

Discussions of “The Care and Feeding of Individual Consultants and Their Clients”

John Dunicliff and Harvey W. Parker

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The following discussions supplement those that were published in Geotechnical News, Vol. 21, No. 1, pp 28-37, and are published in alphabetical order of the writers' last names. These are followed by a discussion for which the writers' names have been withheld at their request. Additional discussions are apparently in preparation and, if received before July 8, 2003, these will be published in the September issue of Geotechnical News.

John P. Bachner

First, the article, while generally excellent, displays in a number of areas civil (in the broadest sense) engineers' customary lack of self-respect. I am not an engineer. I cannot take for granted what so many civil engineers (unfortunately) do. As I see it, perhaps naively, if Earth is habitable 250 years from now, we will have civil engineers to thank. Not architects. Not physicians. Not attorneys. Not accountants. And not clerics. Civil engineers. Does this make civil engineers the most important professionals on the planet? Yes. The most important people? Yes. That being the case, please, start acting like it, at least a little. If more civil engineers did, then more civil engineers would receive the respect they so crave. (If you do not treat yourself with respect, how can you expect others to do so?)

Civil engineering consultants are asked to participate on a team not because of what they bring to the project, but because of what they bring to the proposal: years and years of successful

experience and, often, national or international renown. How much is that worth? A great deal. How much should be charged? Whatever the market will bear. Civil engineers' reasons for charging higher rates in litigation are not, to my mind, those expressed in the article. Higher rates are charged because so much is at stake, and because a good expert can make all the difference. In other words, higher rates are charged — and accepted — because they are justified. The issue is value. (Who cares what your peers charge? This does not mean you should set exorbitant rates, but it does mean that you should be well-compensated for your service and the years spent learning how to provide it well.)

Can we please also address the notion that, while traveling, consultants need to take out their laptops and work themselves to the bone, because, after all, the client is paying for the time. Why? Is this some type of latent guilt complex that manifests itself whenever

a jet engine starts? Believe it or not, when traveling on the client's expense, you can work on the client's project, or you can work on another project (lawyers have done that for years and, for them, it is completely ethical), or you can tend to personal business (which could include sleeping).

Possibly the guilt occurs because of civil engineers' propensity for, as you, regrettably, recommend, time and materials pricing. Why is it that civil engineers feel it so essential to turn themselves into taxicabs? One can easily define a scope of service and submit an all-inclusive fee, to be charged at a certain rate over the duration of the project. When the scope expands, so, too, should the fee, after appropriate notice to the client. This approach has value, and it should help you get over the thought that “\$X is much too high an hourly rate to charge.” Consider, too, that when you sell a service, as opposed to hours, your time is your own. If the service is worth \$25,000 to the client,

does the client care how much time it takes you? Would it be wrong to perform the service in 50 hours? 500?

In a similar manner, I sense from your article the thought that consultants need to hope for certain things to happen, because the client wants to do things properly. Don't hope. Identify what it is that should happen, and then insist that it happen that way. This can be done in a highly professional way, of course, but consultants should certainly lay out what they expect and what they need in order to optimize their performance.

Carrying the notion of respect forward yet another step, if someone intends to use my name in order to have a proposal accepted, I have added huge value from the "get go" and I expect to be paid for it. If my services are employed to the extent envisioned, fine; name usage is considered in the fee. But, if my services are not employed, or not employed to the extent envisioned, payment for use of my name is required. Plus that, I expect payment within 30 days of my invoice being submitted. If my client's client has not paid, my client's collection procedures need improvement. That should be my client's problem, not mine. (Submit

your final report via UPS, COD.)

Your thoughts about contracts are generally sound, except for the notion of "boilerplate." "Boilerplate" is often used to describe vitally important contract elements that a person prefers not to take the time to read. The contract must be read closely, and an attorney is required if one is not conversant with the issues involved. Most good professional liability insurers (Terra Insurance Company is the best, by far, for geoprofessionals) provide contract review services. Nor does good insurance have to be expensive, when the company is put together effectively. (I am told that some Terra insureds that gross in excess of \$50 million per year have paid a net cost of \$0.00 for their liability coverage for the past dozen years. Terra insures a number of sole practitioners. Terra was designed by geoprofessionals!)

