

**DEPARTMENT OF STATE HOSPITALS  
FINAL STATEMENT OF REASONS  
ARCHITECTURAL AND ENGINEERING CONTRACTS REGULATIONS**

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

The Department received 3 comments during the 45-Day Public Comment Phase and edited the text accordingly. The text was re-noticed to the public for 15 days from September 15, 2023, to September 29, 2023. The Department did not receive any comments after the 15-Day Notice. The text was re-noticed for a second time to the public for 15 days from April 10, 2024, to April 25, 2024. The Department did not receive any comments after the Second 15-Day Notice.

**LOCAL MANDATE STATEMENT**

Mandate on local agencies and school districts: None. The Department has determined that the proposed regulations would not impose a mandate on any local agency or school district that requires reimbursement by the state under Government Code, Division 4, Part 7 (commencing with Section 17500).

**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 proposed amendments implement the Architectural and Engineering (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.

**STATEMENT OF SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT  
DIRECTLY AFFECTING BUSINESS**

The Department has made the determination that there will be no significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

This determination was made because the 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.

## **MODIFICATIONS TO THE ORIGINALLY PROPOSED REGULATIONS TEXT**

### 15-Day Notice Modifications:

**Text:** Deleted all of Section 4530(b), therefore Section 4530(c) became Section 4530(b).

**Rationale:** Section 4530(b) was removed as the language may cause confusion of welcoming bids from nonprofessionals based upon the characterization of the work as “technical” work. An example of this is field and construction survey work which, due to its “technical nature,” may welcome bids from non-surveys and non-professionals based on the mischaracterization of it as “technical” work.

**Text:** The text “land surveying” and “geotechnical engineering, engineering geology, construction materials testing” has been added to both Section 4530.1(a) and Section 4530.1(g). The text “and surveying” was removed from both Section 4530.1(a) and Section 4530.1(g).

**Rationale:** The proposed regulation enumerates many categories of services that fall under the term “Architectural and Engineering (A&E) Services”, but in doing so overlooks three key ones – geotechnical engineering, engineering geology, and construction materials testing. To avoid future confusion over the meaning of A&E Services these terms have been added.

### Second 15-Day Notice Modifications:

**Text:** Section 4530.1(a):

Removed “The term” and “shall include” from the definition of Architectural and Engineering (A&E) Services and added “means” to the text.

Added “pursuant to Title 21 Division 1 Chapter 1 Subchapter 2.5” to the definition of A&E.

Removed “including but not limited to,” after engineering services. Added “(e.g.,” “and” and “)”.

Removed “and” from “electrical and fire protection”.

Removed “management, and” between “construction” and “project management services”. Added “A&E services also include” and “and incidental services”.

Removed “as well as incidental services that members of these professions and those in their employ may logically or justifiably perform, in support of the aforementioned services, including planning, permitting and environmental studies, design phase services, construction administration phase services, public outreach, and meeting facilitation related to the foregoing”.

### **Rationale:**

Removed “The term”, and “shall include” and “means” was added to eliminate the multiple uses of the word “include” and to keep the language consistent with other definitions.

Added “pursuant to Title 21 Division 1 Chapter 1 Subchapter 2.5” to identify where CASp is defined and outlined.

Removed “including but not limited to,” and added the specific services related to engineering services in the parentheses to indicate those services are under the engineering services category. The word “and” was added to ensure the text reads as one cohesive list within the parentheses. This list was included to provide the readers of these regulations with common examples of engineering services and what the Department has utilized in the past. This is not an all-encompassing list, but rather an example of commonly used engineering services by the Department.

The word “and” was removed to clarify that “electrical” and “fire” protection are two separate categories.

The words “management, and” were removed from this list to clarify that there is only one term, “construction project management” and not two separate terms; “construction management” and “project management.” The text “A&E services also include” and “and incidental services.” was added to further define what A&E services encompasses while separating them from engineering services.

The services, “architectural, landscape architectural, environmental, land surveying, and engineering services” were selected because they are the services listed in Government Code 4525.

Certified Access Specialist (CASp) is necessary because they provide the Americans with Disabilities Act (ADA) inspections when the project requires it. The requirement to include an ADA inspection would come from the Division of the State Architect within the Department of General Services.

Construction project management is a necessary service because project portfolios will most likely grow over time, and DSH has various ongoing projects to manage. By

including construction project management, it allows DSH the ability to contract outside of DSH to hire a construction project manager. These services are also necessary to ensure that projects come in on time and under budget.

