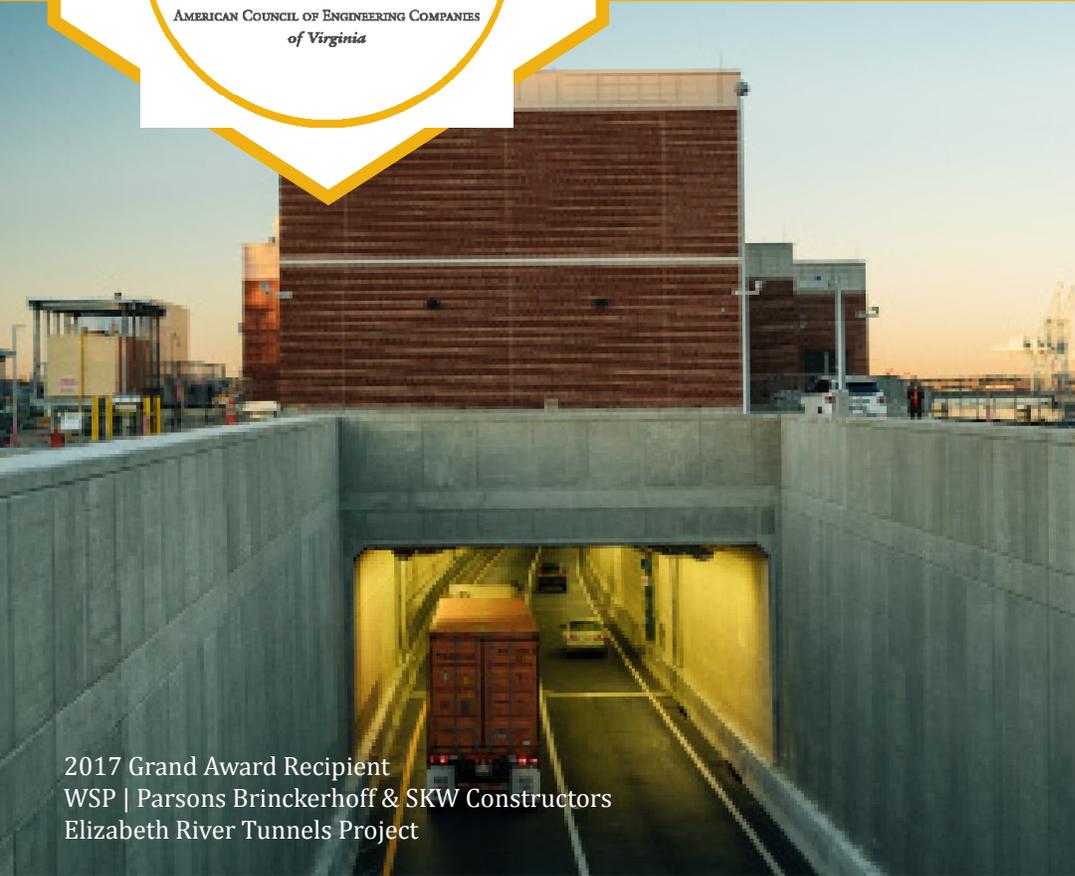


THE VOICE Newsletter

FALL 2017



2017 Grand Award Recipient
WSP | Parsons Brinckerhoff & SKW Constructors
Elizabeth River Tunnels Project

IN THIS EDITION

HISTORY OF ENGINEERING EXCELLENCE IN ACEC/VA 1

PRESIDENT'S CORNER 3

2017 ANNUAL CONFERENCE & 50TH ANNIVERSARY 5

FEATURE ARTICLE
WHEN STATUTES OVERRIDE CONTRACTS 7

UPCOMING EVENTS

VIRGINIA ENGINEERS CONFERENCE
September 20 - 22, 2017
Renaissance Portsmouth Hotel

KEY ISSUES IN FAR OVERHEAD RATES
November 15, 2017
The Jefferson Hotel

ACEC/VA HOLIDAY PARTY
December 13, 2017
The Salisbury Country Club

2018 ENGINEERING EXCELLENCE AWARDS GALA
February 1, 2018
The Jefferson Hotel

CEO & SENIOR PRINCIPAL RETREAT
February 22 - 23, 2018
Salamander Resort & Spa

HISTORY OF ENGINEERING EXCELLENCE IN ACEC/VA

Written by Cecil Doyle and Kevin Kokal

“We’re engineers...we can do anything!”

