

Contract Provisions to Minimize Risk of International Projects

Excerpted and adapted from *The Architect's Handbook of Professional Practice*, 13th edition

Revised November 2006

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SUMMARY

U.S. architecture firms that provide design services abroad have a greater risk of encountering miscommunications that may adversely impact contractual obligations and expectations. To minimize this risk, U.S. firms can include contract provisions that address key issues such as compensation, currency, taxes, project definitions, copyrights, and more.

WHEN IN ROME...

Business and legal conditions are unlikely to be the same in foreign countries as they are in the United States. Different business conditions and legal systems, or the lack of knowledge of them, may greatly magnify the risk for U.S. firms of providing architectural design services abroad. Careful attention to contract provisions may help minimize these risks. The following list, while not comprehensive, enumerates issues to consider when a firm enters into an agreement with a client for a foreign project:

- Whenever possible, enter into a contract for international projects with a U.S. entity, such as the subsidiary of the foreign client company. This helps ensure that the contract will be enforceable under U.S. law.
- Request a substantial retainer. Most foreign clients expect to pay a retainer; the client's response to your request may be an early indication of good faith, intent, and seriousness about the project. A retainer also helps protect you in the event of delayed payments.
- Be aware that foreign capital can be frozen or prohibited from leaving the country. Determine how such prohibitions may apply to your contract.
- For projects that entail unusual or significant risks due to possible currency fluctuations, political instability, or other reasons, request that the full sum of the contract be deposited in an escrow account in the United States in U.S. dollars, and under the control of a U.S. escrow agent who is authorized and obligated to disburse funds to the architect in accordance with the terms of the contract. Define such terms and conditions of payment clearly in the contract.
- Foreign taxes or U.S. tariffs may vastly reduce the value of a contract. State explicitly in the contract that the contract sum, and all payments due to the architect, are "net after taxes," to ensure that the client is responsible for all taxes.
- State explicitly the currency in which the contract sum will be paid. Payment in U.S. dollars is always in the best interest of U.S. firms. If payment is to be made in some other currency, address the matter of currency fluctuations in the contract to minimize your exposure to risk; the profit margin for architectural services is too slim for architects to be in the business of currency speculation. If payment in U.S. dollars is not an option, consider purchasing a currency insurance policy.
- Identify in the contract the client representative authorized to review, approve, and accept your work and authorize payment.
- Assert the right to discontinue providing services in the event of nonpayment, including the right to withhold deliverables.
- Define project suspension and termination circumstances and procedures. Overseas

projects are more likely than domestic projects to be delayed or ended abruptly. It is very important that your right to be paid under such circumstances is clearly established.

- Explicitly assert copyright and ownership of all documents produced by the firm; copyright protection for architectural works may not be as extensive as it is in the United States.
- Clearly define dispute resolution procedures. International arbitration is increasingly popular and is institutionalized through the American Arbitration Association.
- In all agreements with subcontractor design professionals or joint venture partners, include “pay when paid” provisions to limit your financial exposure to your own direct expenses and the services you actually provide.
- Specify the right to send invoices to the client via fax or e-mail, which may reduce the period of outstanding accounts receivable by one or two weeks.
- Specify what materials and services the client must provide before architectural services can begin.
- Define reimbursable expenses explicitly. Many foreign clients are not familiar with the concept.
- Send separate invoices for services and reimbursable expenses, so that questions about expenses do not delay payment for services.

RESOURCES

More Best Practices

The following AIA Best Practices provide additional information related to this topic:

- 10.05.02 Managing International Teams
- 09.01.10 Risk Management Basics
- 10.05.04 Getting Paid for International Work

For More Information on This Topic

See also “Practicing in a Global Market,” by Roger B. Williams, FAIA, JIA, and C. Richard Meyer, FAIA, *The Architect’s Handbook of Professional Practice*, 13th edition, Chapter 6, page 100.



See also the 14th edition of the *Handbook*, which can be ordered from the AIA Bookstore by calling 800-242-3837 (option 4) or by email at bookstore@aia.org.



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Key Terms

- Practice
- Project management
- International practice