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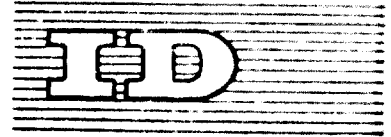
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CONTRACTUAL AND FINANCIAL ARRANGEMENTS ^{1/}

by

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Foreword

The author was born in 1918, educated as a civil engineer and has been a management consultant by profession since 1957, working as a partner in a consulting company employing fifty management consultants, in Sweden.

The Book "Manual on the Use of Consultants in Developing Countries" published by the United Nations Industrial Development Organization, 1968, covers many types of consulting services (pages 3 and 4 in the Manual). In this paper it is referred to as MUCDC. This book, together with other sources, has been used to systematize some of the aspects on contracts and fees.

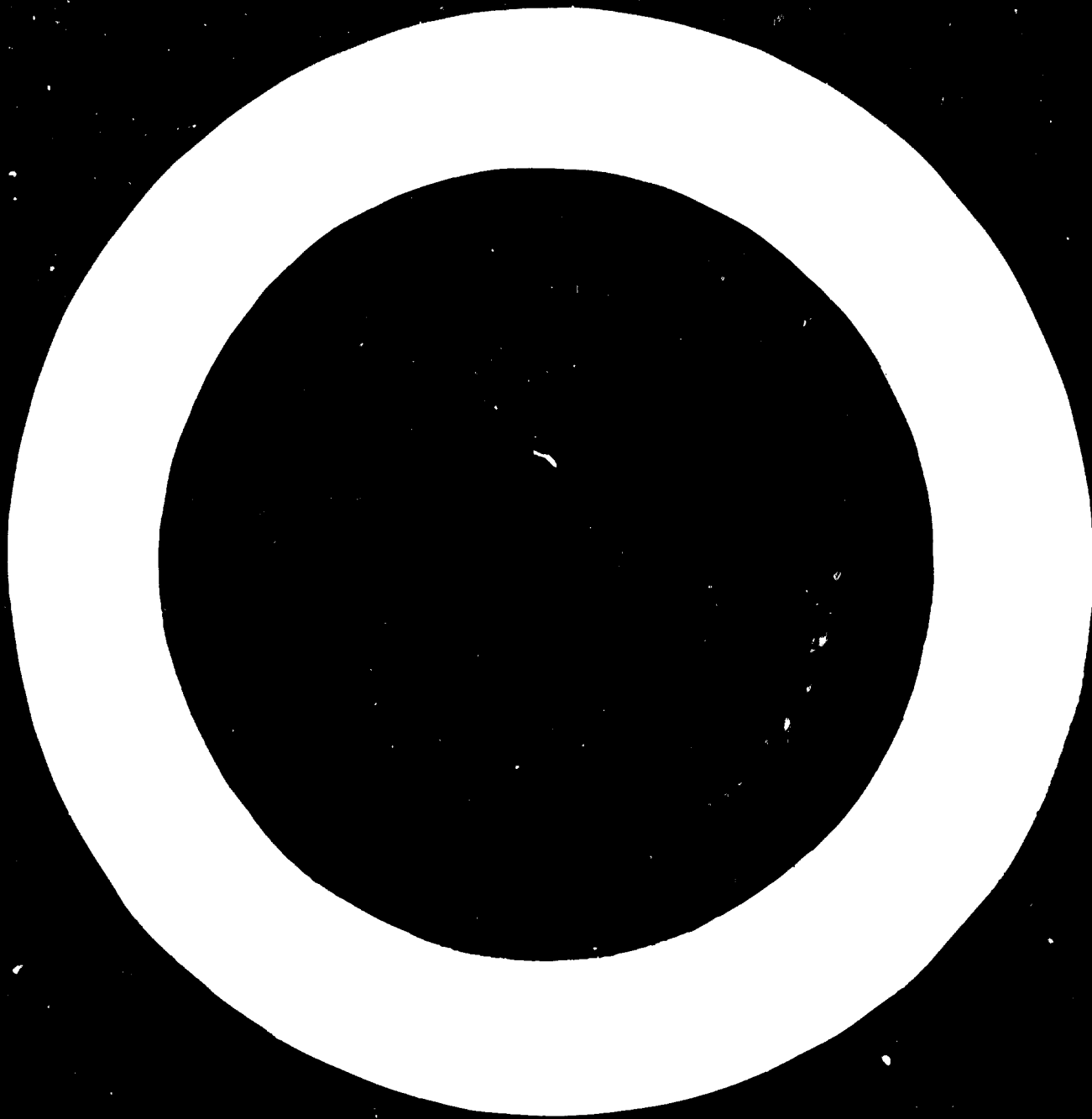
In order that any reader may familiarise himself with the various aspects covering parts and purposes of contracts, MUCDC includes a checklist on pages 25 and 26. This list has been used, with some minor alterations, in this paper.

