2-01-20 Contracting with Consultants for Computer Services

David M. Massey

Payoff
The consulting relationship between a computer consultant and a client involves more than just the work to be performed by the consultant; it also encompasses the rights and responsibilities of the parties (in the event the work is not completed properly), and the ownership and rights regarding the resulting product. Although the consulting agreement must be carefully written with expert advice, this article's discussion of issues critical to the consulting process can help IS managers make informed decisions about, and better manage, the performance of their legal representatives.

Problems Addressed
Outside consultants are often used to ease the transition to new hardware and software, alleviate staff shortages, meet short-term staff requirements, and assist in the development of in-house expertise. Often the manager in charge of a project makes the decision to use a consultant, selects and hires the consultant, and executes an agreement between the parties. Although this approach saves time, it can lead to legal, financial, and operational problems later in the consulting relationship and obviate the cost benefits of hiring a consultant.

This article outlines some of the considerations critical to the process of contracting with computer consultants. Companies that have the benefit of in-house counsel should continue to rely on their legal experts to ensure that the consulting agreement addresses all important legal issues. If in-house counsel is not available, outside counsel should still be used. The guidelines in this article should, however, help IS managers make informed decisions about, and better manage, the performance of their legal representatives.

Why Contracts Are Vital
In some ways, a contract is not unlike a computer program. Both use precise language within a structured framework to obtain specific results. The consulting agreement represents the legal essence of the understanding between two or more parties. The law regarding contracts has been built up over centuries of commerce, and its development has sometimes been confusing even to legal professionals.

IS managers would never ask members of the human resources department to draft and negotiate contracts on their behalf, and they would certainly object if the accounting department designed and implemented its own system. Yet it is common practice in many IS departments to use a standard purchase order to describe the terms and conditions of the consulting agreement. The results are often disastrous because a standard purchase order cannot adequately address the complexities of a consulting relationship.

In addition, it is not uncommon for an organization to send a purchase order to a consultant and receive a letter of agreement in return. In many cases, neither party signs the other's form. Whose form prevails? Is there a contract at all? Most likely, no contract governs either party's form, and general principles of law will apply. The uncertainty and unpredictability of such a situation make a single contract signed by both parties a necessity.
Choosing A Consultant

Among the most important considerations in contracting with consultants is selecting the right consultant. Computer consultants generally come in two varieties. Some are experienced professionals who have decided to strike out on their own. In these cases, the client is dealing directly with the person who will perform the work. Most consultants, however, are employed by relatively small, entrepreneurial companies that are prone to high turnover. When dealing with these companies, particularly if they have been chosen because of the reputation or ability of a particular consultant, the client must maintain the right to approve or reject individual consultants assigned to the project. In the event a consultant must be replaced or reassigned, the contract must also specify who will pay any additional cost of training a new person.

Before accepting a consultant, the client should be sure to check references from satisfied customers for whom the consultant recently performed similar work under similar circumstances. Time permitting, a client can interview a consultant in the same in-depth manner as a prospective employee is interviewed.

Because contracting firms vary in size and area of expertise, the first step in choosing a consultant is to develop a list of candidates from which to choose. Sources might include marketing literature or evaluations on file from past experiences, recommendations of IS managers in other organizations, or even the Yellow Pages, under Data Processing Services.

As the following sections explain, the type of consultant needed also depends on the type of work to be done.

**Routine Assignments**

If the work to be done is relatively routine (e.g., system maintenance, coding, and testing under in-house supervision), any firm or individual contractor can be considered. Small or independent contractors often have lower rates, though large firms may be cost competitive if they wish to place employees immediately.

**Project-Oriented Work**

The success of a project depends on a cohesive, effective project team. A larger contractor with a reputation for project management can choose from among many employees to assemble a team with the necessary skills for the client organization. A clearly structured project-management methodology helps ensure that the project management aspects of development receive the required attention.

