Discussions of "The Care and Feeding of Individual Consultants and Their Clients"

John Dunnicliff and Harvey W. Parker

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The following discussions were received before the deadline for this issue of Geotechnical News, and are published in alphabetical order of the writers' last names. These are followed by discussions for which the writers' names have been withheld at their request. Additional discussions will be accepted for the June 2003 issue, for which the deadline is April 11, 2003. Discussions that give other perspectives on client issues will be particularly welcome. They should be submitted to geotechnicalnews@bitech.ca. The authors' closure will be published in the June issue.

Sherif S. Afifi

I enjoyed reading the article. I am glad that the authors took the time to address some aspects of the inter-relationship between client and individual consultant, which so far has not been given much discussion. I had the opportunity to serve as *client* for a considerable part of my career at NTH Consultants and before that at my previous employer, Bechtel. I now serve at NTH as an in-house consultant. While I have so far never been an *"Individual Consultant",* I have worked extensively with many during my over 35 years of practice. I have a few comments inspired by this worthy article.

The issue of exclusivity is very tricky. If the client decides to go for a proposal and wants the individual consultant to be part of the team, I believe the consultant should be paid for the time involved *in brainstorming and strategy formulation*, just in the same way client employees are paid for that effort. In this case the consultant is exclusive *by definition*. The consultant may face a dilemma later if his/her client does not get the project. At some point during the project life, the consultant may be requested to join the team that got the project. Under the circumstances, unless the consultant is on some sort of a retainer with the client that did not get the job, it seems to me that it would be appropriate for the consultant to work for the team that got the project. However, the consultant must be careful not to release sensitive information on pricing and/or any other proprietary matters that he/she may have come in contact with during proposal preparation.

On the other hand, if the client believes that he knows exactly what he wants and that a specific consultant will fulfill that need, then all the consultant will do is provide a resume for inclusion in the proposal. In this case the consultant cannot commit to any exclusivity.

A problem develops when different clients ask the individual consultant for different levels of effort during proposal preparation and none of them want to pay for the proposal effort. Some just request a resume and others ask for attendance at meetings. If more than one client ask the consultant to attend strategy meetings, the job becomes difficult, if not impossible. A consultant cannot, in effect, be on two teams by virtue of participating in strategy formulation with two opposing groups. Further, the consultant cannot favor one group by attending their strategy sessions, while just providing a resume to the other. In this case, I would advise the consultant to insist on providing resumes to everyone and stop at that. I would not even lunch with any side during the competition period.

Relative to fees, I fully support an awareness program to make sure clients do not unnecessarily “squeeze” individual consultants. In many cases, the consultant’s fees and other expenses represent a drop in the bucket compared to project costs. Most of the time, what is saved by reducing the individual consultant’s fees can hardly be recorded on project balance sheets. The same applies to payments for services rendered. The individual consultant should be paid at a set time whether his/her direct client has been paid or not. Most of the time, delays in payments result from client/prime consultant project management issues, in which the individual consultant has no involvement and has no influence in any way. Thus it would be good practice to pay the individual consultant for completed work on a set schedule.

How the consultant is treated under the circumstances entirely depends on the culture of the organization for which the consultant is working.

Regarding the social treatment of the traveling consultant, I note that, unfortunately, there are no uniform rules of business etiquette among companies in this area. Thus it is not uncommon that a consultant, displaced from his/her family and environment, is requested to travel coach, sleep in a modest hotel, not to charge for travel time, and/or be left alone day after day past working hours in a town that is hot his. How the consultant is treated under the circumstances entirely depends on the culture of the organization for which the consultant is working.

In closing, I like the article. It is time that someone put all that in print. I congratulate the authors.

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Ray Benson

The article on individual consultants and their clients brought back many memories, mostly enjoyable but some regrettable, as this writer has filled both of these roles for many years. In recent years however, the involvement has primarily been as an individual consultant. The following remarks are therefore made from a combined perspective, recognizing that the request in the article is for comments from a client’s point of view.

