

Text of Proposed Regulation

**TITLE 14. NATURAL RESOURCES**  
**DIVISION 2. DEPARTMENT OF CONSERVATION**  
**CHAPTER 3. SELECTION OF PROFESSIONAL SERVICE FIRMS**

**Section 1690. Selection of Professional Service Firms.**

(a) The purpose of these regulations is to establish those procedures authorized and required by Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

(b) Selection by the ~~Division~~ Department for professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required. Selection of the services of analytical laboratory, forestry, geological, geophysical, and other firms shall be on this same basis when the additional services qualify as environmental services or ancillary services logically or justifiably performed in connection with architectural, landscape architectural, engineering, environmental, land surveying, or construction project management services.

NOTE: Authority cited: ~~Sections 3013 and 3106, Public Resources Code; and~~ Section 4526, Government Code. Reference: Sections 4525-4529.5, Government Code.

**Section 1690.1. Definitions, as Used in These Regulations.**

(a) "~~Division~~Department" means the ~~Division of Oil, Gas, and Geothermal Resources~~ in the Department of Conservation and each of its divisions.

(b) "Small business" shall mean a small business firm as defined by the Director of General Services (Section 1896, Title 2 of California Code of Regulations) pursuant to Section 14837 of the Government Code.

(c) "Architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services" are those services to be procured outside State of California Civil Service procedures and of a character necessarily rendered by an architect, landscape architect, engineer, environmental specialist, land surveyor, and construction project management

contractor, but may include ancillary services logically or justifiably performed in connection therewith.

(d) "Project" means a project as defined in Section 10105 of the Public Contract Code, or as defined in Public Resources Code section 21065.

NOTE: Authority cited: Section 4526, Government Code; ~~and Section 3013, Public Resources Code~~. Reference: Sections 4525-4529.5 and 14837, Government Code; and Section 10105, Public Contract Code; and Sections 607 and 21065, Public Resources Code.

### **Section 1691. Establishment of Criteria.**

(a) The ~~Division~~ Department shall establish criteria, on a case-by-case basis, which will comprise the basis for selection for each project. The criteria shall include, but is not limited to, such factors as professional excellence, demonstrated competence, specialized experience of the firm, education and experience of key personnel to be assigned, staff capability, workload, ability to meet schedules, nature and quality of completed work, reliability and continuity of the firm, location, and other considerations deemed relevant. Such factors shall be weighted by the ~~Division~~ Department according to the nature of the project, the needs of the State and complexity and special requirements of the specific project.

(b) In no event shall the criteria include practices which might result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration. ~~Division~~ Department staff with a relationship to a person or business entity seeking a contract under this section are prohibited from participating in the selection process if the ~~Division~~ Department staff would be subject to the prohibition of Government Code Section 87100.

NOTE: Authority cited: Section 4526, Government Code; ~~and Section 3013, Public Resources Code~~. Reference: Sections 4525-4529.5 and 87100, Government Code.

### **Section 1692. Estimate of Value of Services.**

Before any discussion with any firm concerning fees, the ~~Division~~ Department may cause an estimate of the value of such services to be prepared. This estimate shall serve as a guide in determining fair and reasonable compensation for the services rendered. Such estimate shall be, and remain, confidential until award of contract or abandonment of any further procedure for the services to which it relates. At any time the ~~Division~~ Department determines the estimates to be unrealistic because of rising costs, special

conditions, or for other relevant considerations, the estimate may be reevaluated and modified if necessary.

NOTE: Authority cited: Section 4526, Government Code; ~~and Section 3013, Public Resources Code~~. Reference: Sections 4525-4529.5, Government Code.

### **Section 1693. Request for Qualifications.**

(a) Where a project requires architectural, landscape architectural, engineering, environmental, land surveying, or construction project management services, the ~~Division~~ Department shall make an announcement in a publication of the respective professional society. Additionally, the ~~Division~~ Department may publish an announcement in a construction trade journal or in other appropriate publication, if any exist. The announcement shall be published within a reasonable time frame so that a lengthy publication delay does not adversely affect the project.

