

The Design Professional's Guide To Minimizing Risk And Maximizing Profits

Attention A/E's: This informative guide is loaded with strategies to keep your firm thriving and help your business surge

Provided as an educational service by:

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The Tri-State Area's Most Trusted Advisor Since 1995. Providing professional liability insurance practice and risk management solutions



In this action-packed and informative guide you will discover:

- 6 easy strategies to maximize profits...consistently
- Secrets to ensure that your contract is fair and beneficial
- Tips to keep clients satisfied and begging for more
- How to manage subconsultants, while limiting stress
- Why saying “no” can (sometimes) be extremely beneficial
- Strategies to choose a great insurance provider (hint: you get what you pay for)
- How to improve the probability that your construction projects run smoothly--even when the contractor is tough to deal with
- Why more and more owners are asking architects and engineers to be actively involved until a project is complete
- A “slam-dunk” client selection process to avoid stressful and contentious nightmare scenarios
- Many real-life stories and examples with valuable lessons and takeaways
- Our exclusive “crystal ball” strategy to predict the future and avoid risky scenarios
- Three eye-popping stories where projects got seriously messed up (hint: many of these can be avoided)
- Strategies to guarantee you get paid on time and in full
- Tactics to avoid costly change orders and keep projects in check
- Tips to “set up” projects at the outset to minimize risk and ensure on-time payment
- **BONUS: Comprehensive Coronavirus Checklist**
- And much more

About Steve Whitehorn

For over three decades, Steve Whitehorn has been helping Architects and Engineers maximize profits, minimize risk, and create a lasting legacy. He has worked with some of the most successful design firms in the tri-state area.

Following in his father's footsteps, Steve has been living and breathing practice and risk management solutions, practically from the cradle. This is his passion and obsession, and he's damn good at it.

After graduating from Lafayette College with a degree in Economics and Business, Steve worked for Massachusetts Mutual for several years before joining Whitehorn Associates, a practice his father started in 1978. He continued to grow the business under Arthur Whitehorn guidance until 1995 when he took over the day-to-day operations and re-branded the firm Whitehorn Financial.

Drawing from over 20 years of experience, Steve created **The A/E Empowerment Program™**, an exclusive 5 step process that systematically provides practice and risk management solutions to minimize risk, increase profitability and speed up cash flow, specifically designed for Architectural and Engineering Firms of all sizes.

Steve has consistently been recognized throughout the A/E/C industry with numerous national and regional lectures and achievements. In addition, he is a lifetime qualifying member of the Million Dollar Round Table, the premiere association for Financial Professionals.

In addition, he has published extensively in numerous A/E/C publications, and has provided seminars to both clients and design associations on an array of topics, including The A/E Empowerment Program™, BIM/IPD, and other specialized Risk Practice Management topics.

***From the desk of Steve Whitehorn
Managing Principal, Whitehorn Financial Group***

Dear Design Professional,

I know that you entered this wonderful profession not because of money, but to make a difference; because you are an artist who wants to leave a lasting legacy. Virtually every architect or engineer I have worked with has a strong moral compass, is sincere, and passionate about their work.

And yet there is stress and frustration. You're in the construction industry, which is about as forward-thinking as the average caveman. You are forced to deal with (too) many people on projects--contractors and subcontractors who know every trick in the book (there are literally books written to teach contractors how to squeeze money from their clients!), which is fraught with potential liability.

Things can go wrong, through zero fault of yours, yet you get the blame, an easy target.

You need to please clients, make sure that your contract is written properly, deal with change orders, provide oversight, avoid lawsuits and messy disputes, suffer through endless delays--IN ADDITION to running a firm and managing multiple employees.

At the same time, you love what you do. Architects and engineers make the world a better place, and provide an amazing service. You may not always get the recognition you deserve, but we all know that you create amazing work, and deserve to be proud.

This guide is designed to help make your life easier, help limit stress, contentious disputes, and make your firm more profitable. It is filled with extremely practical and useful advice. These are common issues that you encounter; and this advice, while not a guarantee, will likely help your business not just succeed, but thrive.

I hope you enjoy!

Steve

ARTICLE #1:

6 Easy Steps For A/E's to Minimize Risk And Maximize Profit

In these uncertain times, many of us are focused on our health, environment, and our friends and loved ones. And these should be our top priorities.

With that said, you need to stay on top of your practice, to minimize risk and maximize profitability.