Although other participants may speak or write on the topics of Implementation and Evaluation, they have also been included, but mentioned only briefly. The concepts of these topics are important for contract writing and auditing, and those who wish to pursue the subjects further are directed to the corresponding chapters in MUCDC, and to colleagues covering these subjects in Tokyo, December 1-13, 1969.

The Checklist of contract provisions is a general one. Not all conditions are necessarily applied to every case. The majority of items on this list appear to be taken from contracts dealing with civil engineering, which are by nature and tradition, more elaborate.

Chapter 9 - Special Agreement - of this paper, was to a great extent based on the corresponding chapter in MUCDC.

On the occasions that MUCDC has been quoted, the page number has been referred to. IGRA 63 has also been quoted as it contains relevant information regarding civil engineering and the management consultancy sector as well.



BACKGROUND, DEFINITIONS AND SUMMARY

To meet the needs of clients, the work of the consultant described in MUCDC and in this paper, has steadily expanded and today includes advice on many aspects of distribution, transport, production of all kinds, commerce, government service, banking, insurance, professional bodies, Trade Unions, etc. Techniques such as automation, operational research, electronic data processing, critical path analysis, value analysis, and so forth, little known a few years ago, are today yielding substantial benefits to firms who have asked consultants to apply these techniques for them. The consultants' services are in great demand for applying the latest developments in such activities as market research, management accounting, production control, work study, inventory control, quality control, product rationalisation and factory layout.

Today's consultant is therefore concerned with many aspects of the task of making more effective use of resources, employees, plant, buildings, material and working capital. He is also concerned with problems involving basic organization, administration and the re-orientation of companies to face the future marketing and competitive situations. More and more he is being retained for the full-scale appraisal of individual and large groups of companies. (The foregoing views have been taken from a booklet published by the Managements Consultants Association).

It seems natural and logical that my personal experience and my profession have influenced this paper. It concentrates more on the industrial or management consultant rather than the consultant dealing with the infra-structure, civil engineering, etc., i.e., I have tried to follow the definitions as given in the Foreword of MUCDC. In this paper the term "consultant" stands more for the concept of "management consultant" than the other types of consultants.

Assignments of the type discussed in MUCDC and in this paper fall into two broad groups :

- a. the large appraisal of, or audit on, company development, extensive plans, corporate strategy or other large assignments.
- b. the smaller, more specialized task of examining aspects of production, marketing, finance development, etc.

A more specific contract and plan is of course needed for the first group that very often lasts several years.

Quite frequently the contract is only a letter between the client and the consultant, however in many countries it often exists in general conditions for large assignments, as explained later.

In many countries in Europe, pamphlets are written, and sent to clients, on how to use industrial consultants, e.g., Manual on the Use of Consultants in Developing Countries

To achieve good co-operation between client and consultant, it is necessary to have an agreement or contract. It may be long or short, but it must be clear and easy to understand for both parties.

To use consultanting services means development, and development means change. Change means people are influenced, this often hurts because everyone is, more or less, conservative. We therefore, need a contract.

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BASIS FOR THE CONTRACT

a. Agreement and Date of Agreement

The agreement between client and consultant is defined in a contract, which should contain important and specific conditions necessary for the assignment, and may also contain general conditions. However, in many countries general conditions may be read or added in a printed supplement to the contract. In the latter case both the contract and the general conditions should be thoroughly read and signed by client and consultant.

General conditions may be delivered in standard printed contract form, which is completed by numbering. Forms of this kind have been worked out by government agencies, business firms or professional associations in many countries. Model forms, for Civil Engineering and building works in particular, are included in MUCCDC, Annex 3.

The contract may have the form of a signed letter of agreement or a formal contract. Some times it is convenient to have all conditions plus general provisions collected in a contract and to have the price and cost conditions and figures only in a letter. This is because in many instances the technical conditions are circulated to more people who work with them, than the few who normally are interested in the cost and fees of the project.

It is essential that the relationship between client and consultant is clearly stated at a very early stage in the assignment. In order to ensure clarity, it may be practical, as mentioned in (c) and (d), not to sign it before the job has begun, but have rather an assignment lasting a couple of weeks or months, which is paid separately. In this initial period, the future work and purpose can be described, calculated and planned with more precision. Clarity is an essential factor, because the responsibility for interpreting the terms and purpose of the contract may be passed to other personnel.

If the agreement is written in more than one language, it should be stated in the agreement, which of the languages shall be the "ruling" language (IGRA 1963 1-4).

The agreement is considered to have come into force immediately upon signing, or alternatively, upon the signing of any other documents clearly indicating the intention of both parties to collaborate on the basis of these Rules (IGRA 1963 3-4). Essential days and weeks in the assignment, including starting and completion times should be mentioned in the agreement either in writing or in PERT or GANTT, or other plans as mentioned in (e).

b. Identifications of Client and Consultant

In the agreement formalised in a letter, and for a contract, we use the terms 'client' and 'consultant'. It is therefore, essential to clarify from the beginning, who is the client and who is the consultant. The consultant may be a group of consultants or firms and the client may be the board or the managing director or a business or firm, or firms, of a public body or any other organization, or group of companies. Should the client be a public body, it may be very practical to name the authority under which it acts and the source of available funds.

