

CSDZ Webinar

Reduce Exposure Through Best Practices

Presented by Judy Mendoza,
Senior Risk Management Consultant
Victor O. Schinnerer & Co., Inc.



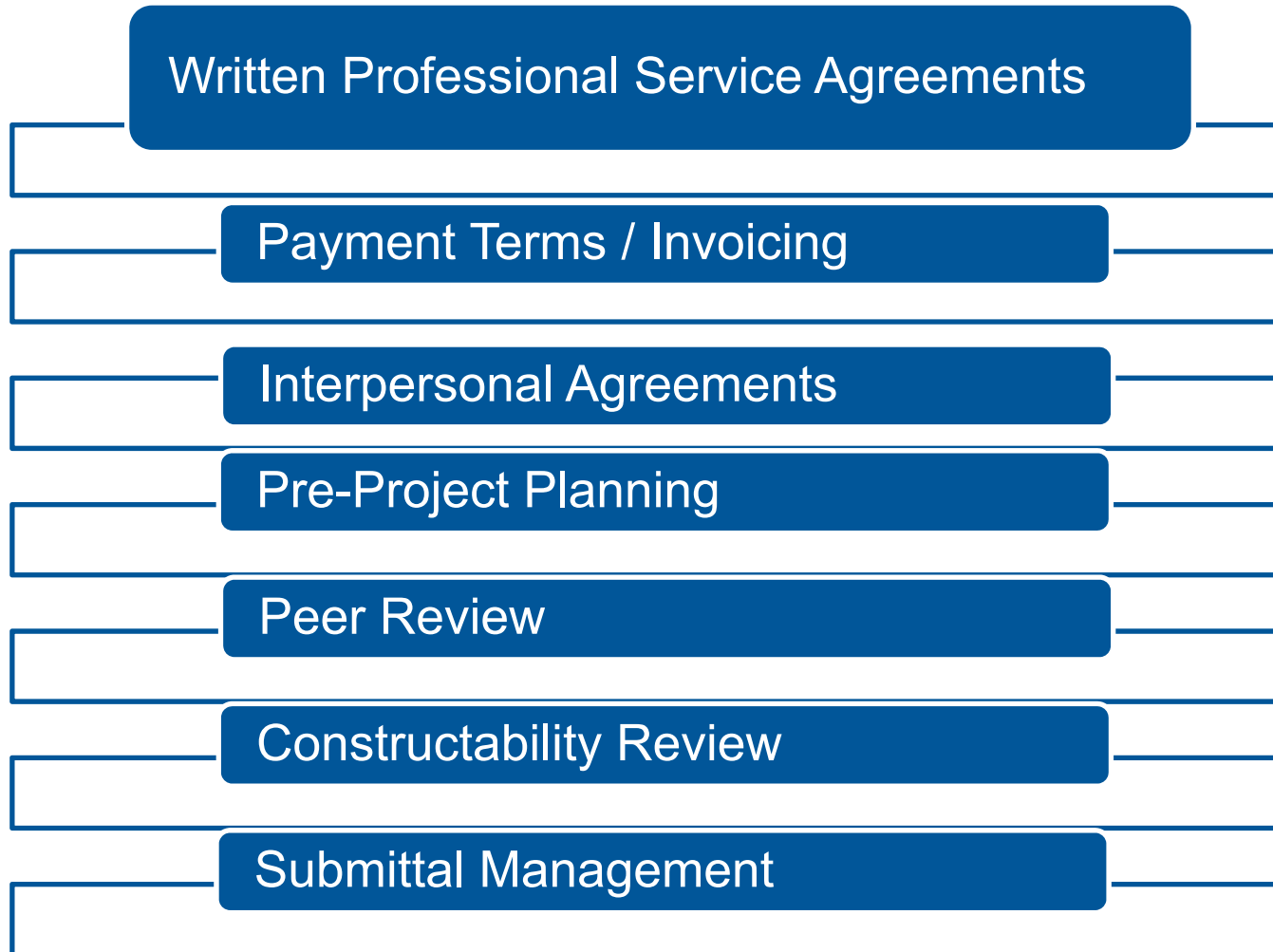
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Best Practices





Professional Service Agreements



First Law Of Contracts

"You get what you negotiate...not what you deserve."

-- Anonymous

Purposes of a Professional Services Contracts



Types Of Contracts

Oral Agreements

Letter Agreements

Purchase Orders

Standard Form Agreements

Custom Agreements

Contract Provisions Expanding Duty

- Broad indemnification obligations
- Express warranties and guarantees
- Language that creates unfulfillable expectations



Red flag words:

- *Warrant, guarantee, insure, assure, ensure, certify*
- Absolute words: *Highest standard; complete & accurate plans; all codes; most economical*
- *Fit for the intended purpose; in strict accordance with owner's requirements; supervise*
- *Time is of the essence*
- *Prevailing party provisions*



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Payment Terms / Invoicing



Fee disputes can lead to claims against design professionals

\$ Is your fee adequate for the services to be provided?

