



## **Public Art Network Best Practice Goals and Guidelines**

The Public Art Network (PAN) Council of Americans for the Arts appreciates the need to identify best practice goals and guidelines for the field. The PAN Council also recognizes that no two public art programs operate under the same governing principles or rules. However, both artists and curators/arts administrators should be obligated to produce work of outstanding quality through a process that is ethical, fair, and reasonable for all parties. The PAN Council encourages both the adoption of these guidelines as well as consultation with legal counsel as appropriate and necessary.

### **Request for Qualifications (RFQ)**

Request for Qualifications (RFQ) can be an effective and efficient method to issue a Call for Artists. RFQs require minimal expenditures of time and money from artists. RFQs primarily rely upon examples of an artist's previous work and typically include an artist's vita, selected references, and a statement of interest about the project. When RFQs are written thoughtfully and applicants' materials are subsequently reviewed, considered, and evaluated by arts professionals and the commissioning organization, a short-list of qualified artists to interview for a proposed project may be easily accomplished. The outcome of this process creates opportunities for in-person interviews or offering a reasonable fee to compensate development of conceptual ideas for the project. The RFQ process does not anticipate that artists prepare or present specific ideas based on limited information provided in the Call; rather, conceptual artistic proposals for the project are developed only after learning more about the project through site visits and interactions with project personnel and constituent interests. It is expected that short-listed artists be compensated for travel expenses when invited to interview. Most artists and many curators/arts administrators prefer RFQs for public sector commissions.

### **Request for Proposals (RFP)**

Request for Proposals (RFP) can be an effective way to consider and evaluate the appropriateness of an artist when a limited number of artists are invited to participate in a selection process, the criteria for selection is explicit and uniform, and there is an honorarium paid to the artist for each submission. Commissioning bodies should not assume that artists will have sufficient time and information to develop site specific proposals that are informed by substantial client interaction unless the proposals and/or competition affords at least four to six weeks of preparation time. Proposals should only be requested when the commissioning agency/organization is prepared to consider the proposal as a conceptual approach to the project and not the final design. All proposal materials should be returned to

those artists not selected for the project, and the authority representing the commissioning agency/organization should assume that all ideas presented for the project, including copyright, belong to the artist.

### **Jury Composition and Design Reviews**

The selection of an artist for a public art project requires both curatorial expertise and sound judgment regarding the ability to sustain positive and open interactions among artist, agency, constituent interests, and the public. For these reasons, PAN endorses the principle that arts professionals, who have knowledge of the visual arts and/or design (public art administrators, artists, architects, landscape architects, art historians, museum and exhibition curators, art critics, educators) and who understand the challenges of public art, actively participate in the selection process of artists and/or artist teams. Furthermore, PAN respects the opinions and preferences as expressed through public involvement in projects and simultaneously values the expertise that only arts professionals can bring to the development of a public art project, selection process, and review of ideas and proposals by artists. Arts professionals should therefore be invited to be an integral part of each phase of public art project identification, artist selection, design reviews, and interim approvals of project deliverables from conceptual design through fabrication and installation.

### **Digital Images**

PAN recognizes that arts organizations, artists, public art program administrators, project managers, curators, and the public each desire access to images of public art.

Adoption of a national standard for images is complex because computer skills among artists vary; artists and agencies/organizations maintain different computer platforms; hardware and software programs may not easily adapt to the field of public art; and, uses for images broadly range from documentation of existing projects to animated proposals to registries to grant applications. PAN supports the advancement of a commitment to digital images over slides not only because there are fewer resources for film processing and slide projection but because technology is creating multiple sources (cameras and the internet) and uses (registries, applications, grants, presentations, file storage) for digital representation of art with effective applications for the field.

PAN is actively working with experts to develop specific recommendations for digital image sizes and dimensions. In the meantime, PAN suggests that the public art field clearly articulate the "pixel" size for the images requested when issuing call for artists and registries.

It is important to protect images that are posted to the web. PAN encourages the field to acknowledge project credits; specifically, the name of the artist, the name of the photographer, the commissioning agency, the date of the work, and a copyright ©.

## **Intellectual Property**

### Copyright

The artist retains all rights under the Copyright Act of 1976 (17 USC Section 101) as the sole author of the work for the duration of the copyright. The duration of copyright in the United States is currently the life of the author plus seventy (70) years. Title to the artwork passes to the client or commissioning agency/organization upon their written acceptance of and payment for the work; copyright belongs to and remains with the artist.