The use of individual consultants or Review Boards can be very beneficial to projects provided a frank, open and cooperative relationship exists between the consultant and his client, and with other involved parties in the project. Involvement of consultants may be for specific problems which may exist, or may be for continuing but periodic reviews of a major project involving years of investigation, design and construction. The client usually wishes to have an independent review and assessment of the project, which may include engineering correctness and quality, cost and schedule, or be restricted to a particular component. Thus, there should be clear, written terms of reference, which are accepted and understood by all concerned. Naturally the consultant wishes to have a cooperative relationship, such that a successful project results with benefits to all. For this reason it is essential that the consultant has a clear understanding of all the issues, and should spend sufficient time to ensure such an understanding exists. The benefits can be dramatic and most are well explained in the article. Perhaps one that the writer would emphasize is the discipline that is brought to the project as the result of preparation for meetings with the consultant or Review Board. Such preparation can be exhilarating for project engineers by showing that the project is well designed and all important aspects have been considered. Additionally, consultants can provide alternate solutions for problems that have not yet been considered but have worked elsewhere. It is vital that the people involved be open-minded, maintaining a view that benefit to the project is the priority. Such is not always the case, but solutions to such problems can be obtained with tolerance and understanding. The project and the client will benefit. The client has the right to expect the parties involved to act cooperatively and enthusiastically, using their combined talents and experience in the best interests of the project.

there should be clear, written terms of reference, which are accepted and understood by all concerned

The article covers the important issues in consultant/client relationships. At the risk of repeating, there are several issues that can result in frustration for the client. These include consultant reports that are vague in conclusions and recommendations, reports that are received too late to take what may be necessary and immediate action, and reports that do not cover key items because of an inadequate understanding of issues.

Frustrations for the consultant include a possible lack of key information which may have existed but was withheld and/or was not provided ahead of the meeting; contracts with unreasonable liability clauses and hold-harmless expectations; payments that are withheld until equivalent payment is received by the client, thereby treating the individual consultant as though he were a major company; and the purported use of consultants in projects that proceed but do not include the consultant with whom a preliminary agreement has been reached - a grievous matter that occurs too often.

It is vital that the people involved be open-minded, maintaining a view that benefit to the project is the priority

The involvement of individual consultants or Review Boards can by very beneficial when the benefits of their experience are used to favourably impact projects or problems. Such benefits can result in major savings and improved schedules, and can be a source of strength for all concerned. Such expectations arising from the use of consultants are not unreasonable, but can only be achieved if all parties are determined to work together in the best interests of the project. The advice and recommendations that may be gleaned from the authors' article can help to ensure that such benefits are obtained for the project and the client.

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Raymond H. Coe

I read with interest the article by Dunnicliff and Parker concerning individual consultants. It may be worth emphasising the importance of individual consultants checking the Professional Services Liability Insurance (Professional Indemnity Insurance in the UK) that will be provided by the client. Such policies usually cover the insured against errors, omissions and legal liability.

It is often assumed that the client will provide insurance cover under his own policy that will fully indemnify his consultant. This is not necessarily the case. Some clients may cover themselves against the errors of an independent consultant but not the consultant himself. Under subrogation rules the insurer is quite likely, subsequently, to seek redress from the independent consultant which will not be a pleasant experience for the latter. Although this may at first sight appear unhelpful there are in fact reasonable reasons for it. Clients who are operating as consultants or contractors and bearing the costs of their own liability insurance do not necessarily expect to bear what they consider are the normal and proper trading costs of those who are operating as full time sole traders. However where an individual is semi-retired or only works in a part time capacity then clients normally appreciate that such individuals cannot be expected to carry their own liability insurance

The cost of such insurance will depend, amongst other things, on:

- the type of work being undertaken,
- the level of cover required,
- the size of the excess,
- the frequency and size of past claims,
- cover required for work already completed or currently underway and
- the particular insurer

Premiums are rising rapidly and apparently increases of 50% to 200% can be expected. This is not because consultancy is regarded as a bad risk but because, over the last 10 to 15 years, premiums have fallen to far too low a level in relation to the costs of insurance cover.

