

CPD events

South East region

Tel 01892 515878;
email info@ribasoutheast.org

Contracts and disputes

18 September, 4pm
Le Meridien Hotel, Gatwick
Background advice from Philip Burkill
Fee £70 including VAT until 4 September,
£80 including VAT thereafter

E-practice: web marketing and e-safety

25 September, 4pm
Le Meridien Hotel, Gatwick
Speakers: Ian Martin and others
Fee £70 including VAT until 11 September,
£80 including VAT thereafter

Eastern Region

Contact Pat Blackman or Tim Brading,
tel 01223 461458; fax 01223 331701;
email pb210@cam.ac.uk,
website cpd4architects-east.co.uk

Planning update

18 September, 1.30 - 5pm
New Hall, Huntingdon Road, Cambridge
Speakers: Roger Shrimplin, W & RC
Shrimplin, chartered architects and town
planners; Niall T Roberts, Malcolm Judd &
Partners
Fee: £55 (£43 for CPD subscribers)

► Negotiate the package, not a component.

Your package is more than an annual salary. It often includes job title, job description, promotion prospects, performance indicators, bonus, profit share, flexible hours, holiday entitlement, relocation package, education and training benefits and pension contributions. **Be reasonable.** You are looking for a mutually beneficial relationship. Recognise employers' constraints and desires, as you expect them to recognise yours.

Offer solutions. It is easier to highlight problems than to solve them.

Avoid using absolutes. Steer clear of extreme positions that lead to yes or no answers, unless you mean it. It can be difficult and embarrassing to reverse your position later.

Provide reasonable rationale. Employers may or may not be able to meet your expectations, but at least they better understand your reasoning.

Avoid instantaneous decisions - unless you are absolutely confident of your answers. No matter how hurried you or the employer are, you can both wait for a final answer for a day or two. Sleep on your decision.

Negotiate on the phone. This is not always possible, but negotiations on the phone are much more impersonal and thus focus on rational issues.

Try to avoid:

- The ultimatum approach. Back yourself into a corner and you have nowhere to go.
- Being negative. Continually pointing out what is wrong with an proposal is not pleasant for the other party who is trying to find a solution.
- Talking too much. Be succinct and reasonable in presenting your views and listen carefully. Don't ramble on or repeat yourself.
- Falling in love with one element of your negotiation. Focusing exclusively on one facet could be a kiss of death, particularly if the employer is severely constrained in that regard.
- Being unreasonable. 'I can find a job that pays £10,000 more than what you are offering.' If that is the case, why are you negotiating? Go where you can find that kind of money!
- Don't be, look or act desperate.

Good luck! Next month we will look at negotiations from the employer's perspective.

To discuss this article in more detail, contact Sharon Palazzo or John Dixon on 020 7731 5194 or email info@hothousebiz.com

Legal

Good housekeeping Better records are the key to claims for additional fees, says Peter Aeberli

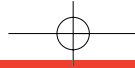
Architects seldom maintain good enough records to establish a contested entitlement to additional fees.

In many cases such claims are not contested because working relationships are good and the project is perceived to be running smoothly. The architect notifies its client that due to various circumstances, which are explained in more or less detail, the originally agreed fee ('the contract fee') is no longer sufficient.

After some horse-trading the client, in order to preserve good relationships and realising that consultants' fees form a small part of the overall project budget, agrees to an increase.

But what if the project is not running smoothly, or relationships break down and the architect, realising it has long since expended the contract fee and there is still work to do, makes a claim for additional fees, which the client rejects? The dispute will have to be decided by a third party, either sitting as adjudicator, arbitrator, or judge. This will involve producing records showing, as set out in clause 5.6 of the RIBA Conditions for the Appointment of an Architect CE/99, that the architect, for reasons beyond its control, has been involved in extra work, for which it would not be remunerated, and the extra work is not due to the architect's breach of contract.

This means the architect must provide evidence that the work for which it is claiming additional fees is extra to that for which the contract fee is payable. These records must be sufficient to refute any suggestion that the work is not extra at all, but was part of the originally envisaged scope of work ('the services'), or that it was not incurred for reasons beyond the ►



These pages are edited by Vicky Richardson.
Email vicky@founding.net

Issue 9 September 2003

► architect's control or was incurred because of the architect's breach of contract.

The following system of record-keeping should be sufficient for this purpose, and is relatively easy to set up and operate.

