

PRACTICAL STEPS TO HELP SUBCONTRACTORS WEATHER ECONOMIC HARD TIMES

BY FRANK E. RIGGS, JR.

Today's construction industry is face-to-face with some harsh realities. Across the country, and with only isolated exceptions, commercial building activity continues to decline, along with project backlogs.

Charting a Course through 2009

The construction industry lost a total of 632,000 jobs nationwide in 2008 – the largest absolute loss in the past 33 years and the highest percentage decline (8.5%) since 1991.¹ In this deteriorating environment, contractors, subcontractors, and suppliers face new and difficult challenges to their profitability and ultimate survival.

“Practical Steps to Help GCs Weather Economic Hard Times” by Lee A. Weintraub in the November/December 2008 issue provided recommendations for GCs. However, if you are a CFM who works for a subcontractor, take heart. In this article, we'll take a similar look at the challenges subcontractors face and review practical tips to help your company deal with its 2009 market challenges.

Although written from the subcontractor's perspective, many of these suggestions are equally adaptable to GCs, suppliers, and others. For some, these recommendations will serve as a reminder of lessons previously learned; for others, I hope they create a useful roadmap for the difficult journey ahead.

CHALLENGES AND OPPORTUNITIES

Hard economic times provide an opportunity to carefully review your company's strategic goals and vision, as well as its business strategies and plans. Now is the time to take stock of current policies and procedures – and to reach out and grab all the good advice you can get.

Suggest that your CEO regularly meet with, and take counsel from, your company's leaders and trusted advisors. Schedule a workshop with your insurance and bonding agents. Set up a

strategic planning session with your outside CPA. Bring in your construction attorney to review your standard form agreements and project documentation practices, and discuss ways to improve the likelihood of getting paid.

TRIM THE FAT, BUT LEAVE THE BONE

Subcontractors, as well as all other industry players, are actively looking for ways to reduce overhead costs in anticipation of even tougher times. Here are some areas to consider:

Labor

A recent release by the AGC states that two-thirds of the nation's nonresidential contractors are planning layoffs. As you consider downsizing your labor force, don't cut unwisely or too deeply. Be sure to maintain adequate expertise in the areas of risk management, cash management, and safety. Keep your key PMs and superintendents; entrusting a project to a lower-priced and less-qualified supervisor can be a recipe for disaster. Follow the carpenter's rule: *Measure twice, cut once.*

Equipment

Selling excess equipment is an expense-saving strategy worth exploring. Although the marketplace may not provide many buyers or top-dollar prices, selling excess equipment will not only add cash to your financial statement, but will also save money on insurance, taxes, and maintenance.

However, you may be tempted to cut back on maintenance even if you don't sell any equipment. Weigh the savings produced by reducing your maintenance staff or deferring expensive equipment repairs against the increased risk of accidents or performance failures – any of which could offset or even greatly exceed your initial cost savings.

Also consider that injury claims resulting from poor equipment maintenance may impact your company's loss history and dramatically affect future insurance premium costs.

Additional Cost-Saving Measures

Other cost-saving measures (such as the reduction of insurance coverages) should be approached carefully. Ask your insurance agent to review the adequacy and cost of your insurance coverage. In tough economic times, the construction industry has traditionally seen a rise in claims and litigation; so, now may not be a good time to reduce your company's coverage.

Umbrella policies are typically not that expensive, and even if your company expects to take on fewer projects this year, the risks associated with those projects may still be significant. And, although there may be less work in 2009, your company could still be exposed to insured liabilities associated with projects completed in the past.

