

7.29.14 RFQ Question Responses- Addendum 1

Further Clarification regarding Follow-on Contracting Questions:

Questions:

1. Is it possible to have the ICES consultant retained both for the scope of work contemplated under the RFQ as well as in a **project management** role for the actual implementation of the CRMs following the completion of the initial planning and preliminary design work?
2. Once the carbon reduction measure (CRM) projects are identified under the current ICES scope of work contemplated under the RFQ, is the consultant **eligible** to competitively submit a bid for design of the CRMs? How about construction of the CRMs?
3. Can an ICES consultant (contracted through a PSA for planning & engineering services) be a subcontractor to a firm for construction and/or design-build?

Clarification Provided by UC General Counsel:

- If UCSC does a separate retention for a Project Manager in the future for management of our defined projects from the ICES scope of work, the ICES consultant may apply.
- The ICES consultant may submit a proposal for design of projects defined by its previous scope.
- The ICES consultant may not competitively bid the construction work.
- The ICES consultant also may not bid on design/build projects because the selection of a design/build team is governed by contractor selection statutes using a competitive bid process, not the quality based consultant selection process.
- This is a statutory exclusion precluding entities from bidding construction work which the entity advised us to perform.
- There are two issues with ICES being both the primary consultant determining the projects to be designed and constructed and then also being involved with same. The two issues are statutory and common law.
 - Statute precludes follow on when it involves more than simply design and professional services. The statute expressly allows follow on for professional services only (**services not competed via construction competitive bidding**). So the ICES consultant could do design solely but could not be part of a subsequent contract involving more than design (construction) because the statute only allows follow on for design/professional services.
 - Common law (case law) also precludes an unfair advantage in a competitive process. If the ICES consultant is allowed to team with the contractor of its choice, it has the potential of an unfair advantage by either setting the price which would determine the winning bid and/or superior knowledge of the UCSC system which would be an unfair advantage in the competitive bid process.

See supporting language below:

2.2.8 AVOIDING FOLLOW-ON CONTRACTS

Public Contract Code sec. 10515 et seq. prohibits a consultant who has provided services on a project from bidding for or being awarded another contract to perform related services for the same project.

*However, architectural, landscape architectural, engineering, environmental, land surveying, construction project management, or real property development services (defined in 2.2.1 as Covered Services) may qualify for an exception to this ban. The exception to the ban that the statute allows for the Covered Services **only applies to the selection of consultants** in accordance with the procedures described in this chapter. Facilities must be careful to navigate the statutory requirements if they wish to qualify for such an exception.*

As an example, a firm providing architectural services for bridging documents on a design/build delivery method project would be precluded from participating on the design/build team because the selection of a design/build team is governed by contractor selection statutes using a competitive bid process, not the quality based consultant selection process described herein. This same firm would not, however, be precluded from consideration in a separately advertised request for a complete project design, which has no construction competitive bid element.

PUBLIC CONTRACT CODE

SECTION 10515-10518

10515. (a) No person, firm, or subsidiary thereof who has been awarded a consulting services contract may submit a bid for, nor be awarded a contract on or after July 1, 2003, for the provision of services, procurement of goods or supplies, or any other related action that is required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract.

(b) Subdivision (a) does not apply to either of the following:

(1) Any person, firm, or subsidiary thereof who is awarded a subcontract of a consulting services contract that amounts to no more than 10 percent of the total monetary value of the consulting services contract.

(2) Consulting services contracts that comply with Article 2.5 (commencing with Section 10510.4).

Further Clarification on the Selection/Contracting Process and Requirements

1. What are the minimum insurance requirements for this project?
 - a. Guidelines for minimum insurance requirements can be found in the latest edition of Insurance Requirements/Certificates of Insurance (Business and Finance Bulletin, BUS-63, Exhibit D). [Here](http://www.ucop.edu/risk-services/files/construction_ins_limits.pdf) is the link: http://www.ucop.edu/risk-services/files/construction_ins_limits.pdf
 - b. Per [BUS-63](#), Design Professionals shall provide minimum general liability coverage in the amount of \$2,000,000 annual aggregate. Below is a list of Forms/Required Endorsements:
 - **FORM: Per Occurrence (ISO Form CG or its equivalent)**
 - **ENDORSEMENTS:**
 - Additional Insured ISO Form CG2010 (11/85) **or** CG2010 (10/01) **and** CG2037 (10/01) **or**
 - CG2010 (07/04) **and** CG2037 (07/04) **or** their equivalents
 - Waiver of Subrogation
 - Primary & Non-Contributory Clause
 - Severability of Interest Clause
 - Separation of Insureds
 - No Cross Suits Exclusion
 - Aggregate limit to apply Per Location/Per Project
2. Further guidance on the Consultant Selection Process can be found at <http://www.ucop.edu/construction-services/facilities-manual/volume-3/consultant-selection-flowchart-over100.pdf>