

Study on the Impact of
OWNER- CONSULTANT
Collaboration Against
the CONTRACTOR
During Project Execution



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1. Introduction

- 1.1.** Managing engineering and construction projects is a complex process that requires a precise balance between all parties, including the owner, consultant, and contractor.
- 1.2.** In many projects, consultants become tools of the owner rather than neutral parties, collaboration between the owner and the consultant against the contractor during execution can lead to significant damages that affect the project success and cause major contractor losses.
- 1.3.** Therefore, clear and fair procedures should be adopted to ensure a balanced distribution of rights and responsibilities, by enforcing strict measures to ensure consultant fairness through documentation, transparency, and independent arbitration mechanisms.

2. Impact of Owner-Consultant Collaboration Against the Contractor

2.1. Manipulation of the Contractor's Financial Claims

Delaying Contractor's payments, or applying unjustified penalties on the contractor, which weaken contractor's cash flow, may lead to significant financial losses and hindering project continuity.

2.2. Unfair Liability on the Contractor

Imposing modifications without granting an appropriate time extension increases the contractor's operational burdens.

Holding the contractor accountable for design or consulting errors beyond their scope of work.

2.3. Negative Impact on Business Relationships and Future Projects

The owner's and consultant's reputation in the construction market may suffer, discouraging major firms from submitting competitive bids for future projects.

3. Real-Example of Consultant Bias and Its Impact on a Project

3.1. Project:

High rise Residential Tower construction (27-story).

3.2. Key Parties:

Owner: A major real estate development company.

Contractor: A local construction firm with a strong track record.

Consultant: An engineering firm appointed for project supervision and management.

3.3. Case of Owner Intervention during construction phase and Consultant Bias

After 30% of the project was completed, the owner decided to change the exterior facade design, requiring more expensive and complex materials. The consultant approved the design change without obtaining formal contractor approval, no clear report was provided on the financial issues and scheduling impacts of the change.

When the contractor requested an extension and compensation, the consultant rejected it, claiming the contractor must "adapt to the modifications."

3.4. Negative Consequences:

Project Delay: Completion was delayed by six months due to material shortages and rework.

Contractor Losses: The contractor faced increased labour and equipment costs without adequate compensation.

Legal Disputes: The contractor filed for arbitration against the owner due to unjustified delays and financial perspective deductions.



3.5. How Could This Bias Have Been Prevented?

Involving an independent party to review modifications before enforcing them, directing consultants to provide documented reports for changes, specifying time and cost implications.

Including contract clauses imposing penalties on consultants for unjust or unprofessional decisions.

4. Practical Measures to Ensure Consultant Fairness and Prevent Bias

To ensure that consultants act impartially and do not favor either party (owner or contractor), manipulating of the Contractor's Financial Claims, several crucial measures can be implemented:

4.1. Assigning an Independent Oversight Body to Monitor the Consultant

An independent authority or neutral technical committee should oversee the consultant's performance and ensure contractual compliance, this body could be a separate consulting firm or an agreed-upon arbitration panel included in the contract.

Defining Consultant Responsibilities Clearly in the Contract

The contract should explicitly define the consultant's duties, preventing them from issuing change orders or making decisions without mutual consent.

Consultants should be required to follow a documented process for any scope changes, clarifying their time and cost implications, to ensure transparency, all technical and financial decisions should be discussed in recorded meetings involving all parties, preventing unilateral decisions.

4.2. Implementing a Decision Review System

Any technical or financial decision by the consultant must be justified in a formal report and discussed with both the contractor and the owner before approval, in case of disputes, an independent technical arbitration panel should review contested decisions.



4.3. Ensuring Consultant Independence from the Owner

Consultants are financially and administratively linked to the owner, leading to bias, this can be mitigated by structuring consultant contracts to ensure independence from owner influence, a financing entity (such as a bank or investment partner) could participate in consultant fee payments to enhance impartiality.

