

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

NOTICE OF PROPOSED RULEMAKING

[Notice published March 24, 2023]

The California Department of Conservation ("Department") proposes to amend Sections 1690 through 1698 of Title 14 of the California Code of Regulations after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

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

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department. Comments also may be submitted by e-mail to Christine.Hansen@conservation.ca.gov.

The written comment period closes at **5:00 p.m. on May 9, 2023**. The Department will consider only comments received by the Department by that time. Submit comments to:

Christine Hansen
California Department of Conservation
715 P Street, MS 1900
Sacramento, CA 95814
Christine.Hansen@conservation.ca.gov
Re: A&E Rulemaking Comment

AUTHORITY AND REFERENCE

Government Code section 4526 authorizes the Department to adopt these proposed amendments to the regulations. The proposed amendments would implement sections 4525 through 4529.5 of the Government Code.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Effect of the Proposed Action:

Government Code sections 4525-4529.5 govern a state agency's process for selecting the professional services of private architectural, landscape architectural, engineering, environmental, land surveying, and construction management firms. Under Government Code section 4526, state contracting for such services "shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required."

Agencies that contract for the specified professional services "shall adopt" regulations detailing how the agency will ensure their contracts for the specified professional services are awarded based on "demonstrated competence and qualifications" and will be performed at "fair and reasonable prices." (Gov. Code, § 4526.) According to the State Contracting Manual, "an agency must have adopted regulations in order to utilize" the contract section process for professional services firms. (SCM vol. 1, Ch. 11.)¹

In 2000, the Department adopted "emergency" regulations for the selection of professional services firms. The emergency regulations applied to one division within the Department, the California Geologic Energy Management Division ("CalGEM"), rather than the Department.² The Department, however, is the contracting entity, and the Department generally, as well as its several other divisions – the Division of Mine Reclamation, the California Geological Survey, and the Division of Land Resource Protection – may have a need to hire professional services firms. For this reason, the Department wishes to amend its regulations to change the word "Division" (referring to CalGEM) to "Department", thus ensuring the regulations cover the entire Department.

Anticipated Benefits of the Proposed Amendments:

The broad objective of the amendments is to make the existing regulations adopted to implement Government Code sections 4525-4529.5 applicable to the Department as a whole. The specific benefits anticipated from the amendments are: (1) ensure the Department and its other divisions can timely utilize statutory selection process for the services of professional services firms, (2) promote consistency and efficiency in the Department's contracting processes;

¹ The State Contracting Manual is the equivalent of regulations adopted by DGS, meaning it has the force of law.

² At the time the regulations were adopted, CalGEM was named the Division of Oil, Gas, and Geothermal Resources.

and (3) reduce the likelihood that the Department's contracting decisions for professional services firms will be subject to legal challenge for non-compliance with statute.

Determination of Inconsistency/Incompatibility with Existing State Regulations:

The Department has determined that the proposed amendments would not render the regulations inconsistent or incompatible with existing regulations. The Department has determined that there is no need to change the substance of its original regulations – but rather simply expand their scope to the Department rather than one of its divisions.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

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

Other nondiscretionary cost or savings imposed on local agencies: None.

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

Cost impacts on a representative private person or business: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states: None.

Significant effect on housing costs: None.

Results of the Economic Impact Analysis/Assessment

The Department concludes that it is unlikely (if not impossible) that (1) the proposal will eliminate any jobs, (2) the proposal will create any jobs, (3) the proposal will create any new business, (4) the proposal will eliminate any existing businesses, or (5) result in the expansion of businesses currently doing business within the state.

The Department believes the proposed amendment will benefit California residents and all stakeholders of California government by improving administrative efficiency and ensuring that the Department's selection of

professional services firms complies with the applicable statutes. Because the Department administers various programs vital to California's public safety, environment, and economy, the proposed amendments will have indirect benefits to the health and welfare of California residents and the state's environment. The Department does not anticipate any benefits to worker safety.

Small Business Determination: The Department has determined that the proposed amendments affect small businesses, but only insofar as the amendments would ensure the Department generally is able to carry out a contracting process already mandated in statute (and small businesses are potential contractors for the Department). The Department does not expect any adverse economic effects on small businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the agency 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 invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Christine Hansen
California Department of Conservation
715 P Street, MS 1900
Sacramento, CA 95814
Christine.Hansen@conservation.ca.gov

The backup contact person for these inquiries is:

Matthew Kloenhamer
California Department of Conservation
715 P Street, MS 1900
Sacramento, CA 95814

Matthew.Kloenhamer@conservation.ca.gov

Please direct requests for copies of the proposed text of the amendment, the initial statement of reasons, and/or any other information relevant to the rulemaking to the above address.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATION, 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 is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the amendment, the initial statement of reasons, and the STD 399. Copies of this information may be obtained by contacting the address, e-mail address, or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Department may adopt the proposed regulation substantially as described in this notice. 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 regulation as revised. If substantive modifications are made, 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, copies of the Final Statement of Reasons may be obtained by contacting the contact person identified above.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through the Department's website at www.conservation.ca.gov.