

CALIFORNIA DEPARTMENT OF JUSTICE
TITLE 11. LAW
DIVISION 1. ATTORNEY GENERAL
CHAPTER 6. SELECTION PROCESS FOR PRIVATE ARCHITECTURAL AND
ENGINEERING FIRMS
NOTICE OF PROPOSED RULEMAKING

Notice published March 11, 2022

The Department of Justice (Department) proposes to adopt sections 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, and 613 of Title 11, Division 1, Chapter 6 of the California Code of Regulations concerning the selection process for private architectural and engineering firms.

PUBLIC HEARING

The Department has not scheduled a public hearing on this proposed regulatory action. However, the Department will hold a hearing if it receives a written request for a public hearing from any interested person or their authorized representative no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person or their authorized representative may submit written comments relevant to the proposed regulatory action. The written comment period closes on April 26, 2022 at 5:00pm. Only written comments received by that time will be considered. Please submit written comments to:

Robert Dunlap
Department of Justice
1300 I Street, Suite 1270
Sacramento, CA 95814
(916) 210-6423
robert.dunlap@doj.ca.gov

NOTE: Written and oral comments, attachments, and associated contact information (e.g., address, phone, email, etc.) become part of the public record and can be released to the public upon request.

AUTHORITY AND REFERENCE

Authority: Section 4526, Government Code.

Reference: Sections 4525, 4526, 4526.5, 4527, 4528, 4529, 4529.5, 4529.10, 4529.11, 4529.12, 4529.13, 4529.13, 4529.14, 4529.15, 4529.16, 4529.17, 4529.18, 4529.19, and 4529.20, Government Code; and Article XXII, Sections 1 and 2, California Constitution.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations:

Generally, the California Constitution forbids state agencies from contracting for private companies to perform the services that state civil service employees can perform. In response, California voters adopted Proposition 35 in November 2000. Entitled the “Fair Competition and Taxpayer Savings Act,” Proposition 35 added Article XXII to the California Constitution to provide that the State of California and all other governmental entities “shall be allowed to contract with qualified private entities for architectural and engineering services for all public works of improvement.” (Cal. Const., art. XXII, § 1.)

Proposition 35 also added chapter 10.1, commencing with section 4529.10, to the Government Code. “Architectural and engineering services” includes all architectural, landscape architectural, environmental, engineering, land surveying, and construction project management services.” (Gov. Code, § 4529.10.) Proposition 35 also codified the voters’ intent to promote fair competition. (*Id.* at § 4529.12.) State agencies enter contracts with private firms through a competitive process of advertising for the service, selecting the firm determined to be best qualified, and negotiating a contract with that firm. (*Id.* at § 4525 et seq.)

A state agency is required to develop regulations describing the procedures for contracting with private architectural and engineering firms. (Gov. Code, § 4526.) Currently, the Department is unable to contract with private architectural and engineering firms because it has not adopted regulations on this subject.

Effect of the Proposed Rulemaking:

These proposed regulations would create a process for the Department to contract with private architectural and engineering firms.

Anticipated Benefits of the Proposed Regulations:

The purpose and intent of Proposition 35 included “remov[ing] existing restrictions on contracting for architectural and engineering services and [allowing] state, regional and local governments to use qualified private architectural and engineering firms to help deliver transportation, schools, water, seismic retrofit and other infrastructure projects safely, cost effectively and on time;” “encourag[ing] the kind of public/private partnerships necessary to ensure that California taxpayers benefit from the use of private sector experts to deliver transportation, schools, water, seismic retrofit and other infrastructure projects;” “promot[ing] fair competition so that both public and private sector architects and engineers work smarter, more efficiently and ultimately deliver better value to taxpayers;” “speed[ing] the completion of a multi-billion dollar backlog of highway, bridge, transit and other projects;” “ensur[ing] that contracting for architectural and engineering services occurs through a fair, competitive selection process, free of undue political influence, to obtain the best quality and value for California taxpayers;” and “ensur[ing] that private firms contracting for architectural and engineering services with governmental entities meet established design and construction standards and

comply with standard accounting practice and permit financial and performance audits as necessary to ensure contract services are delivered within the agreed schedule and budget.” (Initiative Measure (Prop. 35, § 2, approved Nov. 7, 2000, eff. Nov. 8, 2000).)

