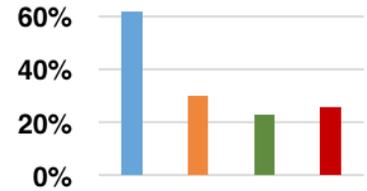


TRENDLINES

Fully executed contracts



According to Zweig Group's 2016 Fee & Billing Survey, **fast-growth** firms start 62 percent of their projects without a fully executed contract in place. Other growth categories appear to be more conservative in their process. **Slow-growth** firms start about 30 percent of their projects without a contract in place, while **stable** and **declining** firms begin about 25 percent of their projects without a fully executed contract in place. (Special discount to TZL subscribers: Use code **SRVY35off** to order this survey at 35 percent off at bit.ly/2f1pA7j)

What is a principal?

"I constantly get asked by readers and clients if I can send them a job description for 'principal.' My response is usually the same – there is no job description for this title. 'Principal' is a status title."



Mark Zweig

EDITORIAL

I constantly get asked by readers and clients if I can send them a job description for "principal." My response is usually the same – there is no job description for this title. "Principal" is a status title. Most of the time it is synonymous with "owner" but not always. Our own research tells us that in 5 to 10 percent of the cases, those with this title are not owners. They could be working for publicly-traded firms or captive firms of other companies but are still deemed critical to their clients and company and therefore have the title.

For most companies in this business, however, "principal" does equate to both status and ownership. It's an important title and an even more important position in firms. Those who are called "principal" should be cognizant of several important aspects of their roles. Here are a few of them.

- **You serve as an example.** This cannot be stressed enough. Everyone will be watching you and emulate your good – and bad – behaviors. That means people will pay attention to when you come in and when you leave, where you choose to eat out when you're on the company nickel, how diligent you are about filling out your timesheet and expense reports, and a million other things. The mantra is, "Do as I do and not as I say."

- **You have to keep the big picture in mind.** That means stop thinking like you are an MEP department head or a branch office manager and start thinking like someone who is an owner in a company. That means you aren't the union shop steward nor representative of some group inside the firm that has an inferiority complex. You are a **FIRM** leader!

See MARK ZWEIG, page 2

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Hot Firm recap

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ON THE MOVE

ACCRUENT STRENGTHENS LEADERSHIP FOR NEXT CHAPTER OF GROWTH: NEW CHIEF TECHNOLOGY OFFICER, DAVID MCCANN; JOHN BORGERDING NOW CEO Accruent, the world's largest provider of asset, facilities and real estate management solutions, announced its new chief technology officer, David McCann, as well as the promotion of John Borgerding to chief executive officer. Mark Friedman, founder and former CEO, will serve as chairman of the board.

John Borgerding joined Accruent in January as president. As CEO, he will continue to lead operations and drive the mission of the company. John has over 20 years of technology experience including his most recent positions as president and COO of Websense, CEO of SumTotal Systems and EVP of global services for Ventyx. As chairman of the board, Mark Friedman will continue to work closely with John on setting the vision and strategy of the business.

As chief technology officer, David will lead Accruent's engineering, product, support and technology teams.

"I'm thrilled to be part of a company that's embarking on a new period of innovation and growth," said David McCann, CTO, Accruent. "Real estate and facilities are strategic drivers in organizations and Accruent is well-positioned to continue its leadership in the market for many years to come."

David brings nearly two decades of technology experience directing enterprise product,

engineering, services and support organizations, and has successfully led technology teams at high-growth companies. Previously, David was the CTO of CLEAResult where he was instrumental in the rapid growth of the company both organically and via acquisition, unifying the technology product strategy and positioning the company for further growth as the leader in the energy efficiency space. Prior to that, he co-founded and was CTO of Bloomfire, and served as vice president of global technical services at LifeSize Communications.

"David is the ideal executive to lead our technology efforts," said John Borgerding, CEO, Accruent. "He has a proven track record delivering innovation at companies like Accruent that grow both organically and through acquisitions."

"In reflecting on the milestone of our recent 20-year anniversary, I couldn't be more pleased with the progress Accruent has made in defining and leading the real estate and facilities software industry," said Mark Friedman, chairman of the board, Accruent. "The addition of world-class talent like John and David is very exciting as we begin the next chapter in advancing our products and scaling the company internationally."