**Specialized-Skill Assignments**

A specialist is often needed when an assignment requires in-depth knowledge of a particular area. If a contracting firm that specializes in the required skill cannot be found, large firms, especially regional or national consulting organizations with a large employee base, should be used.

As in any field, a specialist costs more than a generalist. The client should thoroughly examine the credentials of anyone suggested for a specialist's assignment.
Preparing the Request For Quotation

IS managers usually preface the issuance of a Request For Quotation with one or more informal meetings with each prospective contractor. This gives both the client a chance to see how the contracting firm responds to the request and the contractors an opportunity to review the background and scope of the project and to withdraw if they choose. These informal meetings occasionally foster ideas that can alter the scope and complexity of the project, and the contractor's perspective can encourage new approaches to the problem. Furthermore, a contractor who offers ideas and attempts to review and understand the problem is probably interested in the project and should be considered for the contract.

After the work has been reviewed with the contractors, the request for quotation (RFQ) becomes the key vehicle of communication. A properly prepared and executed request for quotation (RFQ) lays the foundation for a successful project and a satisfactory working relationship with the contractor. However, if it is incomplete, the Request For Quotation can lead to serious problems. The following paragraphs discuss the sections an request for quotation (RFQ) should include.

Job Description.
The request for quotation (RFQ) should define all required deliverables. For example, the Request For Quotation must specify if the Job Control Language and documentation must be delivered with a completed program.

Background Material.
A contracting firm's performance can depend on how well its employees adapt to the client organization and its method of operation. Therefore, the Request For Quotation should include background information about the organization, the purpose of the proposed system, and the relevant system interfaces. This information helps the contractor understand how the system will function within its larger environment.

Responsibilities.
Because certain items are often ignored in proposed requests, they are not accounted for at project initiation. The request for quotation (RFQ) should specify who has responsibility for preparing test data, miscellaneous typing, and documentation.

Work Environment.
The work environment can significantly affect the cost of a project. The request for quotation (RFQ) should define turnaround times precisely; for example, turnaround time of code compilations and tests should be defined in terms of maximum time or number per day and not in such vague phrases as “reasonably fast turnaround.” Workstation configuration and availability should also be specified.

In addition to using precise language, the client should designate an individual to act as a contact with the consultant for questions, problems, and approvals. The request for quotation (RFQ) need not name this client contact person but should define the client contact's role within the client organization or project.

Pricing Structure.
The request for quotation (RFQ) should precisely define how the consultant should structure pricing on the proposal, including the type of contract and the level of detail required. The most common types of contracts are:
• Fixed-price, in which the client pays the consultant a fee for the entire project.

• Time and materials, in which the client pays an hourly rate for the consultant's services and provides the means and resources to perform them.

• Not-to-exceed, which is actually a time—and—materials contract with a fixed-price ceiling. The contractor is paid the hourly rate for the limit of the contract, after which time the consulting firm must absorb the cost of any overrun. Such arrangements are advantageous to the client, and few consultants are willing to enter into them unless they are absolutely certain that the scope of the effort is well within the limits of the contract.

A breakdown of pricing by project phase is usually sufficient; however, it is not unusual for a client to request estimates for each project deliverable. An entire contract need not use a single price structure. Occasionally, fixed-price and time—and—materials arrangements are used in different parts of the same contract.

Response Guidelines.
The request for quotation (RFQ) should state the date and time by which all proposals must be received and the method in which they must be presented. Most contracting firms prefer to give a formal presentation rather than mail the proposal because presentations are an effective marketing tool. They also provide clients an additional opportunity for clarification. When formal presentations are made, each contractor should be given the same amount of time. Because larger contractors have more financial and marketing resources, IS managers should not be swayed by a flashy marketing package but should evaluate the contractor according to the proposal criteria.

Once the request for quotation (RFQ) are sent to the prospective contractors, changes or additions to them must be transmitted to each contractor in writing, regardless of the urgency of time.