\$ Does your Agreement have clear payment terms?

\$ Do you have a “collection strategy?”



Interprofessional Agreements



Retaining Subconsultants

- Written Agreements:
 - Avoid uncoordinated contracts & mismatched expectations.
- Certificates of Insurance:
 - Confirms financial responsibility & compliance with contract terms.
 - Confirm Professional Liability and General Liability coverages.

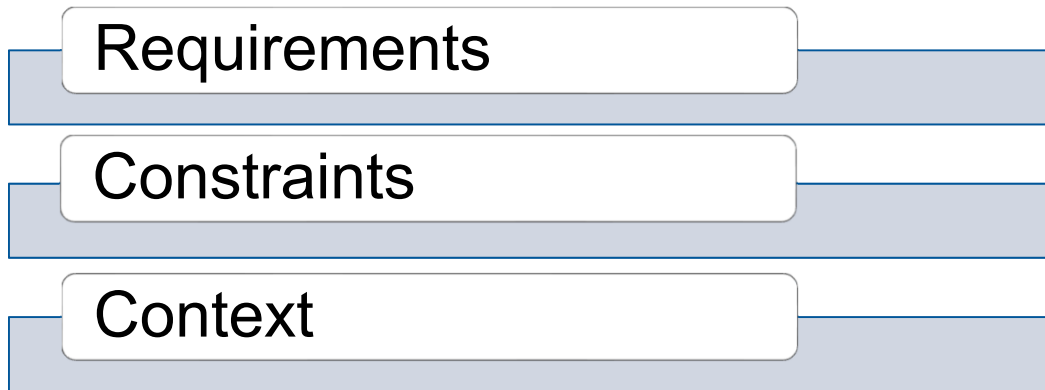


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Pre-Project Planning



Risk Management Model



Phase 1
Risk Analysis

- Identification
- Assessment
 - Probability
 - Severity

Phase 2
Risk Response

- Avoidance
- Retention
- Transfer
 - Contract
 - Insurance

Phase 3
Risk Control

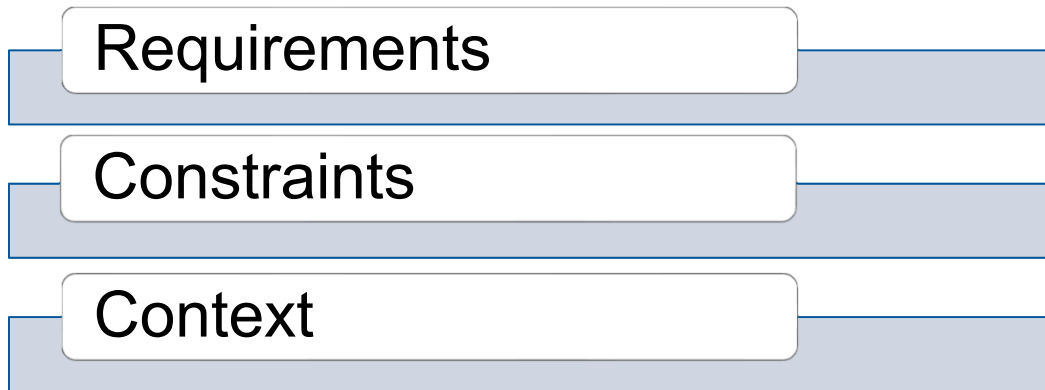
- Implementation
- Monitoring
- Managing Disputes/Claims

Schinnerer's Risk Management Matrix

Can help you assess:

- The Client
- The Project
- Consultants
- Other Parties
- The Fee
- Your Firm
- The Contract
- Overall Assessment

Risk Management Model



Phase 1
Risk Analysis

- Identification
- Assessment
 - Probability
 - Severity

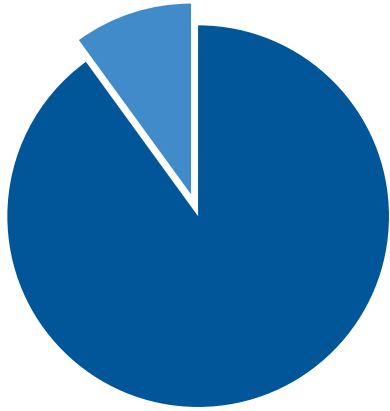
Phase 2
Risk Response

- Avoidance
- Retention
- Transfer
 - Contract
 - Insurance

Phase 3
Risk Control

- Implementation
- Monitoring
- Managing Disputes/Claims

The 90/10 Rule:

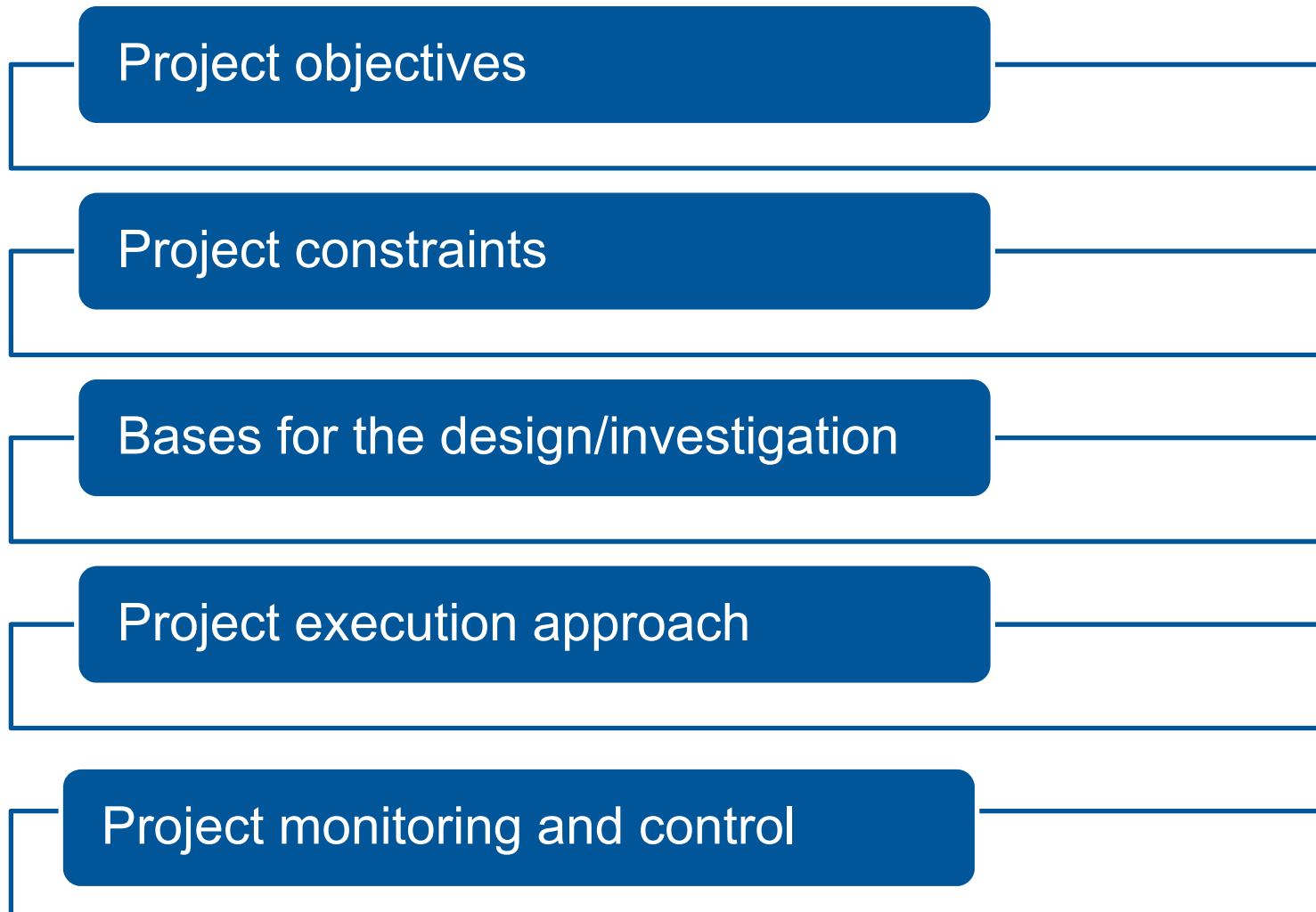


“90% of the success or failure of a project is determined in the first 10% of effort.”

Pre-project Planning

The process of developing sufficient strategic information for owners to address and decide to commit resources to increase the probability of a favorable outcome.

Pre-project Planning Process



Benefits of a Pre-project Planning Process

Better definition of risks

Increased predictability of cost & schedule

Better achievement of business goals

Improved operational performance

Fewer changes and disputes



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Peer Review



Peer Review

A peer review is focused on:

1. Assessing the likelihood that your professional services would satisfy your client's objectives
2. Determining if the key elements of your services and instruments of your services are in conformance with good professional practice.

Peer Review

Investing in a documented peer review is one of the best ways to reduce exposure to claims because a peer review can:

- Minimize client dissatisfaction,
- Anticipate problems, and
- Control the quality of design documentation.

A Peer Review needs to be:

- A contemporaneous, documented review of your professional services and deliverables.
- Conducted – internally or externally – by a qualified professional. (Not by a person responsible for the services or documents being reviewed.)



