

The Collections-Claim Connection: Getting Paid Without Getting Sued

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Introduction

While money isn't everything, it is the measure and fuel of any business, including a design firm. Without payment for services firms suffer, starve, and even die. Payment issues are also often the single greatest warning sign of a project in trouble.

Perhaps there is no greater indicator of the correlation between unpaid fees and troubled projects and relationships than the remarkable frequency with which efforts of design professionals to collect unpaid fees through litigation result in even larger responsive counter-claims from clients alleging professional negligence. 2011 gave the entire industry the most dramatic and alarming example of this pattern. Having already received over \$8.2M in fees, the engineering firm Carter & Burgess sued its client the City of Victorville in Southern California for the final \$106,196 on a power plant project that the City had been forced to partially abandon mid-project due to cost overruns. The City responded with a counter-claim for professional negligence. When the verdict came in 2011, it was devastating financially and professionally as news, industry, and internet sources widely reported and publicized the award of \$52.1M in damages against the engineering firm.

The results of such a counter-claim need not be as dramatic in terms of publicity or financial losses to be devastating to the firm. In addition to the unpaid fees, there are many other impacts of even a "defensive" counter-claim. They frequently include:

- Deductible payments for legal fees and costs, which may even include the involvement of a second "defense" attorney.
- Insurance impacts for rating, pricing, and loss history.
- Lost internal time and resources for purposes of participation in defense.
- Publicity and required disclosures in future responses to RFPs for claims history.
- Potential uninsured exposure for prevailing party attorneys' fees if negligence claims exceed fee claims.
- Ultimate discounted or waived fees for expediency of resolving and closing claim.

Obviously, avoiding such collection challenges and the potential for responsive claims is critical to good business and project success.

In reality, a proper approach to collections closely resembles a proper regimen for personal health. Firms which get paid become and remain healthy and strong. Firms which do not get paid regularly and on time become malnourished and increasingly susceptible to disease. Just as health is a life-long process, financial success is a project-long process. The following discussion tracks the relevant phases and provides analyses and strategies for those various phases. Those phases are:

- Preparing for the Client and Project.
- Strategic Project "Acceptance"

- The Contract.
- The Project.
- Staying Current and Heading Off Trouble.
- Collection Resolution.
- Post-Project Evaluation.

That process must also be supported by quality tools for consistency and efficiency. To carry the health metaphor forward, any high-performing athlete or weekend hacker will say the equipment matters. Similarly here, the best practices for collections will be supported by strategic templates and tools.

I. Preparing for the Client and Project

In reality, the best collection strategies begin before a single hour is billed to the project. The pre-project strategy should involve three components. The first two are purely preparatory: client selection and project selection. The third is client education and should continue for the duration of the project.

A. Client Selection

As the old saying goes, you cannot get blood from a turnip. Accordingly, appropriate client selection is one of the most important steps in ensuring payment for services. Client selection is also one of the first and most important steps in any appropriate risk management plan for a design professional. Nevertheless, it is amazing how many design professionals will become involved with a new client on projects valued at millions of dollars without exerting any genuine effort to investigate or evaluate that client. It is equally amazing how many firms will return to do business with an existing client who has burned them in the past. Obviously, such an approach is shortsighted, particularly as it relates to the subject of getting paid and making a profit. Some of the most important considerations for client selection should be the following:

1. Client Expertise/Expectations.

The most important factor in evaluating any prospective client is to establish the client's relative expertise and corresponding expectations. The key is communication. Making certain that the client and design professional share common expectations, and that those expectations are realistic before beginning work on the project, are the two greatest keys to avoiding later problems on the project. Differing and unrealistic expectations are among the most frequent bases for a client's refusal to pay.

The only realistic way to establish common ground is to spend actual and significant time discussing the project with the prospective client. Many firms find that a client interview is the best way to accomplish this. Regardless of whether a formal interview is used, some of the key components to the evaluation and building of common expectations are:

- Client Background.
- Project Background.
- Client Goals and Intended Outcomes for the Project.
- Expected Project Players and Participants.

- Hoped-For Project Rewards.
- Possible Project Risks.

A sample "Client Profile" and a sample "Client Information Checklist" are attached as starting points.

2. Client Track Record.

Whether it is a new or an existing client, any design firm should investigate the client's track record for payment and litigation. This can and should be part of the client interview referenced above. For a subconsultant, this analysis should obviously include both the prime consultant and the owner.

For new clients, as part of getting to know them, their expectations and expertise, design professionals may ask them about past projects and their experience on those projects. Design professionals may ask them about both their positive and negative experiences. Such experiences will necessarily impact their new relationships on a new project, and just as necessarily impact how the design professional should proceed.

