

## RISK WORK

Having started my Architectural Practice in 1975, I know by now that our profession is not for the faint hearted. As time goes by I feel more and more exposed to what I can only call the ruthless exploitation of Architects and associated professions in the building industry, by Private Clients, Developers, Estate Agents, Brokers, Facilitators, Government Departments and fly by night individuals.

I have learnt the hard way that an Architect should not do any professional work without a written Agreement which is signed by a person who is authorized to do so in terms of a Board Resolution of a duly registered company, and only after some form of due diligence has been carried out.

After 35 years of professional practice, to my dismay I have learned that apart from the odd honourable and trustworthy client, there are two other types of client operating in South Africa.

The first type is unwilling to enter into any type of Agreement, often using the argument that "you" (the Architect) have to trust "us" (the Client). My response to this is that if a Client is not willing to sign a reasonable, professionally drafted Client/Architect Agreement up front, then his agenda is probably not to pay for the architectural services in any event. Therefore my advice to all professionals is simply not to do any professional work without a signed Agreement in place.

The second type of client is prepared to enter into an agreement, but only one which is written in such a way to transfer every risk on to the architect - no matter how unreasonable this may appear! Dealing with this type of client is not simple because they often seem to believe fundamentally, and irrevocably that profession in the built environment, and architects in particular are "supposed to" Work at Risk. According to this type of client, the Architect is expected to render a full and professional service, apply resources and carry professional indemnity insurance despite the fact that we clearly do not share in the profit of the Project itself. The problem is that if the Architect makes it clear from the outset that we do not work at risk, then the normal response is....."*in that case, we will go to another Architect who is willing to Work at Risk*".

To illustrate my point, I have extracted below, the relevant clauses from a Memorandum of Agreement, drawn up by a Client Body who is a well-known and established S.A. Development Company (Devco). This document was recently submitted to a Principal Agent (PA) and his associated consultants for acceptance on a large public sector project:

*4.1.1 that P.A. and Consultants will be DEVCO's preferred design consultants for the Project;*

*4.1.2 that, until such time as DEVCO and the Government have entered into a binding and unconditional agreement for the implementation of the Project, P.A. will carry out certain works at its own cost and at its own risk. Such works shall include but not be limited to the following matters:*

- 4.1.2.1 preparation of scope of work;*
- 4.1.2.1 preparation of concept design;*
- 4.1.2.1 all engineering work and scope;*
- 4.1.2.1 supervision of work*
- 4.1.2.1 preparation of contractor price guidelines; and*
- 4.1.2.1 project management*

*All such works shall be timeously carried out in a good and professional manner as requested from time to time by DEVCO.*

*4.1.3 that, in the event that the Project shall not proceed for whatever reason, P.A. shall have no claim against DEVCO whatsoever, whether for recovery of costs incurred or time expended or howsoever arising.*

4.1.4 *that, in the event that DEVCO and the Government enter into a binding and unconditional agreement for the Project, DEVCO and P.A. will negotiate in good faith to conclude an agreement whereby P.A. is appointed by DEVCO as P.A. for the Project, provided always that nothing herein shall oblige DEVCO or P.A. (as the case may be) to enter into any such appointment upon terms or conditions that are not acceptable to it.*

4.1.5 *that, for the avoidance of doubt, in the event that ultimately no agreement is concluded as contemplated in clause 4.1.4 for whatever reason, P.A. shall have no claim against DEVCO whatsoever, whether for recovery of costs incurred or time expended or howsoever arising.*

I am sure that you will agree with me, that it is a very sad day for the Architectural profession (and for all related professionals in the building industry), if the wording of this Agreement truly represents the prevalent attitude to our professions approach to Risk Work.

In my opinion, the only way to reverse this unacceptable and abhorrent behaviour by potential clients within the building industry, is for the Institute of South African Architects (and all associated institutes) to declare an all out war against Risk Work.

The Architectural Profession is slowly bleeding to death for a host of reasons, but in my opinion the most dangerous and quick spreading is this perception that Architects are prepared to Work at Risk. It is the responsibility of the Institute to protect its members and I therefore appeal to you, on behalf of all S.A. architects to declare risk work as "Unprofessional Conduct" and to reverse this rot before it is too late.