



Department of Toxic Substances Control

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**TITLE 22**

**45-DAY PUBLIC NOTICE AND COMMENT PERIOD**

**NOTICE OF REGULATORY ACTIONS**

**ARCHITECTURAL AND ENGINEERING SERVICES REGULATIONS**

**Department Reference Number: R-00-03**

**NOTICE IS HEREBY GIVEN** that the Department of Toxic Substances Control (DTSC) proposes to adopt article 1, chapter 45.5, division 4.5, title 22 of the California Code of Regulations. This chapter establishes the applicable criteria and procedures for DTSC to follow for the procurement of architectural and engineering (A&E) services related to response actions at hazardous substance sites and corrective actions at hazardous waste facilities.

**PUBLIC HEARING AND WRITTEN COMMENT PERIOD**

DTSC will hold a public hearing on the proposed regulations at 10:00 a.m. on August 5, 2002, in the Sierra Hearing Room, 2nd Floor, 1001 "I" Street, Sacramento, California, at which time any person may present statements or arguments orally or in writing, relevant to the proposed regulations. Please submit written comments to the contact person listed at the end of this notice. Written comments received by DTSC prior to 5:00 p.m. on August 5, 2002 will be considered.

Representatives of DTSC will preside at the hearing. Persons who wish to speak are requested to register before the hearing. Pre-hearing registration will be conducted at the location of the hearing from 9:30 a.m. to 10:00 a.m. Registered persons will be heard in the order of their registration. Any other person wishing to speak at the hearing will be afforded the opportunity after the registered persons have been heard.

*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at [www.dtsc.ca.gov](http://www.dtsc.ca.gov).*

## **AUTHORITY AND REFERENCE**

These regulations are being proposed under the authority of the Government Code section 4526 and Health and Safety Code sections 25150 and 25351.5. The proposed regulations would implement, interpret, or make specific Government Code sections 4525, 4526, and 4527; Public Contract Code section 10105; and Health and Safety Code sections 25358.5 and 25358.6.1 relating to contracting for A&E services.

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

DTSC has been using contractors to investigate and conduct remediation activities at hazardous substance release and waste sites (including State orphan sites) for more than 14 years. DTSC historically bid these contracts as “consulting services contracts.” There was a recent joint decision between DTSC and the Department of General Services’ (DGS) Legal Office that these contracts will now be accomplished as A&E service contracts. In order for DTSC to engage the professional services of a private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firm, existing law (Gov. Code, sec. 4526) obligates a State agency to adopt regulations.

The proposed regulations would establish the applicable criteria and procedures for procurement, by DTSC, of A&E services related to response actions at hazardous substance sites and corrective actions at hazardous waste facilities. These regulations set forth the process for contracting site-specific A&E services. The process applies to projects that require A&E services in excess of \$1 million and requires the Director to advertise the proposed contract in the *State Contracts Register* or through electronic media maintained by appropriate professional and trade organizations.

The regulations authorize the Director to establish selection and ranking criteria based on a number of factors, including ability and reliability. The regulations also set out the additional steps in the contracting process, which include establishing a cost estimate for the work and the negotiation process. Exemptions from the process are provided for emergencies. The regulations also specify the amendment process and variations, including awarding contracts in phases to use the most qualified firms for different portions of the work.

## **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE**

The proposed regulations establish administrative procedures for the A&E contractor selection process and will not affect the quality, quantity, location, or

prioritization of any cleanup work. Therefore, DTSC has determined that the proposed regulations are covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment, pursuant to the California Code of Regulations, title 14, section 15061, subsection (b)(3). A draft Notice of Exemption is available for review with the rulemaking file and will be filed with the State Clearinghouse when the regulations are adopted.

## **PEER REVIEW**

Under the provisions of Health and Safety Code section 57004, peer review is not required because the proposed regulations do not establish a regulatory level, standard or other requirement subject to scientific peer review.

## **BUSINESS REPORT**

DTSC has determined that this rulemaking will not require that businesses write a new report, as defined by Government Code section 11346.3, subsection (c).

## **FISCAL IMPACT ESTIMATES**

**Mandates on Local Agencies and School Districts:** DTSC has made a preliminary determination that adoption of these regulations will create no new local mandates.

**Estimate of Potential Cost or Savings to Local Agencies Subject to Reimbursement:** DTSC has made a preliminary determination that adoption of these regulations will not impose a local mandate or result in costs subject to reimbursement pursuant to part 7 of division 4, commencing with section 17500, of the Government Code or other nondiscretionary costs or savings to local agencies.

