

**DEPARTMENT OF STATE HOSPITALS
INITIAL STATEMENT OF REASONS
ARCHITECTURAL AND ENGINEERING CONTRACTS**

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

INTRODUCTION AND BACKGROUND

In 1974, the Legislature adopted Government Code sections 4525 et seq. to provide for Architectural and Engineering (A&E) contracts to be based on “demonstrated competencies and on the professional qualifications necessary” rather than the standard bidding process for outside contractual services (Government Code, section 4526). Government Code section 4527 further provides that state departments shall encourage firms to annually submit their statement of qualifications and performance data. Also, this A&E contract process adopts a method of hiring the best firm possible for a reasonable cost, rather than the lowest bidder, permits contracts to be held on an “on-call” or retainer basis, and utilizes a pool of potential firms for various projects rather than a single award of a single contract.

Additionally, these statutes removed the control of A&E contracts from the Department of General Services (DGS) purview and shifted that authority to the individual departments. In 2000, this shift in authority from DGS to the departments for A&E contracts was reaffirmed by the voters into the California Constitution as Article XXII pursuant to Proposition 35, effective November 8, 2000. Government Code section 4226 and State Contracting Manual (SCM) Chapter 11.00 provide that in order to utilize A&E contracts, departments must adopt A&E contractual procedures into regulation. Therefore, in June 2015, the Department of State Hospitals (Department) adopted California Code of Regulations, title 9, section 4530 et seq. The regulations generally mirror Government Code sections 4525 et seq. and were guided by DGS A&E regulations to make the process specific to the Department. When a project arises, the Department makes a public announcement of the project, requesting A&E firms to submit their statements of qualifications to design specific projects for which the public announcements were made. The Department then considers all potential firms and selects a minimum of three to discuss potential terms for the project.

Department staff familiar with the contract process and regulations requested clarification on the A&E contract process. In review of the statutes and implementing regulations, it was discovered that the regulations were not in logical order and several provisions permitted by the statutes and Constitution were not included. The

Department is proposing to amend regulations for A&E contracts. The amendments would rearrange the provisions in a more logical order and add provisions pertaining to on-call contracts and emergency A&E contracts and audit authority.

THE PROBLEM THAT THE PROPOSAL IS INTENDED TO ADDRESS

Government Code section 4526 et seq. enables any state agency to directly contract for the professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms utilizing a contractual process outside the standard state contracting process. Departments may only take advantage of this provision of law if they adopt regulations implementing this process for their department. At present, the Department has adopted regulations specific to this statute; however, the current regulations do not specify that the Department may award multiple contracts or have a retainer or emergency contractor as written, which is allowed for A&E projects. Further, the current regulations do not clarify the authority for the Department to audit the contractor's performance or claims on A&E projects. Finally, the provisions are not in a logical order, creating confusion when attempting to follow the State's A&E contract process. Without these provisions implemented, the Department cannot effectively use the regulations.

THE SPECIFIC PURPOSE AND NECESSITY FOR EACH AMENDMENT

Section 4530 Title

Purpose and Necessity

This title is amended to change the title "Selection Process for Private Architectural, Landscape Architectural, Engineering, Environmental, Land Surveying and Construction Project Management Firms" to "Process, Purpose, and Scope of Architectural and Engineering (A&E) Contracts." This amendment is necessary for clarity and conciseness for the patients, hospital staff, and readers of these regulations.

Section 4530(a)

Purpose

This proposed regulation provides the purpose of the Department's A&E regulations and includes the authority for implementing an A&E contract process.

Necessity

The Department is including the scope of authority for its regulations on A&E contracts to ensure that the public is aware of our ability to regulate our A&E contract process. In

addition, this ensures the Department has utilized all relevant authority in developing a comprehensive A&E contract process in these regulations.

Section 4530(b)

Purpose

This proposed regulation moves the language that currently exists in Section 4530.10, "Director's Power to Require Bids," to this Section 4530, subdivision (b). Further, language has been added including a designee as someone able to perform the requirements of this section. Language has also been changed to clearly delineate the Director's discretion to allow for competitive bidding.

Necessity

The amendments to this proposed regulation are necessary because the Department has personnel qualified, or that can be trained, to perform the requirements of this subdivision. This allows a designee to act on behalf of the Director to ensure the process can proceed timely and efficiently if the Director is unavailable to fulfill this requirement or if the involvement of the Director is not necessary. The existing language has also been additionally clarified to specify that the "professional judgment" refers to the Director or their designee when determining if a contract may be awarded on the basis of competitive bids. Moving this language from the existing Section 4530.10 to this section groups similar subject matter for conciseness, improving the clarity and readability of the regulation, the move is a non-substantive change. The word "shall" is changed to "may" to clarify that contracts may be awarded. This change is necessary because the word "shall" indicates that the contract must be awarded, whereas "may" indicates that it may or may not happen. The word "bids" is changed to process. This change is necessary because we are describing a process not a specific bid. The word "and" has been removed for clarity purposes and ease of readability for the readers of these regulations.

