

CALIFORNIA DEPARTMENT OF JUSTICE

TITLE 11. LAW

DIVISION 1. ATTORNEY GENERAL

**CHAPTER 6. SELECTION PROCESS FOR PRIVATE ARCHITECTURAL AND
ENGINEERING FIRMS**

FINAL STATEMENT OF REASONS

UPDATE OF INITIAL STATEMENT OF REASONS

§ 606. Selection of Firm.

(e): This subdivision originally provided that if fewer than three firms submitted statements of qualifications, the Chief may continue the selection process with the submissions received. This subdivision was withdrawn because the Department determined it is not necessary.

§ 607. Negotiation.

(a), (b), and (c): These subdivisions explain that the Department will attempt to negotiate a contract with the most highly qualified firm at fair and reasonable compensation. Government Code sections 4526.5 and 4528 require the Department to follow these procedures when negotiating a contract. The term “may” has been replaced with “shall” because the regulation must conform to statute. Including these statutory requirements in the regulations is necessary for clarity so that all procedures are in one place.

(d): This subdivision originally provided that the Department may, at any point, reopen previously terminated negotiations with a firm. This subdivision was withdrawn because the regulation must conform to Government Code section 4528.

§ 611. Emergencies.

This section originally provided that the Chief was not required to follow the selection provisions set forth in this chapter if an emergency existed. This section was withdrawn because the Department determined it is not necessary.

CORRECTIONS AND NON-SUBSTANTIAL EDITS

A “non-substantial change is one that clarifies without materially altering the requirements, rights, responsibilities, conditions or prescriptions contained in the original text. (Cal. Code Regs., tit. 1, § 40.) The following minor additional issues were noted since publication of the Notice of Proposed Rulemaking and Initial Statement of Reasons:

§ 602. Annual Notice Requesting Statement of Qualifications and Performance Data.

The title of section 602 was amended from “Annual Announcements for Statement of Qualifications and Performance Data” to “Annual Notice Requesting Statement of Qualifications and Performance Data” to increase clarity.

§§ 604 (Establishment of Criteria), 609 (Contracting in Phases), 610 (Requirements/On-Call Contracts).

The term “work” was replaced with “services” or “project” for consistency of terms. Services and project are terms defined in section 601.

§ 606. Selection of Firm.

(a) The phrase “may be submitted” was replaced with “were submitted” to increase clarity.

SUMMARY OF COMMENTS AND DEPARTMENT RESPONSES

Written comments received during the 45-day comment period are included in the rulemaking file under Exhibit 10.

Members of the public submitting written comments during the 45-day comment period, February 4, 2022 – March 22, 2022, identified in numbered order of receipt by the Department:

| Written Commenter # | Name of Commenter | Affiliation |
|----------------------------|--------------------------|---|
| 1 | Tyler Munzing | American Council of Engineering Companies, California American Institute of Architects California American Society of Civil Engineers, Region 9 California Geotechnical Engineering Association California Land Surveyors Association Structural Engineers Association of California |
| 2 | John Palatiello | Council on Federal Procurement of Architectural & Engineering Services |

Summaries of public comments and corresponding responses are organized by topic. The specific comments that are represented in the comment summary statement are listed after each comment summary by the commenter number as identified above followed by a dash and numbered comment when a commenter submitted more than one comment.

§§ 604 (Establishment of Criteria), 609 (Contracting in Phases), 610 (Requirements/On-Call Contracts)

Summary: Replace the term “work” with “services” or “project” for consistency of terms. (1-1.)

Response: Accept. The Department has revised the language in sections 604, 609, and 610.

§ 607 (Negotiation)

Summary: Regulation is not consistent with statutory authority. (1-2.)

Response: Accept. The Department has revised “may” to “shall” and deleted subdivision (d) in section 607.

§ 610 (Requirements/On-Call Contracts)

Summary: The lack of an established multi-firm process could be limiting to the Department and confusing to all parties should the Department elect to award on-call contracts to more than one entity. Regulation should be amended to include a multi-firm process. (1-3.)

Response: No change has been made in response to this comment. Multiple on-call contracts can be awarded under the regulation as written. The Department would enter into separate contracts with each selected firm.

General Support

Summary: We strongly support the qualifications based selection process for the selection of firms for architecture, engineering, surveying, mapping and related design services. (2-1.)

Response: The Department appreciates this comment of support. No change has been made in response to this comment. The comment concurred with the proposed regulations, so no further response is required.

Written comments received during the 15-day comment period are included in the rulemaking file under Exhibit 10.

Members of the public submitting written comments during the 15-day comment period, May 6, 2022 – May 23, 2022, identified in numbered order of receipt by the Department:

| Written Commenter # | Name of Commenter | Affiliation |
|----------------------------|--------------------------|---|
| 1 | Tyler Munzing | American Council of Engineering Companies, California American Institute of Architects California American Society of Civil Engineers, Region 9 California Geotechnical Engineering Association California Land Surveyors Association Structural Engineers Association of California |

§ 610 (Requirements/On-Call Contracts)

Summary: Replace the term “work” with “services” for consistency of terms. (1-1.)

Response: Accept. The Department has revised the language in section 610.

LOCAL MANDATE DETERMINATION

The proposed regulation does not impose any mandate on local agencies or school districts.

ALTERNATIVES DETERMINATIONS

In accordance with Government Code section 111346.9, subdivision (a)(4), the Department has determined that no alternative it considered, or that it otherwise identified, or was brought to its attention, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

These regulations do not impose any burden on affected private persons. Rather, they create an opportunity for private architectural and engineering firms to apply for Department contracts.

ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

The Department determines that these proposed regulations do not adversely affect small businesses. These procedures assure maximum participation of small business firms in compliance with Government Code section 4526.

DOCUMENTS INCORPORATED BY REFERENCE

None.

NON-DUPLICATION

Some of the regulations may repeat or rephrase in whole or in part a state or federal statute or regulation. This was necessary to satisfy the clarity standard set forth in Government Code section 11349.1, subdivision (a)(3).