To designate the client and the consultant is very essential in the field of management consultancy, simply because in the normal assignments of this kind, decision must be taken as the job proceeds and it is of utmost importance to clarify who is responsible to make these decisions, and who is responsible if they are not taken.

In jobs regarding Civil Engineering as well many decisions must be made as the work grows.

c. Review of the Background and Brief Definition of the Project

As mentioned in (a) it is often practical in order to define the scope of the new assignment to begin with a 'first' phase, to define, or in some instances, find the right project and see if it is feasible. This is often the most difficult part of any project. Normally Consulting Firms in America and Europe send their best men, with considerable knowledge, to do this job of deciding principally what has to be done for the client. The client usually has an idea, vague or otherwise, of what he thinks he needs, on the other hand he may have heard of, or seen, assignments made for friends, at home or abroad.

It should be the responsibility of the consultant, from the outset, to use all his talent and experience to attack the real problem, not just find solutions which may help some of the more obvious symptoms. To do this it takes skill, experience and personal integrity.

It is often necessary for the consultant to get an insight into the client's background, his conditions, traditions, ways of thinking, policies

and social systems, in order to define the project, and attack the problem which is most economical and optimal for the client.

This first analysis should be based on personal interviews with the leading people in the client's organization, or written items from the client's firm, and of course from competitors, bankers, experienced people in the trade etc.

An experienced consultant should be able to sort out and define and even give the scope (d) in two to four weeks for client, company or organization (mill, factory, etc.) of 3,000 - 5,000 workers. Bigger projects will take more time. It is advisable to make this first analysis with two consultants. When an assignment is started in this way it is normal that the consultant prepares the first drafts of the agreement.

The first analysis findings prepared in (c) may be added as an Appendix to the contract. Generally both consultant and client refer many times as the project progresses, to this first approach, to control and see if they really are working as decided and planned.

A background review needs a logical approach and systematic appraisal, prior to the presentation of data in a meaningful form.

Finding and defining the project or projects requires thinking, evaluation, reasoning and a creative mind. This evaluation should be expressed in the first report where the findings of (c) and (d) are given. Analysis (c) is necessary in most cases, both for repetitive projects with regular clients and for new projects with new clients.

It is my personal experience, from client relationships, lasting more than ten years, that the more work devoted to the analysis and preparation of the contract in (c) and (d), the better the practical results, implementation and the relationships.

d. Scope of the Assignment and Plans

After the preparatory activities in (c) and in order to write a contract containing the necessary definition of the assignment, the same consultants should define the scope of the assignment. It is here that the consultant's ability to survey the situation and to think systematically and creatively will be required.

It is convenient if this definition of the project includes the necessary description in the main theme, and references in the appendixes, one of the appendixes may be (c) describing who chose the project and 'how' and 'why'.

Successful consultant-client relationships depend on the proper definition of the assignment (MUCDC p. 21). In a continuing relationship this description may be shorter than for new clients, but it must be very clear and accurate so that it can serve as a yard-stick for measuring the assignment.

When the contract covers a number of successive phases of a project, the scope, estimated time for completion and fee arrangement for each phase should be outlined in detail (MUCDC p.22). What is meant by "completion" must be defined very clearly. Most professional consultants want to include in agreements and contracts, a definition of "completion" explaining that it means the project "installed and working" in the client's organization. It is one thing to describe the project, but another thing to make the client decide and then proceed with installation, this demands more assistance from the client, as explained in (c) and (r).

After devoting consulting time to (c) and planning and describing the future work in (d), it is quite possible and recommended, to insert a pause for the client's decision. The client may, after this introduction, quite freely decide if he wants to go on with the following assignments or not, or if he desires more or less extensive changes in the scope. If he does not wish to continue, normally only phases (c) and (d) are paid for. This can be mentioned as a condition in the first contract, or the contract could be signed after phase (d), the latter being our method of operation.

Typical steps are indicated below:-

Phases in a Management Consultant Assignment

- d 1 - First contact, client - consultant
- d 2 - Preliminary discussions on purposes, symptoms, problems, people, business, trade conditions, cost etc.
- d 3 - Decision by consultant and client to perform phases (c) and (d). Information to the whole of the client's organization regarding scope and reason for study.
- d 4 - Work on the preliminary phases (c) and (d). Time schedule, estimated cost, results, etc.
- d 5 - Work (c) and (d) reported and presented to the client's General Management in a conference.
- d 6 - The above report may be altered, in or after the conference
- d 7 - Client decides to continue with assignment after discussing plan and scope. Client decides to go on with only one or two phases, or decides not to go on, as laid out in (d)
- d 8 - Work in phase 1, by client and consultant

