

Presentation for

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# Mini-Brooks Qualifications Based Selection

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# The Board

The North Carolina Board of Examiners for Engineers and Land Surveyors is organized under the provisions of The North Carolina Engineering and Land Surveying Act, Chapter 89C of the North Carolina General Statutes (G.S. 89C). The Board consists of four Professional Engineers, three Professional Land Surveyors, and two Public Members, appointed by the Governor. Members of the Board serve for staggered five-year terms, and no member may be appointed for more than two full terms.

The Board is responsible for the administration and regulation of the professions of engineering and land surveying in North Carolina. The Board reviews applications, administers examinations, licenses qualified applicants, and regulates the professional practice of the licensees throughout the State. The Board investigates alleged violations of provisions of the licensure law.

# Quiz

What is Mini-Brooks?

- A regulation that gets in the way of bidding professional services.
- The light leading the way to quality professional services on government projects.



# Where we're going!

- History of Qualifications Based Selection
- NC Statute
- NC Administrative Code
- How Engineering/Land Surveying Firms may respond
- Questions



# The Man Behind the **Law**



# QBS

Federal Brooks Act

U.S. Code 541 et seq.

Introduced by **Congressman Jack Brooks** of Texas in 1972 to codify selection of architects and engineers (and surveyors) based on qualifications rather than solely on lowest price.

President Nixon signed into law on October 27, 1972.

Applies to Federal Government projects.



# QBS

North Carolina “Mini-Brooks”

G.S. 143-64.31 et seq.

Became law in 1987 for the procurement of architectural, engineering and land surveying services based on qualifications. Construction management at risk services added in 2001.

Applies to the State and its public subdivisions and Local Governmental Units.

# Relating Regulations to Procuring Professional Services

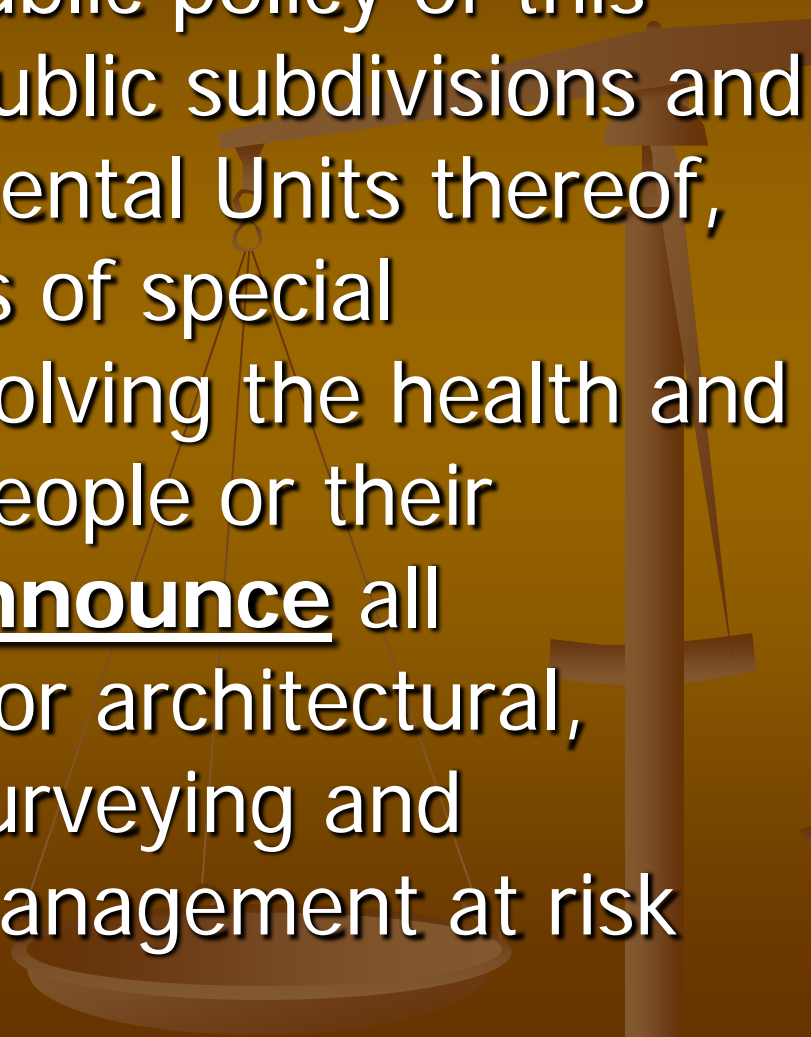
- **What** are the laws, rules, opinions and interpretations that apply?
- **When** is it architectural, engineering, land surveying or construction management at risk services?
- **Where** can you seek advice?
- **How** can you assure that you comply?

