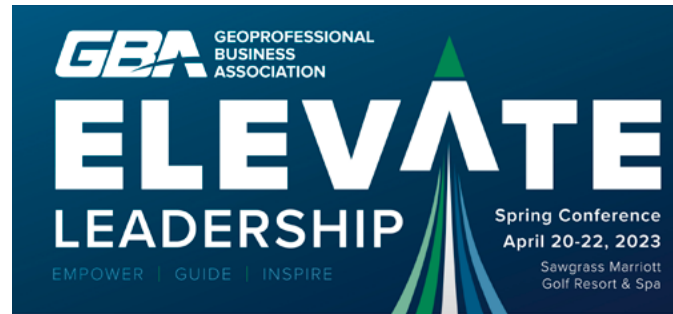


ROUND TABLE

Wrap-Up

SPRING CONFERENCE 2023

As part of the 2023 GBA Spring Conference at the Sawgrass Marriott in Ponte Vedra Beach, Florida, the Business Practices Committee hosted two round tables. There were six topics of discussion on important current issues. Always a crowd favorite, the round tables were well attended, and conversations were lively and engaging. Each round table was moderated by a member of the Business Practices Committee and notes were taken on the discussions, which we've made available for GBA members to read in this document.



NEW CONTRACT REQUIREMENTS

Abstract

Contracts are essential documents that outline the scope of services, fees, and terms & conditions (T&Cs) for services to be provided on a project. The scope and T&Cs are vital in assisting engineers in lowering their potential liability risks on the project. For many years, the majority of clients executed standard engineering firm contracts, with minimal modifications. In recent years client-generated contracts have increased, and many have undesirable or uninsurable terms. Negotiating these contracts can be time-consuming and in many cases project budgets did not include this extra time. Reluctance of clients to modify or limit T&Cs leaves the engineering firm in a position to accept the undesirable terms or decline the project.

Most Important Items To Share With GBA Members

- When an email is received stating authorization to proceed, send an email response that work authorized is in accordance with the proposal and T&Cs submitted by the engineering firm. This eliminates potential submission of a different client-generated contract after work begins.
- Attempt to limit contract review to a designated group of individuals within our firms. This can be more difficult for larger firms with multiple subsidiaries or operational units.
- Need to educate clients on items such as reason for professional consulting contract vs. contractors' contract, uninsurable clauses that hurt client if insisted on, how indemnification works, etc.
- Our members in California and other regions are reporting that prevailing wages and PLAs are an important contract consideration that require significant resources to abide by. Specifically, it appears that there is a push to require increased requirements beyond sub-consultants such as drillers to include CoMET staff. It is our assumption that this may become more prevalent across the country.
- Limitation of Liability (LOL) continues to be an important issue to our members. While many are able to negotiate a fixed LOL amount related to a multiple of their fees or insurance limits, often other language in the contracts can appear to "undo" these negotiations in the future.
- Environment Social Governance (ESG) is becoming an increasing part of the quals-based selection process. While it is not yet a contract requirement in the U.S., or member firms in Canada are seeing this enter the contract process.

