TOP 3 Referendum Mistakes

From an Owner's Representative Perspective

by Curt Wiebelhaus

IN THIS ISSUE, we examine the **top 3 referendum mistakes** from the owner's representative perspective:

1 - Poor RFP (request for proposal) when selecting the architect and construction manager

2 - Ignoring (or not knowing) important roles of the school district

3 - Failing to audit project costs

School district boards, superintendents, business directors and facility directors have limited opportunities to be part of a successful capital referendum. When a school district is presented with one of these opportunities, it is important to manage the referendum at the highest level. Districts typically partner with professional firms to assist with the details of planning and managing a referendum.

Building Solutions, an owner's representative firm in Wisconsin, is often approached by school districts looking to add a referendum expert to their internal staff team to efficiently and effectively navigate a capital referendum process. Building Solutions stresses that a district considering a referendum must take the time to learn and understand "what not to do" before taking the first step toward a referendum.

This is the final article of a three-part series providing the perspectives of professionals directly involved in the proactive planning of successful referendums. The May and June/July 2021 issues of the Wisconsin School News included the architects' and construction managers' perspectives, respectively. This article provides the view of an owner's representative.

The top reasons districts utilize an owner's representative firm to help support a referendum project include:

▶ Time

The architect and construction manager have key roles in the construction project since they are responsible for managing the majority of the project. Approximately 70% of the value of a referendum is allocated to the sub-contractors building or renovating the project. The construction manager is responsible for managing these sub-contractors, and the architect is responsible for providing the design that these contractors build from. This leaves 30% — or $15 million on a $50 million project, for example — of the responsibility on school district personnel. Examples of school district work include furniture procurement, equipment purchases, appliance purchases, information technology design and installation, audiovisual installation, moving in/out of spaces, contingency management, and management of the construction manager and architect. Due to the limited resources of a school district, the execution of these responsibilities often is not performed to the desired level.

▶ Expertise

Another potential pitfall comes from district personnel having limited referendum or construction project expertise. The experience and knowledge needed to properly manage these tasks can only be achieved through training and years of experience.

▶ Financial

A $50 million project that requires 30% to be managed by district personnel who don't have adequate time or expertise may have tremendous financial waste. Often, this portion of the project is marginally managed or managed by someone who has a conflicting interest with the school district. For a district to maximize the effectiveness of their referendum dollars, the district's internal team needs an expert who fully understands contracts, construction and referendums.

The top three referendum mistakes from an owner's representative perspective are:

1. **Poor RFP** (request for proposal) when selecting the architect and construction manager
2. **Ignoring** (or not knowing) important roles of the school district
3. **Failing** to audit project costs.

MISTAKE #1: Poor request for proposal when hiring an architect and construction manager

School districts must fully understand the request for proposal process and the strategy behind it. If district personnel are not confident in this role, they can hire a professional to create the RFP when selecting the architect and construction manager. The investment in this service is negligible compared to the value received. The RFP and contract are the foundation of the project structure.

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The quality of the team that the district will interact with each day will be critical to the success of the project.

Purpose of the RFP

The RFP process is an opportunity for the district to evaluate and compare multiple firms to ensure that the best choice is made. A referendum may be one of the most significant facility decisions that a district may ever make. The following four categories should be considered when selecting an architect and construction manager partner.

1. **Firm's qualifications —** How likely will the firm excel based on the previous experience, history and structure of the firm?

2. **Project team qualifications —** How likely will the specific team (project managers, project superintendent, estimators, etc.) excel based on their past history, experience and skills? The quality of the team that the district will interact with each day will be critical to the success of the project.

3. **Work plan, strategy or approach to the project —** Does the firm's strategy, approach, processes and work plan align with what is needed to excel?

4. **Fees and costs —** How do all the fees and costs of hiring the construction manager or architect compare to other competing firms?

If the selection team ignores one of these categories, they are missing the complete picture.

Using a system and process to evaluate RFP responses helps ensure that each evaluation team member is looking at the project holistically. This process helps ensure the best project for the district, and provides benefits such as:

Meeting community expectations — The community expects a thorough review and comparison of competing firms before awarding major referendum contracts.

Providing transparency — When a defined process is followed, there is minimal opportunity for warranted criticism from competing firms, taxpayers, school board members and others. Clear priorities are established in the RFP as respondents indicate how they will best meet the priorities, and a school district review team ranks each respondent based on how well the team believes they will execute. A clean and defined process will help ensure that the process identifies the firm best able to meet the district's needs.

Allowing for competition — Competition improves the outcome when selecting referendum partners. When firms know they are being compared to others, they will provide their best team, work plan and fees. School districts that award projects without going through a competitive process sacrifice the many benefits of the RFP process.

Some districts that have established relationships with architects and construction management firms from previous projects make the mistake of bypassing the competitive RFP process. Some just go through the motions while others may not even put out an RFP.

The best thing for the district and community is to diligently go through the complete process. Districts shouldn't ignore their relationships, but the magnitude of the potential referendum project deserves a thorough process. If the companies truly have a better understanding of the district, that should be reflected in their proposal.

