

CALIFORNIA DEPARTMENT OF JUSTICE

TITLE 11. LAW

DIVISION 1. ATTORNEY GENERAL

CHAPTER 6. SELECTION PROCESS FOR PRIVATE ARCHITECTURAL AND
ENGINEERING FIRMS

TEXT OF PROPOSED REGULATIONS

The initial proposal (noticed on March 11, 2022) is illustrated by single blue underline. Changes made after the 45-day comment period are illustrated by green double underline for proposed additions and ~~orange double strikethrough~~ for proposed deletions.

§ 600. Purpose and Scope.

(a) This chapter shall be known as the Department of Justice’s Selection Process for Private Architectural and Engineering Firms. This chapter establishes the applicable criteria and procedures for procurement, by the Department of Justice, of architectural and engineering services.

(b) If the Chief determines that the architectural and engineering services needed are technical in nature and involve little professional judgment and that requiring bids would be in the public interest, a contract may be awarded on the basis of bids rather than by following these procedures for requesting qualifications and negotiation.

Note: Authority cited: Section 4526, Government Code. Reference: Sections: 4525, 4526, 4526.5, 4527, 4528, 4529, 4529.5, 4529.10, 4529.11, 4529.12, 4529.13, 4529.13, 4529.14, 4529.15, 4529.16, 4529.17, 4529.18, 4529.19 and 4529.20, Government Code; and Article XXII, Sections 1 and 2, California Constitution.

§ 601. Definitions.

As used in this chapter, the following definitions shall apply:

(a) “Architectural and engineering services” (hereafter “A&E services”) shall include architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services as those terms are defined in Government Code section 4525, subdivisions (d), (e), and (f).

(b) “Chief” means the Chief of Operations of the California Department of Justice, or the person(s) designated to act on the Chief’s behalf.

(c) “Department” means the California Department of Justice.

(d) “Firm” has the meaning set forth for that term in Government Code section 4525, subdivision (a).

(e) “Project” means either a specific planned undertaking, such as the transfer, sale, construction or upgrade of facilities, or a detailed plan or proposal for the types of services that the Department may require in connection with the future transfer, sale, construction, upgrade of facilities, or other specific planned undertaking, when such activities have not yet been identified.

(f) “Small business” means a firm certified as a small business by the Department of General Services pursuant to Government Code section 14839.1.

Note: Authority cited: Section 4526, Government Code. Reference: Sections 4525, 4526, 4527 and 4529.10, Government Code.

§ 602. Annual Announcements for Statement of Qualifications and Performance Data.

The Chief shall make a statewide announcement of all projects using A&E services on the Department’s website at <https://oag.ca.gov/cpu> and through publications of the respective professional societies. The annual notice shall solicit statement of qualifications and performance data from firms providing A&E services. The notice shall include a description of the projects expected by the Department in the next year, a Department contact, and the date, time, and location for submission of the statement of qualifications. The notice may also identify the criteria upon which the contract award will be made.

Note: Authority cited: Section 4526, Government Code. Reference: Sections 4526 and 4527, Government Code.

§ 603. Announcement of Projects.

(a) In addition to the annual notice, the Chief shall publish, either electronically or in print, a Request for Qualifications (RFQ) for any proposed project in the State Contracts Register and in the publications of relevant professional societies.

(b) The RFQ shall include a description of the project, submittal requirements and deadlines for a firm's statement of qualifications, and the criteria upon which the contract award will be made. The RFQ may also provide for the award of multiple contracts if the selection procedure is sufficiently described in the RFQ and the award otherwise complies with the provisions of this chapter.

(c) If the Department requires A&E services for a project with a site or sites that cannot be identified at the time the RFQ is prepared, the RFQ shall specify the type of services that the firm might be expected to complete on an as-needed or on-call basis. RFQs for such "on-call" contracts shall specify with as much detail as possible the anticipated nature of the services required and the expected location where services may be needed.

(d) Failure of a professional publication to publish, or error by a professional publication in publishing an announcement, shall not invalidate that announcement. In such a circumstance, the Chief may extend the announcement deadlines to allow further publication of the announcement.

Note: Authority cited: Section 4526, Government Code. Reference: Sections 4526, 4527 and 4529.12, Government Code; and Article XXII, Sections 1 and 2, California Constitution.

§ 604. Establishment of Criteria.

The Chief shall establish criteria for selecting a firm for each project. The 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 services completed ~~work~~, reliability and continuity of the firm and/or subcontractors, and location. Such factors shall be weighted by the Chief according to the nature, complexity, and special requirements of the project.

Note: Authority cited: Section 4526, Government Code. Reference: Sections 4526, 4527 and 4529.12, Government Code.

§ 605. Estimate of Value of A&E Services.

(a) Before any discussion with any firm concerning fees may take place, the Chief shall cause an estimate of the value of such A&E services to be prepared. This estimate may be based on such factors as a market survey, comparison with fees paid to other departments' or agencies' contractors for similar services, or comparison with the salaries of comparable positions within the Department, within State service, or within other governmental entities. This estimate shall serve as a guide in determining fair and reasonable compensation for the services rendered. The estimated value shall be held confidential until the award of the contract or abandonment of the procurement for the A&E services.

(b) If at any time the Chief determines the Department's estimate to be unrealistic, the Chief may direct that the estimate be reevaluated and modified if necessary.

Note: Authority cited: Section 4526, Government Code. Reference: Sections 4526, 4528 and 4529.12, Government Code; and Article XXII, Sections 1 and 2, California Constitution.

