Improving Cash Flow

- Improving Cash Flow
- How a Collection System Can Improve Your Cash Flow
- Creating Operational Excellence
- Why Cash Flow Is Important to Your Surety
- Invoice Factoring
- Legally Speaking: Top 5 Clauses Affecting a Sub’s Cash Flow & How to Negotiate Better Terms

Save the Date!
March 26-29, 2015
Seattle, WA • See page 18
Maximize Your Cash - Streamline All Key Processes

Collaborative software solutions that maximize your profitability and mitigate your risk:

- Takeoff & Estimating
- Qualification
- Invitation-To-Bid
- Submittal Exchange
- Invoicing & Payment
- LEED® Management

See our special offer for ASA members only – login to ASAdvantage.

www.texturacorp.com  866-TEXTURA (866-839-8872)
Features

Cash Flow — The Lifeblood of Contracting ......................... 6
by Christine Rahlf

How a Collection System Can Improve Cash Flow ............. 10
by Scott Wolfe

The Science of Efficiency and Productivity: .......................... 12
Creating Operational Excellence in the New World Economy
by Gregg Schoppman

Why Cash Flow Is Important to Your Surety ......................... 15
by Scott Bailey

Invoice Factoring Is One Working Capital Solution ............ 17
by Scott Applegate

Departments

CONTRACTOR COMMUNITY .................................................. 4

LEGALY SPEAKING ............................................................... 19

Improving Cash Flow: The Top Five Tips to Improve Your Cash Flow and Negotiate Better Subcontract Terms
by Eric Travers

CONTRACT CORNER ............................................................. 21

Negotiate Better Contract Terms

Quick Reference

ASA/FASA CALENDAR .......................................................... 22

COMING UP .......................................................................... 22
August ASA Webinar Focuses on Choosing the Right Customers

Contractors tend to bid everything that comes their way to ensure they have work for the future. In the Aug. 12, 2014, ASA webinar, “How to Chose the Right Customers (and Get Them to Select Your Bid),” Textura’s Tim Moriarty will explain how subcontractors are turning the table and choosing which customers they want to bid. Moriarty will discuss the challenges general contractors have obtaining bid coverage on their projects and how subcontractors can make their firms a preferred partner by making their jobs easier. This live, 90-minute webinar will begin at 12:00 p.m. ET/9:00 a.m. PT. The registration fee is $99 for members and $179 for nonmembers and allows access with one Internet connection. Project the webinar onto a screen or wall and listen to it on a speakerphone for a group training event. After the program, registrants will receive a link to a recording of the webinar, and an ASA Certificate of Completion that can be downloaded and printed for each person who watched. Register online.

ConsensusDocs Publishes New Standard Contract for Public State and Federally-Assisted Infrastructure Projects

On April 3, the ConsensusDocs coalition published a new standard contract with integrated general conditions for a public works project. ConsensusDocs tailored the terms and conditions and oriented them for public works owner projects that use state public funding or federal financial assistance. This new standard contract document is expected to be particularly helpful for local and state governments that are looking to use an off-the-shelf contract solution. The ConsensusDocs 210 is based on the same fair and balanced, best practice principles as the previously-published ConsensusDocs 200 agreement, but is tailored to public works projects, especially those that are highly-engineered construction projects, such as water and wastewater facilities. The intent of this agreement is to provide a ConsensusDocs standard document specifically tailored to public works infrastructure projects. In support of the ConsensusDocs 210, ConsensusDocs also published the ConsensusDocs 271 Instruction to Bidders on Public Works. This new, standard instructions document will benefit all stakeholders to public projects. One of the distinctions in public projects is that the engineer is more likely (than on vertical construction) to be the lead design professional on the project. Originally, the agreement was going to include exhibits to comply with federal regulations, but based on owner feedback, it was determined that it would best serve the industry for individual agencies to create their own supplements. The agreement is drafted to be flexible to meet public local, state and federal projects.

ConsensusDocs are the only standard contracts written and endorsed by 40-plus leading design and construction industry associations. ASA is a founding member of the ConsensusDocs coalition, which publishes a library of 100-plus contracts and documents. ASA members can use the promotional code ASA100 to receive a special member discount off ConsensusDocs subscriptions.

ConsensusDocs Releases Industry’s First Standard D-B Agreement for Design Services on Federal Projects

ConsensusDocs has published the industry’s first standard design-build agreement for design professional services on federal projects. The new, standard design-build agreement provides the business and contractual terms and conditions for a design-builder to hire an architect or engineer on a design-build project in a manner consistent with federal contracting laws and practices. The agreement includes language that addresses new regulations for affirmative action requirements for protected veterans and individuals with disabilities from the Department of Labor’s Office of Federal Contract Compliance Programs that recently took effect.

ConsensusDocs are the only standard contracts written and endorsed by 40-plus leading design and construction industry associations. ASA is a founding member of the ConsensusDocs coalition, which publishes a library of 100-plus contracts and documents. ASA members can use the promotional code ASA100 to receive a special member discount off ConsensusDocs subscriptions.

ConsensusDocs Publishes New Standard Contract for Testing Lab Services

ConsensusDocs has published a new, standard contract for testing laboratory services. General
ASA Opposes OSHA Proposal to Make Public Employer Injury and Illness Reports

ASA called on OSHA to either withdraw a proposed rule that would require employers to post online their annual employee injury and illness reports “until it can clearly demonstrate how public disclosure will directly lead to safer and healthier work environment or specify in a final rule what steps OSHA will take to assure the accuracy and the proper interpretation and use of data collected.” In a proposed rule published on Nov. 8, 2013, OSHA would require employers to electronically submit the information from the OSHA annual summary form (Form 300A) to OSHA or OSHA’s designee on an at least annual basis. This information would then be published on a Web site available to the public. ASA provided three reasons for its opposition to public posting of employer information: (1) Public shaming of employers that have experienced employee injuries or illnesses may provide an incentive for some employers to underreport their experiences, thus putting those that report accurately at a competitive disadvantage; (2) Information provided by an individual firm, without context or explanation, could lead to faulty interpretation and misuse of the data; and (3) The privacy of employees whose information may be included in their employers’ reports. ASA also argued that while OSHA has the right to access individual employee data, “the requirement for disclosure is outside of the Agency’s scope.” In addition, ASA told OSHA that the agency has “underestimated the time and cost of for an employer to comply with the proposed rule.”

OSHA Provides Guidance on Responsibilities for Temporary Workers

On March 13, the Occupational Safety and Health Administration released guidance that makes clear that both host employers and staffing agencies have roles in complying with workplace health and safety requirements and they share responsibility for ensuring worker safety and health. OSHA made clear that, while the extent of responsibility under the law of staffing agencies and host employers is dependent on the specific facts of each case, staffing agencies and host employers are jointly responsible for maintaining a safe work environment for temporary workers, including, for example, ensuring that OSHA’s training, hazard communication, and recordkeeping requirements are fulfilled. Thus, OSHA could hold both the host and temporary employers responsible for conditions in violation of OSHA rules. OSHA recommended that the temporary staffing agency and the host employer set out their respective responsibilities for compliance with applicable OSHA standards in their contract. OSHA said that including terms governing responsibility in a contract will ensure that each employer complies with all relevant regulatory requirements, thereby avoiding confusion as to the employer’s obligations.

