

1980 S.C. Op. Atty. Gen. 60 (S.C.A.G.), 1980 S.C. Op. Atty. Gen. No. 80-30, 1980 WL 81914

Office of the Attorney General

State of South Carolina

Opinion No. 80-30

MARCH 12, 1980

**\*1 SUBJECT: Construction Management**

The services of a construction manager should be specifically outlined for any proposed public project and should be publicly advertised for in a newspaper of general circulation in the State at least once along with a request for a resume of qualifications. The architect may not add those services by contract amendment for an additional fee under a standard AIA contract previously entered into pursuant to advertised selection of architects for architectural services only.

TO: John McPherson  
Chief Engineer  
State Auditor's Office

**QUESTION:**

May construction management services be added by amendment to an existing contract between a public entity and an architectural firm without advertisement for those services?

**STATUTES:**

§§ 1-1-440, 10-1-80, and 10-5-30.

**FACTS:**

An architectural firm was granted a contract for the design of a public building based on an advertisement of the description of the project and the services sought run on January 29, 1979, in a newspaper of general circulation. The contract was dated March 28, 1979, and was approved by the South Carolina Budget and Control Board on October 16, 1979. The Agreement provided under Article 14, paragraph 14.2.1:

FOR BASIC SERVICES as described in paragraphs 1.1 through 1.5, and any other services included in Article 15 as part of Basic Services, Basic Compensation shall be computed as follows:

Six Point Zero Five (6.05%) Percent of Construction Costs.

With payments for basic services under paragraph 14.2.2 being:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

The State agency has presented for your approval a proposed contract amendment. Under that amendment the architect would be named as the construction manager for the proposed project and would be paid an additional fee of four percent (4%) of the construction costs of the project plus on site expenses.

DISCUSSION:

§ 10-5-30 of the South Carolina Code of Laws (1976) requires that a description of a proposed project and the required services shall be developed and published at least once in one or more newspapers of general circulation throughout the State along with a request for the submission of a resume of qualifications by architectural or engineering firms interested in the proposed project. § 1-1-440 of the South Carolina Code of Laws (1976) states that notwithstanding any other provision of law, all State agencies and departments before contracting for fifteen hundred (\$1,500.00) dollars or more with private individuals or companies for products or services, shall invite bids on such contracts from at least three qualified sources. This statute, however, does contain the proviso that the provisions of this section shall not apply to professional services where the person employed is customarily employed on a fee basis rather than by competitive bidding. § 10-1-80 of the South Carolina Code of Laws (1976) requires competitive bidding on the construction of any public building costing more than thirty thousand (\$30,000.00) dollars subsequent to advertisement in a newspaper of general circulation in the State on three occasions. These bids are required to be opened in public with the award going by law to the lowest responsible bidder.

\*2 The contract which you have presented is a standard form agreement between the owner and the architect commonly denoted as AIA Document B141. The General Conditions of the Contract for Construction, AIA Document A201, and the standard Architect Agreement, AIA Document B141, provide for the architect to perform services involving the estimating, scheduling, and coordination of construction when separate prime contractors are used. This is the situation which was addressed by an opinion letter of this Office dated February 13, 1975, which dealt with increased use of additional resident inspectors on a 'fast track' project due to the necessity for stringent supervision and inspection when multiple contracts were utilized rather than a single prime contractor.

We are informed that the architectural firm in question asserts that you may approve its proposed amendment to the original Agreement under section 1.7.8 of that document. The contract in this instance between the owner and the architect dated March 28, 1979, under section 1.7, states that certain identified services are not included in basic services unless so identified in Article 15. Section 1.7.8 covers the provision of services in connection with the work of a construction manager or separate consultants retained by the owner. It does not contemplate that the architect may act as construction manager on the project which is the subject of the Agreement. It is the opinion of this Office that the use of a construction manager was not contemplated in the original Agreement and that if it had been contemplated AIA Document B141/CM, the construction management edition of the standard form of Agreement between owner and architect, would have been utilized. And even that document contemplates a separation of the architect and the construction manager rather than the assumption of a dual role by the architect. Finally, Article 15 of the Agreement presented does not include the furnishing of construction management services. While under Article 15 changes may be made by agreement of the parties and incorporated into the Agreement, this visualizes changes in the structure or the project scope, not the addition of a construction manager. In view of the nature of construction management services, it is the opinion of this Office that such services should be the subject of advertisement, bidding, and selection, then the approval of the South Carolina Budget and Control Board subsequent to a determination by your office that such services are necessary.

In the opinion of this Office, if a State agency should decide that circumstance warrants the use of a construction manager on a public project, then those services should be the subject of advertisement and invitation to bid pursuant to § 1-1-110. In view of the duties of the construction-manager under the proposed amendment in point as coordinator, inspector, and general overseer of project construction this appears mandatory.

CONCLUSION:

\*3 It is the opinion of this Office that the procurement of services for construction management must be the subject of advertisement. Although the Agreement in issue contains a clause allowing for the provisions of services in connection with the work of a construction manager retained by the owner, as no such services were considered under Article 15 of the original contract, you may not, by amendment, make construction management services a part of the original contract. These services, if the State feels that they are required by a specific project, should be sought by public advertisement.

Judith Evans Finuf  
Assistant Attorney General

1980 S.C. Op. Atty. Gen. 60 (S.C.A.G.), 1980 S.C. Op. Atty. Gen. No. 80-30, 1980 WL 81914

---

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.