That’s what I was thinking the first time I attended a national ACEC Engineering Excellence Awards Gala in DC, as I sat there watching the parade of innovative projects go across the stage and across the screen while listening to the recognition and accolades received by design teams. Engineers do great work. We impact essentially every sector of our society and our work should be recognized and celebrated.

I came away from the Gala with the conviction that this is also what we do in Virginia and the work of our firms should be recognized and celebrated in a similar fashion. Virginia should be there!

That’s how it started for Cecil Doyle. The year was 2000 when he was been asked to chair the ACEC/VA Engineering Excellence Awards Committee. The Engineering Excellence Awards program had gradually denigrated to a relatively short segment of the Friday evening program at the Winter/Spring meeting and he wanted to revive it.

2017-2018 BOARD OF DIRECTORS

At the 2017 Annual Conference, the following slate of officers were inducted as the Board of Directors for the 2017-2018 fiscal year:

PRESIDENT

Robert L. Burkholder, PE

PRESIDENT-ELECT

Jeffrey N. Lighthiser, PE

NATIONAL DIRECTOR

Paul E. Diggs, PE

VICE PRESIDENT EASTERN

Jeffrey W. Ganthner

VICE PRESIDENT CENTRAL

Courtney A. Beamon

VICE PRESIDENT WESTERN

Paul P. Anderson

VICE PRESIDENT AT LARGE

Donald F. Booth

SECRETARY

Gregory C. Ellen

TREASURER

Jared B. Jamison

THIS NEWSLETTER IS PROUDLY PRINTED BY:



HISTORY OF ENGINEERING

A few weeks after the Gala, the ACEC/VA Board convened in the offices of McKinney and Company for a strategic planning session. As chair of the Committee I floated an absolutely brilliant idea to the Board: How about ACEC/VA have its own Engineering Excellence Awards Gala? It could be modeled after the national Gala, albeit on a reduced scale. Not only could we give our firms the proper recognition for their great work and their contribution to the building industry, but we could even make money! What a win-win concept!

Does the word skepticism come to mind? After everyone got back in their chairs from rolling on the floor, and after much discussion and knurling of teeth, the board agreed that the proposal had merit and the EEA committee could move forward on a trial basis.

We followed the ACEC guidelines to develop the program: schedule, project submission requirements, selection of judges, judging, etc. We promoted it extensively throughout the Commonwealth, both to member firms as well as non-members, as a recruiting tool. Firm leaders soon realized this could be an opportunity to enhance their relationships with their clients. Clients like to be associated with an award-winning project.

The first Gala was held at the downtown Richmond Omni. It was a black-tie optional event where we drafted a master of ceremonies from the local radio community and invited a guest speaker. Harry Kincaid, our former Executive Director, and I arrived early, set-up the easels and project boards, and waited. As the time approached only a few people had arrived. I was beginning to sweat the outcome. Maybe the skeptics were right? Suddenly people started arriving all at once. It was a great turnout and the entire event was successful.

The success of that first Gala gave us a strong foundation to build on in future years. Each year the event has been tweaked and enhanced to be responsive to the environment in which we were operating at the time. We have had some great speakers, including the Chief of the Corps of Engineers, Governor Baliles, and the President of Philip Morris. In 2010, the Gala venue was changed to the Jefferson Hotel, which took the event to a whole new level!

After many years of focusing the program on a prominent public figure, the EEA committee decided to make a change. We felt that since everyone was there to celebrate the projects that were submitted for the EEA competition, the event should highlight projects and design teams instead of "celebrities" giving speeches. Besides, it was

EXCELLENCE IN ACEC/VA

becoming more and more difficult to find “celebrities” that actually gave interesting speeches!

Another change that was made to enhance the program was the introduction of the Legislator of the Year Awards. The EEA committee, in conjunction with Reggie Jones, our legal counsel “on the hill”, felt it was time to honor legislators who have played an important role in representing the Virginia engineering profession. So each year, we present an award to a legislator from the House and the Senate. The award winners are always honored to receive the award and genuinely enjoy the event.

Other enhancements to the program include The Rising Star Award and recognition of the class from the Emerging Leaders Institute (ELI).

The Rising Star Award was created by The Next Generation Committee to recognize any and all employees that make a successful engineering firm tick. The ELI program was designed to educate the up and coming leaders the best practices in running an engineering organization.

