

Talk to Me About A&E: Episode 14—Making the go/no-go decision

ANDY MENDELSON: Well, it starts with actually the financial analysis of what it's going to take to actually go through the marketing process and win the project. So that's part of the go/no go process, to look at how much labor time, how much marketing coordinator and support time do I need to actually pursue the project?

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SPEAKER 1: Welcome to Talk to Me About A&E, a podcast series focused on risk management for architects and engineers. Host, Dan Buelow, Managing Director of Willis A&E, will engage experts across the A&E spectrum on topics ranging from contract details to the broadest trends impacting design professionals in North America.

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DAN BUELOW: Hello, and welcome to Talk to Me About A&E. I'm Dan Buelow, Managing Director of Willis A&E. And our topic today is on the project evaluation process, specifically the go/no go process every design professional firm needs to have in place to assess a new project opportunity. My guest today is Andy Mendelson, Chief Risk Management Officer with Berkley DP. Welcome, Andy. How are you doing?

ANDY MENDELSON: Doing well, Dan. Thanks for inviting me into the podcast today.

DAN BUELOW: It's great to have you back. Andy and I just actually presented a Willis A&E webinar and that hour and a half program, which is also on this topic of go/no go-- it's in-depth, and it includes for CE credits, is available on our Willis A&E on-demand programs. You can just check out our website for that if you want to see a copy of that.

But let me tell you a little bit about Andy. He is Senior Vice President, Chief Risk Management Officer at Berkley DP. He's been a licensed architect with over 36 years in practice, project manager, market leader, contract officer, CFO, director of practice management for that significant firm out of Chicago. And that's where, in fact, I met Andy, as his underwriter at DPIC at the time. Now, he's come over to the dark side here, on the carrier side here.

And he was a member of the AIA Documents committee from 2003 to 2017, a legal roundtable committee for 10 years. He's on the risk management committee. I'm on that as well with Andy, on the national ACEC, RMC.

We're lucky to have Andy. He comes with an excellent perspective on this topic of considering what should you take on or not when it comes to these project opportunities. I've said in the past that design professionals are a needy group and what I mean by that is that architects and engineers need a lot of risk management support and training given the significant risks a design professional has to deal with. Design professionals often take on a disproportionate amount of risk versus reward. They work with a wide range of often difficult and/or

unsophisticated clients, who often seek to transfer risk to them that rightfully belongs to the owner. And they work in an often hostile, litigious environment that we currently are in and have been in for many years. And they're trying to balance all of this within an evolving standard of care and a great deal of emerging risk.

So, the good news in all of this is that those firms that invest in meaningful risk management practices and educate their staff are positioned to assume and control a great deal more risk than those firms that don't, and be more profitable. And so having a well thought out go/no go process to assess new business opportunities really is an essential part of risk management for any design professional firm.

And when we talk about risk management, really, if you think about the basics of risk management, you can transfer your risk by insurance, you can transfer it by contract. But at the end of the day, you can't transfer all your risk by insurance or by contract. You can avoid risk, but we need to take on risk in order to grow our business.

So it's important that firms recognize what they can do specific to transferring the risk by insurance and contract, but also are in a position to assume and control that risk and manage that risk. Because at the end of the day, that's really critical. And this go/no go process is certainly a big part of that.

It's interesting, when I'm working with different firms, is that they all tend to have a little different process when it comes to go/no go when evaluating a given project. Some have very detailed procedures in place. Some are simple yes/no questions, even a point system. In some, it's seat of your pants.

And so what Andy and I are going to talk through is certain specific considerations that we would recommend that you would have as part of your plan as you build out or consider to enhance your plan, and whatever your process might be, we would suggest there are six specific areas of consideration. And we will be breaking these down here in this discussion here, in these six segments.

The first segment is client selection factors, and then project selection, strategic considerations around marketing, project team evaluation, financial analysis, and lastly, contracts. So let's get right into this, Andy, here. First on our list here is specific to client selection. Talk to us a little bit about these factors that go into client selection.

ANDY MENDELSON: Well, probably the most significant factor of client selection is a combination of your client's experience in the project type that you're considering, that they are considering building, as well as their reputation in that type of project. In other words, are they sufficiently experienced? Do they have a reputation for building quality projects? Do they have a collaborative working approach with architects, engineers, and contractors that enables projects to move along smoothly, without litigation? Do they understand the essential roles and responsibilities of a design team, of a construction team? And do they have realistic expectations in that regard? So really, these experience factors and reputation factors are prominent or preminent from the perspective of, you're looking at the client, the property owner, or developer, or institution, or whoever your client may be. And are these the type of people that you want to work with, that you will have confidence that if you win the project, that it will be successful in all aspects, or the key aspects from the standpoint of quality, and your ability to make a profit, and to have fair and balanced contracts?