Sum and substance: Excellent article, but civil engineering consultants would do far better by having a better sense of who they really are and what they're really worth. They do not have to be arrogant or prideful. They should take comfort in knowing that they are among the most important practitioners

Alan R. Crumley

When I finished reading the article, I had mixed feelings. The points that were brought up were indeed necessary and timely, yet I wondered if these points in fact reflect on a broader theme, the state or standing of our profession within society. It appears inconceivable that minor experts in archaeology, the arts or history would be left to eat alone when in a strange city. The article properly treats this apparently-minor yet symptomatic issue, and others. Perhaps the fact that the article needed writing signifies the problem: we engineers downplay our role, and society treats us as we treat ourselves. Our profession has let others treat us as a commodity, and we have also become our worst enemy by, in many cases, doing the same. So, we should not be surprised when other colleagues or clients select us on

the basis of price or favorable conditions (favorable to the client), with competence or knowledge as a second criterion. We do unto ourselves what we have let others do to us, and we suffer accordingly.

...civil engineering consultants would do far better by having a better sense of who they really are and what they're really worth.

of the most important profession and, as such, being well-paid and well-rested are not just acceptable, but actually the way things should be.

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[John Bachner is also the Executive Vice President of ASFE, Note that this discussion is written as President of Bachner Communications Inc., a business communication/association management organization established in 1971, and not as a representative of ASFE - Ed.]

We do unto ourselves what we have let others do to us, and we suffer accordingly.

Low expectations from colleagues and ourselves lead us to acceptance of schemes or positions that in other professions would be truly laughable. Does anyone really expect a well-known law-

yer to lend his name to an important solicitation for no fee at all? We wouldn't dare ask. If the group that used the lawyer's name won the bid, does anyone really think that the lawyer (in this scenario) would end up getting zero

percent of the pie? Yet, in the engineering community this happens often, and still we go along. Should there not be a code or rule that states that a person of certain earned standing should rightfully be paid for his or her initial partici-

pation, however minimal? The solution requires vision and time. I agree that is unrealistic to expect change in attitudes by insisting on higher fees or terms that will effectively leave the consultant without work. We cannot effect change overnight, but we should learn basic marketing principles. The one I think we should consider is the fact that the consultant cannot appeal to all markets. So, the consultant must define the marketplace. If a (principled?) (audacious?) (sensible?) stand on care and feeding and payment causes loss of the job offer, was the job worth going for? Maybe there are some clients from whom the consultant should not depend for care and feeding.

Jobs that do not meet a set of principles should be refused. Some of those principles could deal with payment terms and minimum payments in the case of successful bids. I suggest that ASFE contract terms be carefully reviewed and adopted (such as proper hold-harmless language, mentioned in the article). Provisions such as retainage and unreasonable audits should be deleted, not 'deleted if at all possible,' but deleted. If the consultant takes the time to insist and explain, I predict he or she will prevail in most cases.

The article serves as a valuable guide on expectations of clients and consultants. It needed to be written. All of the

topics mentioned are important and merit review, and the authors have basically listed many topics that must be addressed in a consulting practice. I suggest that a second article be developed that addresses the proper hiring and paying of consultants by clients. This second article would require dealing with fair pay and fair contracting as the first topic, with terms to be negotiated well before 'making a worthwhile contribution.'

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William W. Edgerton

I enjoyed reading the article by Dunicliff and Parker on "The Care and Feeding of Individual Consultants and Their Clients." I'm not sure that the appropriate issues are to "fully appreciate the value of consultants" or how "to treat consultants properly", and much of the article seems to imply that Individual Consultants hold a special position in the industry, and thus deserve to be treated "differently". In my opinion, an individual consultant holds a position somewhere between that of an employee and a firm, and the useful exchange of ideas that this article has generated has identified issues related to the employment of individual consultants that differ from those related to the employment of either employees or of engineering firms.

