

## **An Open Letter to Public Art Administrators**

Public artists and public art administrators are equally committed to creating work that is of artistic and civic worth, be it through site-specific commissions, design team, or planning projects. However, with 350 existing public art programs and more evolving, practices are emerging that hinder artists' abilities to give administrators our most productive efforts.

We offer, by this letter, commentary and recommendations that we believe will make the partnership between artists and administrators more effective and efficient, resulting in art works that are more evocative of our time and place. We do not pretend to speak for all artists, indeed, many of the undersigned may not necessarily agree with all the points raised below. However, our collective experience has now taken a voice that we hope may speak to many concerns within our industry.

### ***Open Calls That Require Conceptual Proposals***

Increasingly, agencies are soliciting artists through Requests for Proposals (RFP) rather than Requests for Qualifications (RFQ) at the open call stage. While it may seem like a good idea to narrow the field by asking for specific ideas and drawings, artist selection through RFP's is often counterproductive. For the following reasons, we feel the RFP process is not in an agency's self-interest:

- **Designing site-integrated art is a complicated process.** It is difficult, if not impossible to design site-integrated work without intimate knowledge of the site, and this is impossible with an RFP process.
- **The best design solutions are built in tandem with the art advisory committee.** The time artists spend in the conceptual phase is the *most crucial part* of the value we bring to a project. Asking for a concept without the benefit of the artist building trust and dialogue with the design team, community, and other stakeholders puts the artist outside of the process and results in generic solutions.
- **The odds of winning do not justify the time and expense required to develop a concept at the open call stage.** Successful artists have busy project schedules and can rarely justify applying for RFP's. It's a poor gamble, especially without knowledge of the site or the aesthetic values of

the committee. Unlike architectural competitions, the typical budget for public art projects do not warrant open competitions for good results.

Recommendation: We propose that finalists be chosen based on past work through an RFQ with a Letter of Interest or pre-selected from a registry. While we realize that narrowing a large pool of candidates is very difficult, we feel the best approach for agencies is to narrow the field to no more than three finalists with one alternate. For optimal results, if the timeline and budget allow, finalists' expenses would be reimbursed for a site visit and interview/presentation. This enables the committee to more easily determine whom might be the best fit for the project. The selected artist would then be asked to develop a conceptual design. If the committee is uneasy about committing to an artist without seeing his/her final design, it is common to stipulate that the contract is contingent upon design approval.

### ***Conceptual Design***

The professional standards for public artists today are similar to those of architects. The process of selection and proposal development needs to reflect this. If an artist simply placed their pre-existing work in a site, preparing a finalist proposal was less burdensome. Now it is commonly expected that artists develop original, site-specific conceptual designs, involving professional presentation materials such as boards, samples, Power Point presentations, animated computer renderings, booklets, and models. These require significant time, out-of-pocket expenses, and the hiring of other design professionals such as engineers, architects, and graphic designers.

We ask administrators to consider the number of hours that an artist is expected to invest in a conceptual design and compare it to the hourly rate of other highly trained professionals involved in the project such as engineers, architects, and landscape architects. Please also consider the amount of lead time given to these other professionals and set the deadlines for artists accordingly.

Recommendation: Pay a fee for an artist's conceptual design that is commensurate with that paid for other key professionals on the project, with similar lead times.

## ***Artists Rights***

An alarming number of contracts require artists to relinquish all rights, including those of the Visual Artists Rights Act (VARA), Copyright, and Fair Use. VARA and Copyright laws were established as federal laws to recognize the unique characteristic of art works as distinct from works-for-hire, and specifically to protect the rights of artists working in the public realm. Adherence to these laws remains an important underpinning of the very notion of public art.

## **Copyright**

It is appropriate for an agency, as owners of the artwork, to request that the work not be replicated elsewhere. But as creators of the artwork, artists need to retain the protections afforded to them under current federal copyright law as long as they agree not to reproduce the work for commercial purposes.

Recommendations: Artists should retain copyright to their work. This includes full rights to reproduce images of the work in all media (books, magazines, promotional materials, etc.) without asking for permission, as long as the client is credited. We also understand the client agency should be free to reproduce images of the artwork in any media as long as the artist is credited as the copyright holder.

If agencies wish to use the image of an artwork on a coffee mug, t-shirt, or other item for sale, this does not fall under “fair use”. The agency would need to negotiate a separate licensing agreement with the artist, including possible royalties or other usage fees paid to the artist.