Even an increase of 150% to 200% will only bring the premiums back to the average of the last 20 to 25 years. The position in the US is similar and they are experiencing large increases in the excess imposed by the insurer. In Australia it can be very difficult to obtain cover at all.

In these circumstances an independent consultant may have little choice but to rely on his client's policy. Where this option is taken the individual consultant should ask for written confirmation of the cover provided. The wording should be carefully scrutinised. Is the client fully indemnifying the individual consultant against his errors and omissions or will the client's policy excess also apply to the individual consultant? A large client might have an excess of £0.5m, possibly more. If it does the individual consultant may not be as well insured as he thinks; any cover offered will be worthless.

the individual consultant may not be as well insured as he thinks

In conclusion, whether you are seeking professional services liability insurance or relying on the cover provided by those for whom you are working, it is vital to obtain professional advice on its adequacy. In the UK the Institution of Civil Engineers maintains a register of insurance brokers who can arrange professional services liability insurance.

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Bengt H. Fellenius

Dear John and Harvey,
I like your points and they are well stated. I have a few comments on your views, as follows.

With regard to fees, a point you did not make is that the Individual Consultant is usually a person who is very active professionally, spends time writing up the experience in journal articles, invests considerable money and time in attending conferences, and generally allocates long hours to reading journals and articles in order to maintain the level of expertise that he is offering his clients—necessary because the very reason for his clients engaging him is that he has that up-to-date expertise. He may have little overhead for office rent, secretarial assistance, and accounting efforts, but I think it is a conservative estimate that his time spent on professional activities amounts to a portion of the working year that is greater than the portion charged to projects. Therefore, while the Consultant's hourly fee may be higher than the hourly fee charged by an "upper echelon" consultant working for a large engineering company—often the client of the individual consultant—the yearly take-home pay of the individual consultant is probably a good deal smaller.

I disagree with the authors' approach to the rate charges for legal services

With regard to the rate for legal services, as opposed to the rate charged when working for engineering clients, it is true that, unlike other assignments, the consultant's usual rate is lower, much lower, than the fee charged by the lawyer for his services, frequently even lower than the fee charged for the services of the junior lawyer on the team. Moreover, the lawyer does not turn off the meter when continuing to work in the evening. Therefore, the engineer looks cheap in comparison, or rather his rate does, and there is room for bumping up the rate when the assignment is for legal work. However, I disagree with this approach. The consultant's time is what Lincoln called "stock in trade" and it should be provided at the rate it is worth and unrelated to the client's own rate.

Your rationale for applying a higher rate for legal work is that an assignment to appear as expert witness often entails having "*no participation in the scheduling*" and involves having "*to put other work aside at short notice*". This rationale is weak. Having to be "next day" available for a week or two while the court procedures plod on is frustrating, I agree. However, applying a higher rate to the hours charged when, finally, one gets to provide the services, easily results in the impression of one being opportunistic and not very professional. Instead, I prefer to apply an "*on-call*" or "*stand-by*" rate to such assignments. That is, days spent waiting for the whistle to go off are charged at a per diem rate, which rate is then smaller than the usual rate, say one-third. This approach has the spin-off benefit that often the lawyer-client then finds it much easier to be specific about the day he needs one to be available.

With regard to your "miscellaneous" suggestion that the client should not restrict the scope to "*Do you agree with the predicted pile capacities?*", I assume you mean to recommend that clients should consider using the abilities of a consultant in a wider context than the client's immediate need. For, surely, you do not mean to imply that a consultant, be he willing to accept a limited scope of work, should contemplate to answer such a question? A consultant should be very careful not to ever to sign off on somebody else's work.

because the very reason for engaging the consultant is that he has up-to-date expertise, his time spent on professional activities is greater than the time charged to projects

The proper question should be "*Can you corroborate that the assumptions and procedures used in our project calculations conform to generally accepted principles, are relevant to the project and site conditions, and that appropriate relations are used*". One must never take on liability for somebody else's calculations of capacity, settlement, factor-of-safety, etc., but one can express an opinion, agreement potentially, with how they are made. Or, be paid to redo them and report the results. However, the latter is not restricting the scope of work.