It is useful to delineate ethical issues, as the paper does. Particularly, those related to exclusivity and conflicts of interest, and how they should be handled. These issues are really not that different from those faced by consulting firms. Such firms can and do team with prime consultants on a non-exclusive basis, and when that approach is taken, they recognize that their contribution to the proposal effort will be limited, and, should the team be successful, their participation in the work may be more lim-

ited than if they played a major part in securing the work. Clearly if ideas are developed during the proposal process as a strategy to win the work, then it would be inappropriate to share that information with other teams. As some of

posed methods, including engineering work done in advance, either to demonstrate qualifications or to identify construction scope to enable the preparation of construction cost estimates (e.g., for design-build proposals),

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the commentators have indicated, this is a business decision that is within the realm of each individual to make. As long as all parties are apprised of the relationships, there should be no issue.

With respect to fees for proposal work, it has become fairly standard in the industry that information on resumes (CV), project descriptions, and proposed work scope are provided for free, i.e., as an investment made in securing the work. This should hold true for individual consultants as well as firms. If the consultant is serving only as a technical expert, this effort should not be too burdensome. Information, text, drawings, and calculations on pro-

posed methods, including engineering work done in advance, either to demonstrate qualifications or to identify construction scope to enable the preparation of construction cost estimates (e.g., for design-build proposals), should be compensated, whether the provider is an individual consultant or a firm. It is reasonable for this work to be done at a lower rate (or multiplier) treating the difference as an investment. In some cases, this investment can be recouped if the team is successful.

Contractual Provisions

I agree with the authors that individual consultants should not be required to furnish workers' compensation insurance, unless they hire direct employees. (Most don't.) They should however be required to furnish automobile liability insurance in the event that they will be compensated for any time spent driving a vehicle. The issue of Professional Lia-

bility Insurance depends upon whether the individual consultant is providing advice and consultation, and another party is responsible for the work product, in which case the individual consultant should not be required to furnish that coverage. If, on the other hand, the individual consultant is producing a work product for which he alone is responsible, then the need for errors and omissions coverage is clear, and he should be required to furnish it. If, because of high cost, they do not carry or cannot obtain such coverage, then they should not do this work.

Clients should not be required to compensate anyone for flying first class or business class, especially with the cost of such fares typically over two times the cost of coach class tickets. For relatively long flights, I do not object to authorizing purchase of upgrade coupons so that such consultants can fly more comfortably.

With respect to the timing of when the individual consultant should be paid, I think that is similar to the logic for the E & O insurance:

- If the individual consultant is providing advice and consultation, and another party is responsible for the work product, the individual consultant should be paid within 15 or 20 days from when he submits an invoice, and not be required to wait until the end client pays the prime consultant for the work.
- If, on the other hand, the individual consultant is producing a work product for which he alone is responsible, then he should be paid only after the

prime consultant is paid for the work, thus allowing for the end client's evaluation of acceptability of the work product.

In my opinion, retainage should not be held on any engineering consultants, and thus I would have a hard time recommending that it be held as a pass-through to individual consultants.

Reimbursable expenses should comply with the rules and policies of the client agency. Individual consultants should not be singled out and treated differently than any other staff or consulting firm working on the job. I recognize that many agencies have a prehistoric view of the costs associated with staying in a hotel, dining out, etc. In such a case, the consultant may incur more costs than can be compensated through the contract provisions on reimbursable other direct costs (ODC's). Nevertheless, the proper way to handle this is to raise the hourly rate to cover the anticipated amount. Recognizing that this is purely a guesstimate, what this practice does is attempt to modify the behavior of the client's purchasing staff, at least to the extent that they're trying to achieve cost-effective contract mechanisms. (Many aren't.)

