

MINUTE ITEM
This Calendar Item No. C85 was approved as
Minute Item No. 85 by the California State Lands
Commission by a vote of 3 to 0 at its
6-27-00 meeting.

CALENDAR ITEM

C85

A)) Statewide 06/27/00
S)) W 25650
D. Brown
L. Kiley

**CONSIDERATION OF REGULATIONS ESTABLISHING PROCEDURES
FOR SECURING ARCHITECTURAL, LANDSCAPE ARCHITECTURE,
ENGINEERING, ENVIRONMENTAL, LAND SURVEYING,
AND CONSTRUCTION PROJECT MANAGEMENT SERVICES**

PROPOSAL:

The Commission's Staff proposes the adoption of regulations to implement the provisions of Government Code sections 4526 et seq., to establish procedures for securing architectural, landscape architecture, engineering, environmental, land surveying, and construction project management services.

BACKGROUND:

Government Code section 4526 requires State agency heads to solicit and use qualification and performance data furnished by prospective contractors for specified services as a basis for selection of such contractors, as opposed to the competitive bidding process utilized in the past. The Government Code requires that each agency head adopt regulations implementing the new process before utilizing it.

PERMIT STREAMLINING ACT DEADLINE:

N/A.

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Code Regs. 10561), the Commission Staff has determined that this activity is exempt from the requirements of the CEQA because the activity is not a "project" as defined by the CEQA and the State CEQA Guidelines.

Authority: Public Resources Code Section 21084 and 14 Cal. Code Regs. 15300.

2. The proposed regulatory amendments do not affect small businesses as defined in Government Code Section 11342, sub. (h), because

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businesses will be accorded equal opportunity to submit statements of qualifications and performance data which will form the basis for selection of contractors for specified services.

EXHIBIT:

A. Proposed Regulations

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY PUBLIC RESOURCES CODE SECTION 21065 AND TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15378
2. FIND THAT THE REGULATIONS WILL NOT AFFECT SMALL BUSINESSES AS DEFINED IN GOVERNMENT CODE SECTION 11342(h), BECAUSE SMALL BUSINESSES WILL BE ACCORDED EQUAL OPPORTUNITY TO SUBMIT STATEMENTS OF QUALIFICATIONS AND PERFORMANCE DATA WHICH WILL FORM THE BASIS FOR SELECTION OF CONTRACTORS FOR SPECIFIED SERVICES.
3. FIND THAT THE REGULATIONS WILL NOT HAVE A SIGNIFICANT IMPACT ON THE CREATION OR ELIMINATION OF JOBS OR NEW OR EXISTING BUSINESSES WITHIN CALIFORNIA, NOR WILL THEY HAVE AN ADVERSE ECONOMIC IMPACT ON BUSINESS, INCLUDING THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE WITH BUSINESSES IN OTHER STATES.
4. FIND THAT NO ALTERNATIVE WOULD BE MORE EFFECTIVE IN CARRYING OUT THE PURPOSE FOR WHICH THE REGULATIONS ARE PROPOSED OR WOULD BE AS EFFECTIVE AND LESS BURDENSOME TO AFFECTED PRIVATE PERSONS THAN THE PROPOSED REGULATIONS.
5. ADOPT THE PROPOSED REGULATIONS, WHICH WOULD ADD ARTICLE 13, INCLUDING SECTIONS 2980.0 THROUGH 2990.0, TO TITLE 2, DIVISION 3, CHAPTER 1, OF THE CALIFORNIA CODE OF REGULATIONS, SUBSTANTIALLY IN THE FORM OF THOSE SET FORTH IN EXHIBIT "A", TO BECOME EFFECTIVE UPON FILING WITH THE SECRETARY OF STATE.

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6. AUTHORIZE THE COMMISSION STAFF TO MAKE MODIFICATIONS IN THE REGULATIONS IN RESPONSE TO RECOMMENDATIONS BY THE OFFICE OF ADMINISTRATIVE LAW.
7. DIRECT THE COMMISSION STAFF TO TAKE WHATEVER ACTION IS NECESSARY AND APPROPRIATE TO COMPLY WITH PROVISIONS OF THE GOVERNMENT CODE REGARDING ADOPTION OF REGULATIONS AND AMENDMENTS AND TO ENSURE THAT THE REGULATIONS BECOME EFFECTIVE.
8. DIRECT COMMISSION STAFF TO TAKE WHATEVER ACTION IS NECESSARY AND APPROPRIATE TO IMPLEMENT THE REGULATIONS AT SUCH TIME AS THEY BECOME EFFECTIVE.

