

Pro Bono Services

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Summary

Pro Bono Work for non-profit or charitable organizations involves many factors which require careful consideration prior to their provision by an architectural practice. This Practice Tip also discusses the client's expectations along with recommended procedures for the architect.

Background

Non-profit and charitable organizations perform a valued service in society and some of these manage to do this with very limited financial resources. These same organizations are often managed by local volunteers who are connected with a wide variety of business interests and other organizations which may result in the development of beneficial relationships for architects. Management boards, volunteer directors and their staff members frequently request service providers to reduce their cost or to offer products and services as “in-kind” contributions. “In-kind” also means that the fee can be paid in traded goods or services. Motivation for the architect may be:

- The architect is a volunteer, member or director of the organization requesting pro bono work.
- The architect may believe strongly in the mission of the group requesting the pro bono work.
- The architect may feel that the work provides a business opportunity through the association with the organization or through successful completion of the project.

Great care should be taken though because Regulation 27 under the *Architects Act* contains provisions to protect the public from sub-standard service arising through insufficient compensation. For any circumstance involving reduced fees or no fee at all, the architect must never forget that the group seeking services has the right to expect the full attention and standard of care of an architect.

Recognition (payment) in exchange for services could take several forms including:

- Posting the firm's name on a permanent display of donor names.
- Provision of advertising associated with the organization or its events.
- Provision of low cost or no-cost goods, services or entertainment offered for sale by the organization.
- Provision of letters of reference or testimonials.

For cash donations, the organization may be able to provide a tax receipt for financial contributions, or a non-cash remuneration from the not-for-profit may be considered to have a value as a taxable benefit. Advice from an accountant is recommended.

The total amount of the fee may be reduced in a number of ways including:

- Reduce hourly rates.
- Omit charges for time logged by selected persons participating in providing the professional services.
- A partner, director or a sole proprietor can attend after-hours meetings, presentations and stakeholder sessions without charge.

- Forego profit and charge fees at cost only.
- Subtract from the fee, the value of goods or services offered by the organization as recognition for the services.
- Agree to provide a cash donation at the end of the project after receipt of payment of invoiced fees.

It is never appropriate to treat pro-bono services where they are undertaken for a low fee or without charge, as less important because the architect's liability and responsibilities are not diminished. Regardless of the arrangement, clients view that the architect's services shall be reliable and professional, and rendered with appropriate care and attention. The architect should have a frank discussion regarding the terms of any donation or the scope of in-kind services.

Before commencing any services, carefully negotiate a scope of work, establish a fee for the services, and execute a contract including terms of any donation. A part of the firm's compensation could include the expected means through which the firm's services are recognized.

The architect must clearly state expectations associated with the services. For instance, if it is intended that the architect will agree to work on the project only when other work commitments permit it, the expectation of the total amount of time required to complete with work must be clearly understood by the organization.

Non-profit and charitable organizations will often apply to government agencies for funding and the funding organization will frequently have specific criteria associated with the grants including spending deadlines, public procurement processes and various "certifications". The architect should not undertake the work without a full understanding of these criteria and in particular, the implications on schedule for design and construction work.

Working with volunteers who may be unfamiliar with retaining an architect and the construction process can result in the following scenarios:

- Unrealistic expectations in the time it takes for design, preparation of bidding documents and construction scheduling.
- Expectations that the architect is responsible for delivering the construction on time, on budget.
- Requests for more than expected design options, changes during construction or presentations to the board or the public.
- Improper bid procedures.
- Undisclosed requirements of funder for deadlines of substantial performance or completion.

The group's staff assigned to the project may have little understanding of the construction process, scheduling, and other matters. It is imperative that the architect engages the board of directors routinely in discussion of the project and its progress and in particular, the implications of the construction schedule. The architect must avoid concealing bad news while hoping that the fall-out of a delay will not be serious.

When the project is ready for construction, the use of volunteer construction labour and donated materials add further complications. Donated materials or construction methods may differ from the architect's design and drawings. Organizations usually have limited understanding of the Ministry of Labour, insurance or WSIB requirements. They will rely on the architect to communicate these concerns.

Contractors may offer short form contracts or customized design-build or construction management agreements as a means to expedite contract matters. These could leave the client and the architect in a poor position if the scope of work or the scope of the architect's services during construction are less than clear.

The group may consider that the value of the architectural services seems to be low and relatively free of risk. It is important that the client understand the value and importance of the architect's services and that there is a high level of expectation of professional services and a great deal of risk taken on by the consultants.

Suggested Procedure

1. The architect should clearly state the level of service required to meet the client's expectations associated with pro bono services. The number and nature of deliverables must be understood and in particular, the expectation that the organization will pay for printing, plotting, mounting of presentation drawings, etc. if these things are not part of a donated service.
2. The architect should set limits for the service including, if possible, a maximum number of meetings, membership presentations, renderings and other items, but never below the standard of care where design and general review are involved.
3. The architect must understand all requirements of the funders, including any expectations about schedules and completion dates. It is best if the architect receives copies of the funding applications.
4. Obtain professional accounting advice regarding tax and in-kind donations.
5. A conflict of interest may arise if acting as both the client (e.g. Board of Directors for not-for-profit) and also the consultant. This may have insurance implications and should be discussed with the insurer.
6. The values of services need to be reported properly to insurers, basing premiums on the value of fees.

References

OAA Practice Tip PT.07, and

OAA Regulatory Notice R.10 Professional Opinion – Independent Opinion: Reviewing a Project Prepared by another Architect

The OAA does not provide legal, insurance or accounting advice. Readers are advised to consult their own legal, accounting or insurance representatives to obtain suitable professional advice in those regards.