Fees

I don't agree that higher rates should be charged for legal work. An hour of a consultant's time is worth what it's worth, whether it's sitting in a deposition, or doing calculations at the office. It may be worth a different rate if it were performed in an area where there may be some extra risk to personal safety, e.g., war zone. But despite some protes-

tations to the contrary, a courtroom does not yet qualify. If the individual consultant is precluded from taking assignments in order to be sitting "on the bench" ready to be called, then he should be paid for the loss of opportunity. How much he should be paid depends on whether he can use his time doing something else. Sitting in the hall at the courtroom, you can't. Hanging out at the office, you probably can. So it's a judgment call.

Travel time falls into the category of "to be negotiated" with the client. From my perspective, if the individual consultant has to travel for over 25% of the length of time that he works at the location, then the travel time should be billed. (E.g., 8 hours travel for less than 32 hours of billable work.) If the travel is less than that, then he's receiving a reasonable amount of billable work, and just has to travel to do it. You should figure this out in advance with the client, and establish rates accordingly. (I typically don't charge travel time, and try to arrange to do it outside of work hours when I'm not losing billable work on other things. The exception is when it takes more than 8 hours to get somewhere. Then I try to do billable work on the airplane, or if not, charge a portion of the travel time to the client.)

I look forward to the authors' closure on this topic.

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J. Duncan Findlay

The authors have touched upon a subject for which there have been innumerable lessons learned, and little by way of published guidance. The original article and the commentary it has inspired should remedy that situation.

In the order of the original article sections, the following commentary suggests a few technical "business deal" thoughts about the topics covered

by the authors.

The Client

This discussion touches somewhat upon the standard of care. That is, the mere act of engaging an expert consultant may represent the standard of care under circumstances where there is reason to believe the Client does not have the expertise needed within its own

forces. In terms of sharing risk of loss however, it has been my experience that consultants often do not carry professional liability insurance, which significantly reduces the probability of obtaining any meaningful indemnity, should the consultant's advice, if taken, prove to be deficient.

Both Parties

I would add achieving a fair allocation of risk of loss as an additional objective.

First Contacts

I would suggest that if available, the Consultant should attempt to obtain a copy of the Client's proposed contract or agreement with the Consultant at this stage, to enable the Consultant to assess risk allocation provisions of the relationship, and other expectations such as insurance requirements, standard of care, general terms and conditions including conditions of payment.

The Consultant should also now be evaluating the potential for conflicts of interest and project financing and payment risk. The Client's appetite for risk should not be confused with that of the Consultant.

I would suggest that a written teaming agreement be given consideration, if appropriate, to clarify understanding re-

The authors are not lawyers and should qualify their remarks accordingly.

garding a number of these issues.

Contacts During Proposal Preparation and Subsequent Negotiations

The Consultant should have the right to review any proposal before it is submitted to ensure comfort with representations, if any, that relate to the Consultant or his/her services. There may be copyright issues to consider, if the Consultant is writing, designing, or otherwise producing original work in connection with a proposal effort. This may be of more significance in the case of a com-

petition for a design/build project. Clearly the Consultant's expected level of effort for the proposal should be specified.

Contractual Issues

General

The authors are not lawyers and should qualify their remarks accordingly. Additionally, it would seem a good practice to suggest that contractual issues are often complicated and that seeking the advice of competent counsel, licensed in the location of the project, would be a good idea.

Insurance and Indemnity

I would think that, as presumably the Consultant is operating legally as a business, licensed, etc., that it would be reasonable to expect the Consultant to carry insurance including auto liability. Limits are typically subject to negotiation.

Professional liability insurance coverage under the umbrella of the Client is typically available, but probably not for free. The cost of this protection may be considered in pricing the consulting contract. Additionally, I would be particularly cautious with respect to possible claims between the Consultant and the Client, as coverage under the Client's professional liability insurance policy, or alternatively under project wrap-up policies, may not be available for a dispute between consultants on the project. Unfortunately, an otherwise uninsured Consultant can be left exposed under these circumstances.