So while the program has evolved over the years, several constants have endured: the fact that engineers do great work, society is dependent on the work of engineers, and it needs to be recognized and celebrated. After all.....

“We’re engineers.....we can do anything!”



Ken Anderson PE-LS

Disputes happen in the design and construction field. They cost time, money and diversion from your primary objectives. Let me give you a hand at resolving them either through my “Real Simple Mediation” process or by providing you with an experienced analysis of the dispute.

As Peter Drucker famously said “Don’t solve problems- Pursue Opportunities”. Let me work on your problems so you can pursue opportunities. Yes, I know, you are an engineer and your business is “solving problems”. When you get in deep trouble you turn to your attorney and his clock starts t\$ck, t\$ck t\$ck. Maybe there is a middle, more rational way than jumping into the legal morass.

Give me a call or email (no cost-no obligation) and let’s discuss the issues whether you have a potential claim against someone or one is pending against you. I would like to hear from you.

Anderson Construction Mediation LLC

10160 Staples Mill Road Glen Allen VA 23060 • 540.392.4429

Anderson.10@verizon.net • www.AndersonConstructionMediation.com

WELCOME TO OUR NEW EMERGING LEADERS INSTITUTE PARTICIPANTS

Peter Allen, *Clark Nexsen*

Creighton Barnes, *Clark Nexsen*

Peter (Pete) Bennett, *DJG, Inc.*

Jilian Breeden, *Marshall Craft Associates, Inc.*

Darren Curtis, *DJG, Inc.*

Tara Eschenfelder, *Delta Airport Consultants, Inc.*

Theron (T.R.) Fluker, *Schnabel*

Karen Hall, *Stantec*

Matthew (Matt) Haltiner, *Thompson Consulting Engineers*

Benjamin Jackson, *Froehling & Robertson, Inc.*

Kellen Johnson, *Draper Aden*

Paul Johnston, *Draper Aden*

Jeff King, *Brockenbrough*

Joseph Lighthiser, *Draper Aden*

Abbe Little, *Wiley Wilson*

Gary Massoud, *Wiley Wilson*

Stephanie McAvoy, *Mason & Hanger*

Adam Meese, *Mason & Hanger*

Jessica Michael, *Delta Airport Consultants, Inc.*

Adam Mickiewicz, *DJG, Inc.*

Jesse Munden, *Alliance*

John Ozmore, *DJG, Inc.*

Jonathan Pickral, *Brockenbrough*

Brendan Quirk, *Froehling & Robertson, Inc.*

Noland Silman, *Schnabel*

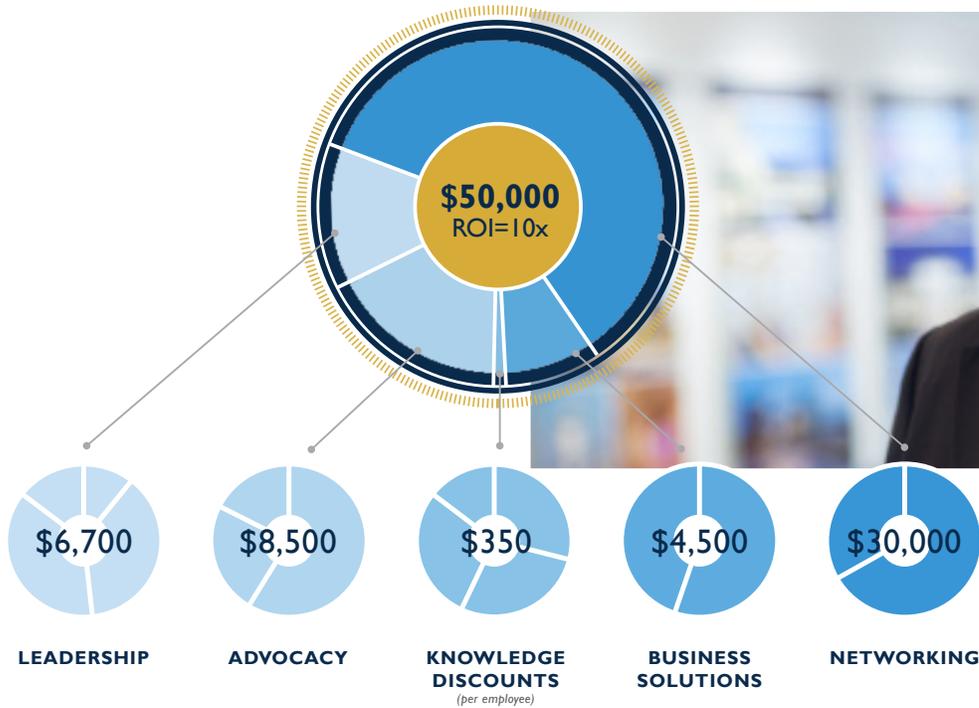
Donald Smith, *Schnabel*

Brian Stanley, *Dunbar Milby Williams Pittman & Vaughan, PLLC*

Aaron Tice, *Wiley Wilson*

Georgana Turner, *Clark Nexsen*

ACEC VIRGINIA



BOB BURKHOLDER, PE
PRESIDENT ACEC/VIRGINIA

PRESIDENTS CORNER SEPTEMBER 2017

How does an organization with only three paid staff members hold 30 events each year and offer a multitude of benefits to their members? With the aid of VOLUNTEERS! ACEC Virginia is fortunate to have a core group of individuals who generously volunteer their time – and who experience the benefits to themselves, their firms, and to the organization as a whole. Without these volunteers, the \$50,000 return on investment seen by many of our member firms would not be realized.

Their efforts and our goals for future events lead us to ask the question: what motivates someone to volunteer? With pay out of the equation, is it about “paying it

forward?” Is it about opportunities for personal and professional development? Both?

