

**PROPOSED AMENDMENTS
TO THE
CALIFORNIA CODE OF REGULATIONS
TITLE 23, WATERS
DIVISION 3, STATE WATER RESOURCES CONTROL BOARD
CHAPTER 29, Contracting with Private Architectural, Landscape Architectural,
Engineering, Environmental, Land Surveying, or Construction Project
Management Firms**

INITIAL STATEMENT OF REASONS

~~OCTOBER 2000~~ JANUARY 2001

**STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF CLEAN WATER PROGRAMS**

CHAPTER 29: CONTRACTING WITH PRIVATE ARCHITECTURAL, LANDSCAPE ARCHITECTURAL, ENGINEERING, ENVIRONMENTAL, LAND SURVEYING, OR CONSTRUCTION PROJECT MANAGEMENT FIRMS

INITIAL STATEMENT OF REASONS

Section 4526 of the Government Code requires agencies contracting for professional services from private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms to adopt regulations that set forth contracting procedures. The procedures must assure that the firms are selected on the basis of demonstrated competence and qualification for the types of services to be performed and at fair and reasonable prices to the agency. In addition, the regulations must assure the maximum participation of small business firms and must prohibit practices that might result in unlawful activities or a conflict of interest.

[Recently enacted Proposition 35 provides, in part, that state agencies shall be allowed to contract with qualified private entities for architectural and engineering services, and the services shall be procured pursuant to a fair, competitive selection process. \(Ballot Pamp., Gen. Elec. \(Nov. 7, 2000\) text of Prop. 35, p. 65.\)](#)

The purpose of the proposed regulations is to [establish selection procedures that](#) meet the requirements of Section 4526 of the Government Code [and Proposition 35](#) and enable the State Water Resources Control Board (SWRCB) and the Regional Water Quality Control Boards (RWQCBs) to enter contracts for professional services with the specified types of private firms.

The SWRCB did not rely on technical, theoretical, or empirical studies, reports, or similar documents in proposing these regulations.

The proposed regulations do not mandate the use of specific technologies or equipment.

Regulations describing an agency's contracting procedures for engaging the professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms are required by [section 4526 of the Government Code statute. Proposition 35 does not specifically require regulations, but requires agencies to procure architectural and engineering services pursuant to a fair and competitive selection process.](#) The SWRCB did not consider any alternatives to the proposed regulations. The SWRCB did not identify any alternatives that would lessen any adverse impact on small business.

The SWRCB has determined that the proposed regulations will not have a significant adverse economic impact on business. The proposed regulations describe a procedure for the SWRCB and RWQCBs to use when entering contracts for professional services with private firms. The proposed regulations do not address the substance of the underlying business transactions. The proposed regulations are intended to facilitate the contracting process, will enable the SWRCB and the

RWQCBs to contract with private firms as necessary, and will not have a significant adverse economic impact on business.

The proposed regulations do not unnecessarily duplicate or conflict with federal regulations. A review of the Code of Federal Regulations did not indicate the existence of duplicative or conflicting law. The SWRCB does not propose to adopt regulations inconsistent with those contained in the Code of Federal Regulations.

SECTION 3870. DEFINITIONS.

Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Proposed Regulation is Intended to Address:

Section 4526 of the Government Code requires agencies to adopt regulations specifying the procedures to be used when the agency engages the professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms. [Proposition 35 requires agencies to procure architectural and engineering services pursuant to a fair, competitive selection process. \(Gov. Code, § 4529.12.\)](#)

Specific Purpose and Necessity of the Proposed Regulation:

The definitions identify the agencies to which the proposed regulations apply, describe the subject services and firms, and clarify the meaning of “disabled veteran business enterprise,” “emergency,” and “small business firm.” These definitions are necessary to avoid ambiguity and forestall conflicting interpretations of the proposed regulations.

SECTION 3871. ESTABLISHMENT OF CRITERIA.

Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Proposed Regulation is Intended to Address:

Section 4526 of the Government Code requires agencies to select specified types of private firms on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required. [Section 4529.12 requires agencies to procure services pursuant to a fair, competitive selection process.](#)

Specific Purpose and Necessity of the Proposed Regulation:

The proposed regulation lists factors the board must use to judge demonstrated competence and professional qualifications when selecting a firm. The detailed elements of the statutory standard provide the necessary basis for comparisons, are essential for agency staff use during the decision-making process, and aid the competing firms to present information about their firms that is most relevant to the particular job.

SECTION 3872. ANNOUNCEMENT.

Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Proposed Regulation is Intended to Address:

Section 4527 of the Government Code requires agencies to make a statewide announcement, through publications of the respective professional societies, of all projects requiring architectural, landscape architectural, engineering, environmental, land surveying, or construction project management services. Agencies are also required to encourage firms to submit annually a statement of qualifications and performance data.

Specific Purpose and Necessity of the Proposed Regulation:

The proposed section specifies where to publish an announcement of a project or request for qualifications, what information must be included in the announcement of a project or request for qualifications, and specifies a means to assure maximum participation of small business firms. These provisions are necessary to [provide a fair, competitive selection process](#) implementing statutory requirements.

SECTION 3873. SELECTION OF QUALIFIED FIRMS.

Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Proposed Regulation is Intended to Address:

Section 4526 of the Government Code requires agencies to select specified types of private firms on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required. Section 4527 requires agencies to evaluate submissions from firms, conduct discussions with at least three firms, and select three firms in order of preference deemed to be the most highly qualified to provide the services required. [Section 4529.12 requires agencies to procure services pursuant to a fair, competitive selection process.](#)

Specific Purpose and Necessity of the Proposed Regulation:

The proposed regulation provides direction for reviewing responses to announcements, ranking firms in order of preference, conducting interviews, and selecting the most highly qualified firms to perform the required services. These provisions are necessary to implement statutory requirements.