Allocation of risk of loss under the Consultant contract is perfectly reasonable, within limits, and I would not expect these provisions to be deleted. As the authors suggest, providing indemnity with respect to damages proximately caused by the Consultant's own negligence is probably the norm. I would point out that attorneys' fees incurred by a contractual indemnitee (client) in defending a claim precipitated by the indemnitor's (Consultant's) negligence is also typically a

damage for which indemnity will be required.

Travel

It is unlikely that a Client will be reimbursed for other than the lowest rates when contracting with a governmental entity.

Miscellaneous Issues

I would suggest obtaining agreement on the form of invoice up front, and avoid any potential for delay in payment due to use of an unacceptable format.

Fees

Hourly and Daily Rates

Although the Consultant's rate should be in line with his peers, some consideration should be given to the context. For example, a Consultant working out of his home, carrying no insurance, may not be able to persuade a Client that his hourly rate should mirror that of a "peer" working in a large design firm. The former has an entirely different overhead structure, and may not be able to respond to concerns about indemnity in the same manner. On the other hand, the Consultant working from home may offer such unique expertise that these issues don't concern the Client.

Legal Work

Under any and all circumstances, get a written fee agreement.

The Client's Professional Issues

I would include also the importance of understanding the political and/or financial issues that may impact the project, as in any large (particularly public) works project your project may be impacted.

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S. Scot Litke

In the article, *The Care and Feeding of Individual Consultants and Their Clients* authors Dunnicliff and Parker provide a framework for “doing business” as a consultant. The roadmap provided is consistent with the efforts of a new entity called the Foundation for Professional Practice (FPP). This organization has recently come under the ASCE umbrella. It is a new iteration of a program originally offered through ASFE, and previously known as the Institute for Professional Practice. The overall goal of FPP programs is to assist consulting engineers in their efforts to professionalize the business aspects of engineering practice. Unfortunately traditional engineering education is rather short on providing this kind of real-world insight. This holds true at the graduate as well as undergraduate level. We are all familiar with the oft spoken lament that young engineers coming out of school don’t have a “clue” as to the realities of the business of engineering. This lack of practical know-how often leads to a

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rather naïve entrée into the world of consulting and has carry-over as one attempts to function effectively at what is often the “bottom of the project food chain”. Professional engineering is after all a business with all that implies. The sometimes less-than-scintillating chore of understanding and manipulating (modifying) contracts, considering insurance coverages, protecting one’s rights and intellectual property, are immediate examples of the exigencies of professional business practice, not to

mention the even more mundane demands of business record keeping, chasing outstanding invoices and the like. The hard reality is that if one does not pay attention to these non-design oriented details, one winds up without a “practice” to practice.

Dunnicliff and Parker draw attention to an important aspect of successful design practice, that being the “business” of being an engineer.

For information about the ASCE’s Foundation for Professional Practice program contact Walt Marlowe at wmarlowe@asce.org

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[ADSC is a founding member of the FPP’s Advisory Board. Scot Litke is the ADSC representative to this body—Ed.]

W. Allen Marr

Articles on issues of professional practice, such as this one, should appear more frequently and be discussed openly. Such exchanges provide an effective way for our profession to define itself and establish what we mean by terms like “professional practice” and “standard of care”. This excellent article provoked a few comments and questions that I offer in the interest of stimulating more discussion.

The authors state that one reason a Client may engage a Consultant is to attempt to reduce professional liability as in “we asked the opinion of an expert!” The insinuation is that having the opinion of an outside expert may in and of itself reduce the professional liability of the Client by spreading it to the Consultant. I doubt this to be case. Professional liability cases tend to seek out those with the money. Most individual con-

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sultants do not carry professional liability insurance nor do they amass sizeable assets; therefore, a Consultant does not present an attractive target to a litigant. It is also doubtful that the Client could successfully duck responsibility in the US legal system by passing it to an outside expert. On the other hand, Clients might better reduce professional liabil-

ity by asking **and following** the advice of a Consultant to provide peer review to identify errors and omissions before they present a professional liability issue. Avoiding the liability is much more cost effective than attempting to spread liability.