OSHA Reminds Employers to Curb Texting While Driving

The Occupational Safety and Health Administration recently reminded employers that they have a responsibility to protect their workers by prohibiting texting while driving. According to the Bureau of Labor Statistics, motor vehicle crashes are the leading cause of death on the job accounting for more than two out of every five fatal work injuries in 2012. OSHA noted that it is a violation of the OSH Act for employers to require workers to text while driving, create incentives that encourage or condone it, or structure work so that texting is a practical necessity for workers to carry out their job. The Department of Transportation has launched a national campaign to stop texting while driving and other distracted driving hazards. To learn more, visit http://www.distraction.gov.
Just as any living organism needs a healthy, steady flow of blood to maintain its vital systems and support growth, a contractor needs a healthy, steady flow of cash to meet its financial obligations and fund future expansion. As the economy continues to recover, many contractors are seeing increased backlog and increased cash demand. Maintaining positive cash flow is even more critical in times of growth than in times of contraction. Unfortunately, many companies do not realize they have a cash flow problem until it is too late. This article will show you how to measure your current cash flow situation and introduce techniques to better manage cash flow.

Recognizing a Cash Flow Problem

Cash flow is quite simply cash receipts minus cash payments over a given time. This measure alone is not very useful. Monthly income and balance sheets allow you to examine key financial ratios that can be monitored and trended to give you plenty of advance warning that you have a cash flow issue. Don’t wait until you are neck deep into your line of credit to find out that you have a cash management problem. Key indicators include:

- Days Sales Outstanding: This is a measure of the average number of days it takes you to collect your money. It is measured by dividing accounts receivable by total sales times the total days in the period. Most subcontractors average 60 to 70 days, but with disciplined cash management practices, many can reduce this number to the high 40s.
- Working Capital: Working capital is current assets minus current liabilities, measuring funds available after meeting current financial obligations. A healthy subcontractor has a working capital of 8 percent to 12 percent of annual revenue.
- Working Capital Turnover: Working capital turnover measures how efficiently you are using your money. It is annual revenue/working capital. Typically, you should achieve net sales of 8 to 12 times your working capital.
- Debt/Equity Ratio: Debt to equity is determined by dividing total liabilities by owners’ equity. This measures how much of the business is funded by the owners versus creditors. A debt to equity over 2.5 will raise eyebrows in the lending community and may prohibit your ability to receive additional financing.
- Current Ratio: This measures your ability to meet your financial obligations and is measured by dividing current assets by current liabilities. This ratio should be at least 1.5.
- Quick Ratio: This is a more stringent measure of your ability to meet financial obligations and is measured by dividing cash and accounts receivable by current liabilities. This ratio should be at least 1.
- Cash Demand and Cash Demand Days: This measure is more robust than many financial ratios because it involves multiple items from both sides of the balance sheet, assets and liabilities. Cash demand is a measure of your funding cycle. It is measured by taking the sum...
of accounts receivable, accounts receivable retention, and under billings and subtracting the sum of accounts payable, accounts payable retention, and overbillings. The resulting sum is the amount of money you have tied up in work in progress. Divide this number by the average daily revenue and you have Cash Demand Days. Improving cash demand days by just a few days can free up significant resources. For example, if you are a $10 million contractor and your cash demand is 30 days, you have $822,000 tied up in work in place. ( $10 million / 365 x 30). Reducing cash demand days by just three days would free up $137,000 that could fund improvements to your business.

Measuring important financial ratios on a monthly basis and trending these scores will help you recognize potential cash flow problems and take corrective action before it is too late.

**Techniques to Improve Cash Flow**

Since up to 85 percent of all cash in a construction company comes from project work in progress, positive company cash flow results from positive project cash flow. Project Managers are the front line of cash management. The greatest impact you can have on cash flow is to train your project managers on good cash management practices and hold them accountable for delivering positive project cash flow using the following techniques.

**Schedule of Values**

Frontloading is controversial topic in the contracting world. Often we ask our clients’ project managers how much they frontload their schedules of values. They respond with a smile and a wink “as much as possible.” Unfortunately, a non-standardized approach like this can lead to undesired results. Frontload too little and you can find yourself financing the entire project. Frontload too much and you can unbalance your schedule making it difficult to justify billings or support subsequent change order pricing. Here are some guidelines on schedule of values:

- List measurable activities and do not use lump sum billing, as you will only be able to bill when the entire activity is completed.
- Breakout startup activities including mobilization, submittals, detailing, and prefabrication in your schedule of values. You incur costs for these activities often before arriving on site and should be paid for them.
- Review the schedule for sequencing and list your activities in the order that they occur.
- Break out large system and material packages into separate billing categories so you can bill these items prior to completion of installation.
- Assign value to each activity. Labor cost should be accurately represented in each activity. Other direct costs, overhead, and profit can be allocated in a manner to facilitate positive cash flow as soon as possible in the project cycle.
- Providing your project managers with a Schedule of Values tool that allows them to allocate cost, overhead and profit to each activity in a traceable format, enabling you to review and hold them accountable for achieving positive cash flow as quickly as possible. Set a measurable goal for them, for example, positive cash flow by 25 percent project completion.
- Provide your customer with both a Schedule of Values and a draw schedule. This will facilitate easier billing and allow your customer to plan for their cash outlays.

**Sample Draw Schedule**

<table>
<thead>
<tr>
<th>Mo.</th>
<th>Scheduled Completion</th>
<th>Estimated Draw</th>
<th>Total Billed</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>5%</td>
<td>$60,000</td>
<td>$60,000</td>
</tr>
<tr>
<td>2</td>
<td>8%</td>
<td>$36,000</td>
<td>$96,000</td>
</tr>
<tr>
<td>3</td>
<td>10%</td>
<td>$24,000</td>
<td>$120,000</td>
</tr>
<tr>
<td>4</td>
<td>17%</td>
<td>$84,000</td>
<td>$204,000</td>
</tr>
<tr>
<td>5</td>
<td>35%</td>
<td>$216,000</td>
<td>$420,000</td>
</tr>
<tr>
<td>6</td>
<td>65%</td>
<td>$360,000</td>
<td>$780,000</td>
</tr>
<tr>
<td>7</td>
<td>85%</td>
<td>$240,000</td>
<td>$1,020,000</td>
</tr>
<tr>
<td>8</td>
<td>95%</td>
<td>$120,000</td>
<td>$1,140,000</td>
</tr>
<tr>
<td>9</td>
<td>100%</td>
<td>$60,000</td>
<td>$1,200,000</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$1,200,000</td>
<td></td>
</tr>
</tbody>
</table>

**Billings**

Billing, like Schedule of Values’ creation, should be a standard process with specific, measurable goals.

The PM can be given a set goal, for example, invoicing 110 percent of accrued revenue (cost+ overhead+ margin). Specific billing steps should be tied to a monthly accounting calendar and include:

1. Review existing job costs including labor, material, other direct costs and overhead.
2. Identify additional costs that will be incurred before the end of the month, especially any large material or equipment deliveries.
3. Evaluate percentage completion of overall budget. Based on total completion, establish target total billing.
4. Identify percentage complete for each schedule of value activity.
5. Compare total amount billed to target total billing.
6. Submit invoices and follow with a phone call to ensure bill has been received and is in the proper format.