# Qualifications Based Selection Law, Rules and Opinions

- Federal Brooks Act U.S. Code 541 et seq.
- State Statute G.S. 143-64.31 et seq.
- Engineers and Land Surveyors Board Rule NCAC 21-56.0701(f)(3)
- Architects Board Rule NCAC 21-02.0209(9)
- Eng/LS Board Newsletter Spring 2001 Q&A
- Attorney General Opinion June 19, 2001

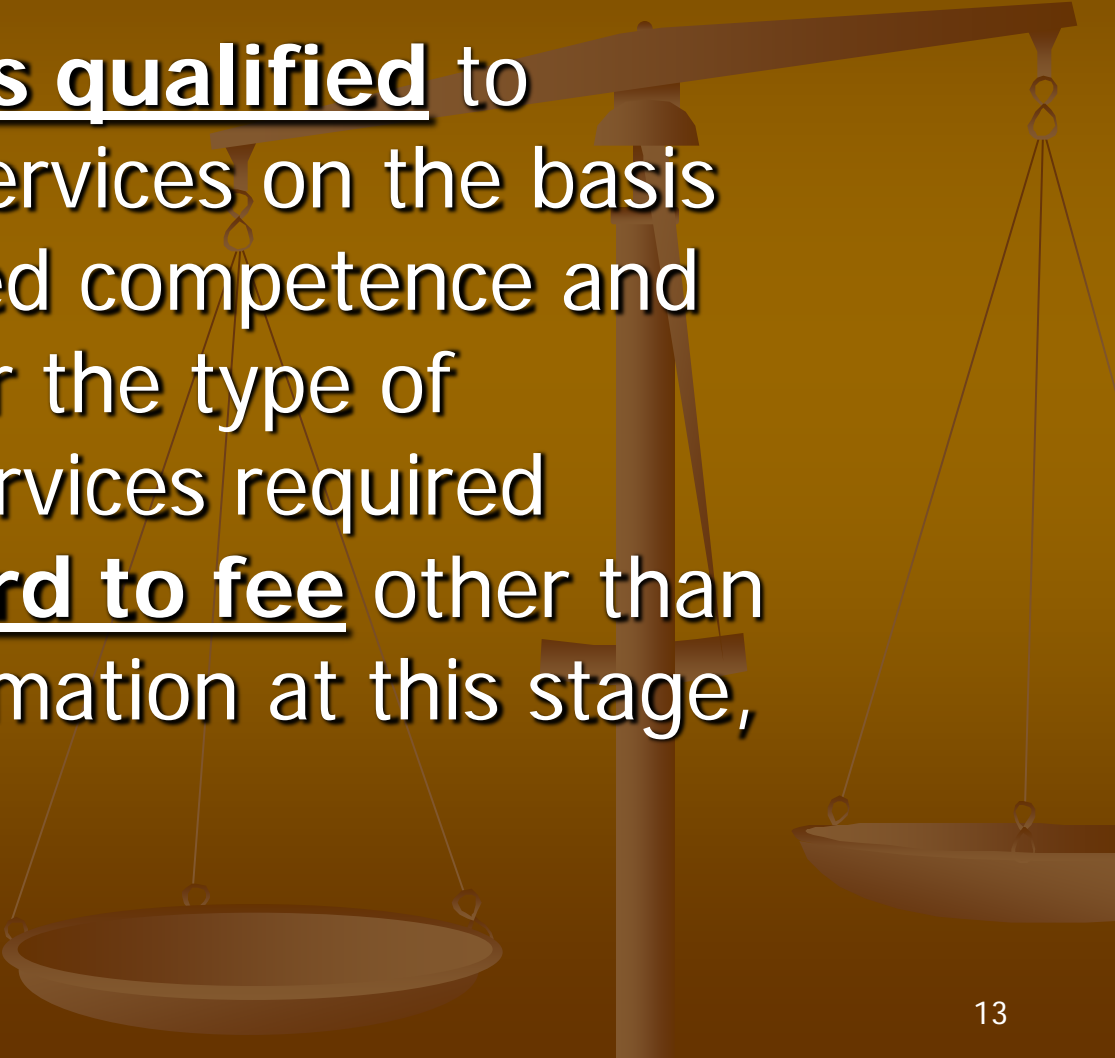
# NCGS 143-64.31

(a) It is the public policy of this State and all public subdivisions and Local Governmental Units thereof, except in cases of special emergency involving the health and safety of the people or their property, to announce all requirements for architectural, engineering, surveying and construction management at risk services,