Armed with this information, the design professional can also conduct its own reconnaissance. Appropriately diligent firms will contact past project participants to check out their experiences. Similarly, with the location of the past projects, a quick electronic search of Court and County records will often reveal if there was litigation on the past projects and if there were problems getting paid. Even a simple internet search can be revealing.

For existing clients, design firms should review past projects before agreeing to another retention. Was the client fair? Did they make timely and complete payments? If not, why not, and what steps can be taken to avoid similar issues? These issues should be resolved before the project gets underway. Similarly, design professionals should not automatically assume that because one project went well, others have also. Design professionals should revisit the original due diligence and make any appropriate updates. (See page 3 of attached "Post-Project Evaluation".)

3. Financial Stability.

Unfortunately, many design professionals somehow feel it is unprofessional to ask a client how a project will be funded and for verification of that funding. On the contrary, the failure to investigate such issues is actually the unprofessional conduct. It is both unwise and unprofessional to get into a project which lacks solid funding to see the project through to completion. Fortunately, many of the current AIA and similar Agreements now call for such information and provide a convenient basis to initiate that discussion.

In evaluating such financial stability, design professionals should be wary of unfunded development companies (Limited Liability Companies, Limited Partnerships, etc.) where the contracts are with one company, but the funds reside with another. Design professionals should also investigate the actual ownership of the property. Failure to do so may hamper lien rights and make ultimate collection of payments more difficult. Where multiple entities are involved, the design professional

may wish to have those other parties added to the agreement, at least for payment purposes, or seek guarantees from such parties.

Where the project is subject to phased or contingent funding, the design professional should build those events into its own schedule as milestones subject to verification. There have been many projects wherein design professionals have not been paid because their services got ahead of the project financing, or the project was abandoned due to funding issues and the design professionals' claims to payment based on "value received" were thereby undermined. That was at least part of the back-story in the Victorville power plant referenced above.

Finally, as a preparatory tool to notices required to enforce payment rights as well as a point of investigation and validation, design professionals may consider securing a title report private projects. It will reveal lenders and other investors who may require notice of liens and other notices, as well as revealing properties which may already be financially leveraged to the point of project impairment.

B. Project Selection

Different projects may also present different collection challenges. Some of the more relevant considerations are the following:

1. Defined and Realistic Scope of Work

Although it is ultimately a contract issue (see below), the first key to project selection is whether it is susceptible to a scope of work which is both definable and realistic. The reasons are obvious. If a project cannot be defined with clarity, how will the firm prove it is complete and entitled to full payment? Even more importantly, if the project is terminated early and the scope is generic or vague, the firm has no controlling means to establish entitlement to fees. Even worse, an unrealistic scope of work almost guarantees a lack of both payment **and** a claim for breach of contract and negligence.

There are two keys to a sufficiently-defined scope of work for collection purposes:

- a. Detailed description of the total project and service sufficient to enforce final payment.
- b. Identification of project milestones and related fees sufficient to enforce incremental payments. This will also help define the project process and schedule.

If such a scope of work cannot be achieved at the outset, it is acceptable to proceed on a time-and-materials basis if it is of a limited duration and commitment, and sufficient protections are provided (see below).

As stated above, open-ended contract obligations are among the greatest challenges to collection of design fees in that there is no definitive means to say all contract obligations necessary for payment have been fulfilled. This may actually arise in two ways. The first is by ambiguous or open-ended contract obligations. The second is by scope creep, whereby services exceed the

contractual scope of work and thereby often lack any genuine definition. Two provisions in the scope of work or the agreement itself can be used as a means to overcome these obstacles. They are:

Consultant's services shall be limited to those expressly set forth above, and Consultant shall have no other obligations or responsibilities for the Project except as agreed to in writing or as provided in this Agreement.

All of Consultant's communications, actions, and documentation relative to the Project shall be covered by this Agreement.

2. Funding and Financing.

For collection purposes, the next greatest consideration is the project funding/financing. The most relevant considerations include the following:

- a. How is the project to be funded and financed? Is it fully funded now or is some portion contingent deferred? If it is contingent or deferred, the firm's obligation and exposure should be limited accordingly.
- b. What access does the firm have to the project funds? If the project is funded, but the funds are held by third parties such as investors, banks, or holding companies, the firm should have a path of direct access to those funds.
- c. Is payment dependent on the review and approval of a third party, such as a bank officer, construction manager, or inspector? If so the process, standards, and timing should be defined in advanced.

