

**DRAFT communication document for KC and ACEC members
11-15-07**

Introduction

Representatives from King County and the ACEC have collaborated during the past two years to address critical issues and concerns associated with the County's architecture and engineering (A/E) contracts. These efforts occurred as part of a new team charter and joint executive committee formed in late 2005. The executive committee's primary purpose is to foster a spirit of open communication and collaboration for addressing best practices, policies and guidelines associated with the county's architecture and engineering (A/E) contracts.

The executive committee and its appointed subcommittees worked diligently since early 2006 to review: (1) new requirements for requests for proposals (RFP's) as part the consultant selection process; and (2) proposed changes to the terms and conditions of basic A/E contracts. This document highlights the results of these efforts and provides references for locating additional information.

New RFP Requirements

- New Project Approach Chart (PAC): The ACEC and the County have agreed to use a new project approach chart (PAC) on all design procurements. The new PAC is intended to encourage more proposals on county projects by making it easier and less time consuming for consultants to respond to RFP's. The PAC identifies the percentage of time allocated to major project tasks and highlights the percentage of time for various firms assigned to the project. There is also a section listing hours of the three to five key personnel. After a consultant is selected by the County, then a more detailed LOE document is required prior to signing a final contract.
- Narrative and Project Schedule: Proposers are encouraged to identify new ideas, creative approaches and potential changes to the scope of work that will improve the overall project and/or schedule. Consultants are also required to submit a project schedule at the task level, consistent with the proposed scope of work and the new PAC.

New A/E Contract Changes

- Salary Caps and Exceptions: The County created a new methodology for setting hourly salary caps for the highest level engineering positions based on a new methodology proposed by an independent labor consultant. The cap is recalculated each year in June and based on verifiable salary data from the Bureau of Labor Statistics Annual Salary Survey. The cap utilizes the 75th percentile rather than a mean average to provide the consultant with an incentive to retain top expertise on county projects. Exceptions are handled on a case by case basis and must be accompanied by a written justification. Although the ACEC remains philosophically opposed to such salary caps, they welcomed the County's efforts

DRAFT communication document for KC and ACEC members
11-15-07

to allow for annual adjustments to the cap using engineering labor market statistics.

-
- Annual Labor Escalation Rate: The County created a new methodology for setting the annual escalation rate that applies to labor costs on multi-year contracts. The County uses a composite index compiled from the regional consumer price index and regional salary data from engineering firms reported to the Bureau of Labor Statistics. The new composite index is based on a rolling five year average designed to smooth out peaks and valleys of current market trends and includes a minimum floor level (the regional consumer price index) and a maximum cap level (the federal government's rate for escalation on A/E contracts). The ACEC does not support the results of the County's methodology because of the concern that salary escalation conditions in the current engineering community make it very difficult for consultants to recover their actual labor costs on a multi-year contract. The County has attempted to address this concern by agreeing to adjust the escalation rate at contract phases, with the knowledge that most typical contracts are two years with one year of escalation at issue.
-
- Implementation of Labor Pool Concept: In mid-2005, the County and the ACEC agreed to implement a labor pool concept that eliminated the County's practice of restricting labor increases to individual employees to no more than 5 percent. Consultants may use the pool of funds established by the annual labor escalation rate to establish the amounts of salary increases for their employees. The County retains the right to question extraordinary increases. A work group of County and ACEC members has agreed on a method for implementing this concept in a manner that ties the increase to major project tasks. The goal is to make the accounting and review of labor pool expenditures easy to administer and part of the overall progress report on planned versus actual project task budgets.
- New Task Budget Flexibility: The County has amended the terms to allow greater flexibility for moving money between task budgets. Money can be moved under the condition that a budget crosswalk is prepared by the consultant and there is no impact on the fee, schedule or total price. Also, a "work order" task may be included in a contract that authorizes critical or urgent work with a letter that details the scope, deliverables and price. This is intended to help a project remain on schedule while complying with amendment procedures and cost control requirements.
- Preliminary Planning Phase: The County recognized there are circumstances when the scope of work is uncertain and the County needs advice on planning a project. In these situations, the County will negotiate a "preliminary planning phase" as part of the scope of work for the contract.
- New Legal Provisions: The County and the ACEC agreed that each party should be held responsible for their own negligence on a contract and this is reflected in the new indemnification language. The consultant will be held responsible for

DRAFT communication document for KC and ACEC members
11-15-07

researching patent rights on custom products or design and the County agrees that the level and costs of such research will be negotiated as part of the contract. Both parties agreed on new language involving the “standard of care” which does not require a consultant to obtain perfection but does maintain the standards and remedies available in Washington. Regarding ownership of design documents, the County retains the authority to grant the consultant permission to use design products created under contract—this does not apply to design known prior to the contract. This ownership provision is not ideal from the ACEC’s viewpoint but is an acceptable compromise to the former contract language.

- Payment of Invoices: The County and the ACEC expressed a mutual interest in receiving timely and accurate invoices and payments. The new contract provisions clearly indicate the process and time table for ensuring that these interests are fulfilled.

References for Additional Information

The County’s web site has several links to additional information about A/E contracts as follows:

A copy of the detailed A/E contract boilerplate:

http://www.metrokc.gov/procurement/documents/2007_Agreement_Standard.pdf

A copy of the factors King County uses to calculate A/E fees:

<http://www.metrokc.gov/procurement/consultants/profitcalc.aspx>