Section 4530(c)

Purpose

This proposed regulation specifies that the Department may award multiple agreements for A&E services based on one solicitation.

Necessity

The regulation is necessary because the right to award multiple agreements for services based on one solicitation saves the state both money and time in the solicitation

process and provides the Department additional on-call retainers. This provides greater flexibility in awarding task orders, which allows the Department to select a firm which has the most specialized experience and skills for the requested services. It also allows the Department to assign multiple projects at the same time without over burdening one firm. Having multiple firms on retainer, or “on-call,” provides the Department the ability to compare pricing and scheduling for specific services. This allows the Department flexibility based on the workload of any given firm, ensuring the firm selected will be able to provide the services needed timely and efficiently.

Section 4530.1(a)

Purpose and Necessity

This regulation is amended to repeal its existing language. In its place, “Architectural and Engineering (A&E) Services” is defined. A&E services is defined to include services that can be provided under this clarified definition and specifies what services will not be included in its definition. This establishes a consistent understanding of the term A&E Services when referenced. This section has been renumbered from 4530.1(e) to 4530.1(a). This section has been renumbered as a non-substantive change to ensure that the definitions are in alphabetical order for ease of readability.

Section 4530.1(a)(1)

Purpose and Necessity

This section adopts the definition of the term “Services” to establish a consistent understanding of the term when used in these regulations. “Services,” which comes from the term A&E Services as defined in Section 4530.1(a), is clarified in this subdivision to specifically mean the activities described in Section 4350.1(a) as well as ancillary or incidental services as defined in this subdivision (a)(1).

Section 4530.1(b)

Purpose and Necessity

This regulation is amended to renumber the section from 4530.1(d) to 4530.1(b). This section has been renumbered as a non-substantive change to ensure that the definitions are in alphabetical order for ease of readability.

Section 4530.1(c)

Purpose and Necessity

This regulation is amended to replace the term “his or her,” with the gender-neutral pronoun “their.” The words “or the Director’s designee” has been removed and added throughout the regulation instead. This amendment is a non-substantive change that has no impact on the meaning of the existing regulation.

Section 4530.1(d)

Purpose and Necessity

This regulation is amended as a non-substantive change that has no impact on the meaning of the existing regulation. Readers of this amended regulation are pointed to the Government Code for the meaning of the term “Disabled Veteran Business Enterprise” instead of the Military and Veterans Code. This section has been renumbered from 4530.1(g) to 4530.1(d). This section has been renumbered as a nonsubstantive change to ensure that the definitions are in alphabetical order for ease of readability. The Department, in proposing this regulatory change, seeks to align its regulatory language to infer that the need for regulations is derived from the requirements of the Department of General Services (DGS). Though the specific citation of law is non-substantive, by changing the code reference to law currently existing within Government Code and related to DGS, the intent of the regulation better matches the rationale for the creation of this regulation. Government Code section 14837(e) points readers to Military and Veterans Code section 999.

Section 4530.1(e)

Purpose and Necessity

This section has been renumbered from 4530.1(a) to 4530.1(e). This section has been renumbered as a non-substantive change to ensure that the definitions are in alphabetical order for ease of readability.

Section 4530.1(g)

Purpose and Necessity

This proposed regulation adopts the definition of the term “Project” to establish a consistent understanding of the term when used in these regulations. Project is defined to incorporate the term as defined in Public Contract Code section 10105(a), and Public Resource Code section 21065, as well as the various projects and services listed in this subdivision 4530(a)(1). These various definitions for project are necessary because they encompass all relevant services that are included in A&E contracts.

Section 4530.1(h)

Purpose

This regulation is amended to further specify and clarify the specific section of the Government Code used to define “Small Business”. This section has been renumbered from 4530.1(b) to 4530.1(h).

Necessity

This amendment is necessary because only Government Code sections 14837(d)(1) and (d)(2) relate to whether a firm qualifies as a small business or not. This update to regulation clarifies that all other sections of Government Code section 14837 are not necessary to consider when establishing whether a business qualifies as a small business. This regulation clarifies the definition without changing the original definition as established in statute. This section has been renumbered as a non-substantive change to ensure that the definitions are in alphabetical order for ease of readability.

Authority and Reference Section 4530.1:

Text: Government Code Section 4526, and Welfare and Institute Code Section 4011 and 4027 have been added to the authority section. Public Contract Code Section 10105 and Public Resources Code Section 21065 have been added to the reference section.

