

PB-16**REQUEST FOR PROPOSALS (RFPS)****A CRITICAL TOOL IN THE SELECTION PROCESS****INTRODUCTION**

The art and science of designing and constructing buildings today is barely recognizable to 40-50 years ago. The process is significantly more complex - especially for publicly funded projects. It naturally follows that the process for finding and hiring an architect is more complex than in the past.

Any principal with over twenty years' experience can attest to a wide variety of means to acquiring work ranging from a simple phone call to a recommendation from a friend to a lengthy drawn out process of letter of interest followed by a proposal followed by an interview and finally site visits to past projects. That same principal will also state that the trend is to the longer more formalized process which brings us to the topic of this practice bulletin - the **Request for Proposal**.

PURPOSE

A Request for Proposal (RFP) is becoming the standard on most projects involving public funds to ensure that the public interest is protected. A client uses an RFP to gather information about a number of architects, interior designers or Prime Consulting Firms in a structured manner. Responses to the questions asked in an RFP will allow the client to make an informed defensible decision. There are a myriad of questions which can be posed in an RFP but they essentially seek to gather the following information about a firm:

1. Professional capability;
2. Depth of Experience;
3. Suitability for the particular project;
4. Ability to provide the required services within a
 1. fixed fee; and
5. Availability.

TYPES OF RFPS**Qualification Based Selection (QBS):**

Consultants are selected based on their qualifications, reputation and availability of both the firm and their personnel to best meet the needs of the client and the project.

Value Based Selection (VBS):

Consultants are selected based on a combination of both qualifications and fees, wherein lower fees increase the overall rating of the firm.

The QBS System is recognized and used worldwide. Since 1972, the United States Federal Government and 45 State Governments have applied this to all types of work. In addition, the World Bank and the Asian Development Bank are just two of many international financial institutions advocating this system.

In Canada, QBS is used by the Province of Quebec and by the City of Toronto and is strongly endorsed by professional architectural and engineering associations. At a North American and international level a number of significant related organizations use QBS including:

APWA	American Public Works Association;
AWWA	American Water and Wastewater Association;
CPWA	Canadian Public Works Association;
FIDIC	International Federation of Consulting Engineers; and
ACEC	Association of Consulting Engineers of Canada.

The **Alberta Association of Architects** endorses the QBS system for a number of reasons including:

QBS Provides Accountability:

The QBS system helps to safeguard against abuses found in fee based procurement by providing transparency. The process is clear, systematic and consistent. The selection is made based on merit and allows accountability. A health authority awarding a critical care facility to an inexperienced architect solely on the basis of a low fee is not acting in the best interests of their project. The health authority is held accountable for how public funds are spent - wisely or foolishly.

QBS Provides Best Value for the Client:

Experience shows that selecting a prime consulting firm based on qualifications is ultimately the best value for the money. Applicable knowledge, experience and the resources available in the prime consulting firm are the keys to an efficient, cost effective project. It is easy to appreciate that an architect with no experience in critical care hospital design will be subjecting himself and his client to a long and expensive learning curve.

QBS Saves Money:

Fees are not the most significant cost savings. In fact the most significant savings are achieved in construction, operation and maintenance of the project. Quality prime consulting services mean savings and reduced risk. An architect or interior designer experienced with critical care hospital design will use his/her experience to design and detail the building properly the first time - avoiding expensive changes during construction.

The **Alberta Association of Architects** acknowledges that professional fees are an important component in our clients' project budget. However, consider that the costs of architectural services represent approximately 1-2% of the total life-cycle cost of a project - that is, the cost from the conceptual state through construction, maintenance and renovation, including both capital and operating costs. In light of this, the drive to minimize fees at the expense of a full professional service begins to lose its lustre.

Applicable knowledge and experience and the resources available to an architect or interior designer are the keys to an efficient and cost effective project. In the QBS system, the architect is first chosen on the basis of qualifications. Only then can the client and architect work together to determine a fair fee that reflects the quality of the service provided the required effort and commitment from the architect or interior designer, and ultimately the long-term value to the client. Selection according to ability and resources improves the prospects for innovative methods

and alternative approaches in architecture. Because there is no incentive to compromise the quality of the service provided the QBS system leads to designs that are economical to construct, maintain and operate in accordance with the client's requirements.

CASE STUDY

The following letter was written to an owner from an architect in response to an RFP which was based almost exclusively on fees. We have modified the facts slightly.

