

Attachment 3

DESIGNER SELECTION PROCEDURES FOR THE UNIVERSITY OF NORTH CAROLINA AND ITS CONSTITUENT INSTITUTIONS

Purpose: The North Carolina Administrative Code (NCAC), Title 01, Subchapter 30D Section .0300 – Selection of Designers or Consultants, .0304 states that the UNC system shall establish its own procedures for final designer or consultant selection. The University is required to file its procedures with the State Building Commission (SBC) for approval. The purpose of this document is to comply with that requirement. This document is intended to provide procedures which complement, not replace, the SBC designer selection policy and, accordingly, should only be used in conjunction with that policy.

The following procedures are unique to the UNC System:

1. Each Board of Trustees of a constituent institution of the University of North Carolina, by delegation from the Board of Governors has been assigned the authority for:
 - a. Selection of architects or engineers for buildings and improvements requiring such professional services.
 - b. Approval of building sites.
 - c. Approval of plans and specifications.
 - d. Final acceptance of all completed buildings and projects.
 - e. Preparing and maintaining a master plan for the institution.
2. The requirement for the State Construction Office representation on all University pre-selection committees is waived by 01NCAC 30D.0304.

3. According to 01 NCAC 30D.0301, all designers or consultants shall file design qualifications information (Federal Standard Form 254 and other supporting material) with the State Construction Office prior to being considered by the pre-selection committee. In addition, this designer qualification information may be filed directly with the constituent institutions of The University when application is made for designer selection for a specific project.
4. GS 116-31.11 delegates the duties of the Department of Administration and the Office of State Construction to the University of North Carolina with respect to the design, construction, or renovation of buildings, utilities, and other property developments of The University of North Carolina requiring the estimated expenditure of public money of two million dollars (\$2,000,000) or less.

The University of North Carolina Procedures: All State Building Commission prescribed policies for designer selection as outlined in the NCAC Subchapter 30D apply to constituent institutions of The University of North Carolina with the following clarifications and modifications:

Definitions

1. **“Capital Projects Coordinator”** means the individual authorized by each funded constituent institution of The University to coordinate each assigned capital improvement project and related matters with the various interested departments at the institution and with the State Construction Office and other State reviewing agencies where applicable. The individual so designated for purposes of these rules in this Subchapter may have other titles within the institution 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. Where possible, the Capital Projects Coordinator shall be a licensed architect or engineer. The Capital Projects Coordinator shall be an employee of the institution.

2. **“Designer”** means any individual, firm, partnership, corporation, association or other legal entity licensed and permitted by law to practice architecture, engineering, or landscape architecture in the State of North Carolina.
3. **“Contact Person”** means the person named in the public advertisement who shall be the Capital Projects Coordinator or his/her designee.
4. **“Funded Agency”** means the constituent institution that is named in the legislation appropriating funds or where such funds have been allocated to a constituent institution by The University of North Carolina General Administration for the design and/or construction project.
5. **“Major Projects”** means those capital improvement projects whose authorized funding or estimated cost is greater than \$500,000 or a planning study activity whose funding is greater than \$50,000.
6. **“Minor Projects”** means those capital improvement projects whose authorized funding or estimated cost is \$500,000 or less or a planning or study activity whose authorized funding is \$50,000 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.
7. **“Download Projects”** means those capital improvement projects with a total cost of two million dollars (\$2,000,000) or less.
8. **“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.

9. **“Open End-Fixed Term Contracts”** – The University of North Carolina and its constituent institutions may require the services of designer(s) or consultant(s) for small projects on a routine basis. In such cases, designer(s) or consultant(s) for annual contracts will be selected in accordance with the procedures described for minor projects. This does not preclude an institution’s use of designer selection procedures specified for major projects if it elects to do so. The term of these contracts will be as outlined in 01 NCAC 30D.0302 (f).

