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Guarding Your Interests in Difficult Times

—Steven J. Isaacs

Protect your firm when pursuing projects and conducting negotiations by considering these 16 vital interests that go beyond maintaining backlog and preserving client relationships.

In this tough economic setting, the first thing on everyone's mind is getting work to maintain the backlog while preserving strong client relationships. These needs naturally take precedence as top priorities because after years of searching for appropriate staff, it is heartbreaking to lack enough work to keep people employed. But focusing on these two concerns alone can mean losing sight of everything else that the leadership team holds important, which can put the firm's health at risk. Now more than ever, leaders must exercise their negotiation skills at a high level.

Whether seeking work or negotiating a contract or change order, there are interests you must consider to guard the firm's longevity, keep people working, maintain the best staff, and be prepared to act quickly when the economy turns around.

Many people in the design industry enter negotiations with little preparation. They are often primarily focused on obtaining a signed contract and a fee, and they may not look beyond those two goals to consider the other issues that affect the best interests

of the firm. Every firm leader, as a key competency of leadership, needs to have a thorough understanding of negotiations and strong negotiating skills. Among those skills is the ability to keep vital components in balance and to consider them carefully when seeking work or entering a negotiation.

Below are the 16 most vital interests that design firms need to consider before every project and in every negotiation, especially during difficult times.

1. Profitable fee

Are you going to make money on this project? When the economy is in terrible shape, you'll find that some competitors will take any work at any cost, even if they lose money, just to have work on the books. It may be tempting to do the same, but consider first how that will impact your firm over time.

When you accept an unprofitable fee, not only does the firm lose money now, but the problem will be compounded when the downturn is over. When the rate of inflation starts to go up, the fee becomes worth less

on a daily basis, and you will be losing more money than you did when the project started. You will have people tied up on a project that is bleeding time and money from the firm when profitable work at a higher rate is becoming available.

2. Client relationship

When design professionals are asked, Why did you ... (take such a terrible fee, not ask for additional services, accept detrimental terms in the agreement, agree to an unachievable schedule?) most professionals respond We had to maintain the client relationship! We in the design profession use this excuse for myriad actions that seem incomprehensible or even harm the firm.

Clients are key to our practices, and maintaining excellent client relationships is important. Yet we often allow this interest to override all others. Evaluate your client relationships regularly to determine which of them are actually worthwhile. Which types of clients offer the best, most interesting work? What market sector is historically your most profitable? Put everyone in the firm to work finding more of these. Do you have parasitic clients who give you lots of repeat work that you always lose money on? We know why they like you, but why do you keep them?

3. Scope of work

How many times has your firm gotten into a project and discovered that your concept of the scope doesn't match the client's expectations? A big part of negotiations is obtaining knowledge. The leadership skill required for obtaining knowledge is the ability to ask powerful questions. Great leaders understand that asking the right questions brings them new information and the understanding to make sound decisions — and to handle complex negotiations. A key interest for design firms is assuring that all parties agree on the scope and that the effort to complete the scope matches the fee available.

4. Schedule

There is always someone who will tell the client they can deliver a faster project schedule than your firm can. You must endeavor not only to understand the client's expectations but also why they have established their schedule and whether can you deliver within that time frame. As a professional and the advisor to your client, you need to help them determine if their expectations are in alignment with the reality of the project's needs.

Case Study: Risk Management Takes Awareness

An architect woke up one morning, had coffee, read the paper, and then went to a contract negotiation with a client at a major educational institution. During the conversation, the client said "You don't have to worry about signing the terms of this agreement because we never sue architects." Luckily, when the architect had read the local newspaper that morning, in the front of the business section was an article about this very organization suing an architect.

Suddenly, the architect realized how much risk he was facing: Everything about the negotiation changed because the client was either prevaricating or uninformed. He was tempted to give in to his emotional reaction and say, "You are a liar." But more important, he understood that the client was — either deliberately or through lack of data — misleading him, and knowing that fact, he realized the risk he was taking in the negotiation.

Case Study: Listening to Staff

A firm had just completed two prison projects that were financially successful. As they were finishing the second project, three staff members came to the partner in charge of the project and said, "Can we get a minute? We represent the entire

5. Terms and conditions.

Clients often dictate the terms and conditions for the agreement, and reviewing these is not traditionally a strength of many design professionals. Terms and conditions were once a simple declaration of the relationship between design professional and client, but today they can contain many items that modify both the scope and the client's expectations. It is of major importance that design professionals learn how to review terms and conditions and that they understand the expectations contained therein.

6. Indemnification articles

Indemnification clauses appear in a majority of agreements. We have all tried to expand our understanding of these clauses, but we are not attorneys. So we send them to an attorney or in-house council and receive the following legal advice: This is not a good clause, but you have to make a business decision. It is essential that we take the time to understand the potential risks we are accepting before we agree to any of these clauses. I am aware of several firms that have agreed to indemnification clauses and paid dearly when the client decided to implement the terms during a conflict.

7. Risk management

Risk comes in many forms, and it is tempting to diminish risks or excuse them in our great desire to acquire the work and maintain the client relationship. Our very need for client relationships makes us vulnerable to moments of bad judgment. But managing risk always comes before the client relationship.

8. Maintain backlog

"We need this work to keep people busy." This is one of the most dangerous sentences in our profession, especially before entering a negotiation. It means that you're willing to get the project at any cost. Are we really willing to lose sight of all our interests just to get a signed contract? Are you willing to lose money, be sued, or do work that harms the firm's reputation? Backlog cannot be your only concern; you must take the firm's other interests into consideration.

