

Geotechnical News welcomes other perspectives on this topic, discussions should be submitted to *geotechnicalnews@bitech.ca*. The deadline for receipt of discussions for the March 2003 issue is January 11.

Introduction

While working for an engineering design company in the late 1970s, the second author thought that an article on this subject was needed, both for the benefit of the clients of individual consultants and for the consultants themselves. At that time he was the client of several individual consultants and felt that the engineering industry did not fully appreciate the value of consultants, nor did the industry appear to treat consultants properly. At that time the first author was working as a consultant to the second one, and we agreed that this article was worth writing. It has taken a couple of decades for us to set aside the time!

Our early drafts omitted the last three words of the title. However, this

The Care and Feeding of Individual Consultants and Their Clients

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perhaps gave the impression of a one-sided article, and we've subsequently tried to create a balance to justify the revised title. But we recognize that, because we both now practice as individual consultants, some of the one-sided flavor may remain. We would therefore welcome discussions in subsequent issues of *Geotechnical News*, particularly balancing ones from 'clients'. If a representative of a client feels constrained because of concerns about company approval, anonymous discussions will be accepted.

In our experience there have been too many occasions when a client or consultant has been frustrated with the other. The purpose of this article is to make a contribution towards mutually satisfying relationships between the two parties.

In this article the words 'he' and 'his' should be read as meaning both feminine and masculine. We tried pluralizing to avoid the issue, but that didn't work.

Definitions

We recognize that there are many types of 'consultants', ranging from individual consultants to consulting companies, but this article concentrates on individual consultants, hereinafter referred to as 'consultants'. We are defining a consultant as a self-employed individual consultant who is retained by

an engineering company or by an owner or an attorney or, less frequently, a contractor or supplier. The assignment may be for a very short term or may be for a major cooperative effort.

The term *client* is used for the engineering company (or the client of an engineering company), owner, attorney, contractor, supplier, etc.

General Expectations of the Parties

The Client

The client wants sound technical advice on subjects that are not fully available in-house. Alternatively he wants a second opinion based upon broad experience or a different fresh approach. He may wish a more in-depth or more comprehensive evaluation, away from the time-and-schedule pressures of his staff. Calling in a specialist may be an attempt to reduce professional liability – "*we asked the opinion of an expert*"! In the case of the Board of Consultants approach, the client is telling his client that he is getting a consensus of specialists.

The Consultant

The consultant wants professional satisfaction from making a worthwhile contribution, fair pay, a cooperative relationship with other engineers, and fair treatment that is professional and sensitive to his needs.

Both Parties

Generally, ethics, sensitivity, courtesy, common sense, and good business judgment should guide both the consultant and the client on all the matters discussed in this article.

Issues Before the Client has the Job

First Contacts

When asked by a client to be a consultant (or to be considered for such an assignment) the consultant should be given more information than just the name of the project. The consultant should be given the general scope and schedule of the project as well as the scope and level of effort that is being considered of him. If possible, he should be told who else (firms, other consultants) is on the proposal team. However, we recognize that sometimes this information is confidential and the client may be restricted from sharing this information because of proposal strategy.

The issue of exclusivity should be addressed and clarified up front. Clients often ask for this. Consultants typically do not accept exclusivity if they have relationships with other potential clients who may be pursuing the same job, but the consultant should discuss exclusivity with his potential client so that this issue is clarified for both sides at the beginning. Exclusivity should be limited to special cases.

If the consultant has not made an exclusive commitment, and is later asked to join a second or subsequent team, he may accept the additional non-exclusive commitment but he should disclose that he is on another team. However, he should not be bound to give the names of the other potential clients.

Sometimes the first contact is exploratory and the potential client is really asking "Would you be available if my team names some consultants?" This may be a necessary step in the process but it leaves the consultant unsure if he is on the team or not. Any ambiguity should be clarified as soon as possible.

Contacts During Proposal Preparation and Subsequent Negotiations

There should be a single point of contact at the client's office, preferably the Proposal Manager.

Consultants who have never worked for an engineering design company may be surprised at the complexity and strategy associated with major proposals and how busy the proposal team is up to the very last minute. Consultants can help by providing their potential client all the requested information, in the requested format and length, well in advance.