The authors indicate that Consultants want professional satisfaction from making worthwhile contributions, fair pay, a cooperative relationship with other engineers, and fair treatment. I would add that they also want challenging work. Most of the Consultants I know are driven by a pure love for their professional area of expertise. Many of them put in far more hours on challenging work than they ever bill for. Their passionate pursuit of knowledge and truth can add great value to the project.

What if the Client is not paid for the services, should the Consultant be left

out too? Is a paid-when-paid policy a professional approach? The agreement between the Client and Consultant should clearly address the terms of payment.

The authors advocate charging higher rates for legal work. Many attorneys frown on this practice because it makes the expert look like he/she is being paid more to testify than to do engineering. The authors justify charging more because the expert has no participation in the scheduling. Yes, there are disruptions produced by legal work but

there is also flexibility to study the documents, prepare your written position, study the work of others, and learn new things that offset these inconveniences. Perhaps we could resolve this issue by doubling our professional fees for all work, not just for legal work.

Clients understand that their success depends on good relationships with their clients. The same is true for their work with Consultants. Some acknowledgement of the consultant's contribution or expression of thanks goes a long way to foster good long-term relation-

ships. A satisfied Consultant may recommend the Client on some other project. Too often, the Consultant receives comments about the expense of his efforts without any acknowledgement of the benefits.

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David Thompson

Once again John and Harvey have brought into the light important and controversial issues regarding our professional practice, as they have done frequently throughout each of their careers. I have many strong opinions, which I will try to condense in this discussion. I comment from three perspectives:

- As a "Client," from the perspective of a past CEO and current Chairman of a mid-size engineering and science firm.
- As a "Consultant", frequently engaged as an expert witness and consultant by other engineering firms, lawyers and insurers.
- As an "Insurer," from the perspective of Chairman of a professional liability insurance company.

Proposal Phase Activities

General

- *Single Point of Contact* – This is imperative for meaningful integration of the Consultant's input to the project. The point of contact should be able to understand the impact of the Consultant's input. This will generally be the Proposal Manager except on large multi-discipline proposals where it may be the Discipline Manager.
- *Teaming Agreement* – Certain items should be clear from the beginning regarding an assignment so as to avoid misunderstandings. For this

purpose I advocate a brief Teaming Agreement letter. At a minimum the letter should confirm the Consultant's exclusive or non-exclusive participation, hourly billing rate, general scope, minimum total fee, and an affirmative commitment by the Client to retain the Consultant under mutually acceptable terms, if the Client is awarded the project by the Owner.

- *Bait and Switch/Brain Picking* – Unfortunately, this unprofessional and unethical practice occurs in a few Client firms. Hopefully the Teaming

should be clearly stated in the Teaming Agreement and confidentiality should be assured to the Client, if requested. The Consultant should provide a standard package of qualifications and technical approach to all Clients. Due to real or perceived conflicts of interest, the Consultant should not participate in Client proposal strategy discussions. The Client may provide a copy of the full proposal to the Consultant (particularly if the proposal is in the public domain), however, for private projects the proposal may not be

I have serious concerns that the design professional industry has not yet figured out how to succeed in this new design-build business model.

Agreement will evoke second thoughts. Alternatively, the Consultant must be quick to learn which clients are interested in a true professional relationship.

Exclusivity

This is largely a business decision based on the Consultant's ongoing relationship with long standing Clients and the Consultant's market position and strategic influence over the success of the project.

- *If Non-Exclusive* – The arrangement

shared. It is probably not appropriate to compensate the Consultant during this phase, since the work should be minimal and some contribution to the proposal effort by the Consultant is appropriate.