Here are six proven ways my A/E clients minimize risk and maximize profits:

1. Have a good contract

Not all contracts are created equal. There are good contracts and there are bad contracts. A good contract lowers your risk, while allowing your firm to improve your profitability.

Bad contracts significantly elevate your risk, potentially jeopardizing your firm's solvency.

Ignoring contract terms, even when they seem mundane, can lead to lengthy litigation, and potential insurability concerns.

2. Manage subconsultant expectations

Being a primary consultant comes with many great benefits. With that said, the prime consultant is vicariously responsible for the sub consultant's performance.

Tell your sub-consultants exactly what you expect of them, and make it clear that you are willing to work with them, as long as they deliver with precision and follow your instructions to a tee.

3. Manage client expectations

I cannot overstate how crucial this is. It also happens to be WAY easier to set expectations at the outset of a project—rather than trying to pacify an unhappy client who was expecting more than they could afford.

Nearly 80% of claims against design professionals are due to unmet client expectations. You must discuss what the owner should expect, within their budget constraints.

As long as the client knows what to expect, and you deliver what you promise, you end up with a satisfied client.

4. Choose the right insurance provider

Different insurance carriers can provide vastly different types of service. The process should NOT all be about price. It should be about a carrier's temperament to pay claims. Do you want to know, or do you want to guess?

It can be well worth investing in a moderately higher premium—if it means that you won't need the stress and uncertainty of chasing down your provider for weeks and months.

Clint Eastwood said every man has got to know his limitations. It is important to recognize that. Not everyone has a corner on all good ideas. Ask for help to broaden the perspective of addressing a situation.

5. Execute a 'GO/NO-GO' process for client and project selection

Everyone has had a bad client. Client and project selection is essential to reducing your risk and boosting your profit.

Every successful firm is willing to say no to a bad client. I know that it can be tempting to sign onto a project and “hope for the best”—especially when things are tight.

With that said, you need to have the foresight to detect red flags and avoid “toxic” clients who can lead to stress and misery.

6. Practice with a sense of conviction during construction

As a designer, your role in the construction phase of a project is not always clearly defined. And yet if the outcome does not go as planned—you may get the blame.

I know it may not seem fair, but unfortunately, it's a common story. I help my clients avoid this, by insisting on having oversight of the contractor's work THROUGHOUT the duration of the project.

You can incorporate a strategy to force greater contractor accountability. This will help you get the submittal schedule delivered on time, improve your receipt of payment, and reduce the amount of effort needed to access substitution requests and RFIs.

ARTICLE #2

How To Make Sure Your Project Goes Exactly According To Plan

As an architect or engineer, your oversight on a construction project can be a gamechanger.

I know that the notion of “overseeing” a project may sound a bit out-of-the-box. After all, very often, once the designer has submitted the plans, the owner and contractor do not involve you in the execution of construction as much as they should.

Yet the trend is starting to shift. More savvy owners are realizing what a huge mistake it is for architects to be marginalized once construction begins. It’s been proven time and again--when clients give design professionals a bigger role, everyone involved reaps massive benefits. I’m talking about potentially saving tons of money and avoiding unnecessary risk and hassle. For example, a \$12.5 million safety building was constructed with a mere \$40,000 in change orders (half of which were owner-driven changes)! And it was also a public project!

This approach is quickly gaining steam, as more owners are realizing its immense value.

As you know, standard AIA contracts do not require or expect architects to visit construction sites often. Even when they visit, they’re not obligated to “inspect”, only to “evaluate and observe”.

Yet surprisingly, many owners and developers mistakenly assume that architects are in charge of quality control. As a result, owners fall into a false sense of security--mistakenly believing that the architect is the “Master-Builder.” In other words, they think they’re relying on the architect to ensure quality control, when the reality is they’re relying on the contractor and forman.

The traditional old-school approach may save money at the outset. Yet it’s at the expense of increased risk, while potentially making everyone’s life more complicated.

To be perfectly blunt, when both architects and engineers are not involved in the execution, things get screwed up.

What to do if you’re not in charge

The most important thing is to set client expectations and be completely TRANSPARENT with your client BEFORE you start the project.

There is a big difference between observing and inspecting. Since you will only be there every so often, contractors may try to cut corners and ignore your plans, and they’ll have plenty of time to hide their work in between your visits. They may use cheap materials, or they may skip a step they view as “unnecessary.” If they hire unskilled, inexperienced, or incompetent subs, that could lead to massive problems.