An architect's professional approach to a project often changes when fee becomes the criteria for selection. Firms will write their RFP with a view to submitting a fee low enough to get the job. To the successful architect the challenge then becomes finding ways of cutting their time on a project. This was accomplished by minimizing the level of service such as:

- *Selecting architectural systems which are easiest to design as opposed to selecting a system which is the most economical to the owner,*
 - *Leaving much of the design up to the contractor,*
 - *Designing to the worst case scenario and repeating throughout,*
 - *Minimizing details and leaving it up to the contractor to develop,*
 - *Not providing checking during and at the end of the preparation of the contract documents.*
- Failure to do so leads to more errors and*
- *Providing minimal review of the shop drawings*

In the past, we have considered going after projects based on price, but in discussing what we needed to do in order to develop a new fee, we soon came to the realization that we were suddenly and primarily representing our own best interests and not those of our client. We were talking about methods of "short-cutting" rather than concentrating on how we could, to the best of our ability, serve our client. We recognized that we need to be responsive to our client's needs, produce a functional and economical design, and provide documents which are complete, clear and will lead toward more competitive pricing. It is our philosophy that we must represent the best interest of our client.

Interesting to note that the owner agreed with the principles expressed in this letter and modified the RFP to minimize fees as a determining factor.

RFP GUIDELINES

The architect/client relationship is unique among professionals in that a strong partnership must be formed if the project is to reach its full potential. Architects know that the level of a project's success is directly proportional to the level of commitment they receive from their client. An architect's first task on a project is to get the owner and users fully engaged in the project. The forming of this partnership does not start when a contract is signed but rather from the moment that a client writes the RFP.

If an architect is to respond to an RFP appropriately, then he/she should have a good understanding of the project. A good RFP will provide the following information:

1. Invitation (including due date and contacts);
2. Objectives of proposal call;

3. Key selection dates;
4. Project description:
 - a. Background including location, history, size,
 - b. Scope of services;
5. Construction budget;
6. Project schedule;
7. Project delivery method;
8. Required information:
 - a. experience,
 - b. project team,
 - c. management capability
 - d. timelines and deliverables,
 - e. professional services,
 - f. insurance
 - g. references;
9. Owner contact;
10. Submission requirements;
11. Evaluation criteria;
12. Proposal conditions (including terms of engagement); and
13. Debriefing procedure.

The AAA has developed a document entitled “A Guide to Writing a Professional Services Request for Proposals for a Building Project”. This document is intended for use by clients and contains additional commentary on each of the 13 items above.

FINAL WORDS ON PROFESSIONAL BUSINESS AND ETHICAL CONSIDERATIONS

Before responding to an RFP, we will usually consider the professional and business aspects of the potential project while disregarding the ethical. And yet the three issues seem to be interwoven through every other aspect of our practice.

Architects or interior designers are very good at convincing themselves to respond to an RFP when their professional, business or ethical instincts are telling them to pass. Many of the reasons you use to justify responding to an RFP will sound self-serving when you are trying to convince the Complaint Review Panel that you are not guilty of unskilled practice because your fee was too low since the client insisted that you meet all of the requirements stated in the RFP. Every experienced architect or interior designer can point to at least one project where they wish their proposal had been unsuccessful. There are numerous ways to get into trouble in responding to an RFP and just as many ways to stay out of trouble. We do not intend to enumerate these but would rather close with a few general thoughts.

Evaluate the client. As surely as we are evaluated by a committee selecting an architect we should also evaluate the client prior to responding to an RFP. Do you really want to work with this client? Why does this client seem to hire a new architect for every project? Are they spreading the work around or do previous architects want nothing more to do with them?

Why do I want this project? Be honest with yourself and remove those rose coloured glasses. We like to think of ourselves as Renaissance Men (Women) capable of doing virtually anything. Just remember that somebody has to pay for your learning curve if you take on a project which is

beyond your experience. Can you afford to pay? Expecting the client to pay is dangerously close to unskilled practice / non-professional conduct.

Construction budget versus project budget. Make sure the RFP authors understand the difference between these types of budgets. It is easy to get into trouble or to lose the job in the first place if that

\$5,000,000 budget is supposed to include fees, testing services and furnishings. Trying to extrapolate the actual construction budget from a client's budget is rife with problems. Ask for clarification. If nothing is forthcoming, state your assumptions.

State your assumptions. It can become impractical to try to pin down every detail in an RFP when you are trying to meet a deadline. I know some clients may think that you have “qualified your tender” but the vast majority of clients would not reject your proposal because you stated your assumptions. It is more likely that your stated assumptions will underscore flaws in the RFP or clear up misconceptions.

NOTES

The *Alberta Association of Architects* thanks Barbara Komisar for kindly providing this article. Ms. Komisar is a lawyer with *Ogilvie and Company* and practices in the areas of corporate and commercial law.
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Appendix A

RFP Cautionary Information

Copyright / Moral Rights

Copyright remains with the architect under standard client/architect contracts such as Document Six, Canadian Standard Form of Contract for Architectural Services. This document contains provisions with respect to copyright for the work and instruments of service under contract, but does not contain any provisions with respect to copyright in the building itself and has no provision concerning moral rights at all.

Generally, clients are unaware that although they pay for a building design and have an implied right to inhabit and use it, the copyright and moral rights in that building remain with the architect or licensed interior designer unless there is a contract stating otherwise. Such is the case with some major public sector clients, wherein some RFP's will require waiver or assignment of copyright and moral rights in their own developed contracts.