**Collections**

Collections should be the project manager’s responsibility, not your accounting department’s. The PM is the one who has the best relationship with your customer and has the most information about the project so they should be the one to resolve any billing issue. When payment is delayed it is usually for these reasons:

- Lack of agreement about percentage completion.
- Lien releases missing.
- Lack of documentation.
- Submitted after the monthly deadline.

Typically a phone call with some follow-up work can resolve most of these issues. Further delay could be a sign of defective work, a pending bankruptcy, or other legal action. Companies should have a progressive escalation policy tied to an account’s aging report that elevates unpaid invoices based on days outstanding. Anything over 60 days should receive management attention and action. Invoices out 90 days or more should receive executive attention and more severe remedies should be considered including work stoppage, filing liens, or litigation.
A STAGGERING STATISTIC INSPIRES A LIFE-SAVING RULE

IN AN INSTANT, CALVIN BERGER SAW THE VALUE OF IN-CAB BEHAVIOR TRAINING FROM CNA

When a recent safety webinar revealed that 280,000 drivers are involved in serious accidents every year, Calvin Berger of Calberg Contracting took CNA’s recommendation to heart, and posted placards restricting cell phone use in each of his company’s vehicles. Now Calberg Contracting is filing fewer claims, and Calvin’s enjoying a handsome bonus for worker safety and performance.

When you’re looking for risk control programs that keep workers dialed in to relevant industry trends … we can show you more.®

To learn more about CNA’s coverages and programs for building contractors, contact your independent agent or visit www.cna.com/construction.
Leveraging Trade Partners

This final technique may be utilized by the project manager and may also require the support of the purchasing manager of your company. The previous techniques are all focused on getting cash in the door quicker. This last technique is focused on managing cash outlays and making sure that payments are made in a method that best maintains your vendor relationships but still maximizes project cash flow. As subcontractors, we are often caught in a “cash flow squeeze” between the slow-paying general contractor and our own diligence in paying vendor invoices. These steps may help alleviate this situation:

- Verify receipt and condition of all material prior to payment. Do not automatically pay invoices as soon as they come in the door.
- Negotiate favorable terms and conditions with your vendors. Working with a few versus many vendors will increase your volume spend and give them an incentive to extend more favorable payment terms.
- Be wary of vendor proposed discounts for prompt payment.
- Compare these discount offers to your cost of money to determine if they are favorable.
- If possible, pay with a credit card. This will push your cash outlay out up to 30 days and many credit card companies offer rebates up to 2 percent.
- Manage your subcontractors using the same rules of engagement the general contractor is using with you. This includes requiring a Schedule of Values, reviewing activity completion prior to payment, utilizing paid when paid provisions when appropriate, and holding retention if retention is being held on you.

Teaching project managers about the importance of cash flow and giving them the tools to manage the cash flow on their projects is only half the battle. The second half is getting them to implement these tools and achieve positive cash flow. Often, project managers focus solely on job cost and profitability. This is because they are usually incentivized only on job profitability, not job cash flow. Ways to address this deficiency include:

- Charge the project interest for negative cash flow.
- Deduct any invoices outstanding over 90 days from the project manager’s incentive pool at the end of each incentive cycle.
- Incentivize the project manager for achieving cash management goals including net overbillings and DSOs.

Using the carrot or the stick is optional and what method works best is a function of your company’s culture and leadership. Having the appropriate tools in place for cash management, training your project managers, measuring and holding them accountable is a necessity for good cash management.

Christine Rahlf is an associate director at Maxim Consulting Group. Ms. Rahlf works with construction-related firms of all sizes to evaluate business practices and assist with management challenges. Ms. Rahlf has extensive experience in both the government and private industry where she has managed complex projects and led technical teams to successful results. Areas of specialization include productivity improvement, process reengineering, scheduling, cost control, risk analysis, and training. She can be reached at christine.rahlf@maximconsulting.com.

ASA NATIONAL CONSTRUCTION BEST PRACTICES AWARDS

Does your company:

- Perform work as a prime contractor?
- Excel at project management and teamwork?
- Have a great subcontract?
- Want to be recognized as an industry leader?


Apply by November 21, 2014

These awards, to be presented during ASA’s annual convention, SUBExcel 2015, in Seattle, Wash., March 26-29, 2015, recognize an extraordinary level of commitment to industry best practices. Your application will be evaluated for: (1) use of a standard subcontract whose provisions substantially reflect the best practices incorporated into the ASA-endorsed ConsensusDocs 750, 751 model subcontract agreements; and (2) highly favorable evaluations from three specialty trade contractors, based on 20 project management factors.
How a Collection System Can Improve Cash Flow  
by Scott Wolfe

Here’s an obvious point about the construction industry: cash flow is critical. Industry participants know this, and they utilize different theories and processes to stay ahead of their cash challenges. This article aims to explore the challenge of cash flow for subcontractors and how collection processes can make a positive impact.

Heavy Cash Burdens

Subcontractors are no strangers to cash flow problems. As the world turns in the construction industry, subcontractors are always between a rock and a hard place when it comes to managing cash. This reality is complicated by the tens or hundreds of other parties doing the same thing at the same time on the same project — such that a mishap by one trade contractor can unfairly cause headaches and cash pains for others.

Multiply these complications across a subcontractor’s entire portfolio of projects, and one will get a clear picture of a very unclear and financially tenuous situation. This is the life and cash burdens of the subcontractor.

Everyone can agree that subcontractors are challenged by cash flow issues, but can everyone agree on the best way to manage these challenges? Likely not. Cash flow problems are a bit like cold symptoms. Go to the pharmacy looking for a remedy, and it’s easy to get lost in the “cold remedies” aisle staring at hundreds of seemingly good cures. Which to choose? Which is right for this particular cold?

When a company confronts their cash needs, they typically wind up working with one or a few of the following three remedies: Access to capital, proactive cash flow protections, and reactive cash flow solutions.

Access to Capital

Company executives have a hard time sleeping at night when cash flow problems arise unless they have access to cash. Accordingly, especially when a company is in a growth mode, securing access to capital is important. Having access to capital is perhaps one of the most natural remedies for subcontractors to choose when faced with cash issues. Most of the time, cash problems arise not because the subcontractor is not due the money, but because the subcontractor simply doesn’t have access to the money yet. Accordingly, dipping into cash from elsewhere can enable companies to bridge the gap in time and alleviate their cash needs.

There are two primary problems with capital access. The first problem is access. Companies must qualify for the cash, and then must qualify for enough cash to cover their need. The second problem is cost. Cash comes at a cost, which may be expensive.

Proactive Cash Flow Protections

Aside from having access to cash to bridge cash problems, companies frequently take proactive measures to protect their cash flow. Primarily, companies will do this through cash flow prediction exercises and through proactive credit analysis. First, cash flow prediction exercises should be a part of every company’s reporting. This requires an honest evaluation of the company’s cash position and anticipated business. Secondly, credit analysis requires companies committing to a credit policy that dictates when the company will and will not do business with another organization. “Credit Policy Best Practices” was explored in the April 2014 edition of The Contractor’s Compass.

Reactive Cash Flow Solutions

Finally, many subcontractor organizations deal with cash flow problems once the problems arise. In this instance, the available solutions are all reactive to the problem, and they all revolve around this question: How can the company get the customer to pay? In this reactive world, companies take different approaches to force account receivable assets into cash. Unfortunately, these approaches are often disorganized and disjointed. The next section of this article explores how and why having a process or system to collect on open receivables can make an enormous bottom line impact.