# NCGS 143-64.31 (cont'd)

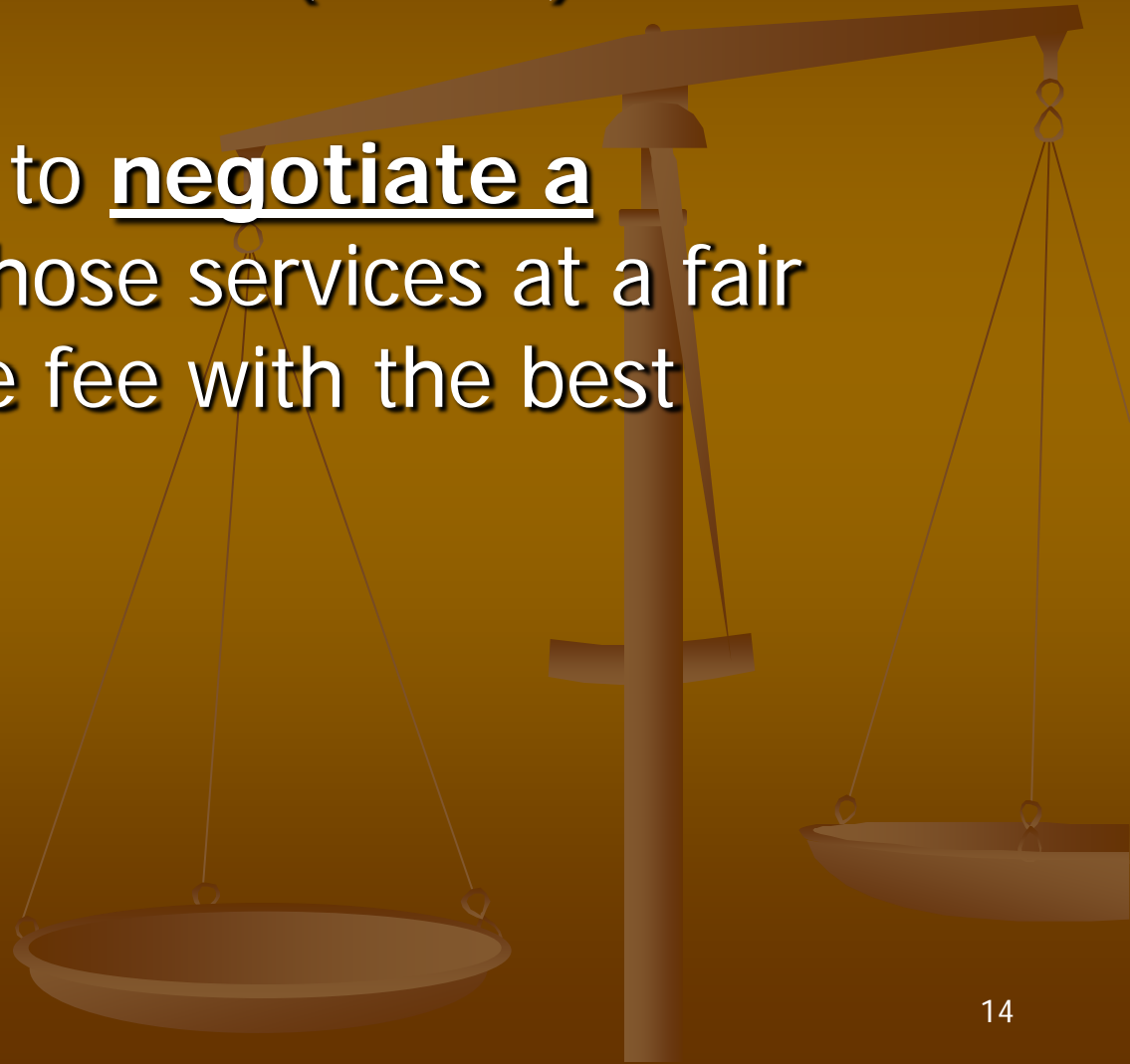
to select firms qualified to provide such services on the basis of demonstrated competence and qualification for the type of professional services required without regard to fee other than unit price information at this stage,





## NCGS 143-64.31 (cont'd)

and thereafter to negotiate a contract for those services at a fair and reasonable fee with the best qualified firm.



## NCGS 143-64.31 (cont'd)

If a contract cannot be negotiated with the best qualified firm, negotiations with that firm shall be terminated and initiated with the next best qualified firm.

