

**State of California
Office of Administrative Law**

In re:
Department of State Hospitals

Regulatory Action:

Title 09, California Code of Regulations

Adopt sections:

Amend sections: 4530, 4530.1, 4530.2,
4530.3, 4530.4, 4530.5,
4530.6, 4530.7, 4530.8,
4530.9, 4530.10, 4530.11,
4530.12

Repeal sections:

NOTICE OF APPROVAL OF REGULATORY
ACTION

Government Code Section 11349.3

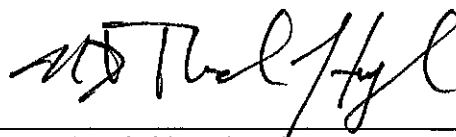
OAL Matter Number: 2024-0506-01

OAL Matter Type: Regular Resubmittal (SR)

In this resubmitted rulemaking action, the Department amends its regulations related to contracts to add definitions for the terms "architectural and engineering services," "project," and "retainer contact" also known as "on-call contract." The amendments further require the Director or designee to participate in outreach programs. In addition, the amendments allow the Director or designee to negotiate contracts without following the selection provisions when an emergency exists and to perform audits.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 10/1/2024.

Date: June 18, 2024



Thanh Huynh
Senior Attorney

For: Kenneth J. Pogue
Director

Original: Stephanie Clendenin, Director

Copy: Anna Libonati

RESUBMITTAL

NOTICE PUBLICATION/REGULATIONS SUBMISSION

STD. 400 (REV. 10/2019)

2024-0506-01SR

For use by Secretary of State only

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

JUN 18 2024

2:16 PM

OFFICE OF ADMIN. LAW
2024 MAY 6 AM 10:01

AGENCY WITH RULEMAKING AUTHORITY
Department of State Hospitals

AGENCY FILE NUMBER (If any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE Architectural and Engineering Contracts	TITLE(S) 9	FIRST SECTION AFFECTED 4530	2. REQUESTED PUBLICATION DATE 6/16/23
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON Anna Libonati	TELEPHONE NUMBER 916-654-2478	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Architectural and Engineering Contracts	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2023-1205-02S
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)
ADOPT
AMEND 4530, 4530.1, 4530.2, 4530.3, 4530.4, 4530.5, 4530.6, 4530.7, 4530.8, 4530.9, 4530.10, 4530.11, 4530.12
TITLE(S) Title 9
REPEAL

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input checked="" type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

9/15/2023 through 9/29/2023 and 4/10/2024 through 4/25/2024

per agency request 6/18/2024 TH

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)
<input checked="" type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) <input type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> §100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____

7. CONTACT PERSON Anna Libonati	TELEPHONE NUMBER 916-654-2478	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) dsh.regulations@dsh.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JUN 18 2024

Office of Administrative Law

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Stephanie Clendenin</i>	DATE 5/3/2024
TYPED NAME AND TITLE OF SIGNATORY Stephanie Clendenin, Director	

**DEPARTMENT OF STATE HOSPITALS
SECOND 15-DAY MODIFIED REGULATIONS TEXT
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

Amend section 4530 to read:

Section 4530. ~~Selection Process for Private Architectural, Landscape Architectural, Engineering, Environmental, Land Surveying and Construction Project Management Firms~~ Process, Purpose, and Scope of Architectural and Engineering Contracts.

- (a) The purpose of sections 4530.1-4530.12 regarding Architectural and Engineering (A&E) Contracts is to implement Article XXII of the California State Constitution and Government Code sections 4525, et seq., to have an A&E contract process.
- (b) The Department reserves the right to award multiple agreements for A&E retainer contract services based on one solicitation.

Note: Authority cited: Section 4526, Government Code. Sections 4005.1, 4011, 4027, and 4101, Welfare and Institutions Code. Reference: Article XXII of the California State Constitution; Section 4526 and 4529, Government Code.

Amend section 4530.1 to read:

Section 4530.1 Definitions.