Sometimes engineering design companies change their minds and do not propose, or are unsuccessful in getting on a team that is being formed, and

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sometimes proposal teams dissolve. Such situations emphasize a consultant's desire to be non-exclusive.

The client should keep the consultant informed of the status of the proposal, including conveying when the project moves from the qualifications stage to proposal, to selection and to negotiation or when any of these are significantly delayed. Everyone is busy, but the client should send a short email to update the status from time to time.

The consultant has a right to know how his qualifications are to be expressed in the proposal, how many of his hours (at least an approximate level of effort) are included, and if/when negotiations with the client's client change the consultant's role or level of effort. Sometimes a firm is selected but

the project owner changes his mind and decides he doesn't want the proposed level of effort for consultants, sometimes eliminating them altogether.

The authors know of cases where a consultant agreed to be on a proposal team which later was successful, but then he never heard from the potential client. The consultant may then feel as if his qualifications may have helped win the job but then he was cut out. There are usually valid reasons such as those mentioned above, but not letting the consultant know is unacceptable practice, perhaps created by the 'too busy' situation, which leads to lack of communication and fosters distrust.

If the client believes that he may want to retain a consultant during the project work, he should name him in the proposal. In the case of public agency owners, it is often difficult for a client to obtain approval to retain a consultant who has not been named in the proposal.

If the consultant is proposed to be on a Board of Consultants, usually all the consultant provides is his resume, possibly re-written to conform to special format or length requirements. If being proposed for a significant assignment, it is often appropriate for the consultant to draft brief proposal text to assist the client in developing a winning proposal. But calculations and analyses or studies should not be expected of the consultant during the proposal stage. If non-exclusive, all potential clients need to be treated equally, so this text should be prepared from basic Request for Proposals (RFP) documents prior to any significant interaction with potential clients.

If exclusive, the consultant might do more work for a proposal, but there are limits as to how much can or should be done. He may be asked to review the proposed scope and/or budget. If this creates substantial work for the consultant, it should be handled on a case-by-case basis as to how much is required and what remuneration is appropriate, if any. As a minimum, any travel expenses to participate in meetings or interviews should be reimbursed.

For Design-Build proposals, a potential dilemma is created about how

much consultant work and how much payment. These proposals require considerable in-depth development of construction methods and strategy in order to win the job. It is likely that any assignment for the consultant other than as a member of a Board of Consultants would be exclusive. Design-Build is an evolving field and detailed discussion of this field is beyond the scope of this article.

Unless there is a clear reason for not doing so, the client may let the consultant see or receive a copy of the proposal – this encourages a cooperative working relationship. Finally, the client should, as soon as practicable after receiving the good or bad news, let the consultant know whether his firm has been selected or not.

Contractual Issues

General

There should be a written agreement for all projects, even if it is just a simple letter agreement that outlines scope and fees. Large clients, particularly those involved with public agency work, often endeavor or may be required to impose boilerplate contract language on a consultant, and generally this flow-down language has been written for contracts between large parties. Two of the major areas requiring modification are insurance and indemnity/warranty language, which can be Draconian. For these and other unfair requirements, the client should ask his client to delete or significantly relax contract language since, in the authors' experience, these provisions can be changed.

Insurance and Indemnity/Warranty Language

Insurance coverage for Workers' Compensation, Employer's Liability, and Commercial General and Automobile Liability, which are normal requirements in contracts between consulting engineering firms and their clients, are not applicable for individual consultants, and contracts must be modified accordingly. The cost of Professional Services Liability Insurance for errors and omissions is usually excessively high for individual consultants, hence

most do not have coverage. In these cases contracts should provide for the consultant to be covered under the umbrella of his client's professional liability insurance.

Indemnity/warranty provisions often are trickily-worded and usually require the consultant to hold his client (and often his client's client and many other entities) harmless in the event of a long list of potential hazards – these provisions are unacceptable for a consultant, and must be deleted if at all possible. A consultant should not have to hold anyone harmless for anything but his own negligence nor pay for anyone else's defense. Consultants should consider having a lawyer briefly review the legal jargon. The authors have seen contracts that, after sifting through the jargon, required the consultant to hold the client and seemingly the rest of the world harmless, not for "negligent acts", but for "all acts" or for other peoples' negligence.

