

## REVISED INITIAL STATEMENT OF REASONS

Government Code section 4526 requires the selection for professional services of private architectural and engineering firms, to be based on procedures that assure that these services are engaged on the basis of demonstrated competence and qualifications for the type of services to be performed and at fair and reasonable prices to the State. Government Code section 4527 provides that the State may obtain the services through statewide announcements and submission of statements of qualifications by firms. Government Code section 4525 defines terms used in the statute. Pursuant to Government Code section 4529.12, the services must be procured based on a fair and competitive selection process. California Constitution, article 22, sections 1 and 2, permit the State to contract with qualified private firms for the services.

The Department of General Services (Department) proposes to amend California Code of Regulations, title 21, sections 1301, 1310, and 1312 concerning the terms and definitions, and selection process for private architectural and engineering firms.

Section 1301 defines terms used in the regulations. This is necessary for the reader to be able to easily understand the meaning of the defined term or phrase as used in the regulations. The existing terms and definitions under subdivisions (a) and (d) of the regulation are updated to reflect amendments to Government Code section 4525 since adoption of the regulation. Subdivision (e) is proposed to be added to the regulation to further define and clarify terms, and update the citation reference to the Public Contract Code. Historically, there have been two types of projects which are advertised for services. A project is either: (1) a “retainer” project whereby targeted specific projects are known at the time of contracting, or (2) a “specific” project which is involving a single subject matter at one or more known sites.

Section 1310 authorizes the Department to request a statement of qualifications; and thus gives the Department more flexibility and the ability to be in a state of readiness to quickly enter into an architectural and engineering contract as the need arises. The regulation also provides for ways that the Department may advertise for services to ensure that contracting for services occurs through a fair and competitive selection process, and allows the Department to take advantage of internet services in advertising. The section also allows the Department to procure architectural and engineering services through requirements or needs contracts (also known or referred to as “retainer” contracts). The proposed amendment to the regulation is required by constitutional and statutory changes that went into effect on November 8, 2000.

Section 1312 provides the method by which the Department will select the most qualified firm to provide the required services. The process ensures that firms seeking to obtain a contract with the Department work smarter, more efficiently, and ultimately deliver better value to meet the Department's mission. The proposed amendment to the regulation provides the procedures for the Department to follow in the event at least three qualified firms cannot be found.

California Constitution, article 22, sections 1 and 2, and Government Code sections 4525, 4526, 4527, and 4529.12 were adopted to allow the State to procure and contract for professional services of private architectural and engineering firms, as needed by the State through a fair and competitive process based on factors such as competence and qualifications.

The purpose of the regulations is to develop processes to obtain professional services of competent and qualified private architectural and engineering firms. The proposed amended regulations implement the statutory standard governing State contracts with private firms for architectural and engineering services. The proposed amended regulations also update the current regulations, which have not been updated since they were filed in 1985, to carry out its mission in light of ever changing dynamics due to the nature of the work that the Department is involved in.

The proposed amendment to the regulations is reasonably necessary to further effectuate the purpose of the statutes and California Constitution. The \$25,000 threshold amounts are removed to issue announcements as needed by the Department. The subdivision regarding publications in professional societies is revised to broaden publication and use of modern media outlets. The amendment will provide processes to announce, issue requests for qualifications, and receive statements of qualifications to procure and contract for professional services of private architectural and engineering firms. The amendment will clarify the Department's ability to identify the general need for the services to assist in its overall mission and enter into requirements contracts, also commonly known or referred to as "on-call" or "retainer" contracts, to obtain services on an as needed basis.

#### TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS.

The Department did not rely upon any technical, theoretical, or empirical studies, reports or documents in proposing the amendment of the regulations.

#### REASONABLE ALTERNATIVES TO THE REGULATION AND THE DEPARTMENT'S REASONS FOR REJECTING THOSE ALTERNATIVES.

No other alternatives were presented to or considered by the Department.

#### ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD BE AS EFFECTIVE AND LESS BURDENSOME TO PRIVATE PERSONS.

No other alternatives were considered that would be:

- (1) more effective in carrying out the purpose for which the regulation is proposed.
- (2) as effective and less burdensome to affected private persons than the amended regulation, or
- (3) more cost effective to affected policy or other provisions of law.

## REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS.

The Department has not identified any alternatives that would lessen any adverse impact on small businesses. The regulations do not have an adverse impact on small businesses because they do not require small businesses to do anything or to abstain from doing anything.

## EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS.

The proposed amendment to the regulations would not have a significant statewide adverse economic impact directly affecting business because it does not require business to do anything, or to abstain from doing anything. Rather, the regulations establish a procedure that may be used by businesses to offer their services pursuant to a contract with the Department for services. The regulations may actually benefit businesses that provide the type of architectural and engineering services the Department seeks.

## RESULTS OF THE ECONOMIC IMPACT ANALYSIS:

Adoption of these amended regulations will not:

- (1) create or eliminate jobs within California;
- (2) create new businesses or eliminate existing businesses within California; or
- (3) affect the expansion of businesses currently doing business within California.
- (4) provide a benefit or cause damage to the health and welfare of California residents, worker safety, and the state's environment.

Significant effect on housing costs: None.

Document Relied Upon: Economic Impact Analysis

## IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS.

The regulation amendment does not impact or impose a mandate on local agencies or school districts.

## UNNECESSARY DUPLICATION OR CONFLICT WITH FEDERAL REGULATIONS.

Not applicable. The Department is not a department, board, or commission within the Environmental Protection Agency, the Resources Agency, or the Office of the State Fire Marshal.

## **ECONOMIC IMPACT ANALYSIS**

(Government Code section 11346.3(b))

The proposed amended regulations will improve the Department's internal procedures to contract for architectural and engineering services. The current Department regulations have not been updated since they were first adopted in 1985, and do not reflect the passage of Proposition 35 (an initiative measure effective since November 8, 2000). Proposition 35 eliminated certain restrictions on the State to allow contracting with private qualified entities for engineering and architectural services in all phases of public works projects. The scope of definitions in the proposed regulations has been broadened, made specific, and also clarified. Government Code section 4526 authorizes the Department to adopt regulations for the aforementioned purposes.

The purpose for amending California Code of Regulation sections 1301, 1310 and 1312 are as follows:

1. The Department's regulations for advertising, selection and contracting for architectural and engineering services will align with approved regulations currently being used by the Department of Transportation in their selection process for private architectural and engineering firms. (Title 21, California Code of Regulations, Section 1520).
2. The Department will be able to make annual announcements, without the existing \$25,000 limit, based on the general need for architectural and engineering services to assist in its overall mission and may enter into requirements contracts, also commonly known as "retainer" contracts.

In accordance with Government Code section 11346.3(b), the Department has made the following assessments regarding the proposed amendments to the regulations:

### **Creation or Elimination of Jobs within the State of California**

The amended regulations will improve the Departments internal procedures to contract for architectural and engineering services. The total amount of work contracted to outside entities will not increase or decrease. Therefore, by amending California Code of Regulations sections 1301, 1310 and 1312, no jobs in California will be created or eliminated.

### **Creation of New or Elimination of Existing Businesses within the State of California**

The amended regulations will improve the Departments internal procedures to contract for architectural and engineering services. The total amount of work contracted to outside entities will not increase or decrease. Therefore, by amending California Code of Regulations sections 1301, 1310 and 1312, no new businesses in California will be created or existing businesses eliminated.

**Affect the Expansion of Businesses Currently Doing Business within the State of California**

The amended regulations will improve the Departments internal procedures to contract for architectural and engineering services. The total amount of work contracted to outside entities will not increase or decrease. Therefore, by amending California Code of Regulations sections 1301, 1310 and 1312, no businesses currently doing business in California will be expanded.

**Provide benefit or cause damage to the health and welfare of California residents, worker safety, and the state's environment**

The amended regulations will improve the Departments internal procedures to contract for architectural and engineering services. The total amount of work contracted to outside entities will not increase or decrease. Therefore, by amending California Code of Regulations sections 1301, 1310 and 1312, the amendment will not provide benefit or cause damage to the health and welfare of California residents, worker safety, and the state's environment.