

Louisiana Professional Engineering and Land Surveying Board

Petition for Declaratory Order and Ruling

1. Name of Petitioner: American Council of Engineering Companies of Louisiana, Inc.
2. Address: 9643 Brookline Ave., Suite 112. Baton Rouge, LA 70809
3. Telephone No.: (225) 927-7704
4. Email: steven.loeb@bswllp.com (Steven Loeb, General Council ACEC/L)
5. List all statutes, rules or orders of the Board to which this petition relates:
 - La. R.S. 37: 681: "safeguard life, health, and property and to promote the public welfare"
 - La. R.S. 37: 682: "safeguarding of life, health, and property"
 - Title 46 §101, A: "safeguard life, health and property, and to promote the public welfare"
 - Title 46 §2501, A: "safeguard life, health and property, to promote the public welfare"
 - Title 46 §2503, "Licensees shall hold paramount the safety, health, and property and welfare of the public"
 - Title 46 §2503, B "Licensees shall at all times recognize that their primary obligation is to protect the safety, health property, and welfare of the public"
 - Title 46 §2901, B: "safeguard life, health, property, and to promote the public welfare"
 - Title 46 §3101, A: "safeguard life, health and property and promote the public welfare."
 - Title 46 §3103, A: "safeguard life, health and property and promote the public welfare."
 - La. R.S. 38:2318:18.1 (Hammett Act); qualifications based selection
6. Clearly and concisely state all the facts necessary to show the manner in which the petitioner is aggrieved by the statute, rule or order or by its potential application, or in which the petitioner is uncertain of its effects:

La. R.S. 37 §681 and others provide that the purpose of the licensing laws is to safeguard the life, health, and property of the public, and to promote the public welfare. This purpose is thwarted by the allowing the selection of professional engineering services based upon price rather than by qualifications.
7. Clearly and concisely state the declaratory order or ruling requested by the petitioner:

This Petition for Declaratory Order and Ruling is hereby submitted for the purpose of interpreting La. R.S. 37: 681 and Louisiana Administrative Code 46 §101 to implement a standard of compliance with qualification based selection laws, including La. R.S. 38:2318.1 (Hammett Act) and 40 U.S. Code 11 § 1101 (Brooks Act), such that a licensed engineer shall not submit, orally or in writing, any monetary cost information in connection with a procurement of professional engineering services by a governmental entity until after the engineer is first selected based upon qualifications. An engineer having submitted requested qualification, and having first been selected as the most qualified to provide the services required for the proposed project, may then submit monetary cost

information, negotiate a contract and establish compensation or fees for the required services.

This interpretation, when issued as a ruling and order, will further the primary goal of the enabling statutes creating LAPELS (La. R.S. 37: 681, et. seq.) which is to regulate the practice professional engineering in order to safeguard life, health, and property, and to promote the public welfare. This interpretation is a reasonable extension of the public policy as stated under both La. R.S. 38:2318.1 (Hammett Act) and 40 U.S. Code 11 § 1101 (Brooks Act).

8. State whether the petitioner has an application or is involved in a disciplinary or enforcement investigation or proceeding, or in any other matter which is presently pending before or under consideration by the Board. If so, explain in detail:
 - N/A
9. State whether the declaratory order or ruling requested by the petitioner relates to, is similar to or is connected with any pending litigation or with any disciplinary or enforcement investigation or proceeding presently pending before or under consideration by the Board. If so, explain in detail:
 - N/A

Signature of Petitioner

BY:



Steven B. Loeb, General Counsel on behalf of
American Council of Engineering Companies
of Louisiana, Inc.

Date:

March 1, 2016

**LOUISIANA PROFESSIONAL ENGINEERING
AND LAND SURVEYING BOARD
9643 Brookline Avenue, Suite 123
Baton Rouge, Louisiana 70809**

RULING ON PETITION FOR DECLARATORY ORDER

RULING NO. 2016-01

1.

On March 7, 2016, American Council of Engineering Companies of Louisiana, Inc. ("Petitioner") filed with the Louisiana Professional Engineering and Land Surveying Board (the "Board") a petition for declaratory order and ruling pursuant to LAC Title 46:LXI§727.

2.