- *If Exclusive* – Again, the Teaming Agreement letter should clearly confirm the situation and assure the Client of confidentiality. If requested the Consultant should fully participate in strategy sessions and contribute unique technical input that will differentiate the Client's team from

the competition. Compensation should be provided to the Consultant for work above the standard level defined in the paragraph above. The Client should share drafts and a final copy of the proposal with the Consultant.

Design-Build Proposals

I have serious concerns that the design professional industry has not yet figured out how to succeed in this new business model. Typically, the design professional is requested to provide huge resources (largely at-risk) during the proposal stage, in the hopes of winning the project and being made whole (see Ed Plotkin's discussion for a typical model: *Geotechnical News*. 2003. Vol. 21, No. 1, March, p.32). Unless the professional is investing small resources in the proposal, or unless they win a large percentage of their proposals, or they can bill higher rates after award; it is tough to show a profit on a full book of business (including the lost jobs). Consultants and Clients should approach this market with caution.

Contractual Issues

- *Written Agreements* – If the project team is selected a written Agreement between Client and Consultant is useful to bring to the surface, for discussion and resolution, issues such as scope, fees, payment, risk allocation, insurance and many other items. Contracts force communications and minimize unrealistic expectations.
- *Flow-down Clauses* – Many Owner contracts include mandatory flow-down clauses that are unreasonable and unfair when imposed on a Consultant. They should be waived with the approval of the Owner.

Risk Allocation

The Consultant should be obligated to perform services in accordance with the normal standard of care in the profession. Further, the Consultant should be responsible for any negligence on its part that contributes to losses incurred by the Client. A limitation of liability clause, limiting the Consultant's liability to its fee or some mutually agreed

amount, is appropriate assuming the Consultant's fee is a fraction of the Client's total fee.

Insurance

Some professional insurance companies will not extend a Client's coverage to an independent contractor (and some will). It is likely that a Consultant will be clearly identified as an independent contractor to avoid deduction of payroll taxes and inclusion in benefit programs by the Client. This can create a problem. In the event of litigation, it is likely that any insurance company will provide defense for the Consultant (so that they won't testify for the plaintiff), however, indemnity may not be provided unless an endorsement was obtained initially. Although the professional liability insurance market has "hardened" significantly in recent years, coverage is still generally available for premiums that are equivalent to 3 to 5 days work.

Consultants should accept a reasonable level of exposure for their work and should finance their risk appropriately.

Fees

- *Rates* – Consultants (and Clients) should charge for the value of their services. The value of a service may vary with the project and other factors.
- *Time Accounting* – Hourly rates (vs. daily) are more flexible. Accounting for time in less than ¼ hour increments (as is sometimes requested by attorneys and insurance companies) is a waste of time.
- *Premium Rates* – The same hourly rate should apply to all time billed, including time over 8 hours per day and on weekends. The exception is time associated with testimony at depositions or trial in which case a minimum 50% "combat pay" premium is barely appropriate to cover wear and tear.
- *Payment* – Consultants should be advised when to bill in order to get into the Client's billing cycle. Payment should be made immediately upon receipt from the Owner, but no later than 60 or 90 days (as agreed) from the invoice date.

- *Retainage* – Inappropriate for any professional service contract.
- *Travel Time* – Should be paid at standard rate for all time up to 8 hours per day, including weekends. Hopefully the time would be utilized as effectively as possible. If not, it should be considered compensation for time that would otherwise be available for other assignments.

Direct Expenses

- *Air Fare* – Perhaps it is my Yankee heritage, but in consideration of the price differential, I find coach class seating perfectly acceptable, even though I am 6' 3" and "of an age". With thoughtful packing, I can generally be fully functional with reading involving project manuals, reports, deposition transcripts and other 8½ x 11 format documents. Further, I find the additional \$2,000 to \$3,000 for a first class ticket hard to justify as a Consultant and unacceptable as a Client. (A recent price check on a roundtrip fares from Boston to San Francisco shows coach pricing at \$476.50 while first class prices at \$3,873.50). Perhaps suitable for Ralph Peak or equal, but not the average Consultant.
- *Documentation* – Reasonable accounting and documentation of expenses should be expected as a part of running any business and Consultants should provide appropriate documentation for direct expenses incurred.