A&E services shall not include legal services which is consistent with industry standards and other state regulations, as found in the California Code of Regulations, Title 21, Section 1520.1(e).

**Text:** Section 4530.1(a)(1): Added “Incidental”, “in support of”, “but not limited to,”, “planning, permitting, environmental studies for construction or design project(s),”, “services”, and “design phase services, construction administration phase services,”. Removed “described in”, and “incidental or ancillary services typically, logically or justifiably performed. Such incidental services may include”.

**Rationale:** This section was adjusted to define incidental services. Additionally, incidental services may not be included in every project. The incidental services are services typically, logically, or justifiably performed in connection with the architectural and engineering services, following general practices of the industry and other state agencies. These specific services were included to provide the readers of these regulations with common examples of incidental services and what the Department has utilized in the past. This is not an all-encompassing list, but rather an example of commonly used services by the Department.

**Text:** Section 4530.1(g): Changed “transportation” to “hospital” and changed “Public Resources Code section 21065” to “Public Contract Code section 10105”. Added “A&E”. Removed “or” and “including all architectural, CASp, landscape architectural, environmental, land surveying, and engineering services, including but not limited to structural, mechanical, plumbing, electrical and fire protection, ~~land surveying~~ geotechnical engineering, engineering geology, construction materials testing, right of way engineering, construction engineering, construction management and project management services. “Project” also includes “services” which relate to public works improvement or other similar Department needs.”.

**Rationale:** The reference to the code was updated to reflect the correct code section. “Project” is a commonly used term in the A&E Industry pursuant to Public Contract Code section 10105; therefore, it was defined to provide clarity to the public as to how the Department intends for the word to be interpreted. The word “transportation” was replaced with “hospital” because transportation is not within the Department’s jurisdiction. The word “or” was removed to clarify that we are borrowing the definition of Project from Public Contract Code section 10105. “A&E” was added and “including all architectural, CASp, landscape architectural, environmental, land surveying, and engineering services, including but not limited to structural, mechanical, plumbing, electrical and fire protection, ~~land surveying~~ geotechnical engineering, engineering geology, construction materials testing, right of way engineering, construction engineering, construction management and project management services. “Project” also includes “services” which relate to public works improvement or other similar

Department needs.” was removed to clarify that the definition of project shall also include A&E services. The language was removed, as all of these services already exist in the definition of A&E Services. In the last sentence, the phrase “and/or” was used because the announcement and the Request for Qualifications do not have to be sent at the same time to potential bidders. The Announcement can be sent first, and the Request for Qualifications would follow, or vice versa, or they could be sent together at the same time. Both an announcement and a Request for Qualifications will always be sent but may not always be sent together.

**Text:** Section 4530.1(h): Changed “(h)” to “(i)”

**Rationale:** The definition for Small Business was changed from Section 4530.1(h) to Section 4530.1(i) to ensure the sections are in alphabetical order.

**Text:** Section 4530.1(h): Added a new section for the definition of Request for Qualifications, “(h) “Request for Qualifications” means the solicitation document used to request a Statement of Qualifications of firms that perform A&E services.”

**Rationale:** The definition for Request for Qualifications was added to clarify the term as used in these regulations. This definition was found in existing regulations and this definition applies to our Department as well; therefore, borrowed the language from California Code of Regulations Title 23 Section 381 and Title 21 Section 1520.1.

**Text:** Section 4530.1(j): Added a new section for the definition of Statement of Qualifications, “(j) “Statement of Qualifications” means the response to a Request for Qualification submitted by firms that perform A&E services.”

**Rationale:** The definition for Statement of Qualifications was added to clarify the term used in Section 4530.1(h). This definition was found in existing regulations and this definition applies to our Department as well; therefore, borrowed the language from California Code of Regulations Title 23 Section 381 and Title 21 Section 1520.1.

**Text:** Section 4530.2(a): Added “retainer contract or”

**Rationale:** The text “retainer contract or” was added to allow the Department to have firms that are readily available to utilize on an as-needed basis for various projects to be described in future task orders to the original agreement. Additionally, by having the retainer contracts, it allows the department to have firms that can assist the department with A&E projects who have specialized knowledge that is not within the state. This also applies to any other section where “retainer contract” is mentioned.