The plot of Catherine Ryan Hyde’s novel, *Pay It Forward*, is about spreading goodwill from one to a few while creating a perpetual cycle of giving and receiving is rewarding and infectious. With ACEC Virginia, a great example of this type of positive experience is our Education Committee’s involvement in K-12 STEM programs. The combination of passion for your profession and the desire to inspire (and be inspired by) our youth is not only rewarding to all, but exhilarating and fun – an enjoyable and refreshing break from the ‘grind’ we may find ourselves caught up in.

Through volunteerism, an individual

can gain new knowledge and experience, find a greater purpose, and feel personally rewarded. Often, volunteering provides a unique opportunity to obtain new professional skills and build your career. For example, participating on a committee such as the Advocacy or PAC Committee educates you on how government works, the potential threats to our profession, and how to communicate effectively with elected officials. Your involvement can offer opportunities to meet legislators at state and federal levels. Personally, I was initially apprehensive about walking the halls of the Congressional office buildings in Washington, D.C. to inform our elected officials of the ACEC Virginia positions relative to funding and proposed legislature. But, as one of a handful of members, I watched, listened, and quickly became

PRESIDENTS CORNER CONT'D

comfortable with jumping into each conversation. In addition to helping me grow with a new experience, this also demonstrates the importance of having volunteers in numbers. More can be accomplished, a sense of teamwork is established, and the demand on the individual is less.

Volunteering can also offer opportunities and challenges that may not be available elsewhere. Opportunities such as leadership roles and challenges such as writing (hopefully) inspiring articles. All kidding aside, I'm enjoying my time as President. I've learned so much in such short time and look forward to continuing to fulfill my obligations. Being involved at this level has been truly rewarding and is helping me continue my professional growth.

Interested in volunteering, but worried about the demands on your already limited time? First, chances are your firm is supporting ACEC Virginia through membership, so I consider approaching your leadership team to gain support for having time to volunteer. Second, we realigned our committees this year specifically to address the well-balanced work/life scenario our volunteers need. Our goal is to increase the number of volunteers, reduce the demands on each, and generate even more impact in our industry. Finally, just try it! If you have the passion and are motivated to make a difference, you'll find the rewards are well-worth the time invested.

VOLUNTEER COMMITTEES

Following the approval of the new bylaws at the 2017 Annual Conference

ADVOCACY COMMITTEE

CHAIR: TIM (T.A.) GROOVER

This committee provides advocacy on behalf of the engineering industry and establish rapport with pertinent governmental agencies. Members of this committee represent ACEC/VA on the Joint Legislative Committee made of ACEC/VA and VSAIA.

EDUCATION COMMITTEE

CHAIR: JANET WEBSTER

This committee provides continuing education for firm employees and promotes engineering in schools of the Commonwealth.

FINANCE COMMITTEE

CHAIR: JARED JAMISON

This committee implements the financial policy established by the executive board, prepares the annual budget, and audits the accounts of the Council.