Petitioner seeks a declaratory order as to whether the Board's licensure laws and rules prohibit a professional engineer from submitting monetary cost information in connection with a procurement of engineering services by a governmental entity in Louisiana prior to the professional engineer's selection based upon qualifications.

3.

La. R.S. 37:681 provides, in pertinent part, as follows:

In order to safeguard life, health, and property and to promote the public welfare, any individual in either public or private capacity, or foreign or domestic firm, practicing or offering to practice professional engineering or professional land surveying, shall be required to submit evidence that he is qualified to so practice and shall be licensed as hereinafter provided. . . .

4.

La. R.S. 37:682(12)(a) provides as follows:

"Practice of engineering" shall mean responsible professional service which may include consultation, investigation, evaluation, planning, designing, or inspection of construction in connection with any public or private utilities, structures, machines, equipment, processes, works, or projects wherein the public welfare or the safeguarding of life, health, and property is concerned or involved, when such professional service requires the application of engineering principles and the interpretation of engineering data.

5.

La. R.S. 37:682(15) provides as follows:

"Responsible professional services" shall mean the technical responsibility, control, and direction of the investigation, design, or construction of engineering service or work requiring initiative, engineering ability, and its use of independent judgment.

La. R.S. 37:698(A) provides as follows:

The board shall have the power to take disciplinary action against any licensee or certificate holder found by the board to be guilty of any of the following acts or offenses:

(1) Any fraud, deceit, material misstatement, or perjury or the giving of any false or forged evidence in applying for a license or certificate, or in taking any examination, or in applying for any renewal license or certificate provided for in this Chapter.

(2) Any fraud, deceit, gross negligence, material misrepresentation, gross incompetence, or gross misconduct in the practice of engineering or land surveying.

(3) Conviction of a felony or of any crime of moral turpitude or entry of a plea of guilty or nolo contendere to a felony charge or to a crime of moral turpitude under the laws of the United States or any state, territory, or district of the United States.

(4) Conviction of any crime or entry of a plea of guilty or nolo contendere to any criminal charge an element of which is fraud or which arises out of such person's practice of engineering or land surveying.

(5) Conviction of any civil or criminal violation of, or entry of a plea of guilty or nolo contendere to any criminal charge under the Louisiana Campaign Finance Disclosure Act or any other campaign finance and/or practices laws of the state of Louisiana, the United States, or any state, territory, or district of the United States.

(6) Violation of any provision of this Chapter or any rules or regulations adopted and promulgated by the board.

(7) The refusal of the licensing authority of another state, territory, or district of the United States to issue or renew a license, permit, or certificate to practice engineering or land surveying, or the revocation, suspension, or any other disciplinary action imposed on a license, permit, or certificate issued by such licensing authority, on grounds other than nonpayment of a licensure fee, or a finding by such licensing authority that a person has engaged in the unlicensed practice of engineering or land surveying, provided that the reason for the action taken by the other licensing authority was recognized by the Louisiana board as a ground for disciplinary action at the time the action was taken.

(8) Providing false testimony before the board.

(9) Using a seal or stamp or engaging in any other act constituting the practice of engineering or land surveying, or violating any order or terms of probation imposed by the board, at a time when his license or certificate is suspended or revoked, or at a time when his license or certificate has been expired for more than ninety days, or at a time when he is in retired or inactive status as a board licensee.

(10) Failure to provide, within thirty calendar days of receipt of notice by certified mail, information or documents requested by the board relating to any alleged violation of this Chapter.

(11) The use of any advertising or solicitation which is false or misleading.

(12) Aiding or assisting another person in violating any provision of this Chapter or any rule or regulation adopted and promulgated by the board.

(13) Knowingly making or signing false statements, certificates, or affidavits in connection with the practice of engineering or land surveying.

(14) Declaration of insanity or incompetence by a court of competent jurisdiction.

(15) Presenting or attempting to use as one's own the license, certificate, seal, or stamp of another person.

(16) Using or attempting to use an expired, inactive, retired, or revoked license or certificate.

(17) Falsely impersonating any other licensee or certificate holder of like or different name.

(18) Practicing or offering to practice engineering or land surveying when not qualified.

(19) Violation of or noncompliance with any order, ruling, or decision of the board.

7.

LAC Title 46:LXI§101 provides, in pertinent part, as follows:

In order to safeguard life, health and property, and to promote the public welfare, any individual in either public or private capacity, or foreign or domestic firm, practicing or offering to practice professional engineering or professional land surveying, shall be required to submit evidence that he/she is qualified to so practice and shall be licensed with the board. . . .

