

# **POLICY ON OFFERING/PROVIDING FREE SERVICES**

## **Pertinent Sections of the Law and Regulations**

### ***11-12 Code of Professional Ethics***

#### ***A. Conflict of Interest***

*(A)(1): When conditions of compensation are submitted in a proposal for a study, pre-design, or preliminary design service, where future opportunity for additional work on the project is also available to the offerer, such conditions must be representative of the real cost of services to be performed.*

#### ***C. Compliance with Laws***

*(C)(2): An architect or firm shall neither offer nor make any payment or gift to a government official (whether elected or appointed) with the intent of influencing the official's judgment in connection with a prospective or existing project in which the architect or firm is interested.*

*(C)(3): An architect or firm shall comply with the registration laws, rules, and regulations governing the practice of architecture in this State and in any other jurisdiction.*

#### ***D. Professional Conduct***

*(D)(2): An architect or firm shall neither offer nor make any gifts, other than gifts of nominal value (including, for example, reasonable entertainment and hospitality), with the intent of influencing the judgment of an existing or prospective client in connection with a project in which the architect or firm is interested.*

## **Commentary**

Under S.C. Code Regs. R. 11-12(A)(1), 11-12(C)(2), and 11-12(C)(3), neither a firm nor an architect may provide **free** services to a client, unless otherwise expressly excepted by statutes or regulations governing the practice of architecture or other state law. The prohibition of free services includes any mechanism resulting in no cost to the client, including crediting cost of the services against any future services or similar accounting practices.

For purposes of Regulation 11-12(A)(1), “real cost of services” means the fair market value of the architectural services based upon the architect’s or firm’s prevailing fee schedule.

For the purposes of Regulation 11-12(C)(2), an offer to perform work at less than fair market value on a project is not considered to be a gift to a government official.

## Frequently Asked Questions

1. May an architect prepare sketches for free as part of a presentation to depict his concept of a proposed project?

A. ***The architect may prepare only conceptual designs, not schematic designs.***

2. Is it proper to offer initial programming, feasibility studies, conceptual designs, etc., to aid a municipality in budgeting and funding proposed projects with the fee deferred pending approval of funding, such as a public vote on bonds?

A. ***If there is a procurement procedure to select an architect and all parties know fees will be deferred, that would not be considered as free services. If there is no procurement procedure, and one architect offers to perform a service at no charge to the client, then it would be deemed an offer of free services and could be a violation of the regulations regarding free services.***

3. Does the law prohibit free services to governmental entities and officials, or does it prohibit performing free services for a client?

A. ***The law prohibits both.***

4. What if I do work for Habitat for Humanity for free or I am approached by a local garden club to help them with a project by donating my time?

A. ***If the work is not being done to gain influence for future projects, it is allowed.***

5. If a contractor requests that the architect prepare a preliminary site plan and building design for pricing, and/or for a proposal offer to a prospective client, would it constitute a free service?

A. ***If the Request for Proposal (RFP) includes a request for sketches and all architects are aware of the request, responding to the request would not be an offer of free services.***

6. Does the law prohibit an Architect from providing Feasibility Studies or Pre-Design services as stand-alone services for free?

A. ***A feasibility study and other pre-design services are frequently offered by many architects and non-architects. The Board distinguishes these studies and pre-design services as architectural practice, and therefore subject to the Architectural Registration Law and S.C. Code Ann. § 40-3-300, when the following conditions occur:***

***1. The feasibility study or pre-design service is provided in combination with architectural services by the same firm.***

***2. The feasibility study or pre-design service is provided in anticipation, or with the expectation, of providing architectural services on that same project by the same firm.***

*If a feasibility study or other pre-design service is undertaken without the intent or ability to provide subsequent architectural services related to the results of the study or pre-design service, it will not be considered governed by the Architects Practice Act or its sections.*