The specific benefits anticipated by the proposed regulations include: (1) the Department will be able to complete projects in a timely manner by directly contracting with private firms when State civil service staff are not available to perform the necessary work; (2) the Department will be able to make annual announcements 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 “on-call” contracts; (3) “on-call” contracts will allow for expeditious and cost-effective contracting for as-needed projects; and (4) business opportunities for private firms to contract with the Department will be increased.

Comparable Federal Regulations:

There are no existing federal regulations or statutes comparable to these proposed regulations.

Determination of Inconsistency/Incompatibility with Existing State Regulations:

The Department has determined that these proposed regulations are not inconsistent or incompatible with existing state regulations. After conducting a review for any regulations that would relate to or affect this area, the Department has concluded that these are the only regulations that concern the Department’s ability to contract with private architectural and engineering firms.

Forms or Documents Incorporated by Reference:

None.

Other Statutory Requirements:

None.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department’s Initial Determinations:

Mandate on local agencies or school districts: None.

Cost or savings to any state agency: No fiscal impact on Department spending because the cost of contracting with private architectural and engineering firms will be comparable to current spending with the Department of General Services for architectural and engineering services.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other non-discretionary costs or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Cost impacts on representative person or business: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. Businesses are not required to apply for contracting opportunities with the Department. These regulations could result in additional income for businesses if they choose to participate in the program and are selected for a project.

Significant effect on housing costs: None.

Significant, statewide adverse economic impact directly affecting businesses, including ability to compete: The Department has made an initial determination that that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Results of the Economic Impact Assessment (EIA):

The Department concludes that it is (1) unlikely that the proposal will create or eliminate jobs within the state, (2) unlikely that the proposal will create new businesses or eliminate existing businesses within the state, (3) likely that the proposal will result in the expansion of businesses currently doing business within the state.

The Department also concludes that:

(1) The proposal would benefit the health and welfare of California residents by allowing the Department to use qualified private architectural and engineering firms to help deliver projects safely, cost effectively, and on time.

(2) The proposal would benefit worker safety by allowing the Department to contract with private architectural and engineering firms, thereby enabling the Department to resolve and avoid project delays that may otherwise jeopardize worker safety.

(3) The proposal would not benefit the state's environment because it does not change any applicable environmental standards.

Business report requirement: None.

Small business determination: The Department has determined that the proposed action affects small businesses. Small businesses will have more of an opportunity to compete for contracts under these regulations.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative considered by the Department or that has been brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or 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.

The Department has determined that the proposed regulations are the most effective way to contract with private architectural and engineering firms. The regulations do not create any burden because applying to contract with the Department is voluntary. These regulations increase business opportunities for private firms because they will allow the Department to select private firms to complete necessary projects.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Robert Dunlap
Department of Justice
1300 I Street, Suite 1270
Sacramento, CA 95814
(916) 210-6423
robert.dunlap@doj.ca.gov

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. In the event the contact person is unavailable, inquiries regarding the proposed action may be directed to the following backup contact person:

Kevin Sabo
Department of Justice
1300 I Street, Suite 1270
Sacramento, CA 95814
(916) 210-7639
regulations@doj.ca.gov

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this Notice of Proposed Rulemaking (Notice) is published in the Notice Register, the rulemaking file consists of this Notice, the Text of Proposed Regulations (the “express terms” of the regulations), the Initial Statement of Reasons, and any information upon which the proposed rulemaking is based. The text of this Notice, the express terms, the Initial Statement of Reasons, and any information

upon which the proposed rulemaking is based are available on the Department's website at <https://oag.ca.gov/cpu>. Please refer to the contact information listed above to obtain copies of these documents.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the Department analyzes all timely and relevant comments received during the 45-day public comment period, the Department will either adopt these regulations substantially as described in this notice or make modifications based on the comments. If the Department makes modifications which are sufficiently related to the originally-proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of the name and address indicated above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, a copy of the Final Statement of Reasons will be available on the Department's website at <https://oag.ca.gov/cpu>. Please refer to the contact information listed above to obtain a written copy of the Final Statement of Reasons.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of this Notice, the express terms, the Initial Statement of Reasons, and any information upon which the proposed rulemaking is based are available on the Department's website at <https://oag.ca.gov/cpu>.