



**International Federation of Consulting Engineers**  
The Global Voice of Consulting Engineers

# Projects in which Consultants have a Financial Interest other than a Normal Fee

FIDIC Briefing Note



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## Background

The international engineering federation FIDIC (the International Federation of Consulting Engineers) believes that its member associations and their members should strive to achieve the highest degree of quality and standards.

FIDIC has always had policy statements that it expects its members to follow to ensure high standards of service in the infrastructure industry. These standards are reflected in FIDICs contracts, policy work, events and committees.

## Projects in which Consultants have a Financial Interest other than a Normal Fee

Over the last decade, new project financing models have appeared changing the way the construction sector operates and forcing consultants to modify their traditional role so as to continue participating in the overall project development process.

Traditionally, project financing is the responsibility of the Client. The Client normally hires Consultants to plan and design his work, and then calls for tenders from Contractors. Consultants assist the Client in evaluating the tenders, in preparing construction contracts and in supervising the execution of the work.

Under the traditional system, the role of the Consultant is clear since he works for and is paid by the Client only.

### Turnkey

In a variation of the traditional project development model, Clients sometimes make Contractors responsible for design as well as construction. Sometimes Contractors with limited design experience or capability then hire Consultants to develop the necessary designs. In this case, the Contractor becomes the Consultant's Client, and the Consultant works solely for the Contractor. The Consultant has no financial interest in the Project other than his fee for the work he performs, and the financial investment is made by the Owner.

### New project financing models

Where the Consultant's role in projects means they have a financial interest other than his usual consultancy fee where the participants, including the Consultant, must carry financial risks different than those normally assumed under the traditional roles.

These new project financing models include:

- Build-operate-transfer (BOT) Projects, where a consortium builds a Project and then operates it for a given period to recover part, or sometimes all, of its investment through revenue derived from operation of the Project.
- Projects which Consultants develop at their own cost with the idea of selling them to Developers.

These two alternative project development systems are explained below.

### BOT or BOOT schemes

Under "build-operate-transfer" (BOT) or "build-own-operate-transfer" (BOOT) systems, consortia of Contractors, equipment suppliers, Consultants and financiers undertake to finance, design, construct, and operate projects and, at an agreed time, transfer them to their ultimate Owners. Some power plants, toll roads, tunnels, and bridges are now being carded out under BOT systems, and the consortia recover the cost of their involvement through the collection of tolls, sale of electricity to utility companies, etc.

In some BOT Projects, Consultants are paid for their services directly by the consortia as the services are performed. The position of the consultant in this situation is similar to that of turnkey or design/construct contracts. In other BOT Projects, the consortia partners will require that everybody participating in the venture make an investment, which, in the Consultant's case, will typically be his

usual fee to be recovered over the operation period of the Project, from the revenue it produces, together with any premium for his risk which may have been agreed with the consortia partners.

In all projects where the Consultant does not work directly for the Owner, a risk of uncertainty exists. It is important, therefore, that Consultants always make absolutely clear who their Clients are for any given project. The Consultant's Client may be the Owner, a Turnkey Contractor, or a Consortium of which the Consultant is a member. Should the Consultant be asked for advice by parties other than his Client he should recommend that they seek it elsewhere, i.e. by engaging their own experts as necessary.

### Changes in design

A particular problem exists in cases where the Consultant has been involved in the initial planning for the Owner, but at a certain time, at the suggestion of the Owner, is retained by either a Turnkey Contractor or made part of a BOT consortium. In this case the Owner may expect that a Consultant will continue the work according to the original plan, whereas the Contractor or the Consortium, for various reasons, may want design changes. In such a case, the Consultant should make the Owner aware of this possibility, in writing, at the time when his work for the Owner is terminated, and his work for the Contractor or the Consortium is about to start.

If changes in the original design are required by the Contractor or by the Consortium, the Consultant should carefully evaluate the effect of such changes and advise the Contractor or the Consortium accordingly. Should the Consultant consider the proposed changes technically unacceptable, he must so advise the Contractor or the Consortium, and refuse to implement the changes.

The ultimate Owner, (public utilities, road or bridge authorities, etc.) should understand that the Consultant who is a member of a BOT Consortium is not its consultant, and should, therefore, carefully consider whether it has sufficient in-house knowledge to evaluate the technical aspects of a Project. If the ultimate Owner does not have such expertise, the Owner should engage its own consultant to act in the Owner's interest.

### No split responsibilities

Consultant should, simultaneously, not advise both the eventual Owner and the BOT Consortium on the same Project. The eventual Owner may want to solicit technical advice from the Consultant in a BOT Consortium, but the Owner and the Consultant must keep in mind that the Consultant's obligations are solely to the Consortium.

### Projects promoted by Consultants

In cases where a Consultant promotes his own project, he should make sure that the concept is technically sound. When he tries to sell his project to an Owner or a Developer, he must make his own financial interest in the continuation of the project absolutely clear, in writing. The Consultant should also advise the Owner and/or the Developer, if a second opinion on key items of technical and/or financial nature should be obtained from other Consultants.

## FIDIC recommends:

- Member associations promote the following to its members
  - Consultants should not work for or represent more than one Client on one project unless all parties concerned are fully aware, in advance, of the Consultant's participation and accept such arrangement in writing.
  - When participating in projects where a Consultant has a financial interest other than his normal fee, he must advise all interested parties accordingly, in writing and in advance of performing services.
  - When a Consultant has participated in a project as Consultant to the Owner and changes his role to advise either a Contractor or to be a member of a Consortium, he must make the Owner aware, in writing and in advance, of this role change, and the fact that the Owner will no longer be in a position to benefit from his advice.
  - To avoid compromising the technical or functional suitability of a Project, Consultants, who elect to work for Contractors or Developers, or to have a financial stake in a project, must:
    - o define clearly at the outset what the Consultant is to do and to what degree of detail designs and drawings are required;
    - o establish that the Consultant will receive compensation adequate to cover his services, whether contingent upon the project proceeding or not; and
    - o resist any effort to deviate from the Consultant's pre-established definition of the work unless all parties concerned in the Project are in full agreement, and the Consultant, himself, agrees that such deviation is the correct course.
  - Investigate the liabilities they will assume with projects where they have a financial interest and seek insurance against such liability.
  - Consultants who have developed their own projects should recommend to concerned parties to seek a second opinion on key technical and/or financial items, if such parties are unable to evaluate the risks and benefits themselves. Otherwise, the consultant will have a vested interest in having the project proceed. Any study needed to develop such a second opinion should be carried out at the level of detail required.

**International Federation of Consulting Engineers (FIDIC)**

World Trade Center II, Geneva Airport P.O. Box 311 CH-1215 Geneva 15 - Switzerland

Tel. +41 22 799 4900 - Fax +41 22 799 4901

Arthur: Graham Pontin, Head of economic and strategic policy

Email: [fidic@fidic.org](mailto:fidic@fidic.org) [www.fidic.org](http://www.fidic.org)

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**Endnotes**