

ACEC-BC Position Paper

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Recommendations when Entering into Subconsultant Agreements

All ACEC-BC member firms play a pivotal role in fostering an environment that is fair, transparent, mutually respectful, and “maintains the highest standards of integrity, professionalism, and ethics in all aspects of our work.”¹ To support these values, the Small Firms Council and the Business Practice Committee have outlined recommendations that firms who enter into contracts with each other can incorporate when negotiating their respective contracts.

These recommendations consider shared risk, ability to control and survive a particular risk, equity, and indemnity. For additional resources, please refer to the references listed at the end of this bulletin.

Equity and Balance: Use balanced provisions from standard agreements (ACEC-32) and consider the Subconsultant as a part of the project team (i.e., consider Subconsultants while negotiating the prime agreement). Fairness includes considering your Subconsultants’ size, equitable proportion of risk, nature and scope of services relative to that of the prime agreement within the bounds of your firm’s policies and the requirements of the prime agreement.

Consistency: Clauses flowed down from the prime agreement are applicable and appropriate; do not introduce additional clauses that are contradictory or more onerous than those in the prime agreement. Subconsultants should expect to accept flow down of relative risk and requirements from the prime agreement, and they should be afforded the same or proportional rights and benefits of the prime agreement, as applicable. For example, the right to rely on information provided by the owner, requirements for safety certifications, drug and alcohol testing, security programs, and confidentiality provision should not be more onerous than the prime agreement.

Indemnity, Insurance and Limitation of Liability: Ensure these provisions do not exceed the scope or requirements of the prime agreement, including considering the proportional allocation of risk.

Note – Limitation of Liability: ACEC-BC always recommends that consultants negotiate Limits of Liability acceptable to both parties that are appropriate to the specific project prior to entering into a contract. This recommendation applies to both prime and sub consulting agreements. Consultants should obtain independent legal and insurance advice during the negotiations.

¹ ACEC-BC Charter of Membership, tenet 2.

Ownership of Documents and Intellectual Property (see footnote²): Clauses should not impose more stringent conditions than those in the prime agreement. Clauses should assure consultants are able to comply with professional regulation regarding retention of documents.

Suspension, Termination, Dispute Resolution: In general, clauses should not impose more stringent conditions than those in the prime agreement except where required for compliance with the prime agreement. For example, suspension or termination may have a more rapid suspension of sub-consultant than the Prime Contract but should still consider dispute resolution and notification timeline.

Payment Terms: Negotiate reasonable payment terms that reflect an obligation to pay the subconsultant in a timely manner, regardless of payment delays from the owner that are unrelated to the subconsultant's performance. Avoid clauses that absolve the prime consultant of the obligations to pay the subconsultant if the prime's delay or non-payment is unrelated to the subconsultant's performance. The payment terms should not be more onerous than the prime agreement.

REFERENCES

[ACEC-BC Position Paper: Limitations of Liability](#)

[ACEC-BC Position Paper: Indemnities](#)

[ACEC Document No. 32 – 2011 Agreement between Engineer and Sub-Consultant](#)

[CCDC 31 – 2020 Service Contract Between Owner and Consultant](#)

[MMCD Client/Consultant Agreement 2024](#)

² Where possible and reasonable, ACEC-BC will always advocate for retention of intellectual property rights by the consultant developing the intellectual property, whether they are the Prime or a subconsultant. Standard language supporting ownership and with reasonable usage by the project owner may be found in CCDC 31 – 2020 Service Contract Between Owner and Consultant, GC 5.2 Ownership and Use of Documents, Patents, and Trademarks.