A good insurance agent may be able to find potential savings in the form of increased deductibles or by removing unnecessary or duplicate coverage (for example, uninsured motorist coverage on business vehicles, which may be duplicated by workers' comp coverage).²

DO WHAT YOU KNOW... WITH THOSE YOU KNOW... IN A LOCALE YOU KNOW

CFMA's 2008 Construction Industry Annual Financial Survey collected data prior to the worst of the 2008 economic downturn and reflected the following contractor expectations:

- Bid more aggressively on new projects: 66%
- Pursue projects in new regions: 39%
- Pursue projects in other industry sectors: 21%
- Pursue projects outside current line of work: 19%

But, even when faced with more competition and smaller margins, should your company move blindly into new markets? The simple answer is "No." Working in unknown locales and/or performing different types of work can be a setup for failure. Instead, increase your marketing efforts to find the right projects, and enough of them.

If your company must travel to previously unexplored territories in order to survive, team up with a trusted owner or GC you have worked with before. Make an extra effort to learn about the local labor market, suppliers, legal landscape, and politics.

Initially, stay in the "shallow end of the pool" by limiting the number of these projects. Also, don't take on a project that could threaten your company's continued existence if things go wrong. Determine whether or not the anticipated profit is sufficient to offset the increased risks of playing "on the road." Look to add a good local superintendent or foreman to your staff.

REMEMBER: CASH IS KING

In hard economic times when credit is tight, safeguard and carefully manage your working capital.³ Talk with your banker and surety about the level of working capital necessary to stay in their good graces. Think twice before you pull equity out of the business to take advantage of the plentiful opportunities to purchase "cheap" assets, whether bargain-priced equipment, new businesses, or other "can't miss" opportunities.

POSITION YOUR COMPANY FOR NEW GROWTH

Although care must be exercised when departing from what your company has traditionally done (and done well), evaluate its ability to grow and change in ways that will take advantage of opportunities that show promise in the near term.

For example, in addition to new infrastructure and military spending, some experts predict that power and energy construction will be strong this year and next. If those sectors are outside your company's specialty, consider expanding your in-house expertise into such areas as green building technology, building information modeling (BIM), or integrated project delivery (IPD).

In both public and private construction – and for both economic and altruistic reasons – many new construction projects will emphasize green building technologies. Those subcontractors who have the technical know-how and experienced labor to deliver green buildings (and/or increased proficiency in BIM or IPD) will be in high demand.

Certainly, green building, BIM, IPD, and other new construction processes are not without some costs, some risks, and a necessary learning curve. Nonetheless, making your company better at what it already does vs. venturing into unfamiliar construction in new geographic areas is less risky (and potentially more rewarding) in hard economic times.

With these general recommendations in mind, let's consider some specific tips for subcontractor survival (and even profitability) during both the pre-contract stage and the course of subcontract performance.

Pre-Subcontract Check

NEGOTIATE FAIR SUBCONTRACT RISK ALLOCATIONS

In order to do business with reliable subcontractors who produce quality work, most GCs will negotiate *some* of the risk allocation in their subcontracts. Those who will not should be avoided – after all, perhaps they know something about the project risks that you don't.

Subcontractors should do business with GCs who are willing to use standard subcontract forms (such as the ConsensusDOCS or AIA documents). If GCs insist on their own handcrafted subcontract forms, be prepared with a collection of standard

alternative clauses to the most onerous GC risk-shifting devices.

If you need help in this regard, seek the counsel of a competent construction attorney. But, in all events, arm yourself not only with the alternate clauses and fair contract language, but also with good and rational reasons for not accepting one-sided, risk-shifting contract language.

Watch out for RFPs that state when your company submits a bid, it consents to signing the GC's standard subcontract form. Also avoid the trap created when the GC's proposed subcontract states that starting work constitutes your company's acceptance of that subcontract form. ConsensusDOCS 750 – Contractor/Subcontractor Agreement is a good alternative to a one-sided subcontract and is endorsed by a number of subcontractor associations, as well as the AGC.

PREQUALIFY OWNERS AND GCs

Nothing is as important to your financial survival and ultimate success as your ability to pick the right owner and the right GC. Work to develop personal relationships with the senior management of your long-term GC clients. This will provide an easier path to fair contract negotiations and informal problem solving.

