Statutes

The Federal and State laws For Procurement of Design Professionals Services in California
The Brooks Act

Federal QBS Statutes

- Enacted October 27, 1972 (The Brooks Act (Public Law 92-582, 40 U.S.C. 541 et seq.))
- Requirement to receive federal funding
- Sec. 902 ... “policy of the Federal Government to publicly announce all requirements for architectural and engineering services, and to negotiate contracts for architectural and engineering services on the basis of demonstrated competence, qualification, experience for the type of professional services required.”
The Brooks Act
Federal QBS Statutes

Brooks Act requires 7 steps involved in pursuing A&E services:

- Public solicitation for architectural and engineering services
- Submission of an annual statement of qualifications and supplemental statements of ability to design specific projects for which public announcements were made
- Evaluation of both the annual and project-specific statements
- Development of a shortlist of at least three submitting firms in order to conduct interview with them
- Interviews with the firms
- Ranking of at least three of the most qualified firms (not based on price)
- Negotiation with the top ranked firm (price can be discussed at this stage).
Most States Follow Federal Brooks Act

- Government Code 4526: “Notwithstanding any other provision of law, selection by a state or local agency head for professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required.”

- Applies to all State and local agencies
  - State and Local Agencies can adopt ordinances and procedure to ensure QBS process is followed
The Little Brooks Act
California QBS Statutes
Government Code 4526 - 4529

- Selection must be based on qualifications and demonstrated competence (price cannot be a factor)
- Step-by-step process mandated in statute
- State agencies must follow process that detailed in section 4527
All local agencies, including charter cities
  - No exceptions

California statutes allow local agencies flexibility to choose the steps they follow to comply with QBS or to follow the State procedure—but cost/price components cannot be a factor until after selection.

Selection Criteria:
  - “…shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project.”
  - Consideration of costs/price is not authorized
Section 4527(a) authorizes discussions with no less than three firms regarding

Discussion can include:
  - Anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services

Local Agencies then shall select therefrom, in order of preference, based upon criteria established and published by the agency, no less than three of the firms deemed to be the most highly qualified to provide the services required.
Section 4528(a) authorizes State or Local entities to select the best qualified firm as follows:

(1) ... [a]t compensation which the agency head determines is fair and reasonable to the agency.

(2) If the agency is unable to ... “negotiate a satisfactory contract with the firm considered to be the most qualified, at a price the agency head determines to be fair and reasonable ... Negotiations with that firm shall be formally terminated.”

(3) “The agency head shall then undertake negotiations with the second most qualified firm.”
1) **Proposition 35 (2000) overruled QBS process**

- Upheld in *Professional Engineers in California Government v. Kempton* decision
  - held that Proposition 35 did not impliedly repeal the QBS statutes, which remained in full force and effect
  - Proposition 35 implicitly repealed prior statutes regulating private contracting, but did not invalidate the prior procedure (“QBS”) for selecting private architect and engineering services.
2) Charter Cities do not have to follow QBS process

- California Legislative Counsel opinions confirm that local agencies are granted flexibility in the minor and technical specifics of their procurement processes, as long as they adhere to the greater QBS structure.

- Legislative Counsel analyzed code language and related court cases. They advise that all local governments, including charter cities, must comply with the Little Brooks Act.
Hot Topics

- Use of “Sealed Envelope Process” for cost/price
  - This is permitted -- sealed envelope can only be opened for the most qualified firm
  - Process by agency must ensure that price is not a component of selection

- Agencies position:
  - Are the public steward of the public funds – natural to want to seek lowest price.
  - Purpose of Brooks Act: secure services on . . . “the basis of demonstrated competence, qualification, experience, and knowledge for the type of professional services.”
Hot Topics

- On Call Services Contract:
  - This is permitted under the CA QBS
  - However, agencies often qualify multiple firms and then shop for the best price when issuing a purchase order/directive to proceed.

- Key consideration: Design Professionals Services are procured to protect the health and safety of the public
  - If price becomes a component compromises health and safety aspect
Potential Agency Risks

- Potential Risks:
  - Loss of Federal Funding
    - Ca Gov’t Code 4529.16 requires that the selection process be applied in a manner that will not result in a loss of federal funding to any government agency.
  - If QBS process is not followed – potential bid protest

Note: Purpose of the QBS process is to protect the health and safety of the public.
City of San Diego
Engineering and Architectural Professional Services
Qualification Base Selection

Rania Amen, P.E.
Director and City Engineer
CIP OVERVIEW

The City’s CIP is a multi-year forecast of capital needs, including new construction projects and planned infrastructure improvements.

- Annual demand for CIP execution continues to trend in the $1 billion range.
- Approximately 1200 active CIP projects.
- CIP expenditures for Fiscal Year 2024 are anticipated to be approximately $900 million at the Fiscal Year End.