MEMBERSHIP COMMITTEE

CHAIR: CHADD YEATTS

This committee pursues prospects to apply for membership, encourages current members to bring in new members, promotes attendance at meetings and events, and helps new members become involved in membership activities or committees.

POLITICAL ACTION COMMITTEE

CHAIR: DONALD BOOTH

This committee develops funding opportunities for both the ACEC/PAC and the Engineering Companies of Virginia PAC (ECV/PAC) to support advocacy efforts on the state and national level.

TRANSPORTATION COMMITTEE

CHAIR: KURT ZEBLEY

CO-CHAIR: JULIE HARTMAN

This committee works with state officials and keep members informed on transportation issues. It also works with staff to set up networking avenues with key VDOT personnel.

PERHAPS FILL

\$50 FOR 50

ACEC Virginia is celebrating 50 years of excellence, 50 years of service, and 50 years of business opportunities for our member firms, made possible because of the member firm dedication and contributions over the past 50 years!

We will be honoring the work and accomplishments of our member

firm at a special 50th anniversary celebration during the 2018 Annual Conference at the Homestead. As we celebrate, we wish to recognize those, past and current, that have made ACEC Virginia the outstanding organization that it is today!

Details for the campaign will be unveiled later this fall!



YOU STILL HAVE TIME TO SIGN UP FOR KEY ISSUES IN FAR OVERHEAD RATES

Is your firm in compliance with Federal Acquisition Regulations (FAR)? Sign up now for the November 15 one-day training, hosted by ACEC Virginia at their office in Richmond. This fast-paced, hands-on solutions-based course will be taught by Dan Purvine, President of A/E Clarity and chair of the ACEC Audit Subcommittee. The course will cover the most critical issues on how to keep your firm in compliance with FAR, how to develop an accurate indirect cost rate for your A/E firm, or perform a successful indirect cost rate audit.

Open only to ACEC member firms, this one-day live training costs \$350 and offers eight hours of CPE credit. Register at www.acecva.org/events or contact Nancy Israel, ACEC Virginia, 804-477-6573 with your questions.

DBE ROUND ROBIN A SUCCESS!

Engineering firms, VDOT personnel, and DBE firms came together on September 7 to network in a round robin format, providing exclusive one-on-one time with VDOT selection committee members and Primes!

Our goal for this event was to provide the networking engineering firms needed so they would have options when building their team for RFP responses. The Round Robin also gave DBE firms the opportunity to “strut their stuff”

so the engineering firms and VDOT selection committee members could see their value.

Participants agreed that the modified format worked well and provided excellent exposure for DBE firms. They also enjoyed the change in venue to The Jefferson Hotel. When asked if they would recommend this event to others, we received a resounding yes from participants!

Quote of the day from a DBE firm, “I was able to accomplish a month’s worth of networking in one day!”

2017 ANNUAL CONFERENCE & 50TH ANNIVERSARY CELEBRATION

June 14, 2018 - June 16, 2018

The Homestead

LEADERSHIP LESSONS FROM THE C-SUITE

Over the last six years, Coughlan has conducted more than 30 unscripted, on-stage interviews with executives from a variety of industries. Guests have included PGA Tour Commissioner Tim Finchem, Fortune 500 CEOs including Michael Dan of Brink's and John Luke of MeadWestvaco and successful entrepreneurs including Shawn Boyer of Snagajob and Shane Emmett of Health Warrior. In this interactive session, he will translate the key lessons these leaders have shared on strategy, marketing, culture, innovation and product development for the benefit of participants.

PROBLEM SOLVING THROUGH PERSPECTIVE TAKING

Do you truly understand the perspectives of those who work for you and with you? Can you accurately gauge the perspectives of your most valuable customers? Has a supplier or business partner recently taken an action that surprised you or caused some disruption to your business? In this interactive session, Coughlan will take a deep look at the importance of perspective-taking, distinguishing it from related concepts including empathy and social awareness through role-play scenarios and exercises.

Richard Coughlan is an award-winning educator who has delivered engaging talks to academic and professional audiences across three continents over the last twenty years. In addition to his role on the faculty at University of Richmond, he serves as a keynote speaker, strategic advisor and facilitator for a variety of corporate and non-profit clients. His views on business and business education appear regularly in national media outlets and his research has been published in leading academic journals.