- d 9 - Necessary decisions by client and consultant. Installation starts.
- d 10 - Work in phase 2, by client and consultant.
- d 11 - New decisions and further installations
- d 12 - Work in phase 3 by client and consultant
- d 13 - New Decisions and further installations
- d 14 - Final report presented to board of directors
- d 15 - Plans for training clients personnel in new systems and procedures
- d 16 - Installations going on and perfected
- d 17 - Assignment completed
- d 18 - More training for client's personnel

Sometimes it may be difficult to prepare a contract covering detailed plans (d) for the whole project because the latter phases are difficult to foresee, for various reasons as described in the following cases :

- Client's personnel unco-operative
- Essential decisions not made by the client during the course of the project
- Personnel sickness at either client or consultant's company
- Delay of one project in a sequence of projects depending on each other
- Acceptance from authorities delayed or missing
- Building or office or premises not ready for installation
- Personnel hired by the client not arriving as planned
- Client's personnel requiring more training in order to work with the new procedures
- Business machines and/or other machinery unavailable, causing delay in installation
- Delay caused by new personnel coming into the project

Of course this list could be extended, however normally, these delays do not affect the management's consultant's pay, as this is determined by the actual working time on the project (see (y)).

In the scope and plans of (d) it is very essential to define the limitations of the projects or projects, so the concentration is centered on the actual project. Such limitations may be procedures, factories, people, houses, affiliated companies, departments, etc.

In the scope and preparatory work, it is recommended to specify not only the phase(s) as

shown in the example "Phases in a Management Consultant Assignment", but also the kind and types of end-products which should be arrived at or produced at the end of each phase or at the end of the assignment. If this is done properly it is much easier for client and consultant to follow up the agreement, or contract, and the project development.

If possible, it is advisable to anticipate the economical advantages, or profits, for the client.

The preliminary analysis in phases (c) and (d) is not intended to solve the clients problems, but to define them and so provide a framework and a plan of approach.

An important preparatory step is to ensure that the client's personnel are informed about the project, to avoid unrest or fear within the company. The success of the consultants' job largely depends on their co-operation and is most essential when implementation is being carried out.

The director who signed the contract should be responsible for the introduction of the consultants and should not delegate this job. He should also tell everybody concerned what is to be expected of them.

e. Time Schedules, Effective Date of commencement of Work, Estimated Time for Completion

The starting time may differ from the day when the contract is signed. Either assignment starts with preparatory work (c) and (d) after which a contract may be signed and the work started, or a contract may be signed directly because a client or some other organization or body has defined the work in phase (c) and (d).

These and other cases need time-schedules in the contract or appendix. Perhaps the best way to accommodate these schedules systematically is in matrix form, (see PERT or GANTT). It is recommended that the time schedules correspond with some sort of "Phases in a management consultant assignment".

It is advisable to specify in the time schedules, the days on which the consultant will work, and those regarded as holidays or vacation. It is often practical to state in the contract that the consultant shall work the same hours as the client's office staff.

It is not unusual to have a pause between phases. The reason is that between phases the client should perform something by himself, in the project, e.g., installation of parts of a new system, hiring of new people, erection of a new building, etc.

f. Designation of Individuals in Client and Consultants Organizations Responsible for Decisions

This point has already been stressed in this paper.

The modern method of working, is to implement as the work progresses according to the contract. Therefore, decisions by the client and consultants are necessary. Decisions of this kind are normally taken after progress reports at the end of phases, or at a conference (j and p).

Normally a consultant company sends a team of two to four, but the number the client's personnel working with them is generally larger. It is therefore important to specify the organization of the groups and their decisions. It is not only decisions about policy, but more often the client must decide on procedures, various programmes, systems etc. The client should state the responsible authority for the assignment, within his organization. In management work this person is normally of high rank (director or project co-ordinator).

Usually the consultant company designates a responsible consultant as leader of the group sent to work with the client. An experienced consultant group generally knows the possibilities, limitations and necessities of the decision-process as the assignment progresses, and will point out to the client the decisions to be made and when they must be made. Decisions delaying the installation work should be reported in the progress report for example.

With regard to the selection of consultants for foreign assignments, the author is of the opinion that only the best men should be sent. It is the policy of his company, even for work in the home countries. A consultant working on his own, far from colleagues, friends, books and sometimes family, must be thoroughly experienced and possess a strong mind and personality. If men of this calibre cannot be sent it is better not to undertake the assignment.

Of course, there may be excellent opportunities to co-operate with local national consultants from the actual country, and such teams incorporating local and foreign consultants, can be quite successful. However, the quality of the foreign consultants must always be highest available. This is a problem for the consultant company tempted to send some of those who can be spared. However, those who cannot be spared are the only ones who should be sent, and this is one of the reasons why many consultant companies do not undertake foreign assignments.

3

RESPONSIBILITY OF THE CONSULTANT

g. Professional help, used methods, services and information to be supplied by the consultant

If the consultant is to make a worthwhile contribution to the client, it is essential to have professional skill and experience. The client expects that his problems will be systematically and carefully approached, and that is why he seeks consulting services and is willing to sign a contract and pay for the assignment. The client also expects the consultant to use the most suitable methods, and to document and report these methods for his future reference.

