

"GETTING PAID FOR CONSULTING"

*IEEE-CNSV*

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# STEPS TO BE PROFITABLE

- 1. Choose Carefully With Whom You Work
- 2. Set Up and Operate Your Consulting Business Properly
- 3. Separate Your Business Assets From Your Personal Assets
- 4. Get the Right Insurance to Protect You
- 5. Understand the Contracts You Enter Into

- 6. Know and Understand the Laws which Apply to your Business
- 7. Use the Legal System Carefully
- 8. Seek Attorney Help When Needed
- 9. Understand the Bankruptcy System
- 10. Avoid Spending Today's Money on Past Mistakes

# Key Contract Clauses

- Contract clauses in consulting contracts which can create major issues include:
  - A. Indemnity
  - B. Attorneys' Fees
  - C. Arbitration or mediation
  - D. Confidentiality
  - E. Change Order/ Scope of Work Revision

# Key Contract Clauses (cont.)

- ◉ F. Change order/scope of work revision
- ◉ G. Payment
- ◉ H. Termination for cause/convenience
- ◉ I. Ownership of intellectual property
- ◉ J. Insurance
- ◉ K. Trade Secrets

# A. Indemnity Clauses

- ◉ Definition
- ◉ Mutual Indemnity
- ◉ Trigger for Indemnity
- ◉ Risk Posed By Broad Indemnity Clause

## B. Attorneys' Fees

- ◉ British Rule
- ◉ American Rule
- ◉ California: not recoverable unless clause in contract, or by applicable statute

# Attorneys' Fees Clause

- ⦿ Advantages of Clause
- ⦿ Disadvantages
- ⦿ Dollar Value of Contracts
- ⦿ Benefits May Vary Based on Typical Contract Amount



# C. Arbitration and Mediation

- Arbitration Advantages
- Arbitration Disadvantages
- May Still End Up in Court, Reasons

# Mediation

- ⦿ How Differs from Arbitration
- ⦿ Advantages and Disadvantages
- ⦿ Most Successful Process for Resolving Disputes

## D. Confidentiality

- Confidentiality Clauses, NDA's
- Purpose, Issues for Consultants
- Client's Perspective: Everything Is Confidential

## E. Changes Clauses

- Clauses Defining Scope of Work
- Change Order Forms
- Risky to Perform Additional or Changed Work Without Written Change Order

# F. Termination Clauses

- For Cause
- Language, Issues, Period to Cure
- Reciprocal Termination Clauses

# Termination for Convenience

- ◉ Usually Client's Right Only
- ◉ Advantages and Disadvantages
- ◉ Contract Clause May Convert Failed Termination for Cause to Termination for Convenience
- ◉ Economic Impact of Termination for Cause

# G. Ownership of Intellectual Property

- Client Usually Wants to Own IP Created by Consultant for Project
- Difficult to Separate Out From Consultant's Pre-existing IP
- Sensitive Area in High-Tech

# H. Insurance Clauses

- Commercial General Liability
- Occurrence coverage
- Primarily for personal injury, property damage
- Substantial Risks Excluded from CGL



# Errors and Omissions (E & O)

- ◉ Claims Made Coverage
- ◉ Covers Negligent Acts or Design

# Additional Insured Provisions

- Client Usually Seeks to Be Named as Additional Insured on Consultant's Insurance
- Occasionally, Reciprocal and Consultant May Be Additional Insured on Client's Insurance

# I. Trade Secrets

- Related to Confidentiality Issues
- Trade Secrets: Ideas, Information Not Known to General Public, Which If Known Would Give Unfair Advantage to Misappropriator

# Conclusion

- Careful Choice of Partners, Clients
- Review and Understand Contract Language
- Have Your Attorney Review/Prepare Your Contracts For Maximum Protection
- Pass On Projects With Warning Signals

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