Collection Systems

Anyone in business has heard it a thousand times: “Accounts receivables get harder to collect as they age,” or “It is not effective to inconsistently collect on accounts.” These things are repeated over and over again simply because they are true. Companies may not heed the advice and may continue about their ordinary ways. While this is possible, it is not possible for these companies to achieve any consistent and long-lasting success in how accounts are collected. It doesn’t matter how big a company is or how great the
company/customer relationship is, their customers will take advantage of any formal or informal credit terms given to them. Consistently collecting open receivables relies on consistent processes to collect.

A collections system can be very complex, or it can be very simple. The one thing it always is, however, is a system. “System” is defined as “a set of principles or procedures according to which something is done.” While this can leverage a computer system or software (and probably should), it isn’t necessary. Most companies, however, will discover that it is nearly impossible to perform certain established tasks and processes across any significant volume without the aid of software.

The problem for most companies is that they leave their collections process to the whim of their

Having an established collections policy ensures that it can be referenced by everyone in the company to make informed decisions.

collections, credit, or accounting staff. The typical staff member will rely on their “gut” about accounts and customers, or some ad hoc method of adding ticklers and reminders to Outlook, Excel, or Post-It notes. In almost every example, peeling the onion on these supposed “systems” frequently unveils that it’s more ad hoc reactions than it is system.

Put a System in Writing

Reducing a collections policy into a writing is valuable for a long list of reasons, most notably because it forces a company to go through the process of thinking about how the policy will work, and it creates an established policy that can be referenced by anyone in the company to make decisions. Unfortunately, so few companies have written collection policies, and even fewer have a staff that consistently adheres to those policies. Those interested in achieving consistent collections performance need to invest in a written policy, so that they can take consistent collection measures.

What a System Should Do

Subcontractors are in a unique business situation because they must juggle the relationship with suppliers and with general contractors. They frequently find themselves incapable of collecting on an account because of contract terms with the general, but owing money to the supplier because of their trade credit terms. One may justifiably wonder what a collection policy can do in these complex situations. While the construction industry has some cash flow complexities, it is subject to the same rules as every other industry. When rubber meets the road, some companies get paid over others because those companies have prioritized their invoices and pay applications above others on the project. Every subcontractor should strive to be those priority accounts. The way to do that is to create a collections system that addresses the following:

- **Take and Maintain a Secured Position by Sending Preliminary Notices** — This is the first suggestion for a reason. General contractors and owners systematically discriminate against subcontractors that are in a secured position, and those that are not. GCs and owners even use software products like GCPay.com, Textura, Sage, and more, to keep track of who has sent preliminary notices and who has not, all for the purposes of keeping track of where their financial exposure lies. Subcontractors on the “secured” list get paid first. It’s that simple.
- **Dedicate Someone to Follow-Up on Pay Applications and Fulfill Requests** — Someone at the company should be completely dedicated to following up on pay requests and supplementing those requests with whatever information is requested. Every time the general contractor or owner asks the subcontractor to jump, they should have the manpower and infrastructure to reply “how high?”
- **Pester** — At the same time, there is more to the follow-up role than just answering the bill payers. Follow up and pester these paying parties after a pay application is due. And don’t just follow up on some random schedule. Set forth in the policy precisely how often to follow up, in what intervals, and through what means. Then, track it through some CRM system.
- **Make Lien Waivers Easy, But Don’t Give on Legal Rights** — Think about what the general contractor and property owner care about? They care about themselves and their own risk on the project. Make it easy on them. Have a clear lien waiver request and fulfillment process. Make it easy, but don’t let them walk all over everyone’s lien rights. Companies gain respect when they stick up for their lien rights, and that respect translates into faster and more obedient payments.

Invest in a Tool

Systems usually require systems, as in software systems. That is completely true. Invest in the tools the staff will need to implement the system that is ultimately employed.

Scott Wolfe is CEO of zlien in New Orleans, La., a platform that reduces credit risk and default receivables for contractors and suppliers by giving them control over mechanic’s lien and bond claim compliance. Wolfe is a licensed attorney in six states with extensive experience in corporate credit management and collections law, including the use of mechanic’s liens, UCC filings and other security instruments to protect and manage receivables. He can be reached at (866) 720-5436, Ext. 700, or scott@zlien.com, or @scottwolfejr on Twitter.
The race to the bottom has been fierce and bloody. The current perception of the marketplace revolves around being the low-priced provider with little room for value propositions. Trade contractors routinely lament about their general contractor customers caring only about the bid, and the continual downward pressure on price has further fueled this belief. There are plenty of contractors that are manipulating the market and “buying work.” As long as there is one bidder willing to work for cost, or even less in some cases, the paradigm of low-cost providers will win. A less popular phenomenon, but one that bears contemplation, is that some of these “buying” contractors are in fact more efficient and productive than are their peers. “There is NO WAY the competition can do it for that,” is a fairly bold proclamation heard throughout contractor bid war rooms daily. What if even 50 percent of the competition is able to not only do it for that price but also make money in the process?

Many contractors fail to envision how the competition could possibly vary its construction enough to have such a dramatic effect on price. Considering contractors have such variation in the ways they individually track direct and indirect costs, it should be easy to see how so much variability could exist. It is also common for an estimator to envision a project from one perspective and have a superintendent or foreman interpret it completely differently. Estimated and actual costs are rarely equal in the same company, so costs across firms are less likely to be equivalent. Simply put, trade contractors that fail to recognize the differences in construction, however small or large they may be, live in a myopic and limiting vacuum.

Efficiency is quickly becoming the mantra across construction organizations. Whether one examines its foundation in Total Quality Management or its younger relative Lean Six Sigma, firms recognize the reduction of waste as an essential strategic imperative. Maintaining pace with the competition is no longer good enough. Production assets leveraging technology, with a seamless integration and a consistent, standardized approach, provide not only short-term gains but also a demonstrable platform for long-term sustainability. One misconception is the belief that adoption of one or all of the aforementioned systems will immediately provide a return. There are no “silver bullets” or panaceas in any industry — the construction industry is no different. For instance, people discover the benefits of Lean construction and become enamored with grandiose expectations of waste reduction. The value is clearly there,
but the largest hurdles to overcome lie in changing behaviors and a general reluctance to adopt a new paradigm by a firm’s associates. Incorporation of a Lean culture is not unlike dieting and getting healthy — on the surface, it is the right thing to do, but battling the behavioral inertia associated with a sedentary lifestyle becomes the greatest barrier to change. All productivity drivers carry benefits, but it is important to recognize the pitfalls associated with each one.

Achieving Operational Excellence

Productivity is hardly a sexy word. In fact, people nod off from boredom when they hear those words. To make it more palatable, the industry is constantly “reinventing” itself. The latest buzzword is “lean,” Lean construction’s foundation stems from the automotive manufacturing sector. Known as the “Toyota Production System,” experts carefully analyzed every aspect of the production cycle, from how materials were stocked to how the fabricators interacted with the finished product. Taiichi Ohno, Shingo Shingo, Sakichi Toyoda, William Deming and Henry Ford all have impacted the Lean model during its evolution. By its strictest definition, Lean is the continuous elimination of waste driven by customer satisfaction. Combined with Six Sigma — another methodology for improving effectiveness and efficiency — Lean aims to drive out waste of all forms including everything from a crew waiting for materials to defects.