It is a good idea to mention in the plan (d) which methods will be used for the project. Very often it is necessary the client's personnel these methods. In a successful client-consultant team on a management assignment good co-operation will develop, this is highly valued by the client. Training in methods and minds is constantly going on within the team.

Information from the consultant, during the project many have the following forms:

- Reports on definition of project (c)
- Scope of assignment and plan for project (d)
- Progress reports for each phase
- Oral discussions with directors
- Oral discussions with personnel inside or outside teams while solving problems
- Parts of new systems and concepts being introduced and installed during the project
- Final report to Board of Directors

h. Work Schedule to be Maintained

In the plan (d) the consultant has estimated the time schedule, later the consultant and client agree upon it in the contract

In the course of the project it is essential for cost and other reasons, to work to plan as far as everyone is concerned. The ability to keep to the schedule is one of the methods of evaluating results. It is common experience that the most effort is required at the beginning and end of each phase and of the whole project.

In Sweden the consultant normally works a forty-hour week, but elsewhere he would take the client's working hours.

i. Personnel to be Supplied

It is customary for the client and the consultant to supply the names of their official

representatives, through an exchange of letters. In addition, the client may require the consultant to indicate the names of those responsible for the day-to-day conduct of the work, but this would be difficult to do before the starting date was known.

Specifications of what is demanded and may be expected of a management consultant, in a general way, are to be found in different codes of ethics, for example in MUCDC, Annex IV. A consultant shall exercise all reasonable skill, care and dilligence in the discharge of his duties, under the Agreement. (AGRI 1963 2(a)).

The consultant may call in the assistance of other consultants or experts, and shall be entitled to charge consulting costs to the client, but not before prior approval, in writing, has been obtained. (AGRI 1963 2-9).

Often the consultant is asked for the names and qualifications of the individuals undertaking the assignment, but it is good practice to allow him some freedom in the selection of project personnel. The list he presents may contain alternatives. In fact considerable freedom should be given to the consultant in the assignment of personnel, as unforeseen circumstances may, in his judgement, necessitate the use of specialists not included in his list. Such variations should be discussed with the project co-ordinator, or client, and his agreement obtained, MUCDC p. 23).

The client must be confident that the consultant's proposals are made solely in his own interests. The consultant, or his company, must gain no relevant economic advantage whatsoever from the recommendations. One or two consultants on a job are usually supervised by a senior consultant, with a partner or director of the firm being ultimately responsible to the client. The resident consultants do most of the ground work. This arrangement helps the consultant to work closely with the firms executives. When recommendations are accepted the consultant remains with the client to help implement the changes. Team work varies in England and in America and is difficult to predict in a contract.

j. Availability for Conference with the Client

Contracts sometimes stipulate the schedule and extent of the meetings to be held between the representatives of the consultant and the client to review the progress of the work and to confirm future plans. The constant exchange of ideas is important to maintain confidence and remove causes for misunderstanding, before they have time to develop (MUCDC p. 23).

As already mentioned, the most effective assignments now start implementing or installing the systems or concepts at a very early stage. In order to do this, much work has to be done in teams, or conferences, with people from the client's and consultant's company. As suggested in MUCDC, it is a good idea to include the more important conferences in the contract, simply because top management personnel seem to have difficulty in finding a suitable time on their calendars. Work in the smaller conferences and teams must also be planned thoroughly. The Consultant should set a good example of how to manage and plan a conference.

Work in these conferences must be effective. Not every conference is simply for the purpose of making decisions, but also for information, training creation of ideas and problem-solving. There should be someone designated to take the minutes of the meeting and prepare a memo .

The consultants' work at the end of a phase should, even if it has been reported, be presented at a conference with the opportunity of more of the client's personnel giving their opinion and expressing their ideas for development.

k. Reporting, including the Schedule, Nature and Language of Reports

By the term 'report' we mean every written piece of information in the assignment, describing progress, systems, concepts, plans, proposals, recommendations, etc.

The schedule, number, language and type of reports to be submitted by the consultant, should be specified in the contract. In the case of large projects, involving successive phases, final reports are generally made at the end of each phase. In addition, the consultant should submit shorter but more frequent progress reports, to keep the client informed (MUCDC p. 23ff). When assignments last for months or years, it is normal to invoice every month. It would seem quite logical to forward the progress reports every month with the invoice.

The steps which should be taken in a subsequent phase will be based on the recommendations formulated in such reports (MUCDC p. 24). But not all progress reports can include recommendations for the client to decide upon, decisions must be made in meetings and conferences as well.

Perhaps it is the ambition of every professional consultant to make good reports and documentations, but it must be borne in mind that the primary reason for hiring a consultant is because the client wants new systems, concepts, ideas, organization, etc. The more implementation-minded the client is, or becomes, the fewer and easier the reports.

It is difficult to specify how much time should be devoted to report writing. It depends on the nature of the task. In my experience, it differs from half to one fifth of the whole time. Actually reports are made all the time the consultant is working on the project.