MARK ZWEIG, from page 1

- **You are probably expected to bring in work.** Most people don't get this title unless the others in charge think they can sell new work. There are a few exceptions – principal CFOs or perhaps a "Grand Wazu" of some technical or design specialty. But mostly, principals are those who are doing the selling. As such, you better be selling.
- **You will be the one to make sacrifices if they have to be made.** If it all gets ugly and the firm starts losing money and has to make adjustments beyond cutting the obvious dead wood from the ranks – the next place is principal pay. Get ready to cut it if necessary to keep the firm on a sound financial footing. It will probably be necessary at some point, even if only perks and not base pay.
- **You have to groom your successor.** The name of the game is continuity. It is also about being able to move up into a higher level role. So that means a big part of your responsibility to the enterprise is to find who will replace you when you move on or move up. It's a real simple idea but about half or more of the principals I have observed over 36 years in this industry don't do it.
- **You have to be a decent person to everyone in the firm.** This means you can't berate people publicly, lord your title over them, or in general be a jerk. It also means you need to treat everyone in the firm as if they are important and worthy, not just your fellow principals or "partners" as some principals insist on calling themselves (I don't like that term for a variety of reasons!)

So there's a lot to this "principal" moniker. Do your principals share a common understanding of what the title should mean in your firm? ▀

MARK ZWEIG is Zweig Group's founder and CEO. Contact him at mzweig@zweiggroup.com.

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PROFILE



Stronger together

Similar cultures and a need for an expanded footprint are the driving forces behind Hot Firm RTM's acquisition of smaller Texas outfit.

By LIISA ANDREASSEN
Correspondent



Tony
Mirchandani,
CEO, RTM

The two companies were in talks for a little more than a year before a merger resulted between Illinois-based **RTM Engineering Consultants** (Best Firm Multidiscipline #37 and Hot Firm #50 for 2016) and **Lippe and Associates Consulting Engineers**, a full-service MEP firm located in Addison, Texas. RTM was the buyer, and the combined organization has 120 people.

"Acquiring a new business is a significant undertaking and we wanted to ensure that customer satisfaction stayed at the forefront and that the partnership aligned with our mission to continuously provide innovative designs to our clients, on time and within budget," says Tony Mirchandani, CEO of RTM.

With this merger, both companies have been able to expand existing capabilities. What they have gained is a larger footprint within the industry while strengthening their commitment to providing reliable, efficient, and innovative MEP/FP

services to clients on a national level. The Lippe and Associates team builds on RTM's expertise and service capabilities in every market, but particularly in Texas.

"When cultures clash, it creates a barrier for integrating teams and processes."

COMBINING CULTURES AND RESOURCES. Mirchandani explains that the two cultures are extremely similar and this contributed to a seamless partnership.

"When cultures clash, it creates a barrier for integrating teams and processes," he says. "We understand that by blending Lippe with RTM, along with our previously acquired offices, we're essentially creating a new culture that embraces the knowledge, expertise, and personality of each company. We truly are stronger together."

RTM's core values include being responsive,

See ACQUISITION, page 4



BUSINESS NEWS

O'CONNELL ROBERTSON AND ALAMO COLLEGES FOUNDATION HOST 3RD ANNUAL A/E JOB SHADOW DAY

On October 7, more than 65 students enrolled in the architecture and engineering programs at San Antonio College spent the morning at one of 17 local firms as part of the Third Annual SAC A/E Job Shadow Day. Groups of students were assigned to each firm based on their career interests. The firms provided office and project tours, involved students in meetings, and demonstrated design programs to give them the opportunity to learn firsthand what a career in their chosen profession will be like.

The students and representatives from each firm then came together for lunch on the San Antonio College campus, where they shared insights and experiences gained from their morning tours. Also attending the lunch were leaders from San Antonio College, Alamo Colleges, and the Alamo Colleges Foundation.

O'Connell Robertson started the program in 2014 with the architecture and engineering program coordinators at SAC and Alamo Colleges Foundation staff. The program was such a success that it was decided to continue with an annual event.

During the lunch, Robert Vela, president of San Antonio College, recognized the firm for coordinating the Job Shadow Day, "which offers students real-world professional

experiences, reinforces corporate support of scholarships, and enhances student success."

"Alamo Colleges has been a valued client since we opened our San Antonio office 16 years ago, and we are proud to have worked on many projects at San Antonio College," says Chris Narendorf, LEED AP, a principal with O'Connell Robertson. "We are honored to again partner with Alamo Colleges Foundation and San Antonio College on this program, which benefits both the students and the architecture and engineering industry."