Estimating the hours that can be worked for the contract fee

Before agreeing a contract fee for services, the architect should estimate the hours that can be expended for that sum. This is done by dividing the proposed fee, less required profit, by the average hourly charge-out rate for technical staff, including partner and director time unless regarded as an overhead (see worked example overleaf).

The average hourly cost of technical staff comprises average salary and costs such as pensions and national insurance, and a contribution to running costs (office overheads and administration) but excludes profit. The architect's accountant should be able to provide this information. Charge-out rates based on two to three times net salary costs are not unusual.

The total hours that can be expended within the fee should be apportioned between the work stages of the services. The RIBA publication *A Client Guide to Engaging an Architect* suggests an apportionment of fees between work stages. But this is front-loaded to improve cash flow and ensure the architect is not out of pocket if the project aborts, as many do. A more realistic approach is necessary for apportioning hours between work stages. It may be appropriate to allow 25% of the fee for work stage K (construction to practical completion) and an additional 5% for work stages G (tender documentation), H (tender action) and L (after practical completion), and reduce the percentages suggested for work stages C (outline proposals) and E (final proposals) by 5% (see worked example).

If the estimated total hours that can, by this calculation, be expended within the proposed fee are inadequate to perform the services, this must be because the fee is too low, the profit margin is unrealistic, the architect is inefficient, or average staff or office costs are too high or, more likely, a combination of these factors.

Whatever the reason, it is not a matter that entitles the architect to additional fees under a provision such as clause 5.6 of CE/99. The problem should be addressed and resolved before the fee is agreed.

Many claims for additional fees fail at this first hurdle. If no estimate is made of the hours that can be expended within the contract fee, which in my experience is often the case, there is no basis for assessing what hours were reasonably necessary to perform the services and whether the fee was sufficient.

Estimating the hours for work stage F: production information

At the beginning of work stage F, the architect should prepare a schedule listing all the drawings that will be required, identifying the content of each drawing and its likely size, A3, A2, A1 etc. The architect should know from experience how long a drawing of each type will take to produce.

With this information, the total time needed to produce the drawings can be assessed. If, after adding an allowance for specification writing, this exceeds the available hours for work stage F, the drawing programme will need to be trimmed or other steps, such as reducing labour costs or profit margins, taken to resolve the discrepancy.

This is also an invaluable resource in programming the preparation of production information and in deciding what, if any, drawings can be delayed until after construction starts. It also provides a basis for the information release schedule which is provided for in certain JCT contracts; a valuable vehicle for managing the release of drawings to the contractor once work starts on site, that is too often shunned by architects.

Recording and monitoring hours expended

Once the project is secured, the architect should monitor, on a work stage by work stage basis, the hours expended against the estimated hours. This means that all technical staff must, at the very least, regularly complete timesheets. It is highly desirable for timesheets to provide a detailed breakdown of hours, by using, for instance, different codes for hours spent on design and drawing, meetings (and with whom), writing letters and preparing documents such as specifications and reports.

If monitoring reveals the estimated hours are likely to be exceeded, the reasons should be promptly investigated, dealt with and recorded. If the reason is that extra work is being carried out – work not remunerated in the contract fee – the extra work and the hours spent on it should

Available from RIBA Enterprises

Through the Legislation Maze: Health and Safety

by Sarah Lupton and Manos Stellakis
Code 32951, Pb £12
Health and Safety, the second in the *Through the Legislation Maze* series, highlights current health and safety. Contents include legislative framework, pre-agreement, managing the practice and work stages.

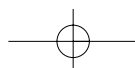
Construction Companion Guide to Inspecting Works

by Nicholas Jamieson
Code 32946, Pb £20
This is the latest title in the *Construction Companion* series. It opens with architects' obligations to inspect, and moves on to a thorough exploration of practice management issues connected with inspection duties. A section on practical matters such as clothing, etiquette and dealing with intimidation follows, ending with an in-depth look at inspection watchpoints for all the building elements from demolition to internal finishes.

Understanding Contract Formation

by Peter Aeberli
Code 24880, Pb £14.99
This is the first publication in the new *Understanding* series and seeks to address problems that may arise in contract formation. Logically ordered, the book explains the background law that governs the process of entering into a contract with another party. Each chapter focuses on a different aspect of law and concludes with a practical exercise to enable readers to test their understanding of those concepts.