**Cost or Savings to Any State Agency:** DTSC has made a preliminary determination that the proposed regulations will have no impact on State revenue or costs.

**Cost or Savings in Federal Funding to the State:** DTSC has made a preliminary determination that the proposed regulations will have no impact on Federal revenue or costs.

**Effect on Housing Costs:** DTSC has made an initial determination that there will be no impact on housing costs.

**Cost Impacts on Representative Private Persons or Businesses:** The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**Significant Statewide Adverse Economic Impact on Businesses:** DTSC has made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability to compete with businesses in other states.

**Assessment Statement:**

- (A) **Creation or elimination of jobs within California** - DTSC has made a preliminary determination that no jobs will be created or eliminated in California as a result of the proposed regulations.
- (B) **Creation of new businesses or the elimination of existing businesses within California** - DTSC has made a preliminary determination that no businesses will be created or eliminated in California as a result of the proposed regulations.
- (C) **Expansion of businesses currently doing business in California** - DTSC has made a preliminary determination that no businesses in California will be expanded as a result of the proposed regulations.

**Effect on Small Businesses:** DTSC has determined that provisions of this rulemaking may have an effect on small businesses.

**CONSIDERATION OF ALTERNATIVES**

DTSC has determined that no other reasonable alternative has been identified and brought to the attention of DTSC that 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. DTSC invites interested persons to present arguments, with respect to the various options, at the scheduled hearing, or during the written comment period.

**AVAILABILITY OF TEXT OF REGULATIONS AND STATEMENT OF REASONS**

Copies of the Notice, Initial Statement of Reasons, and the text of the proposed regulations are posted to DTSC's Internet site at <http://www.dtsc.ca.gov> or may be obtained from Ms. Joan Ferber of DTSC's Environmental Analysis and Regulations

Section as specified below. The information upon which DTSC relied is also available at the address listed below.

## **POST-HEARING CHANGES**

After the close of the comment period, DTSC may adopt the proposed regulations. If substantial changes are made, the modified text will be made available for comment for at least 15 days prior to adoption. Only persons who request the specific proposed regulations, attend the public hearing, or provide written comments on these specific regulations will be sent a copy of the modified text, if substantive changes are made.

Once regulations have been adopted, DTSC prepares a Final Statement of Reasons which updates the Initial Statement of Reasons, summarizes how DTSC addressed comments and includes other materials, as required by Government Code section 11346.9. Copies of the Final Statement of Reasons may be obtained from Ms. Joan Ferber at the address listed below. A copy of the Final Statement of Reasons will also be posted on DTSC's Internet site at <http://www.dtsc.ca.gov>, along with the date the rulemaking is filed with the Secretary of State and the effective date of the regulations.

## **CONTACT PERSONS**

Inquiries regarding technical aspects of the proposed regulations or CEQA documents may be directed to Kathleen Hartshorne of DTSC as (916) 323-3395 or, if unavailable, Laurie Grouard of DTSC at (916) 323-3394. However, such oral inquiries are not part of the rulemaking record.

Statements, arguments or contentions regarding rulemaking and/or supporting documents must be submitted in writing or may be presented orally or in writing at the public hearing in order for them to be considered by DTSC before it adopts, amends or repeals these regulations. To be included in this regulation package's mailing list, and to receive updates of this rulemaking, please leave a message on the DTSC mailing list phone line at (916) 324-9933 or e-mail: [regs@dtsc.ca.gov](mailto:regs@dtsc.ca.gov).

Please direct all written comments, procedural inquiries and requests for documents by mail, e-mail or fax to:

Ms. Joan Ferber  
Regulations Coordinator  
Environmental Analysis and Regulations Section  
Department of Toxic Substances Control

Mailing Address: P.O. Box 806  
Sacramento, CA 95812-0806

E-mail Address: [regs@dtsc.ca.gov](mailto:regs@dtsc.ca.gov)

Fax Number: (916) 323-3215

Ms. Ferber's phone number is (916) 322-6409. If Ms. Ferber is unavailable, please call Ms. Nicole Sotak at (916) 327-4508 or Mr. James McRitchie at (916) 327-8642.

Dated: \_\_\_\_\_

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James McRitchie, Chief  
James McRitchie, Chief  
Office of Environmental Analysis,  
Regulations and Audits