Other firms that participated in this year's SAC A/E Job Shadow Day were: **Alamo Architects, Bain Medina Bain, Big Red Dog Engineering, CNG Engineering, Ford, Powell & Carson Architects, Lake Flato Architects, LPA Architects, RVK Architects,** and more.

LINDGREN MAKES MIDWEST ENERGY NEWS 40 UNDER 40 LIST

Westwood Professional Services, Inc., an award-winning, multi-disciplined surveying and engineering firm, celebrates Mallory Lindgren ranking on *Midwest Energy News'* 2016 40 Under 40 List. Lindgren is Westwood's director of solar energy and a shareholder.

"Lindgren has been a huge promoter of wind and solar energy throughout her career, being highly involved in the community and in industry organizations," says Paul Greenhagen, PS,

Westwood president/CEO. "Her inclusion on the 40 Under 40 List shows her dedication to growing the industry and I applaud her efforts."

Midwest Energy News' 40 Under 40 award program highlights emerging leaders throughout the region and their work in America's transition to a clean energy economy. This is the second year of the program.

JACOBS WINS CONTRACT FOR NEW ALNYLAM BIOPHARMACEUTICAL MANUFACTURING FACILITY

Jacobs Engineering Group Inc. was awarded a contract to provide engineering services and procurement for Alnylam Pharmaceuticals' new manufacturing facility in Norton, Massachusetts.

Under the terms of the agreement, Jacobs is providing engineering services and procurement for the multi-product facility being built to supply RNA interference-based therapeutics for clinical and commercial needs.

In making the announcement, Jacobs Senior Vice President Global Life Sciences Robert Norfleet stated, "Partnering with Alnylam on this major development that enables the company to realize its goal of becoming a fully integrated, commercial-stage company is an exciting opportunity. We're proud Alnylam turned to Jacobs as its design partner, and we look forward to delivering a state-of-the-art facility."

ACQUISITION, from page 3

exhibiting honesty and instilling trust, being constant communicators with the ability to work hard and play hard. Those values align well with Lippe's.

"We understand that by blending Lippe with RTM, along with our previously acquired offices, we're essentially creating a new culture that embraces the knowledge, expertise, and personality of each company."

By combining resources, RTM has been able to expand its reach and create new opportunities in Texas to better serve clients and team members in a way it hasn't before.

"A major benefit of this acquisition is that we have the ability to serve clients as a local boutique firm while also offering the bandwidth and resources of a larger MEP firm," Mirchandani says.

He adds that, as with any new merger, they have learned that automatically combining team members from different offices just because they have the resources can create confusion on the job site.

"It's critical for each team to gain a deep understanding of

the new resources and expertise now available to them to serve clients; this ensures client satisfaction throughout the life of the partnership," he says. "Our goal is to create a positive and lasting impact on a client's business by providing superior engineering and consulting services. This partnership will not only reinforce that mission, but take it even further on a national scale."

Lippe brings 30 years of experience along with a strong national portfolio to the table. The company will continue to provide high-quality and responsive design services for clients in retail, industrial, commercial, and healthcare markets, with capabilities in both remodel and new construction.

"We look forward to partnering with RTM where Tony and his team have embodied a vision for innovation and excellence when it comes to producing engineering designs and providing consulting services," says David Lippe, owner of Lippe and Associates.

"Our goal is to create a positive and lasting impact on a client's business by providing superior engineering and consulting services."

Going forward, Lippe will operate as Lippe and Associates, a division of RTM. ▀

HOT FIRM RECAP



Sonia A. Martinez, chief financial officer, BCC Engineering Inc.

A queen honored with courage award

Defying convention and pushing her firm forward earned Sonia A. Martinez of BCC Engineering Inc. this year's Jerry Allen Courage in Leadership Award.



Sonia A. Martinez, the chief financial officer at **BCC Engineering Inc.**, was the recipient of the 2016 Jerry Allen Courage in Leadership Award. Martinez could not attend the conference, but the award was accepted on her behalf by colleague Ariel Millan.

Martinez first joined BCC during an era of rapid growth. She was an integral part of transitioning the firm from what was a primarily a transportation focused company of 10 employees into a multidisciplinary firm with five offices throughout the state of Florida with more than 140 employees.

Martinez is recognized at her firm as a woman who

defies convention, always pushing forward with the company's best interests in mind. Over the last 10 years, Martinez has grown with the company, and has never shied away from a project's size or work load. Her self-sufficiency allowed the principals and engineers to design while she managed all contractual and financial related material company-wide. The ability to anticipate possible complications and create solutions before they occur earned her the nickname of "The Queen."

