STATE OF CALIFORNIA EDMUND G. BROWN JR., Governor

DEPARTMENT OF VETERANS AFFAIRS
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NOTICE OF PROPOSED RULEMAKING

TITLE 12. MILITARY AND VETERANS AFFAIRS
DIVISION 2. DEPARTMENT OF VETERANS AFFAIRS
CHAPTER 7. SELECTION OF PROFESSIONAL SERVICE FIRMS
SUBCHAPTER 4. SELECTION PROCESS FOR PRIVATE ARCHITECTURAL AND ENGINEERING FIRMS

NATURE OF PROCEEDING

NOTICE IS HEREBY GIVEN that the California Department of Veterans Affairs (CalVet) proposes to adopt the proposed amended regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

CalVet has not scheduled a public hearing on this proposed action. However, CalVet will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to CalVet. The written comment period closes at **5:00 p.m. on September 18, 2015.** CalVet will consider only comments received at CalVet offices by that time. Submit comments to:

California Department of Veterans Affairs
Facilities and Business Services Division
Attention: Deanna Beland
1227 O Street, Suite 314
Sacramento, CA 95814

Comments that are not more than ten (10) pages will be accepted by facsimile at (916) 653-1388. A fax transmission must be completed and received by CalVet by the deadline given above. Comments may also be submitted by email to Deanna Beland at deanna.beland@calvet.ca.gov and must be received by CalVet by the deadline given above.

AUTHORITY AND REFERENCE

Authority Citation: The proposed amended regulations are authorized by Government Code sections 4526 and 4529.10, and California Constitution, Article XXII, sections 1 and 2.

Reference Citation: The code sections implemented, interpreted, or made specific by these proposed amended regulations are Government Code sections 4525, 4526, 4527, 4529.10, and 4529.12, California Constitution, Article XXII, sections 1 and 2 and Military Veterans Code 700.

INFORMATIVE DIGEST: *Summary of Existing Laws and Effects of Proposed Rulemaking*

Background and History: Before November 8, 2000

Under California constitutional law, State civil service employees must perform services provided by State agencies generally. These services cover a broad range of activities, such as clerical support, building maintenance, and security. In some cases, however, the State may contract with private firms to obtain services. Such contracting is allowed, for example, if services needed by the State are (1) of a temporary nature, (2) not available within the civil service, or (3) of a highly specialized or technical nature. Unlike the State, local governments are not subject to constitutional restrictions on contracting for services.

The State and local governments frequently contract with private firms for construction-related services, which include architectural, engineering, and environmental impact studies. State and local governments enter into these contracts through a competitive process of advertising for the service, selecting the firm determined to be best qualified, and negotiating a contract with that firm. However, neither the State nor most local government entities use a bidding process for these services. By comparison, bidding generally is used to acquire goods and for construction of projects.

Existing Law: Effective November 8, 2000

On November 7, 2000, California voters approved an initiative measure (Proposition 35) that resulted in a constitutional amendment (see Article XXII, sections 1 and 2) and the enactment of certain statutory laws (see Government Code sections 4529.10 through 4529.20). The amended State Constitution allows the State and local governments to contract with qualified private entities for architectural and engineering services for all phases of a public works project. Thus, government agencies could decide to contract out for these specific services in any case, rather than just in limited circumstances.

The statutory laws:

- Define the term "architectural and engineering services" to include all architectural, landscape architectural, environmental, engineering, land surveying, and construction project management services; and
- Require architectural and engineering services to be obtained through a fair and competitive selection process.

Effect of Proposed Rulemaking

The proposed amended regulations reflect the constitutional amendments and statute enactments and amendments, which presently are not represented in the CalVet's existing regulations.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

The objective of the proposed amended regulations is to improve CalVet internal procedures to contract for architectural and engineering services. CalVet's current regulations do not reflect the passage of Proposition 35 (an initiative measure effective since November 8, 2000). Proposition 35 eliminated certain restrictions on the State to allow contracting with private qualified entities for engineering and architectural services in all phases of public works projects. The scope of definitions in the proposed regulations has been broadened, made specific, and also clarified. Government Code section 4526 authorizes CalVet to adopt regulations for the aforementioned purposes.