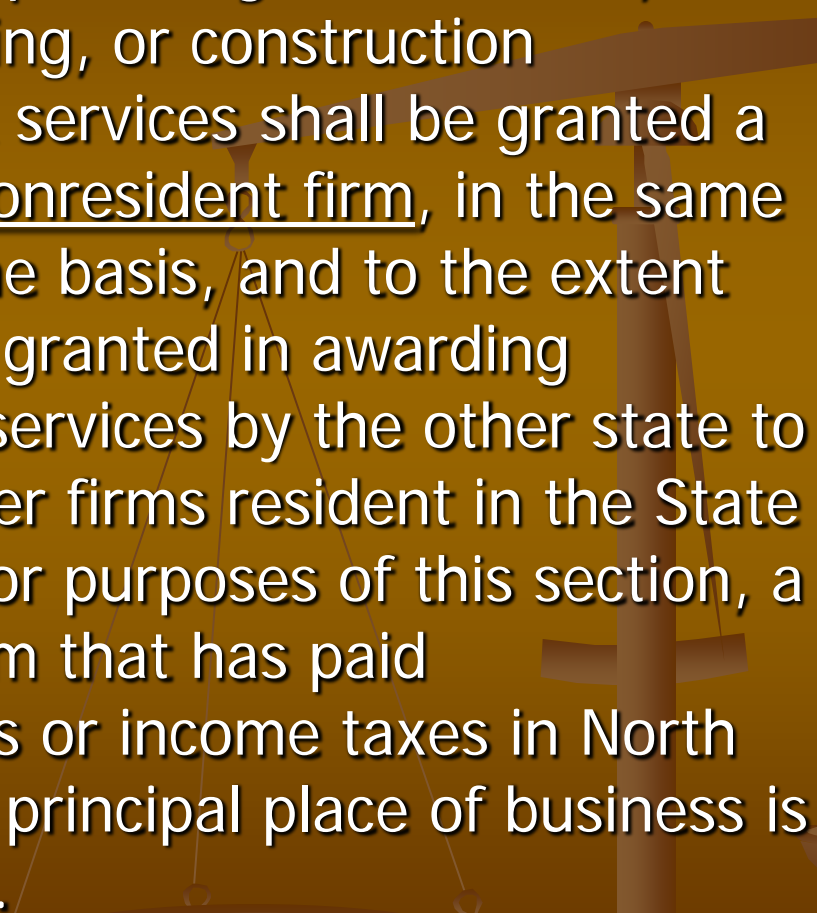
# QBS

## NCGS 143-64.31 (cont'd)

Selection of a firm under this Article shall include the use of good faith efforts by the public entity to notify minority firms of the opportunity to submit qualifications for consideration by the public entity.

# NCGS 143-64.31

(a1) A resident firm providing architectural, engineering, surveying, or construction management at risk services shall be granted a preference over a nonresident firm, in the same manner, on the same basis, and to the extent that a preference is granted in awarding contracts for these services by the other state to its resident firms over firms resident in the State of North Carolina. For purposes of this section, a resident firm is a firm that has paid unemployment taxes or income taxes in North Carolina and whose principal place of business is located in this State.



# NCGS 143-64.31

(b) Public entities that contract with a construction manager at risk under this section shall report to the Secretary of Administration the following information on all projects where a construction manager at risk is utilized:

- (1) A detailed explanation of the reason why the particular construction manager at risk was selected.
- (2) The terms of the contract with the construction manager at risk.
- (3) A list of all other firms considered but not selected as the construction manager at risk and the amount of their proposed fees for services.
- (4) A report on the form of bidding utilized by the construction manager at risk on the project.

The Secretary of Administration shall adopt rules to implement the provisions of this subsection including the format and frequency of reporting.



# NCGS 143-64.32

## Written exemption of particular contracts.

Units of local government or the North Carolina Department of Transportation may in writing exempt particular projects from the provisions of this Article in the case of:

- (a) Proposed projects where an estimated professional fee is in an amount less than thirty thousand dollars (\$30,000),  
or