<table>
<thead>
<tr>
<th>Multi Year CIP</th>
<th>Prior Year for Existing CIP Projects</th>
<th>FY 2024 Adopted Budget</th>
<th>Future Years for Existing CIP Projects</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Projected</td>
<td>$ 5,834,213,631</td>
<td>$ 704,115,321</td>
<td>$ 13,364,638,199</td>
<td>$ 19,902,967,151</td>
</tr>
</tbody>
</table>
CAPITAL IMPROVEMENTS PROGRAM

FY24 ANNUAL BUDGET
GOALS & OBJECTIVES

FY 2024 Budget
• Budgeted Full-Time Employees (FTEs): 800
• Operating Fund: $141.6M
• Capital Improvements Program:
  • Carry forward from the Prior Year $2.56B
  • Budgeted $871M (including grants, bonds donations, etc.)

Goals and Objectives

1) Provide Quality, safe, reliable, and equitable infrastructure
2) Provide timely and efficient delivery of projects
3) Effect change and promote innovation
4) Increase departmental effectiveness and resiliency and expand individual employee expertise
Types of Projects

- Water, Sewer, and Storm Water Pipeline Repair/Replacement
- Road Resurfacing & Sidewalk
- Pump Station & Treatment Plant Repairs/Expansions
- Bridge Repairs/Retrofits
- Park Improvements
- Water Quality Improvements
- Structures: Libraries, Fire Stations, Comfort Stations, Lifeguard Towers, Police Stations

111 Projects and $635 Million in Construction Contracts are to be awarded this year.
Contracting Opportunities: Contracting Methods

1. **Consultant (QBS)**
   - As-needed Consultant Services
   - Stand Alone/Project Specific

2. **Contractor**
   - Design-Bid-Build (DBB)
   - Job Order Contracting (JOC)
   - Emergency Contractor Rotation List
   - CM@Risk

3. **Contractor/Consultant**
   - Design-Build (DB)
   - Multiple Award Construction Contracting (MACC)
   - Progressive Design-Build*
Contracting Opportunities: Consultant (A&E)

Need
• Specialty Services
• Augmentation of City Staff

Typical Services Contracted Out
• Design: Civil, Mechanical, Electrical, Architectural, Traffic, Geotechnical
• Environmental
• Construction Management
• Surveying

Contract Volume
• FY2023: 43 Contracts for $201M
• FY2022: 26 Contracts for $49M
• FY2021: 32 Contracts for $63M
• FY2020: 32 Contracts for $82M
• FY2019: 24 Contracts for $224M
Governing Regulations

- City Charter
- San Diego Municipal Code
- Council Policy
- Administrative Regulations (A.R.)
- California Public Contract Code (PCC)
- California Government Code
- Code of Federal Regulations*

* Only when required (Federal Contracts)
## A&E Contracting Methods

<table>
<thead>
<tr>
<th>Contract Type</th>
<th>Competition Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small Contract (≤ $25k)</td>
<td>• No Competition</td>
</tr>
</tbody>
</table>
| Request for Proposal (RFP) (QBS) | • Limited Competition  
  . $25K-$250K ELBE proposers only  
  . $250K to $500k SLBE/ELBE proposers only  
  • Full Competition  
  . Any contract value above $500k |
| Sole Source               | • No Competition                                       |
Authority to contract for A&E services is governed by:
- San Diego Council Policy 300-07 and
- San Diego Municipal Code Article 2 Division 32.

### A&E Contracting Authorities & Processes

**Scope determination**
- RFP Advertisement
  - Minimum 30 days
  - (45 days for Federal funds)
- Proposal Evaluation
- Consultant Selection
- Negotiations
- Contract Award

6 to 9 months

**San Diego Municipal Code**

Article 2: Administrative Code

Division 32: Contracts for Goods, Services, and Consultants

(“Contracts for Personal Services, Goods, and Consultants” added 6-29-1998 by O-18332 N.S.)
(Retitled to “Contracts for Services, Goods, and Consultants” on 6-27-2012 by O-20148 N.S.)

§22.3202 Competitive Process for Consultant Contracts

Except as otherwise provided in section 22.3208:

(a) For consultant contracts estimated to be $25,000 or more, notice of requests for qualifications and proposals shall be published in a newspaper or posted on the City’s website, or a website of a firm hired by the City to post such notices.

(b) The selection of private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required.

(1) The Purchasing Agent shall negotiate the cost of the consultant contract with the most qualified firm, for a price determined to be fair and reasonable to the City.

(2) If the Purchasing Agent is unable to reach agreement with the most qualified firm on the cost of the consultant contract, the Purchasing Agent shall reject the proposal of the most qualified firm and may begin negotiations with the next most qualified firm.