8.

LAC Title 46:LXI§2501(A), (B) and (C) provide as follows:

A. In order to safeguard life, health and property, to promote the public welfare, and to establish and maintain a high standard of integrity and practice, the following rules of professional conduct shall be binding on every licensee. These rules of professional conduct deal primarily with the relationship between licensees and the public, and should not be construed as a substitute for codes of ethics of the various professional and technical societies.

B. All licensees under the licensure law are charged with having knowledge of the existence of these rules of professional conduct, and shall be deemed to be familiar with their provisions and to understand them.

C. In this Chapter, the term *licensee* shall mean any professional engineer, professional land surveyor, engineer intern, land surveyor intern, or firm holding a license or certificate issued by this board.

9.

LAC Title 46:LXI§2503(A) and (B) provide as follows:

A. Licensees shall hold paramount the safety, health, property and welfare of the public in the performance of their professional duties.

B. Licensees shall at all times recognize that their primary obligation is to protect the safety, health, property, and welfare of the public. If their professional judgment is overruled by nontechnical authority, they will clearly point out the consequences, notifying the proper authority of any observed conditions which endanger public safety, health, property and welfare.

10.

LAC Title 46:LXI§2509(A) provides as follows:

Licensees shall avoid improper solicitation of professional employment or services.

11.

La. R.S. 38:2318.1, which is titled “Louisiana ‘No Bidding of Design Professional Services’ policy”, provides as follows:

A. It is the policy of the state of Louisiana, its political subdivisions, and agencies to select providers of design professional services on the basis of competence and qualifications for a fair and reasonable price. Neither the state nor any of its political subdivisions or agencies may select providers of design services wherein price or price-related information is a factor in the selection.

B. However, the provisions of this Section shall have no effect on and shall not supersede any contract permitted pursuant to the provisions of Chapter 1 of Title 48 of the Louisiana Revised Statutes of 1950 relating to the authority for the Department of Transportation and Development to enter into design-build contracts and the authority of the Louisiana Transportation Authority to enter into public-private partnership contracts, R.S. 38:85, 2225.2.1, or 2225.2.2 relating to the authority for certain political subdivisions to enter into design-build contracts, or R.S. 34:3523, relating to any port project that a notice of intent is advertised for in accordance with R.S. 34:3523, prior to December 31, 2015.

C. It is the policy of the state of Louisiana that all records, as defined in R.S. 44:1(A)(2)(a), involved or dealing with the selection of design professional services shall be open to the public in accord with the intent of Louisiana Constitution Article XII, Section 3, and R.S. 44:31.

ORDER

After due consideration of the petition for declaratory order and ruling filed by Petitioner and after discussion by the Board during its meeting on July 18, 2016:

IT IS THE RULING of the Board that:

12.

La. R.S. 38:2318.1 prohibits the state of Louisiana and its political subdivisions and agencies from selecting providers of design professional services wherein price or price-related information is a factor in the selection.

13.

The prohibitions contained in La. R.S. 38:2318.1 are directed towards the state of Louisiana and its political subdivisions and agencies, not towards professional engineers.

14.

The Board cannot enforce La. R.S. 38:2318.1 against professional engineers.

15.

The Board’s licensure laws and rules do not prohibit a professional engineer from submitting monetary cost information in connection with a procurement of engineering services

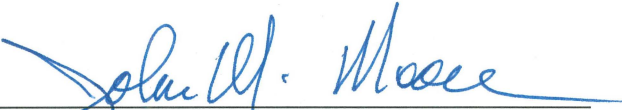
by the state of Louisiana or its political subdivisions or agencies prior to the professional engineer's selection based upon qualifications.

16.

The Board cannot take disciplinary action against a professional engineer who submits monetary cost information in connection with a procurement of engineering services by the state of Louisiana or its political subdivisions or agencies prior to the professional engineer's selection based upon qualifications.

THUS DONE at Baton Rouge, Louisiana, on the 18th day of July, 2016.

**LOUISIANA PROFESSIONAL ENGINEERING
AND LAND SURVEYING BOARD**

By: 
JOHN W. "BILLY" MOORE, P.E., Chairman