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Architect's Guide to Building a Team of Subconsultants

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From professional athletes to professional landscapers, everyone wants to surround themselves with the best team to get the job done. But for architects, having the right team means more than just finding top talent: it means finding highly skilled, properly vetted, and **adequately insured** subconsultants to protect themselves down the road.

Generally, when an owner enters into a contract with an architect, that architect, or “prime designer,” becomes responsible to its client for the errors and omissions of its subconsultants on the project. Known as vicarious liability, it extends the architect’s contractual obligations to a stable of professionals, from the civil, structural, geotechnical, to the mechanical, electrical and plumbing subconsultants (MEPs).



That’s a big umbrella of liability. And as anyone who designs or builds for a living can tell you, there are about a million things that can go wrong on any given project.

When forming a team, an architect can cause serious problems for his firm by not hiring those with the right liability insurance coverage. For example, if an architect contracts with a geotechnical engineer who carries a \$1,000,000 Professional Liability policy, and something goes wrong during the excavation of a foundation, say an unexpected subsurface condition is exposed which triggers a multi-million-dollar change order the architect may be held responsible. The claim will inevitably reach the prime designer.

To shield themselves from costly and unforeseen claims, we give our clients guidelines to consider when gathering up their stable of subconsultants.

1. **The right consultant for the right job.** Assemble a pool of the subconsultants you can pull from for each specific job. If you have a certain type of project, such as a sports facility, then you should know who the top three structural engineers are for that type of job. Develop a team of trusted subconsultants matching project types with disciplines needed.
2. **Align coverage.** Confirm that each team member has appropriate coverage and limits for the given project. You might be able to use an MEP on one project, but their coverage limits might be insufficient on another project. Adjust your team to the coverage needed for the project.

3. **Apportion liability in a fair way.** Make sure your subconsultants have coverage limits equal to or close to yours. Subconsultants can limit their contracts to a small amount by using limitation of liability provisions. As noted above, an engineer can create a multi-million-dollar problem but only have \$1,000,000 in liability coverage. If limits are not aligned, carefully review the nature of the subconsultant's work and their track history. You don't want the subconsultant's negligence to become your economic burden.
4. **Watch for expiration dates.** Your subconsultants will need to provide certificates of insurance that shows their coverage. All policies have expiration dates, so be aware of those expiration dates and make sure they don't expire too soon.
5. **Use common sense.** Retain subconsultants that have the right experience, adequate insurance, solid track record, as well as a good reputation for getting the work done on time and working well with others. Trying to increase profit on a project by hiring cheaper subconsultants may add more to your costs down the road.

Because of the vicarious liability associated with a project, some architects, while rare, won't retain subconsultants, and instead will require the owner of the project to hire and retain them separately. Where that's not an option, architects need to be diligent in making sure their team meets their liability requirements. Vicarious liability needs to be managed all the way downstream.

Before you build your team of subconsultants, speak with an experienced broker who can help you avoid pitfalls. Contact us at dcrow@risk-strategies.com or mwelbel@risk-strategies.com.

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