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Edward S. Plotkin

This article provides the reader with an insight of the smaller consultant's view of doing business in the harsh world of the engineering market. I am aware of the divisions of responsibilities in the participating consultants' hierarchy. It does seem that individual consultants are often found high in responsibility, and usually are deemed low in the hierarchy.

My experiences with a small construction subcontractor, a major heavy constructor, a small consulting engineer, a large national consulting engineering firm, a public works agency as Commissioner, and now as an individual consultant, provides me the opportunity to observe the various facets of our industry treatment of the individual consultant. Most large consulting firms have within their staff, the capability to provide the services inherent to major projects. The determination for retaining the outside individual consultant varies from need for expertise in special disciplines to acquiring specific knowledge of local conditions. Often political motives can influence the decision for retaining certain individuals, e.g., local resident, prior experience with client agency, reducing the competitions' advantage, familiarity with local institutional obstacles, and compliance with specified participation goals.

Another area of an individual consultant's concern is his participation on design / build teams. The work necessary to provide the proposal is substantially greater then that for the standard design for a bid / build contract. The consultant will incur expenses and consume work hours for developing the "best" approach for the project. This investment can be crucial for the team's success. An accepted practice has been for the team to reimburse the consultant an agreed bare base fee with an understanding for receipt of the multiplier balance upon winning the job.

The issue of confidentiality is greater for the individual consultant when participating on multiple design / build teams. Usually, this practice is avoided since the perception of conflict of interest is too great. Large consulting firms have obligated separate members to work with different teams, clearly defining the confidentiality issue. An individual consultant, unless schizoid, could have a problem.

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John Ramage

The authors have done an excellent job of framing the contractual and professional relationships necessary to provide quality consulting services that are meaningful to the client and satisfying to the consultant. I would like to offer comments based on my 30 years of experience working for a large professional services organization.

First, the key points raised in the article apply to any effective professional relationship. Individual consultants, specialty firms, or any other professional subcontractor would ideally like to work in the environment (contractually and personally) that the authors describe. Most important to an effective professional relationship is maintaining open communication among the project team at all stages. However, if consultants do not commit to an exclusive relationship with a potential client during the proposal and procurement stages, then communications must be limited.

In my experience, most contracts between clients and individual consultants take "the easy way" by including all provisions of the client's contract with the owner in the individual consultant contract. There are several contract provisions that are particularly onerous to the individual consultant.

Professional firms would ideally like to work in the environment (contractually and personally) that the authors describe

- ***Insurance*** – Consultants typically provide specialty advice and recommendations to their clients, who then can use, reject or modify that advice in products (reports, designs, etc.) delivered to the owner. The consultant's client has the contractual relationship, and therefore the professional responsibility to the owner. Unless the consultant is providing a "stand alone" work product directly to the owner, professional liability insurance can be waived without impact to the client.
- ***Indemnification*** – Professional services organizations spend considerable efforts in limiting indemnity/warranty provisions in their contracts with owners. In fact, these provisions, if onerous, have resulted in professional firms "walking away" from projects. I would strongly recommend that individual consultants "walk away" from a contract containing provisions that make them responsible for acts other than those under the consultant's direct control.
- ***Payment*** – Consultant fees are usually a small percentage of the client's total billings to the owner. I feel it is inappropriate for consultants to

cover the burden of not getting paid until the client gets paid. Payment within 30 days of invoice receipt, regardless of client invoice and payment cycle, is a reasonable payment provision. Retainage provisions are inappropriate in a consultant contract.