Procedures

Public Announcement: Constituent institutions of The University of North Carolina will submit a request for announcement of the need for professional services through the established web application for such postings on the UNC web site through which the announcement will also be posted to the State’s Interactive Purchasing System (IPS). A contact person, normally the institutional Capital Projects Coordinator or his/her designee, will be named in the public announcement. The advertisement time shall be as outlined in 01 NCAC 30D.0202.

Selection

General Procedure for All Projects: The general procedure for all projects shall be as outlined in 01 NCAC 30D.0302(b) except that the pre-selection priority list shall remain confidential at the institution until the final selection is made by the Board of Trustees.

Minor Projects: The pre-selection committee for minor projects shall consist of at least two members, one of which is the primary or alternate Capital Projects Coordinator. The second member should be a representative from the using department of the institution. A third member (a licensed architect or engineer) is required if the Capital Projects Coordinator is not so licensed. The pre-selection committee shall review individual designer evaluations held by the State Construction Office and refer to the University’s “CAPSTAT” capital status system for designer

references. The constituent institutions of the University shall be responsible for final designer selection and will conduct fee negotiations.

Major Projects: The pre-selection committee make-up will be as specified for the minor projects above except that the committee will include a minimum of three members, one of whom shall be a licensed architect or engineer. The pre-selection committee shall review individual designer evaluations held by the State Construction Office and refer to the University's "CAPSTAT" capital status system for designer references. Procedures as prescribed for major projects as outlined in 01 NCAC 30D.0302 including interview of firms, will be used by the institution.

Emergency Projects: The State Building Commission designer selection procedures make provision for waiver of the normal selection rules when immediate design services are required to correct a situation of an emergency nature. All provisions as outlined in 01 NCAC 30D.0302(e) will apply to The University and its constituent institutions, except that the required report of the written description of the condition and rationale for employing emergency design services will be filed by the Chancellor of the constituent institution with UNC-General Administration for presentation to the next regularly scheduled meeting of the State Building Commission.

Open End-Fixed Term Contracts: The limits for use of open end-fixed term contracts shall be as outlined in 01 NCAC 30D.0302(f). Designers selected for open end-fixed term design agreements shall be selected using procedures prescribed for minor projects unless the institution opts to use the procedures for designer selection for major projects. In no case will multiple open-end design agreements be combined to design sub-portions of a single capital project in

such a manner that the combination of the multiple agreements would provide design of the entire project, as a capital project requires a designer-of-record for the entire facility

The practice of an institution employing simultaneous multiple open-end agreements with the same firm, while not ruled out by these procedures, is strongly discouraged and should be undertaken only when there is justification to do so. The use of open-end agreements for relatively small projects is to allow competition for this work from a wide range of designers, including very small firms. Institutions should enter into open-end agreements with the number of firms and in the specialties only to meet a workload that is reasonably anticipated. Open-end design agreements are not intended to be used to provide preliminary planning on a project with the consideration that the open-end agreement can be increased by contract modification to provide full design service on a project. It is critical that the types of services to be undertaken by open-end design agreement fall within the parameters defined in the public advertisement for open-end design services.

Fee Negotiations

Download Projects (including minor projects and major projects \$2,000,000 and less): The constituent institution is responsible for fee negotiations. Fee negotiations will be supervised and signed by a licensed design or construction professional.

Major Projects above \$2,000,000: Upon final selection of a designer by a constituent institution Board of Trustees, the Capital Projects Coordinator will provide written notification directly to the State Construction Office of the selected firm for project design and will include the names of the final three firms considered for selection. When the constituent institution initiates a request to the State Construction Office for preparation of a contract and fee negotiation with a selected design firm, the institution shall indicate that the designer selection

was made in accordance with the procedures prescribed by the State Building Commission (including procedures adopted by the State Building Commission for The University of North Carolina). Further, the fee negotiation request shall include a statement of scope for the requested design services and any other special stipulations, including schedule.

Emergency Projects: The constituent institution is responsible for fee negotiations. Fee negotiations will be supervised and signed by a licensed design or construction professional.