Although she was diagnosed with cancer, she never let that get in the way of her duties as CFO. In addition to being the lifeblood of the firm, she is also the mother of three children. 

2016 HOT FIRM/BEST FIRM AT A GLANCE

2016 HOT FIRM/BEST FIRM AT A GLANCE

- 29 firms were both Hot Firm and Best Firm to Work For
- 8 firms were Trifecta: Hot Firm, Best Firm to Work For, Marketing Excellence
- Best Firm employee survey taken by over 11,000 employees from over 250 firms
- Average size of Hot Firm: 363 people
- Average size of Best Firm: 149 people
- Word-of-mouth is greatest source of hires for Best Firms
- 11 percent of Best Firms do not have HR departments
- Average three-year revenue growth for Hot Firms: 97 percent with a \$24.1 million increase
- Average three-year employee growth for Hot Firms: 119 people
- 70 percent of Hot and Best Firms allow telecommuting for select staff and flex time for all staff
- 77 percent of Best Firms share revenue data with all employees compared to 23 percent for overall industry
- Gender imbalance: 70 percent men, 30 percent women (most in non-technical support staff)

SPOTLIGHT ON: Hot

HOT FIRM RECAP



Mark Zweig, founder and CEO of Zweig Group, addresses the audience at the Hot Firm and A/E Industry Awards Conference this September at the Arizona Biltmore in Phoenix.

Served Best when Hot

The annual Hot Firm and A/E Industry Awards Conference in Phoenix was a success, and it's heading to Seattle for 2017.

By RICHARD MASSEY
Managing Editor

The 2017 annual Hot Firm and A/E Industry Awards Conference will be held on September 21-22 at the Fairmont Olympic Hotel in Seattle, one of the hottest AE markets in the United States.

Early bird registration is already open at hotfirm.com. Come early and stay late to enjoy a great conference and a great city. But while you consider the prospect of joining Zweig Group and your industry colleagues in the Pacific Northwest, take a moment to look back on what happened this September.

Representatives from 75 firms from across the country and from across multiple AEP disciplines convened at the Arizona Biltmore for food, fellowship, knowledge sharing, and good-old fash-

ioned fun. One hundred Hot Firms were recognized for their growth – **Gate Inc.** of Houston earned top honors – and a total of 138 firms were recognized as Best Firms to Work For in multidiscipline, civil engineering, architecture, environmental, structural, and surveying.

Mark Zweig, founder and CEO of Zweig Group, had this to say of the event he founded 17 years ago.

“Our annual Hot Firm and A/E Industry Awards Conference is the most positive industry event there is,” Zweig says. “It’s a celebration of achievements as well as a source of inspiration for accomplishments yet to come.”

After Zweig made his opening remarks, the conference got going with Richard Earl, an auto-



Firm:

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Chad Clinehens, executive vice president and chief operating officer, Zweig Group.



Richard Earl, automotive consultant and historian.

motive consultant, historian, and professional speaker. Earl gave his presentation, "The Harley Earl Story: Building the largest industrial corporation in the world through design leadership."

Earl enjoyed the experience of speaking to a roomful of architects and engineers.

"Overall, I simply had a wonderful experience before, during, and after the ZG conference during the black tie awards event," Earl says. "Certainly, it helped me a great deal since architects and engineers are at the forefront of the GM/Harley Earl leadership story. This allowed me to share 'something-in-common' with all the attendees, so it was easy to engage and freely talk. All feedback I received was extremely positive."

Even for an automotive historian, the networking was top-tier.

"Positively interacting with a wide variety of kind hearted, garden-variety people, like myself, is always a good experience," Earl says. "I was able to build some good new relationships."

Another keynote speaker was John Quale, professor and director of architecture at the University of New Mexico. He spoke on the topic of "Making Design Education More Valuable." While Quale is a seasoned speaker, the Hot Firm gathering represented something new.

"It was a slightly different audience than I usually speak to – far more interdisciplinary than who I normally have a chance to communicate with in the industry," Quale says. "Normally, I speak to professors and students of architecture, or university faculty members from various disciplines. I appreciated the opportunity to speak with engineers, contractors, and other professionals."

Quale also participated in a breakout session, "Recent Trends in Design Education and New Graduates."

"In the breakout session, we had a very productive conversation about millennials and how they are impacting the work

See HOT FIRM, page 8



Ted Rubin, social marketing strategist and acting CMO at Brand Innovators.



Fred Prozzillo, director of preservation, Taliesin West.



