11. ARCHITECTURAL AND ENGINEERING CONTRACTS

11.00 • INTRODUCTION

(Rev 11/12)

This chapter explains the State's process for selecting the professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction management firms. This process is commonly referred to as the A & E method.

Legal authority: Article XXII, California Constitution; GC §§ 4525-4529.20; PCC § 6106. Although a few other statutes set forth similar A & E methods in specific situations, this Chapter will focus on the A & E method set forth in GC §§ 4525-4529.20.

Each State agency must develop its own regulations for implementation in order to use the (A & E) selection process pursuant to GC §§ 4525-4529.20. If a State agency has not developed such regulations, it cannot use this A & E method set forth in GC §§ 4525-4529.20.

GC §§ 4525-4529.20 do not apply when the State agency determines that: (1) the services needed are more of a technical nature, (2) involve little professional judgment, and (3) requiring bids would be in the public interest (GC § 4529). If so, then the bidding processes set forth in the PCC for services or consulting services apply instead of the State agency's A & E regulations implementing GC §§ 4525-4529.20. See SCM 1, chapter 5.

Although each State agency's A & E regulations will be specific to that particular State agency, GC § 4525, et seq., contains overarching principles that will be discussed briefly here. While DGS approval of A & E contracts is not required by law, many agencies find value in submitting them to DGS for review. DGS' review of A & E contracts will include determining whether the agency complied with their own statutes (if applicable), GC §§ 4525-4529.20 and the State agency's implementing regulations. When submitting a copy of an A & E contract to DGS/OLS, the State agency should also include citations to its A & E statutes (if applicable) and implementing regulations.

11.01 • TABLE OF CONTENTS

DESCRIPTION	SECTION
Introduction	11.00
Table of Contents	11.01
Types of A & E Services	11.03
Competitive Selection Process Based on Qualifications	11.05
Evaluation of Qualifications	11.06
Negotiating A&E Contracts	11.08

11.03 • TYPES OF A & E SERVICES

(New 11/12)

A. "Architectural, landscape architectural, engineering, environmental, and land surveying services" include those professional services of an architectural, engineering, environmental, or land surveying nature as well as incidental services that members of those professions and those in their employ may logically or justifiably perform (GC § 4525(d)).

B. ”Construction project management” means those services provided by a licensed architect, registered engineer, or licensed general contractor for managing and supervising work performed on State construction projects. Such services more specifically include **construction** project design review and evaluation, construction mobilization and supervision, bid evaluation, project scheduling, cost-benefit analysis, claims review and negotiation, and general management and administration of a construction project (GC §§ 4525(e), 4529.5).

All construction project management services performed pursuant to an A & E contract must be performed under the direction and control of a licensed architect, registered engineer, or licensed contractor (78 Ops. Cal. Atty. Gen. 48 (Opinion 94-819), February 9, 1995. The Business and Professions Code contains licensing requirements for architects (Division 3, Chapter 3, e.g. section 5551), registered engineers (Division 3, Chapter 7, e.g. section 6704), and contractors (Division 3, Chapter 9, e.g., sections 7065-7077). The Department of Consumer Affairs regulates architects (California Architects Board), engineers (Board for Professional Engineers and Land Surveyors) and contractors (Contractors State License Board).

C. “Environmental Services” means those services performed in connection with project development and permit processing in order to comply with Federal and State environmental laws.

11.05 • COMPETITIVE SELECTION PROCESS BASED ON QUALIFICATIONS

(Rev 11/12)

Selection for professional services of A & E contractors by public agencies must be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required at a fair and reasonable price.

Projects requiring A & E professional services must be published in a statewide announcement through publications of the respective professional societies. (GC § 4527.) This requirement is in addition to advertising in the California State Contracts Register.

The Request for Qualifications (RFQ) or the Solicitation of Interest (SOI) is the solicitation document that sets out the criteria for determining the best qualified professional firm for the project.

Criteria for selecting an A & E firm should include such factors as professional excellence, demonstrated competence, specialized experience of the firm, education and experience of key personnel, staff capability, workload, ability to meet schedules, principals to be assigned, nature and quality of completed work, reliability and continuity of the firm, location, professional awards, and other relevant considerations. Such factors shall be weighed according to the nature and complexity of the project, the needs of the State, and the special requirements of the specific project. See, e.g., 2 CCR § 1311.

The contracting restrictions imposed by Article VII of the California Constitution and GC § 19130 do not apply, since Article XXII of the California Constitution expressly removed these restrictions on the ability of State agencies to contract with qualified private entities for architectural and engineering services for all public works of improvement. *Professional Engineers in California Government v. Kempton*, (2007) 40 Cal.4th 1016, 1037.

11.06 • EVALUATION OF QUALIFICATIONS

(Rev 11/12)

The statements of qualifications received by the date specified in the RFQ or SOI are evaluated together with any performance data on file. The State agency shall conduct discussions with no

less than three (3) firms. Based on the established criteria, the State agency shall select from among the firms with which discussions were held, in order of preference, no less than 3 firms deemed to be the most highly qualified to provide the services required. (GC § 4527(a).)

11.08 ● NEGOTIATING A&E CONTRACTS

(Rev 11/12)

After the discussions, the public agency shall negotiate a contract with the best qualified firm at compensation that the agency determines to be fair and reasonable. (GC § 4528(a)(1).)

After providing notification to the successful firm of its selection, the State agency shall provide written instructions for the fee negotiations which are to follow. These instructions shall provide the private consulting firm with necessary information which shall allow the fee negotiations to proceed in an orderly fashion. Negotiations shall begin within 14 days after the successful firm has been notified of its selection or upon receipt of the cost proposal. The contractor should be notified if additional time is necessary to begin fee negotiations. (PCC § 6106(b).)

Upon the completion of fee negotiations, the State and the private firm shall proceed to execute a contract so that the contract may be completed by the State within 45 days. The contractor should be notified if additional time is necessary to complete the contract. The State and private firm shall work together to ensure the successful delivery of the requested services in a timely fashion. (PCC § 6106(c).)

If the agency is unable to negotiate a satisfactory contract with the firm considered to be the most qualified, negotiations with that firm shall be terminated and fee negotiations undertaken with the second most qualified firm (and then the third most qualified if necessary). If the agency is unable to negotiate a satisfactory contract with any of the selected firms, the agency shall select additional firms in order of their competence and qualification and continue fee negotiations until an agreement is reached. (GC § 4528(a); PCC § 6106(d).)