DAN BUELOW: Those are very good points. And I think also, is using that contractual formation process really is a critical time for you to use that as a vehicle to establish and manage expectations. In fact, I would go as far as to say it's the responsibility of the design professional to educate their client and to establish clear expectations around the standard of care specifically, and also to have a conversation around contingency funds. And you can't have a conversation around contingency funds, can you, without having a conversation about the standard of care. And so I think that's very important.

And Andy, there is this report that I know you had some involvement, or you were on that group that had worked on this, around the cost of imperfection, which is this document that came out several years ago, but I think it's still very relevant, in which it states that 3% to 5% of construction value, errors and omissions of 3% to 5% of the value there is the norm, and that's traditional design bid build. What that's stating, isn't it, is that you're not perfect, there's no perfect set of drawings, and that in the event that you don't have contingencies in place to cover that expected norm of 3% to 5%, where's that money going to come from?

ANDY MENDELSON: Well, that's a great point you make. And the report you're referring to is published by Dodge Data and Analytics, called "Managing Imperfections in Design and Construction." Dodge was originally known as McGraw-Hill. So that report is available off those websites, and perhaps you can post something on the Willis A&E website where people can see that.

What's critical about this is really analyzing the nature of the project and making sure your client is realistic in terms of establishing a proper contingency fund. And as you said, 3% to 5% is realistic for new construction in the traditional delivery mode. Those contingencies would tend to be higher for remodeling, renovation projects, projects that have a historic preservation component would even need a higher contingency, that sort of thing.

I mean, perhaps that contingency can be lower if maybe you're repeating a prototypical design on a number of different sites. But the bottom line is, the standard of care is not perfection. And experienced owners understand that changes will occur in the design phase, and in particular, they will occur in the construction phase through change orders. And the owner has to maintain, establish, and manage their contingency budget to handle those costs.

DAN BUELOW: OK, so next on our list of go/no go considerations is project selection. Andy, talk to us a little bit about that process of project selection factors.

ANDY MENDELSON: Dan, they mirror the client selection factors to some degree. And again, establishing realistic expectations for the key elements of satisfying the owner's intent, scope, schedule, budget, quality, looking at that on an individual project basis and making sure that the owner's expectations can be met, and that this will align with the intentions that you will have for the project. So quality comes into those factors as well. But perhaps a little bit more on a detailed basis relative to the financial aspects are, is the funding in place for the project? Or is your client expecting you to do some upfront work, perhaps at risk, or perhaps for a lower fee, as they are establishing their funding?

Some firms will say that I'm not going to provide any upfront work. I expect my clients to be properly funded and financed. And they need to have enough money to pay me to do my early design work, that sort of thing. So understanding those issues.

And then understanding the complexity of the project. Will there be entitlements necessary? In other words, government funding for, say, a roadway intersection, for a new project site, a new development-- you know, traffic signaling, off ramps, that sort of thing.

What about the actual process of getting the project approved, whether it's through a zoning board, a planning board? If you're doing projects of a highly technical nature, such as a hospital or other health care institution, there are regulatory boards such as departments of health that have to review hospital projects. In some states, this can take a very long time and requires pretty high level of professional service. So understanding the various conditions of the project will help you decide whether or not this is a worthwhile project to proceed with or not.

And then probably finally in this area is the project delivery method. Will it be a traditional design bid build? Will it be one of the construction management forms of delivery, where the construction manager is involved in a pre-construction basis to provide input and advice on things like budgets, constructability, logistics, schedule, procurement, things like that?

This can be very, very helpful, particularly when you as the architect or engineer have worked successfully with the construction manager in the past, as has the owner. A lot of owners, particularly in the private realm and also these larger institutions like private universities, and again, health care institutions, they like to proceed in a manner where they've got the design team and the construction team on board right at the start of the project. So looking at those kinds of factors, again, will be important for you as you make your go/no go evaluation.

DAN BUELOW: I also would add to that list is, what state or province or country, depending on if you're doing international work or not, is the project located? Because each of those provinces, and certainly states just in the US alone, can create some challenges that need to be addressed when it comes to the unique statutes, laws, practice acts, and so forth that you will have in a given state.

And I always think it's a very good idea for, if you're going into a state that you haven't worked before, that you would identify an attorney that you would want to work with, not only to help guide you through some of the unique laws, if there's anti-indemnity statutes, so forth that you might want to consider in your contract formation, but in the event you actually have a dispute or a claim, there's a finite number of good attorneys out there that really understand the nuances of professional liability and effective defense for architects and engineers, and to get them on your panel, as far as to work with your broker, to add that attorney on there so they're not conflicted if and when you might need them, I think, is a very good idea.

And we've seen firms also have some issues where they go into a new state where they haven't worked before, for example, to find the quality of the subconsultants and so forth. And we'll get into some more of that around this project team formation. But I think those are things to think about.

