

**INITIAL STATEMENT OF REASONS
ARCHITECTURAL AND ENGINEERING SERVICES REGULATIONS
DEPARTMENT REFERENCE NUMBER: R-00-03**

EFFORT TO AVOID DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS

There are separate processes for the State and federal governments to contract for architectural and engineering (A&E) services. There is no duplication or conflicts with these processes and the development of these proposed regulations.

STUDIES RELIED ON

DTSC did not rely on any studies in the preparation of these regulations. A draft Notice of Exemption under the California Environmental Quality Act is available for review with the rulemaking file and will be filed with the State Clearinghouse when the regulations are adopted.

ALTERNATIVES CONSIDERED

Without adopting regulations, the Department of Toxic Substances Control (DTSC) will not be able to directly contract for A&E services for State orphan sites. The Department of General Services (DGS) would have to procure the contract and manage the work. This in essence would put DGS in charge of remediating State orphan sites. In addition, DGS would charge a minimum of 20 percent additional management and overhead charges to the A&E contract, thus increasing project costs while reducing the number of sites that can be remediated. Therefore, adopting regulations is the only alternative.

These regulations were adopted as emergency regulations on November 08, 2001. There were no workshops held; however, the emergency regulation process provided notice to the public that DTSC is working on these regulations. DTSC also posted the emergency rulemaking package on its Internet site.

DETAILED STATEMENT OF REASONS

A detailed statement of reasons for each section of 67900, chapter 45.5, division 4.5, title 22, California Code of Regulations follows. The following information provides an explanation of the necessity for each section of the regulations:

Section 67900.1. Purpose and Scope

This section sets forth the purpose and scope of the article and is necessary in order to inform the regulated community that the regulations establish applicable criteria and procedures for DTSC to procure A&E services related to response actions at hazardous substance sites and corrective actions at hazardous waste facilities.

Section 67900.2. Definitions

- (a) Architectural, landscape architectural, engineering, environmental and land surveying services: This definition is needed to define the type of contracting services that fall under the “architectural and engineering services” umbrella for the purposes of DTSC’s proposed regulations.
- (b) Construction project management: This definition is necessary to delineate who and/or what type of work qualifies an entity as construction project management and meets the requirements of section 4529.5 of the Government Code for management and supervision of work performed on State construction projects.
- (c) Department: This definition is needed to clarify that the term “Department” refers to the Department of Toxic Substances Control.
- (d) Director: This definition is necessary to specify who in the Department has authority to make certain determinations related to the A&E contracting process.
- (e) Environmental services: This definition is to describe the type of services performed in connection with project development and permit processing in order to comply with federal and State environmental laws.
- (f) Firm: This definition is required to delineate the type of entity that is considered a “firm” for purposes of these proposed regulations.

Section 67900.3. Publication of Announcement

This section is necessary to inform potential bidders how they can learn of proposed A&E contracting opportunities. It also establishes the standard practice for how DTSC will publish advertised A&E contracts for bid.

Section 67900.4. Establishment of Criteria.

This section informs potential bidders that DTSC has a standard practice of identifying criteria to be used in analyzing A&E contracting bids. This information can help potential bidders prepare better bids.

Section 67900.5. Selection of Architect, Engineers or Land Surveyors

This section is needed to inform potential bidders how DTSC will qualify firms to be on the list of A&E contractors.

Section 67900.6. Estimate of Value of Services

This estimate of value of service information is necessary in order to have a basis for determining the reasonableness of contract bids. The confidential nature of the information is also a valuable part of the process so that bids are truly competitive.

Section 67900.7. Abandonment of Estimate

This section is needed to inform the public that DTSC has the right to reevaluate project estimates.

Section 67900.8. Negotiation

This information is necessary to inform potential contractors of the negotiation process to be followed in the administration of A&E contracts exceeding \$1 million. Unsuccessful negotiations could result in a contractor not receiving the contract award.

Section 67900.9. Amendments

This section is needed to provide information concerning DTSC's policy and practice when contract amendments may be appropriate.

Section 67900.10. Contracting in Phases

This section is necessary to indicate DTSC's policy and practice concerning phasing contract work in a way that enables DTSC to obtain the best project/cost contract for a given situation.

Section 67900.11. Small Business Participants

This section is necessary to indicate DTSC's policy and practice concerning efforts to provide small businesses with an opportunity to participate in bid contracting processes.

Section 67900.12. Conflict of Interest/Unlawful Activity

This section is needed to provide potential contractors with the State policy/practice concerning unlawful activities and/or conflict of interests in the administration of contracts.