Effective Negotiations

Contributed by Victor O. Schinnerer & Company from a presentation by Steven J. Isaacs, Assoc. AIA, PE at Schinnerer's 46th Annual Meeting of Invited Attorneys June 2007

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SUMMARY

When it comes to negotiations, many design firms have a culture of avoiding confrontation. Shifting our perceptions, however, can give us a more actionable stance. We can learn to define our interests; understand the other parties' interests; and, with good preparation techniques, conduct a mutually successful negotiation.

WHY DO ARCHITECTS AVOID CONFLICT?

"The client holds all the cards."

"It is against our service culture to press for our interests in negotiations."

"The relationship is more important than anything."

This is the dilemma for architects and engineers when facing the prospect of negotiations in any form. Many in the design professions have difficulty even accepting that negotiations are a key element in their daily activities. The root causes include

- Enormous desire to avoid conflict
- Deficient understanding of your interests
- Lack of preparation

CONFLICT AVOIDANCE

When groups of architects and engineers are asked their reaction to the word "conflict," the immediate responses are primarily such terms as fear, anger, stress, fight, and avoid.

In more than 40 sessions over the past few years with groups of 12 to 20 people, the issue with negotiations has become clear. They see conflict, in its many forms in the workplace, as something to avoid at almost any cost. Whether the need is to request more funds for a significant client change or to tell an employee about a performance problem, the confrontation is avoided. The excuses are excellent and numerous. The No. 1 excuse? "I need to focus all my energy on getting the work done."

Conflict avoidance is a dominant trend in the design industry. One goal of a negotiation workshop is to help professionals change their views of conflict to a more actionable form.

Redefining conflict as purely a difference of *interests* begins to shine a light on this new view. Unfortunately, conflict normally appears as a difference in *positions*, and the reaction by our industry is, at best, poor. We hasten to seek compromise, find middle ground, and move on to the work. This establishes the worst precedent for the entire project relationship because it signals to the rest of the team a desire to avoid dealing with issues rather than participate in joint problem solving.

A root cause of avoidance is the widespread belief that the client can get someone else to do the work—cheaper, faster, and accepting any terms in the agreement. The truth is that there will always be a firm willing to accept one or all of the above conditions. This knowledge leads to a common symptom of avoidance: giving in.

The industry must enhance its understanding of the negotiation process. The design professional must accept that even though another firm will always be willing to take more risk, the client has selected *your* firm for a reason. The client's interests will be best served by using your firm, and they have concluded this already. The threat of "going to No. 2" on the list must be overcome. You do this by understanding your own interests.

YOUR INTERESTS—WHAT ARE THEY?

Key factors in the normal decision process for accepting a commission are fee, scope, and terms and conditions. In some cases, the fee dominates the decision. This is certainly important, but some significant issues must be considered beyond fee.

Architects, although aware of these, rarely consider them appropriately before pursuing or negotiating projects. The other factors include the following:

Backlog. How much other work is in the pipeline?

Risk. What is the chance this client or contractor will resolve issues litigiously instead of through alternative approaches, primarily negotiations?

Reputation. Will the completion of this project enhance or weaken the image of my organization?

Experience. Will this commission expand my firm's knowledge about the market?

Cash flow. Will my firm be paid in a reasonable time and without a fight?

Relationship. Can we build a long-term connection with this client?

Schedule. Can we fulfill the client's expectations?

Staff. Does anyone in the firm have the desire to work on this assignment?

Too often, the entire decision is focused on the fee. Even those firms that do consider many factors default to the fee as the overriding issue. They never consider the many other available options in making this decision—primarily because they devote insufficient time to preparing for the negotiation.

PREPARING TO NEGOTIATE

In discussions with hundreds of professionals in negotiation workshops, we have asked the following questions with sample answers shown:

- *What is the average raw rate for labor in your firm?* $30 per hour
- *What is the effective multiplier for your firm?* 3.0
- *So, what is the average hourly rate?* $90 per hour
- *What portion of that rate is profit?* $10

For every hour worked, this firm makes $10 per hour in profit! (This varies widely from firm to firm.) What if you knew that, in any significant negotiation, one more hour in preparation would raise your fee by $1,000? The rate of return on that one hour becomes about $920 per hour ($1,000 less the cost-without-profit, $80.) If this is possible, why are you not spending that hour? What if you spent two hours and could get $5,000 more in fees?

Preparation time for negotiations probably gives you a greater hourly rate of return than anything else you do in your practice. Yet most practitioners don't prepare until they are on the way to the negotiations, sometimes without even talking to the people who will do the work.

Consider preparing for negotiation in these ways:

- **Don't make a promise you cannot keep.** Negotiations begin in marketing. This is especially true at the interview.
- **Spend the time and energy to determine your interests** in the negotiation (see the list above).
- **Search for your client's interests.** Most of this has already been done while preparing for the proposal and the interview.
- **Understand the terms and scope of the agreement.** Even if the client does not include this information in the request for proposal, do the research to determine the client's expectations in these areas.
- **Determine previous experience with the client.** Speak to individuals within and outside your firm to assess the typical or historical goals and process of this client during a negotiation.
- **Quantify as much as possible.** We often believe that issues in a negotiation are subjective and cannot be quantified. This is not the case, but it takes a willingness to make assumptions and test these over time.
- **Practice for the actual negotiation.** Build potential options for resolving conflicts that may arise during the negotiations. Understand the potential implications of these options.
- **Rehearse** with others how you will react to a variety of situations.

No one expects a design professional to do all of these things, but doing something other than "business as usual" will produce a new level of confidence. We have discovered that issues with negotiations in the design profession are vast. The previous discussion reviews a few of them and suggests potential solutions. The industry must address these and other issues if practitioners are to improve results and better satisfy their interests.

ABOUT THE CONTRIBUTOR

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RESOURCES

More Best Practices

The following AIA Best Practices provide additional information related to this topic:

12.01.13 Risk Management Basics

11.05.01 Dealing with Aggressive Negotiators

12.01.07 Controlling Exposure to Risk

For More Information on This Topic

See also "Negotiating Agreement," by Ava J. Abramovitz, Esq., Hon. AIA, in *The Architect's Handbook of Professional Practice,* 14th edition, pp. 479–90.The *Handbook* can be ordered from the AIA Bookstore by calling 800-242-3837 (option 4) or by sending an e-mail to bookstore@aia.org.

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Key Terms

- Practice
- Firm planning
- Quality assurance
- Risk management
- Project management

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