

# Taking the Lead for Your Firm: Small Firm Management Tips

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Architects provide professional services within a competitive business context. While small professional service firms must be financially viable to allow their professionals to pursue their practice goals, they often face cash-flow problems. Professional service fees do not normally provide a high profit margin. And small firms often risk both business assets and personal exposure on every project.

Any misunderstanding or dispute is likely to lead to a claim alleging breach of contract or professional negligence. A claim against a small design firm can destroy the ability of the firm to stay financially solvent. Even a claim requiring no payment takes time to resolve and taints the reputation of the firm. The following is a list of recommendations to help architects and other design professionals avoid professional liability losses. Although firms have varied procedures for selecting clients and consultants and controlling the quality of services and deliverables, they may find this to be a good reminder of a general process.

## Evaluation of Potential Clients

Client selection is perhaps the most important decision a design firm makes on any project.

- ✓ Examine whether a client has the financial capacity to complete a proposed project.
- ✓ Consider whether a client's past record indicates a predilection to litigation or nonpayment for services.
- ✓ Evaluate projects of a purely speculative nature, unless a client has a proven record of completing such projects.
- ✓ Respond to any unrealistic expectations apparent in a client and determine whether the client can be educated in the realities of design and construction.
- ✓ Make sure the client has a clear program, reasonable timeline, and realistic budget.

## Selection of Consultants

Many projects require that the design firm hire, and remain vicariously liable for, other professional service providers.

- ✓ Select your consultants on the basis of their ability to perform specific services.
- ✓ Outline the consultants' scopes of responsibility, tie performance to time constraints, and document acceptance with all consultants.
- ✓ Assess whether your consultants have an adequately skilled and licensed staff to perform the contracted services in a timely manner.
- ✓ Confirm that your consultants have adequate professional liability insurance to help protect you against possible claims due to the consultants' negligence.
- ✓ Use written contracts for all services performed by consultants.

## Development of Professional Services Agreements

Contracts are working guides for the performance of the parties and should spell out the duties, obligations, rights, limitations, and procedures of the affected parties. All contracts should also address scope, time, and compensation issues.

- ✓ Use written contracts for every project, regardless of size.
- ✓ Make sure the party signing the contract has the authority to do so.
- ✓ Modify or supplement industry consensus agreements (e.g., those published by The American Institute of Architects or Engineers Joint Contracts Documents Committee) and consult your legal counsel concerning the effects of such changes with regard to your professional liability exposure.
- ✓ Consult legal counsel to determine whether non-standard contract agreements impose responsibilities or create contractual obligations that you cannot realistically meet or are not willing to assume.
- ✓ Avoid indemnity, warranty, and other obligations that go beyond the professional standard of care.
- ✓ Check with your independent insurance broker about the effects that contract changes may have on your insurance coverage.
- ✓ Be thoroughly familiar with the terms of your agreement with your client, focusing specifically on scope, payment, performance, time, quality standards, and methods of modifying the agreement.
- ✓ Consider negotiating a limitation of your liability that is consistent with applicable law.
- ✓ Include mediation as the first step in resolving any dispute.
- ✓ Be certain that the client understands that initial and working estimates are only tentative costs and are not guarantees of construction bids or final costs.
- ✓ Confirm, in writing, all contract modifications that affect fees, cost of the project or design, scope of the project, or timing of services.
- ✓ State in the contract that the person signing the contract must authorize decisions and changes or identify another person as having real and documented authority to make decisions or changes.
- ✓ Be aware of termination provisions, including whether the client has a right to terminate the agreement for convenience, and evaluate termination payments and any connection to the future use of instruments of service.
- ✓ Be thoroughly familiar with the rights, duties, and responsibilities assigned to you in the general conditions of the contract between the client and contractor.
- ✓ Use the contract to plan performance and to guide design and construction phase services.

## Negotiation of Payment Procedures

Agreements need to be specific not only in terms of the scope of professional services, but the method of compensation for those services needs to be clear as well.

- ✓ Establish the manner, method, and form in which fees will be paid, including a schedule of payment dates and an up-front “mobilization” payment if appropriate.
- ✓ Retain the right to suspend services until delayed payments are received and the right to terminate the contract and pursue legal remedies if the suspension is not effective.
- ✓ Reinforce the value of the professional services by retaining ownership of the copyrights of the instruments of service, with a license to use the documents (or the transfer of ownership and copyrights) only upon complete payment of fees.