- ***Travel and Expenses*** – It is appropriate for consultants to follow the client's travel policies (e.g. coach for domestic, business class for international). Expenses with or without markup can be used. The use of markup on expenses should depend on the payment cycle, and the client's contract with the owner.

mutual respect and trust must exist between consultant and client

The quality and value of consultant services are directly impacted by the contract and relationships between consultant and client. This is a simple concept that takes considerable thought and commitment to effectively implement. Key to this concept is that mutual respect and trust must exist between consultant and client. Without respect and trust, no amount of contract "wordsmithing" and communication plans will lead to quality services and relationships between consultant and client.

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Subal Sarkar

I have the highest regard for the authors and commend them for their open and candid article on consultant and client relationship. I agree with the authors on many issues but I was not aware of how negligent I have been in caring and feeding our consultants until I read the article. At one of the author's request, I agreed to submit this discussion just to clarify certain important issues.

- ***General Expectations of The Parties -*** My experience is with large and complex engineering projects where our firm (client) engaged individual consultant(s) (consultant) for his or her recognized expertise in a certain technical specialty. We find a consultant's expert opinion and advice are extremely valuable in making certain technical decisions as well as resolving business and contractual issues.

  I do not, however, agree with the authors that calling a specialist may be an attempt to reduce professional liability. An individual consultant with limited assets and no insurance cannot reduce a client's liability in the event a claim is made. However, a consultant does help the client to reduce its liability when the consultant's advice prevents the client from making a poor technical decision.

  I agree with the authors that consultant exclusivity during the proposal phase should be limited to exceptional situations. Exceptional situations may include the consultant's involvement in (1) strategic decision-making for a client; or (2) a unique engineering solution that can act as a differentiator in the selection process. In such cases loyalty to a preferred client and sound business judgment should prevail.

  The authors indicate that on too many occasions a client or a consultant has been frustrated with the other. Given the high professionalism of the geotechnical engineers, I can only think of two major reasons that can cause the frustration: communication and unfavorable contract provisions. Communication can be improved through a single point of contact as suggested by the authors. We know open, honest and timely communication reduces a lot of frustration, but at times we all are guilty of not doing it. The contractual matters on the other hand may not be under client's direct control. These issues are discussed below.

honest and timely communication reduces a lot of frustration, but at times we all are guilty of not doing it

- ***Insurance and Indemnity -*** Client's contract with the owner (generally a public agency) often contains onerous provisions including insurance and indemnity. The contract often requires that consultant(s) to the client must satisfy these provisions. It generally does not differentiate between individual consultant (single individual without any employee) and consulting firms. It should also be remembered that owners reserve the right to review and approve each of a client's consultant agreements. Accordingly clients' contract administrators pass the same contract provisions to all consultants. When this issue is brought to the attention of the client's project manager, it is usually resolved, as was done by me on a current project for one of the authors of the article.

  Insurance requirements can be waived, with owner's approval, for an individual consultant who does not have employees and carries no professional liability insurance. However, automobile insurance is still required when auto travel is involved. Insurance provisions will not be waived for a consulting firm which provides services involving preparation of contract documents or important technical deliverables (e.g. field survey or geotechnical report). And despite requests, Parsons Brinckerhoff will not insure the consultant under the client's insurance policies.

In some circumstances, the indemnity provisions can also be waived for an individual consultant but the client will not indemnify the consultant under normal circumstances.

- ***Compensation for Travel Time and Expenses and Retainage -*** These are dictated by owner's policies and procedures and are often incorporated in the contract between the owner and the client. Clients may not have control of these issues. However, if a consultant is not comfortable with these policies, he or she should seek his or her client's help and the client in turn should bring it to the owner's attention. It is best to address this issue prior to signing an agreement. I personally have had only limited success in accommodating a consultant's request on these issues after a contract has been signed.

I generally agree with the authors' suggestions regarding compensations on these issues. I recommend that the consultants should take these issues directly to the owner when the consultant is working directly for the owner, or through the client when the consultant is working for the client.