There is a cavalcade of examples for each of these forms of waste within the construction industry. Experts have long viewed the construction industry as simply an extension of the manufacturing process, making Lean methodologies applicable to any trade.

Knowing what waste is the easy part — it is seen every day. The real challenge lies in becoming operationally superior. The simple answer is planning. To effectively reduce waste, the contractor must plan more effectively. Furthermore, the planning processes and tools must be inculcated throughout the firm and “standardized.” Standardization — kryptonite to some manager and superintendents — requires the team that will use the tools to also be the authors of the tools. Buy-in to the process is an integral step that cannot be ignored.

For trade contractors — painting, drywall, mechanical, electrical — that achieve as low a net income as 2 percent to 3 percent, a 5 percent to 10 percent improvement in labor productivity has the ability to double the bottom line dramatically. While businesses appear far too concerned about top-line growth, productivity improvements impact the more important aspect of the income statement. However, achieving lean or superior productivity requires the same strategic thought processes that a firm’s leadership had when they embarked upon improving safety. Simply put, a contractor cannot simply “train” their people to be more productive. Awareness is one thing but having a truly efficient infrastructure is critical. For instance, all trade contractor leaders should ask themselves this series of fundamental questions:

• Is there one “companywide” way of planning and executing projects or does it depend on who is doing the project?
• Is planning on the jobsite limited to a dry-erase board in a trailer?
• Do you assemble “Foreman Books” or a “Job Book” and call that effort planning?
• At the end of a project, do you prepare a series of lessons learned or do you only autopsy “the bad projects”?
• Are your project managers and superintendents more reminiscent of lone ranger cowboys rather than a drill corps working in unison?
• How do you hold people accountable?

While some of the questions are tongue and cheek, it is important to recognize that planning — whether it is preconstruction or short interval — requires an immense amount of energy and collaboration that can never be duplicated by the simple preparation of a “job book.” At a minimum planning must consist of a process (i.e. how planning is in fact executed), a tool (i.e. a consistent agenda, log, spreadsheet, etc. that is used across the firm) and a method of accountability (i.e. insurance to make sure the first two parts occur). Best-of-class firms have at a minimum the following components as part of their “Operations Tool Box”:

• Preconstruction Planning Process and Tools — From the time the award is certain until mobilization, what critical collaboration has to occur to make the field successful.
• Short Interval Planning — Weekly or bi-weekly planning that allocates resources, equipment, tools, partners, etc. as well as the assignment of a “Plan B” in case the baseline plan goes astray.
• Daily Huddle Concept — Daily goal-setting that aligns the crew and percolates any key issues forward (i.e. material needs, real-time safety hazards, etc.)
• Exit Strategy — Considered preconstruction planning for the last 10 percent of the projects, this key process and tool helps the project team strategize the end of the project.
• Post Job Review — Complete review of the project’s wins and losses and the ultimate tool to develop a comprehensive compilation of lessons learned for a firm’s associates.
• Earned Value Feedback — Considered the gold standard in labor-cost feedback reporting, the field learns if they are winning or losing without complex and nebulous spreadsheets.

Once a firm’s leader identifies the firm’s key deficiencies, champions and task forces assemble to create the desired operational future. As stated previously, an operations manager could easily — albeit painstakingly — develop an operations manual with little to no outside input. Once it is unveiled, the cavalcade of reasons “that won’t work here” will flow in. While utilizing the firm’s associates may take longer, the likelihood of success will increase dramatically.

As discussed previously, the challenges of Lean lie not with the tools themselves, but in the deeply ingrained behaviors associated with the status quo. For instance, short interval planning tools, or “last planners” in Lean terminology, are important
proactive devices to help field managers allocate resources and set measurable goals. The benefit is clear — better planning eliminates emergencies and reduces costs associated with overtime, quick shipping, rework, etc. However, adoption of a new planning system across a contingent of managers and supervisors is not easy, and without strict accountability metrics from senior management, the planning tools simply become another sheet of paper. Skepticism of new doctrines such as Lean does not originate from disbelief in the tools or process, but rather in the inability of an organization to change simple human behavior. Superintendents and managers need to see how new tools and processes will reduce costs over the long term, while changing their habits in the short term. Just as one needs to change a car’s oil on a long journey, businesses need to incorporate new systems on theirs. It is incumbent on construction firms in this new era to create sustainable models that allow their personnel to construct projects as efficiently as possible. Whether that is called Lean, Six Sigma or TQM is irrelevant.

Many contractors give the concept of productivity lip service — they know they need to do it but they fall victim to the circumstances surrounding them. Poor designs, onerous contracts, inconsistent site conditions and demanding owners appear to command more attention than focusing on controllable factors associated with their businesses. Market conditions have necessitated the need to make productivity a strategic priority. Simply building a better mousetrap will not suffice. Contractors must take an exhaustive and introspective look at how they build. Change at the field level truly begins at the top of the organization. Once the leaders of the organization are committed to making any enhancement for the good, they can begin not only to employ new techniques and tactics, but also to address the human element. There are many examples of productivity enhancements in 2014 and the hybrids that will evolve will keep the bookstores quite active in republishing. One inalienable truth that exists is the need to commit to efficiency, regardless of the buzzword.

As a principal with FMI, Tampa, Fla., Schoppman specializes in the areas of productivity and project management. He also leads FMI’s project management consulting practice. Schoppman presented six education modules at ASA’s annual convention, SUBExcel 2014, in March in New Orleans, La. Prior to joining FMI, Schoppman served as a senior project manager for a general contracting firm in central Florida. He has completed complex and sophisticated construction projects in the medical, pharmaceutical, office, heavy civil, industrial, manufacturing, and multi-family markets. He has also worked as a construction manager and managed direct labor. Furthermore, Schoppman has expertise in numerous contract delivery methods as well as knowledge of many geographical markets. He can be reached at (813) 636-1259 or gschoppman@fminet.com.

New On-Demand Videos from FASA

When it comes to managing your business, the Foundation of ASA is your partner in education. View and listen to FASA’s on-demand videos at an individual workstation or in a conference room for group training. Your order includes access to the on-demand video any time, and as many times as you’d like!

These are just two of the on-demand videos available through the FASA Contractors’ Knowledge Depot to meet your business management training needs.

“Strategic Planning: Looking Forward from the Downturn” (Item #8069)
Coming out of this economic downturn, is your company financially positioned to lead the charge — or watch from behind? In the video-on-demand, “Strategic Planning: Looking Forward from the Downturn” (Item #8069), presenter Stephane McShane, Maxim Consulting Group, Denver, Colo., explains how to create a comprehensive and effective strategic plan, including the supporting organizational development initiatives, such as work-in-progress processes, and how the plan links with the business development efforts of your firm. This on-demand video includes download/playback instructions.

Price: $65 Members / $95 Nonmembers

“Navigating Contract Revisions” (Item #8070)
Subcontractors are routinely asked to sign contracts with complicated and risky language. In the video-on-demand, “Navigating Contract Revisions” (Item #8070), presenter Melissa Ogburn, Esq., Lasater & Martin, Highlands Ranch, Colo., helps subcontractors understand which provisions can cause the most risk and how to protect their businesses. Ogburn explains how subcontractors can reshape their subcontract agreements and how to negotiate key contract terms with builders or property owners. This on-demand video includes download/playback instructions.