**Key Points, Concerns, Advice, Solutions, Lessons, Case Histories,
or Anything Else Related To The Topic**

- Limitation of Liability (LOL)
 - No LOL in contracts is becoming more common—the norm for municipality or state contracts with little room for negotiation.
 - Unreasonable LOL for fees in contract; clients asking for insurance limits regardless of project fees.
- One-sided indemnification clauses with multiple parties requested to be indemnified.
- Members continue to see lien waivers that also include indemnifications that are a problem.
- Pay-when-paid
 - “Pay-when-paid” clauses can be problematic, especially in contracts with other design firms. Attempt to put a maximum number of days paid by in contract, regardless if client has paid.
 - Some member firms report that “pay-when-paid” is still common when presented with contracts from clients.
- Duty to defend
 - Being included in contracts. Currently unenforceable in North Carolina.
 - Member firms remarked that they still have to keep an eye out for “duty to defend” clauses in contracts. Fortunately, most members agree that they are often able to negotiate this term.
- Contract language
 - Clients using contractor contracts vs. consulting contracts.
 - Difficulty in getting clients to understand difference between professional liability and general liability.
 - Contracting clients are continuing to use agreements that are not suitable for professional consultation services. Often these contracts are based on “goods” and not services. They can often include “retainage” or “hold backs” that can be negotiated out by our members.
- Client sends email authorizing work, but you later get a contract form different than the proposal submitted. Sometimes work has started and the contract is not acceptable.
- “Attorneys sitting in next room coming up with new clauses”!
- The concept of prevailing wages and project labor agreements (PLA) appears to affect our members differently based on their relative location in the country.
- Native files and intellectual property (IP) clause are becoming more difficult to navigate.
- The amount of resources a firm has to comply with complex contract requirements varies significantly. Of note are the IT requirements in some contracts that prohibit cloud computing and have strict security requirements. Smaller firms may struggle to meet some of these requirements.
- Will artificial intelligence (AI) help our members identify and negotiate problematic contract clauses?



NON-COMPETE EMPLOYEE AGREEMENTS

Abstract

- Are they needed?
- Proposed FTC regulations
- State laws and multi-state corporations

Most Important Items To Share With GBA Members

- Enhance rather than enforce.
- If must sign, read closely, get finite term, and push for monetary or other personally relevant terms.
- From owner side, should have rights to recover incentives given to encourage staying and earning.

Key Points, Concerns, Advice, Solutions, Lessons, Case Histories, or Anything Else Related To The Topic

- Non-competes “hog-tie” employees. Offer carrot instead of stick, e.g. pay off student loans, pay tuition, provide bonuses, etc. Entice rather than enforce.
- Longer than 24 months is unenforceable. Read carefully: Some auto-renew every year or two. Make sure finite term.
- Unanswered question: What if they have a geo-fence (can't work within 50 miles) and work remotely 51 miles away? Is it where they sit, or where they do business?
- If acquisition, terms different for minority vs. majority stakeholder. Most seemed to agree some version of non-compete reasonable in acquisition.
- Current debate is 25% shareholder vs. any shareholder. FTC ruling could impact.
- If shareholder leaves early, clawback clause should be OK where owner has right to recover incentive percentage given.

PAPER TO DIGITAL SERVICES

Abstract

- Obstacles
- Benefits
- Downsides of implementation

Most Important Items To Share With GBA Members

- No one-size-fits-all option. Spend time identifying company needs.
- Going digital provides time efficiencies for field staff and management.
- Streamline processes between offices or merging companies.

Key Points, Concerns, Advice, Solutions, Lessons, Case Histories, or Anything Else Related To The Topic

- Adoption of workflow changes is difficult. Getting buy-in from leadership can be difficult. Possibly generational problem of not wanting to move away from paper.
- Off-the-shelf products are expensive for small firms.

- Project start-up is critical for efficiency.
- Tracking reports are generated or missed.
- Field to lab to office to be integrated on one system.
- Link between field system and billing is important.
- Creating in-house processes is important.
- Major quality and efficiency gains.
- Hybrid options are viable.
- People find workarounds without a system.
- Variety of products available and there is no one-size-fits-all system. Options include design-your-own, off-the-shelf products (GBA sponsor companies), and in-between systems like GoCanvas, Survey123, and Device Magic.
- Build your own advantage: customized to your specific needs. Disadvantage: expensive and sometimes complex. Have to build separate apps for each mobile platform. Data hosted locally instead of cloud.
- Why/when to switch: Mergers with other firms or multiple labs. Streamline reporting and multiple office processes.
- Efficiencies gained in time, report review.
- Efficiencies are the biggest incentive to go digital: Timesheet review, accounting integration, reduce repetitive errors, provide technician instructions, field staff have info at their fingertips; client has access with reports.
- Finding the right product is difficult. Spend time researching available solutions.
- Transfer of institutional knowledge developed from implementation of digital source is important to maintain the software system used in the future.