3. Limitations on Collection Tools.

Some projects may have limitations on collection rights and procedures. Those should be evaluated carefully. For example, public projects typically have no lien rights. Contracts may also limit collection rights by waiving lien rights, requiring Alternative Dispute Resolution procedures, or requiring continuing services during a dispute.

4. Other Claims on Project Funds.

The final consideration is other possible claimants to the project funds. The key considerations here are timing and priority (i.e., while others have prior or prevailing claims which would relegate the firm to secondary status). If so, procedures should be implemented in the contract and in practice to minimize those risks.

C. Client Education.

Client education should be a project-long undertaking. It should and must begin with the very first client meeting. Informed clients tend to be happy and satisfied clients. Happy and satisfied clients are most

likely to pay on time and in full. By contrast, clients who are surprised or disappointed are those most likely to delay or stop payments.

As will be reiterated multiple times below, the two-fold key here is to both communicate and then document the communications and understandings. Absent documentation, there is no reference point, recollections will differ, and there is no common point of accountability and confirmation. Ideally, such documentation will come in the form of a “meeting of the minds” in the agreement, and then continue through the course of the project in the course of contract amendments, meeting records, and correspondence. Too often, if it is not written down and conveyed, when issues later arise, it is as if the communication never occurred.

While client education can involve many issues, three areas are most important for collection purposes and avoidance of claims:

1. Process and Schedule.

Regardless of a client’s sophistication, the design professional should review the expected process and schedule for the project with the client. In doing so, the design professional should be realistic or even conservative. Most importantly, the client should be taught that unexpected events or conditions may arise **and** the design professional is not in control of or responsible for many elements of the process and schedule. These conversations should be documented and, ideally, included as part of the contract.

2. Mid-Project Changes.

The client should and must be advised that delayed decisions or changes by the client (or others, such as building officials) during the project can impact the schedule and cost of the project. This should be reiterated each time the client delays or makes changes during the project.

3. Standard of Care.

The client must be educated as to the design professional’s standard of care. Specifically, the client should be advised that there is never a perfect set of plans or specifications, and that no design can fully anticipate every contingency. The client should be advised that there will be expenses and schedule impacts associated with design clarifications and corrections during the project, and the client should plan accordingly with appropriate contingencies. This advice should be oral and in writing and, ideally, will even be a part of the contract. However, the design professional should be very cautious before providing any recommendation or commitment as to a specific design contingency. Such an “enhanced” standard of care provision might provide:

CONSULTANT’s services shall be provided consistent with and limited to the standard of care applicable to such services, which is that CONSULTANT shall provide its services consistent with the professional skill and care ordinarily provided by consultants practicing in the same or similar locality under the same or similar circumstances. Such standard of care is not a warranty or guarantee and CONSULTANT shall have no such obligation. Accordingly,

Client should prepare and plan for clarifications and modifications which may impact both the cost and schedule of the Project.

D. A Strategic No-Go Decision.

The investigation of the client and project, as well as the client education, should not simply lead to a "check the box" accomplishment. Rather, it should lead to a rational and strategic "yes/no" decision. This decision may be a more holistic evaluation or more regimented through a rubric. The former often works better when the project represents a subject matter or geographic "expansion" from the core practice. The latter may work better when it is a "core practice" project. Potential forms are attached as examples of each approach (e.g., "Pre-Contract Project Evaluation" or "Go-No Go Checklist").

II. Contractual Provisions

Pre-project interviews and investigation are only a preparatory education. The true starting point to protect and secure payment of fees is obviously the Service Agreement. First and foremost, if you do not have a written Agreement signed by both sides, you will often have an almost impossible task in securing payment. To be binding, that Agreement should reflect the key elements of the pre-contract education and exchange. Otherwise, that information is not binding on the client and is of no ultimate benefit to the design professional. Assuming that a written Agreement is in place, several key provisions have proven critical to securing prompt and appropriate payment.

1. Specific Payment Procedures.

Either in the contract itself or by separate written confirmation, establish who needs to receive the invoice at what location and the required content and backup for the invoice. This avoids later excuses that the invoice was sent to the wrong location or lacked sufficient detail or backup. Often, this can best be resolved by including an exemplar invoice to the Agreement as an Exhibit. Experience indicates that it is best to include this in the Agreement where it is more likely to be binding and can less readily be disputed later. By including the clause in the Agreement, the firm may also impose a short duration for the client to request additional information.

2. Early Identification of Disputed Issues.

The Agreement should provide that the client has a very short time period after receipt of an invoice to identify any disputed portion. For example, the Agreement could provide that the client must identify any disputes with the invoice within ten (10) days of receipt or shall be presumed to be in agreement with all portions of the invoice.

