

PB-27**PROVIDING DESIGN SERVICES DURING PROJECT PROCUREMENT**

Legislative references for this Practice Bulletin include:

[The Architects Act General Regulation](#), Section 41(1)

[AAA Code of Ethics](#), Section 3: Competence and Quality of Service, Section 7: Fees

SUMMARY

The underlying message of Practice Bulletin-27 is to confirm to authorized entities that it is unacceptable to prepare and present design work for a project or provide solicited or unsolicited professional services, in the absence of a written agreement that complies with section 41 of the *Architects Act General Regulation (General Regulation)*.

This document addresses in more detail, procurement processes for architectural or licensed interior design services that require design work to be provided as part of the ranking criteria for consultant selection. This often occurs in the form of a Request for Proposal (RFP) context or in other circumstances requiring design work up front, such as design-build procurements or a Public Private Partnership (P3).

These procurement processes are distinguished from a traditional "architectural competition", i.e. a formal structured competition carried out in accordance with Royal Architectural Institute of Canada (RAIC) guidelines as approved by the AAA Council (Council).¹ Architectural competitions are rigorously structured and involve a qualified jury (including an AAA member) to judge submissions, while providing remuneration for the best design(s) and a reasonable expectation that the winner will be commissioned to undertake the project.

Outside of architectural competitions, participation in procurement practices where design work is required up front has not been approved by Council.

BACKGROUND

The Architects Act (Act), the General Regulation, AAA Bylaws and AAA Code of Ethics (Code of Ethics) are clear as to the philosophical and legislative framework around providing professional services for a fee that is commensurate with the scope of work and complexities of any given project. The *General Regulation* is very specific about the requirement for a written agreement:

41(1) Subject to subsection (2), an authorized entity may provide professional services to a client only if the authorized entity and client have executed a written agreement that

- (a) provides for a method of determining the fee or other consideration to be charged, and
- (b) describes the professional services to be provided.

The ethical foundation for this provision arises because the practices of architecture and interior design are complex; there is often a significant information or knowledge asymmetry between an authorized entity and their client (or in the case of a procurement project, a potential client). It is unethical for authorized entities (or any other regulated professional) to take advantage of this information asymmetry for gain. Authorized entities are bound by the Code of Ethics to act in the best interests of their client, provide professional services with honesty and integrity, and avoid questionable conduct (please see Sections 1-5 of the Code of Ethics).

Section 7 of the Code of Ethics goes on to list factors for consideration when determining an appropriate fee for professional services.

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The AAA advises its members not to participate in procurement processes that require design work where those processes are not structured as architectural competitions approved by Council and fall outside of the requirements of section 41(1) of the *General Regulation*. As a guide for its members, the AAA provides the following as examples of practice that do not meet the requirements of section 41(1) and, depending on the circumstances may be construed as unskilled practice or unprofessional conduct that becomes the subject of a complaint.

PROCUREMENT PRACTICES REQUIRING COMPETITIVE DESIGN SUBMISSIONS

There are instances where complete designs are submitted to determine the selection of a registered architect or licensed interior designer, aside from architectural competitions. Examples include a design build, an RFP and P3 RFP procurement practices where considerable professional work is required to be completed by the proponents without compensation from the RFP issuer.

PROFESSIONAL RISKS ARISING IN PROCUREMENT PROCESSES

1. As noted above, there are procurement scenarios that solicit professional work without compensation or consideration, or with levels of compensation (honoraria) that are significantly less than that required to undertake the work. In participating in these procurements, authorized entities are taking a business risk. In some cases, that business risk may be so significant that it may be difficult for the authorized entity to fulfill its professional, ethical obligations, including the duty of care.² When considering such risks, it is important for authorized entities to be aware that registered architects and licensed interior designers must provide professional services that meet the minimum expected standards of the professions, regardless of the level of compensation. Failing to do so constitutes unskilled practice or unprofessional conduct or both. In other words, it is not open to authorized entities to provide lower than minimum standard professional services in response to financial pressure. This is emphasized by section 3 of the Code of Ethics:

Competence and quality of service

- 3 An authorized entity must
 - (a) act in the best interests of its client,
 - (b) provide professional services with integrity, objectivity and independence,
 - (c) serve its clients in a conscientious and efficient manner, and
 - (d) provide a quality of service at least equal to that which would generally be expected from a competent authorized entity in a similar situation.
2. Another issue that arises in the procurement context is the provision of an unsolicited design in drawing and / or model form that exceeds the stated parameters and expectations of the procurement process. As there is no written agreement for the unsolicited professional services provided in this case, this conduct offends section 41 of the *General Regulation*, which prohibits authorized entities from providing professional services in the absence of a written agreement. A breach of section 41 of the *General Regulation* (or any other provision of the *Act* or *General Regulation*) can constitute unprofessional conduct.

The provision of unsolicited professional services may also be unprofessional or unskilled practice if the authorized entity does not have all of the information required to determine if the unsolicited design reflects what is possible or realistic in the circumstances. Again, the authorized entity has an ethical obligation to provide professional services that are in the best interests of the client.

AAA ADVICE FOR AUTHORIZED ENTITIES

There are no protocols for properly responding to requests for proposals, particularly where the situations outlined above are encountered. AAA members are entitled to develop their own business plans and creative replies in the pursuit of work, so long as they comply with the *Act*, *General Regulation* and the AAA Bylaws and Code of Ethics.

In responding to an RFP or in preparation for an interview, where a member develops a strategy either in competition with others for the same client at the same time or, who is sole sourced, the following provides a practical application of the *Act*, *General Regulation* and the AAA Bylaws and Code of Ethics:

- (a) Do not submit responses that include unsolicited designs or require unsolicited professional services. It is a breach of section 41 of the *General Regulation* to prepare unsolicited design work for promotion and presentation to a prospective client at the procurement stage of a project where no such request has been made by the client or in a RFP. The provision of professional services that exceed the parameters of the RFP constitutes a breach of section 41 of the *General Regulation*.
- (b) Do not overstate, exaggerate or otherwise misrepresent the experience, capacity or competence of the authorized entity. Misrepresenting the experience, capacity or competence of an authorized entity in a procurement process is a breach of the Code of Ethics.
- (c) Do not submit a proposal that cannot be realistically completed by the authorized entity without compromising the minimum professional standards for registered architects and licensed interior designers. The submission of a response for which the authorized entity has no realistic chance of completing is a breach of the Code of Ethics.
- (d) Do provide fee estimates that accord with the principles set out in section 7 of the Code of Ethics.

FOOTNOTES

¹ Section 37 of the *General Regulation* prohibits authorized entities from participating in competitions unless the competition complies with the standards approved by Council. Council has approved the RAIC guidelines. Notably, section 37 refers to "architectural" and "limited architectural" competitions. This terminology is outdated and has been replaced in the RAIC guidelines with "endorsed" architectural competitions. The RAIC guidelines can be found at [Architectural Competitions](#).

² Duty of Care is a term found in law. Its meaning: "In tort law, a duty of care is a legal obligation which is imposed on an individual requiring adherence to a standard of reasonable care while performing any acts that could foreseeably harm others. It is the first element that must be established to proceed with an action in negligence."

NOTES

This bulletin is intended to establish acceptable guidelines to the membership at large. The AAA Practice Advisory Committee is available to members and to their prospective clients to assist in providing further interpretation and advice regarding matters of unauthorized practice and RFPs. This bulletin supersedes previous published bulletins PB-19 and PB-25, based on legal advice obtained by the AAA. Language is repeated from the former bulletins from time to time for consistency.

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Practice Bulletins are issued by the AAA as a practice resource or as general interpretations of the requirements in the *Architects Act*, the *Architects Act General Regulation*, and the Bylaws. Bulletins should be read in conjunction with the *Act*, *General Regulation* and Bylaws and in no way supersede these documents. Bulletins are not intended to be and are not legal advice to the members of the AAA nor to the public or client. Members and the public should consult their own legal, income tax or financial advisors as to the application of the *Architects Act* and *General Regulation* in specific circumstances.

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