

# 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).

# The Little Brooks Act

California QBS Statutes

Government Code 4526 - 4529



## 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

## Local Agencies



- 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

## Local Agencies



- 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.

## State/Local Agencies



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.”



## Common Misconceptions



### 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.

## Common Misconceptions



### 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.



Multi Year CIP	Prior Year for Existing CIP Projects	FY 2024 Adopted Budget	Future Years for Existing CIP Projects	Total
Projected	\$ 5,834,213,631	\$ 704,115,321	\$ 13,364,638,199	\$ 19,902,967,151

## 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

## Small Contract (≤ \$25k)

- No Competition

## 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

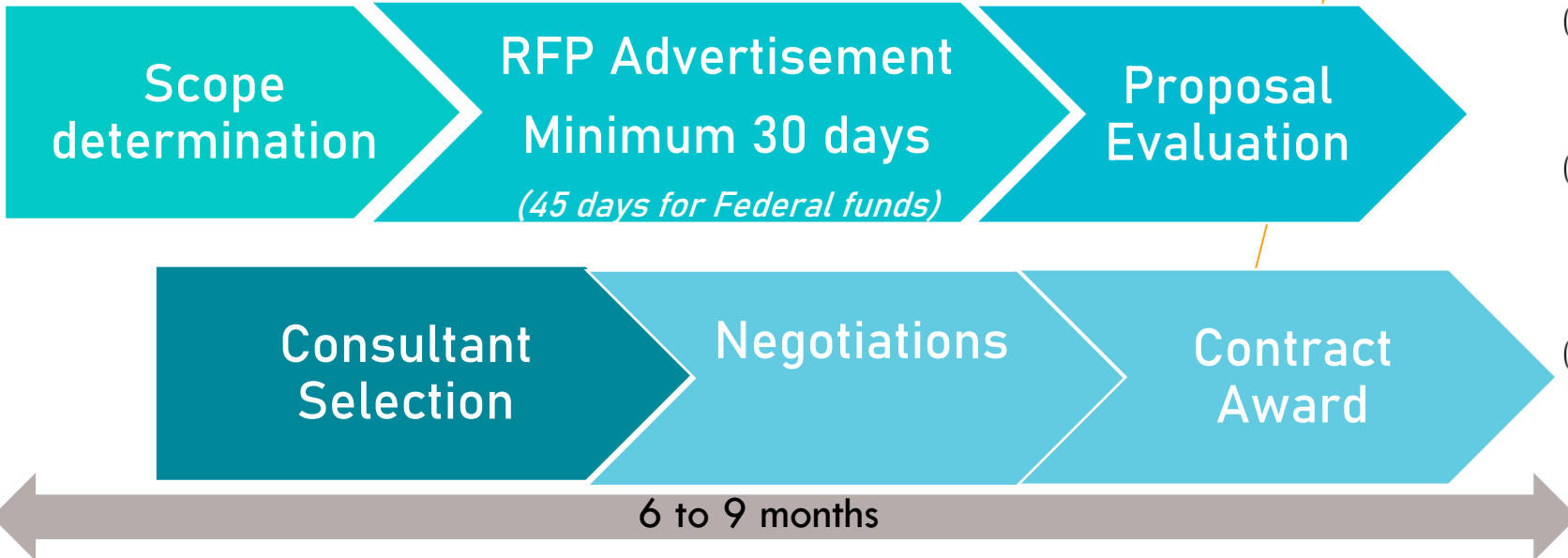
## Sole Source

- No Competition

# A&E Contracting Authorities & Processes

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.



## 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-18532 N.S.)*

*(Retitled to “Contracts for Services, Goods, and Consultants on 4-23-2012 by O-20148 N.S.)*

*(Retitled to “Contracts for Goods, Services, and Consultants” on 1-18-2018 by O-20893 N.S.; effective 2-17-2018.)*