Constructability Review



Constructability Review

Clients are increasingly demanding that the design team engage with representatives of the project owner, the contractor or other entity responsible for construction, and any other project stakeholders deemed appropriate in a structured, documented constructability review process that provided for the timely integration of construction input into project planning, design, and field operations.

A Constructability Review can:

- Be a form of scheduled value engineering.
 - Reduces the probably of “second-guessing” through post-design value engineering.
 - Identifies possible problems early to preclude later claims for delays and extras.
- Obtain design assistance services from the entity responsible for construction.
 - Commits the constructor to performance goals.
 - Documents owner acceptance of recommendations.

A Constructability Review can:

Reduce costs

Reduce time

Improve safety of contractor's field operations



Submittal Management



Submittal Management

Track as-planned and actual submittal dates

Mitigate exposure to contractor delay damage claims

Document compliance with the contractual mandate that the contractor submit a submittal schedule, coordinated with the construction schedule, for the design professional's approval.

Submittal Management

AIA/EJCDC documents:

- Require contractor to provide a schedule of submittals that incorporates time for review & resubmittal if necessary.
- Require the design professional to approve the submittal schedule
- Require that the submittal schedule be prepared in conjunction with the construction schedule so that submittals are made in a logical sequence & in a time manner

Risk Mitigation Credit



- For eligible policyholders, deductible credit up to \$25,000.
- Firms with annual billings of less than \$25M are eligible.
- Must apply for credit and supply supporting documentation within 60 days of receipt of the application.

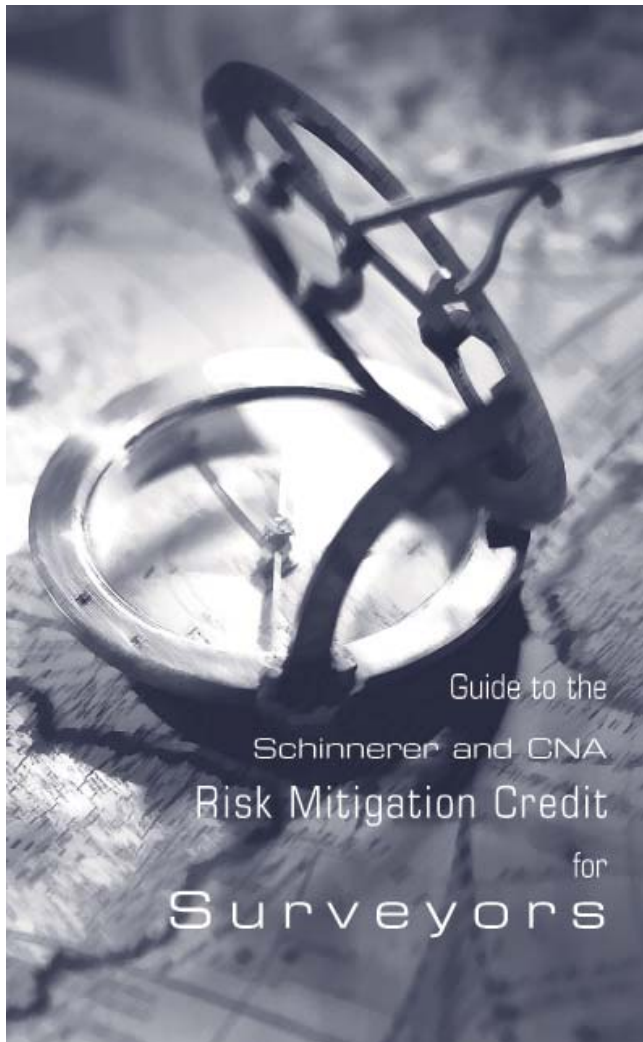
Risk Mitigation Credit

Baseline Requirement: Professional services agreement in place before services leading to claim were performed

Three of these six conditions have to be met:

- Payment terms and invoicing procedures in contract
- Interprofessional agreements and insurance certificates
- Pre-project planning with client
- Peer review by independent professional
- Constructability review with relevant stakeholders
- Submittal management process and records

Risk Mitigation Credit for Surveyors



- For eligible policyholders, deductible credit up to \$25,000.
- Firms with annual billings of less than \$25M are eligible.
- Must apply for credit and supply supporting documentation within 60 days of receipt of the application.

Risk Mitigation Credit for Surveyors

Baseline Requirement: Professional services agreement in place before services leading to claim were performed

Three of these five conditions have to be met:

- Payment terms and invoicing procedures in contract
- **Professional Services & Accuracy Standards**
- Interprofessional agreements and insurance certificates
- Pre-project planning with client
- **Quality Assurance / Quality Control**

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Thank you for your **time!**

Questions?

Judy Mendoza
Victor O. Schinnerer & Co., Inc.
(415) 743-8729
Judy.L.Mendoza@schinnerer.com

**This concludes The American Institute of Architects
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