## NCGS 143-64.32 (cont'd)

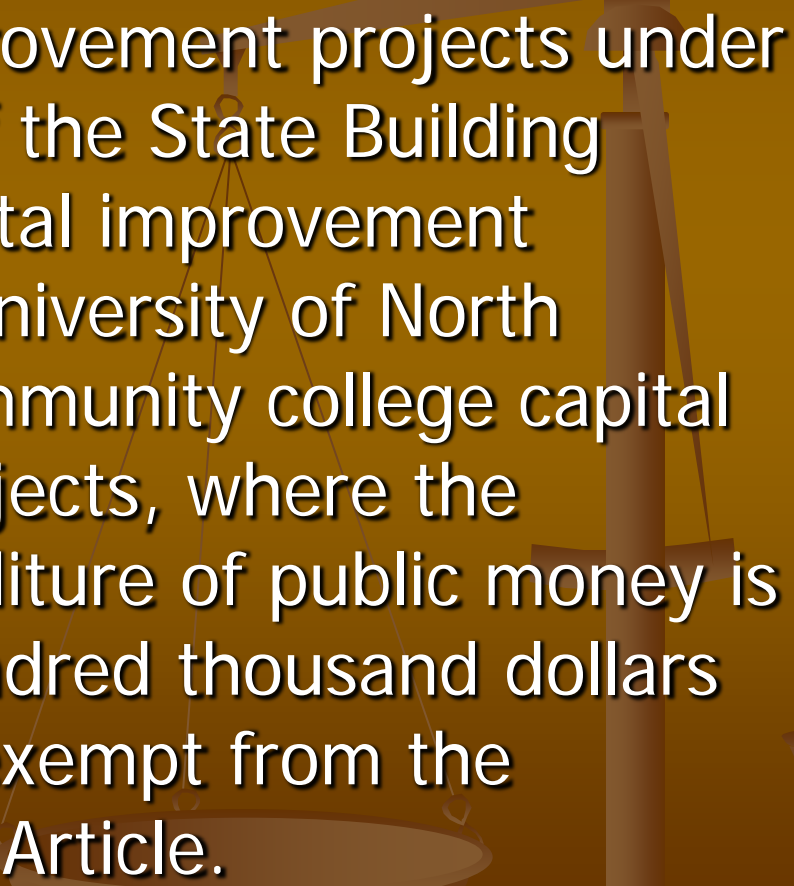


(b) Other particular projects exempted in the sole discretion of the Department of Transportation or the unit of local government, stating the reasons therefore and the circumstances attendant thereto.

# NCGS 143-64.34

## **Exemption of certain projects.**

State capital improvement projects under the jurisdiction of the State Building Commission, capital improvement projects of The University of North Carolina, and community college capital improvement projects, where the estimated expenditure of public money is less than five hundred thousand dollars (\$500,000), are exempt from the provisions of this Article.



# Engineers and Land Surveyors Board Rule

## NCAC 21-56.0701(f)(3)

Shall, with regard to fee bidding on public projects, comply with the provisions of G.S. 143-64.31 et seq., (or for federal projects, the Brooks Act, 40 U.S. Code 541 et seq.) and shall not knowingly cooperate in a violation of any provision of G.S. 143-64.31 et seq. (or of 40 U.S. Code 541 et seq.).

# Architects Board Rule NCAC 21-02.0209(9)

Fee bidding on Public Projects. An architect shall not knowingly cooperate in a violation of any provisions of G.S. 143-64.31.



# Board Newsletter Spring 2001

## Questions & Answers

The Engineering and Surveying newsletter provided answers posed in a Consulting Engineers Council of North Carolina meeting in January 2001.

See the Board's website at [www.ncbels.org](http://www.ncbels.org) under FAQ.

# QBS

## Board Newsletter Spring 2001 Selected Questions & Answers

Is a two envelope system acceptable under the provisions of the Mini-Brooks Act?

No. A project cost may not be provided until a firm has been selected based upon a qualification based process.

# QBS

## Board Newsletter Spring 2001 Selected Questions & Answers

What about the delivery of unit prices for the project?

The delivery of unit prices as a response to a request for proposal identifies relative information with respect to general fees and is not specific to tasks related to the project. The submission of any information, which can be easily correlated to a fixed price or a bid, is prohibited unless the project has been exempted.

# Board Newsletter Spring 2001 Selected Questions & Answers

What is considered a fee bid?

The submission of any information that would allow the public entity to determine a total project fee would be considered a "fee bid."

# Board Newsletter Spring 2001 Selected Questions & Answers

Who must issue the written exemption?

The exemption can only be issued by the entity that is authorized to award the contract.

A faint, stylized illustration of a balance scale is visible in the background. The scale is positioned vertically, with a central pillar and a horizontal beam. Two pans are suspended from the beam by thin lines. The scale is slightly tilted, with the right pan appearing lower than the left. The entire image has a monochromatic brown color scheme.

Are special inspections of an engineering nature subject to the Act?

Yes, since the services are engineering services, the Mini-Brooks Act would apply.