3. Short Payment Durations.

Keep the period between receipt of invoice and the date for payment as short as possible. Ideally, payment should be due before the next scheduled invoice to avoid a mounting series of unpaid invoices.

4. Payment of Undisputed Portions.

In the event the client does dispute a portion of an invoice, the Agreement should provide that they will make prompt payment of all undisputed portions.

5. No Set-off.

Provide that the client may not back-charge the professional or reduce payments as a set-off to perceived damages arising out of the professional's services. Such set-offs frequently subject the professional to the double impact of lost fees **and** liability payments. Provide that the client may only withhold fees for that portion of the services improperly performed.

6. Right to Suspend.

Include a provision which provides that, in the event payment of an invoice is not received within the prescribed time period, the professional may suspend services at their option until payment is received, and shall be compensated for the expenses of the disruption. However, such a provision is only useful if the professional is willing to use it, or at least threaten to use it. Often, design professionals do not use such provisions because they are fearful of liability from the project impacts. Solve this by providing a release for any claims caused by such a suspension. Furthermore, the professional should protect against these risks by providing that the client shall defend, indemnify, and hold harmless the design professional from any and all claims, damages, or losses arising out of such a suspension. In this way, the professional is protected not just from the client, but from third parties (such as contractors) as well.

7. Non-Payment Precludes Right to Use Documents.

The Agreement should make the client's right to use the design professional's work product contingent upon timely and full payment of all fees and costs payable under the Agreement. In the final analysis, such provisions are often the last and best means to compel an otherwise recalcitrant owner to live up to his or her obligations and make payment to the design professional.

8. No Assignment.

As indicated above, good client selection is one of the most important steps towards securing collection. That entire process can be lost if the selected client can assign the project and the design professional's obligations to a third party. Accordingly, the Agreement should provide that the Agreement and the design professional's duties and responsibilities may not be assigned to a third party without the design professional's **subsequent** written consent. Where lenders require an assignment, make it contingent upon an assumption of all client obligations under the Agreement and a contract amendment, as necessary, to protect the design professional and the project in light of the assignment.

9. Parties to the Agreement.

If a third party holds the project funds, consider adding it as a party obligated under the Agreement. Alternatively, require a guaranty of the payment of the fees and costs. Either way, the key is to have the party with the money bound to the design professional.

10. LIMITED Right to Recovery of Collection Costs.

As referenced above, one of the great dangers in any counter-claim for professional negligence is that there will be a right to prevailing party attorneys' fees, which is not insured and which can quickly overwhelm the design firm financially and make even the defense of the allegations cost prohibitive. By the same token, the unrecoverable cost of pursuing many collection actions will also undermine the value in doing so. As a result, a prevailing party attorneys' fees clause can be incredibly valuable as a means to enhance payment opportunities, but it should be limited in both purpose (e.g., collection) and, more importantly, dollar value such that it is consistent with a collection action and not a much broader claim for professional liability.

III. The Project

Once the project begins, collection issues cannot be forgotten as the services are delivered.

A. Statutory Lien Protections

In addition to the contractual provisions, any design professional working on a construction project also has statutory lien protections. Such provisions may often be the most useful tools for securing payment in that it can invoke pressure from third parties such as lenders, investors, and buyers who may demand a "clean title" on the project. Such provisions will vary from State to State. The most common tools are mechanics liens and Stop notices. Some States have also historically added specific design professional liens as well. Each remedy is often very time- and procedure-sensitive. Which scheme applies and provides the greater tools will vary depending on the project and the circumstances (i.e., what type of project is it and who is the professional's immediate client). Accordingly, each set of statutes should be analyzed within the context of a particular project. However, **this analysis should always be performed at the outset of a project**, since some rights may be foreclosed if certain steps and notices are not accomplished at the very outset.

A related "statutory" tool often available to protect design professionals is copyright, patent, and professional licensing provisions which limit unauthorized use of a professional's work product. Again, the applicability and value of these tools will vary by project, and should be evaluated both at the time of contract to make sure necessary rights are retained **and** when the actual work product is "released" so that any necessary procedural formalities are observed.

B. Non-Contracted Additional Services

The best contract and the most strict adherence to lien laws often cannot protect the professional against the self-inflicted damage of providing non-contractual additional services. Most often, such services arise in one of two ways: the professional falls victim to "scope creep" and unilaterally provides services beyond the contracted scope, or the professional provides what he or she perceives to be "additional" services, often even at the client's request, without reducing the Agreement to provide those additional services (and the related payment obligation) to writing. When such events occur, the professional and its attorney are often left with few arguments but equity and mercy in order to secure payment. Accordingly, any professional must strive for two standards during the course of a project:

1. Strict adherence to the contractual scope of work.
2. Consistent and thorough written documentation of requests for **and agreements to** additional services. Often, this effort is aided by self-executing provisions which put the onus on the client to say that such additional services are not requested or to be provided.