Evaluating Contractor Proposals

The method for evaluating contractor proposals should be established before the Request For Quotation is released. The evaluation may simply compare the bottom-line price, or it may use a combination of factors, including price, completion time, relevant experience, and approach. Defining the criteria before issuing the request for quotation (RFQ) facilitates the quick, logical, objective evaluation of proposals.

Larger, complex projects usually elicit proposals that are equally large and complex, as well as tedious. However, the only way to evaluate a proposal properly is to read it thoroughly. IS managers should pay attention to both the information contained in the proposal and the manner in which it is presented. The care and professionalism demonstrated may indicate the contracting firm's overall attitude.

General Information

Because a proposal is a marketing tool, the contracting firm will not overlook the opportunity to present positive information about itself. Information on the firm's history, mode of operation, past successes, and unique methodologies is often included and should be considered in the decision-making process.
Project Narrative

The section on project narrative should address all points requested in the request for quotation (RFQ) in the manner specified. IS managers should be suspicious of proposals that skirt issues or seem vague. A contracting firm that claims that its staff does precise and accurate work should be able to submit a precise and accurate proposal.

Cost is probably the most important item on the proposal, so a careful review of the pricing breakdown is essential. IS managers should review with the contractor any part of the proposal that is not done properly or does not include all requested information, such as specification of the cost of the work for each project subphase. If a firm’s bid is extremely low or high, or the bids vary considerably, the pricing breakdown of the proposals should be reviewed to determine the cause of the differences. Any proposals that do not encompass the scope of the project as defined should be either corrected or eliminated. Any changes to proposals must be made in writing and by mutual consent.

When IS managers find it difficult to choose between similar bids, they should conduct a follow-up interview with each contractor. All contractors should be notified of the client’s final decision, and managers should arrange a meeting with the chosen contractor as soon as possible to finalize the legal aspects of the contract.

General Contract Provisions

Contracts used by consulting firms vary from standard preprinted forms for time-and-materials work to contracts drawn up for special projects or fixed-price work. As with any legal document, it is wise to have a lawyer review the contract to ensure that it is fair and reasonable, covers all contingencies, and meets with the client organization’s practices, policies, and expectations. The contract should define the scope of the association between the client and the contractor, the liabilities of both parties, and the effort to be undertaken; it should also clearly state the legal rights of both parties. The following sections discuss the topics covered in most contracts.

The Project

The name and description of the project or effort to be undertaken should be included, along with its start and finish dates and any milestones relevant to contract performance. Penalties associated with missing deadlines should be stated.

Individual Rates

Individuals covered by the contract should be identified by name and functional title (e.g., programmer or project leader.) In addition, the type of contract should be defined and individual rates assigned as applicable.

Additional Costs

Any costs exceeding the hourly rate or fixed contract price should be explicitly stated. These include expenses to be billed to the client, rate increases that occur during the contract period, and overtime rates (together with a procedure for authorizing overtime). Fixed-price contracts should include a pricing method for work that is not within the scope of the contract and for changes or additions to the existing contracts.
Payment and Billing

General Issues.

The contract should state the billing method, billing due date, and any late-payment penalties. Under a time-and-materials contract, billing for hours expended is usually done biweekly or monthly. Fixed-price contracts may require that a certain percentage of the contract amount be paid at various points in the development effort. Thus it is important to establish and agree on the criteria for measuring the completion of each phase.

The consulting agreement should clearly state the amount of payment due to the consultant and how payment is to be made. Unless the consultant needs an up-front payment to subsidize the work in progress, full payment should not be made until the work is completed. Once consultants have been paid in full, their interest in and commitment to a project usually diminish. For projects of longer duration, payments can be staged to coincide with project milestones.

The consulting agreement must also specify whether payments are net of taxes, or whether the consultant is liable for withholding. Although it is customary for the consultant to handle taxes on consulting fees, the hiring company may agree to withhold and make payments as a convenience to the consultant.

Issues Specific to Time and Materials Contracts.

T&M contracts are most frequently used by service brokers, small organizations, independent consultants, and consulting firms with many employees but without a stable work force. Clients should keep in mind that this method of payment may tempt a consultant to extend work until another assignment becomes available.