### §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

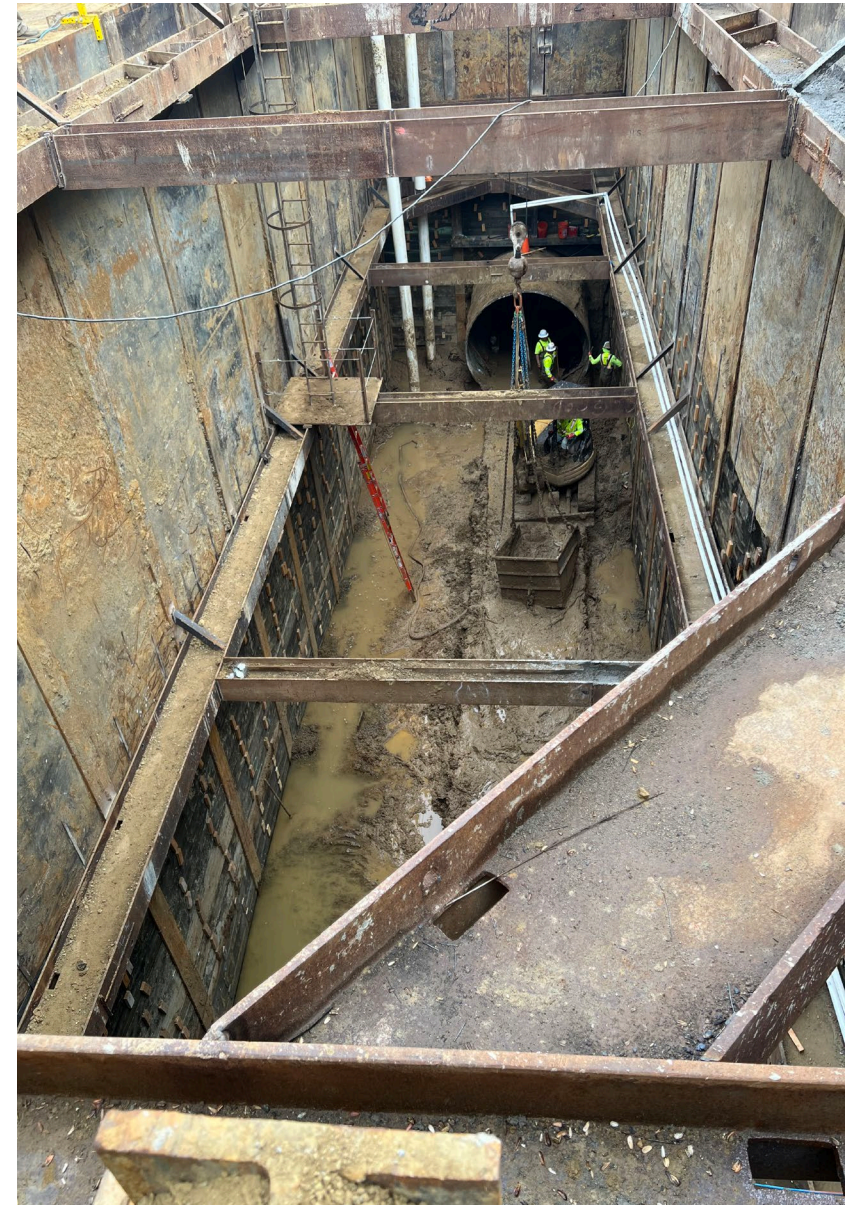
<u>EVALUATION CRITERIA</u>		<u>MAXIMUM EVALUATION POINTS</u>
1.	Specialized experience and technical competence of the firm.	35
2.	Proposed method to accomplish the work	25
3.	Strength of key personnel and commitment to the project	25
4.	Knowledge and understanding of the local environment	15
5.	SLBE/ELBE participation (EOCP)	12
<b>TOTAL MAXIMUM EVALUATION POINTS:</b>		<b>112</b>

*\*EOCP mandatory goals as of Jan 2023*



# 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



## City of San Diego

### Vendor Portal



#### NEW VENDOR REGISTRATION

Create a new vendor record. If you wish to view or edit an existing vendor, simply Log In.



#### BID OPPORTUNITIES

Search and bid electronically on opportunities with this agency, download documents, and become a prospective bidder.



#### MY CONTRACTS

Manage your awarded contracts, record payments, add subcontractors, produce reports and charts.

LOGIN REQUIRED



#### CERTIFIED VENDORS

Find Certified Prequalified Businesses

LOGIN REQUIRED



#### CONTRACTS

View public information regarding agency contracts.

LOGIN REQUIRED



#### MY INSURANCE

View and fulfill insurance requests / requirements.

LOGIN REQUIRED





Thank You

# Contract Requirements: Insurance

## General Requirements

Insurance Type	Construction Contract Liability Limits	A&E Professional Consultant Agreement Liability Limit
Commercial General Liability	\$5M per Occurrence \$10M per Aggregate	\$2M per Occurrence \$4M per Aggregate
Automobile Liability	\$1M	\$1M
Worker Compensation	Statute	Statute
Professional Liability (Errors and Omissions)	\$1M per Occurrence \$2M per Aggregate	\$3M per Occurrence \$3M per Aggregate



## Specialty Insurance (when applicable)

Contractors Pollution Liability  
 Hazardous Transporters  
 Builder's Risk  
 Railroad Protective Liability