C. Finding Leverage for Bringing Payments Current

During the course of a project, there will frequently be those times when a client needs an extra service or favor. These are the times to make sure all payments are verified. Common opportunities for leverage include the following:

- Additional Services.
- Reduction in Services.
- Acceleration in Services.
- Requests for Services on a New Project.
- Change in Project Financing.
- Assignment of Project.
- Change in Project Ownership.
- Providing Value-Added Services or Courtesies. (Here, there should be a limitation or release of liability as well.)

IV. Staying Current and Heading Off Trouble

Experience shows that many firms fall behind in their collection efforts and accrue large, overdue receivables because they find discussions of such issues with clients to be awkward, uncomfortable, and even "unprofessional". In reality, it should be seen as unprofessional to not address the issues. There are professional ways to pursue such issues without their becoming a point of conflict with the client. If they do become a point of conflict, it is better to know sooner rather than later.

A good collection procedure will typically follow a rational path of escalation. Such a procedure may include some or all of the following:

1. Even if a payment is not technically "due", consider sending a reminder notice. For example, if an invoice has a thirty (30)-day payment period, it may go to the bottom of the pile. A reminder fifteen (15) days before the due date will often move the invoice back to the top of the pile.
2. If a payment is not received by the due date, a prompt written reminder should be sent. It should be succinct, courteous, and professional.
3. If payment is not received within a short time of the reminder letter (e.g., 10-15 days), it is time for a personal contact. It may be in person or by telephone. Avoid asking questions such as: "Is there a problem?" Rather, ask: "Is there a reason we did not receive payment on time?" This is less likely to suggest a vulnerability. Confirm the conversation, any explanation, and the commitment to pay in writing. The explanation and the commitment may often be useful in a later

collection effort and to defeat any differing excuses offered later. Even if no explanation is offered and no commitment made, the conversation should be documented for later use in establishing notice and the lack of any criticism.

4. No later than thirty (30) days after a payment becomes overdue, all strategic options and requirements should be considered. This would include contractual options such as suspension of services, enforcement of guaranties, and notifications to owners and lenders. It would also include statutory remedies, such as lien notices and stop notices. Again, none of these measures is unprofessional, but are simply tools to be used to keep a project on track.

V. Collection Resolution

Ideally, any collection effort will be held separate from any claim resolution. This avoids unnecessary entanglement and the almost inevitable counter-claim for negligence and breach of contract. This is also, quite candidly, one of the most difficult separations to make. Nevertheless, there are some procedures which have demonstrated themselves to be useful. Those procedures include the following:

1. Statutory Remedies.

Statutory remedies, such as liens and stop notices, often have much shorter time tables and durations for resolution than do client claims for breach of contract and negligence. Accordingly, these protections should be expressly retained and never waived. Such procedures often also create pressure points with third parties, such as lenders, which prompt clients to make payment.

2. Third-Party Guarantees.

If a third party holds the project funds and has guaranteed payment, the design professional may often take its fee claim directly to the guarantor without any threat of a counter-claim, since the third party is not the client.

3. No Set-Off on Related Claims.

The provision for no set-off referenced above can often also avoid an intermingling of claims.

4. Waiver of Fee Disputes.

A provision requiring immediate notice of disputes over fees can preclude intermingled claims.

5. Short Duration of Fee Disputes.

The Agreement may provide that all fee and cost disputes will be resolved within a short duration (i.e., within sixty [60] days), and that during the dispute the client will place the disputed funds into a trust fund. Experience demonstrates that design professionals are much more likely to receive their fees if the funds are out of the client's account.

Where a discount or a free service is provided, seek to obtain a release for any services related to the discounted fee. Such releases are most easily obtained during the project and often have a value far in excess of the discount, since they may preclude future claims.

VI. Post-Project Evaluation

The end of one project should be viewed as a critical opportunity for preparation for the next project. While the project is fresh, the design professional should review all aspects of the project, including the financial performance. Relevant considerations include:

- Was the project profitable? If not, why not?
- Were payments made in full and on time? If not, why not?
- What project risks were encountered and avoided, and how?
- Were all aspects of the contract closed out and documented?
- What steps can be taken on subsequent projects to avoid or minimize negative experiences identified above?

A sample "Post-Project Evaluation Form" is attached.