PREPARING FOR A RECESSION

Abstract

What are you and your company doing to prepare against a recession? Recession presents risks to a company primarily financially (making sure bills and employees are paid) and increases stress for managers and employees.

This is a topic about organizational resilience. Firms that prepare for economic downturns before they occur have been shown to perform better and recover more quickly from their effects. Plans for downturns should be easier to do when in good times, when you are not feeling the heat of reduced revenue and profit. Planning should encourage proactive rather than purely reactive responses in navigating difficult economies.

Most Important Items To Share With GBA Members

- In order to become more resilient, try to diversify your operations and client base.
- Maintain a long runway to manage your operating expenses through liquid assets and a work backlog.
- Planning for a recession should be considered in annual operating plans.
If you wait for a recession to occur, it is already too late.

**Key Points, Concerns, Advice, Solutions, Lessons, Case Histories,
or Anything Else Related To The Topic**

- In order to be more resilient, we should diversify our portfolios: Add new business lines (or disciplines), expand into new markets, develop new customers.
- As part of recession-proofing, we should consider the worst-case scenario (not necessarily plan for it but try to be aware of a worst-case condition).
- Maintain enough liquid assets to pay for several months of operations.
- Try to maintain a backlog of work.
- Cut expense. This could also provide an opportunity to trim some fat from your organization or leverage new technologies.
- Recession-proofing needs to be included as part of your annual planning. If you wait until the recession hits, it is too late.
- If you rely on credit for operations, make sure that your banking institution is also resilient and will have money available during a recession.
- Everything you do, kick it up a notch (get more work, build backlog, take care of clients and people) because the wind may no longer be at our back, but rather in our face.
- Maintain the core and remain as profitable as possible.
- Raise prices; most clients will take it in stride.
- Push business development.
- Become more conservative. Take more cash forward.
- Reduce/eliminate debts (e.g. instead of new trucks, buy used)
- Make sure you get the materials testing/special inspections component of the work; don't give service away.
- Employees look to see how you treat employees/clients in tough times. Don't panic!
- Create contingency plan for economic downturn.
- Keep people engaged. Communicate, communicate, communicate. Be transparent, open, honest, and upfront about the marketplace and the business climate.
- Monitor/track underperformers; know your weak links. Be prepared to make tough decisions.



RAISING PRICES

Abstract

Many firms are struggling to raise prices in light of rising business costs. This round table focused on the biggest challenges that GBA members face and some solutions they have devised to combat the commoditization of engineering services.

Most Important Items To Share With GBA Members

- Technology fees, etc.
- Pick the right clients who recognize value—let the undercutters take the bad clients.
- Raise fees until the client wants to talk, then have a good conversation.
- Escalators—tie increases to inflation.
- Don't be afraid to ask for more money.
- To pay employees more we have to increase rates.
- Client selection is the key to success. Have a strong go/no-go process and be strategic.
- Clients usually don't push back when rates increase. That may mean you are not raising them enough! Your fear is holding you back.
- Lump-sum projects enable more flexibility and are often more profitable.

Key Points, Concerns, Advice, Solutions, Lessons, Case Histories, or Anything Else Related To The Topic

- Articulate value. If the quality is there, clients will come back. Many engineers do not know how to talk about value, differentiate, or explain to a client why they charge more than other firms.
- Just do it.
- Clients get it or maybe you don't want them.
- Two thoughts on rates: Don't just use a rate sheet – be strategic or use a standard rate sheet.
- Why are lawyers/doctors different?
- Negotiate mindset.
- Hold ground and let clients come back.
- Raise fees and have clients talk to you. Have the conversation.
- Pay-when-paid: Interest, retainers.
- Escalators? More in line with anticipated cost of living.
- Discounts to preferred clients, those who paid on time.
- Software/service/admin/technology fee → X % of profit to offset software costs, etc.
- Subs mark up high.
- Keep raising rates until a good client complains.
- Haven't seen any pushback on higher rates.
- With inflation, now is the time to raise rates.
- If new rates are to start at the beginning of January, establish and implement the new rates a month or so earlier so new projects that are to start in January are based on the new rates.
- Don't be afraid to ask for more money.