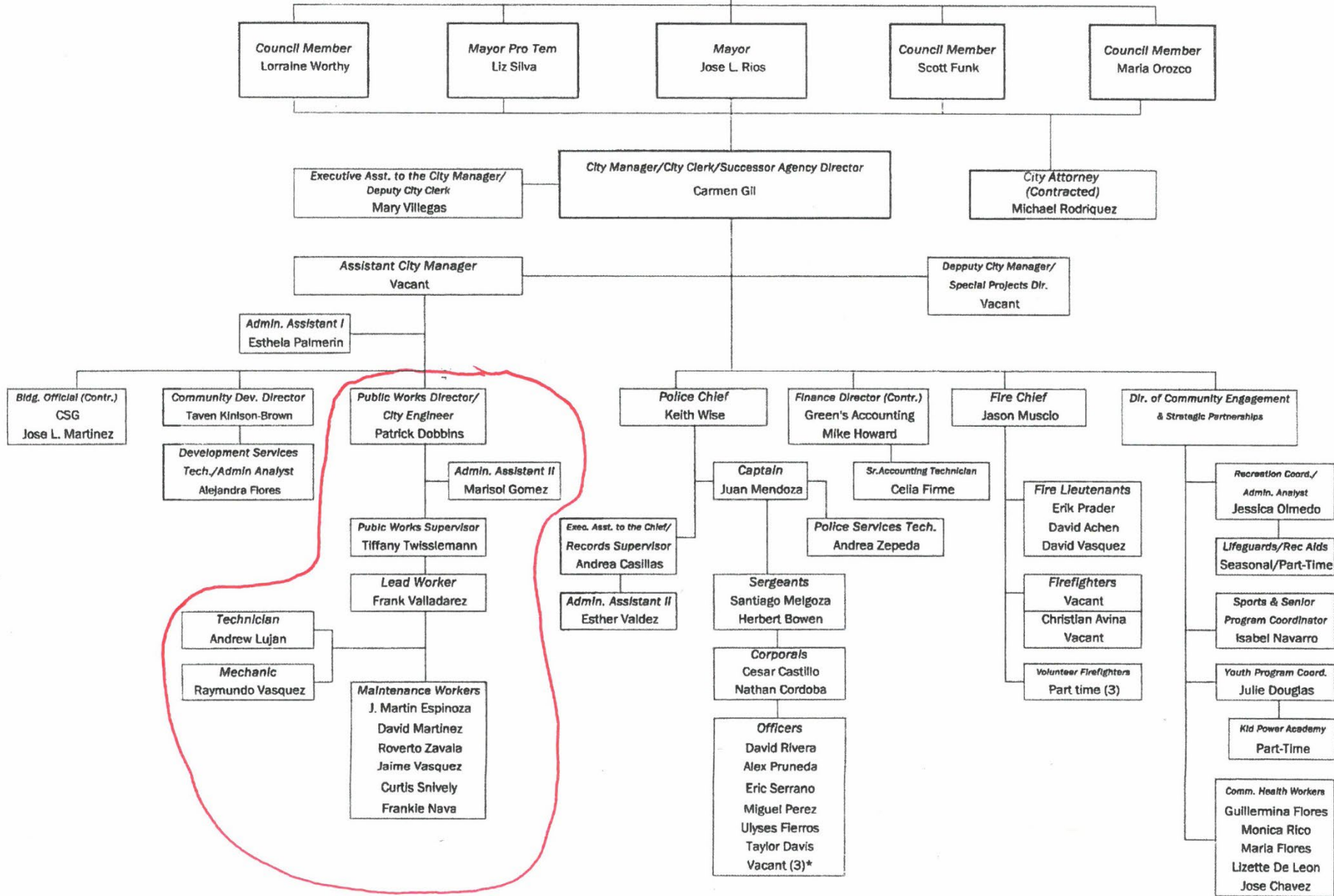
# City of Gonzales Consultant Selection Process

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

**City of Gonzales**  
FY 2023 - 2024



# 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

**From:** Patrick Dobbins <pdobbins@ci.gonzales.ca.us>

**Sent:** Wednesday, January 3, 2024 12:03 PM

**To:** Patrick Dobbins <pdobbins@ci.gonzales.ca.us>

**Subject:** City of Gonzales - Expected RFPs

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:

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

## 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

Issue Advance Notice	January 3, 2024
City Issues Request for Proposals	January 30, 2024
PreProposal Meeting	February 15, 2024 at 10:30 AM
Proposal Submittal Deadline	February 29, 2024 at 3:00 PM
City Staff reviews submitted proposals	March 5, 2024
Interviews	March 19, 2024
City negotiates scope/fee/schedule with consultant	March 21, 2024
Approval of Contract at City Council Meeting	April 1, 2024

# 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