You should also develop an "Owner and GC Prequalification" checklist. For example, it's important to find out the number of lawsuits filed against a GC or the number of liens filed against a particular owner's projects. Also check the public records maintained by licensing boards for grievances filed against GCs.

Where you find a history of numerous lawsuits, or a pattern of payment issues, run – don't walk – away from that project opportunity!

Your prequalification process should also include a thorough attempt to determine the financial solvency of each owner and GC. Certainly in today's economic environment, the size of an owner or GC is no guarantee of their financial well-being.

Although these investigations are not easy to perform, they are absolutely worth the additional time and effort. Whatever you did in this regard during good economic times is not enough to carry you safely through this year and the next.

QUALIFY YOUR SUB-SUBCONTRACTORS AND SUPPLIERS

Your ability to avoid litigation, complete a project on time and within budget, and make your anticipated profit is directly tied to the ability of your sub-subcontractors and suppliers to meet their performance obligations.

The same recommendations that apply for the prequalification of GCs and owners also apply for sub-subcontractors and suppliers. A major sub-subcontractor who defaults on your project, or a major supplier who fails to deliver project materials, can pose major threats to your company's bottom line.

Although prices for many construction materials have stopped rising sharply, be prepared for future material shortages and material/equipment price escalations. Closely follow the market trends with respect to material prices and, when necessary, insist on escalation clauses in your subcontracts as a measure of protection.

To the extent that you can, insist that the *force majeure* clause in your subcontract gives you the right to a time extension due to the consequences of unanticipated material or equipment shortages, as well as for delivery difficulties beyond your company's control.

INSIST ON REASONABLE TERMINATION FOR CONVENIENCE AND SUSPENSION OF WORK TERMS

Many subcontractors fail to carefully consider the impact of a subcontract "termination for convenience" in their GC negotiations. In the past, the exercise of "termination for convenience" rights was somewhat rare. In today's world, where the availability of project financing remains problematic, the subcontract "termination for convenience" clauses take on new importance.

Guard against "termination for convenience" clauses that limit your recovery to only what a GC can recoup from an owner. Ensure that the payment guaranteed by the "termination for convenience" provision is adequate compensation for your incurred costs (including the cost of terminating sub-subcontractors and suppliers) and for lost opportunities associated with the project's early termination.

At the very least, insist on profit and overhead mark-ups on the cost of the work performed. Also, negotiate for additional overhead and profit on the costs of the work not performed as a result of the termination, since the loss of the project will leave you with an inadequate return on your project investment and limited opportunities to find replacement work.

Similarly, take a hard look at the subcontract terms that govern a work stoppage or suspension. If you must accept a "no-damages-for-delay" clause, then limit its operation to exclude work stoppages or suspensions for a specified amount of time (for example, more than seven days).

Project interruptions caused by funding problems are increasingly commonplace. Be sure that your subcontract entitles you to a time extension and enables you to recoup the additional costs that will flow from a demobilization, delay in restarting the project, and remobilization.

OBTAIN AND REVIEW THE OWNER/GC AGREEMENT

Subcontractors often attempt to assess their subcontract risks by reviewing only the primary subcontract document. Most subcontracts *incorporate by reference* the owner/GC agreement, and subcontractors frequently fail to request and receive copies of that document – often with disastrous results.

Subcontracts typically impose upon a subcontractor all of the duties imposed upon a GC by the owner/contractor agreement. If a GC will not provide a copy of the owner/GC contract (even if you agree that pricing information may be redacted), it's a sign that you're dealing with the wrong GC.

If your review of that contract shows that the GC has taken on risks you are not willing to accept, attempt to negotiate a modification to your subcontract to prevent the "flow down" of unacceptable risks.

INSIST ON FAIR CONTINGENT ASSIGNMENT CLAUSES

Many subcontracts, and many owner/ GC agreements incorporated by reference into subcontracts, provide for the assignment of the subcontract to the owner (at the owner's election) if the GC defaults.

