



## GUEST ESSAYS

### **Responding to RFP's (Request for Proposal): Risk Management Tools to Assist Bidding an RFP**

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In today's tough economy, competition is fierce among design professionals so it is critical to be as prepared as possible when trying to win new projects, especially those that are put out for bid. New publicly bid projects that have good potential to go to construction have become scarce. When a project does come up, there are 20 to 30 firms competing for the same job, making the chances of your firm being awarded the project even slimmer.

When considering whether or not to bid on one of these projects you need to ask yourself the following questions:

- Does your firm have the experience with the project type?
- Do you have the staff capable of handling a project of this size and scope?
- Do you have confidence in your design team including your sub-consultants?
- Can you turn in a successful project that will be profitable?

When preparing your response to the Request for Proposal (RFP), you take many steps to ensure your firm has a good chance at being awarded the project. You choose a project manager and the employees within your firm that have the most experience with the project type. You take great care in selecting your sub-consultants. You follow your customary quality control procedures. Every aspect of the design phase, the costs of construction, the construction schedule and most importantly your fees will be thoroughly reviewed before the bids are released.

Everything looks good, what could possibly go wrong during this phase of the RFP? The answer lies within the RFP itself.

When you assemble your project team, you need to choose the individual who is best suited to understand the terms spelled out in the RFP. Just as you have project quality control procedures to review the design, you need to have the same type of process when responding to an RFP.

Who is the project owner? Is it a government entity? Is it a school district? Is the project publicly funded? Is the project owner a developer? If it is an LLC, who are the parties that comprise the LLC?

Understanding who the project owner is as well as the expectations set forth in the RFP is as important as delivering the winning bid. If you do not have a handle on the expectations set for the project, then you will most certainly have an unsuccessful project.

Reading the RFP thoroughly will give you a sense of these expectations. Are they set too high? Does the RFP contain provisions that are one sided, favoring the project owner? Are the provisions insurable? Can your firm effectively manage these expectations? Keep in mind, the language from the RFP will also be the language used for the contract for services.

When reading through the terms in the RFP, highlight any potential problems and contract language that could be uninsurable. It is critical that this task be undertaken as soon as your firm decides to respond to the RFP. Some of the clauses that could contain questionable language include:

- Standard of Care
- Time is of the Essence
- Termination
- Ownership of Documents
- Dispute Resolution
- Compliance with Law
- Reliance upon information provided by others
- CAD and Electronic Media
- Indemnification
- Insurance Requirements

It is very important to use the appropriate resources to assist you in determining if any of these or other clauses could be problematic for your firm. A valuable resource is your insurance broker and your Professional Liability insurance company. Most specialty brokers and Professional Liability carriers can offer assistance with reviewing the RFP language for insurability.

If you prefer an attorney review, select legal counsel that understands and has experience in working with design professionals. Corporate attorneys don't always know the pitfalls of uninsurable clauses.

The most overlooked clause is the one related to insurance provisions. This clause can make the difference as to whether this project will be profitable or not. We often find the Professional Liability limits to be unreasonable. Project owners think nothing of requiring design firms to carry a \$5 or \$10 million limit of liability.

When reviewing the section on insurance, make sure your firm can comply with the limits of liability being requested. Can your firm secure the limits? Is your carrier willing to offer higher limits? What will the additional limits cost? How long are you required to maintain the higher limits?

Too often the design firm does not research the requirements of the insurance provision until the day before the RFP is due. Many times brokers will receive a frantic phone call from a design firm seeking quotes for higher limits for the Professional Liability insurance because the firm does not carry the required limits.

Discuss the options available to your firm with your broker early on. If seeking a Specific Additional Limit, the underwriting carrier will need their short application completed with the key project information such as:

- Name and location of the project
- Project type
- Construction values of the project
- Total design fees for the project, including sub-consultants
- Payment of fees over the life of the project
- Target dates for design and construction



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Because underwriting guidelines have become much stricter over the last several years, the carrier will also require a copy of the RFP. They too will want to review the insurance requirements as well as some of the clauses discussed above for insurability. A firm's claims experience weighs heavily into the underwriting equation in determining if the carrier will offer the higher limits.

The following is a recent example of how a design firm was negatively impacted by poor management of the RFP.

A university put forth an RFP for the renovation of the school and student housing facilities including constructing an addition to one of the buildings. There were several architecture firms bidding on the project. The university was requiring a \$5 million limit of liability for the Professional Liability insurance. Those firms that had read the RFP upon receipt were able to contact their broker right away to request the higher limits. Because these firms were pro-active they knew early on if they were able to secure the required limits and were able to incorporate the additional cost of the insurance into their proposal.

One particular firm called their broker two days prior to the bid's due date requesting the \$5 million limit. The firm did not have the total project fees ready and was not able to relay this information until the next day. The insurance carrier was advised the firm needed to have the quotes no later than Noon the following day since the RFP was due at 3PM.

Due to the firm's adverse loss ratio (approximately 250%), their Professional Liability carrier would not offer the firm the required \$5 million limit. Nor would the carrier offer a practice limit increase. If the firm had acted earlier, the broker may have been able to secure excess limits through another carrier. But time had run out.

The architecture firm was in a state of shock. Needless to say, they were unable to bid on the project.

This is a good example of poor quality control procedures and management of the RFP. The firm clearly did not manage the bidding of the project effectively. They assumed they would be able to comply with the insurance requirements and waited until the last minute to contact their broker. If there was more time the broker could have explored other options.

Sub-consultants should make sure to understand the insurance requirements as well. If you are being asked to submit a bid to the prime design firm bidding on the RFP, request a copy of the RFP. Read the insurance provisions to make sure that your firm can also comply with the required limits.

Since projects are so scarce and most Professional Liability carriers are tightening their belts with respect to offering higher limits, it is critical to be proactive when responding to an RFP. It may require a little extra time and effort to review the RFP and implement sound quality control procedures but at the end of the day you are taking the first steps to produce a successful bid and ultimately, a profitable project.

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Ms. Pellet is Vice President of the Marquis Agency and a member of its professional practice leadership team and risk management committee. Ms. Pellet's insurance and risk management career spans over 20 years, concentrated in the design professional liability market. Prior to joining Marquis, Ms. Pellet was a



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professional liability underwriting with AIG Group and was a senior executive with one of the nation's leading design professional brokers.

Ms. Pellet has been published in several Architecture and Land Surveying trade magazines. She has also developed and presents risk management seminars for numerous design professional associations. Recently Ms. Pellet was recognized by the NJ Land Surveying Society for her outstanding contributions and services to the society and was honored with "Friend of the Society."

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