

NEOTERICA

50 Things You Need To Know Before Hiring a Consultant

Contracting With Consultants - Points to Consider

By Kerry C. Stackpole, CAE, IOM

A disclaimer if there ever was one...At the outset let me say that I am not a lawyer, do not play one on television and am not giving legal advice in any form, shape or circumstance. This information is designed to help you think about own needs when contemplating consulting agreements. Legal information is not the same as legal advice – so I recommend you consult a lawyer if you want professional assurance that the ideas or information, and your interpretation of it, is appropriate to your particular situation. Now onto to the interesting stuff...

Trust is everything. Never create a written agreement with a consultant that you wouldn't with do business with on a handshake. Trust is everything and a written agreement doesn't change that.

Win-win really does matter. Avoid being "heavy-handed" in your discussions or negotiations with the consultant. Starting out on a positive note and maintaining the shared desire for success is critically important to the outcome of your project. People never forget how you made them feel.

Achieving your goals is good. Knowing what they are is vital. You can achieve your goals by creating and being flexible in your approach to the consulting agreement. Do you really need a written report? Would a briefing to select staff or volunteer leaders suffice? The long held adage that "time is money" remains true today. Without this specificity it will be difficult, if not impossible, to determine whether the consultant has performed their obligations.

Ask! What's the worst that can happen? Never be afraid to ask for what you need in a consulting agreement. The consultant or their firm may say no or maybe they'll agree. You won't know unless you ask.

Being creative is good. Creativity can apply in contracting too! Consider offering performance-risk incentives within the consulting relationship. Create an agreement with 90% of the consulting fees guaranteed with a performance bonus or payment beyond 100% of the total fee for exceptional outcomes.

What does legal say? Consulting agreements are frequently used in today's world and while every organization has differing practices regarding the review of legal agreements, be sure that the specific goals, reporting relationships and outcome reporting you have in mind survives legal analysis. Having reasonable expectations about services to be performed under the agreement and the consequences if those expectations are not met are vitally important.

Who owns the work? Robert Frost said "good fences make for good neighbors" and the same could be said for being clear about the use of the consultant's work. Some agreements allow you complete unfettered use of the physical product delivered by the consultant and some do not. Be sure you have the

use you need specified in the agreement. Many consultants will want to retain the copyright for their work, but often will agree to license their work to the client. A consultant may ask for additional compensation to assign this right. Knowing the terms of use and the ownership of copyrights to the finished products helps avoid unpleasant surprises later.

Get the money right. The terms of total compensation, payment schedules, hold-backs, and expense reimbursement all need to be spelled out clearly. Do you prefer an hourly agreement or a flat-fee arrangement? Is there a cap on reimbursable expenses? What are the reimbursable expenses---travel, hotel, messengers, secretarial services, phone calls, car rentals, meals, overnight delivery, copy expenses, faxes, meals, computer rentals?

Once more unto the breach, dear friends, once more... When a disagreement arises regarding the consulting agreement, having agreed upon remedies available to either party becomes critically important. Talk about the options with your consultant. Given that mutual success and achievement of your organization's goals are likely paramount objectives for both parties, finding common ground on what constitutes a breach and what are suitable remedies will likely be obvious. Remedies include equitable relief, monetary damages, return of fees or the right to seek injunctive relief against the breaching party to prevent any further breach of the agreement. Having everyone on the same page at the start is especially valuable should things turn sour.

How do I get out? The terms of the agreement protect your interests by allowing you to terminate the agreement under certain conditions. The consultant will typically have comparable language to cover their needs as well. For you, typical conditions might include (1) breach of confidentiality or non-solicitation provisions of the agreement, (2) non-performance clauses for not providing deliverables on schedule, or (2) illegal activities that affect consultant's performance under the agreement. Without the right to terminate the agreement, you are obligating yourself to the consultant even if the consultant has taken actions contrary to your best interests.

Competitive enthusiasm or not. Although not necessarily a popular feature of consulting agreements, non-competition and non-solicitation clauses at least for the term of the consulting relationship agreement are becoming more common. If you operate in a competitive environment (and who doesn't these days?) you may want to ask about the possibility of a non-compete or non-solicitation provision.

Some Closing Thoughts. Start with the end in mind. Be clear about the results you desire. Confirm that clarity with the consultant and anyone associated with the project from your team or theirs. If the consultant cannot comprehend your desired outcome, a second opinion may be in order. Avoid paying for the obvious unless it moves your agenda forward for political reasons. Be prepared to revel in the experience of your consultant. Look for them to suggest and say challenging things.

Knowing they may make you a tad uncomfortable (not to be confused with miserable) is generally a good thing. If they are making your life miserable, say so and get the issue resolved, today! Look for and insist upon the results agreed to at the outset of the relationship.

Changing up the terms or conditions of the agreement is not a unilateral option. It has to be a bilateral understanding. This means as the client that you stick to your promises regarding payments, communications, accessibility, review deadlines and anything else you agree to do and the consultant will want and be obligated to do the same. Everyone understands circumstances and situations change. Communicating those needs and the likely changes well in advance makes all the difference to the success of your desired outcomes.

About Kerry C. Stackpole

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Neoterica Partners delivers strategic planning, leadership development and professional interim CEO services to associations, foundations and professional societies. Among the firm's clients are leading associations' in tax and financial services, advertising, certification, emergency medical services, engineering, hospitality, catering, publishing, news media and technology.

A tenured career association executive, Mr. Stackpole has served as president/CEO of eight not-for-profit organizations and foundations in manufacturing, entrepreneurial ventures, electronic imaging, financial services, engineering, e-commerce standards, hospitality and communications technology.

During that time, he served as Chairman of the New England Society of Association Executives. Moreover, as an active member of the American Society of Association Executives (ASAE), he is a leader on association strategy, leadership and marketing having served as chairman of the ASAE Executive Management Section Council and an ASAE National Board Member.

A Fellow of the American Society of Association Executives he holds the earned designation of Certified Association Executive (CAE) and is a graduate of the United States Chamber of Commerce Institute for Organization Management (IOM). Mr. Stackpole serves as a co-facilitator for the American Society of Association Executives' Future Leaders program and has also taught events management for the Continuing Studies program at Bentley College. He received his Ed.M. in management and organization development from Cambridge College.