SECTION 3874. ESTIMATE OF VALUE OF SERVICES.

Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Proposed Regulation is Intended to Address:

Section 4526 of the Government Code states that the procedures which agencies are required to adopt to assure that specified types of private firms are selected on the basis of demonstrated competence and qualifications must also assure that the services are engaged at fair and reasonable prices to the public agencies.

Specific Purpose and Necessity of the Proposed Regulation:

The proposed regulation requires the agency to prepare an estimate of the value of the proposed project based on objective data. The SWRCB believes this procedure will help assure that the services are engaged at fair and reasonable prices, as is required by statute.

SECTION 3875. CONTRACT NEGOTIATION.

Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Proposed Regulation is Intended to Address:

Section 4526.5 of the Government Code requires agencies to follow Section 6106 of the Public Contract Code when entering a contract for professional services from private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms. Section 4528 of the Government Code sets forth procedures that state agencies must follow when negotiating a contract for the specified types services from private firms. [Section 4529.12 requires agencies to procure services pursuant to a fair, competitive selection process.](#)

Specific Purpose and Necessity of the Proposed Regulation:

The proposed regulation describes procedures to use to negotiate fees and execute a contract, including notification of the successful firm, provision of written instructions for the negotiation, timing for the negotiation process, and alternatives should the negotiation fail to produce a satisfactory contract with the firm first selected. Implementation of these procedures will satisfy the previously mentioned applicable mandates in the Government Code and Public Contract Code.

SECTION 3876. STATEWIDE PARTICIPATION GOALS.

Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Proposed Regulation is Intended to Address:

Subdivision (c) of section 10115 of the Public Contract Code requires contracts awarded by state agencies to have statewide participation goals of three percent for disabled veteran business enterprises.

Specific Purpose and Necessity of the Proposed Regulation:

The proposed regulation describes a procedure to demonstrate compliance with statutory and regulatory requirements and is necessary in order to implement those requirements.

SECTION 3877. CONTRACT AMENDMENTS.

Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Proposed Regulation is Intended to Address:

Section 4526 of the Government Code requires agencies to adopt contracting procedures that assure that specified types of private firms are selected on the basis of demonstrated competence and qualifications and that assure that the services are engaged at fair and reasonable prices to the public agencies. [Section 4529.12 requires agencies to procure services pursuant to a fair, competitive selection process.](#)

Specific Purpose and Necessity of the Proposed Regulation:

The proposed regulation specifies the necessary conditions and procedures permitting amendment of a contract during performance. This provision is necessary to allow the parties enough flexibility to account for unexpectedly changed circumstances, using procedures that provide continued protection to the interests addressed in the enabling statute.

SECTION 3878. CONTRACTING IN PHASES.

Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Proposed Regulation is Intended to Address:

Section 4526 of the Government Code requires agencies to adopt contracting procedures that assure that specified types of private firms are selected on the basis of demonstrated competence and qualifications and that assure that the services are engaged at fair and reasonable prices to the public agencies. [Section 4529.12 requires agencies to procure services pursuant to a fair, competitive selection process.](#)

Specific Purpose and Necessity of the Proposed Regulation:

The proposed regulation permits the agency to negotiate only a part of the contract compensation provision prior to execution of the contract in cases where the agency determines it is necessary or desirable for a contract to be performed in stages, the firm is the most highly qualified to perform the entire project at a fair and reasonable price, and the contract provides that the agency has an option to use the firm for other phases of the project for a fair and reasonable price to be later negotiated. This provision is necessary to provide procedures that address special project needs by allowing the parties to contract for a project, even though the full extent of the project cannot be known until after the work has begun. At the same time, the proposed procedures protect the interests addressed in the enabling statute.

SECTION 3879. PROHIBITED PRACTICES.

Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Proposed Regulation is Intended to Address:

Section 4526 of the Government Code requires agencies, when adopting regulations for contracting procedures that assure that specified types of private firms are selected on the basis of demonstrated competence and qualifications, to include procedures that specifically prohibit practices that might result in unlawful activity and that specifically prohibit government agency employees from participating in the selection process if the employee has a conflict of interest as defined by statute. [Section 4529.12 prohibits participation in the selection process by agency employees who have a financial or business relationship with a candidate firm, and specifies that the selection procedure must require compliance with all laws regarding political contributions, conflicts of interest, or unlawful activities.](#)

Specific Purpose and Necessity of the Proposed Regulation:

The proposed regulation prohibits the participation of an agency employee in the selection process if the employee has a specified relationship with a firm seeking a contract, and it requires agency contracts to include a provision in which the firm warrants that the contract was not obtained through an unlawful consideration. This regulation is necessary to implement statutory requirements.

SECTION 3880. APPLICATION OF CHAPTER

Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Proposed Regulation is Intended to Address:

Section 4529 of the Government Code mandates that agency regulations defining procedures for contracting with private firms for specified professional services shall not apply where the agency determines that the needed services are of a technical nature involving little professional judgment and that requiring bids would be in the public interest.

Specific Purpose and Necessity of the Proposed Regulation:

The proposed regulation specifies that the chapter does not apply when the agency determines that the needed services require competitive bids or an emergency condition exists. This provision clarifies the application of the proposed regulations, consistent with statutory [authority](#).