- To pay employees more we have to charge more.
- Ask for rate escalation for multi-year contracts.
- Think outside the box for covering costs (e.g. fuel surcharge).
- Fear is a major factor in not raising rates to clients. They are afraid of upsetting a client or getting pushback.
- Most of the participants have raised their fees this year and have not had significant pushback from clients.
- Some firms have raised their prices several times this year because of increasing inflation and rising salary costs.
- Some government agencies are not allowing reasonable escalation clauses and engineers are getting stuck with contracts that they lose money on.
- Lump-sum projects are better and enable the firm to be more flexible with staffing. Lump sum are generally more profitable than hourly projects.
- Client selection is one of the most important aspects of success. Sometimes it makes sense to fire a client. Despite how busy we are, some firms fear a recession will come and are being conservative about firing bad clients.
- Small projects often lose money so some firms are setting minimum fees or project sizes.

STRATEGIES FOR INCREASING SALARIES

Abstract

With a tight labor market for A/E professionals and high backlog, firms are struggling to find staff and working hard to keep their existing staff. At the same time, inflation has been as high as 9% for not only goods and services of our staff but also for construction materials, leading to significant cost increases for client's projects. In order to recruit and retain staff, firms need to increase salaries/compensation but need to be cognizant of how much the clients are willing to absorb.

Most Important Items To Share With GBA Members

- The A/E profession has a history of incentivizing staff through ownership opportunities and discretionary bonuses but the staff recently entering the profession are not interested in ownership. Moreover, there is often a disconnect between how much influence a single person has on overall firm performance. Consider significantly reducing the discretionary bonus structure and increase base salary compensation and manage performance.
- Consider fringe benefits that relieve the everyday pressures of staff to allow each to increase productive hours. Examples include daycare and other wellness benefits, especially for younger families.
- More lump-sum projects.
- Make all employees, including C-suite, hourly.
- Increase hourly pay on certain projects.
- Increase base salaries and decrease bonuses.
- Monthly and quarterly bonuses instead of end-of-year bonuses.
- Educating staff about the other factors that play in to pay increases. Teach staff about more of the business/economics side of pay increases.
- Ensure that staff are accountable for productivity and tie salaries to performance.
- Losing people to other industries or to the contractor, client, etc. New generation shares salary and bonus numbers with each other.

**Key Points, Concerns, Advice, Solutions, Lessons, Case Histories,
or Anything Else Related To The Topic**

- Tie salary increases to increased responsibility.
- Provide incentive-based increases tied to certain professionals for earning needed certifications or qualifications.
- Examine fringe benefit offerings that will incentivize staff to log more than 40 chargeable hours/week such that the cost to provide such benefits does not eliminate the fees earned on the additional charged hours.
- Continue pricing strategies that do not charge by the hour but rather based on the product offered.
- Significantly reduce the discretionary bonus structure for certain staff to increase base salaries. Bonuses/other compensation (young staff value base compensation over bonuses).
- Embrace more technology for solutions.
- Relating to prices/client billing.
- Loan qualifications.
- Hourly pay – increased pay on certain projects comes with some risks.
- California state requirement: \$75/hour for nuke operator
- Why is our model different than the lawyers/doctors?
- More lump-sum billing.
- Straight time pay or compensate time over 40 hours; varies by level of employee/what type of time.
- Benchmarking with salary surveys.
- Reduce overhead costs (savings go to salaries).
- Promote total compensation considering benefits (PTO, work, etc.)
- Increase fees to increase salary. As a profession we all need to increase our rates. Elevate the profession.
- Tailor raises/bonuses to what motivates each employee.
- Take care of the key staff.
- Increase efficiencies.
- Gen Z thinks more should be cut off the top to more equalize pay across the staff.
- Educating staff about the other factors that play in to pay increases. Teach staff about more of the business/economics side of pay increases.