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GOVERNMENT CODE - GOV

TITLE 2. GOVERNMENT OF THE STATE OF CALIFORNIA [8000 - 22980] (Title 2 enacted by Stats. 1943, Ch. 134.)

DIVISION 3. EXECUTIVE DEPARTMENT [11000 - 15990.3] (Division 3 added by Stats. 1945, Ch. 111.)

PART 5. DEPARTMENT OF TRANSPORTATION [14000 - 14463] (Heading of Part 5 amended by Stats. 1972, Ch. 1253.)

CHAPTER 2. Powers and Duties [14101 - 14181] (Chapter 2 added by Stats. 1945, Ch. 118.)

ARTICLE 2.5. Contracts for Professional and Technical Services [14130 - 14136] (Article 2.5 added by Stats. 1988, Ch. 9, Sec. 1.)

14130. (a) The Legislature hereby finds and declares all of the following:

(1) There is a compelling public interest in ensuring that all federal, state, local, and private funds available for the state highway program are captured and used in a timely manner.

(2) In order to maximize the use of federal, state, local, and private funds and to maintain a competitive posture in seeking supplemental federal funds, California must have a highway construction plan in place.

(3) Changes in federal, state, and local revenues and the growing private participation in state highway construction can result in significant fluctuations in workload relating to project study reports, project development, surveying, and construction inspection. To maintain a more stable workforce in the department and avoid the costly process of short-time hiring and layoff while still responding in a timely manner to funding opportunities and uncertainties, additional flexibility through outside contracting and cooperative agreements with local public agencies is needed to supplement the department's program staff.

(b) Therefore, it is the intent of the Legislature that the department contract for the services of engineers, architects, surveyors, planners, environmental specialists, and materials testing specialists, in order to provide professional and technical project development services to the department whenever the department is inadequately staffed to satisfactorily carry out its program of project study reports, project development, surveying, and construction inspection in a timely and effective manner. It is the further intent of the Legislature to permit, through cooperative agreements with the department, local public agencies to undertake that program of activities on state highway projects for which they are a funding source.

(c) This section shall become operative on January 1, 1998.

(Repealed (in Sec. 2) and added by Stats. 1993, Ch. 433, Sec. 3. Effective September 24, 1993. Section operative January 1, 1998, by its own provisions.)

14131. The department may contract for the services of engineers, architects, surveyors, planners, environmental specialists, and materials testing specialists to provide professional and technical services relating to project study reports, project development, surveying, and construction inspection whenever the director determines that the guidelines adopted pursuant to Section 14134 are applicable. Services contracted for shall not cause the displacement of any permanent, temporary, or part-time employee of the department.

For purposes of this section, "displacement" means layoff, demotion, involuntary transfer to a new class, or involuntary transfer to a new work location requiring the employee to change his or her place of residence in order to be able to continue in his or her job classification.

(Amended by Stats. 1991, Ch. 313, Sec. 2. Effective August 2, 1991.)

14131.1. The department, in applying the criteria for contracting for services established pursuant to this article, shall consider the workload relating to project study reports, project development, surveying, and construction inspection based on the total program relating to those factors for each fiscal year. In determining the appropriateness of contracting, the provisions of this article and the

guidelines adopted pursuant to this article may be applied to the total program relating to project study reports, project development, surveying, and construction inspection for the fiscal year. Application of the provisions of this article and the guidelines to each individual contract for services is not required.

Once the department applies the provisions of this article and the guidelines to the total project development program for the fiscal year and determines the total personnel years allocated for contracting out for the fiscal year, there shall be no further requirement to identify or refer to specific facts or guidelines which justify contracting out regarding individual contracts.

(Added by Stats. 1991, Ch. 313, Sec. 3. Effective August 2, 1991.)

14131.2. (a) Solely for the purpose of validating the selection of consultants completed prior to July 1, 1990, the Legislature hereby declares that the process of evaluating and selecting consultants for that list of projects specifically identified in the selection process undertaken during the period between June 13, 1989, and June 30, 1990, in support of the Riverside County Transportation Improvement Plan, as specified in Measure A on the November 8, 1988, ballot for Riverside County, is consistent with the requirements of this article, and the resultant numerically ranked list of consultants shall serve as the basis of negotiation and award of contracts by the department until September 19, 1992.

(b) The method of selecting consultants authorized by subdivision (a), and the resultant list, may be utilized until December 31, 1995, if (1) the process for prequalifying consultants is reopened to allow additional consultants the opportunity to qualify for inclusion in the list and (2), the prequalifying process is conducted at least annually.

(Amended by Stats. 1993, Ch. 136, Sec. 1. Effective January 1, 1994.)

14132. (a) In addition to the requirements set forth in this section, in the department's contracting out for the services of engineers, architects, surveyors, planners, environmental specialists, and material specialists, the department shall comply with the criteria governing the state's participation goals for minority, women, and disabled veteran owned firms as specified in Article 1.5 (commencing with Section 10115) of Chapter 1 of Part 2 of Division 2 of the Public Contract Code. These goals shall apply to the overall dollar amount expended each year by the department pursuant to this article.