**Text:** Section 4530.2(c): The words “or DVBE” were added.

**Rationale:** The words “or DVBE” were added for consistency and to clarify that it is either small business firms or DVBE.

**Text:** Section 4530.3(a): Added the word “shall” and removed the word “may”.

**Rationale:** After further review, it was determined that the text would be reverted to “shall” to ensure that an estimate is always prepared.

**Text:** Section 4530.4(h): Changed the phrases “Quality Assurance plan” and “Quality Control plan” from upper case to lower case.

**Rationale:** This text was changed to clarify that the Department does not require a specific quality assurance and quality control plan; the firm needs to have some type of quality assurance and quality control plan in-place and be able to provide proof of the plans.

**Text:** Section 4530.7: Removed the word “defined”.

**Rationale:** The word “defined” was removed to eliminate confusion since “as-needed A&E work” is not defined anywhere in the proposed regulation.

**Text:** Section 4530.9: Removed “State Contracting Manual Vol.1 Section 7.33;” from the Reference Section.

**Rationale:** This text was removed because it does not apply to the Reference Section.

**Text:** Section 4530.10: Removed the first sentence, “Contracts for A&E services are subject to standard accounting practices.” Added “ed” to the end of “contract”.

**Rationale:** The sentence was removed for clarity purposes; this section’s primary focus is audits. The word “contract” was changed to past tense “contracted” to clarify that the Department would already have an agreement in place.

**Text:** Section 4530.12: Removed “Los Angeles Gas & Electric Corp. (1922) 188 Cal. 307, 319;” from the Reference Section.

**Rationale:** This text was removed because this case did not relate to the proposed regulation at hand.

## SUMMARY OF COMMENTS RECEIVED

The following is a summary of comments received during the 45 Day Public Comment Period beginning on June 16, 2023, through August 31, 2023.

No	Commenter/Affiliation		Date Received
1.	Eric P. Angstadt	California & Nevada Civil Engineers and Land Surveyors Association	7/31/23
	Mike Belote	California Land Surveyors Association	

	Scott Terrell	American Institute of Architects, California	
	Travis Deane	California Geotechnical Engineering Association	
	Tyler Munzing	American Council of Engineering Companies, California	
2.	Eric P. Angstadt	California & Nevada Civil Engineers and Land Surveyors Association	7/31/23
	Mike Belote	California Land Surveyors Association	
	Scott Terrell	American Institute of Architects, California	
	Travis Deane	California Geotechnical Engineering Association	
	Tyler Munzing	American Council of Engineering Companies, California	
3.	Eric P. Angstadt	California & Nevada Civil Engineers and Land Surveyors Association	7/31/23
	Mike Belote	California Land Surveyors Association	
	Scott Terrell	American Institute of Architects, California	
	Travis Deane	California Geotechnical Engineering Association	
	Tyler Munzing	American Council of Engineering Companies, California	

Comment 1:

“A&E services are not technical in nature – § 4530 (b). Simply put, § 4530 (b) should be deleted. For context, this same wording was deleted from the Caltrans’ Local Assistance Procedures Manual, and the State Contracting Manual similarly does not include any like exceptions for A&E services. The release granted to agency heads in GOV 4529 is intended to address non-A&E services, for example, copy machine servicing by an agent of the machine’s manufacturer, not “A&E services” as defined in the proposed regulation.”

Department Response to Comment 1:

RPO has amended the text to reflect this change.

Comment 2:

“Missing key categories of services – §§ 4530.1 (a) & (g). Going into greater depth than GOV 4525, the proposed regulation enumerates many categories of services that fall under the term “Architectural and Engineering (A&E) Services”, but in doing so overlooks three key ones – geotechnical engineering, engineering geology, and construction materials testing. To avoid future confusion over the meaning of A&E Services, we request these additional categories of services provided by design professionals be incorporated.”

Department Response to Comment 2:

RPO has amended the text to reflect this change

Comment 3:

“Contextual fix – § 4530.4 (j). QBS selection is done on the basis of qualifications. For consistency and to avoid confusion with other areas of the proposed regulation, as well as state and federal law, we request the term “factor” in § 4530.4 (j) be changed to “qualifications”.”

Department Response to Comment 3:

Thank you for the comment. However, this comment is not being considered as it is outside the scope of this rulemaking process and does not involve objections, support, or recommendations directed towards a specific regulatory action.