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Business Boom Can Bust Staffing Plans

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Business is booming! This condition holds true for a great number of architects and engineers across North America. And while few firms are complaining about the number of projects they are involved with, many are finding their resources – particularly their human resources — being stretched to the breaking point.

A mid-year 1999 study by the American Institute of Architects identified staffing as the principal concern of surveyed members. Not surprisingly, excessive workload was the second highest concern.

Overworked staff and backlogged workloads are key red flags when it comes to professional liability dangers. As multiple projects compete for time and attention, details often fall through the slats.

Documentation may be missed, observation may be lessened and junior employees may be assigned to tasks better left to seasoned veterans. The demands of keeping up with the plethora of projects can lead to critical errors and omissions – along with unwelcome disputes and professional liability claims.

Being willing to hire more employees is not always a solution. Beyond having financial constraints, design firms are finding it difficult to locate qualified staff in this overheated economy. According to a study by the Engineering Workforce Commission of the American Association of Engineering Societies, the number of engineering graduates earning bachelor degrees declined approximately 9% between 1989 and 1998.

So what's the answer to this dilemma? Obviously, turning down attractive projects is not the solution that design firms are looking for. Instead, firms should take a proactive approach to locating and hiring qualified professionals and implementing necessary steps to train and retain top performers. If the supply of qualified workers simply won't meet the demand, companies can investigate alternative employment options that can help them keep up with the workload while holding liability exposures in check.

Perpetual Recruiting

In good times, design firms should be in an aggressive recruiting mode whether they are currently hiring or not. This does not simply mean running non-stop help-wanted ads in local newspapers and professional trade journals. Rather, it means keeping eyes and ears open to available talent that may add to quality of staff.

For example, management should regularly network through professional associations. Word of mouth can often unveil talented architects or engineers looking for a new challenge or a change of scenery. Brazenly headhunting for your competitors' key employees may lead to retaliation, but a low profile and an open ear can bring opportunities to light.

Another low cost and effective recruiting tool is your company Website. Many firms have created extensive "career opportunity" sections, with clear and prominent icons on the home page linking prospects to this section. They provide a brief description of the company and its culture as well as listing any positions currently available. A contact e-mail address for inquiries is a must, as is a mechanism for prospects to attach resumes and work samples. Also give company addresses, phone numbers and the names of contact persons so prospects can make a personal call.

Intern programs continue to be a popular way to bring junior talent into a design firm. But keep in mind that an AIA Work-On-The-Boards Survey reported that 36% of firms feel interns are poorly prepared for practice, and therefore, are not always an easy fix.

Alternatives to Traditional Staffing

A drawback to hiring during strong economies is the potential for downsizing once the market cools off. Firms that repeatedly grow and shrink along with the whims of the economy often suffer decreased morale and lowered performance as employees become distracted by the apparent instability. Design firms, therefore, may want to look to alternative staffing methods that are growing increasingly popular during times that demand more workers.

Contract professionals or contingent employees are becoming increasingly commonplace in the design industry. In fact, across all industries, professional and technical workers are the fastest growing segment of a flexible work force once known as "temporary employees." No longer do clerical and administrative workers comprise the bulk of temps. Highly qualified architects, engineers and other professionals can be hired through national agencies and specialized staffing companies.

And it's not just those workers who can't find a steady job that fill the ranks of contract professionals. This employment option is proving attractive to skilled designers looking for professional challenge, diversity of assignments, travel and the ability to increase skills for heightened marketability. Plus, if they like your company, and decide it's time to set their roots for a while, they may accept your offer to stay as full-time employees.

The benefits these workers provide are obvious. They allow flexibility with staffing as job skill requirements and project load fluctuates. Contract workers are typically paid hourly and the employment agency handles administration, payroll taxes and benefits. Plus, you enjoy lower recruiting costs compared to hiring employees.

Disadvantages include potential higher turnover and reduced job loyalty – although this is not always the case. Plus, you usually have to pay overtime. Be sure to check state labor laws regarding what qualifies a worker as an "employee." Sometimes, the number of hours worked, duration of hire or scope or work requirements may inadvertently cause a contract professional to be qualified as an employee.

Independent contractors are another alternative to permanent staff. These are essentially the same types of workers as contract professionals, but you deal direct with the worker rather than going through an agency. The advantage is that the per-hour cost is generally lower since you don't pay a fee to an agency. The disadvantage is that you lose the administrative services often provided by agencies. (Some contractors work with a third-party administrator that helps them handle payroll and

benefits administration.) Meeting the state-law requirements to avoid employee status is even more important when dealing one-to-one with a contract worker.