RFP Mishaps

School districts regularly share information with each other. It is common practice for a district to ask neighboring districts for a template RFP to solicit the market for a specific product or service. This can work great in many situations if only minor changes are needed. A major referendum project unique to an individual district is not one of those situations.

In addition, the construction management portion of the process is complex and not easily understood, particularly in regard to "fees and costs." Districts commonly ask, "What is the proposed construction manager fee?" The response provides just a tiny portion of the overall fees and costs that the construction manager will charge the project. There are more than 14 possible fees commonly charged on a project. If all 14 are not considered, it is impossible to evaluate a firm based on "fees and costs." A good RFP addresses all potential fees.

An excellent RFP includes a construction manager and architect contract that is fair, reasonable and helps protect the school district as it

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architect and construction manager working in sync.

prepares to make one of its largest capital purchases. If a district utilizes an owner's representative firm for any portion of the project, this is the most important portion.

MISTAKE #2 — Ignoring (or not knowing) important roles of the school district

School district personnel have an important role in ensuring the entire project is a success. Typically, the district will hire a construction manager to manage the construction portion of the project and an architect to design the project. The best projects include the school district, architect and construction manager working in sync. As a district prepares for a referendum, they need to understand the additional inherent tasks so they can either prepare to reallocate resources internally or consider hiring an owner's representative to fill in where internal resources may be stretched too far. Below is a partial list of important roles that the school district has in a project.

1. **Overall budget management —** The construction manager is responsible for budgeting and managing the construction portions of the project. The school district needs to track and account for the remaining budget. They need to track the various funding sources and the soft costs related to the project to ensure the overall budget is maintained.

2. **Manage soft costs —** Each purchase order requires collecting a bid, reviewing and confirming the scope is accurate, and coordinating the work or scheduling a delivery. People often think a referendum is all about the significant sub-contractor work involved and forget about all the other related purchases the district makes to furnish or support the new and renovated spaces.

3. **Cost auditing —** Most projects have multiple billing errors and this role is commonly missed.

4. **Conflict resolutions and negotiations —** Construction can be stressful for everyone involved. At some point during a project, stress may elevate to a conflict or argument. Whoever the

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conflict is between, it is important that the district quickly addresses it so the conflict does not distract from the overall goal of efficiently improving the facility.

5. School operations expert — Districts must do a good job communicating the facility needs and coordinating meetings with staff who can share their needs for the architect to design a solution. The architect cannot provide design solutions without meaningful input from administrators and staff.

MISTAKE #3 — Failing to audit project costs

With the size of most referendum projects and the complexities inherently involved, it is inevitable there will be billing errors. These errors can add up to a substantial amount throughout the project. Typical projects have about $150,000-$200,000 in billing errors. The district is responsible for reviewing and catching these errors.

Most districts use a standard construction manager contract, known as an AIA 133 "cost-plus" contract, which has many advantages. Unfortunately, clear and concise pay applications are not one of those advantages. A typical pay application on a $50 million project often has more than 100 pages of supporting costs that are included. The billing errors can only be found by reviewing this detail one page at a time.

Tips when cost auditing include:

- Audit the project cost as the project progresses with each monthly pay application. The nature of the errors found on the first pay application will likely be corrected for all future invoices.
- The time spent by an owner's representative to audit cost on a project will quickly pay for itself through the errors corrected and oversight completed as part of the process. It is also significant that the community and school board know that additional third-party oversight is being performed.
- Be very cautious when entering into a non-AIA standard contract with a construction manager or design/build firm. Custom contracts that do not follow the industry-standard language often heavily slant the terms of the contract to the construction manager or design/build contractor. By following the RFP process above and including a district-created AIA contract, districts will not be in this situation. When districts are considering a non-standard contract, they can have an owner's representative review the business terms of the contract and an attorney review the legal terms of the contract before signing it. In addition, a custom contract likely

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does not allow the cost to be audited as part of the pay application process.

- Some construction managers or design/build firms provide a guarantee of "no change orders." This sounds great to many school districts, but the only way that a contractor can provide a guarantee of "no change orders" is if they have built in an internal contingency. This built-in contingency often becomes a profit for the construction manager or design/build firm when it is not used. Another option is for an owner's representative to manage a transparent contingency and change orders to ensure the district does not get charged any more than the actual cost of the project plus the agreed-upon fee.

Avoid mistake #1 (poor RFP when hiring an architect or construction manager) by making a small investment to have a professional create and manage the RFP process.
Avoid mistake #2 (ignoring important roles of the school district) by making a checklist early in the project.
Avoid mistake #3 (failing to audit project costs) by setting the project up to receive proper documentation with each pay application and allocating time to review it. Every project has billing errors. It is expected that the school district has proper procedures in place to prevent or reduce these billing errors. Avoiding these three major mistakes will help ensure the project will be a success while building greater confidence in administration from the school board and the community. ■

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