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Robert J. Smith

The authors have clearly and thoroughly set forth excellent guidelines for clients and consultants alike. Their compilation of knowledge and experience in this article is a service to consultants and clients. One thought should be amplified—communication. Frequent communication between consultant and client, and vice versa, enhances the relationship. Accompanying invoices with a letter containing short narrative summaries of the work accomplished for the invoice period and that planned for the next period helps the client become better informed. More frequent e-mail reports on accomplishments and challenges further enhance client understanding. Similarly, clients should promptly and regularly update their consultants on client concerns/issues, changes in project goals, concepts, schedule and budget, and changes in organization and personnel. With e-mail, these communications are no real burden. However, they serve important needs and enhance relationships.

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Ronald E. Smith

The authors are due a debt of gratitude for this articulate paper addressing an often spoken of but seldom written of professional issue. This writer has spent most of his career in the role of client of individual consultants, but a few years ago did find himself in the consultant's role. Based on these experiences, I offer the following comments in support of the authors' positions.

Fundamental to many of the issues raised in this paper is the concept that the relationship between the consultant and the client should be operated at the highest level of professionalism. The relationship typically involves a very high level of expertise solicited by the client to oversee the work of the client's staff on a critical project. It is a relationship based on a very high level of trust. While these comments seem obvious to those of a more advanced age, we must recognize that many in the younger generations have not had the benefit of an education that had the available credit hours for training in professional behavior. Therefore as individual consultants enter into each new client relationship, one must be conscious of their responsibility to teach professionalism by their example. The consultant must be prepared to state what they expect of the relationship and be capable of explaining to their client why they believe the kind of relationship proposed by the consultant is essential to providing high quality, economical professional services.

If the client has reservations about insurance and indemnity concessions, it would suggest that the client has failed to find a consultant that they adequately trust

While professionalism is the foundation of the consultant-client relationship, a written agreement is the absolutely necessary expression of the relationship, and it should be in place from the beginning, i.e., at the time of the proposal. For this to be achievable in the world of rapidly developing projects, each individual consultant should spend time as they begin their practice to think through each of the commonly recurring issues raised by the authors and develop their positions and alternatives on those issues. This effort could be handled in much the same manner as client-engineering firms develop their standard terms and conditions for contracts. When a client then proposes something in a relationship that the consultant, having thought the issue through in a calmer time, finds unacceptable, either from a professional or a business perspective, the consultant is prepared to explain their position to the client and why the consultant is not prepared to proceed under the client proposed conditions.

Given below are comments on several of the relationship issues raised by the authors.

- ***Single point of contact*** - Generally it would be impracticable to meet the client's project expectations without a single point of contact conveying those expectations. Although as an expert, the consultant must have the right to appeal decisions of the client contact person if the consultant believes the contact's decision is not in the best interests of the client and/or the project.
- ***Exclusivity*** - This is largely a business decision. However the consultant must consider the situation where their expertise is so uniquely matched to the project that they are essentially in a monopoly position. In such a situation, it may be a disservice to the project owner for the consultant to accept an exclusive position.
- ***Insurance and indemnity*** - The consultant is being hired essentially as an extension of the client's staff. Staff is covered by the client's professional liability insurance, and the staff is effectively "indemnified, held harmless, and defended" in the case of a claim, with the possible exception of gross negligence and/or criminal acts by the staff. It seems reasonable that the individual consultant should be afforded the same protection. If the client has reservations about such concessions, it would suggest that the client has failed to find a consultant that they adequately trust and should look for another consultant that they can trust.

It is unprofessional not to keep team members, including the consultant, informed of key project activities

- ***Pay when paid, retainage, and invoice backup*** - Client firms do not subject their staff to "pay when paid" or "retainage" and neither should they treat single consultants in this manner. Likewise the consultant should not be required to provide a greater level of invoice backup than is required of staff. To impose these conditions or insurance and indemnity conditions on consultants will ridiculously increase the cost of consultant services at no real benefit to anyone other than contract bureaucrats and/or attorneys looking to cover their "back sides".
- ***Bait and switch*** - The far too widely exercised practice of including a consultant in a proposal to get the work and then failing to use them after the team is awarded the work is unprofessional, and in some jurisdictions, a violation of law. The best way to avoid this situation is to have a well-written agreement as to services to be provided by the consultant.
- ***Integration of the consultant's team*** - It is unprofessional not to keep team members, including the consultant, informed of key project activities. Likewise it is equally unprofessional for the consultant not to respond to the client's needs in a reasonable and timely manner.

