

TITLE 21. Contractor Debarment

NOTICE OF PROPOSED RULEMAKING

The State of California Department of Transportation (“Department”) proposes to adopt the proposed regulations described below after considering all comments, objections and recommendations regarding the proposed action.

PUBLIC HEARING

The Department has not scheduled a public hearing on this proposed action. However, the Department 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 the Department. The written comment period closes at 5:00 p.m., on April 29, 2005. The Department will consider only comments received at the Department by that time. Submit comments to:

Mr. Thomas C. Fellenz
Department of Transportation
Legal Division
1120 N Street, MS-57
P. O. Box 1438
Sacramento, CA 95812-1438

AUTHORITY AND REFERENCE

Government Code section 14105 authorizes the Department to adopt the proposed regulations, which would implement, interpret, or make specific section 14105 of the Government Code. Authority cited: Section 14105, Government Code.
Reference: Section 1101 Public Contract Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Department proposes to add Chapter 22, and adopt sections 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618 and 2619 in title 21, Division 2 of the California Code of Regulations (CCR). These sections concern the proceedings for the debarment of any contractor or service provider who willfully conceals, alters, misrepresents, or distorts, or attempts to conceal, alter, misrepresent, or distort the findings of any laboratory or subcontractor that provides quality control inspection and testing services to the contractor.

Government Code section 14105 (g) provides that whenever any person, firm, corporation, partnership, or association performing quality control inspection and testing

services on a public work contract, pursuant to section 1101 of the Public Contract Code, and is under the jurisdiction of the Department, is found by the Department to have willfully concealed, altered, misrepresented, or distorted, or attempted to conceal, alter, misrepresent, or distort the findings of any laboratory or subcontractor that provides quality control inspection and testing services to the contractor, the Department shall order for a period of not less than one year and not more than three years that the person or entity refrain from doing any of the following within the Department's jurisdiction:

- (A) Bid on a public work contract.
- (B) Work on a public work contract.
- (C) Be awarded a public work contract.

Government Code section 14105 (g) also states that any determination by the Department to debar a person shall be made after a full investigation by the Department and a fair and impartial hearing with reasonable notice.

Finally, Government Code section 14105 (g) authorizes the Department to promulgate rules and regulations for the administration and enforcement of Government Code section 14105 and to provide for the definition of terms contained therein.

Chapter 22 will set forth the procedure to be followed by the Department for noticing and conducting a debarment hearing.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial disclosures:

Mandate on local agencies and school districts: None.

Cost or savings to any State agency: None.

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

Cost impacts on a representative private person 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.

Adoption of these 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.

Significant effect on housing costs: None.

Small Business Determination

The Department has determined that the proposed regulations do not affect small business since the regulations do not change whether a small business is legally required to comply with the regulation or is legally required to enforce the regulation or derives a benefit from the regulation or incurs a detriment from the enforcement of the regulation.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the agency 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.

The Department 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:

Thomas C. Fellenz, Attorney
State of California Department of Transportation
Legal Division, MS-57
1120 N Street
Sacramento, CA 95814
Telephone: (916) 654-2630

The backup contact person for these inquiries is:
Larry Rouen
State of California Department of Transportation
5900 Folsom Blvd., MS-5
Sacramento, CA 95816
Telephone: (916) 227-5704

Questions on the substance of the proposed regulations may be directed to either Mr. Fellenz or Mr. Rouen.

Please direct requests for copies of the proposed text 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 Mr. Fellenz at the above address.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department 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, and the initial statement of reasons. Copies may be obtained by contacting Tom Fellenz at the address and phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the proposed text, it will make the modified text (available with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Tom Fellenz at the address indicated above. The Department 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 Thomas C. Fellenz 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 assessed through our website at www.dot.ca.gov.