It is important to state in the contract, who shall be the receiver of the reports. Normally, it is the director who is project co-ordinator. It is convenient as a rule for reports to be written and typed in the client's offices.

1. Ownership of Reports, Designs, Blueprints, etc. to be Specified in the Contract

As a rule, contracts specify whether the copyright of documents prepared by the consultant in connection with the agreement, rests with the consultant or the client (MUCDC p. 24).

It is the author's opinion, that since the client has paid for the reports, the work and the solution of problems, he is the owner of these products. Generally, problems and solutions in top management are commercial secrets, and only on rare occasions is the client interested in publishing them. Reports, solutions and concepts from one assignment are usually difficult to use for another client, or to apply, even in the same trade.

m. Safeguarding of Information supplied by Client

A management consultant often receives detailed information about a company's internal affairs. It must be possible for the client to feel completely assured that such information will not be used in any unauthorised manner and that the consultant will respect confidences received. This is part of every code of ethics.

n. Guarantee of Performance, where required.

Contracts sometimes provide that the consultant must offer a guarantee to ensure that the assignment is completed in accordance with the initial definition (d) (MUCDC p.24).

It is the author's opinion that the best guarantee for good implementation is a good plan (d) and planned meetings and conferences with the client's personnel. The guarantee in the form discussed in MUCDC is more frequently used for consultants dealing with civil engineering.

4

RESPONSIBILITIES OF THE CLIENT

c. Information, Services and facilities to be Provided

It is most important that the client should instruct his staff to supply the consultant with all relevant information freely, not necessarily waiting until it is asked for.

The nature of the information and the manner in which it is to be disposed of, should be stipulated in the contract. Ethical behaviour requires that such information be held in confidence by the consultant unless otherwise agreed (MUCDC p. 23).

It is not only the relevant information that the consultant asks for, but in many cases that which is not asked, may be of importance. Any professional management consultant has the ability through his interview technique to extract information that the client is not aware of. The client should realise that too much information regarding existing life and procedures in his company may delay the problem-solving phase. The consultant must judge how much information he really needs.

The client may provide office space, clerical and technical personnel, transportation facilities, housing, etc. To avoid future misunderstandings, it is advisable to specify all these in the contract. In addition, the intrinsic costs entailed should be accounted for in calculating the costs of consulting services (MUCDC p.23).

Management consulting may be seen as a big translation of ideas from the consultant to client. The bigger the contract surface, in order to ensure a good reception of the consultant's ideas, the more successful the assignment will be. Therefore as much work as possible should be done on the client's premises, thus using every possibility for two-way information. However, some time must be allocated to working in his own office to survey and edit reports, confer with colleagues, etc. This is still part of the assignment and should be paid for.

Reports should be written, or typed in the client's office and in the language he prefers.

P. Availability for Conference and Decisions with the Consultant

This has been discussed in item (j).

Here it may be added that the consultants do try to keep the same persons in their team, those who started and helped the project to progress coping with mistakes, problems and solutions. It is very helpful if the client has the same ambition.

Important meetings must be scheduled a long time ahead, at least in Europe, to ensure that reports or results for each phase will be ready. If we start the job first then call a meeting it is the author's experience that the schedule is never adhered to, costs kept down or estimated results obtained.

IGRA 63 comments as follows, this can also be applied in a similar manner to management consultants :-

- .The client shall give his decision on all sketches, drawings, reports, recommendations and tender documents laid before him by the Consulting Engineer, in such reasonable time as not to delay the work of the Consulting Engineer.

5.

IMPLEMENTATION

It is of course, entirely up to the management of the client's organization to make decisions about proposals, plans, etc., and how to put them into effect. That is why he should hire a consultant, i.e., to execute the measures he has suggested.

As stressed earlier, it is essential that implementation, or installation of systems, etc., should start as soon as possible in the assignment, that is, the beginning. An early start will ensure that the basic ideas and principles behind the proposals are observed and used.

It is difficult and unusual to state in the contract how and when implementation will start. The best way is probably to select consultants with a good record for early installations.

DURATION OF THE CONTRACT

IGRA 63, (see MUCDC p. 122) is written more for consulting engineers than for design and supervision of construction.

It is easier to terminate a contract with a management consultant. If the client is not satisfied with the job, there is no basis for continuation. I have therefore, mentioned only those paragraphs in IGRA 63 and MUCDC which are relevant to the management consultants work and contract.

- q. Stipulation of termination either by stating a Specific Date or by Indicating the duration of the operation from the Executing of the Contract

All consulting contracts should include a statement of the time during which they are to remain in effect. Provision must be made for modifying the original term, including the time limits within which request for modification must be made by either party (MUCDC p.24)

Regarding the quotation, in many cases based on (c) and (d), the general rule in Sweden is that such a quotation stands for three months, during which time the client should decide.

r. Provision and mechanism for the modification of the specified date by mutual agreement

Should circumstances arise which call for modification of the Agreement, it may be made by mutual agreement, given in writing. Proposals of this nature from one Party, should be given due consideration by the other Party.