9. Staffing

Staff members want to do work they believe in and work at a firm where they feel they are making a significant contribution to both the firm and clients. They want to grow their abilities over time and take on more challenging assignments. Addressing these needs through the projects your firm pursues

staff and we want to tell you something. We don't want to work on another prison project, ever, in our lives."

"Why?" the partner asked.

"We feel that what we're designing is pure incarceration. There's no chance of people recovering in this situation. They become hardened criminals when they're incarcerated like this. They will just come back here again when they're released. We're creating this cycle, and we don't want any part of it."

The normal response they expected, and got, from the partner was, "Do you realize how much of our bonuses came out of these two projects? My opinion is that we will give up somewhere between 15 to 20 percent of our annual bonuses if we walk away from this market."

But they told him that the staff had already talked about the financial side, understood the consequences, and it didn't matter. The partner had to go tell the other partners about this, and while they weren't happy about the situation, the firm walked away from the prison market. They walked away because all the designers and all of the junior staff said, We don't want to work on this one. Life is just too short.

While many firms do great work on these projects, this firm determined that keeping the unique group of talented staff together as a team was more important than the profitability they could achieve in that particular market.

Case Study: The High-Maintenance Client

An A/E firm had a client that wanted to do a good design for a community hospital. Every Wednesday the client would go to the firm's office to talk about progress on the project. One Wednesday after the client left, the project manager went to his director and broke down in tears.

"I just spent seven hours getting beat up with the client screaming at me. I need help," he pleaded.

The next Wednesday when the client came, the director went into the meeting. When he walked in the client asked, "What's going on?"

"I want to see how we're doing," the director said.

"I'm glad you're here. Let's review where we are."

Five minutes into the discussion the client started yelling at the project manager. The director stopped him, "Wait. Step outside, please."

The client asked, "What's going on?"

"I'm sorry," said the director, "but I can't let you yell like that in the office. You're a professional. He's a professional. I can't let you yell like that."

"Do you understand what's going on in there?" the client replied.

"I don't care," said the director. "I can't let you

can help attract and retain talented staff, and while the war for talent is under a cease fire at the moment, it will be competitive when the economy turns around.

10. Reputation

Will this project enhance the firm's reputation or detract from it? An understanding of your firm's vision is key in deciding which projects to pursue. The future of your organization will be impacted by your selection of the next project.

11. Location

Where is the project? Who on staff is willing to travel in order to make site visits every week for years, especially during construction? All of a sudden, it's too far for someone to travel regularly and that location needs people working on site, which can have a big impact on the budget. What does it mean when you have to get on a plane to go overseas? Do you have people who are willing to travel that much? Location can be a big item and a big interest for your firm and your staff.

12. Cash flow

Will this client pay in a timely fashion? For that matter, will this client pay at all? Isn't it in the interest of the firm to know this before entering into an agreement?

13. Core values

Does this project have anything to do with the statement posted in the front lobby that proclaims the firm's core values? Once you put the firm's core values on your marketing materials, every time you make a decision about pursuing a market someone will ask you to explain where that value is expressed in the project. It's called walking the walk.

14. High-maintenance clients

Will this client suck your life away over the next three years? Here is another instance in which maintaining the client relationship is used as a blanket excuse for taking on work that can be high-risk, costly, or even damaging to the firm.

15. Experience and diversification

In order to stay healthy, no firm can rely on a single client or type of client, a single type of project, a single market. Firms need to be diversified so that when one market sector is experiencing difficulty, other sectors can keep the firm going. The firm needs to do projects it has never done before, and this expansion of experience needs to be thought out in advance. What work will add to the firm's capacity in a meaningful way? What is the direction of the future and what markets will you want to be in?

yell like that. Let's go back in the meeting and resume."

Twenty minutes later the client started screaming at the project manager.

"Go home," said the director. "I'm throwing you out of the office. You have to figure out how to control yourself."

"What? You're quitting the project?"

"No," said the director, "I'm doing something for you and for us. We're professionals. Next Wednesday I'll be at the meeting, and you come back."

The director had to sit in the project meeting every Wednesday for six months. The only thing stopping the client from yelling was his presence in the room. The firm built the project, it turned out wonderful, but it was a long and difficult period for everyone involved.

16. Willingness of the client to allow you to do great design.

Most of us joined this profession to contribute to the built environment. A key interest is if your client will allow you to design and deliver the best solution for their needs.

My colleague recently heard a well-known landscape designer discuss an urban open space she designed for a major city. The client was reluctant to include the spacious lawns shown in a rendering of people playing with balloons and kites, saying the scene was completely unrealistic in a city setting and the space would be wasted. The designer advocated strongly for the open space. The lawns made it into the project, and the architect showed photos of hundreds of people lying on the grass and kids playing in the open — complete with balloons and kites. Will your client understand that your solution is both workable and valuable or do they need you to educate them?

Protect Your Firm's Interests

We all have a tendency to select a few reasons for pursuing projects and reaching particular agreements with clients. We may also tend to avoid examining those interests

that would cause us to conclude that we should not pursue a project or should walk away from a negotiation. When we do that, we put the firm at increased risk of incurring harm to the firm's finances, reputation, or staffing.

We must understand all of our interests when making significant decisions and then take steps to protect them. We must evaluate the importance of each interest to our firm today and tomorrow in order to make the decisions that will keep our firms strong. This challenge is even more import in difficult times we now face.

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