Fixed-Price Bonus.

In some cases, the client may wish to provide an incentive for the consultant to complete a project before its deadline or under budget. This can be done by awarding a bonus directly related to the cost savings if the project is completed early. Because this arrangement motivates consultants to complete projects quickly, clients should ensure that the job is done thoroughly.

Expenses.

Some consulting firms charge for expenses in addition to the hourly rate for services. These expenses are typically small and include mileage, parking, and certain supplies. Expenses for meals, travel, and lodging may occur when a contractor from outside the local area is employed. Organizations should seek such consultants only when the skill needed for a project is so specialized or uncommon that it cannot be found locally.

When a client agrees to handle expenses for an out-of-town consultant, the contract should clearly delineate the expenses for which the client is liable. The client usually retains the right of prior approval for expenses and requires that regular periodic expense reports be filed.
Right to Hire.

Although not directly related to compensation, the right to hire is sometimes addressed as part of the compensation arrangement with the consultant. Typically, this provision gives the client the right to hire the consultant after a specified period of time and stipulates that the client pay a penalty for earlier hire. As is the practice with employment agencies, the penalty is usually calculated as a percentage of the hiring salary.

The Fine Points of Contracting

If the Request For Quotation has been properly prepared and reviewed, the groundwork for the contract will have been laid by the time a consulting agreement is needed. The agreement, however, must expand on some of the issues presented in the request for quotation (RFQ), as well as introduce certain new issues.

Scope and Standard of Work

Consulting agreements are often made on a time-and-materials basis without any specifically stated goals. This approach provides a blank check to the consulting firm, and good-faith misunderstandings about what is expected can lead to costly disagreements.

To avoid or minimize these problems, the contract must provide specific descriptions of the expected results and how the success of any end product is to be measured. It is often difficult to describe with precision the desired result of the consulting work and tie the description to a precise timetable and price. If the result of the work is a specific program or system, completion can be measured by appropriate performance tests. When possible, specification of the work should divide the job into small increments for which the manager sets separate prices and timetables.

In addition to the specific obligations described in the written contract, a consultant has a second type of obligation to the client. It is the same as the duty of any other professional—to exercise a level of care appropriate to the relationship. In most cases, the consultant must exercise the same level of skill in performing the job as the average full-time practitioner would exercise. Failure to exercise this standard can be considered negligence and render the consultant liable to the client for loss and damage caused by the consultant's error.

Proving negligence, however, is not easy. For example, the consultant may argue that any errors or omissions were not the result of negligence but arose from adherence to the instructions given by the client. Therefore, the consulting agreement must specify precisely what is expected of each party and what their respective remedies will be if expectations are not met.

Acceptance Criteria

Before any work is undertaken in a consulting relationship, the parties should agree on the criteria upon which acceptance, and thus completion, of each phase of the project will be determined. Every project milestone, from successful compilation of code to completion of an entire processing cycle, should have acceptance criteria and a procedure for documenting compliance with them.

Acceptance is typically documented through the use of a schedule or attachment to the consulting agreement. To avoid possible misunderstandings, each party signs the schedule
on meeting each milestone. In the event the agreement is prematurely terminated, the schedules help determine what, if any, payment is due.

**Maintenance and Error Correction**

Software is inherently complex, and nobody can guarantee that it will be error-free or operate without interruption. The consulting agreement, however, should explain who is responsible for failures, errors, and interruptions. Software authors typically bear this responsibility for a limited period of time, usually from 90 days to a year, during which time they must correct any errors discovered in the software. After this period, the client may wish to extend protection by entering into a separate maintenance agreement.

The maintenance agreement may be an attachment or schedule to the consulting agreement, in which case it will be governed by the terms and conditions of the consulting agreement. It may also be a separate agreement, in which case it will have to address anew all the issues relevant to the consulting agreement. Practically speaking, it is best to consider the issue of maintenance at the beginning of the consulting arrangement.