- ~~(a)~~(e) "Firm" means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture, landscape architecture, engineering, environmental services, land surveying or construction project management with the provisions of Government Code Section 4525.
- ~~(b)~~(i) "Small Business" means a firm that complies with the provisions of Government Code Section 14837(d)(1) and (d)(2).
- (c) "Director" means the Director of the Department of State Hospitals ~~or the Director's designee~~ authorized to act on his ~~or her~~ their behalf.
- ~~(d)~~(b) "Department" means the Department of State Hospitals.
- ~~(e)~~(a) ~~"Architectural, landscape architectural, engineering, and environmental, land surveying services" and "construction project management" means those services, as defined in Section 4525 of the Government Code.~~ "Architectural and Engineering (A&E) Services" means all architectural, Certified Access Specialist (CASp) pursuant to Title 21, Division 1, Chapter 1, Subchapter 2.5, landscape architectural, environmental, land surveying, and engineering services (e.g., structural, mechanical, plumbing, electrical fire protection, geotechnical engineering, engineering geology, construction materials testing, right of way engineering, and construction engineering). A&E services also include construction project management services and incidental services. "A&E services" shall not include legal services rendered to the Department, provided that nothing in these regulations shall prevent an A&E contractor from consulting legal counsel and including the fees as part of its reasonable overhead.
- (1) "Incidental Services" shall mean any activity in support of subdivision (a) including but not limited to, planning, permitting, environmental studies for construction or design project(s), educational services, instructional services, training, public outreach services, design phase services, construction administration phase services, providing workshops, making presentations and facilitating meetings.
- (f) The terms "minority business enterprise" and "women business enterprise" shall have the respective meanings set forth in Section 10115.1 of the Public Contract Code.
- ~~(g)~~(d) ~~The term "disabled veteran business enterprise" shall have the meaning set forth in Section 999 of the Military and Veterans Code.~~ "Disabled Veteran Business

Enterprise” (DVBE) means a firm that complies with the provisions of Government Code section 14837(e).

- (g) “Project” includes the erection, construction, alteration, repair, or improvement of any state structure, building, road, or other state improvement of any kind, as defined in Public Contract Code section 10105. Project shall also include any and all hospital projects and any and all related A&E services. Furthermore, “project” means the nature or scope of work being solicited as defined by a statewide announcement and/or 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.
- (i) “Statement of Qualifications” means the response to a Request for Qualification submitted by firms that perform A&E services.

Note: Authority cited: Section 4526, Government Code; Sections 4005.1, 4011, 4027, and 4101, Welfare and Institutions Code. Reference: Sections 4525 and 14837, Government Code; Sections 10105 and 10115.1, Public Contract Code; Section 21065, Public Resources Code; and Section 999, Military and Veteran Code.

Amend section 4530.3 to read:

Section ~~4530.2~~4530.3. Announcement/Notification of Project.

- (a) A statewide announcement/notification of each retainer contract or proposed project shall be published in the California State Contracts Register, in accordance with the Government Code (commencing with Section 14825), and in the publications of the respective professional societies. Failure of any professional society to publish the announcement/notification shall not invalidate any contract.
- (b) The announcement/notification for each retainer contract or proposed project shall include, at a minimum, a brief description of the services required, location, duration, eligibility and preferences, submittal requirements, contact person for the Department, and the final response date for receipt of statements from firms of their demonstrated competence and professional qualifications.
- (c) The Director or designee shall identify potentially qualified small business firms or Disabled Veteran Business Enterprise (DVBE) interested in contracting with the Department, and shall provide copies of project announcements/notifications to those small business firms or DVBE that have indicated an interest in receiving the announcements/notifications. Failure of the Director, or designee, to send a copy of an announcement/notification to any firm shall not invalidate any contract.
- (d) The Director or designee shall encourage small business firms or DVBE to become certified through the State Department of General Services and to subscribe to the California State Contracts Register for advertisement notifications. The Director or designee will participate in outreach programs to provide small business firms or DVBE with information on Departmental contracting opportunities.

Note: Authority cited: Section 4526, Government Code; Sections 4005.1, 4011, 4027, and 4101, Welfare and Institutions Code. Reference: Sections 4526, 4527, 4529.12, 14825, and 14838, Government Code.

Amend section 4530.5 to read:

Section ~~4530.3~~4530.5. Estimate of Value of Services.

- (a) Before entering into discussion with any firm selected pursuant to Section 4530.4 ~~4530.5~~, the Director or designee shall direct ~~the~~ Department staff to prepare an estimate of the value of the proposed project or task order(s), based upon accepted rates for comparable services. The estimate will serve as a guide in determining fair and reasonable compensation in the negotiation of a satisfactory contract or retainer contract in accordance with the provisions of Section ~~4530.7~~, 4530.6 and shall not be disclosed until award of the contract or abandonment of the negotiation process for the services to which it relates.
- (b) At any time the Director or designee determines the Department's estimate to be unrealistic for any reason, the Director or designee shall require the estimate to be reevaluated and, if deemed necessary, modified.