Loaned employees are a less common but growing source of contract workers. With this approach, consulting firms “borrow” employees from another consulting firm to work on a short-term basis in exchange for a fee. This practice is proving effective between design firms with good working relationships. However, there are substantial gray areas here regarding professional liability. For example, if there is a claim arising from a loaned temp employee’s services on a project for the borrowing firm, the lending firm can easily be brought into the suit.

Subconsultants are certainly not new to design firms. Most architects, for example, have experience hiring subconsultants from a variety of engineering disciplines. However, in today’s hot market, it is becoming more common to find architects subconsulting with other architects, civil engineers subconsulting with other civils, etc., to help handle large workloads. Rather than hiring subs to perform functions where a firm lacks expertise, companies are subcontracting work they would typically perform themselves if they had adequate staff.

Reducing Liability

What are some of the steps design firms can take to minimize liabilities while coping with an overheated market and a lack of qualified job candidates?

First, establish strict hiring criteria to meet your needs. Make sure recruits possess the skills, licenses and other requirements necessary to perform the functions they will be called upon to perform. Provide new hires with close supervision, mentoring by senior staff members and ongoing training from effective instructors.

If you can’t find qualified job candidates or are hesitant to commit to a long-term employment relationship, look to the alternative employment options discussed previously. Develop a short list of qualifications for these firms or individuals. Look for

those with track records of delivering high standards of quality and who demonstrate client-service and work-ethic philosophies similar to yours. Look for those experienced in providing the specific type of services you need performed, preferably for the same type of project. Ask about their current workload – you don’t want to hire a contractor or sub who is just as overbooked as you are.

Work Agreements

No matter how competent the other party may seem – even if you have experience working with the individual or firm – put your work agreement in writing. When drafting your contract, you can start with one of the professional association forms (both EJCDC and the AIA have consultant agreements you and your attorney can likely adapt to your situation). Or, develop a form of your own. Your goal is to arrive at an agreement that is reasonable and fair and allows each of you to reach your objectives.

Here are three critical points you need to address in the work agreement:

1. Draft a clear scope of services that spell out the functions to be performed and the working relationship to be established.
2. Include a fair and insurable indemnity. We suggest a mutual indemnity that gives both parties equal protection. By providing for mutual indemnity based on comparative fault, the party found most responsible for the error or omission will bear the bulk of the liability. This comparative fault clause only comes into play legally if the claim ultimately is decided in court. However, it can also serve as a valuable guide should a dispute be resolved prior to a lawsuit through mediation or some other dispute resolution technique.
3. Have each party maintain and furnish proof of insurance. Your agreement should require each of you to provide to the other certificates of insurance showing all coverages.

Other issues you will need to address include:

- Who will retain ownership of documents?
- How will you handle payment?
- Will the subconsultant/independent contractor perform construction observation?

If you are the prime consultant, we recommend that you pass through to your subconsultant or independent contractor any liability protections (such as indemnities and limitations of liability) that you are able to obtain from your client. If you loan your employees to (or borrow employees from) other consulting firms, you should have a contract that sets forth who will take responsibility for claims that arise from the employee's services. Probably the best solution is to have the "borrowing" firm assume the responsibility and indemnify the other firm.

A final consideration for lowering liability is to limit the amount of additional work your firm takes on. This doesn't necessarily mean having to say no to the next new project that arises. Rather, you can raise your standards for the types of work you will accept. That could include raising your fees, limiting the types of projects you will accept, or raising the standards you demand in a new client. That way, you can continue to accept the cream-of-the-crop new clients and possibly weed out troublesome ones. Although your total revenues may remain constant or rise more slowly, your profit margins could increase substantially while your exposure to risk is reduced.

Conclusion

A strong economy and high demand for your services should be a blessing, not a curse. By choosing your new hires and your new projects wisely, controlled sustainable growth becomes a more realistic goal. Now, more than ever, you should be paying close attention to client satisfaction and making decisions that will pay dividends when the market inevitably cools. Work force flexibility through the use of alternative staffing options can be an important solution to position your firm for success today and tomorrow.

Can We Be of Assistance?

We may be able to help you by providing referrals to consultants, and by providing guidance relative to insurance issues, and even to certain preventives, from construction observation through the development and application of sound human resources management policies and procedures. Please call on us for assistance. We're a member of the Professional Liability Agents Network (PLAN). We're here to help.