Although the client may “own” the work of art, the artist who created the work owns the copyright to the work of art, including all ways in which the work is represented, other than in situ. Artists may wish to register their copyright with the Federal government. Clients should not request that artists waive or share any of their legal copyright privileges as defined and awarded by the Federal government.

### Visual Artists Rights Act (VARA)

The Visual Artists Rights Act of 1990, known as VARA, (17 USC Section 106A) assures an artist’s protection of his/her “visual art” especially as it effects post-sale rights including all drawings, sketches, and prototypes. Under VARA, artists have the right to prevent any intentional distortion, mutilation, or other modification to their work. In some cases where the art is integrated (building, landscape, infrastructure, etc) the client or commissioning agency/organization may ask the artist to waive their VARA rights.

### Rights to Reproduce the Work

The artist and client or commissioning agency must each agree to the right to reproduce the artwork in any and all forms. Typically, artists grant the client or commissioning agency/organization license to make two-dimensional reproductions of the work for non-commercial and educational purposes. The client or commissioning agency/organization in turns agrees to include a credit to the artist and a notice of copyright on all such reproductions.

### Additional Rights

It is standard professional practice that agencies agree not to intentionally alter, modify, change, destroy, or damage the work of art without first obtaining permission from the artist. If the artist’s work is accidentally damaged, the artist has the right to request that the work not be attributed to the artist until such time as the work is fully restored.

## **Conflicts of Interest**

Any conduct that creates an appearance of impropriety or may otherwise impair a Commission-Committee member’s judgment in the selection of a project site, finalist, or artist is prohibited. Anyone in a position to receive financial gain from the selection of artist(s) will be ineligible to serve on a selection panel. Panelists must declare any conflict of interest and recuse themselves if a conflict of interest arises.

### **Contract Indemnification**

Indemnity refers to the party with ultimate responsibility for liability. In the event that there are injuries, damages and/or lawsuits, an indemnity clause will establish who will be responsible for paying the costs and any judgment.

Indemnification language could require a party to be responsible regardless of that party's actions or involvement in a situation that leads to liability. But, generally, indemnification responsibilities are limited to the scope of the work to be performed under the initial agreement and only apply when the indemnifying party somehow contributed to the situation that created the liability.

The PAN Council endorses Mutual Indemnification for liability resulting from negligent or willful behavior because this is the best compromise between artist and client or commissioning agency. Specific language might read, "The Parties shall and hereby agree to defend, indemnify, and hold harmless each other against any liability that arises out of the other Party's negligent or willful behavior."

### **Insurance Requirements**

Contracting agencies may request that the selected artist carry Liability Insurance. It is standard practice for artists to hold \$2,000,000 (two million dollars) in coverage per incident regardless of the size of the contract or project budget.

### **Payment Schedules**

Does the PAN Council have an opinion about Payment Schedules? I would encourage us to consider a payment of approximately 10% upon signing the contract and a retainage of approximately 5% until title is transferred to the client and a maintenance schedule has been submitted.

### **Conservation and Maintenance of Artworks**

Care of a public art collection is a continuing responsibility in which the owner preserves the work of art as well as the collection in its entirety. It is recommended that all public artworks be maintained at museum standards and with attention to their unique materials. Regardless of whether the works are in storage or in public space, works of art should be handled by professional art handlers. There should be a regular maintenance schedule for each work in the collection and the artist of record should provide maintenance instructions to the owner of the work. It is recommended that the owner of the artwork inventory and evaluate the condition of the art every three years to determine if any extraordinary maintenance is required.

Commissioning organizations and agencies should withhold final acceptance of the artwork until the artist has provided a maintenance plan or document because not all project elements will be overtly obvious to those charged with monthly or annual assessment (ie: projects in which landscape, water, and media made be integrated with the final project.) It is further encouraged that site plans and drawings be provided to the owner so that it is understood how to maintain the site as conceived by the artist.

An integrated conservation program should include inventory; assessment of the collection condition; treatment proposals and consultation with a professional conservator as necessary; restoration of the works of art; training of maintenance personnel by conservators and/or program staff; updating project records and documentation; and, including the advice of a professional conservator during the development of design documents and prior to fabrication of the art.

**For additional resources developed and produced by the PAN Council, please visit the Americans for the Arts member's site:**

**<http://ww2.americansforthearts.org/vango/Core/login.aspx>**

**To become a member:**

**[http://www.americansforthearts.org/get\\_involved/membership/default.asp](http://www.americansforthearts.org/get_involved/membership/default.asp)**