Exhibit A

ARTICLE 13. REGULATIONS FOR IMPLEMENTATION OF SECTION 4526 OF THE GOVERNMENT CODE

§ 2980.0 Purpose and Scope.

The purpose of these regulations is to establish, as authorized and required by Government Code sections 4526, et seq., procedures for securing architectural, landscape architecture, engineering, environmental, land surveying, and construction project management services.

Authority: Government Code section 4526, Public Resources Code section 6108.

Reference: Government Code sections 4525-4529.

§ 2980.1 Definitions

As used in these regulations, the following terms have the following meaning:

- (a) "Firm" means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the profession of architecture, landscape architecture, engineering, environmental services, land surveying, or construction project management.
- (b) "Small business" firm is one that meets the definition of small business firm set forth in Title 2, California Code of Regulations, section 1896(n).
- (c) "Commission" is the State Lands Commission.
- (d) "Executive Officer" is the Executive Officer of the State Lands Commission or any person designated by the Executive Officer to act on behalf of the Executive Officer.
- (e) "Architectural, landscape architectural, engineering, environmental, and land surveying services", includes those professional services of an architectural, landscape architectural, engineering, environmental, or land surveying nature as well as incidental services that members of these professions and those in their employ may logically and justifiably perform.
- (f) "Construction project management" means those services provided by, or under the direction of, a licensed architect, registered engineer, or licensed general contractor, or relevant firm which meet the requirements of Government Code Section 4529.5 for management and supervision of work performed on state construction projects.

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(g) "Environmental services" means those services performed in connection with project development and permit processing in order to comply with federal and state environmental laws. "Environmental services" also includes the processing and awarding of claims pursuant to Chapter 6.75 (commencing with Section 25299.10) of Division 20 of the Health and Safety Code.

(h) "Publish" shall mean publication of notices describing projects for which architectural, landscape architecture, engineering, environmental, land surveying, or construction project management services will be required in the publications of the respective professional societies and in the State Contracts Register, and shall include publication of such notices in electronic form through the Internet.

Authority: Government Code section 4526, Public Resources Code 6108.

Reference: Government Code section 4525.

§ 2980.2 Conflict of Interest/Unlawful Activity Prohibited

Any practice which might result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration, is strictly prohibited, and each Commission employee is specifically prohibited from participating in the negotiation or selection process when that employee has a personal or business relationship with a person affiliated with, or has an interest in, any firm seeking a contract with the Commission or solicited by the Commission for such a contract.

Authority: Government Code section 4526, Public Resources Code 6108.

Reference: Government Code sections 4526 and 87100.

§ 2980.3 Establishment of General Criteria and Establishment of List of Pre-qualified Contractors.

The Executive Officer shall publish at least annually a notice that solicits statements of qualification and performance data from firms that provide the services defined in Section 2980.1.

(a) The Executive Officer shall establish and publish a list of relevant general criteria which will form the basis for adding such firms to a list of pre-qualified contractors maintained by the Commission. The general criteria shall include such factors as professional excellence, demonstrated competence, specialized experience of the firm, education and experience of key personnel to be assigned, staff capability, workload, ability to meet schedules, nature and quality of completed work, reliability and continuity of the firm, location, familiarity with pertinent regulatory processes, familiarity with project locale, previous experience with a specific type of project, and other considerations deemed relevant.

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Authority: Government Code section 4526, Public Resources Code 6108.

Reference: Government Code section 4527.

§ 2980.4 Construction Project Management Expertise

Any individual or firm proposing to provide construction project management services pursuant to these regulations shall provide evidence that the individual or firm and its personnel carrying out onsite responsibilities have expertise and experience in construction project design review and evaluation, construction mobilization and supervision, bid evaluation, project scheduling, cost-benefit analysis, claims review and negotiation, and general management and administration of a construction project.

Authority: Government Code section 4526, Public Resources Code section 6108.

Reference: Government Code section 4529.5.

§ 2980.5 Project-Specific Criteria

The Executive Officer may, prior to engaging a firm for a specific project, develop and publish a project-specific list of additional relevant criteria, if any, for that project. Such project-specific criteria may include, but not be limited to, for example, a requirement that the selected firm have experience working in the ocean surf zone, if such experience is deemed relevant or critical to successful completion of that project. Such factors may be weighted by the Executive Officer according to the nature of the project, the needs of the State and the complexity and special requirements of that specific project.