Open-End Fixed Term Contracts: The basic design agreement delineating unit costs (cost per hour, etc.) is negotiated at the institutional (campus) level. Further, negotiation of a specific fee for individual projects under the open-end fixed term design agreement is also negotiated at the institutional (campus) level. Either type of fee negotiation is to be conducted by one person or group of persons which includes supervision and signature by a licensed design or construction professional.

Reporting

The institutions conducting fee negotiations will report the outcome of the negotiations via the “CAPSTAT” system, where it will be consolidated for reporting to the State Building Commission at least annually, but customarily for the Commission’s regularly scheduled meetings. The report will include a listing of all projects for which fee negotiations have been conducted at the institutional level; the designer of record, project budget, fee, and other explanatory data as appropriate. A summary report of each year’s activity will also be submitted to the State Building Commission no later than June 30 of the following year. In addition, the top three designers considered, in priority order, will be listed in an electronic posting on The University web site, based on the submission of the selection information via a web application accessed by the selecting institution.

**UNC Designer Selection Procedures for Projects <\$500,000
(Interim Guidance Pending State Building Commission Procedure Development)**

The following designer selection procedures apply only to projects less than \$500,000 funded on or after July 1, 2007 in keeping with legislation under Session Law 2007-446 (HB 73). Projects funded prior to that date should follow designer selection procedures and thresholds per the “Designer Selection Procedures for the University of North Carolina and its Constituent Institutions” approved 12/06 by the State Building Commission.

Designers for projects requiring the estimated expenditure of public money less than \$500,000 may be directly selected under the guidance of qualified campus staff involving at least a licensed architect or engineer and Capital Projects Coordinator (may be one person if both qualifications are met in a single individual). Selection may be made without public advertising or interview, but should continue to be based on qualifications and selection criteria currently in use in the approved selection process. The campus is responsible for fee negotiation and contract execution, using the appropriate design agreement for “download” projects (“Standard Form of Agreement Between Owner and Designer – Capital Projects Costing Less than \$2,000,000”).

Campuses should continue to adhere to their internal procedures regarding the level of involvement of their respective Boards of Trustees. If their board currently approves all designer selections, those made under this process should also be approved. If the board has delegated some authority to the Chancellor or staff, that delegation should continue to be followed. Compliance with these internal approvals should continue to be documented in whatever fashion has been customary at each campus (usually Board minutes where their approval is required). In addition, designer selections should continue to be posted in CAPSTAT as they occur.

The use of “Fixed Term” or “Open-End” design agreements is no longer required for projects under \$300,000 or under \$500,000. However, there may be some advantage in continuing to use these arrangements. The use of an open-end agreement permits the related use of a letter agreement instead of the full standard design agreement. In addition, the use of these agreements reinforces the State’s commitment to soliciting competition for all work, which has been the foundation of the State’s procurement system, whether for goods and services or construction, since the 1930’s. It may be wise to revert to selection among the firms who have been through the competitive process and selected for open-end agreements for work between \$300,000 and \$500,000 in order to avoid the appearance of any favoritism or improprieties in selections.

Existing open-end agreements, advertised under the \$300,000 limit may only be used for projects of that magnitude. If campuses wish to establish new open-end agreements that allow for larger projects up to \$500,000, they may do so by following the customary advertising and selection processes for open-end agreements, but advertising at the higher level. Again, this is not required, but may be done at the campus’s option.

While this legislation increases flexibility in that it both raises the limit for informal projects and reduces the red-tape required to select a designer for them, it comes with a responsibility to use that flexibility wisely. Selections should be made with great care to avoid any semblance of

undue influence in selection or criticism of work being concentrated among to small a group of firms.

The State Building Commission is expected to address the development of revised procedures soon which will further clarify operating impact of this legislation on our day-to-day operations. In the meantime, please use this outline for guidance and test all of your selection decisions based on their ability to withstand public scrutiny; are they fair, are they logical, are they consistent, are they defensible?

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MDT
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