I'd like to close with the same thought as the authors, expressed in slightly different words. For many years I have used a simple test to evaluate if a relationship was likely to succeed. That test is: *Will the relationship be mutually beneficial?* If the relationship is not likely to produce a "win-win" conclusion, then I believe it is wise to follow the advice of Stephen Covey and say "no deal." Individual consultants typically occupy the top rung of our professional ladder. It is my hope that these esteemed members of our profession will continue to set the example for mutually beneficial professional relationships.

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James Warner

The authors are to be commended for discussing a sensitive subject on which most of us are too timid to tread. The writer is in general agreement with most of what has been presented and is particularly in accord with the way travel issues have been handled, especially for those of us that "*are of an age*". I would however add that the same applies to taking cabs rather than the slower and more crowed airport shuttles!

I can't completely agree however, with the statements relative to proposing to more than one client for the same job. Most clients retain us because they think our special knowledge will give them an advantage. I would think from the client's perspective, that advantage would be lost if we committed to others as well. For this reason, I generally will not consult separately, to two different clients on the same project and consider the client's wishes along these lines to be reasonable.

Relative to the authors' *Miscellaneous Issues Relating to Payment,* I would opine the authors are being too easy on the bean counters who want a receipt for every penny spent. The "*certain minimum*" might best be changed to "reasonable minimum, say $50.00". A question that clients should consider is "Are the consultant's energies better used focused on timely service and technical superiority, or on record keeping of trivial expenses? (I refuse to bother with receipts for minimal amounts and have not found it to be a major problem except with government agencies and large bureaucracies. Just completed an expense report for a major *professional organization*; A full page of fine type and legalese for reimbursement of less than $1,000.00! And yes, this is the reason that I no longer give what was their longest running and highly rated Continuing Education Course, 102 times in cities throughout North America!). Obviously, I feel strongly (maybe too strongly), about such nickel and dime treatment, but it really does overtax a mind that must remain sharp with technical matters.

The authors are being too easy on the bean counters

In the section on *Hourly and Daily Rates,* the first and last sentences of the second paragraph are in opposition. What is a "peer"? Some might have higher overhead expenses than others. The requirements of staying on top of ones field is not the same for all consultants. Although my specialty is grouting and structural repair, an inordinate amount of time, study, and travel is in regard to the appurtenant materials technology which is changing rapidly, and involves sophisticated chemistry requiring an extraordinary amount of effort to digest. The concern should not be what the other guy is charging, but rather, what is reasonable for the knowledge and service being provided.

Clients should be mindful of the considerable amount of non-billable time and effort a top consultant must expend in order to stay on top. Most consultants are retained because they are considered the very best at what they do. They neither attain nor maintain this position without considerable professional activity and continuous study, including many subscriptions, much reading, active membership on technical committees, and attendance at numerous technical meetings and specialty conferences around the world. This requires a huge outlay of both time and expenditure, which must be recouped from their clients.

I don't really know what most others are charging, but am outright amazed to see the wide variation of charges by expert witnesses in legal proceedings, and especially how little, some professionals value their time. I rather expect that most of us are working far too cheaply considering the value we are benefiting our clients!

Concerning *The Consultants Personal and Professional Issues,* not all Consultants would agree on the comments relative to dinner and social life. At my age, I eat rather lightly, and by the end of the day am pretty well knocked out, so I prefer to get something light and quick on my own and to bed early. It is certainly not unreasonable for the client to offer invitations however and I always am appreciative even though they are frequently declined.