**Ownership of Results**

Clients frequently make the mistake of not executing a written contract assigning themselves—as commissioners of the work—copyright of the consultant's work. This agreement should be obtained before work is begun because in addition to clearly defining ownership, the agreement helps define the scope of the work to be done.

It may seem obvious that the party hiring someone to make something should own what is made. Unfortunately, the question of ownership in contract programming is far more complex. Generally, the author of a work owns the copyright. However, when the author is an employee, and the work is created within the scope of employment, the employer owns the copyright.

**Work for Hire.**

In consulting arrangements, ownership may depend on whether the work product is considered a work for hire. Several criteria are used to determine whether a work is a work for hire and therefore whether it belongs to the author or the commissioning party. These criteria include the method of payment, whether there was an express contract for hire (especially one restricting the author's freedom to engage in other related creative activities), whether the author maintained regular working hours, whether the employer withheld income tax, and whether the work was created at the employer's place of business.

The Copyright Act describes nine types of work that are generally considered to be works for hire. Computer programs are not specified in any of these categories, but some of the categories are broad enough to be interpreted as including computer programs. The best advice for programmers is to negotiate copyright ownership up front. Hiring parties should ensure that a written agreement exists if they want to own programs created by consultants.

Whether the original copyright to a work vests in the author or the commissioning party, the author may assign the copyright expressly to any party. Therefore, it is customary for a contract to describe the work as a work for hire that is the property of the client. In the event the work is not a work for hire, the contract usually provides for the
author to expressly assign copyright to the client. The common failure to include this provision results in further delays and negotiations.

**Warranties, Liabilities, and Indemnification**

Warranties, like ownership, may not seem important immediately, but they are critical to consulting agreements because they are not legally required by statute. In some cases, certain warranties from the Uniform Commercial Code (UCC) may govern the consulting agreement. But because UCC warranties are applicable to the sale of goods, they generally apply to hardware or off-the-shelf software. Custom programming is a service, not a good, so the customer purchasing custom software is not protected by these warranties.

It may not be clear from the consulting agreement whether the end result of work is custom software. To avoid any uncertainty regarding warranties, negotiating parties usually include an explicit disclaimer in the contract. To be effective, the disclaimers must be conspicuous and precise; they are therefore generally capitalized in print.

Other warranties are specifically addressed in the following sections. When a warranty is breached, remedies are available. Some are provided as a matter of law. Parties to a contract, however, are free to specify other warranties, a practice that may benefit both parties in the long run. By agreeing up front to liquidated damages—that is, to a specified form and amount of damages in the event of specific breaches—the parties to a contract can avoid costly and protracted litigation.

**Consultant's Insurance.**

Many consultants have errors-and-omissions insurance that covers their liabilities for failure to do the consulting job correctly or on time or for violating third-party rights. If the consultant has such a policy, the client should request a copy of the certificate of insurance before waiving any warranty in the agreement. Often the client will request to be added as an additional insured party so that the policy cannot be canceled without written notice to the client.

**Third-Party Rights.**

Consultants often have prior obligations to companies for whom they have previously worked. They may be obligated to maintain the confidentiality of information, techniques, or processes to which they have been exposed. They may have assigned the rights to material they have created to the companies that hired them. Finally, they may have agreed to restrictions against working in certain areas, with certain clients, or in certain industries.

The consulting agreement should include a clearly written representation and warranty by the consultant that the work to be performed will not violate any third-party rights and that all materials to be delivered under the agreement will be original to the consultant. The client may require the consultant to indemnify the client in the event that any third parties assert claims against the work performed by the consultant. Indemnification is simply an arrangement for one party to make another party whole against any claims arising under certain circumstances. Because this can be a costly proposition, it should not be entered into lightly.
Confidentiality

In the course of their work, consultants are likely to have access to the confidential or proprietary information of the hiring company. Although less likely, the company may also be exposed to confidential or proprietary information belonging to the consultant. Once disclosed, information that may have been considered a trade secret may no longer be protected, unless the disclosing party has protected the information with appropriate confidentiality provisions.