The Consulting Engineer shall not have the right to assign or transfer the benefit or obligation of the Agreement or any part thereof. However, he shall be entitled at any time to take into partnership another partner, or partners (or directors) and he or they shall thence be deemed to be included in the expression "The Consulting Engineer".

If conditions are changed for the work in the assignment, which was not anticipated at the beginning, it may be necessary to change the plan (d), which will mean a new edition of plan, and new cost figures.

s. Provision for Extension or Renewal

The method to be used for mutual agreement to extend or renew the contract may be specified in the provisions. The fee arrangements in cases of extension or renewal should also be stipulated (MUCDC p. 24). This stipulation gives neither the client nor consultant much trouble as a rule. When both parties are satisfied with the co-operation they will find ways and means to go further.

t. Provision for Early Termination by Either Party

Contracts should specify the conditions under which either party may terminate the agreement, including the amount of advance notice required, provisions for suitable completion of the project and settlement of costs incurred by the consultant to the time of cessation of the work (MUCDC p.24).

The Agreement shall not be dissolved by the death of the Client. His rights and obligations shall pass to his Successors.

Should the Consulting Engineer, being an individual, die or be prevented by illness or any other circumstance beyond his control, from performing the obligations implied by the Agreement or having it performed entirely, the agreement comes to an end without prejudice to the accrued rights of either party against the other.

Should the Consulting Engineer be unable to fulfil his obligations under the Agreement owing to circumstances beyond his control, or owing to some unreasonable action of the Client towards him or

because the client does not meet his obligations under the Agreement, he is entitled to suspend his activities and/or to cancel the Agreement, (in which case the provisions in the contract would be referred to) without prejudice to his right to claim damages from the client if grounds exist.

u. Termination by reason of events beyond the control of either party

v. Provision against delays

(u) and (v) are force majeure categories, for which provision is very difficult to get in any contract. A management consultant firm has usually several clients and should events in (u) or delays in (v) happen he could, after a reasonable time, get other jobs for the consultants concerned.

GENERAL PROVISIONS

i. Legal Jurisdiction for the Interpretation of the Contract

If the client and the consultant are in areas in which different legal systems are in effect, the jurisdiction under which the terms of the contracts are to be construed should be specified. If the contract is drawn up in more than one language, it is good practice to state which language is the "ruling" one for purposes of the interpretation of the contract.

In the Agreement it shall be stated under the legal provisions of which country the Agreement has been concluded.

The copyright of all documents prepared by the Consulting Engineer in connection with the Agreement rests with the Consulting Engineer. The Client shall not be entitled either directly or indirectly, to make use of these documents for the carrying out of the work other than under the supervision of the Consulting Engineer and/or of any additional or similar work without prior approval of the consulting Engineer and without additional remuneration.

ii. Insurance provisions

It is rather unusual for a management consultant to have professional insurances regarding quality and function of their work.

iii. Best Efforts Pledged by both Consultant and Client

The consultant should not hire people from the client's organization when assignments are going on. On the other hand, the consultant does not expect that the client will hire people from his own company either.

iv. Handling of Disagreements through Arbitration Procedures

Any dispute or difference arising out of the Agreement and/or the provisions of these Rules, including those considered as such by only one party, shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce in Paris, by one or more arbitrators, appointed in accordance with the said Rules.

v. Obligations for Visas, Permits, Licence Fees and Taxes

8 EVALUATION OF RESULTS

In some management assignments, like work simplification, cost reduction, sales methods, and logistics, the results of consultants and clients work can and should be expressed directly in terms of money, men or other calculable terms. In other assignments such as planning and control, development of new products and processes, systems installations, it may be some time before the results take full effect, and may be difficult to measure because many things have been changed.

There are however, certain criteria for well completed assignments, and one is to be found in MUCDC on page 41ff by Mr. Philip Shay.

When the engagement and contract is completed the client should re-assess his choice of consultant, how it was justified, as well as the performance of his own personnel.

9 SPECIAL AGREEMENT

Trade marks and Property Information

Information regarding this subject is to be found in MUCDC page 27ff.

10 FINANCIAL PROVISIONS AND FEES

The Management Consultants Association in England expressed some thoughts on consultants' fees, which is included here, viz :

Consultants, like accountants, have no established scale of fees which applies to the whole profession. In many countries they are not bound, like doctors or lawyers, by an accepted national form of registration, nor are there approved schemes of percentage payments, as in the case of architects or civil engineers.

It is however, a matter of professional ethics for a consultant to agree his fees with his clients in advance.

Before any assignment is undertaken, consultants carry out a preliminary survey (d) of the problem and submit a survey report. The report suggests the terms of reference for the assignment, and gives a forecast of the profit improvement or the other benefits to be expected as well as an estimate of the cost in consulting fees. Some times a charge is made for this survey, but may be made free of charge, if it is followed by an assignment.

