

**Article 11 Selection Process for Private Architectural, Landscape Architectural,
Engineering, Environmental, Land Surveying and Construction Project
Management Firms**

8100 Purpose.

The purpose of the selection process for private architectural, landscape architectural, engineering, environmental, land surveying and construction project management firms is to provide procedures that assure such services are engaged on the basis of demonstrated competence and qualifications for the types of services to be performed, at fair and reasonable prices to the Department of Boating and Waterways.

NOTE Authority cited: Section 4526, Government Code. Reference: Sections 4525 and 4526, Government Code.

8100.1 Definitions.

The following definitions shall be used in this article.

(a) "Architectural, landscape architectural, engineering, environmental, 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 or justifiably perform.

(b) "Construction project management" means those services provided by a licensed architect, registered engineer, or licensed general contractor which meet the requirements of Section 4529.5 of the Government Code for management and supervision of work performed on state construction projects.

(c) "Contract" means any agreement entered into by the Department for architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services.

(d) "Department" means the Department of Boating and Waterways.

(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.

(f) "Multiple Contracts" means contracts that may be awarded to multiple firms.

(g) "On-Call Contracts" means contracts for projects that involve more than one component, site, or activity.

(h) "Single Firm Contract" means a contract that is let to the single most qualified firm.

(i) "Small Business" is a firm that meets the definition of "small business" provided in Government Code Section 14837.

(j) “Specific Project Contract” is a contract for a project that involves a single subject matter and may result in a single contract.

NOTE Authority cited: Section 4526, Government Code. Reference: Sections 4525, 4526, and 14837 Government Code.

8100.2 Contract Types.

(a) The Department may utilize specific project contracts, single firm contracts, multiple contracts, or on-call contracts depending on the specific situation. All contract types are subject to this Article.

(b) Multiple contracts may be awarded for contracts that cover different, specific geographic regions; contracts that encompass different specific, unique disciplines; or contracts for which there would be a primary contractor, with a backup contractor in the event the primary contractor is unavailable for the assignment.

NOTE Authority cited: Section 4526, Government Code. Reference: Sections 4525 and 4526, Government Code.

8100.3 Selection Criteria.

The Department shall establish selection criteria that will comprise the basis for the selection of eligible firms to perform the required services. The criteria may include such factors as professional experience of the firm in performing services of similar nature; quality and relevance of recently completed or ongoing work; reliability, continuity, and location of firm to the project site; staffing capability; education and experience of key personnel to be assigned; knowledge of applicable regulations and technology associated with the services required; specialized experience of the firm in the services to be performed; participation as small business firm; and other factors the Department deems relevant to the specific task to be performed.

The Department may weigh these factors 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. Reference: Sections 4526, 4527 and 4529.5, Government Code.

8100.4 Request for Qualifications.

(a) A statewide announcement of each 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 shall not invalidate any contract.

(b) The announcement for each proposed project shall include, at a minimum, a brief description of the services required, location and duration of services, criteria upon which the award will be made, 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 Department shall identify potentially qualified small business firms interested in contracting with the Department, and shall provide copies of project announcements to those small business firms that have indicated an interest in receiving the announcements. Failure of the Department to send a copy of an announcement to any firm shall not invalidate any contract.

NOTE: Authority cited: Section 4526, Government Code. References: Sections 4526, 4527 and 14825, Government Code.

8100.5 Annual Submission of Qualifications.

In compliance with Government Code section 4527, interested firms may submit their qualifications and performance data to the Department annually throughout the year. The Department may consider such qualifications and performance data when selecting a contractor in accordance with Section 8100.6. Such qualifications and performance data that are on file with the Department for longer than one year, and not subsequently renewed or refiled, shall not be considered by the Department in the selection process.

NOTE: Authority cited: Section 4527, Government Code. Reference: Sections 4527, Government Code.

8100.6 Selection of Qualified Firms.

(a) After the expiration of the final response date in the published project announcement, the Department shall review and evaluate the written statements of demonstrated competence and professional qualifications using the selection criteria in the published project announcement, and rank, in order of preference, the firms determined as most highly qualified to perform the required services.

(b) The Department 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 Department 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. Reference: Sections 4526 and 4527, Government Code.

8100.7 Negotiation.

(a) From among the firms selected in Section 8100.6, as most highly qualified to perform the services required, the Department 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 Department 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 Department is unable to negotiate a satisfactory contract in accordance with subsections (a) and (b), the Department 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 Department shall abandon the negotiation process for the required services.

NOTE: Authority cited: Section 4526, Government Code. References: Sections 4527 and 4528, Government Code.

8100.8 Estimated Value of Services.

(a) Before entering into discussion with any firm selected pursuant to Section 8100.6, Department staff shall prepare an estimate of the value of the proposed contract, 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 in accordance with the provisions of Section 8100.7, 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 Department determines the estimate prepared in accordance with (a) to be unrealistic for any reason, the Department shall reevaluate the estimate and, if necessary, modify the estimate.

NOTE: Authority cited: Section 4526, Government Code. References: Sections 4526 and 4528, Government Code.

8100.9 Amendments.

Where the Department 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. References: Sections 4527 and 4528, Government Code.

8100.10 Contracting in Phases.

Where the Department determines it is necessary or desirable for a project to be performed in separate phases, the Department may negotiate a partial compensation for the initial phase of the services required; provided, however, the Department 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 Sections 8100.7 and 8100.8, regarding estimates of value of services and negotiation shall be followed.

NOTE: Authority cited: Section 4526, Government Code. References: Sections 4526 and 4528, Government Code.

8100.11 Department's Power to Require Bids.

If the Department 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 may be awarded on the basis of competitive bids and not the procedures of this Article.

NOTE: Authority cited: Section 4526, Government Code. References: Sections 4529, Government Code.

8100.12 Unlawful Considerations.

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.

NOTE: Authority cited: Section 4526, Government Code. References: Sections 4526, Government Code.

8100.13 Prohibited Relationships.

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: Section 4526 and 4527, Government Code. References: Sections 4526, 4527, 87100 and 87102, Government Code.