And on this topic of project selection, a recent survey that we had, the question here was list the top project types that experience the most professional liability claim severity. And this is our Willis A&E survey of 12 leading professional liability carriers and claim managers. And so they list off the different types of projects, residential being very high on that list, if not the very top. Condo, of course. You've got infrastructure issues and so forth. I

think that the takeaway that people need to recognize in all of this-- again, this is kind of-- also consideration back to the client selection or the different types of clients that you might work with as a design professional, and the challenges that you have in managing those expectations, I think is very important.

And the last thing I would add to this project selection is having go/no go if it's design build. You touched on that earlier as far as design build and the different delivery method, which it brings some challenges. But I think certain project types, you may have a different list of go/no go considerations.

When it comes to design build, there's a real concern around the terms and conditions, who's responsible for bid quantities and pricing. And that would be a no go for a lot of firms, and so forth, in that checklist. You might have a separate checklist for residential, condo, and so forth. So things to consider on that list as you build out your own go/no go process here.

The next on our list here, Andy, that we have identified is around marketing. Share with us some strategic considerations specific to marketing.

ANDY MENDELSON: Well, it's interesting, as my firm grew to be working in multiple markets and offering multiple design services, we found that it was necessary to be more arduous with our go/no go process simply because of the amount of money we were spending as overhead cost in pursuing projects. So you really want to use the process to help control those marketing expenses.

One of the things we always sought to do as an architecture and engineering firm was to be pre-positioned for the project-- in other words, to know that this project RFQ or RFP was going to be coming out at some point in the future to enable us to establish relationships with the client before the process began. So that was really important, in our view.

The other was, do you know what the competitive landscape is once you do enter the process of RFQ and RFP? And how many firms are they going to be seeking proposals from? Do you consider those to be worthy competitors and the like?

And then in that context, what are your realistic chances of winning the project? Are you well positioned? Are your skills and the relationships that you have-- and will you be able to offer something different in an interview, something special that will make you placed to have a greater success of winning that project?

So there could be political factors that come into play. There could be aspects of a prior working relationship with the client. You might be doing work for a public university.

And maybe you've done three of the last five projects, and there's a really great project coming out. And because it's a public university, they have to go out for a public solicitation. And maybe you think you're extremely qualified for that, but is it your turn to win that project? Or will the client say, I've given you three of the last five projects, we really need to look to somebody else going forward?

And having that kind of reconnaissance, that kind of information, will help you avoid a lot of unnecessary marketing expenses where the situation was really set up at the beginning, where you really didn't have much of a chance of winning the project. So being strategic in your approach to the marketing and sales of a project is very important.

DAN BUELOW: The next on our list, Andy, of these considerations is around project team. One of the things I think is important to keep in mind here-- certainly, it's not hard to keep this in mind, is the challenges that all design professionals are really facing when it comes to finding enough qualified staff. And this has been a real issue.

We lost, in the 2008-09 economic downturn, a significant number, percentage of qualified, senior level design professionals. And now we're in this pandemic era of work from home and finding enough and retaining the staff that you need. What we're seeing though, frankly, is because of the staffing issues that we have seen with all of the design professionals out there-- and this includes the primes and the subs they work with, but also, certainly, the contractors they work with, and the owners, even-- we've seen an uptick in actual claims due to design error.

Historically, 3/4 of all claims you could say were really based in non-technical areas-- as rooted in those areas-- contracts and so forth, client selection. However, with this staffing issue, we've got a real issue with claims coming in here where carriers are telling us we've seen a real uptick in actual design error. It's something to be thinking about throughout this process. And it's some of the things that I'd like you to talk a little about as far as the project team evaluation process specific to the internal design team.

ANDY MENDELSON: It's very important that you have proper leadership and management of every project that you take on. And as you noted, we are in a period of time, and it's been going on for quite a while, where there is not an abundance of talent overall in the industry, particularly at the project management levels and project principal levels, senior technical staff, and the like. So what is the depth of your staff resources? And as you are pursuing a new project, do you have the people in place to actually execute the project?

What's common for architects and engineers, when they have to go on to an interview situation, if they've been shortlisted for a project, is to utilize project principals and project managers that they know are particularly good presenters in that sort of environment. And sometimes, people can get overcommitted. You might have three or four outstanding proposals where the same project manager is on two or three of those. And if you're so fortunate to win two or three of those, can that project manager handle all those projects? Or do you have sufficient backup depth to switch out the project manager? So you have to be transparent in this regard with your clients. As you get towards the end, you need to be able to commit to the people that you're putting in front of them. So do you have that talent level at the management leadership level?

And then as the project proceeds, do you have sufficient talent at the design level and at the technical level to fill in the staff and move forward with it? So it starts with the analysis of your own firm, and how much of this project you can take on with the services that you're providing. And then it continues on into looking at your subconsultants and the same sort of thing.