There are no easy bargains in management consulting. High calibre men are needed, and have to be retained against the attraction of highly paid jobs in commerce and industry. There are indeed, many men who have risen to senior posts in commerce and industry, spent five or ten years as consultants, and then returned to executive work as Managing Directors of some of the country's best-run companies. It is two-way traffic. Amongst the ranks of the consultants are men who have served as managing directors or in other senior management posts. This situation inevitably influences the fee levels. However, consultants must justify the fees they command, and they do so by the overwhelming evidence of the value of the work they perform and by the fact that so many of their clients come back to them again and again with further assignments.

Professional fees, whatever the professional service, must be subjected to questioning. Will the benefits which are expected more than offset the cost of the fees? The consultant's reputation demands that he consistently does work which his clients find profitable. Accordingly, if he is invited to do work in circumstances where the benefits cannot be expected to outweigh the cost, he will decline the assignment.

MUCDC has the following on financial arrangements (page 24):

The type of fee, length of time during which it is to apply and the method of payment should be stated for each successive stage of a project. It is important that the contract state the currency or currencies in which payment is to be made and the basis for currency conversion. If there are regulations limiting the transfer of money abroad, it is advisable to stipulate in the contract, the obligation of both consultant and client to comply with these regulations. Many contracts contain a provision for the payment of interest on delayed payments. The tax liability of the consultant should likewise be stipulated.

Chapter 5 in MUCDC deals with consulting fees, and all the necessary information for writing a contract.

In the author's experience it is normal to get paid for 1400-1500 man hours per year instead of the 1760 quoted in MUCDC page 30. With this number of hours it would be difficult to have the necessary time for personal training and development of new techniques, which are necessary for every consultant.

A survey of per diem rates of management consulting fees in the United States of America is to be found in MUCDC page 146ff. In Scandinavia the most universal methods regarding fees in industrial and management consulting are:

- per diem
- the bracket quotation
- fixed lump-sum payment

Work of course is in teams as a rule, and the above would be per team per day, etc. Other methods include:

- salary cost multiplied by a factor
- total cost plus fixed fee
- percentage of estimated cost of construction

These refer to consultants working with infrastructure, civil engineering, etc. The retainer fee would be an interesting and tempting method, but apparently is not widely used in any part of Europe. With the six forms mentioned above the consultant and his fee are finished with when the job is completed. This suits many clients and assignments.

The client's personnel are permanent unless promoted or fired and we must bear this in mind when comparing the consultant's fee with the personnel's salaries. The overhead expenses and 'extras' that always appear, must also be taken into account, over and above the salary.

To illustrate this more clearly, a case study of the costs of a working hour for a young Swedish consultant in civil engineering has been included in this chapter. This report was made in 1966 by the Association of Swedish Consultant Engineers.

Case Study of Costs - A Young Swedish Consultant in Civil Engineering, 1966.

The costs for consultants consist of about 75% wages and fringe benefits, and 25% other general overhead costs. As the 'production unit' from the consultant firm is one hour of engineering work, the visible price for the services will be totally dependent on the increasing wage situation.

The number of man hours per project will increase in the future, because of increasing demands for perfect documentation to obtain better economic results and profit for the whole project.

For those projects which are paid by salary cost multiplied by a factor, the fee is calculated on the following basis, No. of hours x cost/hr x factor, or

$$N \times C \left(1 + \frac{F}{100} \right) \quad \text{where}$$

- N** is the number of hours every consultant worked on the assignment
- C** is the cost per hour in accordance with the Swedish Consultants Specifications (ABK and 1800 hours/year)
- F** is a percentage agreed upon to cover the consultants indirect costs and his contribution to the firms profit

The consultant should be able to verify through accountancy, the number of hours and cost per hour. On the following figure (page 21) we are given an idea of which costs must be covered by the agreed percentage. In the Swedish case the data was as shown on the next page, with an annual salary of 36,000 Sw. Cr. (US \$1 = 5.36 Sw. Cr.) 1800 hours per year was used for the definition of cost per hour to invoice in accordance with ABK.

The Consultant Firm's overhead varies of course, from one company to another. In this case it was 37% and distributed as follows:

Management and administration	11
Time for development of new techniques	4
Service departments to the consultants	8
Other costs	7
Insurance	3
Capital costs and interest	4
Total overhead costs	<u>37%</u>

It must be noted that in this case no provision is made for travel or similar costs.

The Swedish Case

Parts of real costs for production

How to calculate the invoice after ABK

		Vinstmarginal	Percentage 105%	43:40
		40:10		
Consultant firm's Overhead	Capital cost Interest			
	Insurance			
	Other costs			
	Service Departments			
	Time for development of new techniques			
	Consultant company management	29:30		
Net Production Cost	Working Materials	27:77		
	Place to Work	25:86		
	Pension ATP	24:33		
	Time that cannot be invoiced	22:51		
	Sickness	21:77		21:20
	Vacations	19:63		
	Pension ITP	18:23		
	Wage per hour			
			Cost per hour after ABK	
			$36000 + 2200$	
			<u>1800</u>	
			= 21:20	





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