



HANGING YOUR CONSULTING SHINGLE

Why Would I Do It?



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Engineering | Architecture | Design-Build | Surveying | GeoSpatial Solutions



Why do you want to be self-employed?

- What do you want to get out of having your own business?
- What do you like about what you currently do?
- Will this enjoyment continue if you are self-employed?
- What do you not like about what you currently do?
 - How many of these things can you avoid if you are self-employed?

MONETARY EXPECTATIONS

- How much money do you:
 - Expect to make?
 - Need to make to cover family expenses?
 - Need to make to cover business expenses?
 - Need to make to cover health benefits?
 - Need to make to allow for sick leave or vacations?

HOURS

- What will your hours be?
- How many weeks a year will you work?
- Do you want to work part time?
- Do you just want to work certain times of the year?

YOUR TALENTS

- Why would someone hire you over a competitor?
 - What makes you or your services special or unique?
- How will you secure work?
 - Do you expect to receive consulting work from your previous employer(s)?
 - Do you have a network to obtain potential clients?
- What are your costs of proposing/bidding a project?

PICKING A BUSINESS ENTITY

- Form a business organization
 - Limited Liability Company
 - Corporation
 - Partnership

Avoid the sole proprietorship. Create a shield to protect your individual assets.

BUSINESS ENTITY FORMALITIES

Once you pick a business entity, compliance with formalities is a must, or claimants have an opportunity to reach your personal assets that are not part of the business (“piecing the corporate veil”). For example:

- Use company letterhead
- Sign in a representative capacity
- Appoint appropriate company officials, if appropriate
- Do not commingle funds
- Maintain separate bank accounts
- Generate separate company income records and reports
- Hold annual meetings

BUSINESS ENTITY FORMALITIES

- Document major decisions in the minute book
- Obtain a separate EIN (the IRS has some exceptions)
- Document Loans
- Properly capitalize the company

REGISTRATIONS

- IRS (EIN) – there is an exception for the one-man LLC, the IRS allows you to use your SS No.
- State tax registrations
- State Boards
- State registrations??

FACILITIES

- Create a pro forma budget
- Do what your pro forma budget allows
- Be creative
- Subletting space from a professional firm, or subletting space in the same building as a professional firm so you have access to the equipment/resources you will need are options.

YOUR PROFESSIONAL TEAM

- Establish your necessary business relationships
 - Lawyer
 - Accountant
 - Insurance Agent
 - Banker

CONTRACT

- Have a good contract to provide your services under
- Understand all its terms, including the boilerplate provisions
- Limit your liability
- Have good payment provisions with teeth
- Develop a deal maker/deal breaker checklist

BUSINESS DEVELOPMENT

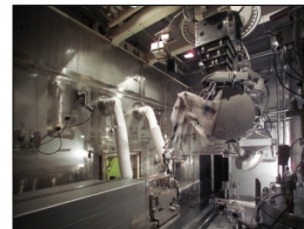
- Enact a plan to develop business
 - Is it realistic?
- Have a backup plan to generate revenue if/when work is slow or lacking
- Keep track of the “soft dollar” costs of marketing (both your out-of-pocket expenses and your time)

RETIREMENT PLAN

- How much do you
 - Currently put toward retirement?
 - Expect to put toward retirement as a consultant?
 - What is your retirement vehicle?
 - What will be your retirement vehicle as self-employed?



COMMON MISTAKES



PRICING

- Under pricing
- Over pricing
- Know contractual payment alternatives

SELLING TO THE WRONG PEOPLE

- Watch out for the cut-throat contractor
- Endeavor to work with clients who know the business and who know there is no such thing as the “perfect project” – that design issues are part of almost every project

SCOPE CREEP

- Your client comes first (within the scope of work)
- Don't be meek in pointing out the client's request/expectation that goes beyond your scope
- Help yourself at these moments by:
 - Having a contract with language stating that scope must be described specifically – if it is not described then it is not undertaken by you, by custom in the industry or otherwise
 - Having a contract with a list of additional services you offer (can be an exhibit to your complaint if you have to sue)
 - Understanding your client's overall project from the start so if you see holes, you can point them out to your client/add them to your additional services

SPENDING TOO MUCH MONEY

- Fund a reserve to cover 6-8 months of family and business expenses before spending money on new equipment, software or non-essential items
- When you start to get regular checks, resist the urge to spend before funding your reserve
- Fund a separate reserve for upcoming recurring business expenses
 - Taxes (quarterly withholding of estimated taxes)
 - Insurance
 - Registrations

