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Risk Management Tools for the Design Professional

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Ms. Christen 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. In 2005, Debra was recognized by the New Jersey Land Surveying Society for her outstanding contributions and services to the society and was honored as a "Friend of the Society."



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Responding to an RFP: Risk Management Tools to Guide the Bidding Process

by Debra Christen, Marquis Agency

Competition among design professionals can be fierce, so it is critical to be as prepared as possible when trying to win new projects, especially those that are put out for bid. Just as you have project quality control procedures to review a design, you also should have a similar process for responding to an RFP (Request for Proposal) to assess the appropriateness of the project for your firm, to minimize risk and to insure profitability.

When first considering whether to bid on a project, ask these questions:

- Does our firm have experience with the project type?
- Is our staff capable of handling a project of this size and scope?
- Do we have confidence in our design team, including sub-consultants?
- Can we turn in a successful project and make a profit?

Once you decide to respond to the RFP, you will take many steps to ensure your firm has a good chance at being awarded the project. You will choose a project manager and team that have the most experience with the project type. You'll take great care in selecting your sub-consultants. You'll follow your customary quality control procedures and review every aspect of the design phase; the costs of construction, the construction schedule and most importantly, your fees.

So, what could possibly go wrong when responding to an RFP? The answer may lie within the RFP itself.



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Project Owners and Project Expectations

When you assemble your project team, you need to call upon the staff members who are best suited to understand the project and the terms spelled out in the RFP. Your team should be asking the following questions. Who is the project owner? Is it a government entity? 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 it? Understanding who the project owner is as well as the expectations set forth in the RFP is as important as delivering the winning bid.

Reading the RFP thoroughly will give you a sense of these expectations. Can your firm effectively manage them, or are they set too high? Does the RFP contain provisions that are one-sided, favoring the project owner? Are some provisions uninsurable? 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 problem areas, including 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, well in advance of the proposal deadline.* Some of the clauses that could contain problematic 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

Be sure to consult experts to help you to determine if these or other clauses could pose issues for your firm. Your insurance broker and your Professional Liability insurance company are valuable resources – in fact, most specialty brokers and Professional Liability carriers can offer assistance in reviewing the RFP language for insurability.

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

Sub-consultants should also make sure they understand the insurance requirements of an RFP. If you are being asked to submit a bid to the prime

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design firm bidding on the RFP, request a copy of it. Read the insurance provisions to make sure that your firm can also comply with the required limits.

Insurability and the RFP

The insurance provisions clause can make the difference as to whether a project will be profitable or not. Project owners may think nothing of requiring design firms to carry a \$5 or \$10 million limit of liability when, in fact, such limits may be impractical or even unattainable. Is your carrier willing to offer them to you at all? If not, can other markets be pursued? What will the additional limits cost? How long are you required to maintain them?

To avoid a last-minute scramble that could cost you the project, discuss the options available to your firm with your broker early on in the process. If you are seeking a Specific Additional Limit, the underwriting carrier will need their short application completed with key project information such as:

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

The carrier will most likely require a copy of the RFP to review the insurance requirements as well as some of the clauses discussed above, for insurability. Further, be aware that a firm's claims experience weighs heavily in the underwriting equation in determining if the carrier will offer the higher limits. Here's an example of how a design firm was negatively impacted by neglecting to proactively manage the RFP process.

Timing Is Everything

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, and 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 brokers right away to request the higher limits. *Because these firms were proactive 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 proposals.*

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One 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 3:00 p.m.

But due to the firm's adverse loss ratio (approximately 250%), their Professional Liability carrier would not offer either the required \$5 million limit, nor 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.

To win projects in a competitive market, 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 you are taking the first, necessary steps to produce a successful bid and ultimately, a profitable project.

Broker's Notes