*Detailed information on copyright can be found at:*  
*[www.copyright.gov/circs/circ1.html](http://www.copyright.gov/circs/circ1.html)*

## **VARA**

The Visual Artist Rights Act of 1990 was created to give artists the right to be credited as the author and to prevent destruction or alteration of their work. Some states now have their own artists’ rights legislation. Artists making site-specific and site-determined artwork recognize that public sites sometimes change uses and that the protection of a work is different than that in a museum setting. At the same time, the artist’s reputation is based on that work and its integrity-

Recommendation: The client must notify the artist whenever the work is to be altered, relocated, or removed. This is in the agency's interest, as the artist may find a more creative solution for re-integration, give instructions for storage, or find another buyer.

If the piece is to be removed permanently, the artist should be given the first right to regain ownership, remove the artwork, or disclaim authorship.

*A useful guide to VARA can be found at: [www.nyartsalive.com/vara.htm](http://www.nyartsalive.com/vara.htm)*

### ***Insurance***

Onerous insurance requirements more appropriate for general contractors, architects, or engineers are being asked of artists. Insurance requirements need to be commensurate with risk and exposure, contract size and scope.

- Professional Liability Insurance or Errors and Omissions (not to be confused with General Liability insurance), is not available to artists as they are not licensed under any state and their work does not inherently pose a risk to the public. This insurance is available to those professions that are licensed to prepare and sign construction documents. The same applies to bonding. If artists are subcontracting services such as these, those professionals may be required to have such insurance, and their fees to artists (and subsequently to the client) will reflect this.
- Most artists do not have employees and so do not need to provide Workman's Compensation. Workman's compensation insurance requirements are usually legislated on a state-by-state basis. Exemptions for sole proprietors or single-member LLC's are usually available.

Recommendation: Agencies should review insurance requirements with their legal counsels and be prepared to make an informed argument on behalf of the artist as necessary. Agencies should remove any reference to errors and omission insurance in their contract language, except as it applies to artists' subcontractors such as engineers or others who may be preparing construction documents that require a stamp.

### ***Contracts***

We recognize that contracts will vary depending on the situation of each agency and project. In general, however, contracts must be symmetrical

between artist and agency with mutual indemnity and termination clauses. Here are a few issues frequently encountered by artists:

- Artists are usually held to strict timelines, but when construction is delayed the artist is left waiting to be paid and/or having to pay for storage for their work. Most suppliers are paid within 30 days or begin adding finance charges. The same should be written into artists' contracts.

Recommendation: Artists should be paid interest when agencies do not comply with the payment schedule, and compensated for expenses incurred when agencies do not meet the installation schedule.

- It is common practice for design professionals on a building project to charge for change orders. It is not uncommon, however, to repeatedly ask artists to go back to the drawing board in the design phase or to respond to alterations in the site.

Recommendation: Like other design professionals, artists should be paid for change orders.

*For an annotated sample contract please see the Public Art Network "Model Public Art Commission Agreement":*

*[www.artsusa.org/pdf/services/pan/annotated\\_contract.pdf](http://www.artsusa.org/pdf/services/pan/annotated_contract.pdf)*

Commissioning top quality art is a difficult task in the best of circumstances. We hope that this letter will contribute to a dialogue between our professions that will be ongoing and direct. Hopefully, through increased awareness, professionalism, and mutual respect, the standards of both professions will be raised another notch.

Respectfully,

Alice Adams, New York City

Wick Alexander, San Diego

Steve Appleton, Los Angeles

Maria Artemis, Atlanta

Judy Baca, Venice, CA

Judy Bales, Fairfield, IA

Lynn Basa, Chicago

Linda Beaumont, Langley, WA

Pam Beyette, Seattle  
Doris Bittar, San Diego  
Brian Borrello, Portland, OR  
Christine Bourdette, Portland, OR  
Carolyn Braaksma  
Robin Brailsford, Dulzura, CA  
Ed Carpenter, Portland, OR  
Con Christeson, St. Louis, MO  
William Cochran, Frederick, MD  
Zachary Coffin, Atlanta  
Susan Cooper, Englewood, CO  
Dan Corson, Seattle  
Fernanda D'Agostino, Portland, OR  
Leila Daw, Branford, CT  
Louis Delsarte, Atlanta  
Mary Lynn Dominguez, San Diego  
Ellen Driscoll, Brooklyn  
Janet Echelman, New York, NY and Brookline, MA  
Jud Fine, Venice, CA  
Diane Gage, San Diego  
Cliff Garten, Los Angeles  
Steve Gillman, Oakland  
David Griggs, Denver  
Barbara Grygutis, Tucson, AZ  
Mags Harries, Cambridge, MA  
Lajos Heder, Cambridge, MA  
Ralph Helmick, Newton, MA  
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Ned Kahn, Sebastopol, CA  
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Marc Pally, Los Angeles

Peter Richards, San Francisco

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