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### **Ensuring a Good Prime/Subconsultant Relationship**

In today's more complex project world, it is common to have teams of companies working together on a design project. Sometimes these teams take the form of a joint venture with shared risk and responsibility among two or more design firms. The other – and perhaps more common – form is to have a prime consultant and one or more subconsultants employed by them on the project.

There are various types of subconsultant services that are contracted for on a regular basis. There often will be one or more technical design subconsultants providing services on a project for which the prime design firm does not have the technical capability or perhaps the manpower to provide such services. The subconsultants often function in areas of technical specialty such as electrical engineering; heating, ventilating, and air conditioning engineering, or architectural specialties such as interior design and code compliance. Other types of subconsultants needed on projects include surveyors, drilling companies for subsurface investigations, environmental firms for contamination investigations, laboratories to perform environmental or materials analysis, and other types of non-design services.

Another type of prime/sub relationship is when a subconsultant partner works with a firm in similar areas of expertise, but the subconsultant firm is needed to meet staff resource requirements to comply with schedules. In this case, the division of work, scope, and responsibilities must be very

clearly defined to eliminate confusion, unnecessary duplication, and gaps in the project work.

## **Subconsultant Selection**

In many cases, an established design firm will have worked with a variety of subconsultants on a continuing basis on multiple projects. In this case, the selection process is not likely to be very formal. However, when the subconsultant is unfamiliar to the lead design firm, it is critical to go through a rigorous and thorough process of selection. Just as a firm wants to be selected by a client on the basis of its qualifications and proposal, it is important that it apply the same standards to the selection of subconsultants. It's all about qualifications and experience, not price.

To do this, a firm should request qualifications statements from a number of prospective subconsultants to get information on past experience and whether their project history provides the kind of background needed to get qualified support from them on a project. A firm will need to obtain resumes of the staff assigned to the project and may want to include those resumes in the signed contract with the selected subconsultant to ensure those people will be assigned to the project. A firm will also need to check references, possibly with other clients the subconsultant has worked with or other direct clients they have had independent contracts with.

Another source of subconsultant references is within the firm itself, as others within the company may have worked with particular subconsultants.

Design firms need to remember that they are the prime consultant and their client will look to them for ultimate responsibility. It's imperative they hire the most qualified subconsultants and hold them to the same rigorous standards to which a client is holding the prime consultant.

## **Subconsultant contracts**

Once a design firm has selected subconsultants for a project, it wants to be certain it has a written contract with them for services. Subconsultant agreements may take various forms. One form is a general subconsultant agreement that contains the overall conditions a

firm wants in all subconsultant contracts. The subconsultant's scope of services and fee can then be added.

Other types of agreement/contract forms can be on-call or task-order service agreements. These can provide a convenient way to work with subconsultants that a firm has worked with previously and where the client project contract is structured on the same basis.

Another option is to use standard agreement documents, such as those produced by the American Institute of Architects or the American Council of Engineering Companies. These organizations have industry-approved prime/subconsultant contract forms that can be a good starting point if a firm does not have a company standard.

Also consider the following issues with respect to subconsultant contracts:

- Do not use the subconsultant proposals as the contract. Language in proposals generally does not make good contract language. Often it is not sufficiently definitive and may contain statements about items that the subconsultant may or may not be committing to do on the project.
- If the subconsultant's proposal is to be added to the contract as an exhibit, be aware of the general conditions in the subconsultant's proposal/contract form. A firm must delete those general conditions that do not conform with the general conditions in the prime/subconsultant agreement contract. If there are overlaps in general conditions language, it will only cause confusion should there be an issue that is later contested.
- Subconsultants should be required to carry professional liability insurance at an appropriate level that corresponds with their responsibilities and impact on the project. A firm must get an insurance certificate that clearly spells out the professional liability coverage and deductibles that the subconsultant has.
- Never give a limitation of liability to a subconsultant unless there is one with the client. A subconsultant's proposal/contract form will often contain a limitation of liability

in the general conditions. As mentioned above, this is something a firm needs to read carefully so as not to provide protection to the subconsultant that it does not have as the prime consultant.

- Make sure to effectively flow down, incorporate, and give precedence to all desired and mandatory terms and conditions in the prime contract with the client. To the extent the design firm's subconsultant contract terms do not line up with its prime contract terms, the design firm takes risks it will need to justify taking or effectively mitigate.

### **Managing the subconsultant**

Now that a design firm has a contract with the subconsultant, it needs to have a plan to manage and oversee the work. The scope of services in the subconsultant contract must be clearly written, with identified deliverables milestones and a clear statement of the fee and how the subconsultant will be paid. A firm will also need to think about how it wants to manage the subconsultant's activities. Should it hold weekly or less frequent meetings to understand the subconsultant's progress on the work and to answer any questions it might have? There may also be the need to coordinate and integrate subconsultant activity, particularly if more than one subconsultant is on the project.

A firm needs to make it clear to the subconsultant what the performance expectations are so that its level of performance meets the same level of performance being held to by the client. This also will provide the basis of monitoring the subconsultant's progress and quality of performance at project meetings. A firm should also require a quality assurance/quality control (QA/QC) program plan from the subconsultant. By doing this, a firm will be putting them on notice that there are clear expectations of their level of performance with regard to QA/QC. Implementing safety and quality controls will also provide another topic of conversation at progress meetings.

### **Ensuring good subconsultant performance**

The job of managing the subconsultant contracting process and performance needs to be as structured as other aspects of project management. A client looks to a design firm as

the overall responsible party for its contract with them. Therefore, the design firm needs to be equally diligent with its subconsultants to be sure their performance is going to enhance the overall project results and meet the goals and expectations of a client. The steps presented above outline a process for ensuring good subconsultant performance.

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