## **Establishment of Communication and Documentation Procedures**

The establishment of reasonable expectations and the reinforcement of those expectations are critical to creating and maintaining a productive working relationship with a client.

- ✓ Listen to your client to identify true concerns and realistic objectives.
- ✓ Determine the level of reporting the client wants, and set up a method of reporting progress or, if desired by the client, exceptions.
- ✓ Remember that documentation must be systematic (establish and enforce communication and documentation procedures), contemporaneous (document circumstances and events as they occur), and objective (state the facts only; don't speculate).
- ✓ Address contractual and other project-specific requirements for communication and documentation if they vary from standard procedures.
- ✓ Head off minor disagreements before they become irreconcilable differences by keeping your client informed of developments and having your client acknowledge situations that could affect time, quality, or cost.
- ✓ Correspond with your client on a regular basis and return telephone calls promptly.
- ✓ Send a transmittal letter with every invoice, noting the status of services and any completion of phases.
- ✓ Preserve the project record for at least the period of the applicable statute of repose.

## **Performance by Staff Members**

Everyone in a firm is responsible for quality and any member of a firm can create a situation that leads to a claim.

- ✓ Appoint a qualified and experienced member of your firm to coordinate in-house quality control efforts.
- ✓ Establish crosschecking procedures to detect simple errors and omissions in plans and specifications.
- ✓ Have the work of less experienced staff members carefully checked by a principal of the firm or by a responsible and experienced employee.
- ✓ Develop and use an office manual that sets forth the duties and responsibilities of all positions in the firm.

## **Recommendation of Materials and Equipment**

Clients make decisions; design firms make recommendations. All parties should understand their duties and the limitations of their authority.

- ✓ Explain to the client both the benefits and risks of using new materials or equipment and document the client's informed consent regarding incorporation into the design.
- ✓ Educate the client that designing for sustainability and energy cost reductions does not result in guarantees of either the products used or the outcomes anticipated.
- ✓ Use new materials or equipment only after determining their suitability for the exact purpose for which they are specified.
- ✓ Document a rational selection procedure that goes beyond reliance on sales literature regarding the suitability of new materials or equipment.

- ✓ Rely on test reports furnished by the manufacturer only if the scope of the test and reputation of the tester are known.
- ✓ Inform the producer of the applicable new material or piece of equipment how the product is to be used in your particular application.

### **Conduct of Construction Phase Services**

Providing services during the construction of a project can preserve design integrity, add value for the client, keep minor problems from becoming major claims, and reduce the likelihood of inferior substitutions and design modifications.

- ✓ Educate the client that the greatest protection against faulty workmanship lies in the competence and integrity of the contractor the client selects. As a result, you cannot be a guarantor of the contractor's performance.
- ✓ Educate the client that changes will have to be made and that a detailed change order and substitution process must be established and followed in a timely manner.
- ✓ Disapprove the use of a subcontractor only in an objective and factual way so as to avoid any possible claim of defaming a subcontractor.
- ✓ Instruct your own employees to avoid exposure to hazardous conditions during visits to the site.
- ✓ Require a contractor-led safety program and do not interfere with the contractors' responsibilities to provide a safe and healthy work environment for their employees.
- ✓ Follow your contractual and professional responsibilities for site safety so that overall safety of personnel at the job site remains with the contractor.
- ✓ Make sure that all communications by field representatives are through the general contractor and not directly with subcontractors.
- ✓ Establish and enforce a shop drawing submittal process which indicates that approval of a submittal is only to check for conformance with the design concept expressed in the drawings and specifications.
- ✓ Establish and enforce a request for information system that places responsibility on the contractor to specifically identify needed information, and make certain that all instructions to the contractor are confirmed in writing.
- ✓ Communicate project closeout procedures with the client and contractor early in the process to facilitate a smooth completion and transition process

Although firms have varied procedures for selecting clients and consultants and controlling the quality of services and deliverables, they may find this to be a good reminder of a general process. Continuously reviewing your risk management and business practices is the sign of a vibrant firm open to the challenges in practicing in an ever-changing environment.

For more information about these risks and how to manage them, see the [AIA Trust Quick Reference Risk Resource Review](#) and read synopses of AIA Trust White Papers on topics that include getting paid without getting sued, construction contract administration, contractor terminations, effective documentation, and more.