Confidentiality provisions generally outline a procedure for disclosure that ensures that both parties understand the confidential nature of the information being disclosed. The terms of confidentiality must also include the duration of the restrictions, and the remedies available if they are breached.

Because information that has become widely available loses its strategic importance, one remedy available for breach is injunctive relief. An injunction allows the injured party to prevent the breaching party from further damaging the value of strategic information by continued improper disclosure.

Solicitation

While working on the project covered by the contract, the consultant will come in contact with the client's key suppliers, customers, contacts, and employees. The client has legitimate expectation that the consultant will not use any of these contacts for personal benefit, particularly to the detriment of the client.

The restrictions on exploiting the contacts obtained through the consulting relationship are typically of limited duration. Otherwise, the consultant would eventually exhaust the supply of potential customers simply by virtue of having worked with their associates. The scope and duration of the restrictions depend on the work being done, as well as on the nature and extent of the consultant's access to client information.

Before retaining a consultant, clients should ascertain the nature of any applicable restrictions. Because consultants are in a better position to determine whether prior agreements restrict provision of the services required, it is customary for a consultant to warrant that no such restrictions exist or that any existing restrictions do not prevent work on a client's project.

Competition

Competition is handled through a noncompete clause designed to protect the customer's expectation that custom software or similar technology developed for the organization will not be provided to a competitor. The noncompete clause is standard and valid unless it is unreasonable.

Reasonableness is a widely used legal standard that is judged in the courts on a case-by-case basis. For example, a stricter noncompete clause is generally more acceptable in the case of custom software that is work made for hire. Broad restrictions would not be appropriate for more routine work and therefore may not be enforceable.

Restrictions on solicitation and competition are closely related and are often addressed together. Confidentiality provisions are also related. The contract must specify that violation of any of these provisions constitutes a material breach of the agreement.
Disputes and Remedies

The consulting agreement outlines what each party expects of the relationship. Ideally, the expectations are met, and the parties are satisfied with the outcome of the relationship. In reality, it is helpful to know in advance how disputes will be resolved and what remedies are available when they occur.

Consulting agreements are controlled predominately by state law since there is no national contract law. It is necessary therefore to specify which state and law will control the contract. Because courts in one state may adjudicate disputes governed by the laws of another state, the consulting agreement must also specify where disputes will be resolved.

Although there is no inherent advantage in having the client's state law and court system govern a contract, consultants often balk at such a provision if they are from another state. An equitable solution, and one that usually discourages litigation, is the provision that any dispute be resolved under the law and in the courts of the state of the party defending a legal complaint. Faced with the prospect of out-of-state litigation, a potential plaintiff is likely to resolve any disputes without resorting to formal legal action.

Changing the Contract

It is not unusual for the direction of the consulting project to change midway through the assignment. These changes should be documented in clearly written change orders to avoid misunderstandings. Changes may be necessitated as a result of changing needs of the client or of the consultant. Sometimes both parties agree that a refinement or adjustment to the project is required for successful completion.

The consulting agreement should clearly state how the parties will handle the delays and increased costs caused by changes to the contract. When the client initiates changes in the contract, it is customary to extend the time for completion of milestones as well as the deadlines for any completion bonuses; this is not done, however, when the changes are made at the request of or to accommodate the consultant.

Any changes, no matter how minor, should be documented so that their impact on the project is clearly known. The client should retain the right to accept or reject change requests, based on overall impact to the project. Changes to fixed-price or not-to-exceed contracts may require a budget increase. Finally, a client should never have to pay for changes caused by a consultant's error.

Term and Termination

The term and termination of a contract are integral parts of the contract life cycle. These clauses may include a specific length of time for the duration of the contract as well as certain circumstances or conditions that end the contract before expiration of the term. Instead of specifying a time frame for the expiration of the contract, the consulting agreement may simply terminate on completion of the project.