*David A. Ericksen serves as a member of Severson & Werson's Executive Committee in San Francisco after serving as President from 2009-2012. He has led the firm's Construction and Environmental Practices. For over twenty years, Mr. Ericksen has specialized in the representation of architects, engineers, construction managers, design-builders, and other construction professionals. Mr. Ericksen's expertise covers all aspects of such professional practice as lead litigation and trial counsel, as well as being an active resource for risk management, strategic planning, and transactional matters. He is a trusted and valued resource to design and construction professionals and their insurance carriers across the United States and beyond. He is a graduate of University of California School of Law in Berkeley, a former law clerk to the Washington State Supreme Court, and a member of and resource to numerous construction and environmentally-related professional organizations. Mr. Ericksen is a frequent speaker before construction professional organizations such as the AIA, SEA, ACEC, CSI and others, as well as providing in-house training seminars for firms.

**Severson & Werson has provided legal services throughout California and the country for more than fifty years. The firm provides counseling and litigation support to all members of the construction process, including design professionals, construction managers, environmental professionals, owners, contractors, and insurance carriers.

CLIENT PROFILE

Company Name: _____

Corporation **Partnership** **Sole Proprietor** **Other**

Tax ID #: _____

Client Contact Name: _____

Street Address: _____

City: _____ **State:** _____ **Zip Code:** _____

Telephone: _____ **Facsimile:** _____

Website: _____ **E-Mail:** _____

Send invoices to the attention of: _____

Project Description:

What is your ownership in the Property?

Similar Project Experience(s):

Reference: _____

Reference: _____

Reference: _____

CLIENT INFORMATION CHECKLIST

QUESTIONS TO ASK OF THE CLIENT DURING PROJECT DEFINITION PHASE

Determine and Reduce Financial Risk:

- Conduct a credit check on the client to determine their ability to pay and their payment history.
- If a client has no history with us, insist on a significant retainer and then bill against it. When the retainer is exhausted, have the client provide further funds for the retainer.
- Inquire about the client's payment cycle to determine the best time of the month to submit your invoice. If the client's organization processes bills and writes checks on the 20th of every month, for example, ascertain when the invoice must be submitted to be included in that month's payment cycle.
- Ask for a retainer on all projects or a payment schedule which includes an arrangement for interest on unpaid bills over 30 days. While many firms insist on a retainer from new clients, few ask for one from existing clients. This is generally seen as a statement of trust and courtesy. However, it does not change the fact that those clients are using your money to finance their project for 60 or 90 days as you wait for payment.
- Include the specific action steps to be taken in case of nonpayment as a clause in your contract. This should include your option of stopping work on the project.
- Include the format of your invoice as a topic of discussion during the negotiations. Determine ahead of time the precise information the client wants to have included in the invoice and in what format it should be rendered. Sort out the invoice format before billing begins, not when you are in the midst of attempting to collect an overdue bill. **Attach a sample copy of your invoice format to your contract, initialed by the client, as an Exhibit.**

Quality Expectations of the Client:

- Meet with the client representatives to have a discussion on the levels of quality they are expecting with respect to design, contract documentation and project communication.
- Sit with the client and determine those things that are really important to them in the area of quality.

CLIENT INFORMATION CHECKLIST

- Ask the client to provide specific examples of project quality that are acceptable **and** unacceptable.
- Determine with the client how these standards of quality are tied to the construction budget when dealing with the selection of materials and methods.
- Determine with the client how these standards of quality are tied to the fee budget.
- Discuss with your client and your team the quality implications for the project process. For example, do the quality standards call for two design alternatives from which the client may choose, or are you expected to simply keep working until the design is “perfect”? Do the quality standards demand that every detail be designed “from scratch”, or does the budget only allow for the reuse of standard details?
- Document the results of your discussions with the client. Provide a summary memo to the client which outlines your understanding of quality for the project and gives specific examples of how those quality levels will be manifested in the deliverables.

Client Management Plan:

- Have a discussion on the unique needs and preferences of both the individuals with whom you will be dealing and the organization within which they work.
- Identify key preferences, processes and “taboos”.
- Your client’s organization likely has very specific processes for communication, review and approval. Ask the client to review these processes and, if possible, to provide any policies or procedures for dealing with vendors in writing.
- Obtain the names, titles and contact information for all people within the client’s organization with whom you will be dealing. Set up a file containing this contact information along with any comments about personal preferences or timing requirements.
- Have a discussion with the team regarding any unique personality types within the client’s organization. Establish a plan addressing how you intend to deal with any distinct personalities, and ensure all team members are informed about specific requirements.
- Determine the attitude of the client’s organization regarding the project itself. Determine answers to questions such as the following:

CLIENT INFORMATION CHECKLIST

- What has been the general attitude toward the project?
- What risks do you perceive the organization/community is taking with this project?
- Is there strong support for the project in the organization/community?
- Does the project have any particular “patrons” in the organization/community?
- Does it have any enemies in the organization/community?
- Are there any significant political issues or special interest groups involved with the project?
- How do you feel about our firm’s involvement in the project?
- Do you have any concerns about our firm that you would like to address now?