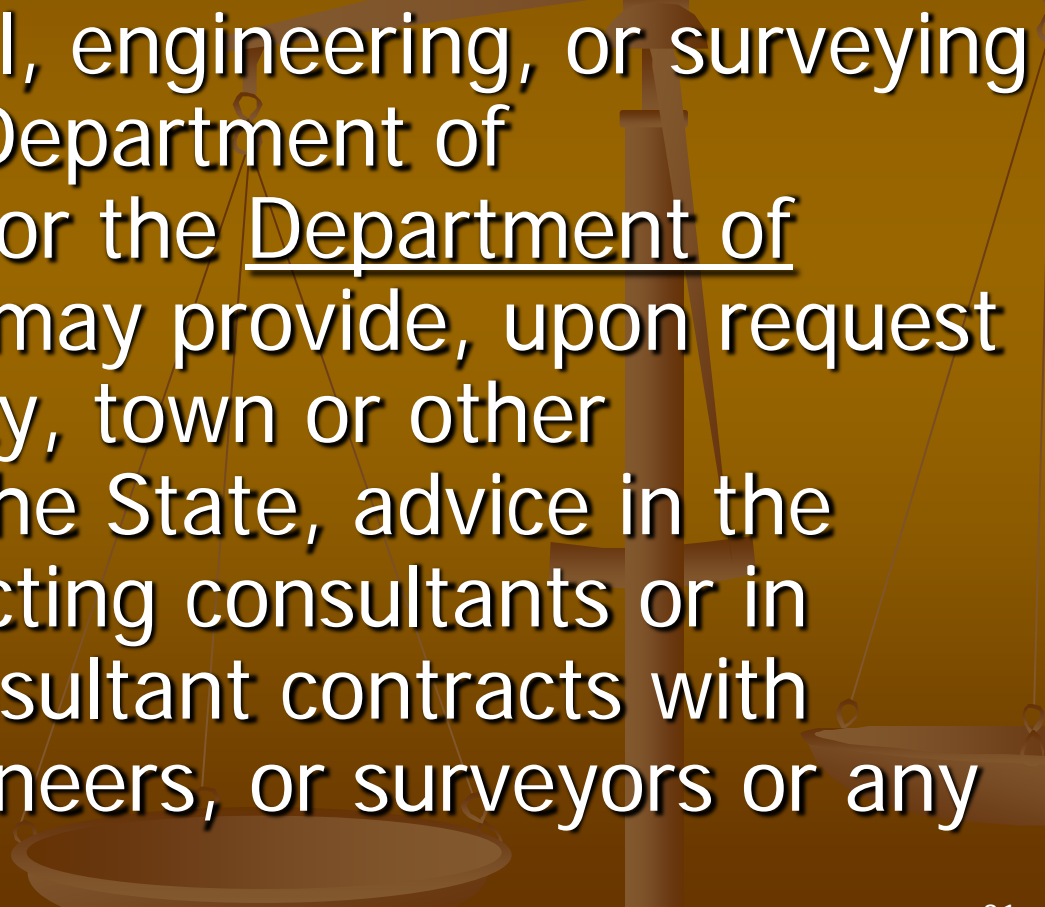
# NC Attorney General Advisory Opinion 1/19/01

The Attorney General's Advisory Opinion determined that the selection of sub-consultants, where the contract is not with the government entity, is not subject to the Mini-Brooks Act.

