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Stage Description

Professional services

There is increased potential within the industry for the architect to perform a wide variety of roles. Great care is therefore needed to secure any commission on the right basis as it can no longer always be assumed that 'the normal services will apply', or that there will be a common understanding between architect and client as to what the 'normal services' might mean.

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If relating to a specific project the services will be affected by the nature and scale of the building project, the management structure set up for the project, and by the procurement method adopted. The architect could be engaged from inception through to completion, or perhaps for specific services at a single stage. Given this wide diversity of potential roles, it is important that the services to be provided in each case are identified accurately and with care.

The job or commission can be secured through a variety of methods. For example, it could be as a result of a direct approach made to a potential client or an invitation to discuss and negotiate or to bid in competition. This might concern only the architect, or it might call for a joint submission with other professionals or partners from commerce and industry.

Where securing a commission is subject to competitive tendering, it is essential to know what criteria the client intends to apply when evaluating tenders, and what procedures will govern the submission. A careful assessment of resources required will be crucial in order to make realistic costings and establish viability before tendering.

Whatever the method of securing the commission, the importance of having an agreement in writing cannot be emphasised enough. It is a requirement of both the RIBA and the ARB Codes of Conduct, and it is normal practice to use one of the standard forms published by the RIBA. If these are not used then great care must be taken to allow for the effect of legislation which directly regulates many aspects of an architect's appointment, particularly payment provisions and dispute resolution.

Sometimes, where the architect is contacted at a very early stage, the nature of the project and the scope of the services required may be so unclear that it is not practicable to use one of the standard forms. In these cases it may be better to agree the preliminary services by letter, but it is essential that the services are confirmed in writing.

A successful working relationship depends on the roles of all parties being established clearly from the outset, and without the ambiguities that so frequently lead to misunderstandings and conflict. The activities listed below could be relevant before the appointment of an architect, whether for full or partial services, under any Plan of Work stage or part of a stage, and are generally applicable regardless of procurement method.

PRE200 Stage Activities**PRE210** Initial discussions**ACTION**
PRE211

Prepare and activate strategy to target potential clients. This may include a practice statement.

SEE ALSO
PRE/SM1

ACTION
PRE212

Respond at once to approaches from potential clients. If it is of interest, ask for further particulars, including details of the selection process to be adopted. Establish as much as possible by telephone or in writing.

SEE ALSO
PRE/SM2

NOTE

Avoid spending unnecessary time on 'long shots' or unsuitable commissions. The client should be able to explain enough of what they have in mind, particularly with regard to how they feel an architect may be able to help them, to establish whether a meeting would be worthwhile. In particular, avoid being drawn into giving free advice.

ACTION
PRE213

Arrange a preliminary meeting, if appropriate, to discuss requirements.

The initial meetings between client and architect will set the tone for the future working relationship. Clarify your respective roles and responsibilities.

Consider your reaction to the client and the project.

Are you in general sympathy with the client's needs and aspirations – if not, will this have an adverse effect on your work? Are the prospects good for building up a good understanding with the client? This is the stage at which key issues of a philosophical or political nature can be raised, such as the client's level of concern regarding environmental issues, or their interest and involvement in new procurement approaches such as partnering.

Be properly equipped with information about your practice and its work.

(CONTINUES)

ACTION
PRE213
CONTINUED

Remember that a professional appointment is a process of mutual selection: have ready a practice brochure with details of the practice's track record and personnel and a truthful statement about its expertise, experience and resources.

NOTE

Take care when offering professional advice gratuitously to friends and acquaintances. The duty of care that you owe is not related to the size of fee. Even if there is no fee, you might still have a duty in tort.

Do not be casual in your dealings and inadvertently let yourself in for more than you intended. Under certain circumstances informal dealings can be construed as giving rise to contractual relationships. A contractual duty, if breached, could result in loss and an ensuing claim.

Warn the client at once if design requirements, timing and budget seem unrealistic. Remember that a failure to warn could leave you open to allegations of negligence. Explain fully what you advise should be done. Avoid jargon, and take care not to seem patronising or arrogant.