Conclusion

Many areas remain unmentioned in this discussion due to time and space concerns. I will conclude by stating a successful professional relationship between a Client and a Consultant must be built upon mutual respect, open communication, and a sincere interest in providing the Owner with services which will achieve the project goals.

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Representatives of a U.S. Federal Agency Which Engages Consultants on a Regular Basis

We want to thank the authors for their effort in producing a most useful document which shares their experience and provides a first class vehicle for discussion. The authors have provided some deserved light on the client /consultant relationship. For very pragmatic reasons, this relationship deserves attention. The quality of this relationship and

services. Hence, it becomes almost a “take it or leave it” matter on the part of the consultant. In our experience, most individual consultants have been willing to exercise patience, and tolerance, with these requirements in the interest of public service (and being personally involved in significant public works projects).

play in improved communications if they would ask, rather than wonder. This applies to all facets of the relationship and the status of projects. One important aspect of the relationship that often goes unattended is a full understanding of the client’s desired outcome from the consultation. Too often, assumptions made by consultants miss the mark. Simple questions from the consultant about what is possible and what is desired could go a long way to avoid the appearance of insensitivity and to create a satisfying relationship. As the authors indicated, the pace of day-to-day activities in the client organization may leave matters that are important to the consultant unattended. As a practical matter, more consultants than clients will read the authors’ words. For this reason, this advice to the choir may be more useful.

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associated communications are very important to the success of projects. From a government client perspective, we offer the following general observations.

Variations between how government agencies interpret procurement rules, or exercise creative latitudes, may cause some confusion and “heartburn” for individual consultants. Federal agencies all operate under the Federal Acquisition Regulations (FAR), which contain strict requirements in some areas and are more open to interpretation in other areas. These restrictions will generally impact the flexibility of contract form and content, require some level of comparison or competition in obtaining the service, require substantiation of fee, provide boundaries for modes and time of travel, and define, or limit, expense reimbursement and documentation requirements. Many of the topics enumerated by the authors can be affected, i.e., pre-engagement negotiation, pre-engagement communication, use of a “competitive” selection process, pre-award information, close out billing requirements, etc. Much of this is not under the control of the individual, or organization, seeking the consultant

When a consultant is engaged for the purpose of providing professional opinion (advice), he should not expect to necessarily have the last say on an issue. This may require introspective consideration by the consultant of whether it is pride or a technical basis that motivates him in believing “his way is best.” The client, who is exercising the responsibility of a Professional License in overseeing and signing designs, has the last word (and direct liability). If an individual consultant believes that his expert opinion is not being properly considered, he has the choice of continuing or withdrawing from the project. If such improper consideration will result in endangerment of the public, the consultant’s follow on decision to withdrawing is whether to pursue the issue with others (higher organizational authority, the owner, regulatory or government bodies, etc.), or “go public.” A similar course of action is available if the consultant believes that excessive public monies are being expended.

The authors have pointed to the importance of communications. One aspect of communications might benefit from some added emphasis. That aspect is the potential role the consultant could

On the matter of eating alone, while it helps communication and rapport on the project for the client (or staff) and consultant to interact personally in some level of social activities, the professional engagement is fundamentally a business arrangement, not a social event. For Federal Government personnel who are instructed to “avoid the appearance of” conflicts, ethics issues from after hours socializing may arise in two ways: 1) accepting gifts over a minimum value, if the consultant is buying, or 2) appearing to curry favor or influence decisions, if the government staff member is buying. The government employee will be buying with his own funds, and not a corporate expense account. While “self treat” occasions are allowable, they may still give rise to the appearance of trying to influence the views of the consultant.

We appreciate the opportunity to provide these brief comments. This sort of exchange should be valuable to both consultants and clients.