(3) This negotiation process may continue until an agreement is reached with a qualified firm, or until all proposal are rejected pursuant to this section or section 22.3015.
Request for Proposal (RFP)

This process requests a proposal from qualified A&E Consultants highlighting capabilities & expertise only.
- Open competition
- Contracts at any value and for project-specific or As-Needed services.

Key Details:
- Detailed Scope of Services and Deliverables are key!
- The Evaluation Panel must commit to scoring proposals and interviews when applicable.
- Selection is determined by qualifications only.
- Short list, if applicable.
- If pricing is included in a proposal, it will be deemed non-responsive.
**Selection Criteria**

- Selection Criteria Customized per Scope
- Evaluation Points: Customized per Scope
- SLBE/ELBE Points*: Predetermined per P&C

*EOCP mandatory goals as of Jan 2023

<table>
<thead>
<tr>
<th>EVALUATION CRITERIA</th>
<th>MAXIMUM EVALUATION POINTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Specialized experience and technical competence of the firm.</td>
<td>35</td>
</tr>
<tr>
<td>2. Proposed method to accomplish the work</td>
<td>25</td>
</tr>
<tr>
<td>3. Strength of key personnel and commitment to the project</td>
<td>25</td>
</tr>
<tr>
<td>4. Knowledge and understanding of the local environment</td>
<td>15</td>
</tr>
<tr>
<td>5. SLBE/ELBE participation (EOCP)</td>
<td>12</td>
</tr>
</tbody>
</table>

**TOTAL MAXIMUM EVALUATION POINTS:** 112
Contract Negotiations

• Negotiation with the highest qualified firm

  Effective use of Time is Crucial

• Negotiation with the second-highest qualified proposer if a satisfactory agreement cannot be reached with the first-ranked proposer.

• Negotiation of fair and reasonable prices

• Comparison of the previous fee schedule and hourly rate and current market conditions.

• Review the level of effort for each deliverable

  Planning, Design, Construction Support, Close Out

• Build contingency for additional services.
A&E Contracting

- E&CP Project Manager coordination with Purchasing & Contracts
- RFPs advertised on PlanetBids
- Industry Outreach Meetings- 6 months lookahead
Thank You
## Contract Requirements: Insurance

### General Requirements

<table>
<thead>
<tr>
<th>Insurance Type</th>
<th>Construction Contract Liability Limits</th>
<th>A&amp;E Professional Consultant Agreement Liability Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial General Liability</td>
<td>$5M per Occurrence $10M per Aggregate</td>
<td>$2M per Occurrence $4M per Aggregate</td>
</tr>
<tr>
<td>Automobile Liability</td>
<td>$1M</td>
<td>$1M</td>
</tr>
<tr>
<td>Worker Compensation</td>
<td>Statute</td>
<td>Statute</td>
</tr>
<tr>
<td>Professional Liability (Errors and Omissions)</td>
<td>$1M per Occurrence $2M per Aggregate</td>
<td>$3M per Occurrence $3M per Aggregate</td>
</tr>
</tbody>
</table>

### Specialty Insurance (when applicable)
- Contractors Pollution Liability
- Hazardous Transporters
- Builder’s Risk
- Railroad Protective Liability
City of Gonzales
Consultant Selection Process

PATRICK DOBBINS, PUBLIC WORKS DIRECTOR/CITY ENGINEER
CITY OF GONZALES
City of Gonzales

1. Located in Salinas Valley, founded in 1874, population of 8,800
2. Full-service city (water, wastewater, roads, drainage, public buildings, and parks)
3. Agriculture processing facilities in business park
4. Major Capital Projects underway
   • Industrial Wastewater System
   • Community Center Complex
Request for Proposal (RFP) Steps

1. Advance Notice
2. Prepare RFP
3. Issue RFP
4. Review submitted proposals
5. Interview short-listed firms
6. Negotiate with top-ranked firm
7. Present agreement for approval at City Council meeting
1. **Advance Notice of RFP**

1. Provide notice of upcoming RFP to consultants
   - Consultants can start doing “homework”
   - Some firms won’t pursue if staff wasn’t aware of RFP prior to issuance
   - Results in better proposals

2. Prepare distribution list
   - Consultants (on-call list or wider distribution?)
   - Lead Services (Deltek, Integrated Marketing Systems)
   - Ask colleagues for referrals for similar projects
On-Call Consultants – Thought I’d start the new year by letting y’all know the RFPs we plan to issue in the next six months:

<table>
<thead>
<tr>
<th>Topic/Title</th>
<th>Funded?</th>
<th>Expected Release of RFP</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Project Management and Design Services for EV Charging Stations</td>
<td>Funded by $1.1M Calif Energy Commission grant with 20% local match</td>
<td>By 1/10/2024</td>
</tr>
<tr>
<td>2 Project Management and Construction Management Services for $30M Industrial Wastewater System Project</td>
<td>Funded with State Revolving Fund loan, Wastewater Enterprise monies, Impact Fees</td>
<td>By 1/19/2024</td>
</tr>
<tr>
<td>3 Prepare exhibits for 2024 Pavement Rehab Project bid document and provide CM/Inspection Services</td>
<td>Various Assessments Districts</td>
<td>By 2/15/2024</td>
</tr>
<tr>
<td>4 Prepare Preliminary and Final Design of SB1 funded roadway rehab project (0 and 100 block of Fourth Street)</td>
<td>SB1 monies</td>
<td>By 1/26/2024</td>
</tr>
<tr>
<td>5 Develop Infrastructure Master Plan for Industrial Business Park including coordinating with UPRR to improve existing railroad crossing for future Business Park development</td>
<td>Enhanced Infrastructure Finance District (EIFD)</td>
<td>By 1/30/2024</td>
</tr>
<tr>
<td>6 Prepare Caltrans PID, PSR, PAAD and PS&amp;E for US101/North Alta Street Interchange</td>
<td>Developer funded</td>
<td>unknown, Maybe Spring 2024</td>
</tr>
<tr>
<td>7 Landscape Architectural Services for Meyer Park (ie, Needs Assessment, Design Services, Support Services during Construction)</td>
<td>unknown as existing Assessment District doesn’t have sufficient funds</td>
<td>unknown</td>
</tr>
<tr>
<td>8 Preliminary and Final Design for new city Well 8</td>
<td>Water rates and Impact Fees</td>
<td>Summer 2024</td>
</tr>
<tr>
<td>9 Update Sphere of Influence Roadway Impact fees</td>
<td>unknown</td>
<td>Summer 2024</td>
</tr>
</tbody>
</table>
2. **Prepare RFP**

1. Describe in detail the project or desired service
2. Scope of work
3. Distribution list
4. Evaluation criteria
5. Estimate of Fee
6. RFP Schedule
7. Agency contract for desired edits for city to consider
8. Background documents
3. Issue RFP

1. Issue Request for Proposal via email
2. Preproposal Meeting
   • Site visit?
3. Respond to consultant questions
4. Prepare for interviews
5. Receive proposal packages
4. Review Submitted Proposals

1. Proposal submittals follow QBS approach
   • Proposal in one envelope
   • Fee estimate, rate schedule and desired edits to city agreement in second sealed envelope
2. Review for “responsiveness”
3. Score based upon review criteria stated in RFP
4. Project Manager and Team’s experience
   • Other team member’s qualifications and experience
4. Review Submitted Proposals

5. Document on a common rating sheet
6. Evaluator meeting upon completing reviews
   • Discuss proposal review comments
   • Rank firms
7. Invite “short-listed” firms to interviews
5. Interview

1. Interview panel of technical staff, stakeholders and others
2. Questions prepared in advance
3. Prior to beginning the interviews, brief the rating panel
4. 25-minute presentations
5. 25-minute questions and responses
6. Score each teams performance
7. Document on a common rating sheet
6. Negotiate with Top Ranked Firm

1. Open “second envelope”
2. Review consultant’s fee estimate
3. Contact references
4. Negotiate for mutual understanding of scope, fee and schedule
5. Move to the next ranked firm if unsuccessful
6. When finalized, prepare staff report for City Council meeting
## Sample RFP Schedule

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Issue Advance Notice</td>
<td>January 3, 2024</td>
</tr>
<tr>
<td>City Issues Request for Proposals</td>
<td>January 30, 2024</td>
</tr>
<tr>
<td>PreProposal Meeting</td>
<td>February 15, 2024 (10:30 AM)</td>
</tr>
<tr>
<td>Proposal Submittal Deadline</td>
<td>February 29, 2024 (3:00 PM)</td>
</tr>
<tr>
<td>City Staff reviews submitted proposals</td>
<td>March 5, 2024</td>
</tr>
<tr>
<td>Interviews</td>
<td>March 19, 2024</td>
</tr>
<tr>
<td>City negotiates scope/fee/schedule with consultant</td>
<td>March 21, 2024</td>
</tr>
<tr>
<td>Approval of Contract at City Council Meeting</td>
<td>April 1, 2024</td>
</tr>
</tbody>
</table>
7. **Post RFP Phase**

1. Fully execute agreement
   - Obtain insurance certificate w/ city officers named as additionally insured
2. Debrief with consultants not selected
3. Advise stakeholders of selected consultant and timeline
4. Review Request for Proposal process and internally discuss any adjustments
Questions