Rationale: These citations are added to further clarify that in addition to the authorities granted in law for the creation of this regulation, the Department generally seeks to implement, interpret, or make more specific Government Code Section 4526 and Welfare and Institute Code Section 4011 and 4027, which grants the Department general control and direction of the property and concerns of each state hospital. Public Contract code 10105 and Public Resources Code Section 21065 was added for the definition for project.

Section 4530.2 Title.

Purpose and Necessity

This amendment renames and renumbers the existing title “Section 4530.3. Announcement of Project.” to “Section 4530.2. Announcement/Notification of Project.” These regulations are renumbered to place the regulation in logical reading order; this is a non-substantive change. The word “/Notification” has been added to clarify that it can either be an announcement or a notification.

Section 4530.2(a)

Purpose

This section is adopted to add retainer contract to the announcement published in the California State Contracts Register. Subsection 4530.3(a) is renumbered to subsection 4530.2(a). The word “/notification” has been added to this section.

Necessity

This amendment is necessary to clarify and explicitly state retainer contracts are allowed for A&E projects. Current regulations, as written, do not specifically list retainer contracts. Adding this language clarifies the requirement to publish retainer contracts, just like proposed projects, for the Department. The renumbering is non-substantive. The word “/Notification” has been added to clarify that it can either be an announcement or a notification.

Section 4530.2(b)

Purpose

This section is adopted to add that retainer contracts shall also be announced in the manner specified by this subdivision. Subsection 4530.3(b) is renumbered to subsection 4530.2(b). The word “/notification” has been added to this section.

Necessity

This amendment is necessary to clarify and explicitly state retainer contracts are allowed for A&E projects. Current regulations, as written, do not specifically list retainer contracts. Adding this language clarifies the announcement of retainer contracts for the Department. The addition of retainer contracts to this subdivision ensures that when it is announced, retainer contracts follow the established rules and the requirements of proposed projects. The renumbering is non-substantive. The word “/Notification” has been added to clarify that it can either be an announcement or a notification.

Section 4530.2(c)

Purpose

This section is adopted to specify that a designee of the Director may carry out the requirements of this subdivision to identify specific entities interested in contracting with the Department. This section also specifies Disabled Veteran Business Enterprises

(DVBE) as a type of firm which may be contacted. Subsection 4530.3(c) is renumbered to subsection 4530.2(c). The word “/notification” has been added to this section.

Necessity

The amendment of language adding a designee of the Director as able to fulfill the requirements of subdivision (c) is necessary because the Department has specific personnel specially qualified and knowledgeable in the contracting process. This adoption allows the designee to act on behalf of the Director to ensure the process can proceed timely and efficiently if the Director is unavailable to fulfill this requirement or if the involvement of the Director is not necessary. Without this amendment to add designated personnel as able to fulfill the requirements of this subdivision (c), it may create confusion regarding the legitimacy of the announcement and contract process. DVBEs are specifically named because under the previous regulatory language, it was implied that the DVBE must be a small business. This amendment clarifies that a DVBE, regardless of whether they are a small business or not, may be identified for a potential contract with the Department. The renumbering is non-substantive. The word “/Notification” has been added to clarify that it can either be an announcement or a notification.

Section 4530.2(d)

Purpose

This section is adopted to specify that the Director, or designee, will encourage small business firms to certify through the DGS and subscribe to the California State Contracts Register. The Director, or designee, will also participate in outreach efforts to provide information on contracting opportunities with the Department.

Necessity

These adoptions are necessary to encourage small businesses or DVBE, which typically have less resources and access to knowledge of the contracts process, to register with services designed to inform businesses of advertisement notifications for contracts. By becoming certified with the DGS, a small business places themselves in a better position to be awarded a contract as that part of the verification process will not be necessary later in the contract process. Adopting this regulation also establishes the commitment of the Department to work with small businesses or DVBE to ensure they have the knowledge necessary to compete for contracts with the Department.

Authority and Reference Section 4530.2:

Text: Government Code Section 4526 and Welfare and Institutions Code Section 4011 and 4027 has been added to the authority section.

Rationale: These citations are added to further clarify that in addition to the authorities granted in law for the creation of this regulation, the Department generally seeks to implement, interpret, or make more specific Government Code Section 4526 and Welfare and Institute Code Section 4011 and 4027, which grants the Department general control and direction of the property and concerns of each state hospital.

Section 4530.3. Title.

Purpose and Necessity

This amendment renumbers the existing section title from “Section 4530.5. Estimate of Value of Services.” to “Section 4530.3. Estimate of Value of Services.” These regulations are renumbered to place the regulation in logical reading order; this is a non-substantive change.