Some of these contingent assignment clauses also provide that if an owner defaults on a construction loan, it's possible that the GC's contract and subcontracts are assigned to the lender so that the project can be completed.

Review these clauses to ensure that the owner or lender must, as a condition to taking advantage of such a clause, pay the subcontractor all amounts due under the subcontract, in addition to all amounts that may become due as a result of the subcontractor's continued performance.

Many such clauses adequately treat the right of the subcontractor to be paid for future work performed, but fail to mention or properly provide for the obligation to first pay the subcontractor for amounts past due.

ASSESS THE ADEQUACY OF YOUR PAYMENT PROTECTIONS

Consider implementing these important pre-contract steps:

Negotiate for the right to stop work when payments are not made on time – specifically, after notice is sent to the GC and the GC has had a reasonable opportunity to cure the payment failure.

Many standard subcontracts contain a "work continuation" clause that obligates subcontractors to give up the right to stop work in the event of a "dispute." The most common dispute is a GC's failure to make payments due to a subcontractor. This contract term deserves some discussion and negotiation in the current economic environment.

Give preference to projects where the GC has provided a payment bond from a surety on the U.S. Treasury Department's list of certified surety companies.

Ask for a copy of the payment bond before you sign the subcontract, since obtaining a copy of the bond at a later date will likely be more difficult.

Review the bond terms to verify that they are reasonable, and then make certain that you equip your PM or other responsible person with the information necessary to provide timely notices and perfect any payment bond claim that may arise down the road.

Understand your lien and trust fund rights prior to starting work.

This is especially important if you are doing business in a new jurisdiction. And, if you have not recently reviewed your state's lien law or trust fund statutory scheme, do so now.

Map out the notice and filing requirements for your PM and others. Get competent help, if necessary. Compliance with the lien laws in most states is incredibly tricky, and even slight missteps almost always guarantee a loss of lien rights.

In this economy, you need all the payment security you can find. For example, in some states, preliminary filings before you start work are either necessary to preserve your lien rights or will give you some added measure of protection.

Arm yourself with these available payment security protections. Insist on seeing, in advance, the lien waivers or other documents you will be asked to sign as a precondition to payments during the project.

Make the required lien waivers exhibits to your subcontract, so that there cannot be an argument later about the documentation that must be provided to the GC as a condition precedent to your company's right to be paid. Negotiate changes when it appears that the GC will ask for releases and affirmations that are unreasonable or exceed those mandated by the lien statutes.

Insist on the right to adequate assurances of sufficient financing to build the project.

The 2007 AIA documents allow contractors to seek assurances of project financing before a project begins, but restrict that right once work starts. Because subcontractors are subject to the "flow down" of limitations contained in owner/GC contracts, be aware of such clauses and insist on actually seeing proof of adequate project financing both before and during the construction project.

If you are signing a subcontract that contains a "pay-if-paid" clause, then pre-contract verification of project financing is imperative.

Avoid subcontracts that contain "pay-if-paid" clauses.

GCs are in a better position than subcontractors to verify an owner's ability to finance a construction project, so try to avoid a GC's attempt to transfer this risk to your company.

At the very least, be prepared to negotiate limitations on a "pay-if-paid" clause. For example, the clause should not be

effective if the reason for the owner's payment refusal is the GC's performance default. You might also insist that the "pay-if-paid" clause be limited only to instances in which the owner becomes insolvent.

There are other approaches to softening the impact of a "pay-if-paid" clause. If necessary, seek the help of an experienced construction attorney or insist on a standard subcontract form (either from the ConsensusDOCS or an AIA document) that does not contain a "pay-if-paid" clause.

Avoid subcontracts that contain "no-damages-for-delay" clauses.

As you know, delay damages are likely to be the biggest dollar risk present on a construction project. Many one-sided subcontracts will either outlaw a subcontractor's entitlement to delay-related damages, or restrict the recovery to only those allowed by the owner. The latter limitation, of course, fails to protect the subcontractor from delays caused by the GC.