The specific benefits anticipated by the proposed amended regulations are:
1. The CalVet regulations for advertising, selection and contracting for architectural and engineering services will align with other State entities such as Department of General Services and the Department of Corrections and Rehabilitation.
2. The CalVet will be able to make annual announcements, without the existing $25,000 limit, based on the general need for architectural and engineering services to assist in its overall mission and may enter into requirements contracts, also commonly known as "retainer" contracts.
3. Utilization of Retainer Agreements allows for expeditious and cost effective contracting for professional architectural and engineering services.
4. Utilization of Retainer Agreements provides the ability to contract for one or more architectural and engineering disciplines to enhance or supplement an existing team of State civil service Architect(s) and Engineer(s) when these certain services are not available within State civil service staff and the services are of such an urgent, temporary, or occasional nature that the delay incumbent in their implementation under civil service would frustrate their very purpose.
5. Landscape architecture, environmental services, and construction project management will be added to the professional services available for procurement consistent with Government Code 4525 – 4529.5.

CalVet has evaluated the proposed regulations for inconsistency or incompatibility with other existing State regulations. There are regulations currently being used by the Department of General Services in their selection process for private architectural and engineering firms. (Title 21, California Code of Regulations, Subchapter 4. Selection Process for Private Architectural and Engineering Firms). CalVet's proposed regulations will be consistent with those regulations. Otherwise there are no other related regulations on this matter. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing State regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

CalVet has made the following determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any State agency: Unknown fiscal impact on State spending for architectural and engineering services and construction project delivery. Actual impact will depend on how the State uses the contracting flexibility granted by these regulations.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the State: None.

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: CalVet has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. (These regulations increase the business opportunities since they are designed to select private firms that offer services to CalVet.)

Cost impacts on a representative private person or business: CalVet is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS:

Adoption of these amended regulations will not:

(1) create or eliminate jobs within California;
(2) create new businesses or eliminate existing businesses within California; or
(3) affect the expansion of businesses currently doing business within California.
(4) as stated above, the benefits include refinements to CalVet's contracting processes and increased opportunities for architectural and engineering firms to bid on CalVet job opportunities.

Significant effect on housing costs: None.

Small Business Determination:

CalVet has made an initial determination and is not aware of any adverse effect on small business. Small businesses with access to electronic publication tools will have more of an opportunity to compete for services under these regulations.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), CalVet must determine that no reasonable alternative which is considered or which has otherwise been identified and brought to the attention of CalVet would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

CalVet invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Deanna Beland, Departmental Construction and Maintenance Supervisor
California Department of Veterans Affairs
Facilities and Business Services Division
1227 O Street, Suite 314
Phone: (916) 651-5045
Fax: (916) 653-1388
Email: deanna.beland@calvet.ca.gov

The backup contact person for these inquiries is:

Sergio Mondragon-Lopez, Associate Governmental Program Analyst
California Department of Veterans Affairs
Facilities and Business Services Division
1227 O Street, Suite 314
Phone: (916) 503-8377
Fax: (916) 653-1388
Email: Sergio.mondragon-lopez@calvet.ca.gov

Please direct requests for copies of the proposed text (the "express terms") of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Deanna Beland at the above address.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

CalVet will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons, and the Economic and Fiscal Impact statement (STD Form 399). Copies may be obtained by request from the contact persons named above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, CalVet may adopt the proposed regulations substantially as described in this notice. If CalVet makes modifications which are substantial and sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before CalVet adopts the regulations as revised. Please send requests for copies of any modified regulations to the contacts named above. CalVet will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Deanna Beland at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through the CalVet website at: www.calvet.ca.gov.

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