Price: $65 Members/$95 Nonmembers

Order online at www.contractorsknowledge depot.com or call 1-888-374-3133
Cash may be king, but the ability to pay one’s bills on time is even more important to a surety. When working with young underwriters, surety companies often hear, “They have lots of cash.” In isolation, lots of cash may look good, but that alone doesn’t draw the full picture of a contractor’s ability to meet its ongoing obligations, otherwise known as cash flow. It’s the role of the surety underwriter to dig deeper and to assess a contractor’s cash flow situation by pulling the various pieces of the underwriting puzzle together for a complete picture. The contractor that can demonstrate sound cash flow will help itself in maximizing its surety capacity. A contractor with strong cash flow will typically demonstrate a well-managed company with excellent systems, policies and employees, as well as a strong earnings stream.

When reviewing a contractor’s financial information in terms of cash flow, here’s what an underwriter looks for and why:

- **Credibility of in-house financial reporting** — Do the in-house financial numbers track with the fiscal year end prepared by a certified public accountant? Sometimes underwriters ask for prior year interim financials to see how they tracked to the subsequent FYE CPA numbers. Good internal data goes a long way in terms of surety support, especially in terms of earnings and cash flow projections. If in-house balance sheet and income statement information is unreliable, cash flow projections likely will be unreliable as well.

- **Cash position as it relates to the spread between accounts receivable/accounts payable, the net of overbillings and underbillings and any current debt obligations** — A strong cash position could be negated by the fact that it is derived, in part, from large overbillings or current borrowing on an operating line. The stronger the cash position net of all of the other current assets and liabilities, the less the likelihood of cash flow problems. Here’s an interesting formula for breaking down the value of the cash being shown relevant to other sources of cash and current obligations:

\[
\frac{\text{Cash} - \left(\text{Current bank debt (BLOC only)} + (\text{Overbillings-Underbillings, if greater than 0}) + \left(\text{Accounts Payable & A/P Retention - Accounts Receivable & A/R Retention, if } > 0\right)\right)}{\text{Total Assets}}
\]

- **Overbilling practices** — Does the contractor routinely overbill, or does the contractor often find itself in an underbilled position? Underbillings can be indicative of a contractor with lax billing procedures where documentation isn’t being received timely from the field. While underbillings often can be the result of timing differences or large material/equipment deliveries, they also can indicate issues with unapproved change orders or unrecognized profit fade. A contractor that effectively overbills will often show a line item for “Interest Income” on its income statement. While this was a huge profit center during the early 1980s during the days of double-digit interest on deposits, showing a net gain on interest income in excess of interest expense in these times of low interest rates is still a measure of success.

- **Accounts receivable turnover** — The quicker those receivables turn over, the better. A major red flag for a surety is slow turning receivables. A burning red flag is slow turning receivables with a contractor that doesn’t know why they’re turning over slowly. An A/R aging schedule should break out
receivables by account and by how late they are beyond current, net of retainages, with a separate column for retainages. A preponderance of 90-day+ receivables will be investigated by the underwriter to determine if there is an overall pattern of slow collections or some isolated issues of hung receivables. If there are several accounts that are over 90 days, it may suggest the contractor’s accounts receivable aren’t being aggressively pursued and managed. A high retainage total likely will correlate with diminished cash and/or a dependence upon borrowings on an operating line. It may also reflect a company that has difficulty in getting jobs closed out and final paperwork filed in order to collect the final payment.

“Experts can provide excellent advice on how best to maximize your cash flow and therefore maximize your surety capacity.”

- Large spread of accounts receivable much larger than accounts payable may explain a nominal cash position — This is very common at FYE with accounts that pay taxes on a cash basis. Such a spread on an interim basis might warrant further investigation. Does the contractor routinely pay down subs/vendors or is the contractor paying according to the “pay when paid” or “pay if paid” provisions of their contracts? From a cash flow perspective, a contractor shouldn’t pay a sub/vendor early unless there’s a discount incenting early payment, especially if the early payment requires utilizing borrowing from a bank or shareholder.

- Is the amount of retainage agreed to in contracts reasonable? — A contractor with 10 percent retainage across all contracts is going to experience far more challenges than the contractor that negotiates that initial 10 percent retainage down as the contract progresses. For example, reducing retainage to 0 percent at 50 percent complete can have a significant impact on overall cash flow, especially on larger projects or across an overall backlog.

When considering a large project or backlog, a surety will assess the cash flow demand tied to retainage. The surety will want to know how the contractor is going to fund that retainage, especially since contractors often are without the opportunity to hold retainage from their subcontractors. Will the contractor be able to fund the retainage out of current cash flow and cash flow generated from the project, or will it need to utilize its bank line for startup and/or ongoing costs?

- What is the contractor’s banking relationship? — Is there an operating line in place? What is the limit? How much is outstanding? Does the contractor have borrowing capacity to fund immediate startup costs or any cash flow bumps? A hung receivable can jeopardize a contractor’s cash flow. A surety likes to know the sources of funding available if such an obstacle were to be encountered, be it an operating line and/or shareholder loans. Does the contractor utilize sweep accounts to effectively manage its operating line usage and minimize interest expense?

- What due diligence should the contractor do to ensure payment from the owner or prime contractor? — Verification of financing of an owner, especially on private work, should always be done. A contractor should not be afraid of offending an owner. This step is part of doing business responsibly. The standard AIA contract provides a provision for verification of financing before the job starts. Exercise that contractual right. If a sub is working for the prime contractor on a private project, financing should still be verified or confirmation should be obtained showing the prime contractor is bonded to the owner. If the contract includes a “no lien” provision, how will the contractor, or in some cases the subcontractor, protect itself if it is not paid?

- High liquidated damages and/or actual/consequential damages can be a killer to cash flow — How will the contractor mitigate exposure to high damage provisions assessed to it? For actual/consequential damage exposure, can the limit be capped? Does the contract state a liquidated damages provision only to have the bond form add actual/consequential damages to the equation? When bidding a project with high damage provisions, the contractor should consider a worst-case scenario and either mitigate that exposure or include an appropriate contingency.

- Has the subcontractor reviewed the contract between the prime and owner? — The sub is obligated to the same extent as the prime contractor when the subcontract includes a flow-through provision. A review of the contract may reveal payment provisions that could be detrimental to the subcontractor.

When developing a good cash flow strategy, a contractor should have a knowledgeable surety agent, a construction-oriented CPA, and an attorney familiar with construction contract language as part of its team. Each of these experts can provide excellent advice on how best to maximize your cash flow and thereby maximize your surety capacity.

Scott Bailey is a contract underwriting manager for Merchants Bonding Company, Des Moines, Iowa, a member of The Surety & Fidelity Association of America.
Being a contractor in today’s environment can be extremely difficult. Banks are not lending and contractors are reliant on their customers to pay their invoices in a timely manner, which most of the time means 30-60-90 days. All the while you’re expected to make payroll, pay vendors and try to grow your business. This is impossible without access to working capital, and if a bank won’t lend you the money, you have to either:

- Turn down jobs.
- Find jobs where general contractors/owners pay promptly.
- Find an alternative solution to improve your cash flow.

Subcontractors bear most of this burden because they are furthest from the cash flow. On top of the slow payment terms, many general contractors or owners hold retainage from each pay application, further crippling subcontractors’ cash flow. Factoring may provide a solution for some. Factoring provides relief to contractors by giving them access to immediate working capital without an additional burden on the general contractor or owner to pay quicker than they normally would. Factoring can help contractors consistently meet their payroll, pay vendors timely and bid on more jobs they otherwise couldn’t.

