

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

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

(a) A “proceeding involving a license, permit or other entitlement for use” means any proceeding to grant, deny, revoke, restrict, or modify a license, permit or other entitlement for use, that does not solely involve purely ministerial decisions and is:

(1) Applied for by the party;

(2) Formally or informally requested by the party; or

(3) A contract between the agency and the party or a franchise granted by the agency to the party, other than a contract that is competitively bid, a labor contract, or a personal employment contract. For purposes of this provision:

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

(B) A “labor contract” is a contract or agreement reached through collective bargaining or with a representative group regarding the salary, benefits, or terms and conditions under an employment or retirement policy for employees or retirees, including a project labor agreement entered under Public Contract Code Section 2500.

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

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

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

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

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

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

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

### **Credits**

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 84308, Government Code.

### **HISTORY**

1. New section filed 1-26-83; effective thirtieth day thereafter (Register 83, No. 5).

2. Amendment filed 11-10-83; effective thirtieth day thereafter (Register 83, No. 46).
3. Amendment filed 2-22-85; effective thirtieth day thereafter (Register 85, N. 8).
4. Amendment filed 7-13-2023; operative 8-12-2023 pursuant to Cal. Code Regs., tit. 2, section 18312(e). Submitted to OAL for filing and printing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2023, No. 28).