



# A&E Regulations Proposed Changes

California Water Commission Briefing

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# A&E Contracting, explained

**A&E: Architectural & Engineering Contracting: this is a qualifications-based procurement for engineering, architectural, land surveying, landscape architectural, construction project management or environmental services based on published selection criteria. Once selection is made, negotiations begin to achieve a fair and reasonable cost.**



# Presentation Outline



APA Process &  
Participants



Proposed  
Changes



December  
Hearing &  
Comments



Schedule

# APA Process & Participants



# APA Process & Participants: Main Steps in Rulemaking

## **Publish Notice, Regulations and Initial Statement of Reasons (ISOR) for Public Comment**

45-day comment period (October 13 to December 12, 2023)

One comment (no substantive comments)

Public hearing (December 12, 2023)

No comments or attendees

## **Summarize and Respond to Comments and Consider Changes to Regulations**

Final Statement of Reasons (FSOR)



# APA Process & Participants

## **CWC Approval (due September 2024)**

Final Rulemaking package due to OAL by October 13, 2024, or rulemaking expires

## **Department of Finance (DOF) Approval**

Economic/Fiscal Impact Statement;

NO IMPACTS = NO APPROVAL NEEDED

## **Office of Administrative Law Approval (due October 13, 2024)**

Product: Regulations & Rulemaking Record

Proposed  
Changes





# Amend Section 383

Add sentence: “This does not prohibit the DWR from publishing estimated *ranges* of contract values.”

Explicitly enables posting of a “Look-Ahead Report” on the A&E website

Positive feedback from the consultant community to Look-Ahead Report



Before any discussion with any firm concerning fees may take place, **the Director shall cause an estimate of the value of such 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 DWR, 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.


**Such estimate shall be, and remain, confidential until approval of contract** or abandonment of any further procedure for the services to which it relates.

At any time, the Director may determine the State's estimates to be unrealistic due to rising costs, special conditions, or for other relevant considerations, the estimate shall be reevaluated and modified if necessary.

**This does not prohibit the department from publishing estimated ranges of contract values.**

# DWR A&E Contracts Look Ahead Report

- Division
- RFQ number
- Estimated Advertisement quarter
- Estimated Contract Term
- Description of work
- A&E category/Service Type
- Estimated Range of Contract Value



# Delete Section 390: Exclusions

Deletion of entire section will enable hiring of consultants for boards.  
There is no need for any exclusions.

DWR needs to be able to hire consultants for advisory boards.

In addition, this section was very unclear and duplicative of the statute, violating two of the six requirements of regulations: clarity and non-duplication.

# Delete Section 390: Exclusions continued

Section language to be deleted:

“The provisions of this subchapter shall not apply to service agreements for architects or engineers engaged to provide consulting services on specific problems on projects where the architectural and engineering work is being performed by State of California Civil Service employees, nor to service agreements for the services of recognized experts retained as members of advisory boards.”

Authority: Section 426, Government Code. Reference: Sections 4525-4529, Government Code.

# December Hearing & Comments





# Public Hearing

December 12, 2024

- No attendees
- No comments






# Email Comments

## American Council of Engineering Companies

### **SUMMARY**

Qualifications-Based Selection (QBS) means that the selection of a design professional shall be based on qualifications alone. Pertaining to Section 383, the American Council of Engineering Companies (ACEC) (commenter) assumed that DWR would be negotiating for cost prior to the negotiation phase, and reminded DWR of this and that doing so would be inconsistent with QBS law.



# Email Comments continued

## American Council of Engineering Companies

### **RESPONSE**

Noted; DWR will continue to select A&E consultant based on qualifications alone, then begin negotiations for a fair and reasonable cost. DWR will not make a change based on this comment.

### **NOTE**

The commenter from ACEC did not fully understand the changes, and called Kristen Martin to explain comment letter, to which Kristen requested the full explanation in writing before the comment deadline, which was received in time, essentially negating their initial comments.



# Schedule





# UPCOMING

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May 15, 2024

**Brief CA Water Commission**

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June 15, 2024

**Submit final package to OAL**

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July 30, 2024 (or TBD depending on when filed with OAL)

**Estimated effective date TBD when filed with SOS**



# Questions and Comments