§ 606. Selection of Firm.

(a) After expiration of the period stated in the announcement prescribed in Section 603, the Chief shall evaluate any current statements of qualifications and performance data on file with the Department, together with those that may be submitted by other firms regarding the proposed project.

(b) The Chief shall conduct discussions with no fewer than three firms regarding the required A&E services.

(c) From the firms with which discussions are held, the Chief shall select, in order of preference, based upon the established criteria, no fewer than three firms deemed to be the most highly qualified to provide the services required.

(d) If fewer than three firms submitted statements of qualifications, the Chief may discontinue the selection process or extend the selection process and provide supplemental notice to attract additional firms.

(e) Alternatively, if fewer than three firms submitted statements of qualifications, the Chief may continue the selection process with the submissions received.

Note: Authority cited: Section 4526, Government Code. Reference: Sections 4526, 4527 and 4529.12, Government Code; and Article XXII, Sections 1 and 2, California Constitution.

§ 607. Negotiation.

(a) The Chief shall attempt to negotiate a contract with the most highly qualified firm. In negotiating fees and executing a contract, the Chief shall follow the procedure described in Section 6106 of the Public Contract Code (or any successor statute).

(b) If the Chief is unable to negotiate a satisfactory contract with the most highly qualified firm at fair and reasonable compensation as determined by the procedure set forth in Section 605, negotiations shall be terminated. The Chief ~~may~~shall then undertake negotiations with the second most qualified firm on the same basis. Failing accord, negotiations shall be terminated. The Chief ~~may~~shall then undertake negotiations with the third most qualified firm on the same basis. Failing accord, negotiations shall be terminated.

(c) Should the Chief be unable to negotiate a satisfactory contract at fair and reasonable compensation with any of the selected firms, the Chief ~~may~~shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this chapter until an agreement is reached.

~~(d) The Chief may, at any time, reopen previously terminated negotiations with a firm.~~

Note: Authority cited: Section 4526, Government Code. Reference: Sections 4526, 4526.5, 4528 and 4529.12, Government Code; and Article XXII, Sections 1 and 2, California Constitution.

§ 608. Amendments.

If the Chief determines that a change in the contract is necessary during the performance of the A&E services, the parties may, by mutual written agreement, amend any term of the contract, including a reasonable adjustment in the firm's compensation as determined by the procedure set forth in Section 605.

Note: Authority cited: Section 4526, Government Code. Reference: Sections 4526, 4528 and 4529.12, Government Code; and Article XXII, Sections 1 and 2, California Constitution.

§ 609. Contracting in Phases.

(a) If the Chief determines it is necessary or desirable to have a project performed in phases, it will not be necessary to negotiate the total contract amount or compensation provisions in the initial instance, provided that:

(1) The Chief has determined that the selected firm is best qualified to perform the entire project at a fair and reasonable cost; and

(2) The contract states that the Department may, at its option, use that firm to perform other phases of the ~~work~~project 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.

(b) The procedures established in this chapter with regard to estimates and negotiation shall otherwise be applicable.

Note: Authority cited: Section 4526, Government Code. Reference: Sections 4526 and 4528, Government Code.

§ 610. Requirements/On-Call Contracts.

If the Request for Qualifications identified the general need for A&E services to assist in the Department's overall mission, the Chief may enter into contracts for such services through a requirements contract, commonly known as an "on-call" contract. Requirements contracts will provide a process for the development and execution of task orders for defined 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. Reference: Section 4526, Government Code; and Article XXII, Sections 1 and 2, California Constitution.

§ 611. Emergencies.

Notwithstanding the provisions of this chapter, if the Chief determines that an emergency exists, the Chief may negotiate a contract for A&E services, including amendments, without the

necessity of issuing a Request for Qualifications or following the selection provisions set forth in this chapter. For purposes of this section, “emergency” means 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. Reference: Section 4526, Government Code; Sections 1102 and 10340, Public Contract Code; and Article XXII, Sections 1 and 2, California Constitution.

§ 612. Prohibited Practices and Conflict of Interest.

(a) Practices that might result in unlawful activity, including rebates, kickbacks, or other unlawful consideration are strictly prohibited. The Department shall require a contract entered into pursuant to this chapter to include a provision in which the firm certifies that the contract was not obtained through rebates, kickbacks, or other unlawful considerations either promised or paid to a Department employee. In addition to any other applicable legal proscriptions, failure to adhere to the certification 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) A Department employee shall not participate in the selection process if the employee has a relationship with a person or business entity seeking a contract which would subject that employee to the prohibition of Government Code section 87100.

(c) Nothing in this chapter shall be construed to abridge the obligation of the Department or the firm to comply with all laws regarding political contributions, conflicts of interest, or unlawful activities.

Note: Authority cited: Section 4526, Government Code. Reference: Sections 4526 and 4529.12, Government Code; and Article XXII, Sections 1 and 2, California Constitution.

§ 613. Small Business Participation.

The Chief shall encourage small business firms to become certified through the State Department of General Services and to subscribe to the California State Contracts Register for advertisement notifications. The Chief shall provide to all small business firms who have indicated an interest

in receiving such, a copy of each Request for Qualifications (RFQ) for projects for which the Chief concludes that small business firms could be especially qualified. Small businesses that wish to receive these notifications shall subscribe to the Department's mailing list on the Department's website at <https://oag.ca.gov/cpu>. A failure of the Chief to send a copy of an RFQ to any firm shall not operate to invalidate any contract.

Note: Authority cited: Section 4526, Government Code. Reference: Section 4526, Government Code.