Authority: Government Code section 4526, Public Resources Code section 6108.

Reference: Government Code section 4527.

§ 2980.6 Notice and Publication for Specific Projects

(a) The Executive Officer shall publish a statewide announcement of any project or projects requiring architectural, landscape architectural, engineering, environmental, land surveying, or construction management services. Such announcement shall contain, at a minimum, the type of services required, a description of the project, and projected schedule for the project, including a date by which firms not on the Commission's list of pre-qualified firms, must provide responsive materials to be considered for the project or projects.

(b) The Executive Officer shall endeavor to provide to all small business firms which have indicated an interest in receiving such announcements, a copy of each project announcement. A failure of the Executive Officer to send a copy of an announcement to any

firm or a failure of such firm or firms to receive an announcement sent by the Executive Officer shall not operate to preclude any contract.

Authority: Government Code section 4526, Public Resources Code section 6108.

Reference: Government Code section 4527.

§ 2980.7 Estimate of Value of Services.

Before any discussion with any firm concerning fees, the Executive Officer shall cause an estimate of the value of such services to be prepared. This estimate shall serve as a guide in determining fair and reasonable compensation for the services rendered. Such estimate shall be, and remain, confidential until award of contract or abandonment of any further procedure for the services to which it relates. At any time the Executive Officer determines the State's estimates to be unrealistic due to rising costs, special conditions, or for other relevant considerations, the estimate shall be reevaluated and modified if necessary.

Authority: Government Code section 4526, Public Resources Code section 6108.

Reference: Government Code section 4528.

§ 2980.8 Negotiation of Contract

(a) After expiration of the notice/compliance period stated in an announcement, the Executive Officer shall evaluate current statements of qualifications and performance data on file with the Commission, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with no less than three firms regarding the Commission's need for services, and the ability of each firm to provide those services to the Commission for the proposed project in a timely manner. The Executive Officer shall then select therefrom, in order of preference, based upon criteria established pursuant to sections 2980.3 and 2980.5, no less than three of the firms deemed to be the most highly qualified to provide the services required.

(b) The Executive Officer shall, in accordance with section 6106 of the Public Contracts Code, negotiate a contract with the best-qualified firm for services at compensation that the Executive Officer determines is fair and reasonable to the State of California. Should the Executive Officer be unable to negotiate a satisfactory contract with the firm considered to be the best-qualified, at a price the Executive Officer determines to be fair and reasonable to the State of California, negotiations with that firm shall be formally terminated. The Executive Officer shall then undertake negotiations with the second best-qualified firm. Failing accord with the second best-qualified firm, the Executive Officer shall terminate negotiations. The Executive Officer shall then undertake negotiations with the third best-qualified firm.

(c) Should the Executive Officer be unable to negotiate a satisfactory contract with any

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of the selected firms, the Executive Officer shall select additional firms in order of their competence and qualifications and continue negotiations in the same manner until a satisfactory agreement is reached.

Authority: Government Code section 4526, Public Resources Code section 6108.

Reference: Government Code section 4528.

§ 2980.9 Contracting in Phases

Should the Commission determine that it is necessary or desirable to have a given project performed in phases, it will not be necessary to negotiate the total contract price or compensation provisions at the time the initial phase is negotiated, provided that the Executive Officer shall have determined that the firm is the best qualified to perform the whole project at a fair and reasonable cost, and the contract contains provisions that the State, at its option, may utilize the firm for other phases and that the firm will accept a fair and reasonable price for subsequent phases to be later negotiated and reflected in a subsequent written instrument.

Authority: Government Code section 4526, Public Resources Code section 6108.

Reference: Government Code section 4528.

§ 2990.0 Amendments.

In instances where the Commission or the Executive Officer orders a necessary change in the character or scope of work to be performed in the course of performance of the contract, the firm's compensation may, by written agreement between the Commission and the firm, be adjusted in an amount which reasonably reflects the value of the change from that character and scope of work which existed prior to the change.

Authority: Government Code section 4526, Public Resources Code 6108

Reference: Government Code 4528

Authority: Public Resources Code Section 71215(b)

Reference: Public Resources Code Sections 71200 and 71215

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