# Turn for Advice

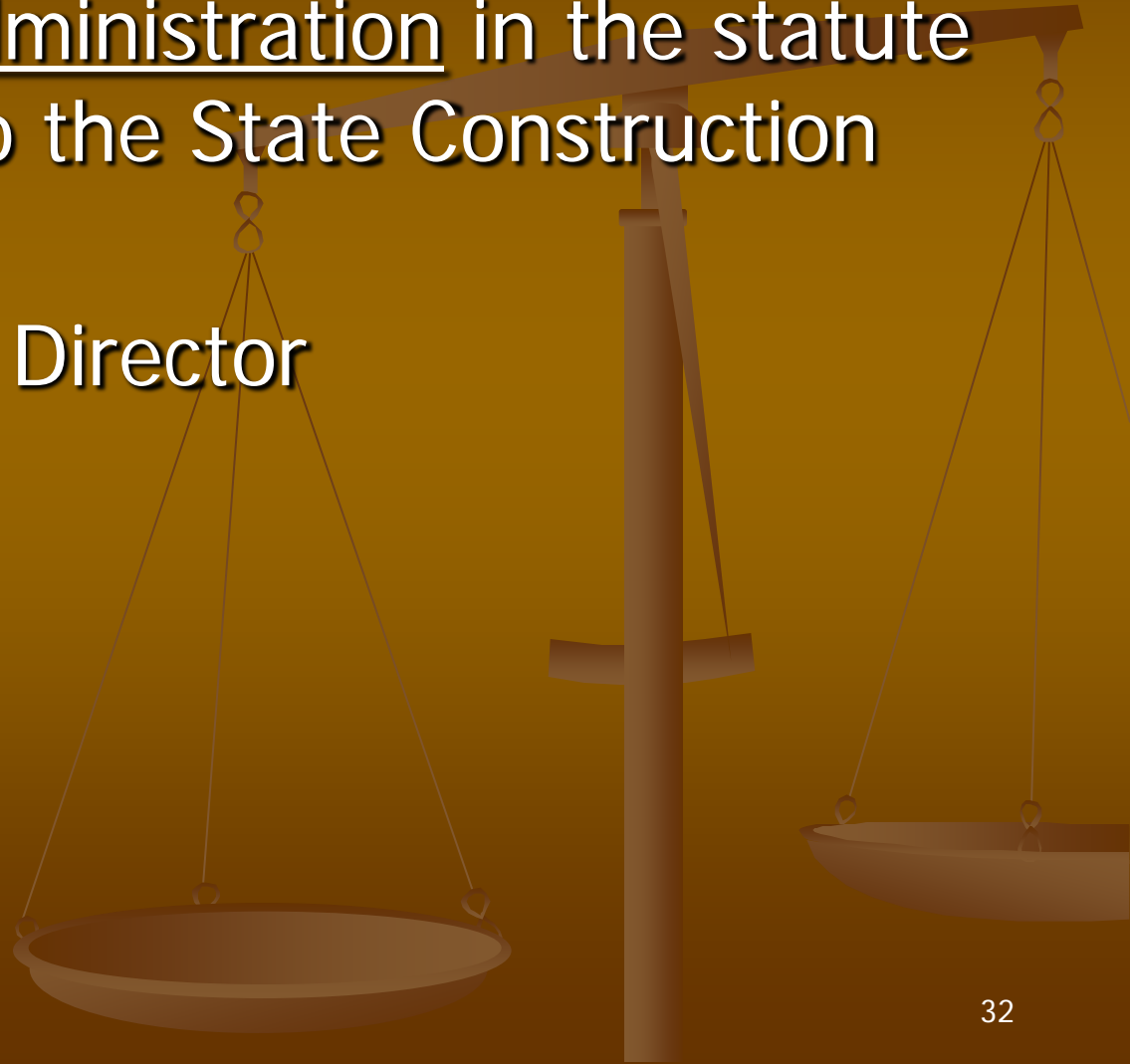
## NCGS 143-64.33

On architectural, engineering, or surveying contracts, the Department of Transportation or the Department of Administration may provide, upon request by a county, city, town or other subdivision of the State, advice in the process of selecting consultants or in negotiating consultant contracts with architects, engineers, or surveyors or any or all.



