

The Plagiarized Proposal

(Case 1009)

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The Case:

You have been asked to submit a proposal and cost estimate for the foundation investigation for a proposed mid-rise condominium at First and Main Streets by a developer for whom your firm has done work previously at the site of the Hillside Court project.

You go to the developer's office to discuss the scope of the work in preparation for writing the proposal and note that in addition to the red BMW convertible and the steel gray Jaguar with gold trim parked in front of the one-story, single-office building, the lettered sign on the door indicates:

Hillside Court Development, Inc.

Grandview Enterprises, Ltd.

First and Main Associates, Inc.

As you enter the building, you note that there appears to be one secretary (who also acts as the receptionist) in a general office function area, plus two large executive offices. At the meeting in one of executive offices, the developer, Barry Young, indicates that he is retaining I. M. Strong, principal of Strong Engineers, as the structural engineer for the project. He also states that due to the peculiar architectural layout of the proposed building on the site, the structural engineer will be responsible for considerably more work than normal for this type of structure. Nothing of any substance can be done on the structural design until the foundation report is received. You are familiar with the Strong structural engineering group, having worked with them on one or two projects recently, and know that they have a good reputation in the local engineering community.

Young indicates that he does not know what needs to be done regarding the foundation investigation and requests that you outline the specific items in your proposal to him for the work. You return to your office and prepare a detailed scope of work, including it in your proposal for the foundation investigation. You have the proposal delivered to Young's office and get on with other projects on your list of things to do. Three weeks later, having heard nothing from the developer, you call to ascertain the status of the project.

Mr. Young apologizes for not having called you, and explains that he gave your scope of work to one of your competitors, who agreed to do the work for the same price as your budget estimate, but also agreed to bill the developer for only the field work by the drilling contractor (about 25% of the total budget) until the condominium complex is completed and 80% occupied. In fact, the field work is scheduled to start in about two weeks.

What, if anything, do you do?

Alternate Approaches and Survey Results for “The Plagiarized Proposal” (Case 1009)

1. Do nothing. Walk away and don't call this client again. It is a poor lesson to have to be learned; hopefully you will have enough sense to foresee such a situation in the future.
Percentage of votes agreeing: 0%
2. Call Young and tell him that his actions in using the scope of work you prepared to solicit a bid from someone else was disreputable. Then walk away from the project and don't pursue it further.
Percentage of votes agreeing: 6%
3. Call Young and explain that you really want this project, and if you had know price was that sensitive an issue, you would have been happy to match your competitor's offer, insisting that because it is your scope of work, you should get the project. Also, tell him that you have contacted the exploration drilling contractor and can get a 10% discount on his work if the project is given to you.
Percentage of votes agreeing: 3%
4. Write a letter to Young, telling him that while you understand his position, he has made a mistake. You have worked "behind" (as a follow-up to) the other firm on several occasions, and have found their work to be substandard. Encourage him to reconsider, because he really doesn't want the other firm on his project, and you would do a much better job.
Percentage of votes agreeing: 0%
5. You suspect your competitor actually has some sort of affiliation with the developer, so you should ask around to find out who else may have received a 'bid' package from the developer. If your suspicions are true (only your competitor received the package), contact Young and discuss your suspicions. If there is no satisfactory conclusion reached, go to Alternate # 9, below.
Percentage of votes agreeing: 7%

6. Sue the b-----d! He (the developer) manipulated you into preparing a very detailed scope of work just so he could then copy it and present it to your competitor, or give your entire proposal to your competitor to use in bidding against you. Scum like this should be run out of the state on a rod back to where he came from (you saw the out-of-state plates on the Jaguar)!
Percentage of votes agreeing: 5%
7. Send a letter to your competitor explaining that engineers shall not use practices that denigrate the profession or are improper, misleading or unfairly coerce favorable business results. It was a breach of ethics to use another engineer's proposal to unfairly obtain favorable business.
Percentage of votes agreeing: 10%
8. Call your competitor and let him/her know what you think of their unprofessional behavior. Tell him/her that accepting work on a contingency basis (getting paid only if the project receives funding and is 80% occupied) is unethical. Also, you will be happy to tell everyone you know in the local engineering community what kind of non-professional they are to take your scope of work as their own!
Percentage of votes agreeing: 0%
9. File a complaint against your competitor for unethical behavior with the state Board of Registration for Professional Engineers, showing that the competitor used your work product (the detailed scope of work) as their own.
Percentage of votes agreeing: 25%
10. Send a letter to Young explaining that he violated copyright laws when he gave a copy of your proposal to another engineering firm to solicit a 'bid'. Include an invoice for preparing the original proposal and scope of work.
Percentage of votes agreeing: 18%
11. In the future, include a Proprietary Statement with your proposal alerting the reader that the information in the proposal is copyrighted. Then sue the developer if such a thing should happen again.
Percentage of votes agreeing: 18%
12. Work with this developer in the future, recognizing his previous behavior and be prepared to deal with it.
Percentage of votes agreeing: 2%
13. Accept the fact you are not going to work on the project, but call I. M. Strong to inform him of what has transpired, for his information, since he will be heavily involved in the project for a substantial fee.
Percentage of votes agreeing: 6%