Every contract should provide the right of termination for a material contract breach by the other party. A material breach may include such events as nonpayment, nondelivery, failure to meet specific deadlines, or even bankruptcy. If a breach occurs, one party may wish to give the other time to cure the breach before terminating the agreement. The time allowed for a cure varies according to the nature of the breach, but, in general, it is between 10 and 30 days.

The contract should also provide for termination by mutual consent. Such occurrences should be documented by both parties so that there is no question that the wish to terminate
is mutual. If the client wants the right to terminate the agreement at any time, that right should be set forth clearly in the agreement. The client should expect to pay a penalty if this option is taken.

**Other Contractual Considerations**

To be optimally effective, a contract must include provisions whose purpose is not always clear to the parties. Contract law is old and complex and has been heavily litigated. Some phrases that have crept into common contract usage should be aggressively avoided.

One example is the best-efforts clause. Although both parties expect that the consultant will devote professional and diligent efforts to the project, a best-efforts standard can have unpredictable, and undesirable, implications.

Another common contract provision is the merger and integration clause, which provides that the written contract is the entire agreement between the parties. This seemingly unimportant clause can avoid complications in the event of a dispute.

**Managing Problems of Personality and Performance**

To help a consultant become as productive as possible, the client should prepare the consultant's working environment in advance. Preparation should include setting up a work space and workstation, making any security arrangements necessary for entrance and exit by the consultant, and preparing the system so the consultant can access project data and software. Contact with the consultant should be managed by the client contact, who will help the consultant with orientation, design standards, and project monitoring, among other issues.

A reputable consulting firm selects its consultants carefully and tries to match their abilities with client needs. Nevertheless, problems occasionally arise with personalities and performance. Although the IS manager's participation in interviewing and selecting the consulting firm and consultants minimizes the likelihood of problems, the manager should be prepared to address these issues as they arise.

**Nonperformance**

When a consultant is not performing as expected, the problem is usually resolved by replacing the consultant. All problems, however, must be documented and explained to eliminate any doubt regarding nonperformance or misunderstanding of expectations. Comparing the consultant's performance against the project plan helps clarify the problem.

**Personnel Conflicts**

Conflicts between in-house employees and consultants can seriously disrupt a project. The problem may simply be in-house resentment of a highly paid outsider, or it may be a personality clash.

Personality issues are less a matter of performance than of compatibility, and consultants may find themselves, through no fault of their own, in the unfortunate position of clashing with in-house personnel. Personality types that do not fit well in the organization should be detected through careful and thorough interviewing. If personnel conflicts arise, however, the consulting firm should be notified.
Careless Habits

Habitual late arrivals, long breaks and lunches, and early departures should not be tolerated. They should be brought to the attention of the consultant, and if necessary, of the consulting firm.

Missed Deadlines

If the consultant continually misses deadlines, the client should review the project with the consultant and the consultant's managers. Vague specifications, inadequate turnaround, downtime, and overly optimistic time estimates are just a few of the many causes of missed deadlines. The consulting firm should assume its share of cost overruns when it is responsible for delays.

Recommended Course of Action

Contracting for systems and programming services can be a useful staffing alternative. But drafting and negotiating a consulting agreement should not be undertaken without professional advice. Form contracts, or one-size-fits-all agreements, are not sufficient. The procedures described in this article are not all necessary for every project. The complexity of the procedures should correspond to the scope and importance of the proposed work. Each consulting relationship is unique and should be approached as such.

Many, if not all, of the problems between a client and consultants can be anticipated and avoided or minimized through use of a clear, well-written consulting contract. When disputes arise, a well-written contract provides a reference point for the assignment of responsibility and for an amicable resolution without litigation.

The consulting agreement is the blueprint by which a project is implemented. By paying careful attention to the details and using professional assistance, IS managers can ensure that the consulting relationship is productive and satisfying for both parties.

Author Biographies

David M. Massey

David M. Massey is director of business development for the ISERV Co. in Grand Rapids MI.