

**STATE OF CALIFORNIA
OFFICE OF ADMINISTRATIVE LAW**

In re:)	
)	
DEPARTMENT OF GENERAL SERVICES)	DECISION OF DISAPPROVAL OF REGULATORY ACTION
)	
REGULATORY ACTION:)	(Gov. Code, sec. 11349.3)
Title 2,)	
California Code of Regulations (CCR))	
ADOPT: 1896, 1896.2, 1896.4, 1896.6, 1896.8, 1896.10, 1896.12, 1896.14, 1896.16, 1896.18, 1896.20, 1896.22)	OAL File No. 04-0130-03 S
REPEAL: 1896, 1896.2, 1896.4, 1896.6, 1896.8, 1896.10, 1896.12, 1896.14, 1896.16, 1896.18, 1896.20)	
_____)	

DECISION SUMMARY

This action amends the existing regulatory framework for small business eligibility and certification for bid preference in state contracting.

On March 16, 2004, the Office of Administrative Law (“OAL”) disapproved the proposed repeal and adoption of sections 1896 – 1896.22, not consecutive, in Title 2, California Code of Regulations (“CCR”) for failing to follow the procedures required by the Administrative Procedure Act (“APA”).

DISCUSSION

Regulations adopted by the Department of General Services (“Department”) must be adopted pursuant to the APA. See Government Code section 14843. Any regulatory act a state agency adopts through the exercise of quasi-legislative power delegated to the agency by statute is subject to the APA unless a statute expressly exempts or excludes the act from the requirements of the APA. (Gov. Code section 11346.) No exemption or exclusion applies to the regulatory action here under review. Thus, before the instant regulatory action may become effective, OAL must review it for compliance with both the procedural requirements of the APA and certain substantive standards.

A. PROCEDURE

The Department's rulemaking file fails to comply with the requirements of Government Code sections 11346.5(a)(6) and 11347.3(b)(5) and the State Administrative Manual section 6680 because it fails to contain a completed STD. 399 Economic and Fiscal Impact Statement. Government Code sections 11346.5(a)(6) and 11347.3(b)(5) read together mandate that each completed rulemaking file submitted for OAL review contain:

“An estimate, prepared in accordance with instructions adopted by the Department of Finance, of the cost or savings to any state agency, the cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4, other nondiscretionary cost or savings imposed on local agencies, and the cost or savings in federal funding to the state.”

The “instructions adopted by the Department of Finance” referred to in the above quotation from Government Code section 11346.5(a)(6) governing preparation of the fiscal impact estimate are contained in the State Administrative Manual, section 6601 et seq. State Administrative Manual section 6680 mandates that each STD. 399 Economic and Fiscal Impact Statement have parent agency sign off on the form:

“State agencies must include a completed STD. 399 form with each proposed regulation that is submitted to the OAL for publication in the California Regulatory Notice Register. The STD. 399 form must be approved and signed by the Agency Secretary.” [Emphasis added].

The State and Consumer Services Agency is the parent agency for the Department of General Services. The Department's STD. 399 form included in this rulemaking file does not contain a signature of approval from the State and Consumer Services Agency. As a consequence, the incomplete STD. 399 form submitted in this rulemaking violates the above APA procedural requirements.

CONCLUSION

For the reasons set forth above, OAL has disapproved the repeal and adoption of the above-cited sections of Title 2 of the CCR. If you have any questions, please contact me at (916) 323-8916.

Date: March 18, 2004

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For:

DEBRA M. CORNEZ
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