

**PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA**

**REGULATIONS FOR THE PROCUREMENT OF PROFESSIONAL SERVICE
FIRMS (REQUEST FOR QUALIFICATIONS-RFQ)**

(Adopted October 18, 1995; effective October 18, 1995, by Decision 95-10-042.)

SECTION I. INTRODUCTION

These procedures implementing Government Code Sections 4525-4529.5, which govern the procurement of the professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms, have been established by the California Public Utilities Commission (Commission) to permit the issuance of Requests For Qualification (RFQ) and the subsequent selection of private professional services, as necessary, and consistent with applicable laws, to carry out the responsibilities of the Commission. Consistent with the provision of Government Code Section 4529, these procedures shall not apply in circumstances where the Commission's Executive Director determines that the services needed are more of a technical nature and involve little professional judgment and that requiring bids would be in the public interest. It is the Commission's intention that these procedures be fully understood by all agencies of government, as well as firms seeking to provide services to the State.

SECTION II. DEFINITIONS

As used in these regulations, the following definitions apply:

- A. "Commission" means the California Public Utilities Commission.
- B. "Director" means the Executive Director, or the person(s) designated to act on his/her behalf, of the California Public Utilities Commission.
- C. "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 or justifiably perform.
- D. "Construction project management" means those services provided by a licensed architect, registered engineer, or licensed general

contractor which meet the requirements of Government Code Section 4529.5 for management and supervision of work performed on state construction projects.¹

E. "Environmental services" means those services to be procured outside the State of California civil service in connection with project development and permit processing to comply with Federal and State environmental laws, including 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.

F. "Firm" means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the professions enumerated in paragraphs C, D, and E, above.

G. "Project Manager" means the Commission staff member assigned to oversee the scope of the project, as defined in the contract.

H. A "small business" firm is one that has been certified by the State Office of Small and Minority Business (OSMB).

SECTION III. STANDARDS OF CONDUCT

A. It is the Commission's intent that all parties interested and/or involved in the implementation of these professional service procurement procedures, including but not limited to Commission employees and principals and employees of prospective and contracted professional service firms, fully understand the consequences of engaging in unlawful activity. Such unlawful activity may include, but is not limited to, offering or giving rebates, kickbacks, or other unlawful consideration toward securing a contract or favorable treatment with respect to compensation, terms, amendment, or the evaluation of contract performance. If it is found, after notice and hearing by the Director, that any such activity was undertaken by a contractor, the Director may terminate the right of the contractor to proceed, provided that the facts upon which the Director makes such findings may be reviewed in any competent court. In such event, the Commission may also pursue the same remedies against the contractor as it could in the event of contract breach, as well as penalty and exemplary damages.

Commission employees found by the Director to have participated in such unlawful activity will be subject to appropriate disciplinary and legal action by the Commission.

B. No participant in the Commission's contractor selection or contract negotiation process shall have a personal, business, or financial interest in a person or business entity seeking a contract

¹ Government Code Section 4529.5 provides:

"Any individual or firm proposing to provide construction project management services pursuant to this chapter 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."

under this General Order. Failure of a participant to remove him/herself from the process once aware of such a conflict of interest will be cause for appropriate disciplinary and/or legal action by the Commission.

C. Commission employees found by the Director to have knowingly imparted unauthorized information to one or more prospective contractors during the selection or contract negotiation process will be subject to appropriate disciplinary and legal action by the Commission.

D. Commission appointees and employees shall comply with all applicable laws including, but not limited to, conflict of interest and ethics requirements.

SECTION IV. PROCESS FOR PROCURING CONSULTANTS TO PROVIDE PROFESSIONAL SERVICES

A. The Project Manager shall develop a detailed scope of the professional services project which will serve as a guide in the identification of selection criteria as well as the appropriate range for compensation. The project scope will be incorporated into the professional services contract.

B. The Director shall establish criteria for selecting a firm for each project. Such criteria shall include, but need not be limited to: professional excellence, demonstrated competence, specialized experience of the firm, education and experience of key personnel, staff capability, workload, ability to meet schedules, principals to be assigned, nature and quality of completed work, reliability and continuity of the firm, location, professional awards, conflict of interest, and compliance with all applicable laws in force during the relevant time period. The Director shall weight the established criteria according to the nature, complexity, and special requirements of the specific project.

C. The Director shall determine the State's estimated value of services to be provided. The estimated value shall be held confidential until the award of the contract or abandonment of any further procedure for the services to which it relates. If at any time the Director determines the State's estimate to be unrealistic, s/he may direct that such estimate be reevaluated.

D. The Director shall place a notice of the proposed project in the State Contracts Register and in the publications of relevant professional societies. The notice shall include the nature of the work, the criteria upon which the award will be made, and the time within which statements of interest, qualifications, and performance data will be received, and a statement that the contract will be awarded without discrimination based on race, color, religion, sex, or national origin. The Director shall endeavor to provide to all small business firms who have indicated an interest in receiving such, a copy of each notice for projects for which the Director concludes that small

business firms could be especially qualified. A failure of the Director to send a copy of a notice to any firm shall not operate to invalidate any contract.

E. The Director 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; shall conduct discussions with no less than three firms, including key personnel who would perform the work, regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services; and then shall select therefrom, in order of preference, based upon criteria established and published by her/him, no less than three of the firms deemed to be the most highly qualified to provide the services required.

F. A letter shall be signed by the Director and sent to all RFQ respondents, which lists the ranking firms and identifies the participants in the selection process. This letter shall be the only communication to RFQ respondents about the ranking of firms, and shall designate an authorized Commission representative for questions.

G. The Director shall negotiate a contract with the best qualified firm at compensation which the Director determines is fair and reasonable to the State of California. If the Director is unable to negotiate a satisfactory contract with the firm ranked number one, at a price the Director determines to be fair and reasonable, negotiations with that firm shall be formally terminated. The Director shall then undertake negotiations with the second most qualified firm. Should no satisfactory contract be reached then the Director shall terminate negotiations and shall thereafter undertake negotiations with the third most qualified firm. Should the Director be unable to negotiate a satisfactory contract with any of the selected firms, the Director shall select additional firms in order of their competence and qualification and continue negotiations until an agreement is reached.

H. Prior to commencing contract negotiations as described in Subsection G, the Director shall provide written instructions to each successive firm, as applicable, for the negotiations which are to follow. These instructions shall provide the firm with necessary information which shall allow the negotiations to proceed in an orderly fashion, including the designation of the authorized Commission representative(s). Negotiations shall begin within 14 days after the successful firm has been notified of its selection or upon receipt of its cost proposal. The firm should be notified if additional time is necessary to begin negotiations.

I. Upon the completion of contract negotiations, the Director and the successful firm shall proceed to execute a contract within 45 days, including all applicable approvals required by the State. The firm should be notified if additional time is necessary to complete the contract. The Commission and the firm shall work together to ensure the successful delivery of the requested services in a timely fashion.

J. Where the Director determines that it is necessary or desirable for a project to be performed in separate phases, the Director may negotiate a contract for the initial phase of work. To establish a contract price for the initial portion of phased work, the Director must first determine that the chosen firm is best qualified to perform the entire project at reasonable cost to the State. A contract for work to be performed in phases without a negotiated total contract price must provide that the State may, at its option, require that firm to perform other phases of the work and that the firm will accept a fair and reasonable price for that subsequent phased work to be later negotiated and reflected in a subsequent written instrument.

K. Amendments may be used to adjust the negotiated compensation if the Director and firm agree mutually, in writing, to do so when the Commission effects a necessary change in the project.

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