(b) The announcement shall contain the following information: The nature of the work, the criteria upon which the award shall be made, and the time within which statements of interest, qualification and performance data will be received.

(c) The ~~Division~~ Department shall endeavor to provide to all small business firms who have indicated an interest in receiving such, a copy of each announcement for projects for which the ~~Division~~ Department concludes that small business firms could be especially qualified. A failure of the ~~Division~~ Department to send a copy of an announcement to any firm shall not operate to preclude any contract.

NOTE: Authority cited: Section 4526, Government Code; ~~and Section 3013, Public Resources Code~~. Reference: Sections 4525-4529.5, Government Code.

### **Section 1694. Selection of Firm.**

After expiration of the time period stated in the announcement, the ~~Division~~ Department shall evaluate statements of qualifications and performance data which have been submitted to the ~~Division~~ Department. Discussions shall be conducted with no less than three firms regarding the required service. Where three firms cannot be found which could provide the required service, a full explanation including names and addresses of firms and individuals requested to submit proposals must be entered in the files. From the firms with which discussions are held, the ~~Division~~ Department shall select no less than three, provided at least three firms submit proposals, in order of preference, based

upon the established criteria, which are deemed to be the most highly qualified to provide the services required.

NOTE: Authority cited: Section 4526, Government Code; ~~and Section 3013, Public Resources Code~~. Reference: Sections 4525-4529.5, Government Code.

### **Section 1695. Negotiation.**

The ~~Division~~ Department shall attempt to negotiate a contract with the most highly qualified firm. When the ~~Division~~ Department is unable to negotiate a satisfactory contract with this firm with fair and reasonable compensation provisions, as determined by the procedure set forth in Section 1692 if those procedures were used, negotiations shall be terminated. The ~~Division~~ Department shall then undertake negotiations with the second most qualified firm on the same basis. Failing accord, negotiations shall be terminated. The ~~Division~~ Department shall then undertake negotiations with the third most qualified firm on the same basis. Failing accord, negotiations shall be terminated. Should the ~~Division~~ Department be unable to negotiate a satisfactory contract at fair and reasonable compensation with any of the selected firms, additional firms may be selected in the manner prescribed in this Chapter and the negotiation procedure continued.

NOTE: Authority cited: Section 4526, Government Code; ~~and Section 3013, Public Resources Code~~. Reference: Sections 4525-4529.5, Government Code.

### **Section 1696. Amendments.**

In instances where the ~~Division~~ Department effects a necessary change in the project during the course of performance of the contract, the firm's compensation may be adjusted by negotiation of a mutual written agreement in a fair and reasonable amount where the amount of work to be performed by the firm is changed from that which existed previously in the contemplation of the parties.

NOTE: Authority cited: Section 4526, Government Code; ~~and Section 3013, Public Resources Code~~. Reference: Sections 4525-4529.5, Government Code.

### **Section 1697. Contracting in Phases.**

Should the ~~Division~~ Department determine that it is necessary or desirable to have a given project performed in phases, it will not be necessary to negotiate the total contract price or compensation provisions in the initial instance, provided that the ~~Division~~ Department shall have determined that the firm is best qualified to perform the whole project at a fair and reasonable cost, and the contract contains provisions that the ~~Division~~ Department, at its option, may

utilize the firm for other phases and that the firm will accept a fair and reasonable price for subsequent phases to be later negotiated and reflected in a subsequent written instrument. The procedure with regard to estimates and negotiation shall otherwise be applicable.

NOTE: Authority cited: Section 4526, Government Code;~~and Section 3013, Public Resources Code~~. Reference: Sections 4525-4529.5, Government Code.

**Section 1698. ~~Division~~ Department's Power to Require Bids.**

Where the ~~Division~~ Department determines that the services needed are technical in nature and involve little professional judgment and that requiring bids would be in the public interest, a contract shall be awarded on the basis of bids rather than by following the foregoing procedures for requesting proposals and negotiations.

NOTE: Authority cited: Section 4526, Government Code;~~and Section 3013, Public Resources Code~~. Reference: Sections 4525-4529.5, Government Code.