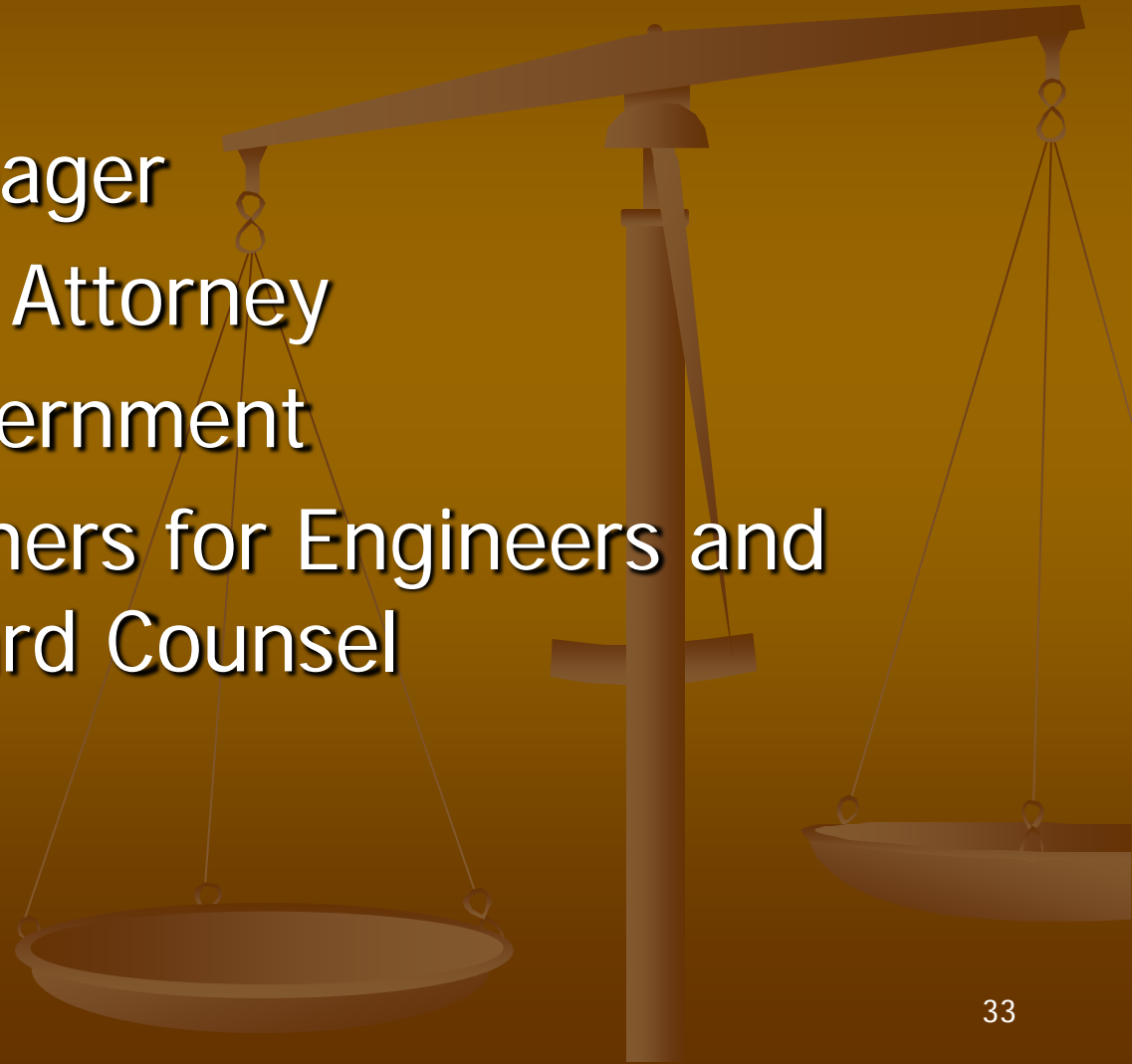
Department of Administration in the statute  
is a reference to the State Construction  
Office.

Greg Driver, PE – Director



# Turn for Advice

- Purchasing Manager
- AG/City/County Attorney
- Institute of Government
- Board of Examiners for Engineers and Surveyors - Board Counsel



# QBS

The background of the slide is a collage of four images: a stack of papers in the top-left (purple), a clock face in the top-right (pink), a stack of papers in the bottom-left (green), and a clock face in the bottom-right (yellow).

Example of a Company's Response to a Request for Proposal in compliance with the Mini-Brooks Act

(Company) will not knowingly contribute in any manner to the violation of the letter or intent of NC General Statute 143-64.31, et seq.

By submitting this price proposal, (Company) has the full knowledge and belief that, and by accepting this proposal for consideration, you, as the unit of government, are affirming that:



# QBS Company Response to RFP

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1. This proposal is not for a contract to be awarded by the State of North Carolina or any of its agencies, by a public subdivision or by a unit of local government for architectural, engineering, land surveying or construction management at risk services; or
2. You have announced the requirements for professional services and solicited this proposal on the basis of having selected (Company) by qualifications based selection to accomplish this work without regard to fee other than possibly unit price information, and you are not negotiating with, or have terminated negotiations with, any other firm or company for the accomplishment of this work while this proposal is being considered for possible acceptance by you; or

# QBS Company Response to RFP

3. You, as the unit of local government or NCDOT, have under G.S. 143-64.32 in writing exempted the particular project from the provisions of G.S. 143-64.31, et seq. based upon the total estimated professional fee being less than \$30,000 or in your sole discretion as the unit of government stating the reasons for such exemption and the circumstances attendant thereto, and have furthermore provided (Company) with a copy of such statement of exemption signed or adopted by the contracting authority; or

4. The project is a State capital improvement project under the jurisdiction of the State Building Commission, a capital improvement project of The University of North Carolina, or a community college capital improvement project, where the estimated expenditure of public money is less than five hundred thousand dollars (\$500,000), and therefore exempt from the provisions of G.S. 143-64.31.

**Otherwise, this proposal is null and void.**

# Real World Scenarios

- RFP from State agency requesting price for engineering
- Call from utility department to do project
- Call to be one of three to submit proposal
- RFP to submit price for project
- RFP to submit man-hour rates for project
- RFP by county, all private money
- RFP by downtown redevelopment corporation
- Architect requests price for engineering or surveying on county project

QUESTIONS ?