Here is how factoring works:

- A contractor sends the factoring company an invoice for work they’ve completed.
- The factoring company wires up to 80 percent of its value into the contractor’s bank account that day, then holds the remaining 20 percent in escrow.
- The contractor’s customer sends the factoring company the payment when the invoice is due.
- The factoring company remits the balance of the escrow, less a fee to the contractor.

Benefits of Working with a Factoring Company

Where banks will consider whether your company is financially sound when deciding to approve a loan, factoring companies don’t look at the size of your business or your creditworthiness. In fact, factoring companies look at the creditworthiness of your customers. So just about any contractor that has a creditworthy commercial customer base with invoices for products delivered or services rendered to another business or government agency can benefit from factoring.

Construction-Focused Factoring Companies

Most factoring companies choose one or more industries to specialize in such as transportation, staffing and construction. When you choose to work with one that specializes in construction, you get the benefits of working with a partner that understands your industry and can help you navigate some of its challenges.

Once the contractor submits an invoice to its factoring company, the factor will pay the vendors right away. The quick payment to the vendors often allows the contractor to receive early payment discounts that they otherwise would not receive.

Understating lien laws can be challenging for contractors. Factoring companies that specialize in construction understand the lien process and can help you with a basic understanding of lien laws in your state, as well as get the lien releases for you. Additionally, they often subscribe to a service that gives updates on the latest changes to the lien laws by state to help you stay current with the laws for your area.

Small and growing contractors don’t always have the staff to operate as an accounts receivable department like larger companies might have. The factoring company can step in and provide some of these services. From paying your subs and suppliers to helping you manage the financial aspects of the project, factoring companies can be an asset. There are also additional back office services that a factoring company brings to the table, such as helping ensure you...
Additional Working Capital Options

In addition to factoring there are a few other options available to contractors to obtain working capital outside of a traditional bank loan including utilizing an asset-based lender or equipment financing. An asset-based lender will provide a line of credit based on your company’s assets. An equipment finance company can offer different lease and loan options on both new and used equipment. They can help you lower your monthly payments on the acquisition of new equipment or by refinancing your existing equipment.

An equipment finance company can also help you turn some of the equity you have in your existing equipment into working capital.

Here are a few key differences:

- A factoring company can provide funds quickly, often in less than 24 hours, when it could take two to three months to get an asset-based loan.
- Asset-based lenders and banks will set a credit limit, and if you need to increase that to accept a new opportunity, it could take months to get approved. With a factoring company, all you need is additional creditworthy commercial clients with unpaid invoices to get additional working capital.
- When you work with an equipment financing company or an asset-based lender you are acquiring debt. When working with a factoring company, as long as your customer pays their invoice, you are acquiring no debt.

Even though factoring may be more expensive than some other options, it can be a working capital solution as long as your opportunity cost outweighs the factoring cost. Factoring may not be the right fit for everyone, but with factoring volume at over $88 billion in 2011, according to the Commercial Finance Association’s Annual Asset-Based Lending and Factoring Survey Highlights, many companies see it as their key to cash flow security and growth.

Scott Applegate is the chief operating officer at CapitalPlus Equity, a factoring company assisting construction companies with their cash flow needs. Applegate can be reached at (865) 670-2345 or beck@capitalplus.com.

Save the Date!
March 26 - 29, 2015
Seattle, Washington
Renaissance Seattle Hotel
Subcontractors and suppliers (collectively “subcontractors”) know all too well that cash flow is the lifeblood of their businesses. Yet many subcontractors overlook the vital role that subcontract clauses can have on affecting their ability to timely secure payment. Here are just a handful of tips about ways to improve your cash flow and safeguard your business from some of the more common cash flow problems that plague subcontractors.

**Condition Your Bid on Acceptable Payment Terms**

A single bad job can lead to massive financial problems. Always make sure that your proposal for the work is conditioned upon acceptable contract language. If you fail to do this, you may have squandered the leverage you need to obtain good contract payment terms on a host of issues, particularly if your customer has relied on your bid to win the job.

If you cannot secure fair payment terms in the contract, you must preserve the right to walk away from a bad contract to a safer job. That process starts with conditioning your bid and then making sure you carefully review the contract you are being asked to sign so you understand exactly what is in it so you can hold firm on the “killer clauses” that most threaten your cash flow.

**Preserve Mechanic’s Lien and Bond Rights**

Lien and bond rights are important tools to maintain payment security, but they have a huge and often underappreciated impact on cash flow because subcontractors that do what is necessary to preserve their lien and bond rights position themselves to go to the head of the line for payment, even on projects where the owner or upper tier is getting cash-strapped.

This is because the payment security of a mechanic’s lien or payment bond means there is an additional party, and pool of money, to pay a valid claim. Subcontractors that are diligent in preserving their rights can distinguish themselves from other creditors, who will be more likely to be at the mercy of their customer.

It is vital that you know the law of the state where you are working, and do what is necessary to preserve these important rights. Some states allow “up front” waivers of mechanic’s lien and bond rights. Others prohibit such waivers. Some states require that subcontractors complete and serve or record a preliminary document (at the start of their work) such as a Notice of

Furnishing as a condition precedent to the subcontractor’s ability to later make a lien or bond claim. Other states have no such requirements or restrictions, but all have filing and notice deadlines of some sort that typically must be strictly followed at the risk of losing rights.

Every year ASA publishes “Lien & Bond Claims in the 50 States” (Item #3006), containing contact information for ASA attorneys who contributed to the manual. Having a good construction attorney’s input into the lien and bond law impacting your rights when starting a project is one of the most important weapons you can add to your contract management toolbox to better ensure a more consistent cash flow.

**Avoid Pay-if-Paid Clauses**

Agreeing to a “pay if paid” clause in your subcontract can be a big mistake. In the states that allow “pay if paid” clauses — in some states such clauses are void as against
When entering a contract, it is not only reasonable but prudent to ask for payment assurances. Many current industry forms like the ConsensusDocs subcontract form expressly give subcontractors a contractual right to access information about the owner’s project financing.

Consider Asking for a Joint Check Agreement

Relatively recently, even raising the prospect of a joint check agreement would raise eyebrows. But in the last five years such agreements have become more and more common. A properly worded joint check agreement may be one of the best ways to ensure timely cash flow in that such agreements can create a direct payment pipeline from the owner to your company and eliminate the payment delays that are otherwise common when payment must be channeled through your customer before it gets to you.

Subcontractors protected by a well-drafted Joint Check Agreement are much more likely to be paid, even if your customer encounters financial difficulty, than those who are relying on standard subcontract language.

But a JCA is only as good as the language in its four corners. If you will use such an agreement you should ask a good construction attorney in your state to prepare a form for you to have in your files to use. For similar reasons, if you are presented a JCA drafted by another party, have your attorney review that agreement to advise you on whether it is sufficient for your needs.

Don’t be penny wise and pound foolish: Given how important such agreements are to cash flow, the little bit you may spend up front for an attorney’s input is valuable insurance that you can make an informed decision on whether the proposed JCA gives you the protection you need or warrants modification.

