

# Mind Your [RF] Ps & Qs

LEAGUE OF CALIFORNIA CITIES, ANNUAL CONFERENCE

OCTOBER 17, 2019

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# Introduction

RFPs and RFQs are legal documents that should be prepared or reviewed by the City Attorney.

# Overview

Part 1: Introduction & General Legal Principles

Part 2: When to Use an RFP or RFQ

Part 3: What to Include in an RFP or RFQ

# Introduction & General Legal Principles

Request for Proposals → Proposals

Request for Qualifications → Statement of Qualifications (SOQ)

Proposal: What you'll do

SOQ: What you've done

| Procurement Method         | Contract Type                 |
|----------------------------|-------------------------------|
| Bidding                    | Public Works Projects         |
| Request for Quotes         | Goods/Small Projects          |
| Request for Proposals      | Non-Public Works Services     |
| Request for Qualifications | Non-Public Works Services     |
| Discretionary Selection    | Certain Professional Services |



A public contract awarded without compliance with applicable law, including the city's own requirements, may be **void as a matter of law**.

Forms and procedures for bidding are **not interchangeable** with forms and procedures for RFPs and RFQs.

Only the **stated criteria** for selection may be considered.

*(Eel River Disposal & Resource Recovery, Inc. v. County of Humboldt (2013) 221 Cal.App.4th 209.)*

Proposals submitted in response to an RFP are **not subject to disclosure** until negotiations are completed.

*(Michaelis, Montenari & Johnson v. Superior Court (2006)  
38 Cal.4th 1065.)*

- RFPs vs RFQs
- Proposals vs SOQs
- Selection of Procurement Method
- Legal Compliance:
  - Use applicable procedures and documents
  - Must follow stated selection criteria
  - Limited CPRA exception

# When to Use an RFP or RFQ

## When to Use an RFP or RFQ Overview

- General Law and Municipal Requirements
- Statutory Design-Build
- “Architectural and Engineering Services”
- Non- Public Works Services
- Funding Source Requirements
- RFP or RFQ

- State Law
- Federal Law
- Municipal Requirements



## Public Contract Code § 22160 et seq.

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- Qualified Project
- Over \$1 Million & Council Authorization
- RFQ (pre-qualify or short-list)
- RFP (“low bid” or “best value”)

# Government Code § 4529.10 et seq.

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- Architectural
- Landscape Architectural
- Environmental
- Engineering
- Land Surveying
- Construction Project Management

“All architectural and engineering services shall be procured pursuant to a ***fair, competitive selection process***....”

(Govt. Code § 4529.12.)

“The legislative body may contract with any specially trained and experienced person, firm, or corporation for special services and advice in *financial, economic, accounting, engineering, legal, or administrative* matters. It may pay such compensation to these experts as it deems proper.”

(Govt. Code § 37103 (1949).)

For grant-funded contracts, review and comply with the funding agency's requirements/conditions for procurement.

***Method:***     ***Often best for:***

- |            |  |
|------------|--|
| <b>RFP</b> | <ul style="list-style-type: none"><li>• Project-based award</li><li>• Lump sum price primary criterion</li></ul>         |
| <b>RFQ</b> | <ul style="list-style-type: none"><li>• Ongoing or on-call services</li><li>• Qualifications primary criterion</li></ul> |

- Follow general legal and municipal requirements
- For design-build comply with statutory procedures
- Fair and competitive selection process for “architectural and engineering services”
- RFP or RFQ mostly used for non-construction services
- Comply with funding source requirements
- Decide whether RFP or RFQ is best for a procurement

# What to Include in an RFP or RFQ



What to Include in an  
RFP or RFQ  
**Overview**

- Contents of the Response
- Submittal Instructions
- Evaluation Criteria
- Selection
- Review and Award
- Disclaimers, etc.
- Protest Procedures
- Form of Agreement

# Objectives:

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1. Obtain information necessary to make an **informed decision**.
2. Obtain information that closely corresponds with the **stated selection criteria**.

An RFP or RFQ might request information on some (or all) of the following:

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- General information about Respondent
- Summary of qualifications
- Summary of relevant experience
- Proposed approach to services
- References and contact information
- Financial stability and insurance
- Price and/or hourly rate schedule

Respondents need to know exactly what they must do and deadlines for all tasks (i.e. the **what**, **when**, and **how** for submitting a response).

**What** must be submitted by Respondent?  
Identify the information that should be included in the response and the order/format of that information.

## **When** are responses due (and other key dates)?

- Include response deadline on cover page
- Include provision/table with all relevant dates, such as:
  - Pre-submittal meeting (if applicable)
  - RFI deadline
  - Interview of finalists (if applicable)

## How should responses be submitted?

- Provide clear information for how hard copy and/or electronic copy responses should be submitted, including identifying information.

## Preliminary Decision: **Objective** vs. **Subjective** Criteria (or both)

Examples:

- Price/Rates
- Qualifications
- Experience
- Responsiveness
- References



- Indicate how the stated criteria will be applied in order to rank the responses.
- Typically, a value is assigned to each criterion either in terms of a raw score or weighted percentage.

## Example: Raw Score

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|                                  |               |
|----------------------------------|---------------|
| Qualifications                   | 1 - 10 points |
| Experience with similar projects | 1 - 10 points |
| Price                            | 1 - 10 points |

## Example: *Weighted Score*

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|                                  |     |
|----------------------------------|-----|
| Qualifications                   | 20% |
| Experience with similar projects | 35% |
| Price                            | 45% |

- Describe the process for review and award of the agreement
- Identify *who* will evaluate the responses (e.g. panel vs. city staff) and *when* the agreement will be awarded, if at all
- Indicate whether and when finalists will be interviewed
- Ensure transparency and avoid any appearance of favoritism

- Document scoring process by using and filing score sheets based on stated criteria.
- Score sheets should evidence compliance with stated criteria.

Include disclaimers and reservation of rights, such as:

- Proposal/SOQ becomes sole property of City
- Respondent is responsible for all costs to submit
- Right to cancel or postpone RFP/RFQ
- Right to reject all and/or decline to award
- Right to waive immaterial irregularities
- Right to reject any proposal/SOQ

Conflict of interest limitations should be addressed in the RFP or RFQ, including statutory verbiage regarding the procurement of “architectural and engineering services.”

## Government Code § 1090

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- Public agency officers and employees “shall not be financially interested in any contract made by them in their official capacity....”
- Section 1090 can apply to ***consultants*** who have the potential to exert considerable influence over contracting decisions.



- Consider adding streamlined protest procedures if not already addressed in municipal code.
- Good procedures enable the city to efficiently manage the protest without stalling the procurement.
- No legal right to a due process hearing—procedures should keep it simple.

**Practice Tip:** Attach the form of agreement to the RFP or RFQ as a required, non-negotiable form.

- Ensures all respondents have full information on contractual requirements.
- Avoids protracted negotiations of contract terms.

## Conclusion

- RFPs and RFQs should be subject to **legal review** like any other legal document
- Subject to legal limitations, RFPs and RFQs are best for procurement of **non-construction services**
- **Tailor** each RFP and RFQ to the particular procurement based on the city's objectives and priorities

THANK YOU!!