If the potential client appears unwilling to make such modifications to the insurance and indemnity/warranty language, the consultant may take an attitude of, *"Thank you for inviting me; I regret that I'm unable to accept an assignment on these terms; if it isn't possible to change them, I must withdraw from the team; I sincerely hope that this decision will not affect our past and future good working relationship"*.

Fees

Fees will be discussed under the next main subheading.

Travel

Many individual consultants are 'of an age' when flying in an economy class cabin on flights of more than two or three hours is unacceptable. Moreover, it is nearly impossible to do any work efficiently in the cramped confines of a coach seat. If the project involves any significant long-distance travel, the consultant may insist on business or first class. This may test boilerplate contract language but it can usually become agreeable if the consultant provides a letter to his client saying that this requirement applies to all his air travel.

Miscellaneous Issues Relating to Payment

A contract between a consultant and his client will include either an agreed hourly or daily rate plus reimbursable expenses. Contracts between clients and their clients often contain maximums for daily expenses for hotels and meals. It is reasonable to require that consultants abide by the same limits if they are not absurd. Even though a consultant may state in his standard fee schedule that he marks up expenses by ten or other percent, it is also reasonable for him to accept the same markup that is imposed on his client (often zero for public work).

Contracts will usually require defined material to be submitted with invoices, such as receipts for expenses above a certain minimum, and documentation of hours and work done, all of which are reasonable unless unusually excessive. The consultant should provide a standard Fee Schedule if he is charging for technical or photo equipment, or for copying and printing on his own printers.

The consultant should ask the client when his invoices should arrive at the client's office so that they are included in the client's regular billing cycle, otherwise the invoice may arrive late and won't be included in the client's billings for another month. Consultants must normally accept that they will not be paid until soon after their client is paid for the increment of the consultant's work. However, the client should do everything in his power to see that the consultant is paid as quickly as practicable. This should not be left up to the "accountants" but should be the personal responsibility of the consultant's single point of contact.

Consultants should realize that clients usually have a specific window of time during which billings can be made, outside of which the client cannot bill the consultant's charges. If the client does not offer information about this window, the consultant should ask for it. In particular, the consultant should realize that clients generally bill for all their final charges shortly after a project has ended, and a consultant should ensure that he submits his final invoice

well before that window of time has ended.

Retainage – the provision whereby a percentage of approved payment amounts is withheld until some later date, usually after audit or ‘satisfactory completion’ – is often included in contracts between clients and their clients. Since audits of individual consultants (in an attempt to define salary and overhead) make no rational sense, these provisions should be deleted if at all possible.

Fees

Hourly and Daily Rates

Use of an hourly rate is more flexible, because the consultant may not always work full days on the project. Typically, the same hourly or daily rates apply to Saturday, Sunday and holiday work.

The rate the consultant charges should be “in line with” those of his peers. He should not try to get more work by charging a lower rate. The rates of others are discovered by networking or word of mouth or by checking out a proposal from an engineering design company that is in the public domain. Fees should reflect experience levels and whether the consultant has high indirect expenses, secretarial services or expensive computer equipment or services.

Consultants should be paid for hours worked, but often there will be a definition of the maximum number of hours to be charged for one day. If a daily rate is used, there needs to be a definition of how the consultant will be paid for less than a full day.

For international work, in cases where this clearly will involve full days, a daily rate is often appropriate, and will typically correspond to ten to twelve times the hourly rate. We believe that ten is normal, but both of us have worked much longer days when on an international assignment away from home, for which a number larger than ten would seem more equitable.

Legal Work

A consultant is justified in charging higher rates for legal work, because he has no participation in scheduling, and may have to put other work aside at

short notice when called upon to do so. Reasonable rates are: for preliminary work and report writing, 1 to 1.4 times the standard rate; and for depositions, court appearances and legal meetings directly associated with court appearances, up to two or more times the standard rate. The consultant can ask his legal client for fair treatment in determining these rates, consistent with the client’s practice and with other expert witnesses.