If you cannot avoid these clauses altogether, there are alternate clauses that can lessen the impact of a "no-damages-for-delay" clause. For example, restrict the operation of such clauses to short-term delays or to delays resulting from specified causes. Give these clauses some attention – they carry significant dollar consequences.

Insist on reasonable retainage provisions and negotiate:

- A limitation on the amount of initial retention that will be withheld,
- The elimination of retention on stored materials,
- A mandatory reduction of the retention when the project is 50% complete,
- A further reduction or elimination of retention when the project is substantially complete, and
- The release of all retainage and your contract balance within a certain number of days after *your work* is complete, without having to wait for completion of the entire project.

Negotiate for additional payment security when the contract terms or project players raise other concerns.

For example, if you are contracting with a limited liability company or partnership, or if the owner of the project is a one-asset (or no-asset) offshoot of another company, you need additional payment protection.

Personal guarantees or letters of credit are possibilities, but are often difficult to obtain. A joint check arrangement with an owner when the GC's financial wherewithal is shaky may be a partial solution.

THE GO/NO-GO CHECKLIST

In tight economic times, projects that produce cost overruns or evolve into disputes are especially dangerous for subcontractors because they are expensive, and will undoubtedly delay payment for your work – even if your performance is not an issue.

Use the "Go/No-Go" checklist on page 40, or develop your own that includes the following essential questions:

- Are the design drawings complete and adequate?
- Are the site conditions conducive to an efficient work environment?
- Is the schedule reasonable?
- Has there been an adequate pre-bid site and sub-surface investigation?
- Is there any prior history of environmental hazards on or near the site?
- Is there any evidence of "problem" subcontractors? (For example, are any of the other subcontractors litigious or facing significant financial difficulty?)
- Are there other conditions (such as weather, traffic, work restrictions, access, or storage problems) that are likely to impact site operations?

REVIEW POTENTIAL REWARDS AND LIKELY RISKS

In making a final decision about whether to bid or accept the subcontract for a particular project, a subcontractor must decide if the projected profit margin is sufficient to justify the identified project risks. In difficult times characterized by fewer projects and more competition, the temptation to take greater risks for smaller rewards increases.

You may also be tempted to take on projects that you would normally walk away from, solely to "carry the overhead." Over the next year or so, many subcontractors will succumb to these temptations – try not to be one of them!

Strategies during Construction

A second set of risk mitigation practices comes into play as soon as construction begins. For the savvy subcontractor, these survival/risk mitigation practices include the following:

MAINTAIN AN ADEQUATE DOCUMENTATION SYSTEM

On some construction projects, it's not enough that subcontractors perform their work properly. To stay out of trouble, it's also necessary to adequately document proper performance.⁴ Review your company's documentation practices relative to each new subcontract. Find out if the subcontract requires or suggests the need for a variation or an addition to your current documentation system.

For example, if you are required to enter into a subcontract containing a “no-damages-for-delay” clause, then look at your standard daily reports and form notice letters to the GC. Does the daily report invite your PM to record problems that “cause delays” to the project? Do your standard notice letters speak of your additional costs that flow from “delays?”

If you answered “Yes,” then these documents may be adequate to justify your entitlement to a time extension for delays. However, when you characterize these problems as “delays” in the face of a “no-damages-for-delay” clause, you may forfeit the opportunity to be compensated for an unexpected project event for which the owner or GC should take responsibility.

Under these circumstances, it might be appropriate to modify your standard daily report form or notice letter by deleting references to a “delay,” and instead speak of job problems in ways that may preserve your right to seek additional compensation. So, instead of referring to a job “delay,” you might also accurately describe the problem as a “disruption,” an “active interference” with your job operations, or “extra work.”

Recognize that most courts do not like to enforce “no-damages-for-delay” clauses, but it helps to give the court or arbitration panel some ammunition to use when fighting your battle.