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PRE214

Identify the client, and the status and authority of any client representative.

Note whether an individual is acting in a private capacity or representing a charitable organisation, consortium or a company, etc. If a representative, then what authority is he or she acting under and with what power?

In the case of a commercial or industrial client, make certain precisely where the ultimate authority resides. For example, the client's company might exist within a parent body. If the company fails and is unable to pay your fees, the benefits of your work could still be available to the parent body, which might have no legal obligation for the unpaid fees.

Where the client is a couple (married or unmarried), or a group of individuals who have formed some kind of association, be sure that you know who has authority to make decisions, give instructions and sign cheques.

ACTION
PRE215

Check whether the project is for direct occupation by the client or more in the nature of a speculative venture. Enquire about the possible involvement of a user client who may expect to be consulted.

NOTE

Bear in mind that working with a group of people on a community – type project, or one which involves a user client, may entail a great deal of extra work, some of it outside normal working hours.

ACTION
PRE216

Check the experience of the client.

Some clients know exactly what is needed and what they can realistically expect from consultants, while some may never have built before – this may be a once-in-a-lifetime experience.

NOTE

Be particularly careful in initial meetings with inexperienced clients. Remember that your legal duty of care can relate to the known experience or inexperience of your client.

ACTION
PRE217

Check the soundness of the client.

Make discreet enquiries about the prospective client's business record, and apparent financial position. Is there any known tendency to questionable business dealings or hasty resort to threats of legal action? What nature of client are they? What previous projects have they commissioned? What were they like to work with?

ACTION
PRE218

Check whether any other architects were formerly involved with the project. If so, check that their appointment has been properly terminated and notify them in writing of your own appointment, when this has been formally concluded. Fig. PRE 1 is a specimen letter.

SEE ALSO

Fig. PRE1

PRE220 Bidding for the Project

ACTION PRE221

Check the client's requirements for the submission.

If involved in competitive fee bidding, make sure that it is on fair and equitable terms, and that the given information is sufficient to permit preparation of a realistic bid. Confirm in writing any reservations or requests for further information.

SEE ALSO
PRE/SM2

ACTION PRE222

Agree a common policy between fellow consultants if the fee bid is to be a team effort. Agree compatible working methods, procedures, and information format.

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Assess carefully what the project will require in terms of practice resources before you quote a fee. Do you have the necessary skills and staff? Can they be made available for the particular programme? If it looks as if you will be overstretched, can you buy in skills or sublet work? Fig. PRE2 is a project resource planning sheet. Whether prepared manually or as a spreadsheet, this could provide essential information for a fee bid and be a tool for monitoring small jobs.

SEE ALSO
Fig.PRE2

ACTION PRE224

Decide whether it is realistic to undertake the commission with confidence that the timetable, quality of services and budget can be met. What are the risks, and can they be traded off against likely benefits to the practice if the commission is won?

ACTION PRE225

Identify the likely role and nature of professional services needed. Will you be acting as lead consultant, as design leader, as a consultant team member, as consultant to the Employer Client in design and build, as provider of information to the Contractor Client in design and build, or even as coordinator or manager for separate trades contracts? Make an appraisal and consider carefully the implications.

SEE ALSO
PRE/SM3

ACTION PRE226

Examine carefully any terms or conditions proposed by the client.

NOTE

Be wary of conditions which might imply a level of services beyond that which can be reasonably provided for the fee.

ACTION
PRE227 Check that there is no conflict with professional Codes.

ACTION
PRE228 Consider whether the terms and conditions follow normal practice or whether there is specially drafted wording which shows considerable client bias.

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PRE229 Check what the client has asked for concerning indemnities, third party warranties, liability period, levels of professional indemnity cover, etc. and consider whether these are reasonable or acceptable. If being considered for the commission depends on evidence of PII cover well in excess of that presently arranged, discuss with insurers the possibility of providing such cover as an interim measure, with the certainty of extending it if and when the commission is secured.