Travel Hours

Because travel hours incur the same time commitment as other hours committed to a project, a consultant is entitled to be paid for them. There are at least two approaches to this. First, hours are charged on the same basis as defined

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for other hours, with a definition of when hours will start and stop, such as, “*Travel time will be based on the actual departure time from the consultant’s office, to the actual time of arrival at the destination office or hotel, and similarly for the return*”. This approach is generally appropriate for work within the consultant’s country. Second, on the basis of a defined time for several categories of travel distance, and this is generally appropriate for international work. For example, “*Travel time will be charged as follows: from USA to Central America, 1 day; to Europe 1½ days; to Southeast Asia 2 days*” – these durations should take some account of lost working time created by jet lag.

In all cases the consultant should provide the maximum practicable input to the project during travel hours. During outbound travel this will typically include the review of project material, and during return travel, will typically

include review and report writing. However, it is not infrequent for a consultant (particularly those of ‘a certain age’) to leave the office of an international client in a state of semi-exhaustion, having contributed to the full extent of human ability – so some “gentle expectations” are suggested for effort during return travel.

Miscellaneous Day-to-Day Issues

If the consultant has broad experience of similar projects, the client should not restrict the scope of the consultant to a small or limited technical task such as “Do you agree with the predicted pile capacities?” Such a consultant may be able to be helpful with broader aspects.

In the above section we indicated that the consultant should be provided with project material to review while traveling. This material should be provided to him well before traveling if possible, so that if he believes the review will take more time than available during traveling, he can start this in his home office. This also gives him the opportunity to refer to other material in his office and to spread out drawings – not really possible on a plane.

The hard copy files provided to consultants can often be very extensive, particularly in the case of legal work. If the consultant has an appropriate computer, and in particular an appropriate laptop, it is often helpful for the client to offer drawings on a CD, or both CD and hard copies.

During the progress of the work, the principle of a single point of contact should be maintained, although it may move from the Proposal Manager to the Project Manager or to another senior technical person when the project begins.

If the client needs to change the schedule for a meeting with his consultant, or if the consultant’s availability changes, the other party should be notified immediately. This is particularly important when the consultant has been ‘holding’ a week or period, “just in case the client can arrange for the other parties to meet during that time”.

The Client's Professional Issues

In an earlier section we identified the client's primary need as sound technical advice. Recognizing that he is likely to

...the consultant's primary needs are professional satisfaction, fair pay, a cooperative relationship, and fair treatment...

be paying a significant fee, paying for travel time and possibly for business class airfare, he has every right to expect that the consultant will maximize effort to be responsive to the needs of the project on arrival in the client's office.

The consultant should also make every effort to understand not only the technical issues under consideration but also the background and side issues so that he better understands the needs of

his client. He should make every effort to make a creative contribution and/or develop a fresh approach since he is not encumbered by day-to-day "administrivia."

The client also deserves to have the consultant address business issues in a professional way. Mail, phone calls etc should be returned by the consultant promptly, and resumes, reports, and invoices should be submitted in the proper format with backup materials and on time.

The Consultant's Personal and Professional Issues

In an earlier section we identified the consultant's primary needs as professional satisfaction from making a worthwhile contribution, fair pay, a cooperative relationship with other engineers, and fair treatment that is professional and sensitive to his needs.

An all-too-frequent issue for a consultant is that he travels, maximizes effort in his client's office, returns to his own office exhausted, and then hears nothing about 'what happened'. This can be de-motivating, and the client should make every effort to keep the consultant informed about what happened on the project after his visits.

Finally, eating out alone every evening is not an enviable experience. If

there is a good rapport between client and consultant, we suggest that the consultant's social needs should not be forgotten.

Summary

We've tried to make constructive suggestions towards mutually satisfying relationships between individual consultants and their clients. The essence of such relationships is recognition of the needs of the other party, and respect for those needs. As indicated in the introduction, and by the Managing Editor of Geotechnical News, we would very much welcome discussions that give other perspectives on this topic.

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THESIS
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