

1 Amend 2 Cal. Code Regs., Section 18438.2 to read:

2 **§ 18438.2. Proceedings Under Government Code Section 84308.**

3 ~~(a)~~ A “proceeding involving a license, permit or other entitlement for use” means any
4 proceeding to grant, deny, revoke, restrict, or modify a license, permit or other entitlement for
5 use, as defined by Section 84308(a)(5)(A), that does not solely involve purely ministerial
6 decisions and is:

7 ~~(1)~~ (a) Applied for by the party;

8 ~~(2)~~ (b) Formally or informally requested by the party; ~~or~~

9 (c) An action, initiated by a state or local agency, that implicates or targets a party, or
10 limited number of parties; or

11 ~~(3)~~ (d) A contract between the agency and the party or a franchise granted by the agency
12 to the party, other than a contract that is ~~competitively bid, a labor contract, or a personal~~
13 ~~employment contract~~ exempted under Section 84308(a)(5)(B). For purposes of ~~this provision~~
14 Section 84308(a)(5)(B):

15 ~~(A) “Competitively bid contract” means a contract required by law to be awarded to the~~
16 ~~lowest responsible bidder with a responsive bid, or, if the successful bidder refuses or fails to~~
17 ~~execute the contract, to the next lowest bidder with a responsive bid. “Responsible bidder”~~
18 ~~means a bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness,~~
19 ~~capacity, and experience to satisfactorily perform the contract. “Responsive bid” means a bid~~
20 ~~that indicates compliance without material deviation from the requirements of the solicitation~~
21 ~~and the terms and conditions of the proposed contract.~~

22 ~~(B)~~(1) A “labor contract” is a contract or agreement reached through collective
23 bargaining or with a representative group regarding the salary, benefits, or terms and conditions

1 under an employment or retirement policy for employees or retirees, including a project labor
2 agreement entered under Public Contract Code Section 2500.

3 ~~(C)(2)~~ A “personal employment contract” is a contract for employment, including the
4 terms and conditions of employment, between the agency and an agency employee.

5 ~~(D) Except as provided in subdivision (a)(3)(A), a contract between the agency and an~~
6 ~~independent contractor is neither a labor agreement nor personal employment contract.~~

7 ~~(b) “Pending.” A proceeding involving a license, permit, or other entitlement for use has~~
8 ~~commenced and is considered pending only under the following circumstances:~~

9 ~~(1) For an officer, a proceeding involving a license, permit, or other entitlement for use is~~
10 ~~pending when:~~

11 ~~(A) The decision is before the officer for the officer's consideration. If the officer is a~~
12 ~~member of a governing body, this includes any item placed on the agenda for discussion or~~
13 ~~decision at a public meeting of the body; or~~

14 ~~(B) The officer knows or has reason to know a proceeding involving a license, permit or~~
15 ~~other entitlement for use is before the jurisdiction of the agency for its decision or other action,~~
16 ~~and it is reasonably foreseeable the decision will come before the officer in the officer's decision~~
17 ~~making capacity.~~

18 ~~(2) For a party or party's agent, or a participant or participant's agent, a proceeding~~
19 ~~involving a license, permit or other entitlement for use is pending when it is before the~~
20 ~~jurisdiction of the agency for its decision or other action.~~

21 Note: Authority cited: Section 83112, Government Code. Reference: Section 84308,
22 Government Code.