NOTE

Take expert advice from a construction lawyer and insurers if the client seeks to impose onerous conditions.

PRE230 Design and build

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PRE231 When acting for Contractor Clients in design and build, establish who carries the liability for design and to what extent. The contractor might not be insured against failures of design, and the liability might extend beyond the normal professional duty to exercise reasonable skill and care.

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SEE ALSO
PRE/SM1

ACTION
PRE212

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SEE ALSO
PRE/SM2

NOTE

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(CONTINUES)

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Where the client is a couple (married or unmarried), or a group of individuals who have formed some kind of association, be sure that you know who has authority to make decisions, give instructions and sign cheques.

ACTION
PRE215

Check whether the project is for direct occupation by the client or more in the nature of a speculative venture. Enquire about the possible involvement of a user client who may expect to be consulted.

NOTE

Bear in mind that working with a group of people on a community – type project, or one which involves a user client, may entail a great deal of extra work, some of it outside normal working hours.

ACTION
PRE216

Check the experience of the client.

Some clients know exactly what is needed and what they can realistically expect from consultants, while some may never have built before – this may be a once-in-a-lifetime experience.

NOTE

Be particularly careful in initial meetings with inexperienced clients. Remember that your legal duty of care can relate to the known experience or inexperience of your client.

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PRE217

Check the soundness of the client.

Make discreet enquiries about the prospective client's business record, and apparent financial position. Is there any known tendency to questionable business dealings or hasty resort to threats of legal action? What nature of client are they? What previous projects have they commissioned? What were they like to work with?

ACTION
PRE218

Check whether any other architects were formerly involved with the project. If so, check that their appointment has been properly terminated and notify them in writing of your own appointment, when this has been formally concluded. Fig. PRE 1 is a specimen letter.

SEE ALSO

Fig. PRE1

PRE220 Bidding for the Project

ACTION PRE221

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SEE ALSO
PRE/SM2

ACTION PRE222

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SEE ALSO
Fig.PRE2

ACTION PRE224

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ACTION PRE225

Identify the likely role and nature of professional services needed. Will you be acting as lead consultant, as design leader, as a consultant team member, as consultant to the Employer Client in design and build, as provider of information to the Contractor Client in design and build, or even as coordinator or manager for separate trades contracts? Make an appraisal and consider carefully the implications.

SEE ALSO
PRE/SM3

ACTION PRE226

Examine carefully any terms or conditions proposed by the client.

NOTE

Be wary of conditions which might imply a level of services beyond that which can be reasonably provided for the fee.

Stage Description

Professional services

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SEE ALSO
PRE/SM1

ACTION
PRE212

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SEE ALSO
PRE/SM2

NOTE

Avoid spending unnecessary time on 'long shots' or unsuitable commissions. The client should be able to explain enough of what they have in mind, particularly with regard to how they feel an architect may be able to help them, to establish whether a meeting would be worthwhile. In particular, avoid being drawn into giving free advice.

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(CONTINUES)

ACTION
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PRE/SM2

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SEE ALSO
Fig.PRE2

ACTION PRE224

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ACTION PRE225

Identify the likely role and nature of professional services needed. Will you be acting as lead consultant, as design leader, as a consultant team member, as consultant to the Employer Client in design and build, as provider of information to the Contractor Client in design and build, or even as coordinator or manager for separate trades contracts? Make an appraisal and consider carefully the implications.

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NOTE

Take care when offering professional advice gratuitously to friends and acquaintances. The duty of care that you owe is not related to the size of fee. Even if there is no fee, you might still have a duty in tort.

Do not be casual in your dealings and inadvertently let yourself in for more than you intended. Under certain circumstances informal dealings can be construed as giving rise to contractual relationships. A contractual duty, if breached, could result in loss and an ensuing claim.

Warn the client at once if design requirements, timing and budget seem unrealistic. Remember that a failure to warn could leave you open to allegations of negligence. Explain fully what you advise should be done. Avoid jargon, and take care not to seem patronising or arrogant.