Seemingly “small” details can lead to major headaches and end up costing hundreds of thousands of dollars. Issues may only creep up years later, with each party blaming the next, and lawsuits galore. Lawyers win big at everyone else’s expense--especially everyone’s favorite scapegoat, the A/E.

For example, a contractor may decide to use a different waterproofing system for the roof than the one specified in the plans. What's the big deal, right? It may take a year or two, but if the roof eventually leaks, leading to water damage, I don't need to tell you what can happen next. By the time it shows up, it is difficult and costly to trace the source of the problem and who messed up. You could end up on the hook even though you may not be responsible, wasting your time and money.

That's just one of many examples. (As a risk management specialist, I hear and am involved in all kinds of horror stories.)

I strongly urge you, before construction begins, to go over the Construction Phase of the contract with the owner--make sure they understand that "We won't always be there, we won't see everything."

Best case scenario, the owner may develop some foresight regarding your traditional limitations of services, and expand your role during construction, while compensating you for your time as well. If that does not happen, the owner should, at least, have a greater sense of expectation, and hopefully you won't get dragged into issues that are beyond your reasonable control.

Article #3

"Crystal Ball" Technique To Anticipate And Avoid Risky Scenarios

I always tell my clients, there are only 3 things in life you can count on: death, taxes, and change on a construction project.

This knowledge can literally save you hundreds of thousands (perhaps millions) of dollars and endless heartaches. Here are three eye-opening stories in which disputes, delays, or costly changes either were avoided, or COULD have been avoided.

EYE-POPPING STORY #1: Too early to order project material?

One of my architect clients recently designed a project that called for a large amount of steel. The owner was concerned that if they waited too long to purchase the steel, threatened tariffs would significantly drive up the cost. The owner wanted to order steel immediately at the completion of the schematic phase.

This may have SEEMED sensible, but my client recognized the risk, potentially leading to huge waste, change, heavy losses, not to mention hassles for all stakeholders. The chances of the plans remaining unaltered through design are about the same as a snowball's chance in...well, you get my drift.

If the plans were changed (which they did), a significant amount of the steel could not have been used. RetroFitting, correcting, or ordering the required material would have led to significantly more cost, complexities, and delays. In addition, veering even slightly from the design (no matter how tempting) can have disastrous consequences.

In short, ordering the material in the first phase might have saved a few bucks (due to potential tariffs), but this would have led to catastrophe. It's the ultimate "pennywise pound foolish."

And who would the owner blame? Everybody's favorite scapegoat; the Architects and Engineers.

In these types of scenarios, I always tell my clients two magic words: BE TRANSPARENT. Explain the pros and cons to the owner in a respectful, positive, yet firm way. You'd be amazed how many clients will embrace you as the voice of reason when you show full transparency and make it clear that your number one concern is protecting THEIR best interest.

EYE-OPENING STORY #2: Dallas Bridge Is Falling Down

Over the past several years, a new pedestrian and bike bridge over the Trinity River in Dallas has been the subject of a huge dispute.

The problem? Rods in the cables that hold up the bridge have been cracking. The contractor has been in a heated dispute with the city over who should pay for the repairs, with the "Starchitect" caught in the crossfire. According to the Dallas Observer, "The cable parts have failed in high winds, tests were not conducted as originally required, and an adjustment rod was made of thinner material than called for in the original design."

How did this happen? According to the Observer, the project got more expensive than initially estimated (shocker!), so the city pressured the contractor to 'value engineer' the bridge--which is a fancy term for "cutting corners." The amazing thing is, the architect repeatedly urged the city to conduct the proper tests and even offered to lend it money to pay for it! Yet they didn't listen.

Could this have been avoided? It's hard to know. It seems like a textbook case of "cutting corners". The Contractor may have been planning to blame the architect, but it was the Contractor that didn't say "No." Either way, situations like this can be tough to avoid.

I always implore clients to do their due diligence. Try to work exclusively with contractors you trust, and ideally someone you've worked with multiple times in the past. Have a sense of conviction should a stakeholder request a change.

EYE-OPENING STORY #3: A city (allegedly) refuses to pay

A St. Louis-based interior design firm was owed \$110,000 for a renovation of the city of Belleville City Hall (the conversion of a bank into the police headquarters.)