When a client/architect contract includes such a waiver or assignment, in order to preserve copyright and moral rights in a building, or at least benefit from these rights, members should include specific terms either in their contracts for service or in a separate contract. For example, if copyright is assigned and moral rights are waived, the client can expect to pay extra for the acquisition of these rights, but then gains the freedom to change or add to the building in the future.

WORKERS COMPENSATION BOARD (WCB) INSURANCE COVERAGE

Some RFP's include WCB insurance coverage as a condition of engagement. This is an extraordinary request because our members are generally exempt from such WCB coverage. However, given that clients can make this kind of request for additional coverage, such a requirement should be accepted as a cost of doing business with them. The cost covering such a requirement should be included under disbursement charges.

Word of caution: The WCB insurance coverage requirement may not be clearly conveyed by an RFP and it becomes a member's responsibility to note it separately as a disbursement item. Refer to Practice Bulletin No. 14, WCB Coverage & You, for further information.

RISK DOWNLOAD

There is no undertaking without risk. Methods of minimizing risk by downloading it to the architect can become an unfair risk transfer that can cause conflict, liability and added cost. In an attempt to transfer risk, client developed contracts can carry revisions to one of the standard forms of contract used in the industry, applying a shifting or elimination of responsibilities.

LIMITLESS LIABILITY

Beware of limitless liability being placed upon the architect. It is not a fair practice and is not followed by contractors and businesses in the construction industry who limit their liability as a matter of course. A reasonable limit for the architect would be the dollar amount of errors and omissions insurance required.

HOLD HARMLESS

When the client requires that the architect hold harmless the client from all third party claims, demands or actions for which the architect is responsible, it is anticipated to be only fair to apply to the client a hold harmless clause in favor of the architect on the same terms.

VALUE BASED SELECTION (VBS)

When Value Based Selection (VBS) process is used, it is a **fee based** selection process where the architects are selected based on combination of both qualifications and fees, wherein lower fees increase the overall rating of the firm.

Beware: In any fee based selection process, fees become the overriding criteria

A fee based process is perceived to offer some savings at the early stages of a project, however, past experience has demonstrated that the overall combined capital and operating costs are generally greater when compared to projects where architects have been engaged using a non-fee process such as Quality Based Selection (QBS).

When a fee based selection (VBS) process is used, members should only submit a fee proposal when the

RFP includes:

- Client's identification of the project, its location and status of funding.
- Client's outline of schedule, indicating anticipated start of services and desired completion of construction.
- Construction budget for project.
- Scope of architectural services required.
- Terms of engagement.

INSURANCE

When the client is requesting professional liability (errors & omissions) insurance coverage at limits in excess of industry standards, the cost of such additional coverage should be considered as a recoverable expense under disbursements. In the event the client intends to provide project insurance, such criteria should be coordinated with the member's own insurer.

CONSTRUCTION BUDGET

Neither the architect nor the client has control of the construction cost and therefore the architect cannot warrant or represent that the project costs will not vary from the construction budget. This should not be implicated otherwise by any contrary RFP terms of reference.

As a rule construction budget does not include the client's 'other budget' factors which do not relate to the architect's scope of services and the intended 'work' itself. Anything to the contrary, needs to be clarified.

PROJECT DELIVERY METHODS/CONSTRUCTION CONTRACTS

Every form of project delivery and construction contracts carry their own advantages and disadvantages and include variant levels of risk and conditions to perform services. A detailed document entitled 'Alternate Forms of Project Delivery', authored by AAA/APEGGA Joint Board of Practice is available on the AAA website, www.aaa.ab.ca. The disadvantages to be aware of in respect to each form of project delivery and construction contracts are summarized as follows:

Design – Bid – Build / Traditional Method (Stipulated Price Contract)

- Takes longer to complete a project.
- Can result in adversarial or confrontational relations between owner, consultants and contractor.
- Changes during construction can be more costly and also have an adverse effect on schedule.
- This method is not usually the best value to the owner and costs are generally higher.

Construction Management

- Owner does not have a fixed guaranteed cost commitment at the beginning of construction. When the construction manager acts as agent, the guaranteed cost is not available until completion of construction.
- Increased risk of unresolved design issues arising after design has commenced.
- Administrative costs are higher for the owner.
- Can cause confusion in roles and responsibilities.

Design – Build

- Cost savings are in conflict with building quality and maintenance cost.
- A more complex and risky process than other forms of project delivery.
- Architects and engineers are disconnected from the owner.
- Too difficult, complex and costly to properly manage risk and costs for one – off type buildings.

Cost – Plus

- No incentive to avoid cost overrun.
- Often not permitted on publicly funded projects.
- Total cost is unknown until project completion

The term “architect” shall be used to describe architects, restricted practitioners and licensed interior designers as defined in the Architects Act and is interchangeable in this Practice Bulletin.