ACTION
PRE214

Identify the client, and the status and authority of any client representative.

Note whether an individual is acting in a private capacity or representing a charitable organisation, consortium or a company, etc. If a representative, then what authority is he or she acting under and with what power?

In the case of a commercial or industrial client, make certain precisely where the ultimate authority resides. For example, the client's company might exist within a parent body. If the company fails and is unable to pay your fees, the benefits of your work could still be available to the parent body, which might have no legal obligation for the unpaid fees.

Where the client is a couple (married or unmarried), or a group of individuals who have formed some kind of association, be sure that you know who has authority to make decisions, give instructions and sign cheques.

ACTION
PRE215

Check whether the project is for direct occupation by the client or more in the nature of a speculative venture. Enquire about the possible involvement of a user client who may expect to be consulted.

NOTE

Bear in mind that working with a group of people on a community – type project, or one which involves a user client, may entail a great deal of extra work, some of it outside normal working hours.

ACTION
PRE216

Check the experience of the client.

Some clients know exactly what is needed and what they can realistically expect from consultants, while some may never have built before – this may be a once-in-a-lifetime experience.

NOTE

Be particularly careful in initial meetings with inexperienced clients. Remember that your legal duty of care can relate to the known experience or inexperience of your client.

ACTION
PRE217

Check the soundness of the client.

Make discreet enquiries about the prospective client's business record, and apparent financial position. Is there any known tendency to questionable business dealings or hasty resort to threats of legal action? What nature of client are they? What previous projects have they commissioned? What were they like to work with?

ACTION
PRE218

Check whether any other architects were formerly involved with the project. If so, check that their appointment has been properly terminated and notify them in writing of your own appointment, when this has been formally concluded. Fig. PRE 1 is a specimen letter.

SEE ALSO

Fig. PRE1

PRE220 Bidding for the Project

ACTION PRE221

Check the client's requirements for the submission.

If involved in competitive fee bidding, make sure that it is on fair and equitable terms, and that the given information is sufficient to permit preparation of a realistic bid. Confirm in writing any reservations or requests for further information.

SEE ALSO
PRE/SM2

ACTION PRE222

Agree a common policy between fellow consultants if the fee bid is to be a team effort. Agree compatible working methods, procedures, and information format.

ACTION PRE223

Assess carefully what the project will require in terms of practice resources before you quote a fee. Do you have the necessary skills and staff? Can they be made available for the particular programme? If it looks as if you will be overstretched, can you buy in skills or sublet work? Fig. PRE2 is a project resource planning sheet. Whether prepared manually or as a spreadsheet, this could provide essential information for a fee bid and be a tool for monitoring small jobs.

SEE ALSO
Fig.PRE2

ACTION PRE224

Decide whether it is realistic to undertake the commission with confidence that the timetable, quality of services and budget can be met. What are the risks, and can they be traded off against likely benefits to the practice if the commission is won?

ACTION PRE225

Identify the likely role and nature of professional services needed. Will you be acting as lead consultant, as design leader, as a consultant team member, as consultant to the Employer Client in design and build, as provider of information to the Contractor Client in design and build, or even as coordinator or manager for separate trades contracts? Make an appraisal and consider carefully the implications.

SEE ALSO
PRE/SM3

ACTION PRE226

Examine carefully any terms or conditions proposed by the client.

NOTE

Be wary of conditions which might imply a level of services beyond that which can be reasonably provided for the fee.

ACTION
PRE227 Check that there is no conflict with professional Codes.

ACTION
PRE228 Consider whether the terms and conditions follow normal practice or whether there is specially drafted wording which shows considerable client bias.

ACTION
PRE229 Check what the client has asked for concerning indemnities, third party warranties, liability period, levels of professional indemnity cover, etc. and consider whether these are reasonable or acceptable. If being considered for the commission depends on evidence of PII cover well in excess of that presently arranged, discuss with insurers the possibility of providing such cover as an interim measure, with the certainty of extending it if and when the commission is secured.

