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HEALTH AND SAFETY CODE - HSC

DIVISION 45. HAZARDOUS SUBSTANCE RESPONSE [78000 - 81050] (*Division 45 added by Stats. 2022, Ch. 257, Sec. 2.)*

PART 2. HAZARDOUS SUBSTANCE ACCOUNT [78000 - 81050] (*Part 2 added by Stats. 2022, Ch. 257, Sec. 2.)*

CHAPTER 3. General Powers and Duties [78400 - 78620] (*Chapter 3 added by Stats. 2022, Ch. 257, Sec. 2.)*

ARTICLE 10. Contracting [78590 - 78620] (*Article 10 added by Stats. 2022, Ch. 257, Sec. 2.)*

78590. For purposes of this article, the following definitions shall apply:

- (a) "Firm" means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the profession of engineering, architecture, environmental, landscape architecture, construction project management, or land surveying.
- (b) "Prequalified list" means a short list of professional service firms that possess the qualifications established by the department to perform a specific type of professional service, with each firm ranked in order of its qualifications and costs, pursuant to subdivision (c) of Section 78600.
- (c) "Professional service" includes a professional service of an engineering, architectural, environmental, landscape architectural, construction project management, land surveying, or similar nature, as well as an incidental service that members of these professions and those in their employ may logically or justifiably perform.

(*Added by Stats. 2022, Ch. 257, Sec. 2. (AB 2293) Effective January 1, 2023. Operative January 1, 2024, pursuant to Sec. 4 of Stats. 2022, Ch. 257.*)

78595. Notwithstanding Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code, the department may advertise and award a contract, in accordance with this article, for a professional service pursuant to this part or Chapter 6.5 (commencing with Section 25100) of Division 20, if the contract is individually in an amount equal to, or less than, one million dollars (\$1,000,000).

(*Added by Stats. 2022, Ch. 257, Sec. 2. (AB 2293) Effective January 1, 2023. Operative January 1, 2024, pursuant to Sec. 4 of Stats. 2022, Ch. 257.*)

78600. The department may establish prequalified lists of professional service firms in accordance with the following process:

- (a) For each type of professional service work for which the department elects to use this article for advertising and awarding contracts, the department may request annual statements of qualifications from interested firms. The request for statements of qualifications shall be announced statewide through the California State Contracts Register and publications, internet websites, or electronic bulletin boards of respective professional societies that are intended, designed, and maintained by the professional societies to communicate with their memberships. Each announcement shall describe the general scope of services to be provided within each generic project category for a professional service that the department anticipates may be awarded during the period covered by the announcement.
- (b) The department shall define a generic project category so that each specific project to be awarded within that generic project category is substantially similar to all other projects within that generic project category, may be within the same size range and geographical area, and requires substantially similar skills and magnitude of professional effort as every other project within that generic project category. The generic categories shall provide a basis for evaluating and establishing the type, quality, and costs, including hourly rates for personnel and field activities and equipment, of the services that would be provided by the firm.
- (c) The department shall evaluate the statements of qualifications received pursuant to subdivision (a) and the department shall develop a short list of the most qualified firms that meet the criteria established and published by the department. The department shall hold discussions regarding each firm's qualifications with all firms listed on the short list. The department shall then rank the firms listed on the short list according to each firm's qualifications and the evaluation criteria established and published by the department.

(d) The department shall maintain prequalified lists of professional service firms on an ongoing basis, except that no firm may remain on a list developed pursuant to subdivision (c) based on a single qualification statement for more than three years. The department shall include in each prequalified list no less than three firms, unless the department certifies that the scope of the prequalified list is appropriate for the department's needs, taking into account the nature of the work, that the department made reasonable efforts to solicit qualification statements from qualified firms, and that the efforts were unsuccessful in producing three firms that met the established criteria. A firm may remain on the prequalified list up to three years without resubmitting a qualification statement, but the department may add additional firms to that list and may annually rank these firms. For purposes of annual adjustment to the ranking of firms already on the prequalified list, the department shall rely on that firm's most recent annual qualification statement, if the statement is not more than three years old.

(Added by Stats. 2022, Ch. 257, Sec. 2. (AB 2293) Effective January 1, 2023. Operative January 1, 2024, pursuant to Sec. 4 of Stats. 2022, Ch. 257.)

78605. (a) During the term of the prequalified list, as specific projects are identified by the department as being eligible for contracting under the procedures adopted pursuant to Section 78610, the department shall contact the highest ranked firm on the appropriate prequalified list to determine if that firm has sufficient staff and is available for performance of the project. If the highest ranked firm is not available, the department shall continue to contact firms on the prequalified list in order of rank until a firm that is available is identified.

(b) The department may enter into a contract for the services with a firm identified pursuant to subdivision (a), if the contract is for a total price that the department determines is fair and reasonable to the department and otherwise conforms to all matters and terms previously identified and established upon participation in the prequalified list.

(c) (1) If the department is unable to negotiate a satisfactory contract with a firm identified pursuant to subdivision (b), the department shall terminate the negotiations with that firm and the department shall undertake negotiations with the next ranked firm that is available for performance. If a satisfactory contract cannot be negotiated with the second identified firm, the department shall terminate these negotiations and the department shall continue the negotiation process with the remaining qualified firms, in order of their ranking, until the department negotiates a satisfactory contract.

(2) The department may award a contract to a firm on a prequalified list that is to be executed, including amendments, for a term that extends beyond the expiration date of that firm's tenure on the prequalified list.

(3) If the department is unable to negotiate a satisfactory contract with a firm on two separate occasions, the department may remove that firm from the prequalified list.

(d) Once a satisfactory contract is negotiated and awarded to a firm from any prequalified list for a generic project category involving a site or facility investigation or characterization, a feasibility study, or a remedial design, for a specific response action or corrective action, including, but not limited to, a corrective action carried out pursuant to Section 25200.10, the department shall not enter into a contract with that firm for purposes of construction or implementation of any part of that same response action or corrective action.

(Added by Stats. 2022, Ch. 257, Sec. 2. (AB 2293) Effective January 1, 2023. Operative January 1, 2024, pursuant to Sec. 4 of Stats. 2022, Ch. 257.)

78610. The department may adopt guidelines or regulations as necessary and consistent with this article, to define the manner of advertising, generic project categories, type, quantity and cost of services, qualification standards and evaluation criteria, content and submittal requirements for statements of qualification, procedures for ranking of firms and administration of the prequalified list, the scope of matters addressed by participation on a prequalified list, manner of notification of, negotiation with, and awarding of contracts to, prequalified firms, and procedures for protesting the award of contracts under this article, or any other matter that is appropriate for implementation of this article.

(Added by Stats. 2022, Ch. 257, Sec. 2. (AB 2293) Effective January 1, 2023. Operative January 1, 2024, pursuant to Sec. 4 of Stats. 2022, Ch. 257.)

78615. Any removal or remedial action taken or contracted by the department pursuant to Section 78870 or 78875 is exempt from this article.

(Added by Stats. 2022, Ch. 257, Sec. 2. (AB 2293) Effective January 1, 2023. Operative January 1, 2024, pursuant to Sec. 4 of Stats. 2022, Ch. 257.)

78620. This article does not exempt any contract from compliance with Article 4 (commencing with Section 19130) of Chapter 5 of Part 2 of Division 5 of Title 2 of the Government Code.

(Added by Stats. 2022, Ch. 257, Sec. 2. (AB 2293) Effective January 1, 2023. Operative January 1, 2024, pursuant to Sec. 4 of Stats. 2022, Ch. 257.)