NOT SPENDING ENOUGH MONEY

- Identify the essential items required to perform your services
- Find a way to gain access to them (borrow/rent/purchase)

ASSUMING A SIGNED CONTRACT WILL BE HONORED

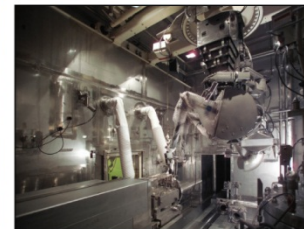
- Being in the “right” contractually or professionally is the first good step towards a favorable outcome for you
- But it is not the whole 9 yards
- Realize the time and expense involved with enforcing your rights if they are not recognized by your client
- Courts rarely award attorney fees to the prevailing party – even when the contract allows or requires it – so take that cost (and the value of your time) into account and make a business decision up front
- This usually requires that you compromise your claim, even when you’re in the right
- This is the “**cost of doing business**”

GOING AGAINST YOUR INTUITION

- Most successful consultants end up having a pretty good nose for business
- Follow your intuition whenever possible
- If you go against your intuition, monitor that situation closely
- Take what you have learned and experienced with your past employers



DRILLING DEEPER ON CONTRACTS



DEAL MAKERS

- Scope (+ services not included)
- Limitation of Liability
- Consequential Damages Waiver
- Standard of Care
- Force Majeure
- Means-Methods-Safety duties excluded
- Ownership of documents and reuse clause
- Stop work-termination for non-payment
- 30 day pay (+attorney fees & interest for non-payment)
- Engineer can rely on Client's information

UNACCEPTABLE PROVISIONS

- Poor or Unlimited Scope
- Unrealistic Project Schedule
- Unlimited Liability
- Consequential Damage Responsibility
- Heightened Standard of Care
- Broad Form Indemnity
- Guarantees- Warranties – Certifications
- Means – Methods – Safety Duties
- Liquidated Damages (no cap)
- Excessive Insurance Requirements

UNACCEPTABLE PROVISIONS (CONT)

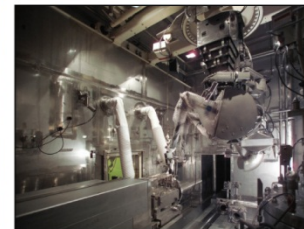
- No Change Order Clause
- Pay-if-Paid Clause
- Third Party Beneficiaries to the Contract
- Waiver of Consultant's Lien Rights
- Flow-down Clauses w/o/ Review

BONUS PROVISIONS

- Notice of Error and Chance to Cure
- Termination
- No Liability for Contractor's Work
- Construction Observation Defined
- Can Sue the Consultant and not Personnel
- Contract Assignment Requires Consent
- Electronic File Disclaimer
- Engineer Responsibilities Detailed
- Hazardous Materials Disclaimer
- Payment for Extra Services



DRILLING DEEPER ON INSURANCE



WORKERS' COMPENSATION

- Workers' Compensation Insurance as required by statute, including:
 - Employers Liability – Limits of \$1M Each Accident; \$1M Disease – Policy Limit; \$1M Disease – Each Employee
 - Many states allow a waiver of the requirement to secure this insurance for:
 - The Self-Employed
 - Officers & Directors
 - Other Categories

Know your state's law well so you can effectively exclude this requirement from your contract, if allowed

COMMERCIAL GENERAL LIABILITY

- Commercial General Liability Insurance with Limits of \$1M per Occurrence and \$2M in the Aggregate
 - These policies insure against:
 - Bodily Injury
 - Property Damage
 - Person Injury, Advertising Injury
 - Medical Expenses
 - They are intended to protect you from liability for damages to property (other than your own work or property) caused by your work or your product

BUSINESS AUTOMOBILE LIABILITY

- Business Automobile Liability Insurance with limits of \$1M per occurrence, combined single limits (owned, hired & non-owned)

PROFESSIONAL LIABILITY

- Professional Liability Insurance with limits of \$1M per Claim and \$2M in the Aggregate
 - Understand your policy exclusions
 - Endorse out an exclusion if it would deny you coverage, especially coverage you need for your line of work
 - The higher the deductible – the lower the premium
 - Claims made policies
 - Notice of claim
 - The policy language and exclusions can be as important as the limits of coverage

UMBRELLA POLICY

- Umbrella/Excess Liability Insurance with Limits of \$3M per Occurrence
 - This policy “covers” or extends limits of coverage over your CGL and Auto policies



QUESTIONS?