The above titles are available from www.ribabookshops.com, all RIBA Bookshops or via the mail order department, tel 0207 251 0791, fax 0207 608 2375.



be identified, if this has not been done by those completing the time sheets. A note should be prepared explaining how these hours were expended and why, having regard to any grounds under the provision of the appointment that entitles the architect to additional fees, such as clause 5.6 of CE/99.

Recording time expended on extra work

It is important that the technical staff are briefed about what work is remunerated under the contract fee. They should be required to record on their timesheets, in similar detail to hours expended on the services, but with a separate code, any hours spent on extra work.

Ideally they should also prepare a brief note of what the additional work involved and why it was carried out, with cross-references to relevant documents, such as correspondence from the client and other consultants. If the appointment contains a provision such as CE/99, clause 5.6, the note should identify any applicable subsection of that provision, such as clause 5.6.1, Client variation to services, clause 5.6.4 delay and disruption by ..., clause 5.6.5, prolongation of the building contract. In the case of delay or prolongation it is particularly important to identify why this has caused extra work; not merely the performance, over a longer period but at a reduced intensity, of work remunerated by the contract fee.

Good record-keeping is also vital where the architect is being paid on a percentage fee, so as to clearly distinguish extra work which results in an increase in the construction cost and extra work that does not. The former type of extra work may be remunerated under the percentage fee, the latter will not. It may be that, where there are changes to the contract fee of this type, adjustments will also have to be made to the estimated hours for the work stages that have not yet been performed.

It is, of course, unlikely that technical staff will keep such records scrupulously. But regular monitoring of the hours incurred against estimated hours will ensure that problems with record-keeping are quickly highlighted. It may be preferable to make the project leader responsible for identifying extra work and annotating the time sheets, with the technical staff, to record the hours spent on such work and the reasons why it was performed.

This may seem a burden, but the time and cost involved is insignificant compared with that needed to establish a contested additional fee claim if such records are not maintained and the likelihood that such a claim will fail.

Notifying the client that extra work is being incurred

If the hours incurred exceed or are likely to exceed the estimated hours for reasons that

the architect considers entitles it to additional fees, the client should be notified as soon as possible. In many bespoke terms of appointment this is expressly required.

Even if this is not required, and CE/99 is vague on the point, it will ensure any differences of opinion can be resolved as they arise. It enables the client to take steps, if possible, to minimise or avoid the need for the extra work and, if appropriate, agree a basis for any additional fee with the architect. This should help to maintain good client relationships if nothing else.

Making a claim for additional fees for extra work

If the architect's claim for additional fees is not agreed, the architect will, by keeping records in the suggested manner, have a solid basis for proving its entitlement. It will be able to show what hours were allowed for in the contract fee and how those hours were expended, which should, hopefully, be sufficient to refute any suggestion that the additional fee claim concerns work required under the contract fee.

It will also be able to identify separately what hours were expended on extra work, and why, which should provide a basis for refuting any suggestion that the extra work was incurred for reasons within the architect's control or because of its own breach of contract.

The objection to keeping such records is usually that it is impractical to require technical staff to prepare timesheets in this detail or to sufficiently distinguish work included in the contract fee from extra work. If this objection is correct, it means an architect can never establish a contested entitlement to additional fees, since timesheets that merely record all the hours spent on a project are useless for this purpose.

In practice, if an architect fails to keep proper records in the first place, it has to engage a forensic expert to create the necessary records retrospectively. This is extremely costly, time consuming and seldom effective. By the time the expert becomes involved, no one can remember what actually happened during the course of the project.

Peter Aeberli is a chartered architect, now practising as a barrister, arbitrator, adjudicator and mediator at 3 Paper Buildings, London.

Worked example (all figures net of VAT)

Part 1: Calculating the available hours

Proposed fee (9.5% of anticipated construction cost of £500,000.00)	£47,500.00	
Required 20% profit	£9,500.00	
Available fee	£38,000.00	
Divide by average charge-out rate	£55.00/hour	
Available hours (rounded)		690.00 hours

Part 2: Apportioning available hours to work stages (approximate)

Work stage C	outline proposals	15%	104 hours
Work stage D	detailed proposals	15%	104 hours
Work stage E	final proposals	15%	104 hours
Work stage F	production information	20%	140 hours
Work stage G	tender documentation	4%	24 hours
Work stage H	tender action	2%	13 hours
Work stage J	mobilisation	1%	7 hours
Work stage K	construction to practical completion	25%	72 hours
Work stage L	after practical completion	3%	22 hours