Conclusion

After you have put in the hard work on the front end, make sure to timely address issues as they develop. In this regard, you need a trusted and experienced person managing your receivables, so small payment delays don’t become big ones. The companies that know what to ask for up front, and that have a bottom line they are prepared to stick to on the contract terms important to them, are half way there to improved cash flow. Those that then regularly monitor collections and quickly move to address payment delays as they occur complete the loop. It is those companies that do all the above that best position themselves to avoid or mitigate the types of cash flow problems that can be common in the construction world. Subcontractors and suppliers that incorporate the above tips into their credit strategy should see improved collection rates and cash flow. And that’s a good thing.

Eric Travers, Esq., is a director with Kegler, Brown, Hill & Ritter, Columbus, Ohio, practicing primarily in the firm’s Construction Law area, representing subcontractors, general contractors, owners, suppliers, architects, sureties, construction managers, and others. Kegler, Brown, Hill & Ritter, serves as legal counsel for ASA. Travers can be reached at (614) 462-5473 or etravers@keglerbrown.com.

Don’t Overlook Financial Backing or Reputation of Your Customer’s Customer

Don’t forget that your customer is in the same boat as you are because it, too, needs cash flow to pay its bills, which include your bill. Thus, keep in mind that even the best contract language you can negotiate may not ensure your timely payment if your customer is not being paid.

This means that when entering a contract you should consider the project’s financing and the reputation of those who control the cash flow in the tier (or tiers) above you. It is not only reasonable but prudent to ask for payment assurances. Indeed, many of the current industry forms like the ConsensusDocs subcontract form expressly give subcontractors a contractual right to access information about the owner’s project financing.

If you cannot verify that the project has the financial backing to succeed, or are concerned about a party in the upper tier above your customer, that information may play a vital role in your decision on what to bid and the security you need to continue.
ASA’s “Subcontractor’s Negotiating Tip Sheets” are designed to help subcontractors navigate harmful contract language and provide information they need to negotiate a particular subcontract clause, including ASA-recommended language, samples of what a subcontractor may see in a client’s proprietary subcontract, and an explanation of the impact of poor language on a subcontractor. Recently released tip sheets focus on: “Extra Work,” “Warranties,” and “Warranty Time of Commencement and Time Limits.”

Extra Work
General contractors sometimes expect subcontractors “to act expeditiously when the owner wants something done,” but subcontractors should be careful about extra work: “I can move quickly on extras or changes as long as you give me a written change order.” The subcontractor may find that it does not have clear entitlement to prompt payment for extra work ordered by the general contractor, or the subcontractor may find that payment for additional work is delayed because a formal change order has not been issued. A common provision found in general contractors’ proprietary subcontracts may state: “The Subcontractor shall promptly comply with any Contractor directive with respect to performance of the Subcontractor’s work, including such related work as is directed by Contractor. Pending resolution as to the amount of adjustment in subcontract price, if any, the Subcontractor shall continue its performance of such directed work without delay or interruption.” ASA recommends: “Subcontractor shall be entitled to equitable adjustments of the contract time for extra work it performs in accordance with the subcontract documents, and for extra work it performs pursuant to written or verbal instructions of Customer, provided that Subcontractor gives Customer notice (except in an emergency threatening bodily injury or loss of property), prior to starting such extra work, identifying the date and source of the instructions considered as requesting extra work. Any request of Contractor to Subcontractor without a written order is a breach of the Subcontract.”

Warranties
General contractors sometimes use a provision in their proprietary subcontracts stating: “The Subcontractor represents and warrants that it is an expert in the particular line or lines of work herein contracted to be done and will perform the Work to meet the needs and expectations of Owner. The Subcontractor warrants that the materials and equipment used to complete the Work is new, merchantable, and free of defects, and that all Work is in strict compliance with the specifications, unless the specifications deviate from accepted construction practices.” The subcontractor may find that it has warranted the suitability of someone else’s work, such as the design professional, and may be liable for the disappointed expectations of the owner. ASA recommends: “This warranty is provided in lieu of all other warranties, express or implied, and the warranties of merchantability and fitness for a particular purpose are hereby disclaimed by Subcontractor.”

Warranty Time of Commencement and Time Limits
General contractors sometimes use a provision stating that the subcontractor’s “warranty shall extend for the duration specified and shall commence upon final completion of all project work as demonstrated by final payment.” The subcontractor may find that it is indefinitely responsible for maintenance and safety on a building on which it has worked, and may find that it is responsible for problems caused by an undetectable owner modification or even misuse. ASA recommends: “Notwithstanding anything to the contrary, our warranty period is for one year from the date of Substantial Completion of our Work and in no event for more than one year from the date of first occupancy or use by the Owner.”

ASA tip sheets are available in the members-only section of the ASA website.
ASA/F ASA Calendar

August 2014
12 - Webinar: How to Choose the Right Customers (and Get Them to Select Your Bid)

Construction Best Practices Award

January 2015
13 - Webinar: Negotiating Retainage

February 2015
10 - Webinar: Mechanic’s Liens: Protect and Collect

March 2015
26-29 - SUBExcel 2015 in Seattle, Wash.

April 2015
14 - Webinar: Non-Negotiators’ Strategies for Negotiating Outstanding Results

May 2015
12 - Webinar: Managing the Life Blood of Contracting - Cash Flow

June 2015
9 - Webinar: Bidding from the Other Side: How GCs Use GradeBeam to Find Subcontractors

Coming Up . . .

in the August 2014 Issue of ASA’s

Theme:
Field Management

• Field Management Going Mobile
• Fleet Management Tools to Increase Productivity
• Public Private Partnerships: Payment Security Concerns
• OSHA Global Harmonized System for Hazcom
• Legally Speaking: Protect Your House! Project Legal Considerations for Field Personnel

Look for your issue in August.

Past Issues:
Access online at www.contractorsknowledge depot.com

Contact information for all ASA and FASA events/programs:
www.asaonline.com education@asa-hq.com
How to Stay Lean and Mean
(And Come Back Stronger!)

Subcontractors can’t afford to sit around waiting for the economy to recover. Instead, they have to work hard to stay lean and mean.

But how do you run an efficient operation until construction activity rebounds? And how do you do it without sacrificing quality or taking unnecessary risks?

Project DocControl helps subcontractors document their projects in half the time. Created by subcontractors, this unique system automates the process of creating and tracking project documentation. So you can spend more time managing projects ... and less time shuffling through paperwork.

As an ASA Gold Sponsor for more than 10 years, Project DocControl has continued to support all ASA chapter members by providing discount benefits through the ASAdvantage program. For more information, or for a no-obligation online demo, call 813.903.9446 or visit us at www.ProjectDocControl.com.

“The flow and consistency of the documentation in Project DocControl was exactly what we had been looking for. We needed a tool that would allow employees to generate documents easily and consistently.”

— Stephen Rohrbach, CPC
President
F.A. Rohrbach, Inc.
Past ASA National President
Surety Bonding • Treasury Listed • Rated A+ by A.M. Best • Licensed Nationwide • 30 South Road, Farmington, CT 06032 • (860) 415 8400

Henry Nozko Jr., nozkojr@acstarins.com • Henry Nozko III, nozko3@acstarins.com • acstarins.com

What other sureties wouldn’t dream of, we do every day. We’re accessible, responsive, flexible, and always ready to talk. Above all, we handle the bonding cases other sureties can’t. (Or won’t.) So if your case seems a little out of the ordinary, call us instead: (860) 415 8400.

SURETY FOR AN IMPERFECT WORLD