NOTE

Take expert advice from a construction lawyer and insurers if the client seeks to impose onerous conditions.

PRE230 Design and build

ACTION
PRE231 When acting for Contractor Clients in design and build, establish who carries the liability for design and to what extent. The contractor might not be insured against failures of design, and the liability might extend beyond the normal professional duty to exercise reasonable skill and care.

**ACTION
PRE232**

When acting for Employer Clients in design and build, be wary if asked to check the Contractor's Proposals against the Employer's Requirements, and avoid 'approving' drawings submitted by contractor or sub-contractors.

NOTE

Take expert advice on whether terms proposed by the client comply with current legislation, unless it is clear that they follow those currently recommended by the RIBA. It is particularly important to check that terms regarding payment, notices and dispute resolution comply with the Housing Grants, Reconstruction and Development Act, and that a provision to deal with the Contracts (Rights of Third Parties) Act has been incorporated.

Remember that the law requires a professional to exercise reasonable skill and care. Resist any attempt to get you to guarantee what might not be attainable, e.g. that a building will be 'fit for the purpose intended'.

Do not enter into collateral agreements with third parties or give indemnities which impose greater liabilities than those which arise out of the agreement already entered into with your client.

**ACTION
PRE233**

If no terms are stipulated, draw up terms of appointment that could be proposed.

Consider the minimum and maximum level of services which might be appropriate for the project, but in order to remain competitive keep strictly within the stated requirements when compiling the proposal.

NOTE

Use a Standard Form of Appointment prepared by the RIBA, exactly as recommended in the guidance notes. If for some reason this is not possible, take expert advice on the terms to be proposed.

NOTE

When setting out in writing the professional services you agree to carry out, make absolutely clear what is not included. Leave no room for misunderstandings, particularly when dealing with new or inexperienced clients.

NOTE

With a consumer client, always arrange to meet and talk through the terms proposed in detail, and make sure your client fully understands them, otherwise under the Unfair Terms in Consumer Contracts Regulations 1994 certain terms may not be considered 'individually negotiated' and therefore become void.

PRE240 Negotiating terms**ACTION**
PRE241

Respond to the client with the fee proposal, and be prepared to negotiate if appropriate.

Price the client's stated requirements at the outset, no more and no less. You will need to be competitive, but if you quote a fee that is unrealistically low it might mean that you have to cut corners and the quality of service you are able to provide will suffer accordingly. There are obvious risks in putting yourself under this kind of pressure.

Take the time and trouble to explain fully to a client what you are proposing and why. For example, statutory obligations and necessary consents, production information, and procedures for appointing contractor and sub-contractors may well seem daunting to the uninitiated. It is also sometimes wise to spell out the obvious – for example, that there is no such thing as a maintenance-free building and that regular and adequate maintenance is assumed when designing.

NOTE

Be realistic when negotiating. A successful negotiator knows how far to go and when to stop. The aim should never be to secure a commission at any price.

PRE250 Finalising the appointment**ACTION**
PRE251

Decide whether to accept the commission if offered and confirm it in writing.

ACTION
PRE252

Submit appointment documents for signature before commencing work. Ensure that future review of the appointment is covered in case it is required. Where a standard form is used, follow the guidance notes exactly.

Should it prove premature to enter into a formal Memorandum at this point, when for example the extent of professional involvement cannot yet be determined, then enter into a preliminary agreement as an interim measure, clearly identified as such (see Fig. PRE3).

Keep adequate and appropriate records of all dealings connected with the project. Never sacrifice proper paperwork for the sake of assumed goodwill. File everything systematically, whether in hard copy or in digital form, so that items can be easily found and retrieved. It is essential to have fail-safe back-up arrangements to protect both work in progress and records which may be needed for future reference.

NOTE

Never assume that the commission is won until you have received written confirmation of acceptance.

SEE ALSO
Fig.PRE3