WHEN STATUTES OVERRIDE CONTRACTS

WRITTEN BY STEPHEN F. ANDREWS, ESQ. AND J. BRANDON SIEG
VANDEVENTER BLACK LLP

The following article was written by Stephan F. "Hobie" Andrews and J. Brandon Sieg of the law firm Vandeventer Black LLP in Richmond, Virginia. They devote a substantial portion of their practice to the representation of design professionals in the Mid-Atlantic and beyond.

our professional liability insurance coverage and hold firms accountable for a catalog of frightening claims and damages. When negotiating a contract with a state agency or other public body in Virginia, have you ever encountered language such as:

servants or agents and whether or not due to any act of omission or commission, including negligence of the Agency.

What does it mean, and why is it a problem?

WHAT FACTS MIGHT TRIGGER THIS INDEMNITY PROVISION?

Imagine the following scenario: the Contractor fell behind schedule early in a project, and the Owner is growing impatient with delays. Assume that a concrete subcontractor claims to have identified some ambiguity in your specifications for the concrete foundations. Unfortunately for you, these ambiguities are raised in a stack of submittals that the Contractor provides late on a Friday afternoon of a holiday weekend. The following week the Contractor tells the Owner that you are contributing to the delay by responding too slowly to submittals. You tell the Owner that you need more time to fully understand and evaluate the issues raised by the concrete subcontractor.

The Owner, tired of delays and anxious to occupy the project, instructs the

The A/E, including its consultants, shall defend, indemnify and bear all loss, expense (including reasonable attorney's fees) and damage from any cause whatsoever arising out of, incidental to, or in connection with the performance of the Contract. A/E shall defend, indemnify and hold harmless the Agency, its agents, Lenders, officers and employees from all claims, demands, expenses, penalties, costs and judgments made, claimed or recovered against the Agency from any cause whatsoever, arising out of, incidental to, or in

connection with the performance of the Contract whether or not due to any act of its employees,

We see them all the time: overreaching indemnity provisions that might compromise



Contractor to work out the issues with the subcontractor. After construction is completed, there is a structural failure resulting in personal injury and a lawsuit against your client, the Owner. Further investigation confirms that your specifications were correct and that the entire issue arose from the Contractor's and subcontractor's efforts to "work out" the problem and keep the project on schedule.

How might the indemnity provision above affect a claim by the owner against you under these facts?

IN GENERAL, ASSUME THAT THE TERMS OF YOUR CONTRACT WILL BE ENFORCED

In Virginia, courts will strictly enforce the language of a written agreement.

By agreeing to terms similar to

this indemnity agreement, you are essentially saying that the Agency can look to you to reimburse the cost of any claim or judgment awarded against the Agency, even if you can prove that the Agency was partially at fault. In the hypothetical above, the contract indicates that the Agency may have a viable indemnity claim

against your firm even though your firm did nothing wrong – there is no "negligence" trigger in the indemnity

provision as a link to your liability.

Furthermore, because you are agreeing to indemnify the Agency even if you are not negligent, it is likely that your professional liability insurance carrier will deny coverage for this claim.

HOW TO MODIFY THE INDEMNITY AGREEMENT

For all of the reasons above, it is important to agree to acceptable language when you negotiate your contract with your clients. A significant problem with this particular indemnity agreement is that it applies "whether or not due to" the negligence of the A/E or any act of the Agency or its employees, servants or agents, "including negligence of the Agency."

A practical solution is to replace this language with something along the lines of the following:

... A/E shall indemnify and hold harmless the Agency, its officers and employees from all damages, costs and expense (including reasonable attorneys' fees and defense costs), to the extent

arising out of the negligent acts, errors or omissions, recklessness or intentionally wrongful conduct of the

A/E in performance of this Contract.

Such language will limit your duty to indemnify and hold harmless the Agency to claims that arise from your own negligence or wrongdoing and more nearly assure the maintenance of professional liability insurance coverage. By making these edits, you will preserve your defense in the above hypothetical to argue that you did nothing wrong.

If you have negotiated many contracts for A/E services, then the analysis above should be familiar to you. But things get more complicated if you are negotiating with a public body.

WHAT IF THE PUBLIC BODY REJECTS YOUR EDITS?

It is easy to feel like you have unequal bargaining power when negotiating a contract with a public body. You may still be in the honeymoon phase of having just been selected for the project, and you are concerned when the public body refuses to accept what you think is a justifiable allocation of risk on your project.

