OPINION

Risk management

Claims are not like fine wine – they do not get better with time. So take these four steps to assess and manage potential exposures.

Dan Knise

Rob Hughes

GUEST SPEAKERS

Design firms are always looking for ways to increase revenues and decrease costs. This takes many forms, but one initiative that will clearly pay dividends is to manage risk on both a pre-claim and post-claim basis.

What do we mean by manage risk? Well, simply put, it is the process of identifying, quantifying (if possible), mitigating, transferring, or accepting risk. This is something we all undertake every day as we evaluate the risks of any action (or inaction) and move forward with life. Sometimes, we undertake this type of risk assessment and management informally; at other times, we employ a more disciplined approach. For design firms to address risk most effectively we encourage a formal process.

FOUR-STEP PROCESS FOR BASIC RISK ASSESSMENT. Our experience is that the best run architecture and engineering firms utilize a four-step process as follows:

1) **Evaluate.** Assess the project and client at an early stage and make a reasoned go/no-go decision.

2) **Negotiate.** Once the decision to go ahead is made, work actively to manage the contract negotiations.

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3) **Manage.** Practice effective project management, including active communication and documentation.

4) **Take action.** Once any signs of trouble, or even potential trouble, appear be proactive in addressing any concerns or issues.

PROJECT EVALUATION AND GO/NO-GO DECISION-MAKING. It is important to begin the risk management process at a very early stage. In fact, this work actually

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starts even before considering a particular project or client with ensuring that your firm has the proper business and professional licenses for the project jurisdiction.

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The next step is to evaluate the nature of the project and the project owner. Historic claim information tells us that certain projects and certain types of clients represent greater risk than others. This includes projects such as condominiums and schools. Developers, in particular, tend to come after architects and engineers more often than state departments of transportation, for example.

You should evaluate the project owner's track record with regard to length of time in business, financial stability and integrity, decision-making approach (e.g., committee versus hierarchical), and style (wheeler-dealer, conservative, etc.). You'll also want to understand how they select their professionals – will this be a qualification-based selection process or low bid? In most cases, QBS is preferable by far.

Throughout this process, and the related step of making sure you have the necessary skill sets in-house (or access to such skill sets through qualified subconsultants), there should be a procedure to seek approval at various levels. This no/no-go decision process is critical.

Navigating the proposal phase: During the proposal phase, be sure to evaluate whether or not you have the skill sets in-house, or access to the skill sets, required to undertake the work being proposed.

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Equally important is this – are the right people available to actually work on the project or is your backlog too full? Will you need to work with any owner-selected subconsultants (e.g., geotechs) and, if so, what is their track record?

On a related note, what is the adequacy of the project information (e.g., soil tests)? Can you rely on owner-furnished information or will you need to undertake independent evaluation and testing?

Once you've jumped these hurdles you'll want to look at the adequacy of the compensation (avoid "buying work") and the scope of services. Additionally, what is the timeframe for the project? Is there adequate time to do a proper design and provide meaningful response to requests for information or other construction-phase issues? The owner's overall project budget is also important. Are there adequate funds to build the project? Are the owner's expectations realistic?

CONTRACT NEGOTIATION ISSUES. Once you've made the decision to move forward, then attention must be turned to the actual contract document that will control your relationship with the project owner. While the entire contract must be reviewed, the clauses that typically garner the most attention are:

- Scope of services
- Standard of care
- Express warranties or guarantees
- Time limitations
- Owner-supplied information
- Ownership of documents/intellectual property
- Indemnification/hold harmless

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PROJECT MANAGEMENT IS KEY; DON'T LET ISSUES SIMMER. Once the project is underway, it is important to continually communicate with the project owner and others, as appropriate. A key step is to document all such communications with an email or formal meeting report to avoid misunderstandings later.

It is also important to be on the lookout for any signs of issues. Project delays, cost-overruns, nasty emails from the owner or contractor, can all be signs of trouble ahead. Should any of these occur, don't be afraid to put your professional liability insurer on notice and seek their assistance with these pre-claim matters. Claims are not like fine wine – they do not get better with time.

In closing, the most important thing to keep in mind is that good risk management does not have to be a barrier to success. In fact, when properly exercised, it can help enhance profits and growth while reducing the risk of negative consequences.

DAN KNISE is president and CEO at **Ames & Gough**. Contact him at dknise@amesgough.com. ROB HUGHES is a senior vice president and partner at Ames & Gough. Contact him at rhughes@amesgough.com.