

## DEPARTMENT OF STATE HOSPITALS INITIAL STATEMENT OF REASONS

California Code of Regulations  
Title 9. Rehabilitative and Developmental Services  
Division 1. Department of Mental Health  
Chapter 16. State Hospitals Operations  
Article 5. Contracts

### PROBLEM STATEMENT

The Department of State Hospitals (formerly the Department of Mental Health (Department)) relies upon the Department of General Services (DGS) to contract for the professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction management firms. Government Code (GC) section 4526 allows state agencies to adopt regulations to contract directly for these services. The Department is electing to adopt these regulations at this time.

### BENEFITS

Adopting Section 4530 - Selection Process for Private Architectural, Landscape Architectural, Engineering, Environmental, Land Surveying and Construction Project Management Firms regulations will allow the Department to contract directly for these professional services thereby reducing administrative time for awarding contracts and increasing the Department's ability to more effectively and efficiently manage the contracts. The regulations contain provisions to award contracts based on demonstrated competence and qualification for the types of services performed and at fair and reasonable costs to the Department. These regulations allow the Department to respond quickly to legislative changes and safety aspects for protecting patients and staff.

#### Section 4530.1. Definitions

**Purpose:** This subsection provides the definitions for specific terms and entities referred to throughout Section 4530.

**Necessity:** This subsection is necessary to define the terms and entities referred to throughout Section 4530 to eliminate confusion or misunderstandings.

**Rationale:** The clear definition of terms and entities used on Section 4530 allows for a fair and equitable bidding process for all applicants.

#### Section 4530.2. Selection Criteria

**Purpose:** This subsection specifies nine criteria to be considered for the selection of eligible firms to perform the required contracted professional services of Section 4530. This subsection also notifies the public that the criteria will be weighed according to the

nature of the proposed project, the complexity of the proposed project, and any special requirements of the specific services and the needs of the Department.

**Necessity:** This subsection is necessary to provide a competitive, equitable and fair bidding and selection process for firms submitting contracts under Section 4530 in order that they can understand the expected qualifications and selection criteria for eligible firms.

**Rationale:** The selection criteria contained in this subsection must be identified in order to provide a competitive, equitable and fair opportunity for firms to compete for these contracts. This information provides transparency in the selection process and allows firms to include the criteria indicated in their bid packages.

### **Section 4530.3. Announcement of Project**

**Purpose:** This subsection provides the procedures for publishing the announcement of each proposed project in the California State Contracts Register and professional publications. The project announcements will include a description of the projects and other filing instructions. Finally, this subsection describes the Department's process for contacting small business firms that have indicated an interest in receiving the announcements.

**Necessity:** This subsection is necessary to provide public notification procedures regarding Departmental projects available to contractors under Section 4530. This subsection also documents the Department's process for assuring maximum participation of small business firms as required in GC 14838.

**Rationale:** In order to provide a competitive, equitable and fair opportunity for public firms, including small businesses, to compete for these contracts, the Department must inform the public as to where the announcement of these projects will be published; provide a description and filing instructions; and discloses the Department's process for notifying small businesses as required in GC 14838.

### **Section 4530.4. Selection of Qualified Firms**

**Purpose:** This subsection specifies the procedures by which the Department will rank the firms who meet the selection criteria of Section 4530.2 for each project. This subsection also describes how the Department will conduct discussions with no more than three of the most eligible firms per project about anticipated concepts and the benefit of alternative methods for furnishing the required services.

**Necessity:** This subsection is necessary for narrowing down the number of eligible firms per project in the event more than three firms submit contract bids for the professional services stipulated in Section 4530.

**Rationale:** This subsection informs the public that no more than the three top eligible firms per project will be considered for these professional services contracts. This information provides transparency by allowing competing firms to have some

understanding of how the most qualified firms will be selected. Establishing “three” as the number of top tier applicants has been established with both the California Department of Corrections and Rehabilitation and the California Department of Transportation to be a reasonable number and prevents the process from being unnecessarily prolonged, given time and limited state resources.

#### **Section 4530.5. Estimate of Value of Services**

**Purpose:** This subsection describes the processes by which a confidential value for a project under Section 4530 is reached in order to negotiate a fair and reasonable compensation with the most eligible firms.

**Necessity:** This subsection is necessary to assure the Department contracts with firms for fair and reasonable costs at the time the contract is selected. These costs are independently determined before reviewing the contract bids so that the bids do not influence the fair and reasonable costs determined by the Department.

**Rational:** This subsection assures the Department is compliant with GC 4526 which allows state agencies to contract directly for these services as long as the costs are fair and reasonable to the public agencies.

#### **Section 4530.6. Statewide Participation Goals**

**Purpose:** This subsection states the Department’s intent to comply with the statewide disabled veteran business enterprises participation goal of not less than 3 percent of total contract value in the awarding of Section 4530 professional services contracts, unless exempted from the goal by the Department.

**Necessity:** This subsection is necessary to assure the Department’s intent to participate in the Disabled Veteran Business Enterprise Program found in Military and Veterans Code (MVC) section 999 and Public Contract Code (PCC) section 10115.2.

**Rationale:** This subsection notifies the public that the Department will comply with MVC 999 and PCC 10115.2 in the awarding of contracts to disabled veterans when determining the best qualified firms for Section 4530 contracts, unless exempted from the goal by the Department.

#### **Section 4530.7. Negotiations**

**Purpose:** This subsection describes the negotiation process which begins with the most qualified firm(s) selected for each project. Section 4530.4 describes the process for selecting the most qualified firm(s). If the Department determines that a fair and reasonable compensation cannot be reached with the most qualified firm, negotiations shall be terminated and begin with the second most qualified firm. This process will continue until a satisfactory contract is negotiated. If the Department is unable to negotiate a satisfactory contract, the Director will abandon the negotiation process for the required services.

**Necessity:** This subsection is necessary to inform the public of how the negotiations will occur for the selection of qualified firms and what they can expect if no qualified firms are selected. This provides transparency for the awarding of contracts for the professional services of Section 4530.

**Rationale:** Based on the experiences of the Department of Corrections and Rehabilitation and the California Department of Transportation, this method of negotiating has proven fair and practical, giving applicants who are denied an opportunity for reconsideration, yet allowing the Department to exercise discretion to move ahead with another, potentially more qualified candidate. It is also consistent with how these two agencies conduct their construction projects.

#### **Section 4530.8. Amendments**

**Purpose:** This subsection details that any changes will be made with mutual consent between the Department and the contractor, which will be in writing and with a reasonable adjustment in the firm's compensation.

**Necessity:** This subsection is necessary so that all parties are informed as to how changes to the terms of a contract during the performance of services will be handled through contract amendments.

**Rationale:** Both parties of a contract need to know what to expect if changes are needed to the scope of work once the contracted work has begun. This section may impact whether a firm elects to bid on a project or not.

#### **Section 4530.9. Contracting in Phases**

**Purpose:** This subsection informs the public that the Director of the Department may decide to have some projects, under Section 4530, performed and funded in phases by the selected best qualified firm. This subsection also includes the process of how these later negotiated services will be contracted with the same firm and how the compensation will be determined.

**Necessity:** This subsection is necessary to alert the public that certain projects under Section 4530 may be performed in phases and additional work may be awarded to the same best qualified firm and not awarded to other firms to perform. This subsection also allows the Department to contract with a firm qualified to complete an entire project.

**Rationale:** Allowing for contracting in separate phases gives greater flexibility in managing a project. Other agencies have found that there were many challenges in granting a contractor the award for an entire performance job. The Department of Corrections and Rehabilitation has found that managing a project in phases has benefitted the state agency and the contractor because they are able to assess the progress and make adjustments before moving on to the next phase. This saves time and money for the state and is in the best interest of the public.

#### **Section 4530.10. Director's Power to Require Bids**

**Purpose:** This subsection provides authority for the Director to require bids for the services under Section 4530 that are technical in nature and involve little professional judgment. In such cases requiring bids would be in the best public interest and a contract would be awarded on the basis of the competitive bids.

**Necessity:** This subsection is necessary to allow the Department flexibility in awarding some contracts under Section 4530 that are less complex and more technical in nature, through the competitive bidding process.

**Rationale:** Not all contracts under Section 4530 will need to go through the procedures of this Article. Allowing the Department flexibility in determining which process to use will help facilitate the awarding of contracts and thereby saving costs, without compromising quality of services, which is in the best interest of the public.

### **Section 4530.11. Unlawful Considerations**

**Purpose:** This subsection assures the public that no firm will use unlawful means to obtain a contract under Section 4530.

**Necessity:** This subsection is necessary to allow for a fair and unbiased awarding of public contracts. This subsection allows for a more competitive opportunity for firms to bid on projects based on their ability to perform the services required within their proposed costs.

**Rationale:** This subsection prevents discrimination in the awarding of contracts through unlawful considerations such as rebates, kickbacks, and the like. Failure to adhere to this subsection may be cause for contract termination and recovery of damages under the rights and remedies due the Department under the default provision of the contracts.

### **Section 4530.12. Prohibited Relationships**

**Purpose:** This subsection describes the conflict-of-interest disclosures of Section 4530 prohibiting certain state employees from participating in the awarding of these contracts.

**Necessity:** This subsection is necessary to prevent public officials from obtaining financial gain through contracts they have authority to award or approve. It is necessary to provide a fair and equitable opportunity for the public to obtain contracts under Section 4530.

**Rationale:** This subsection stipulates the requirements of GC 87100, preventing public officials at any level in the state from participating in making or influencing the awarding of these contracts in which the employee has a financial interest.

## **NECESSITY**

Sections 4530-4530.12 will allow the Department to contract directly for these professional services thereby reducing state administrative time for awarding contracts and increasing the Department's ability to be more effective and efficient in managing these types of professional service contracts. Sections 4530.1-4530.12 provide detailed processes to cover all of the elements of these contracts, alert the public of the specific requirements for participating, and provide transparency in contracting for these services.

Over the past 20 years, the patient population in the state hospitals has shifted from civilians with mental health disorders to criminals with mental health disorders. This change has required four of the state hospitals to be retrofitted with enhanced security features. In addition, a fifth state hospital was built in 2005 to accommodate the sexually violent predators. In order to respond quickly to legislative changes and safety aspects for protecting the patients and the staff, the Department needs to be able to independently administer and manage private architectural, landscape architectural, engineering, environmental, land surveying, or construction management firms in order to save time and costs.

These regulations increase Departmental operational efficiencies and effectiveness by allowing the Department to award contracts in the least burdensome manner.

#### **TECHNICAL, THEORETICAL AND/OR EMPIRICAL STUDY, REPORTS OR DOCUMENTS**

These regulations are similar to those approved for the California Department Corrections and Rehabilitation (CCR Title 15, Division 3, Subchapter 5, Article 7), which allows them to contract directly pursuant to GC 4526.

#### **ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

These regulations are intended to allow the Department to contract directly for the professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction management firms without going through DGS. The regulations will allow the Department to award and manage the contracts more efficiently and respond more timely to statutory changes impacting the safety of patients and staff at the state hospitals.

##### The Creation or Elimination of Jobs within the State of California

The services in these regulations are currently performed by contracted firms; therefore, these regulations will not create or eliminate additional jobs in California. These regulations merely transfer the authority to award and manage the contracts from DGS to the Department.

##### The Creation of New Businesses or the Elimination of Existing Businesses within the State of California

The services in these regulations are currently performed by contracted firms; therefore, these regulations are not intended to create new businesses or eliminate existing

businesses in California. These regulations merely transfer the authority to award and manage the contracts from DGS to the Department.

The Competitive Advantages or Disadvantages for Businesses Currently Doing Business within the State of California

These regulations will maintain the current competitive process used by DGS. They do not create disadvantages for businesses currently within California.

The Increase or Decrease of Investment in the State of California

The services in these regulations are currently performed by contracted firms; therefore, this regulation is not intended to increase or decrease investment in California. These regulations merely transfer the authority to award and manage the contracts from DGS to the Department.

The Incentives for Innovation in Products, Materials, or Processes

The services in these regulations are currently performed by contracted firms; therefore, this regulation is not intended to create incentives for innovation in products, materials or processes. These regulations merely transfer the authority to award and manage the contracts from DGS to the Department.

Benefits of the Regulation

These regulations will help to improve the benefits to the health, safety and welfare of California residents, worker safety, and the state's environment and quality of life by allowing the Department to expedite the awarding of contracts and completion of work at the state hospitals which house over 90 percent forensic patients. Working through DGS for these contracts causes delays in the awarding of this professional work. The Department is able to allocate staff as the need arises to facilitate the completion of public safety contracts in order to protect the patients and staff at the state hospitals.

These same regulations have been successfully implemented by the California Department of Corrections and Rehabilitation.

**EVIDENCE SUPPORTING FINDINGS OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS**

These regulations are similar to those approved for the California Corrections and Rehabilitation (Title 15, Division 3, Subchapter 5, Article 7), which allows them to contract directly pursuant to GC 4526. CDCR has successfully implemented these regulations with no significant statewide adverse economic impact directly affecting businesses.

**REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES**

Over the years as additional state hospitals need to be built and existing state hospitals need maintenance, repairs and alterations to accommodate the changing patient population, the Department has determined that having the ability to contract directly

without going through DGS allows the Department to respond quicker to architectural changes that increase public, patient and staff safety. There are no reasonable alternatives to these regulations. The Department is electing to submit these regulations pursuant to GC 4526 which allows state agencies to adopt regulations to contract directly for these services.

#### **DUPLICATION OR CONFLICT WITH FEDERAL REGULATIONS**

There is no duplication or conflict with Federal Regulations.