The city refused to pay, and the firm agreed to reduce the asking price to \$90,000. They still didn't get paid, and were ultimately forced to accept \$72,000 to end the dispute.

Part of the reason the city was upset was because the project was supposed to be completed in January 2017, but was not finished until the following September.

The city made two claims:

The architect who originally led the design team was removed mid-project, which the city claimed led to significant delays.

Although the city initially ordered a specific window shade, they later changed their mind and requested a different style. By that time, the design firm had already purchased the shades, but the city still refused to pay for them, forcing the firm to swallow \$20,000, the cost of the shades.

Although it's hard to attribute blame without knowing the details, the bottom line is this: the architect lost \$38,000, and seemed to have little recourse.

Some scenarios are hard to avoid. It's very plausible that if the contract and pay schedule had been structured differently, the outcome could have turned out better.

Article #4

Strategies To Guarantee You Get Paid On Time And In Full

It's no secret--construction projects almost never go as planned.

I'm not only talking about messy disputes, incompetent contractors, and poor execution. Even if all the parties are competent professionals with the best intentions, things still can go south. It is important to keep an eye on the Golden Rule: The further out your money goes when due, the more your client discounts the value of your services.

The sad reality is, A/E's often have a "bull's eye" on their back. If something goes wrong, and a developer or contractor is looking to cut corners--YOU may be the victim.

Here are some examples of things which can lead to you not getting paid:

- Unexpected costs drain the owner's budget
- Extra design work or "scope creep", which the owner doesn't want to pay you for
- Contractor delay, causing longer A/E involvement
- Developer is unhappy with the contractor's execution, and blames the A/E
- Extensive change during construction

- Poor construction sequencing, leading to alleged design flaws, and A/E incompetence

In one well-known instance, the architects of the new Minnesota Vikings' stadium had to fight to get paid, because the project cost way more than the government wanted to pay, through no fault of the architect.

I actually hear stories like this all the time. Yet a lot of architects and engineers seem resigned to the belief that the risk of not getting paid is merely an "occupational hazard", and they "hold their breath", hoping for the best. They seem to think they have no control over the outcome.

This is a mistake. You actually have a lot of control over your destiny, and can often prevent these scenarios.

If you want to get paid in full, on time, reduced stress, you need to stack the odds in your favor BEFORE you begin a project.

Here are some ultra-practical strategies and tips that have helped my clients hold onto as much of their profits as possible. (Many of these won't take you very long, and can save you a lot of time, hassle, and money in the long run.)

Use a standard AIA agreement. If your client wants to use a different contract, that may be okay, but get your "antennas" in motion. Find out why they don't want to use the standard contract, and speak to your lawyer or risk-management professional to make sure YOUR interests are protected.

Read your contract with a "fine-toothed comb" for any details that can lead to problems or disputes. If any changes are made to the wording by any of the parties, check with a lawyer or risk-management professional. Something may seem like trivial and technical "mumbo jumbo", but later on it can lead to big problems.

Be sure all liability and responsibility are clearly delineated in the contract. There is no reason that an A/E should be on the hook for changes in project scope, poor execution, unexpected costs, or anything else beyond their control. (And most things that go wrong are beyond your control.)

Don't be afraid to speak up. Sometimes your client's lawyers may "test the waters" by structuring the contract in a way that's most beneficial to them, at your expense. When you call them on it, they may be willing to back down, but there's only one way to find out. Always try to push in favor of your best interests. You usually have a lot more to gain than to lose with this approach.

Get paid on time THROUGHOUT the project. Cash flow needs to be a process, not an event!

I will say this again...

Cash flow needs to be a process, not an event!

If your pay is delayed at any point in the process, STOP WORK! Even if the client has the best intentions, this could be a red flag. You may end up doing significant work and not get paid, and you need to do everything possible to prevent that from happening.

As a rule of thumb, it's all about risk vs. benefit. Ask yourself 2 questions:

1. "What is the best possible outcome if I take on this project?"
2. "What is the worst-case scenario that may arise?"

If you use this formula, you'll usually end up making a wise decision that will bring about the best outcome for you and your clients.

Article #5

Coronavirus Checklist: Common scenarios and challenges that can impact your firm post-Covid19

Here is a list of common issues that can impact your architectural or engineering firm. They cover a wide range of relevant topics--including contracts, client relations, payment issues, legal concerns, risk management, and more.