Note: Authority cited: Section 4526, Government Code; Sections 4005.1, 4011, 4027, and 4101, Welfare and Institutions Code. Reference: Section 4526 and 4528, Government Code.

Amend section 4530.2 to read:

Section ~~4530.4~~4530.2. Selection Criteria.

The Director or designee shall utilize selection criteria for each retainer contract or proposed project which will comprise the basis for the selection of eligible firms to perform the required services. ~~These factors shall be weighed by the Director or designee according to the nature of the proposed project, the complexity and special requirements of the specific services, and the needs of the Department.~~ The criteria are to include such factors as:

- (a) Professional experience of the firm in performing services of similar nature.
- (b) Quality and relevance of recently completed or ongoing work.
- (c) Reliability, continuity, and location of firm to the project site.
- (d) Staffing capability.
- (e) Education and experience of key personnel to be assigned.
- (f) Knowledge of applicable regulations and technology associated with the services required.
- (g) Specialized experience of the firm in the services to be performed.
- (h) Quality assurance plan and quality control plan.
- ~~(h)(i)~~ Participation as small business or Disabled Veteran Business Enterprise firm.
- ~~(i)(i)~~ Other factors the Director, or designee, deems relevant to the specific task to be performed. ~~These factors shall be weighed by the Director according to the nature of the proposed project, the complexity and special requirements of the specific services, and the needs of the Department.~~

Note: Authority cited: Section 4526, Government Code; Sections 4005.1, 4011, 4027, and 4101, Welfare and Institutions Code. Reference: Sections 4526 and 4527, Government Code.

Amend section 4530.4 to read:

Section ~~4530.5~~4530.4. Selection of Qualified Firms.

- (a) After the expiration of the final response date in the published project announcement, the Director or designee shall review and evaluate the written statements of demonstrated competence and professional qualifications using the selection criteria contained in Section ~~4530.2~~ 4530.4, and rank, in order of preference, the firms determined as eligible to perform the required services.
- (b) The Director or designee shall conduct discussions with at least the three most eligible firms, or a lesser number if fewer than three eligible firms have responded, about anticipated concepts and the benefit of alternative methods for furnishing the required services. From the firms with which discussions are held, the Director or designee shall select, in order of preference, not less than three firms, or lesser number if fewer than three eligible firms responded, deemed to be the most highly qualified to perform the required services.

Note: Authority cited: Section 4526, Government Code; Sections 4005.1, 4011, 4027, and 4101, Welfare and Institutions Code. Reference: Sections 4526, 4527, 4528, and 4529.12, Government Code.

Amend section 4530.6 to read:

Section ~~4530.6~~4530.7. Negotiation.

- (a) From among the firms selected in Section 4530.45, as most highly qualified to perform the services required, the Director, or designee, shall attempt to negotiate a satisfactory contract with the best qualified firm at a compensation which the Department determines is fair and reasonable.
- (b) If the Director or designee is unable to negotiate a satisfactory contract with the best qualified firm at a compensation which the Department determines is fair and reasonable, negotiations with that firm shall be terminated and negotiations undertaken with the second-best qualified firm. If unable to negotiate a satisfactory contract with the second-best qualified firm at a compensation which the Department determines is fair and reasonable, negotiations with that firm shall be terminated and negotiations undertaken with the third best qualified firm. If unable to negotiate a satisfactory contract with the third best qualified firm at a compensation which the Department determines is fair and reasonable, negotiations with that firm shall be terminated.
- (c) Where the Director or designee is unable to negotiate a satisfactory contract in accordance with subsections (a) and (b), the Director or designee shall continue the negotiations process with the remaining qualified firms, if any, in order of preference, until a satisfactory contract is reached. If unable to negotiate a satisfactory contract with any of the qualified firms, the Director or designee shall abandon the negotiation process for the required services.

Note: Authority cited: Section 4526, Government Code; Sections 4005.1, 4011, 4027, and 4101, Welfare and Institutions Code. Reference: Section 4526, 4526.5, 4527, and 4528, Government Code.

Amend section 4530.6 to read:

Section 4530.74530.6. Statewide Participation Goals Retainer Contracts.

~~In the negotiation of a satisfactory contract as provided in Section 4530.7, the best qualified firm must meet the statewide participation goals of not less than 3 percent for disabled veteran business enterprises unless the contract was exempted from the goal by the Department. The best qualified firm shall comply with the statewide participation goals as required by the regulations contained in Title 2, California Code of Regulations, Sections 1896.61-1896.67 and 1896.90-1896.96.~~

Pursuant to the Department's authority as set forth in Article XXII of the California Constitution, the Director or designee may identify the general need for A&E services to assist in its overall mission and may enter into contracts for such services through a retainer contract, also commonly known as an "on-call" contract. Retainer, or on-call, contract services are based on scope of work and assigned by task order. Retainer contracts will provide a process for the development and execution of task orders for as-needed A&E work. Rates for such work shall be specified in a rate schedule to be attached to the original contract provided that rates may be modified, and categories of work added by mutual agreement of the parties.

Note: Authority cited: Section 4526, Government Code; Sections 4005.1, 4011, 4027, and 4101, Welfare and Institutions Code. Reference: Article XXII, California State Constitution; Section 4526, Government Code; 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.

Amend section 4530.8 to read:

Section 4530.8. ~~Amendments~~ Task Orders.

Where the Director or designee determines that a change in the contract is necessary during the performance of the services, the parties may, by mutual consent, in writing, agree to modifications, additions or deletions in the general terms, conditions, and specifications for the services involved, with a reasonable adjustment in the firm's compensation.

Note: Authority cited: Section 4526, Government Code; Sections 4005.1, 4011, 4027, and 4101, Welfare and Institutions Code. Reference: Sections 10250 and 10251, Public Contract Code.

Amend section 4530.9 to read:

Section 4530.9. Contracting in Phases.

Where the Director or designee determines it is necessary or desirable for a project to be performed in separate phases, the Director or designee may negotiate a partial compensation for the initial phase of the services required; provided, however, the Director or designee first determines that the firm selected is best qualified to perform the entire project. The contract shall include a provision that the Department may, at its option, utilize the firm to perform other phases of the services at a compensation which the Department determines is fair and reasonable, to be later negotiated and included in a mutual written agreement. In the event that the Department exercises its option under the contract to utilize the firm to perform other phases of the project, the procedures of this Chapter, regarding estimates of value of services and negotiation shall be followed.

Note: Authority cited: Section 4526, Government Code; Sections 4005.1, 4011, 4027, and 4101, Welfare and Institutions Code. Reference: Sections 10124, and 10261, and 10346, Public Contract Code.

Amend section 4530.10 to read:

Section 4530.10. ~~Director's Power to Require Bids.~~ Audits.

~~If the Director determines that the services are technical in nature and involve little professional judgment and that requiring bids would be in the public interest, a contract shall be awarded on the basis of competitive bids and not the procedures of this Article.~~

The Director or designee may require financial and performance audits, as necessary to ensure contracted services are delivered within the agreed schedule and budget.

Note: Authority cited: Sections 4005.1, and 4101, 4011, and 4027 Welfare and Institutions Code; Section 4526, Government Code. Reference: Article XXII, California State Constitution; Section 4529.14, Government Code.

Amend section 4530.11 to read:

Section 4530.11.-Unlawful Considerations, Prohibited Practice and Conflicts of Interest.

- (a) Each contract shall include a provision by which the firm warrants that the contract was not obtained or secured through rebates, kickbacks or other unlawful considerations either promised or paid to any Department employee. Failure to adhere to this warranty may be cause for contract termination and recovery of damages under the rights and remedies due the Department under the default provision of the contract.

- (b) No Department employee who participates in the evaluation or selection process leading to award of a contract shall have a relationship with any of the firms seeking that contract if that relationship is subject to the prohibition of Government Code section 87100.

Note: Authority cited: Sections 4005.1, 4011, 4027, and 4101, Welfare and Institutions Code. Reference: Sections 4526, and 4527, 87100 and 87100.1, Government Code.

Amend section 4530.12 to read:

Section 4530.12. ~~Prohibited Relationships.~~ Emergencies.

~~No Department employee who participates in the evaluation or selection process leading to award of a contract shall have a relationship with any of the firms seeking that contract, if that relationship is subject to the prohibition of Government Code Section 87100.~~

Where the Director or designee determines that an emergency exists, the Director or designee may negotiate a contract for such services, including task orders, without the necessity of issuing a Request for Qualifications or following the selection provisions set forth in this Article. For purposes of this section, "emergency" is defined as a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.

Note: Authority cited: Section 4526, Government Code; Sections 4005.1, 4011, 4027, and 4101, Welfare and Institutions Code. Reference: ~~Sections 4526, 87100, 87100.1, and 87102, Government Code. 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; and Grayden v. Pasadena Redevelopment Agency (1980) 104 Cal App. 3d 631, 635-637.~~