As to indemnity provisions, you have a strong fall-back position. The Code of Virginia appears to prohibit the kind of broad indemnity agreement identified above:

Any provision contained in any contract relating to the planning or design of a building, structure or appurtenance thereto . . . or any provision contained in any contract relating to the planning or design of construction projects other than buildings by which the architect or

AN UNDER APPRECIATED STATUTE FAVORING A/ES WHO CONTRACT WITH "PUBLIC BODIES" IN VIRGINIA

WHEN STATUTES OVERRIDE CONTRACTS

professional engineer performing such work purports to indemnify or hold harmless another party to the contract against liability for damages arising out of bodily injury to persons or damage to property suffered in the course of the performance of the contract, caused by or resulting solely from the negligence of such other party, his agents or employees, is against public policy and is void and unenforceable.

This section shall apply to such contracts between an architect or professional engineer and any public body as defined in § 2.2-4301. Every provision contained in a contract between an architect or professional engineer and a public body relating to the planning or design of a building, structure or appurtenance thereto . . . or relating to the planning or design of construction projects other than building by which the architect or professional engineer is performing such work purports to hold indemnify and hold harmless the public body against liability is against public policy and is void and unenforceable. This section shall not be construed to alter or affect any provision in such a contract that purports to indemnify or hold harmless the public body against liability for damage arising out of the negligent acts, errors or omissions, recklessness or intentionally wrongful conduct of the architect or professional engineer in the performance of the contract. ...

Va. Code § 11-4.4 (emphasis added).

This statute may have flown under the radar—there are no reported cases interpreting it. A plain reading indicates, however, that a public body cannot require you to indemnify claims arising from the public body’s own negligence. Such indemnity provisions are “void” and unenforceable. Moreover, the statute establishes limits on the scope of any A/E indemnity obligation.

Bringing this statute to the public body’s attention may help persuade the public body to narrow the scope of an indemnity provision. And even if the public body insists on broader language, you have put the public body on notice that its preferred language is not enforceable.

WHAT IS A “PUBLIC BODY”?

The term “public body” is defined in Va. Code § 2.2-4301 as:

Any legislative, executive, or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described in this chapter [Virginia Public Procurement Act]. “Public body” shall include (i) any independent agency of the Commonwealth, and (ii) any metropolitan planning organization

or planning district commission which operates exclusively within the Commonwealth of Virginia.

If you are negotiating a public contract in Virginia under Virginia’s Public Procurement Act, then chances are you are negotiating with a “public body” and the statutory limitations to indemnity agreements will apply.

CONCLUSION

It is always best to ensure that the written terms of your contract reflect an agreement you can live with. But if a public body in Virginia refuses to negotiate an appropriate balance of risk in its indemnity provision, Va. Code § 11-4.4 may provide an alternate argument to help prevent you from indemnifying the public body for its own negligence or for an overly broad indemnity obligation not covered by available insurance coverage.

The authors may be contacted at 804 237 8800 or by email at sandrews@vanblacklaw.com, jwalker@vanblacklaw.com, or bsieg@vanblacklaw.com.



VANDEVENTER BLACK LLP
ATTORNEYS AT LAW



American Council of Engineering Companies of Virginia
8600 Mayland Drive
Richmond, VA 23294
www.acecva.org

LEADING YOUR TEAM TO VICTORY

Want to build your firm's team to its maximum strength and effectiveness? Attend ACEC Virginia's first ever CEO & Senior Principal Retreat on February 22-23, 2018 at the Salamander Resort & Spa in Middleburg and learn ways to build a better team.

The goals:

1. Encourage each member of your leadership team a model in attitude and behavior for others in the organization
2. Assess your leadership team and fine tune your leadership approach.

Our facilitators are Melissa and Tom Laughon. Melissa, the co-owner of Catch Your Limit Consulting, is an experienced facilitator for strategic planning and board/staff development. She is a nationally recognized speaker who leaves her audience with practical strategies for building a better team.

Tom is founder of Catch Your Limit and a leading expert on creativity and strategic thinking. Tom and his team guide and grow leaders, including Fortune 500 companies, national associations, and any organization willing to work hard to "catch their limit" in the areas of leadership development, creativity, innovation, teaming and positive change. Tom's custom designed and delivered programs are designed to bring significant long-term returns to both large and small organizations.

For more information, contact ACEC Virginia's Nancy Israel, nisrael@acecva.org.