1. Delays and work suspensions. Many projects have been shut down, suspended, or severely hampered. Projects are being furloughed or placed on hold indefinitely. As a designer or engineer, you may suffer from the delay. Owners may deduct from your fees, or in some cases, try to hold you accountable if things don't go as planned. (And right now, very little is going as planned.)

I know it sounds crazy. The government is shutting down projects to protect the public. How can YOU be blamed? Most reasonable owners will certainly see it that way. But here is the thing-- owners and developers are losing a lot of money. And some unscrupulous clients or contractors may want to use any trick they can to minimize their losses.

Typically, A/E's tend to be "low hanging fruit"--you have insurance, and may be easier to blame than contractors. Again, I'm not saying this is likely. But it's very wise to be prepared before things get ugly.

Check your contract to see if you are responsible for any delays. (Specifically, look for the "force majeure" clause which addresses a suspension of work through no fault of any parties. Incidentally, general contractors have greater contractual force majeure rights than design professionals in the standard AIA language.) Be sure to consult with your risk-management specialist or attorney to determine if you may be held responsible.

2. Social distancing guidelines. If you are working in an office setting or visiting sites, obviously you must keep social distancing guidelines. This may be difficult and inconvenient--but it's the law. (It is also highly recommended for the sake of public health and safety.)

In addition to fines and penalties, there is something else to be aware of. If somebody develops COVID-19--you may be accountable.

Even if you're adhering to the rules--do you want to be in a situation where you need to prove that you were following the rules? It's much simpler to be proactive and avoid any hint of doubt--as opposed to leaving things ambiguous and needing to prove your innocence.

3. Contract awareness. As I always say, not all contracts are created equal. These are unprecedented times, and many legal issues have arisen that we have never seen in our lifetime.

What if projects are delayed for weeks or months? What if the owner suffers major losses and must suspend the project? If major design changes are required due to health concerns, will the owner be forced to compensate you? Does the owner have a responsibility to pay you as an additional service? Could you be held accountable for problems that are no fault of your own? Will you need to visit sites during a lockdown? (More on that question below.)

Even if you see your colleagues impacted negatively--that may not happen to you. It all depends on your contract. You may need to speak with a lawyer or a risk management specialist, to review your rights, and get advice on how you can get the best results for your firm--despite the crazy times we live in.

4. Change orders as a result of the crisis. It is not clear how long the current situation will last, or what kind of changes will be expected of businesses. There are reports that sports facilities will need to make dramatic renovations to accommodate social distancing measures. It's very likely that offices and commercial buildings will be expected to make major renovations as well--both internally and externally--to accommodate the new world we are living in.

Some experts are predicting a return to closed office spaces, after a popular trend of open office plans which it now turns out can lead to the spread of germs. Businesses may also require a lot more space. Other ideas being considered are more fresh-air ventilation, no-touch controls, and many other sanitary changes to prevent the spread of germs. (All these may actually be very beneficial for designers in the coming years.)

As a result, it's very possible that projects which are currently in motion will require major changes. Now, this could be a very positive thing--however it's very important that it be done according to contract. In addition, you need to make sure that you are properly compensated, and that you are on the same page as the developer and the contractor. Again, when in doubt, speak to an attorney or a risk management specialist.

5. Payment schedule. There is a severe shortage of cash flow. As a result, you may find it hard to get paid on time.

My advice--be proactive. Don't just sit around hoping that you'll get paid. Don't assume that the check is in the mail. Make sure to clarify with the owner or developer that you are expecting to get paid on time. Be courteous and respectful, but be firm.

Now, they may tell you that they simply don't have the funds right now due to the current crisis. That's not the end of the world. You can feel free to negotiate a reasonable payment schedule to accommodate your client. The important thing is to be sure they feel accountable, and to have transparent communication.

6. Stay in touch with clients. I cannot overstate the importance of being in contact on a regular basis.

This accomplishes several things:

Clients will recognize that they need to be responsive, and cannot just "slip under the radar". Your client will appreciate the close personal connection that you are creating. They will be more likely to fulfill their obligations and be reasonable, if they feel like you care about them. Staying in touch gives you a chance to build a personal connection. Many people assume that in business, emotions don't play a big role. Your client will either fulfill their obligation, or they won't. This is not true. It has been proven time and again that clients are more likely to fulfill contracts when they feel a personal connection that goes beyond mere business.

GOLDEN RULE: People don't care how much you know, until they know how much you care.