Section 4530.3(a)

Purpose

This section, as proposed for amendment, changes the section references in the subdivision from 4530.4 to 4530.5, and from 4530.7 to 4530.6, adds that a designee of the Director may perform the tasks the Director completes for this subdivision (a), adds task orders to the items for which estimates are prepared, and adds the negotiation of retainer contracts as another type of contract benefited by the creation of estimates. Subsection 4530.5(a) is renumbered to subsection 4530.3(a).

Necessity

These adoptions are necessary for many reasons. Changing the references to 4530.5 and 4530.6 reflect the new location of the regulations pertinent to this section. Adding a designee of the Director is necessary because the Department has personnel qualified, or can be trained, to perform the requirements of this subdivision. This adoption allows the designee to act on behalf of the Director to ensure the process can proceed timely and efficiently if the Director is unavailable to fulfill this requirement or if the involvement of the Director is not necessary. The words “task order(s)” is included to allow the Department to fund development of design and construction documents as projects initiate and progress. Because this language was not specifically included in the regulation text, it unclear whether task orders were permissible items the Department could contract for and obtain. Retainer contracts are added here, similar to other areas

in these proposed regulations, because they are permissible types of contracts the Department may seek to obtain. The renumbering is non-substantive.

Section 4530.3(b)

Purpose and Necessity

The amendment of language adding a designee of the Director is necessary because the Department has personnel qualified, or can be trained, to perform the requirements of this subdivision. This adoption allows the designee to act on behalf of the Director to ensure the process can proceed timely and efficiently if the Director is unavailable to fulfill this requirement or if the involvement of the Director is not necessary. Subsection 4530.5(b) is renumbered to subsection 4530.3(b); the renumbering is non-substantive.

Authority and Reference Section 4530.3:

Text: Government Code Section 4526, and Welfare and Institutions Code Section 4011 and 4027 have been added to the authority section. Government Code Section 4526 and 4528 have been added to the reference section.

Rationale: These citations are added to further clarify that in addition to the authorities granted in law for the creation of this regulation, the Department generally seeks to implement, interpret, or make more specific Government Code Section 4526 and 4528 and Welfare and Institute Code Section 4011 and 4027, which grants the Department general control and direction of the property and concerns of each state hospital.

Section 4530.4 Title.

Purpose and Necessity

This amendment renumbers the existing section title from “Section 4530.2. Selection Criteria.” to “Section 4530.4. Selection Criteria.” These regulations are renumbered to place the regulation in logical reading order; this is a non-substantive change.

Section 4530.4

Purpose

This section is amended to add that a designee of the Director may perform the tasks the Director completes for this section, adds retainer contracts as another item affected by the regulation of this section, and moves the sentence explaining how factors will be weighed from its own separate sentence at the end of this section into the opening paragraph of this section.

Necessity

Adding a designee of the Director to perform tasks the Director is to perform is necessary because the Department has personnel qualified, or can be trained, to perform the requirements of this subdivision. This adoption allows the designee to act on behalf of the Director to ensure the process can proceed timely and efficiently if the Director is unavailable to fulfill this requirement or if the involvement of the Director is not necessary. This amendment is necessary to clarify and explicitly state retainer contracts are allowed for A&E projects. Retainer contracts are allowed for A&E projects, but current regulations, as written, do not specify retainer contracts. Moving the sentence from the bottom of the section to the introduction paragraph is nonsubstantive.

Section 4530.4(h)

Purpose

This section is adopted to add quality assurance and quality control plan, as a factor to be considered by the Director, or designee, in the selection of a firm.

Necessity

The proposed regulation is necessary to ensure services provided by A&E firms are high quality and meet the project scope or need. One of the requirements within the solicitation is for A&E firms to provide a Quality Assurance plan and a Quality Control plan to display experience and success in developing design and construction documents.

Section 4530.4(i)

Purpose

This section is amended to add the status of a firm as a DVBE as a factor to be considered by the Director, or designee, in the selection of a firm. This section has been renumbered from 4530.2(h) to 4530.4(i).

Necessity

The proposed regulation is necessary to comply with state contract rules and existing regulations such as GC Sections 14835 et. seq. The status of a business as a DVBE, whether large or small, is to be considered in selecting a firm to perform the services sought by the Department. The renumbering is non-substantive. This section has been renumbered to place the regulation in logical reading order; this is a non-substantive change.

Section 4530.4(j)

Purpose

This section is amended to add that a designee of the Director may perform the tasks the Director completes for this section. This section has been renumbered from 4530.2(i) to 4530.4(j).

Necessity

Adding a designee of the Director to perform tasks the Director is to perform is necessary because the Department has personnel qualified, or can be trained, to perform the requirements of this subdivision. This adoption allows the designee to act on behalf of the Director to ensure the process can proceed timely and efficiently if the Director is unavailable to fulfill this requirement or if the involvement of the Director is not necessary. This section has been renumbered to place the regulation in logical reading order; this is a non-substantive change.

Authority and Reference Section 4530.4:

Text: Government Code Section 4526 and Welfare and Institutions Code Section 4011 and 4027 have been added to the authority section.

Rationale: These citations are added to further clarify that in addition to the authorities granted in law for the creation of this regulation, the Department generally seeks to implement, interpret, or make more specific Government Code Section 4526 and Welfare and Institute Code Section 4011 and 4027, which grants the Department general control and direction of the property and concerns of each state hospital.

Section 4530.5. Title.

Purpose and Necessity

This amendment renumbers the existing section title from “Section 4530.4. Selection of Qualified Firms.” to “Section 4530.5. Selection of Qualified Firms.” These regulations are renumbered to place the regulation in logical reading order.

Section 4530.5(a)

Purpose

This section, as proposed for amendment, changes the section reference from 4530.2 to 4530.4, and adds that a designee of the Director may perform the tasks the Director

completes for this subdivision (a). Subsection 4530.4(a) is renumbered to subsection 4530.5(a).

Necessity

The change in reference from Section 4530.2 to Section 4530.4 is done to reflect the change in location of the regulatory section referenced. Adding a designee of the Department is necessary because the Department has personnel qualified, or can be trained, to perform the requirements of this subdivision. This adoption allows the designee to act on behalf of the Director to ensure the process can proceed timely and efficiently if the Director is unavailable to fulfill this requirement or if the involvement of the Director is not necessary. The renumbering is non-substantive.

Section 4530.5(b)

Purpose

This section is amended to add a designee of the Director as personnel authorized to perform the requirements of this section. Subsection 4530.4(b) is renumbered to subsection 4530.5(b).

Necessity

This amendment is necessary because the Department has personnel qualified, or can be trained, to perform the requirements of this subdivision. This adoption allows the designee to act on behalf of the Director to ensure the process can proceed timely and efficiently if the Director is unavailable to fulfill this requirement or if the involvement of the Director is not necessary. The renumbering is non-substantive.

Authority and Reference Section 4530.5:

Text: Government Code Section 4526 and Welfare and Institutions Code Section 4011 and 4027 have been added to the authority section.

Rationale: These citations are added to further clarify that in addition to the authorities granted in law for the creation of this regulation, the Department generally seeks to implement, interpret, or make more specific Government Code Section 4526 and Welfare and Institute Code Section 4011 and 4027, which grants the Department general control and direction of the property and concerns of each state hospital.

Section 4530.6. Title.

Purpose and Necessity

This amendment renumbers the existing section title from “Section 4530.7. Negotiation.” to “Section 4530.6. Negotiation.” By renumbering this title, the existing regulatory language of 4530.7(a), (b), and (c) are also renumbered to 4530.6(a), (b), and (c) respectively. These regulations are renumbered to place the regulation in logical reading order, and are non-substantive.

Section 4530.6(a) through (c)

Purpose

These subdivisions are amended to add a designee of the Director as personnel authorized to perform the requirements of these sections.

Necessity

This amendment is necessary because the Department has personnel qualified, or can be trained, to perform the requirements of this subdivision. This adoption allows the designee to act on behalf of the Director to ensure the process can proceed timely and efficiently if the Director is unavailable to fulfill this requirement or if the involvement of the Director is not necessary.

Authority and Reference Section 4530.6:

Text: Government Code Section 4526, and Welfare and Institutions Code 4011 and 4027 have been added to the authority section. Government Code Sections 4526 was removed from the reference section.

Rationale: These citations are added to further clarify that in addition to the authorities granted in law for the creation of this regulation, the Department generally seeks to implement, interpret, or make more specific Government Code Section 4526 and Welfare and Institute Code Section 4011 and 4027, which grants the Department general control and direction of the property and concerns of each state hospital. Government Codes Section 4526 has been moved from the reference section to the authority section.

Section 4530.7. Title.

Purpose and Necessity

This amendment renames and renumbers the existing section title from “Section 4530.6. Statewide Participation Goals.” to “Section 4530.7. Retainer Contracts.” This regulation is renumbered to place the regulation in logical reading order and renamed to

match the new language proposed for adoption which discusses retainer contracts. The renumbering is non-substantive.

Section 4530.7

Purpose

This regulatory language currently in this section is repealed, and in its place, new regulatory language adopted to specify that the Director, or designee, may enter into contracts for such services through a retainer contract. The language adopted specifies the general purpose and functions of a retainer contract and specifies how rates and categories are handled.

Necessity

The proposed regulation is necessary to provide the Department's authority to identify the general need for A&E services and enter into multiple retainer contracts. It ensures that contractors are aware of how contract services will be assigned and the rates for the scope of work. The Department currently has over 70 active construction projects across all DSH locations and inclusion of an additional A&E firm would allow the Department to develop construction documents expeditiously. The initial language is repealed because it is about the Department's state-wide goal of meeting DVBE requirements and not just limited to A&E contracts. Section 4530.2 addresses notification to small businesses and DVBE.

Authority and Reference Section 4530.7:

Text: Government Code Section 4526, and Welfare and Institutions Code Section 4011 and 4027 have been added to the authority section. Article XXII, California State Constitution has been added to the reference section. Sections 10115, 10115.1, 10115.2, and 10115.3 and 10115.9, Public Contract Code; and Sections 999, 999.1, 999.2, 999.3, 999.4, and 999.5, Military and Veterans Code have been removed from the reference section.

Rationale: These citations are added to further clarify that in addition to the authorities granted in law for the creation of this regulation, the Department generally seeks to implement, interpret, or make more specific Government Code Section 4526 and Welfare and Institute Code Section 4011 and 4027, which grants the Department general control and direction of the property and concerns of each state hospital. California State Constitution, Article XXII was added since it addresses A&E. 10115, 10115.1, 10115.2, and 10115.3 and 10115.9, Public Contract Code; and Sections 999, 999.1, 999.2, 999.3, 999.4, and 999.5, Military and Veterans Code have been removed from the reference section because of the amended text.

Section 4530.8. Title.

Purpose and Necessity

This amendment renames the existing section title from “Section 4530.8. Amendments.” to “Section 4530.8. Task Orders.” This amendment is necessary because the phrase “task orders” is used in practice for A&E contracts and not “amendments.”

Section 4530.8

Purpose

This section is amended to add a designee of the Director as personnel authorized to perform the requirements of this section.

Necessity

This amendment is necessary because the Department has personnel qualified, or can be trained, to perform the requirements of this section. This adoption allows the designee to act on behalf of the Director to ensure the process can proceed timely and efficiently if the Director is unavailable to fulfill this requirement or if the involvement of the Director is not necessary.

Authority and Reference Section 4530.8:

Text: Government Code Section 4526 and Welfare and Institutions Code Section 4011 and 4027 have been added to the authority section.

Rationale: These citations are added to further clarify that in addition to the authorities granted in law for the creation of this regulation, the Department generally seeks to implement, interpret, or make more specific Government Code Section 4526 and Welfare and Institute Code Section 4011 and 4027, which grants the Department general control and direction of the property and concerns of each state hospital.

Section 4530.9

Purpose

This section is amended to add a designee of the Director as personnel authorized to perform the requirements of this section.

Necessity

This amendment is necessary because the Department has personnel qualified, or can be trained, to perform the requirements of this section. This adoption allows the designee to act on behalf of the Director to ensure the process can proceed timely and efficiently if the Director is unavailable to fulfill this requirement or if the involvement of the Director is not necessary.

Authority and Reference Section 4530.9:

Text: Government Code Section 4526 and Welfare and Institutions Code Section 4011 and 4027 have been added to the authority section. State Contracting Manual Vol. 1 Section 7.33 and Public Contract Code 10346 have been added to the reference section.

Rationale: These citations are added to further clarify that in addition to the authorities granted in law for the creation of this regulation, the Department generally seeks to implement, interpret, or make more specific Government Code Section 4526 and Welfare and Institute Code Section 4011 and 4027, which grants the Department general control and direction of the property and concerns of each state hospital. State Contracting Manual Vol. 1 Section 7.33 and Public Contract Code 10346 was added due to requirements of partial compensation.

Section 4530.10. Title.

Purpose and Necessity

This amendment renames the existing section title from “Section 4530.10. Director’s Power to Require Bids.” to “Section 4530.10. Audits.” This change is necessary to align the title with the new requirements of the section, which repeals language describing the condition under which a contract can be awarded through the competitive bids process and replaces it with language describing audit requirements for contracts from the Director, or designee.

Section 4530.10

Purpose

This section is amended to add language establishing that contracts for A&E services with the Department are subject to standard accounting practices and that the Director, or designee, may require audits before, during, and after the awarding of the contract. The existing regulatory language of Section 4530.10 was stricken and moved to Section 4530, subdivision (b); this is a non-substantive change.

Necessity

This amendment is necessary to establish the rule that all contracts for A&E are subject to standard accounting practice. Establishing this rule ensures those seeking to enter into contracts with the Department to provide A&E services are aware that the contracts are subject to audits of the deliverables of the contract. Audits are one mechanism for the Department to ensure the services of the contracts are performed within the expected scope, which is a standard accounting practice. Audits help ensure proper usage of tax payer funds.