For all inquiries, I respond with a simple one page PROPOSAL – AGREEMENT. It has been used quite successfully for many years, although an "Acceptance Signature" line was added to the bottom a few years ago after being fleeced by a plaintiff's attorney for travel time. I usually don't require it to be signed except by attorneys I don't know. Although I will agree to reasonable modification, the last paragraph and in particular, the last ten words which state "The provisions herein shall prevail over all conflicting language of any other document" is non-negotiable. While this has cost a few projects through the years, it largely mitigates the damage of the often used clauses which the authors have quite correctly referred to as "Draconian". Consultants are specialists that must devote full effort to technical excellence. They are not attorneys and should not be required to retain and pay for legal advice simply to consult to a client. Perhaps the greatest shortcoming of both large firms as well as individual consultants is that they have never learned to "**just say NO!!!**" We individual consultants need to do this when unreasonable contracts come forth.

the greatest shortcoming of both large firms as well as individual consultants is that they have never learned to "just say NO!!!"

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Chief Geotechnical Engineer of a Major Engineering/Construction Organisation

The authors have presented a comprehensive and complete discussion on the subject. As a frequent (satisfied) client of individual consultants – the chief geotechnical engineer of a major engineering/construction organisation – my greatest difficulty in their use relates to the often unwieldy internal process of engaging them for major projects, especially those projects undertaken for government or semi-government owner organisations.

In general, the process usually requires the jumping through of numerous bureaucratic hoops intended principally to discourage sole-sourcing of large-scale consulting and/or construction contracts. Unfortunately, these same hoops usually have to be negotiated in the process of engaging individual consultants. They include the preparation of lengthy board papers, request forms, compensation review forms, and sole-source justification forms – mostly deliberated over by non-technical readers; the making of presentations to project and/or corporate boards; and the like. This process is all usually repeated on an yearly basis, as these contracts often have to be renewed/re-justified annually (i.e., in all, a time-consuming process for both the individual consultant and for the "technical" client).

The engagement of a consultant is not undesirable, and it is hoped that some of the hoops and bureaucratic wrangling can be dispensed with

It is hoped that in future some owner organisations will recognise that the sole-source engagement of an individual consultant, who is often the pre-eminent expert in a particular speciality, is not undesirable, and that some of the hoops and bureaucratic wrangling can be dispensed with. In the meantime, I have a board paper/form/ presentation or two to prepare for the New Year.

Informal Comments and Anonymous Discussions Received by the Authors

The authors are grateful to have received considerable response to this article. All the comments have been valuable but, for various reasons, many were not submitted as formal discussions. The following paragraphs will give the reader a sense of the nature of the comments that the authors have received informally so far.

Most of the comments have been very supportive of the article, particularly of the fact that such issues were finally put into print. A few comments suggested that the authors should have gone into more detail on some subjects, such as providing more detailed guidelines for the actual fees charged. The authors received comments that it is essential to ensure that the lines of communication are clear such that both parties know who has the authority to interact with and give instructions to the individual consultant.

The topics of confidentiality and exclusivity came up often in the comments, especially when addressing the rapidly developing world of Design-Build. Several comments indicated that the issues brought up in this article also have bearing on any consulting relationship between any clients and consulting firms, particularly small specialty firms.

A few comments suggested that the article may have been too one-sided in favor of the consultant (something the authors tried to avoid but always realized that we may not have succeeded) but few have offered any means of rectifying this problem. Some said that they agreed with most of what was said but that they did not wish to put their disagreements in print.

Please note that, to minimize such concerns, *Geotechnical News* is willing to publish anonymous contributions, perhaps identifying the writer in only a general way, as has been done for the anonymous discussion in this issue. Using this approach, a writer can write freely without having to worry about confidentiality, and in particular whether the discussion conforms to any stated policy of either past or present employers.

The authors look forward to your comments, and particularly to those received in time for the next issue of *Geotechnical News*, the deadline for which will be April 11.
They should be submitted to
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