REINFORCE THE IMPORTANCE OF NOTICE OBLIGATIONS

As part of your emphasis on project documentation, ensure that your PMs and others responsible for satisfying notice obligations understand what those obligations are and the importance of strictly complying with them.

Subcontractors frequently fail to observe notice requirements that can protect them from job delays and unreimbursed additional costs. And, some fail to understand that notice requirements are strictly enforced in many jurisdictions.

If you want to have any chance of getting paid for the unexpected consequences of a construction project, you must identify and follow the subcontract notice requirements. If necessary, create a “Notice” checklist for your PM during the pre-project analysis of the subcontract documents.

PRESERVE BOND AND LIEN RIGHTS

To protect your company against the consequences of the bankruptcy/insolvency of an owner or GC, take advantage of the protections afforded by payment bonds and mechanics’ liens statutes. Understand that bankruptcies and insolvencies are likely to increase in this economic downturn.

Remember: The claims of a “secured party” in bankruptcy are often the only claims that are paid, even partially, and that your status as a mechanics’ lien claimant may give you that “secured party” status. The impact of a bankruptcy on a mechanics’ lien claim will vary according to state law.

Nevertheless, the presence of a claim of lien on a project may often be enough to cause the GC to bond the claim of lien (the second-best thing that can happen to a subcontractor lien claimant) or to cause the owner’s lender to insist that the lien claim be paid (the best thing that can happen to a subcontractor lien claimant).

Keep in mind that a lien is often not a perfect remedy. Construction liens are frequently subordinate to mortgages reflecting project financing. Mortgage foreclosures, which are at an all-time high, often lead to the sale of properties at reduced prices. After applying the sale price to the superior mortgage, little or no funds may remain to be applied to a construction lien.

MAINTAIN ZERO TOLERANCE FOR PAYMENT FAILURES

Be aggressive and attentive in your billing practices. Now is *not* the time to extend credit to owners and GCs by failing to insist on prompt and proper payments. If you have successfully negotiated the right to stop work when the cash flow ceases, give prompt notice of your intention to exercise that right.

You can be cordial in your demands for payment, but also firm. If necessary, blame your insistence on payment on your banker, surety, or suppliers. Someone is getting paid in connection with the construction project – it might as well be you!

KEEP COMMUNICATION LINES OPEN WITH CREDITORS

Now is also *not* the time to hide things from, or create surprises for, your lenders or surety. They are vital to your survival, so keep them close and informed. Enlist them as partners and advisors in what you are trying to accomplish.

Let them see that you are working hard and working smart in order to avoid the problems plaguing construction. Do not call on them only when you have a problem. Involve them in your successes and in your strategic decision-making.⁵

MONITOR SUB-SUBCONTRACTORS AND SUPPLIERS

As previously mentioned, if you have major sub-subcontractors and suppliers on a project, your success is tied to theirs. If you have done a proper job of prequalifying sub-subcontractors and suppliers, you are halfway home.

However, you will still need to closely monitor the performances of those sub-subcontractors and suppliers whose failures could be so devastating to your bottom line. Ensure that your sub-subcontracts and supply agreements allow you to move quickly to supplement their performances or terminate their rights to continue to perform if they cannot keep their contract commitments.

Address and cure small problems before they become big ones. Make certain that your obligations to the GC “flow down” to your primary sub-subcontractors and suppliers.

If a sub-subcontractor's performance is especially critical to meeting your subcontract commitments (for example, if a sub-subcontractor default cannot easily be addressed by a replacement sub-subcontractor), then consider the need for a performance bond or other additional security from that sub-subcontractor.

