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Responding to Requests for Project Design & Construction Industry Proposals (RFPs)

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In design professions and construction, owners solicit proposals for their projects from industry firms that they believe are qualified to do the work. This risk management article focuses on how to respond to requests for proposals (RFPs). But before discussing the response, some basic contract law should be covered.

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CONTRACT FORMATION

In the legal world, to form a contract we need three elements. One party to the contract formation process makes an “offer” to the other party. The other party can “accept” the offer, make a counter-offer, or outright reject the offer). The offer and counter-offer can go back and forth as many times as necessary in a negotiation. The third element is called “consideration,” which means both parties of the process must give up something in value. Types of consideration include when a party provides services in exchange for money from the other party.

In context of responding to requests for proposals in the design professions and the construction industry, the project owner solicits offers for a project. The designers or construction professionals make an offer which would include a fee for the project, including the scope of services being suggested and qualifications to perform the work. Then the project owner can accept the proposal, make a counter-offer, or reject the offer. In a sense, the RFP is not an offer but starts the contract formation process of “offer-acceptance-consideration.”

RESPONDING TO REQUESTS FOR PROJECT PROPOSALS

All that being said, the American Institute of Architects recommends that responses to RFPs be based on qualifications and free from price comparison. The project fee can be negotiated after the offer has been accepted. Project owners should examine the talent and experience proposed and make selection on the basis of merit before discussing compensation. But of course, that is not always the case, and project owners require compensation proposed as part of the total offer.

A variation of the theme is where project owners establish a short-list of qualified design or construction professionals without compensation for part of the offer. And from that list, the project owner can then enter into fee negotiations to distinguish the candidates from each other.

As part of a response to a RFP, the following considerations should be included.

- A response to an RFP can be problematic, both for what they include and for what they omit. For example, statements included for marketing purposes can create issues if they use superlative descriptions that induce the project owner to expect a level of service that exceeds the proposer’s standard of care.
- Some RFPs may include a contract form, such as professional association model agreements by the American Institute of Architects (AIA), the Engineers Joint Contract Documents Committee (EJCDC), or the Design-Build Institute of America (DBIA). These model agreements may be used as is or highly modified to the point where the project is too risky. Or the project owner’s RFP may include a custom contract form, that may be risky as well.
- The RFP may allow edits to the model or the custom agreement, with a list of changes and reasons why. In a project owner’s evaluation process, the edits/changes may influence the owner’s decision on which design or construction industry firm is the best fit for their project.

A ROAD MAP TO STRUCTURING A PROPOSAL TO A RFP

Here's a breakdown of the process and best practices:

1. Understand the RFP and the Client's Needs:

- Read the RFP carefully: Understand all requirements, including the scope of work, deliverables, timeline, budget, and evaluation criteria.
- Analyze the client's situation: Research the client's business, goals, challenges, and what they hope to achieve through the project.
- Tailor your response: Customize your proposal to address the client's specific needs and demonstrate how your skills and experience can help them achieve their objectives. Avoid generic responses.

2. Structure Your Proposal:

- **Cover Letter:** A formal introduction highlighting your company's qualifications and enthusiasm for the project.
- **Executive Summary:** A high-level overview of your proposed solution, summarizing the key aspects of your proposal and how you'll meet the client's needs.
- **Deliverables and Implementation Plan:** Detailed description of your plan to execute the project, including timelines, milestones, and assigned team members.
- **Pricing and Contract Terms:** A transparent and detailed breakdown of your proposed costs and contract terms.
- **Additional Product Information:** Include supporting information such as demo recordings, case studies, or mutual action plans.
- **Social Proof:** Highlight testimonials, case studies, awards, and certifications to demonstrate credibility and success.

3. Develop Compelling Content:

- **Focus on the Project:** Go beyond simply stating your qualifications and explain how your expertise will directly benefit the project and the client.
- **Be Specific and Direct:** Clearly articulate your proposed approach, timeline, and deliverables.
- **Showcase Relevant Experience:** Provide concrete examples of successful projects ideally similar to the current one and highlight measurable outcomes.
- **Emphasize Your Value Proposition:** Clearly communicate the unique benefits your firm brings to the project.
- **Present a Clear Timeline:** Outline the project phases and milestones to demonstrate planning and reliability.
- **Showcase Team Expertise:** Highlight the qualifications and experience of your team members who will work on the project.

4. Refine and Submit:

- **Proofread Carefully:** Ensure your proposal is error-free, professional, and well-organized.
- **Follow Submission Requirements:** Adhere to all formatting, length, and submission instructions.
- **Submit on Time:** Punctual submission is crucial.
- **Follow Up:** Politely follow up after submitting to confirm receipt and offer to answer any questions.

Key Considerations:

- **Value over Price:** While competitive pricing is important, emphasize the value and quality you provide, not just the lowest cost.
- **Communication:** Maintain open communication with the client throughout the process.
- **Transparency:** Be upfront about what you can and cannot provide.
- **Professionalism:** A well-written and presented proposal demonstrates professionalism and attention to detail.

By following these guidelines, design professionals and construction firms can create strong and persuasive RFP responses that increase their chances of winning valuable contracts.

List generated by Artificial Intelligence (AI)

About the Author of this Risk Management Building Block Article

As a risk manager for the last 20 years for the design profession, Eric O. Pempus, FAIA, Esq., NCARB has experience in professional liability insurance and claims, architecture, engineering, land use, law, and a unique background in the construction industry. Prior to risk management, he has 25 years of experience in the practice of architecture/engineering, and as an adjunct professor teaching professional practice courses at the undergraduate and graduate levels for the last 37 years at Kent State University's College of Architecture & Environmental Design.

As a Fellow of the American Institute of Architects and AIA National Ethics Council 2021 Chair, he has demonstrated his impact on architectural profession. He has presented numerous loss prevention and continuing educational programs to design professionals since 2000 on topics of ethics, contracts, and professional practice in various venues across the United States and Canada. He is a former member and chair of his city's Board of Zoning & Building Appeals for 24 years, and is a licensed architect, attorney, and property & casualty insurance professional.

His educational background includes a JD from Southwestern University School of Law, Los Angeles; Master of Science in Architecture from University of Cincinnati; and BA in psychology/architecture from Miami University, Oxford, Ohio.

The above comments are based upon DesignPro Insurance Group's experience with Risk Management Loss Prevention activities and should not be construed to represent a determination of legal issues but are offered for general guidance with respect to your own risk management and loss prevention. The above comments do not replace your need for you to rely on your counsel for advice and a legal review, since every project and circumstance differs from every other set of facts.

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