

From: Roger Brunner [roger.brunner@alaska.edu]
Sent: Thursday, January 18, 2007 4:41 PM
To: Rob Lang
Cc: Titus, Steve; Steve Tada; Kim Ronning
Subject: RFP 2007060 CWTS UA Term Consultant Pool

Dean Lang,

Your November 17, 2006, letter on behalf of the the Alaska Professional Design Council addressed to Kim Ronning, Steve Titus and Steve Tada was forwarded to me. The proposals in response to that RFP were due before the date of your letter, so it was too late to protest the language of the solicitation or request for proposals by that time. I understand that proposals have been scored and perhaps other steps taken also. You can imagine the problems that could be caused by changing the rules after the game is over.

Regarding the merits of the suggestions attached to your letter, several of them are unacceptable to the university, in my opinion. The ownership of drawings, especially on small projects such as are contemplated by this RFP, needs to vest in the university. There may be room for compromises such as the university agreeing not to resell the drawings to third parties, etc. However, on work hired for a specific university project, we need to own the drawings and documents that we pay to have made for us. Likewise, some adjustment of the copyright language to exclude indemnity for misuse or resale may be possible. But, in general, the university will want to own the full rights to designs and buildings it hires someone to design and build for it. Your concern about section 8.2.2 seems to me to be possibly based upon a misinterpretation. If a statute by its terms does not apply to a particular situation, then it does not apply to that situation and should not be of concern.

Responding specifically to your letter is particularly problematic with regard to the indemnity provision. Whether the university would be willing to custom draft an indemnity provision less protective than the general one would depend on the exact circumstances. The size and nature of the project, the likelihood of claims, and the range of possible damage or injuries are some factors that could influence that decision. I cannot speculate in detail what might happen in unknown possible circumstances on hypothetical projects under future RFPs.

In the future, if the Council has questions or concerns about a specific RFP, I encourage them to raise the issues promptly so they can be addressed before it is too late to address them under the procurement rules. In our recent phone conversation, you suggested that a future

meeting to discuss these concerns with APDC representative might be beneficial. I will do some checking to see who from the university could participate in such a meeting.

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