

Whatcha Gonna Do?

The Situation

When county residents approved a construction bond for new park facilities, the county park authority issued a request for proposal (RFP) for design and construction of a park shelter and surrounding landscape in one of its public parks.

The RFP directed that bidders submit one price that included both the design and build phases of the project. The contract's pay structure, however, was in four phases: initial approval of design, final approval of design, initial phase of construction, and final phase of construction.

The contract selection committee narrowed the competition down to two qualified firms: a design-build firm owned by Baklode Feez, ASLA, RLA, and a joint venture comprising Owt Raged, ASLA, RLA, and Park Shelter Construction, Inc. After further review of the RFPs, the county selected Backlode Feez, Landscape Architect.

When county officials debriefed Owt Raged, he learned that Baklode Feez intended to charge only 25 percent of the standard design fee for the first two phases of the contract. Owt Raged saw this as an unfair business practice, and as something he could not easily do since he was a joint venture combining his design team with an independent contractor each being responsible for its own phase of the project.

Owt Raged wrote a letter of complaint to the ASLA Ethics Committee suggesting that Baklode Feez was in violation of the ASLA Code and Guidelines for Professional Conduct.

Whatcha Gonna Do?

Was Baklode Feez' pricing strategy dishonest? Was it fair of him to scale back the design fee for the first two phases and then make up for it in the



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construction phase? If so, did Baklode Feez obtain the contract in an unscrupulous or unethical manner?

Furthermore, is a registered landscape architect who is a member of the Society obligated to price his or her work according to a standard pricing structure?

Was Owt Raged out of line for objecting to Baklode Feez' practices or did he have a legitimate case against the design-build firm?

Recommendation of the ASLA Ethics Committee

Delaying the county's obligation to pay for the landscape architect's fees until the end of construction was a benefit that Backlode Feez was willing to give to obtain the contract.

The Ethics Committee observed that the contractor has command of its business practices and pricing policies. Although it is expected that the contractual relationship will remain within the normal parameters of business, the ability to freely price services high or low, or to package fees

within a design-build format, is the individual owner's decision.

It may be startling and unusual, but is not a violation of the ASLA Code and Guidelines for Professional Conduct. For the ASLA Ethics Committee to decide otherwise would be a restraint of trade.

Editor's Note: One of the objectives of the ASLA Ethics Committee is to educate members about the ASLA Code and Guidelines for Professional Conduct. The code contains important principles relating to duties to clients and to members of the Society.

Readers are invited to send their comments on cases appearing in LAND to Managing Editor, 636 Eye Street, NW, Washington DC 20001-3736 or E-mail to bwelsh@asla.org. Members are invited to submit questions regarding ethical matters along with supporting data to Allen Hixon, FASLA, Ethics Committee Chair, c/o ASLA, 636 Eye Street, NW, Washington DC 20001-3736.