"The Future Ain't What It Used to Be"

This astute observation by Yogi Berra rings true for today's construction industry. And yet, smart subcontractors will weather the hard times ahead and emerge stronger, wiser, and better positioned to take advantage of the next economic boom. Act now, and take the necessary steps that will enable your company to survive and thrive. **BP**

FRANK E. RIGGS, JR., is the Chair of the Construction Practice Group at Troutman Sanders, LLP in Atlanta, GA. Frank represents owners, GCs, subcontractors, and suppliers in transactional and dispute matters. He also serves as a mediator and arbitrator for construction disputes.

With more than 33 years' experience as an attorney in the construction industry, Frank is a frequent contributor to *CFMA Building Profits*, and has been recognized in *Chambers USA* and *The Best Lawyers in America* in the field of construction law. He received a BS from the University of Southern Mississippi and a JD from the University of Virginia School of Law in Charlottesville, VA.

Frank is an active member of CFMA's Georgia Chapter, and has served on the national Publications, Education, and Conference Planning Committees. He serves on several national committees for the AGC, is an officer for the DBIA Southeastern Region, and is active in the ABA Construction Forum.

Phone: 404-885-3353

E-Mail: frank.riggs@troutmansanders.com

Website: www.troutmansanders.com

Endnotes:

1. Simonson, Ken. "Job Woes Spread, Underscoring Urgency of Stimulus and Credit Market Thaw," *AGC Construction Economic News*, January 29, 2009.
2. Bateson, Todd. "Proceed with Caution When Looking for Insurance Savings," *Construction Executive*, December 2008.
3. For more on cash flow, see Anthony R. Stagliano's article, "Cash: The Lifeblood Of Every Contractor" in the September/October 2008 issue.
4. For more on project documentation, see Ronald A. Lundstrom's article on "Subcontractor Preparation for Claims & Litigation" on page 42.
5. For more on surety relationships, see Matthew J. Rosenberg's article, "The Economic Crisis: Its Impact on the Surety Industry" in the January/February 2009 issue.

Editor's Note: The published article in the March/April 09 issue of *CFMA Building Profits* may differ slightly from this version. All statements and opinions expressed within this article are the responsibility of the author alone, and do not reflect or imply any opinion on the part of CFMA, its officers, or its members.

**Don't Miss the "Go/No-Go"
Checklist on next page!**

| A Subcontractor's "Go/No-Go" Checklist | | ✓ |
|---|--|---|
| 1 | Is the GC bonded? | |
| 2 | Is there a binding commitment for adequate project financing? | |
| 3 | Does the GC pass a comprehensive prequalification investigation? | |
| 4 | Is the owner experienced in construction and financially secure? | |
| 5 | Does the subcontract fairly allocate contract and project risks? | |
| 6 | Does the subcontract allow your company to stop work for a payment failure? | |
| 7 | Does the "termination for convenience" clause provide adequate financial protection? | |
| 8 | Have you verified that the subcontract does not contain a "pay-if-paid" clause? | |
| 9 | Have you verified that the subcontract does not contain a "no-damages-for-delay" clause? | |
| 10 | Are the "flow down" risks in the owner/GC contract reasonable? | |
| 11 | Are the design documents complete and accurate? | |
| 12 | Is the scope of work within your traditional area of expertise? | |
| 13 | Is the project located in a jurisdiction where you have successfully worked recently? | |
| 14 | Is the project site, political environment, available labor, and site access acceptable? | |
| 15 | Is the anticipated profit margin sufficient to justify the project risks? | |
| Total Items Checked | | |

Note: These questions will vary based on the individual niche of the subcontractor and the nature of the project. Although a more complete list might provide useful information for a subcontractor rating a particular project, there is something to be said for limiting the questions in this checklist to only those that are critical to a "Go/No-Go" decision-making process.

For example, by using the chart above, a subcontractor might establish this presumptive scoring system: If a project receives 10 or fewer checkmarks, then it's a "No-Go" project. If a project receives 11 or more checkmarks, then the project may be worth a second look. But, depending on which items are unchecked, the project still may be one that should not be pursued absent special attention, successful negotiation of subcontract changes, and/or additional security measures.