

**DEPARTMENT OF STATE HOSPITALS  
NOTICE OF PROPOSED ACTION  
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

**PUBLIC NOTICE**

The Department of State Hospitals (Department) hereby gives notice of the proposed regulatory action described in this document. A public hearing regarding the proposal is not currently scheduled. Not later than 15 days prior to the close of the public comment period, any interested person, or their duly authorized representative, may make a written request for a public hearing pursuant to Government Code 11346.8, and a public hearing will be held. Requests for a public hearing should be sent to:

California Department of State Hospitals  
Regulations, Policy, and Operations Unit  
RE: A&E Contracts Regulation  
1215 O Street, MS-20  
Sacramento, CA 95814  
Phone: (916) 654-2478  
Email: [DSH.Regulations@dsh.ca.gov](mailto:DSH.Regulations@dsh.ca.gov)

**WRITTEN COMMENT PERIOD AND SUBMITTAL OF COMMENTS**

Statements or arguments relevant to the proposed regulatory action may be submitted to the Department in writing, email, or facsimile to the address and number listed above. All comments must be received by **July 31, 2023**.

Comments sent to persons or addresses other than that specified or received after the date and time specified above may be included in the record of this proposed regulatory action but may not be summarized or responded to regardless of the manner of transmission.

**AUTHORITY AND REFERENCE**

Authority: Section 4526, Government Code; sections 4005.1, 4011, 4027 and 4101, Welfare and Institutions Code; section 11.05 of the State Contracting Manual – Volume 1.

Reference: Sections 4525-4529.5, 4526, 4527, 4528, 4529, 4529.12, 4529.14, 14120, 14825, 14837, 14838, 87100, and 87100.1, Government Code; Article XXII of the California State Constitution; sections 1102, 10105, 10115.1, 10124, 10250, 10251, and 10261, Public Contract Code; section 21065, Public Resources Code; sections 7.33, 11.05, 11.06, and 11.08, State Contracting Manual – Volume 1; 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; section 999, Military and Veteran Code.

## **INFORMATIVE DIGEST AND POLICY OVERVIEW**

### Summary of Existing Laws:

Existing law, chapter 10, division 5, title 1 of the Government Code, establishes a contracting process with private architects, engineering, land surveying, and construction project management firms. Pursuant to Section 4526, selection by the Director of the Department for professional services shall be “on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required.” Section 4526 further requires the development of regulations to implement this method of selection.

Further, chapter 10, division 5, title 1 of the Government Code, requires any development of procedures to prohibit practices which may result in unlawful activities. It mandates the head of each state agency to encourage firms to submit statements of qualifications and performance data and establishes a process for the review of such data for the selection of qualified firms to negotiate a contract for the services.

Government Code section 4226 and the State Contracting Manual section 11.00 also establish that for departments to use A&E contracts, a process must be adopted into regulations.

Section 4530 et seq. of title 9 of the California Code of Regulations establishes a contracting process specific to the Department. However, the current regulations do not specify that the Department may use one Invitation for Bid to hire multiple contractors, whether it's on call retainers or project specific. 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 following the contract processes. Without these provisions implemented, the Department cannot effectively use the regulations.

### Effect of the Proposed Action:

The proposed amendments implement the A&E contractual authority the Department may utilize under the law, including providing for audit authority over the contracts. These amendments also establish a process for the procurement of a contract for services to address emergency needs as defined. Further, these amendments would present the regulations in a more logical order to clearly outline the steps required for this distinct contract process.

#### Broad Objectives and Anticipated Benefits of the Proposed Regulation:

The broad objectives of the regulations are to implement contractual authority the Department may use in accordance with existing law. These regulations will organize the provisions of the regulation in a more logical reading order, establish a process for the procurement of contracts on an emergency basis, and clarify the ability for a designee to be delegated by the Director of the Department, as appropriate. These amendments will make the contracting process more efficient.

The anticipated benefits of this action are an increased efficiency in the Department's contracting process for A&E services. By establishing the ability to delegate tasks to appropriate personnel, clarifying various definitions in the existing regulations, and implementing additional authority provided by law, including the ability to audit contracts for performance, the contracting process may be completed and implemented more efficiently, and the public will benefit from having a clearer understanding of the Department's process.

#### Evaluation of Inconsistency or Incompatibility with Existing State Regulations:

During the development of this proposed regulatory action, the Department reviewed existing regulations on this topic and concluded that the proposed regulation is neither inconsistent nor incompatible with existing state regulations or statutes. In arriving at this conclusion, the Department reviewed the Welfare and Institutions Code, Penal Code, and title 9 of the California Code of Regulations.

#### **FORMS INCORPORATED BY REFERENCE**

None

#### **LOCAL MANDATE STATEMENT**

Mandate on local agencies and school districts: None.

#### **FISCAL IMPACTS**

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

Cost or savings to any State agency: None.

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

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

## **HOUSING COSTS**

Significant effect on housing costs: None.

## **SIGNIFICANT, STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS AND INDIVIDUALS**

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.

## **STATEMENT OF RESULTS OF ECONOMIC IMPACT ASSESSMENT**

The adoption of the proposed regulations will neither create nor eliminate jobs in the State of California, nor result in the elimination of existing businesses or create or expand businesses in the State of California.

The Department has made the determination that there will not be any significant cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Benefits of the regulation to the health and welfare of California residents, worker safety, and the state'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.

## **SMALL BUSINESS DETERMINATION**

The Department has determined that the proposed regulations do not affect small businesses nor is the Department aware of any cost impacts that a small business would necessarily incur due to the proposed regulations. 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 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.

## **COST IMPACTS TO A REPRESENTATIVE PRIVATE PERSON OR BUSINESS**

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

## **STATEMENT OF ALTERNATIVES CONSIDERED**

The Department has determined 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 the regulations are proposed or would be as effective as 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 submit statements or arguments with respect to alternatives to the proposed regulation during the comment period.

## **CONTACT PERSONS**

The primary contact for this regulatory action is Anna Libonati, and the backup contact is Rachelle Sack. They can be reached by telephone at (916) 654-2478 or email at [DSH.Regulations@dsh.ca.gov](mailto:DSH.Regulations@dsh.ca.gov).

## **AVAILABILITY STATEMENTS**

The Department has prepared an Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic impacts of the proposal and all the information upon which the proposal is based, and the proposed text (the “express terms”) of the regulation. Copies of the proposed regulation text and ISOR may be accessed on the Department’s website, listed below, or may be obtained from the Department using the contact information provided in this document.

Further, non-substantive inquiries concerning the proposed regulatory action may be

directed to the contact person named in this document at (916) 654-2478. The Department has compiled a record of this rulemaking action, which includes all the information upon which the proposal is based and is available for inspection upon request to the contact persons.

Following the close of the public comment period or date of the public hearing, if one is held, the Department may adopt the proposed regulations substantially as described in this notice or may modify the proposed regulation if the modifications are sufficiently related to the original text. Except for non-substantive, technical, or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who testify or submit written comments during the public comment period, and all persons who request notification. Please address requests for regulations as modified to the contact person identified in this document.

### **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, the Final Statement of Reasons (FSOR) shall be available. Copies may be requested from the contact person in this notice or may be accessed on the Department's website listed below.

### **AVAILABILITY OF DOCUMENTS ON THE INTERNET**

This notice, the ISOR, the proposed regulation text, and all subsequent regulatory documents, including the FSOR, when completed, are available on the [Department website](https://www.dsh.ca.gov/Publications/Regulations.html) at <https://www.dsh.ca.gov/Publications/Regulations.html>.