Do they have the depth of resources to support your efforts? Do you need to hire a certain type of consultant because of business diversity requirements, such as MBE, WBE, other aspects of disadvantaged businesses that are a goal or even a requirement of the public agency, and tend to be also goals in private industry as well?

So how is your team going to be composed? How much complexity is there to managing not only your internal team, but the external team of consultants? So there's quite a few factors there in order for you to manage the project if you are going to win it.

DAN BUELOW: Great points, Andy. And then on the second to last considerations is the financials, right? We're doing all this to make some money. And what are the considerations around go/no specific to financial analysis?

ANDY MENDELSON: Well, it starts with, actually, the financial analysis of what it's going to take to actually go through the marketing process and win the project. So that's part of the go/no go process, to look at how much labor time, how much marketing coordinator and support time do I need to actually pursue the project? But let's assume you've done that, you're proceeding forward.

You need to be confident that you're going to be able to negotiate a fee that is going to be sufficient for you to earn a reasonable profit on the project. So you need to be able to analyze, and perhaps even do some preliminary project planning, or in some cases, for large and complex projects, maybe it has to be some very detailed project planning where you're not just relying on maybe a similar project that you did in the past, but you're applying the complexity factors of this project that's in front of you, and analyzing the labor internally, your subconsultant costs, other direct expenses and indirect expenses that you have so that you know that when you submit the fee-- and maybe you have knowledge of what the market range of the fees will be that will be acceptable to enable you to win. But you have to go through that process of really understanding whether that fee is going to be sufficient.

So as your project scope and scale gets more complex, it's going to take more work in this regard up front. And that's part of your overall marketing cost of pursuing a project.

DAN BUELOW: And then last but not least on our list here of go/no go is around contracts, right? And we've done a few podcasts around contracts. And we think it's important for every firm to understand what their go/no go considerations are, and to be well versed around this.

But there's a lot of issues to consider specific to contracts. Andy, why don't you just hit some of the high points on that? I think that, again, I would just stress the importance of using this process in managing expectations, and throughout the process of the project here with good documentation practices, beginning with these contracts.

ANDY MENDELSON: Well, the goal is to have fair and balanced contracts. You, as a design professional, have an awful lot of responsibility-- not only that which is going to be defined in the contract, but your overall duties to safeguard the health, safety, and welfare of the general public. So you have a lot of responsibilities. And you want those terms and conditions of the contract to properly reflect that relative to your standard of care. Whether it's an industry standard agreement, such as an AIA agreement, or a EJCDC agreement, or a custom form that your client may have created, you need to be able to go through those terms and conditions and make sure they're insurable

under professional liability insurance, as well as assigning proper responsibilities to you as a design professional, and properly assigning responsibilities to the owner and to the contractor.

So you need to have some dialogue in this regard. It's a way of establishing mutual expectations between you and your client, the project owner, as well as having that discussion, as we said earlier, as far as in the context of the standard of care, their need to establish contingencies, their need to have a designated representative that can make decisions on a timely manner, that sort of thing. So it's very important that you be diligent in contract review and know that your client is going to be fair on the other side of the table as you reach acceptable terms and conditions on the overall agreement.

DAN BUELOW: Well, that wraps up the list that we had there, Andy. And again, I think everybody has to come up with their own process. Every firm has their own, say, appetite for risk, and even their own ability to assume and control and manage that risk. But I think these are really critical factors and points to consider throughout this process. Do you want to give us any final words of wisdom around the strategic goals specific to this go/no go process?

ANDY MENDELSON: Ultimately, what you want is you want projects that are in alignment with your quality and strategic goals that you have established as a firm. When you look at your clients, your projects, the financial factors, the contractual factors, it's difficult to have a perfect situation. So ultimately, what you're going to do, and what we recommend that you do, is consider all of these factors in balance. And ultimately, it's up to you as a design professional to make an informed decision based on these factors, whether or not you want to pursue this project.

So just keep in mind that our business is complex. You should be very thorough and diligent in this regard. There can be flexibility. Maybe you want to take on a project at a lower fee because there's other strategic advantages, such as enabling you to move into a new market, a new geography, it's a project type that you feel will particularly benefit your firm's portfolio, that sort of thing. So there can be weighing these various factors, and ultimately just making an informed business decision on behalf of your firm.

DAN BUELOW: Great points, Andy. Thank you very much. And actually, Andy and his team over at Berkley DP have developed a go/no go project checklist. And you can find that on their website at www.berkleydp.com, or shoot us and/or me a note, and we'll make sure you get a copy of this.

I want to thank our special guest. Andy, thank you for sharing your experience and expertise on this topic.

ANDY MENDELSON: My pleasure. Pleased to be a part of it.

DAN BUELOW: Great having you. And thank you for joining us for this Willis A&E podcast, Talk to Me About A&E. Thank you.

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