4.4. Legal Accountability for Consultant Bias

- a. A contract clause should state that evident bias or unjust decisions by the consultant may result in legal or financial consequences,
- b. A third-party expert review if the Contractor disputes the Consultant's findings, and independent arbitration or mediation process in case of persistent disagreements.
- c. A mechanism for filing complaints against consultant decisions, as a portion of the consultant's fees should be tied to their performance, evaluated by an independent entity, if bias or unprofessional decisions are proven, consultant fees may be reduced or their contract terminated.
 - Official Warning: A formal notice for documented instances of bias or unfair decisions.
 - Fee Deduction: If bias causes financial loss or project delays, up to 10% of the consultant's fees may be deducted.
 - Contract Termination: In cases of repeated violations, the consultant's contract may be terminated.
 - Legal Liability: If consultant bias leads to significant damages, they may be held legally accountable.

5. Draft Clause of Owner-Consultant Agreement for Fairness and Neutrality

- a. The Consultant shall act impartially and in good faith in all technical assessments, approvals, and evaluations related to the project.
- b. The Consultant shall provide written justification for any decision that may negatively impact the Contractor, including rejections of work, change order denials, or penalties imposed through the Owner.



- c. The Consultant shall not unreasonably withhold approvals, delay responses, or impose additional requirements beyond the agreed project scope, unless justified in accordance with contractual obligations.
- d. If a dispute arises between the Contractor and the Consultant regarding a technical issue, the Consultant shall facilitate resolution based on contract specifications, industry standards, and fair practice, rather than solely in Favor of the Owner.

6. Draft Clause Owner-Contractor Agreement Require Consultant's Fair Treatment

Since the Consultant is not directly contracted by the Contractor, the Owner Contractor Agreement should include a clause ensuring that:

- a. The Owner acknowledges that the Consultant's role in assessing the Contractor's work shall be based on objective project requirements, contractual terms, and industry best practices.
- b. Any rejection of work, penalties, or delays imposed based on the Consultant's recommendation must be supported by clear contractual provisions and objective evidence.
- c. The Contractor shall have the right to dispute any Consultant-driven decision that materially affects cost, time, or quality through the dispute resolution process defined in this Agreement.
- d. The Owner shall not impose financial penalties or additional obligations on the Contractor solely based on the Consultant's opinion without independent verification.

7. Review for various types of Consultant Bias:

Consultant bias can significantly impact project outcomes across various industries, including construction. This bias manifests in several forms, leading to inefficiencies and compromised results.

- 7.1. Optimism Bias:** Consultants may unintentionally overestimate the benefits and underestimate the complexities of a project, leading to unrealistic schedules and budgets. This often results in cost overruns and delays



- 7.2. **Confirmation Bias:** Consultants might focus on information that supports their preconceived notions, overlooking potential issues. In project management, this can lead to the neglect of warning signs, causing budget overruns and safety risks.
- 7.3. **Conflict of Interest:** When consultants have vested interests, their advice may be biased, leading to inflated costs and strategic misalignment. Ethical consulting requires due diligence and strong contractual protections to mitigate such conflicts.
- 7.4. **Unconscious Bias:** Biases related to gender, race, or age can influence hiring and management decisions. For instance, in construction, male applicants have a 40% higher chance of being interviewed than female counterparts, highlighting significant gender bias
- 7.5. **Outsider Efficacy Bias:** Overestimating the capabilities of external consultants over internal staff can lead to inefficiencies. External consultants may require additional time and resources to understand the organization's context, whereas internal staff already possess this knowledge

- 7.6. **Mitigation Strategies**
 - a. **Awareness and Training:** Organizations should educate their teams about various biases to promote objective decision-making.
 - b. **Diverse Teams:** Encouraging diversity can counteract individual biases, leading to more balanced perspectives.
 - c. **Structured Decision-Making Processes:** Implementing standardized procedures can reduce the influence of personal biases.
 - d. By recognizing and addressing these biases, organizations can enhance the effectiveness of their projects and consulting engagements.

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