(b) The department shall develop a list of qualified minority, women, and disabled veteran business enterprises that have been certified as a minority, women, or disabled veteran business enterprise, and that are interested in performing engineering, architectural, environmental, landscape architectural, or land surveying services under contract with the department, utilizing existing resources such as the Office of Small and Minority Business, the Minority Business Development Agency, and the Small Business Administration. Notice of the development of the list and request for statements of interest shall be published in professional publications at least 60 days prior to the deadline for submittal of statements of interest. The qualifications required for minority business enterprises and women business enterprises shall be the same as those required for any other firm or individual contracting with the department for the purposes of this article.

(c) Any minority, women, or disabled veteran business enterprise not initially included on the list of interested firms may file statements of interest at any time, and the department shall evaluate the statements and notify the minority or women or disabled veteran business enterprise of their eligibility for placement on the list within 60 days of the request. Any minority, women, or disabled veteran business enterprise that is eligible to be counted toward the department's participation goals and that meets the standard requirements shall be added to the list of interested firms immediately.

(Amended by Stats. 1993, Ch. 433, Sec. 7. Effective September 24, 1993.)

14133. (a) Contracts made pursuant to this article are not subject to Article 4 (commencing with Section 19130) of Chapter 6 of Part 2 of Division 5.

(b) Contracts for engineering, architectural, landscape architectural, environmental, or land surveying services that the department elects to advertise and award in accordance with Section 14132.1 are not subject to Chapter 10 (commencing with Section 4525) of Division 5 of Title 1. All other contracts for engineering, architectural, environmental, landscape architectural, or land surveying services made pursuant to this article are subject to Chapter 10 (commencing with Section 4525) of Division 5 of Title 1. Notwithstanding Section 10295 of the Public Contract Code, the determination as to whether the guidelines for contracting adopted pursuant to Section 14134 have been met shall be the sole responsibility of the Director of Transportation. The Department of General Services shall have 30 working days upon receipt of a contract under this article in which to act on the contract, except in cases where further clarification is required by the department to execute the contract.

(Amended by Stats. 1992, Ch. 1086, Sec. 3. Effective January 1, 1993.)

14134. (a) The department, after consultation with the commission and local transportation agencies, shall adopt guidelines for determining the appropriateness of contracting with private firms or on projects developed cooperatively with local jurisdictions. The guidelines shall include, but not be limited to, consideration of the following:

- (1) Ensuring that all available federal, state, and local funds, including supplemental federal funds, are captured and used in a timely manner.

(2) Reducing short-term fluctuations in the department's workload relating to project study reports, project development, surveying, and construction inspection while still enabling the department to be plan-ready.

(3) Facilitating the expeditious use of locally raised funds for state highway projects, recognizing that, in this instance, local governments are partners in state highway construction and that locally financed projects should not be unnecessarily delayed.

(4) Ensuring that the cost effectiveness of contracting is considered equally with other factors when a determination of the appropriateness of contracting is made.

(5) Ensuring that contract selection is performed in accordance with applicable state laws regarding the selection of professional architectural, engineering, environmental, or land surveying services, and to ensure the selection process avoids or prohibits unlawful or unfair procedures or activities.

(b) These guidelines shall serve as general criteria for the determination of the appropriateness of contracting for services relating to project study reports, project development, surveying, and construction inspection and shall not be deemed to require the department to contract for specific projects solely because they may meet these criteria.

(c) The department may contract with local jurisdictions, rather than with private firms, for professional and technical services relating to project study reports, project development, surveying, and construction inspection. In such a case, the services shall be only for a project located within the area of the local jurisdiction.

(Amended by Stats. 1991, Ch. 313, Sec. 4. Effective August 2, 1991.)

14135. Each contract for engineering, architectural, or landscape architectural services entered into pursuant to this article and any construction contract resulting therefrom is subject to all of the following conditions:

(a) The engineering, architectural, or landscape architectural firm providing design services for a project is not eligible to bid on or to be awarded the construction contract for that project.

(b) The department shall provide a regular civil service employee as the resident engineer on any construction contract that results from project design services performed by engineers, architects, or landscape architects selected pursuant to this article.

(c) All contract plans and changes to plans prepared by an engineer, architect, or landscape architect selected pursuant to this article shall be subject to review and approval by a licensed engineer, architect, or landscape architect of the department.

(Amended by Stats. 1991, Ch. 314, Sec. 6.)

14136. (a) The department shall encourage mentor-protege agreements between prime contractors and subcontractors whereby protege firms may receive appropriate developmental assistance from the mentor firm to enhance protege firms' capabilities to perform as subcontractors and suppliers.

(b) In encouraging establishment of mentor-protege relationships, the department may consider offering incentives to prime contractors including, but not limited to, a credit against participation goals required by Article 1.5 (commencing with Section 10115) of Chapter 1 of Part 2 of Division 2 of the Public Contract Code.

(c) This section shall be known and may be cited as the Polanco Mentor-Protege Program of 1993.

(Added by Stats. 1993, Ch. 433, Sec. 8. Effective September 24, 1993.)