- Determine the attitude of the client’s organization regarding client gifts, meals, and socializing. Establish a plan for the frequency and nature of client entertainment throughout the course of the project.

PRE-CONTRACT PROJECT EVALUATION

HISTORY OF THE PROJECT

- What was the prime motivation for this Project?
- How long has this Project been considered?
- What actions have already been taken on this Project?
- What has been the general attitude toward the Project?

RISKS OF THE PROJECT

- Are there any particular challenges you expect to encounter on this Project?
- Are there any particular challenges you expect we will encounter on this Project?
- What risks do you perceive the organization/community is taking with this Project?
- Are there any risks that you want to advise us of?

PARTICIPANTS IN THE PROJECT

- Who is the primary sponsor of this Project?
- What is their position in your organization?
- Is there strong support for this Project in the organization/community?
- Does this Project have any enemies in the organization/community?
- Are there any significant political issues or special interest groups involved with this Project?
- What is your personal involvement in this Project?
- How do you feel about our firm's involvement in this Project?
- Do you have any concerns about our firm that you would like to address now?

QUESTIONS TO BE ANSWERED BY PRINCIPAL/PROJECT PROPONENT

- Why did we pursue this Project?
- How does this Project fit into our larger business and marketing goals?
- What is our relationship with this client?
- Do we want this Project to change our relationship with this client?
- Do we expect significant future opportunities with this client?
- What do we expect this Project do so for us in this target market?
- Do we want to use this Project for any specific marketing or public relations efforts?
- What risks do we need to watch out for on this Project?
- What profit do we expect to make on this Project?
- If we do not expect to make a profit, what other benefits do we expect to gain from this Project?

FORCES THAT COULD BE AT WORK FOR BOTH THE CLIENT AND THE FIRM ON THIS PROJECT

- Politics (internal and/or external).
- Community relations.
- Marketing and public relations.
- Cost control.
- Environmental issues.
- Reputation.
- Personalities.

QUESTIONS TO BE ANSWERED BY THE CLIENT

Goals for the Project:

- Why are you undertaking this Project?
- What is your primary goal for this Project?
- Do you have any secondary goals for this Project?
- Does this Project represent a significant step in the growth of your company/ agency/community?
- Does this Project break new ground for you or your industry?
- What problem(s) do you expect this Project to solve?
- What opportunity(ies) do you expect this Project to create?
- What do you expect to have following this Project that does not exist now?
 - New building.
 - New or improved process.
 - Reduced costs.
 - Competitive advantage.
 - Enhanced public image.
 - Other (explain)
- Does this Project represent:
 - New capital investment.
 - Regular repair and maintenance.
 - Temporary “stop gap” measures.

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SAMPLE GO – NO GO CHECKLIST

QUESTION	YES	NO	STRATEGIC RESPONSE TO “NO”
<u>The Client</u>			
1. Have we worked with this client before?			
2. Do we know that this client is financially stable and has a good business reputation (<i>i.e.</i> , not a single-purpose, limited liability entity)?			
3. Does this client pay its bills promptly?			
4. Is this the type of project the client has worked on before both successfully and regularly?			
5. Is the client willing to spend the necessary time with you to fully discuss the project prior to preparing the proposal?			
6. Are there future opportunities with this client?			
7. Do we know who makes the final decisions for the client?			
8. Would our other clients approve of our involvement with this project?			
9. Is the client realistic about schedule and budget?			
10. Is the client realistic about project goals?			
<u>The Project</u>			
11. Do we have (or can we get) a well-defined scope of work?			
12. Will the permits and approvals be obtainable within the client’s planned time frame?			
13. Are we familiar with all the applicable regulations and technologies?			
14. Are there future opportunities for similar projects with other clients?			