Forum Comments from Respondents

1. Offering to match your competitor's offer is the worst possible option, since it validates the developer's course of conduct. He winds up saving even more money on the project, and you work for less than cost. Who comes out ahead? Sometimes the most financially beneficial decisions are not to do the work.
2. Having lived in New England for a good while, I realize that what goes around, comes around. Said another way, we don't get mad, we just quietly get even. We have learned a lesson here, however, and we should not forget that. When dealing with folks that you don't know very well, you must develop the scope (at least the written scope) very slowly until the project is in the bag. In summary, I'd be circumspect, but stay tuned to what is happening on the project. I'm pretty sure there will be future opportunities.
3. If possible, obtain a copy of the scope of work given to your competitor' and compare it to yours for violation of copyright laws.
4. Since it may have been the developer's intent from the beginning to get you to put a detailed scope of work together so that he could peddle it to your competitors to obtain competitive (and cheaper) 'bids', it is unlikely that any chastisement from you will have much effect on future events.
5. It is possible to quietly spread the word about the developer's unethical behavior and that of your competitor. Be careful to avoid a lawsuit about slander.
6. Unfortunately, you did not have a signed contract to prepare the scope of work. While a case could be made that the developer's request constituted a verbal contract for the preparation of the proposal and work scope, the monetary value of that work effort is quite small, and nowhere equal to the amount you would have to pay legal counsel to initiate litigation against the developer, let along the time and effort you would need to put into the case. Current estimates of legal expenses for a case of this magnitude are on the order of \$20,000 to carry through litigation, including a trial, and even then you may not win.
7. Filing a complaint with the Board of Registration against another engineer must be backed with convincing substantiating evidence. All you have is the developer's verbal communication that he gave your scope of work to the competitor, and it is unlikely that the developer is inclined to support your allegations against his (now hired) consultant.
8. Your competitor now has a conflict of interest. He won't get paid unless the project is successfully completed.....which means that there is the potential for him to overlook or disregard a problem with the site that might doom the project.

9. The two fancy cars in the driveway should have been an indication that the developer and his partner were used to maximizing their personal gain on their projects; that they lived at a higher level than most engineers; and they liked to flaunt their apparent affluence. The sign on the front door indicates three separate corporations, all operating out of the same small office facility. As you opened the door it should have dawned on you that these developers form a new corporation for each project they undertake. They therefore limit their liability to the assets of the named corporation, which may not amount to more than a desk and a chair. As a result, if invoices are sent to the corporation from suppliers or design professionals for their services, and the project fails to obtain adequate financing or is aborted for some other reason, there is nothing left in the paper corporation to pay the invoices. It can file for bankruptcy and not be obligated to pay the design professionals or suppliers. All of this is legal, and by using this multiple corporation procedure, the developers protect their personal assets, such as the automobiles, as well.
10. You should have recognized one of the corporations shown on the front door as the name of the project your firm had worked on previously. Had you been prudent, you would have checked your accounts receivable file to determine if the developers had paid their invoices in total, and on time.
11. If you had recognized the type of company the developer operated and still wanted to proceed with submitting a proposal, you might have caught his attention by copyrighting the proposal, and indicating that no portion of it could be duplicated or used by others without your written permission. This is a little-used technique, and generally implies lack of trust in the prospective client, but used selectively, it may be effective.
12. A prospective client who would a) pull such a trick, and b) get payment delayed in this fashion is one that is not needed by a reputable firm. Let them work with the bottom feeders.
13. I'm intrigued by the low percentage of votes received for informing the structural engineer of the situation, even though you are no longer involved in the project. You do this out of a sense of duty for the well being of other engineers with whom you have worked and for whom you have respect. This is a matter of applying the Golden Rule, since you would appreciate being apprised of such a situation if you were in the structural engineer's shoes.

Epilogue

When you went back to your accounts receivable file to determine if the developer had paid your firm for the Hillcrest Court Development project which you had completed several months ago, you found that in fact, they had not. As a result, you found it necessary to take legal action to receive the outstanding balance due you from this previous project.

Separately, you did call the structural engineer, I. M. Strong, who listened to your concern that things seemed a bit odd with the project (especially when an engineering consultant - your competitor - agrees to delay getting paid for his/her work until the project is completely built and 80% occupied!). He listened to you, thanked you for calling, and hung up.

Several months later, you heard that the project failed to obtain adequate financing, the paper corporation folded, your competitor did not get paid, and I. M. Strong, who had stayed with the project, lost more than \$30,000 in unpaid engineering fees. You are now doubly thankful that the developer gave your scope of work to your competitor, and a bit saddened that Strong did not perceive the potential financial problems with the project that you tried to warn him of earlier.