Authority and Reference Section 4530.10:

Text: Government Codes Section 4011, 4027, and 4526, and Article XXII, California State Constitution, have been added. Government Code Section 4529 has been changed to 4529.14. Welfare and Institutions Code has been removed.

Rationale: These citations are added to further clarify that in addition to the authorities granted in law for the creation of this regulation, the Department generally seeks to implement, interpret, or make more specific Government Code Section 4526 and Welfare and Institute Code Section 4011 and 4027, which grants the Department general control and direction of the property and concerns of each state hospital. California State Constitution, Article XXII was added since it addresses A&E. Government Code Section 4529 was changed to 4529.14 to specify that A&E services are subject to standard accounting practices.

Section 4530.11. Title.

Purpose and Necessity

This amendment renames the existing section title from “Section 4530.11. Unlawful Considerations.” to “Section 4530.11. Prohibited Practice and Conflicts of Interest.” This change is necessary to align the title with the new requirements of the section, which provides that no employee of the Department involved in the evaluation or selection process for a contract shall have a relationship with any of the firms seeking the contract.

Section 4530.11(a)

Purpose and Necessity

The first paragraph of this section is renumbered from Section 4530.11 to Section 4530.11(a) for clarity and consistency. New regulatory language is added to this section to establish a conflict-of-interest language for any firm seeking to enter a contract with

the Department and the personnel of the Department. This new language is different in subject matter from the existing paragraph, necessitating the need to assign it as subdivision (a). This is a non-substantive change.

Section 4530.11(b)

Purpose and Necessity

This section is moved from the existing Section 4530.12. Prohibited Relationships. to the new Section 4530.11. Prohibited Practices and Conflicts of Interest. and renumbered as subdivision (b). This change is made for clarity and the existing language is not changed. Moving this language from the existing Section 4530.12 to this 4530.11 groups similar subject matter for conciseness, improving the clarity and readability of the regulation, addressing a problem identified by users of this Article. This is a non-substantive change.

Authority and Reference Section 4530.11:

Text: Welfare and Institutions Code Section 4011 and 4027 have been added to the authority section. Government Code Sections 87100 and 87100.1 have been added to the reference section.

Rationale: These citations are added to further clarify that in addition to the authorities granted in law for the creation of this regulation, the Department generally seeks to implement, interpret, or make more specific Welfare and Institute Code Section 4011 and 4027, which grants the Department general control and direction of the property and concerns of each state hospital. Government Code Sections 87100 and 87100.1 were added to the reference section because it provides the guidelines for conflict of interest.

Section 4530.12. Title.

Purpose and Necessity

This amendment renames the existing section title from “Section 4530.12. Prohibited Relationships.” to “Section 4530.12. Emergencies.” The language currently in this section is proposed to be moved to 4530.11 and new language adopted on actions the Director of the Department, or designee, may take in the event of an emergency. As such, the title is changed to also reflect the proposed subject matter to be adopted.

Section 4530.12

Purpose

This section is amended for clarity by moving its existing language to Section 4530.11 and renumber it as subdivision (b). This change groups the language with the existing, similar language of 4530.11 regarding the prohibited practice of obtaining the contract through rebates, kickbacks, or other prohibited practices with Department employees. In its place, new language is adopted which authorizes the Director of the Department, or designee, to negotiate for services or task orders without issuing a Request for Qualifications or following the selection provisions of Article 5, under emergency circumstances.

Necessity

This adoption of emergency language is necessary because the Department must be able to acquire a contract for services expediently in the event of an emergency, which is defined in Public Contract Code Section 1102. The Request for Qualifications process may require more time than is allowed in an emergency situation. By defining the conditions under which an emergency is declared, it permits the Department the flexibility necessary to address emergent situations to protect the health and safety of patients and employees while providing transparency to the public of the circumstances under which an emergency can be declared.

Authority and Reference Section 4530.12:

Text: Government Code Section 4526 and Welfare and Institutions Code Section 4011 and 4027 have been added to the authority section. Article XXII, California State Constitution, Sections 4525-4529.5 and 14120, Government Code, Section 1102, Public Contract Code, Sections 92 and 94, Streets and Highways Code; Los Angeles Dredging Co. v. City of Long Beach (1930) 210 Cal. 348, 354-355; Los Angeles Gas & Electric Corp. (1922) 188 Cal. 307, 319; and Grayden v. Pasadena Redevelopment Agency (1980) 104 Cal App. 3d-631, 635-637 have been added to the reference section. Government Code Sections 4526, 87100, 87100.1, and 87102 have been removed from the reference section.

Rationale: These citations are added to further clarify that in addition to the authorities granted in law for the creation of this regulation, the Department generally seeks to implement, interpret, or make more specific Government Code Section 4526 and Welfare and Institute Code Section 4011 and 4027, which grants the Department general control and direction of the property and concerns of each state hospital. The original authority and reference section has been moved to another section along with the text. The new authority has been added to justify the new text.

ECONOMIC IMPACT ASSESSMENT

The Department does not anticipate any non-discretionary costs or savings imposed on any local agency due to this proposed regulation, during the current fiscal year and subsequent fiscal years, nor does the Department anticipate any additional costs to the Department or any other State agency.

The Department benefits in cost effectiveness and time savings with the reduction of multiple solicitations. This is done by clarifying the Department's ability to use one solicitation to yield one or more retainer, or on-call, A&E firms. It will provide the Department the ability to audit the contractor's performance or claims on A&E projects. Auditing contract activities provides fiduciary oversight for spending of Department funds. It will eliminate the duplicative government processes.

Creation or elimination of jobs within the State of California:

The proposed regulations amend existing regulatory language to implement contractual authority permitted by law, clarify audit authority over the contracts, and clarify the A&E contract process. The processes defined in these regulations will be performed by existing Department staff and affect only Department positions related to the A&E contracts process. As a result, the proposed regulation will neither create nor eliminate jobs within the State of California.

Creation of new businesses or the elimination of existing businesses within the State of California:

The proposed regulations amend existing regulations by implementing contractual authority available to the Department. The proposed regulations clarify audit authority over the contracts and clarifies the A&E contract process. The processes defined in these regulations will be performed by existing Department staff and affect only Department positions related to the A&E contracts process. These amendments improve the contracting process for A&E services, which improves the ability of qualified businesses to do business with the Department. However, these amendments do not alter the experience requirement or other criteria necessary for a business to be awarded a contract to perform the necessary services. As a result, the proposed regulation will neither create nor eliminate existing businesses within the State of California.

Expansion of businesses currently doing business with the State of California:

These regulations amend current regulations by implementing authority available to the Department for the A&E contract process. It establishes the process to audit contracts and clarifies the contract process. These processes will be performed by existing Department staff and affect only Department positions related to the A&E contracts

process. While these amendments improve the contracting process for A&E services, and therefore improve the ability of qualified businesses to enter into contracts with the Department, these regulations are not anticipated to directly affect the ability of businesses to expand. Businesses must still meet the requirements necessary to perform the services needed by the Department. The Department, as well as all qualified businesses, are anticipated to benefit from these amendments, but no material impact to the economy is anticipated other than potential savings as a result of a clear and efficient process. As a result, the proposed regulations will not affect the expansion of businesses currently doing business within California.

Benefits to California residents' health and welfare, worker safety, and the State of California's environment:

With the implementation of these regulations, the health and welfare of California residents, as well as worker safety, may be improved as the clarification in the contracting process may result in an increased ability to contract with the Department. The Department, through these regulations and amendments, is committed to a transparent process and working with all California businesses to have the knowledge necessary to successfully compete for contracts. However, the Department will specifically encourage small businesses and DVBE businesses by participating in outreach programs and encouraging these businesses to become certified through the Department of General Services and to subscribe to the California State Contracts Register to receive advertisement notices. These actions are anticipated to be a positive for the qualified businesses of California, which will result in a more efficient economy overall, positively affecting all California residents. Lastly, these proposed amendments may benefit the State's environment by streamlining the Department's process, which may result in a reduced carbon footprint, a reduction in overall waste of resources, use of resources, and energy costs.

STATEMENT OF SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Department has made the initial determination that there will not be any significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposed action does not mandate the use of specific technologies or equipment.

DOCUMENTS RELIED UPON

ANTICIPATED BENEFITS FROM THE REGULATORY ACTION

The proposed amendments to existing regulation will rearrange the provisions of the regulation in a more logical order. These regulations clarify authority for the Department to audit the contracts, ensuring the provisions of the contract are within scope and budget, therefore reducing waste and ensuring an efficient process. The regulations also add a process for the Department to procure a contract in the event of an emergency and organizes language intended to prevent conflicts of interest and prohibited actions leading to the improper securing of contracts. These rules collectively ensure the Department operates efficiently and provides transparency of process to the public.

STATEMENT OF ALTERNATIVES CONSIDERED

The Department has made the initial determination that no reasonable alternative considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which these regulations are proposed, would be as effective and less burdensome to affected private persons than the proposed regulations, would lessen any adverse impact on small businesses, 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 submit statements or arguments with respect to alternatives to the proposed regulation during the comment period.

TECHNICAL, THEORETICAL, OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

None.

DUPLICATION OR CONFLICT WITH FEDERAL REGULATIONS OR STATUTES

The Department does not anticipate a duplication or conflict with federal regulations to occur.