SEVERSON & WERSON, PC

SAMPLE GO – NO GO CHECKLIST

QUESTION	YES	NO	STRATEGIC RESPONSE TO “NO”
15. Is this the type of project that we have worked on before successfully and regularly?			
16. Do we have available staff experienced with this type of project?			
17. Are we sure our work load will not be strained by taking on this project at this time?			
18. Do we have at least as much chance to be selected as our competitors?			
19. Can we comply with the time schedule for completing our portion of the work?			
20. Can we provide high-quality client service on this project?			
<u>Business Considerations</u>			
21. Is this what our business and marketing plans say we should be doing?			
22. Is the selection process reasonable?			
23. Do we have a strong message that will differentiate us from the competition?			
24. Will the project be worth the marketing effort it takes to get it?			
25. Can we comply with any MBE, WBE, and/or DBE requirements?			
26. Will the client sign a contract with a limitation of liability clause?			
27. Will the contract with the client be equitable?			
28. Will the contract be free of hold-harmless and indemnity provisions?			
29. Will the contract be free of open-ended or speculative obligations?			
30. Will our fee be wholly adequate? Profitable?			

SEVERSON & WERSON, PC

SAMPLE GO – NO GO CHECKLIST

QUESTION	YES	NO	STRATEGIC RESPONSE TO “NO”
31. Is there a good reason to take this job if we do not anticipate a profit?			
32. Will our fee be competitive?			
33. Is the owner willing to provide funds for unexpected contingencies?			
34. Are their insurance requirements typical? (If there are any special insurance requirements, you must answer “No” to this question.)			
35. Is this a project in which we should be investing our resources?			
36. Is this the best opportunity we have at this time?			

Add up the total of your “Yes” answers.

If your “Yes” score is less than 30, can you provide realistic strategies to reach 30?

If your “Yes” score is less than 20, strongly consider rejecting the project.

POST-PROJECT EVALUATION FORM

PROJECT NAME: _____

PROJECT NUMBER: _____

OWNER: _____

CLIENT: _____

PROJECT LOCATION: _____

COMPLETED BY: _____

Participants in Evaluation Process:

_____	_____
_____	_____
_____	_____

Instructions for Filling Out This Form:

This form is an aid for identification of strengths and weaknesses in the performance of its projects. Please be as objective as possible when filling out this form. We will use this information to reinforce our strengths and to find ways to eliminate our weaknesses.

Poor Satisfactory Excellent

SCOPE AND SERVICES:

Project met owner's requirements.	1	2	3	4	5
Comments:					

POST-PROJECT EVALUATION FORM

	<u>Poor</u>	<u>Satisfactory</u>	<u>Excellent</u>		
Were the plans neat, thorough and technically correct?	1	2	3	4	5
Comments:					

Was project scope under control throughout the project?	1	2	3	4	5
Comments:					

What did we learn that might improve the management of future projects?
Comments:

SCHEDULE:

Was project completed on schedule?	1	2	3	4	5
Comments:					

Was the original schedule appropriate?	1	2	3	4	5
Comments:					

What did we learn that might improve the scheduling of future projects?
Comments:

BUDGET:

Was project completed within expected budgetary constraints?	1	2	3	4	5
Comments:					

POST-PROJECT EVALUATION FORM

	<u>Poor</u>	<u>Satisfactory</u>	<u>Excellent</u>		
Was the profit target met? Comments:	1	2	3	4	5

What did we learn that might improve the budgeting of future projects?
Comments:

COMPENSATION:

Were invoices paid on time? Comments:	1	2	3	4	5
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What did we learn that might improve compensation planning, billing and collections on future projects?
Comments:

PROJECT TEAM:

Were staff skills adequate for project requirements? Comments:	1	2	3	4	5
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Was there excessive overtime on this project? (Was the staff trained to meet schedules?) Comments:	1	2	3	4	5
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Did consultants perform to expectations? Comments:	1	2	3	4	5
---	---	---	---	---	---

POST-PROJECT EVALUATION FORM

	<u>Poor</u>	<u>Satisfactory</u>	<u>Excellent</u>		
Was the contractor's performance adequate? Comments:	1	2	3	4	5
How well was the project team on track throughout the project? Comments:	1	2	3	4	5
Were there any difficulties in managing the client? Comments:	1	2	3	4	5
Were there any difficulties in managing the consultants? Comments:	1	2	3	4	5
What did we learn that might improve the team efforts on future projects? Comments:					

GENERAL MANAGEMENT:

Were there any difficulties in marketing? Comments:	1	2	3	4	5
Were there any difficulties in project planning? Comments:	1	2	3	4	5

POST-PROJECT EVALUATION FORM

	<u>Poor</u>	<u>Satisfactory</u>	<u>Excellent</u>		
Were there any difficulties in negotiating? Comments:	1	2	3	4	5
How effective was information flow and communications with client? Comments:	1	2	3	4	5
How effective was information flow and communications with consultants? Comments:	1	2	3	4	5
How effective was information flow and communications with contractor? Comments:	1	2	3	4	5
Did procedures for control/course corrections work as expected? Comments:	1	2	3	4	5

Other comments about this project that might be helpful: