements of the Administrative Procedures Division of the Legislative Reference Service.

Signature of certifying officer Regina Dumas
Date 12/19/16

ALABAMA STATE BOARD OF LICENSURE FOR
PROFESSIONAL ENGINEERS AND LAND SURVEYORS

NOTICE OF INTENDED ACTION

RULE NO. & TITLE: 330-X-14-.05, Practice

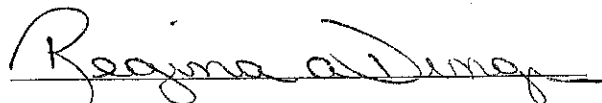
INTENDED ACTION: Amend 330-X-14-.05(f) by deleting the existing language and replacing with revised language.

SUBSTANCE OF AMENDMENT: The Board proposes to amend subparagraph (f) of the Rule. This action will identify that professional employment is based on qualifications and competencies. Multiple licensees and firms may provide competitive price proposals when certain restrictions are met including that a specific scope of work has been developed. Exclusions are identified.

TIME, PLACE, MANNER OF PRESENTING VIEWS: A public hearing will be held on January 31, 2017 beginning at 8:15 A.M. in the Purchasing Division Conference room on the first floor of the RSA Union Building, 100 N. Union Street, Montgomery, Alabama. Interested persons may also present their views in writing to the Alabama Board of Licensure for Professional Engineers and Land Surveyors, 100 N. Union Street, Suite 382, Post Office Box 304451, Montgomery, Alabama 36130-4451.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: Written comments concerning these changes must be received by the Alabama Board of Licensure for Professional Engineers and Land Surveyors no later than February 13, 2017.

CONTACT PERSON AT AGENCY: Regina A. Dinger, Executive Director; Alabama Board of Licensure for Professional Engineers and Land Surveyors; P.O. Box 304451, Montgomery, AL 36130-4451; (334) 242-5568.



Regina A. Dinger, Executive Director
Alabama State Board of Licensure for
Professional Engineers and Land Surveyors

ECONOMIC IMPACT STATEMENT
FOR APA RULE
(Section 41-22-23(f))

Control No. 330 Department or Agency Board of Licensure for Professional
Engineers and Land Surveyors

Rule No: Chapter 330-X-14.-05

Rule Title: Practice (Canon IV)

 New XX Amend Repeal Adopt by Reference

 This rule has no economic impact.

 XX This rule has an economic impact, as explained below:

1. NEED/EXPECTED BENEFIT OF RULE: The rule is needed to clarify the position of BELS on the ethical method of procurement of engineering and surveying services related to engineering. The rule will be beneficial in that it lays out a method of procurement that reinforces the importance of matching the qualifications of the providers of the services with the needs of the procurer and allows for price comparison based on a defined scope of work.

2. COSTS/BENEFITS OF RULE AND WHY RULE IS THE MOST EFFECTIVE, EFFICIENT, AND FEASIBLE MEANS FOR ALLOCATING RESOURCES AND ACHIEVEING THE STATED PURPOSE: The rule will provide both economical benefits by supporting a price competitive system of procurement, and public protection in requiring a scope of the services needed assuring that the competition is fair. This system protects the purchaser from those wishing to maximize profits, while at the same time minimizing their effort.

3. EFFECT OF THIS RULE ON COMPETITION: The rule will increase competition over what it has been in the past and encourage qualified suppliers to participate in the procurement process in a way that allows them to, if needed, help develop a scope of services and, if not needed, to price the same services as their competitors. The purchaser will be presented with prices for services and the qualifications of those service providers and can decide if the price being charged is commensurate with qualifications of those offerors.

4. EFFECT OF THIS RULE ON COST-OF-LIVING AND DOING BUSINESS IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED: None

5. EFFECT OF THIS RULE ON EMPLOYMENT IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED: None

6. SOURCE OF REVENUE TO BE USED FOR IMPLEMENTING AND ENFORCING THIS RULE: Existing funds in the BELS budget.

7. THE SHORT-TERM/LONG-TERM ECONOMIC IMPACT OF THIS RULE ON AFFECTED PERSONS, INCLUDING ANALYSIS OF PERSONS WHO WILL BEAR THE COSTS AND THOSE WHO WILL BENEFIT FROM THE RULE: The short term economic impact is that it will encourage procurers to ethically solicit price competition from qualified providers of services thus reducing costs without reducing the amount of service.

8. UNCERTAINTIES ASSOCIATED WITH THE ESTIMATED BENEFITS AND BURDENS OF THE RULE, INCLUDING QUALITATIVE/QUANTITATIVE BENEFITS AND BURDEN COMPARISON: None

9. THE EFFECT ON THIS RULE ON THE ENVIRONMENT AND PUBLIC HEALTH: Benefit would be that only qualified professionals perform the work. All potential providers would be developing their submissions from the same scope of work.

10. DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE RULE IS NOT IMPLEMENTED: Without this rule there is an increased risk that the public will obtain substandard work and dishonest pricing practices. If the selection of professional services is awarded to the lowest bidder without an agreed scope of service or determination of qualification, there is an increase in the possibility of under-designed projects. Faulty designs can result in catastrophic failures or cost over-runs during construction.

**BOARD OF LICENSURE FOR
PROFESSIONAL ENGINEERS AND LAND SURVEYORS**

**CHAPTER 330-X-14
PROFESSIONAL CONDUCT
(CODE OF ETHICS)**

330-X-14-.05 Practice (Canon IV)

330-X-14-.05 Practice. (Canon IV) The engineer or land surveyor shall endeavor to build a practice and professional reputation on the merit of his or her services as follows:

(a) The engineer or land surveyor shall not offer, or promise to pay or deliver, directly or indirectly, any commission, political contribution, gift, favor, gratuity, benefit or reward as an inducement to secure any specific professional engineering or professional land surveying work or assignment; providing and excepting, however, that an engineer or land surveyor may pay a duly licensed employment agency its fee or commission for securing engineering or land surveying employment in a salaried position.

(b) The engineer or land surveyor shall not solicit professional employment by self-laudatory advertising, or in any manner contrary to high professional standards.

(c) Licensees shall not falsify or permit misrepresentation of their, or their associates', academic or professional qualifications. They shall not misrepresent or exaggerate their degree of reasonability in prior assignments nor the complexity of said assignments. Presentations incident to the solicitation of employment or business shall not misrepresent pertinent facts concerning employers, employees, associates, joint ventures, or past accomplishments.

(d) The engineer or land surveyor shall not supplant, nor attempt to supplant, directly or indirectly, another engineer or land surveyor in an ongoing engineering or land surveying project, after contracts have been awarded to such other engineer or land surveyor.

(e) The engineer or land surveyor shall not attempt to compete with another engineer or land surveyor for employment by reducing his or her usual charges or by the use of unethical practices.

~~(f) 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.~~

~~Should the engineer or land surveyor be unable to negotiate a satisfactory contract with the client for any reason, the engineer or land surveyor shall withdraw from further consideration for the engineering or land surveying services. Another engineer or land surveyor may then be selected for negotiations of a contract for the services on the stated project.~~

~~Examples include but are not limited to, simultaneous negotiations or solicitation of fee proposals by the client from two or more engineers or land surveyors constitutes "bidding" and participation by a licensee is prohibited.~~

The licensee, the engineering firm, or land surveying firm is to seek professional employment based on the qualifications and competencies required for proper accomplishment of the work. This process prevents the engineer or land surveyor or firm from submitting a price for services prior to the prospective client having selected that licensee or firm, based on stated qualifications and competencies, and having provided the licensee or firm with the scope of the work requested.

1. Multiple engineers or land surveyors or firms may provide competitive price proposals, provided the following restrictions are met:

(i) The prospective client has first sought statements of qualifications from interested licensees or firms, and

(ii) Those licensees or firms, selected by the client based on qualifications and competencies required for proper accomplishment of the work, have received in writing a comprehensive and specific scope of work.

2. The scope of work shall not be required to be exhaustive, but shall include those items that practitioners, meeting the standard of care for their respective discipline, would be expected to include as part of their services.

3. Clients that do not wish to develop or are not able to develop a scope of work, may enlist the assistance of one or more of the prospective licensees or firms or a third party to assist them. Price proposals shall reference the client's scope of work.

4. Exclusions. Where multiple licensees or firms are requested to provide proposals:

(i) Engineers or engineering firms may provide a price proposal, without having first received a scope of work or having presented their qualifications, provided the price submitted to the client does not and will not exceed \$10,000 in the aggregate and, if not performed properly, would not jeopardize the safety or health of the public.

(ii) For surveying services that do not support or form the basis for engineering design, the surveyor, or the surveying firm, is not subject to subsection 330-X-14-.05(f).

(g) The engineer or land surveyor shall perform his or her work in accordance with approved standards of practice and care and shall endeavor to adhere to all laws in effect in the jurisdiction in which he or she is practicing.

(h) Should the engineer or land surveyor be presented with a Certification to be signed, sealed, and dated as summarized in Rule 330-X-11-.04 and defined in Rule 330-X-2-.01(7), he or she should carefully evaluate that Certification to determine if any of the circumstances set forth below would apply. The engineer or land surveyor who signs, seals, and dates Certifications which: (a) relate to matters which are beyond the engineer's or land surveyor's technical competence, or (b) involve matters which are beyond the engineer's or land surveyor's scope of services actually provided, or (c) relate to matters which were not prepared under the engineer's

or land surveyor's responsible supervision, direction or control are subject to disciplinary action pursuant to Rule 330-X-16. If any of these circumstances would apply, the engineer or land surveyor shall either: (a) modify the Certification to limit its scope to those matters which the engineer or land surveyor can properly sign, seal, and date, or (b) decline to sign the Certification.

(i) The engineer or land surveyor shall be completely objective, truthful, and shall include all relevant and pertinent information in all professional reports, statements or testimony.

(j) The engineer or land surveyor shall issue no statements, or criticisms or arguments on matters connected with public policy which are inspired or paid for by an interested party, or parties, unless he or she has prefaced his or her comments by explicitly identifying himself or herself, by disclosing the identities of the party, or parties, on whose behalf he or she is speaking, and by revealing the existence of any pecuniary interest he or she may have in the instant matter.

(k) Licensees shall notify their employer or client and such other authority as may be appropriate when their professional judgment or covenants of this Code of Ethics are overruled under circumstances where life, health, property, or welfare of the public is endangered.

Author: Board

Statutory Authority: Section 34-11-35, Code of Alabama 1975

Effective date: September 10, 1982. Amended: December 19, 1984, October 20, 1987, April 9, 1990, October 18, 1994, October 28, 1998, July 23, 2002, June 4, 2003, and July 27, 2012.