John Quale, professor and director of architecture, University of New Mexico.

HOT FIRM, from page 7

place,” Quale says. “I think the biggest takeaway was the importance of mentoring recent hires, but also allowing them to explore their interests.”

Keynote speakers included Fred Prozzillo, director of preservation at Taliesin West, who gave his presentation on “Frank Lloyd Wright, the Arizona Biltmore, and Wright’s legacy at Taliesin West in Scottsdale, Arizona.” Wright was a consulting architect on the Biltmore.

Ted Rubin, social marketing strategist and acting CMO at Brand Innovators, was also a keynote speaker. With more than 700,000 followers on Twitter, he is a leading expert on branding. He talked about the power of relationships in marketing your firm, and the ways in which your cus-

tomers interactions and social media can help or hurt your brand image. His mantra is, “Life is not about waiting for the storm to pass, it’s about learning to dance in the rain.”

Chad Clinehens, Zweig Group’s executive vice president and chief operating officer, says the goal of the Hot Firm conference is to “wow” its attendees. But when firm leaders return to their home offices, he hopes the conference, and what was learned there, will continue to resonate.

“We work hard to make this conference stand out in the industry,” he says. “We want to dazzle everyone with a high level of production and choreography combined with a great venue and amazing food. We want the experience to be a real treat for all the attendees. While being fun and educational, we hope attendees go back to their firms and inspire even greater success.” ▀

HOT FIRM BREAKOUTS

This year’s event, as in previous years, featured a full slate of breakout sessions with dynamic speakers. Here’s what they had to say about the 2016 conference.



“As our industry heats up, good people are becoming harder to find. M&As are one of the best ways to bring in top talent and leaders who will help you grow to the next level.”

—Paul Greenhagen, president and CEO, Westwood Professional Services



“From a strategic perspective, our Hot Firms are entering the fourth quarter with plans to fuel the fires of 2017. To predict the future, they’re using backlog of work, pipeline of new work, and predictive cash flows – without those tools in place, Hot Firms are running into 2017 blind.”

—Ted Maziejka, Zweig Group financial and management consultant



“We had an open discussion on the concept of work-life balance and how the perception of this concept is shifting as millennials come into leadership roles.”

—Christina Zweig, director of marketing, Zweig Group



“By presenting at the conference, we got the chance to share the ideas that work for us while also having the value of those ideas confirmed by our industry colleagues.”

—Dan Williams, president and CEO, Garver Engineers



“My partner Mike Woeber and I presented on the Federal Research Tax Credit for A/E firms. We were enthused by the exceptional interest and intelligent conversations, but also by the genuine desire from the attendees to further their exploration of this area of strategic federal taxation. The investment in Zweig, and specifically sponsoring the Hot Firm conference, has already paid back in spades.”

—Dawson Fercho, partner-founder, Corporate Tax Advisors



“In 2016, social media, marketing, and recruiting go hand-in-hand. The design firm that doesn’t figure that out does so at their own peril.”

—Randy Wilburn, director of executive search, Zweig Group

“The M&A panel was a rare opportunity to hear from an incredible group of industry experts. I was interested in the aspects of deal structuring that all four panelists agreed on, as well as some of the areas in which their philosophies differed. There was so much to learn and I think that panel could have kept going for hours!”

—Jamie Claire Kiser, director of M&A services, Zweig Group



“The focused interest in growth through M&A by firms of all sizes, locations, and sectors, underscored the bullish outlook the Hot Firms have in their people, practices, and the future. The questions and topics were at a very high level.”

—George Christodoulo, attorney-partner, Lawson & Weitzen

“I presented on the business benefits that come from being able to forecast people and dollars more effectively and plan further into the future. Hot Firm is a great opportunity to hear firsthand from industry leaders about their business challenges and needs. Very often, another participant or attendee has a similar experience and has a solution to share.”

—Tom Vandervort, founder, Planifi

“The Zweig conference manages to get the right mix of networking, learning and fun. The keynote speakers are always interesting. Thank you for another great learning experience. The conference always provides practical, real-life material and procedures that can have an immediate and positive effect on our firms.”

—Calvin Ladner, president, LJA Engineering

“I presented on cost reduction through your technology infrastructure. We had a great discussion on automation, cloud-based services, migration processes, and what to expect from a procedural and cost basis, should you decide to make the move. I presented Zweig Group as our first case study, saving roughly \$300,000 a year without adding any additional staff.”

—Jay Thornton, director of IT & e-commerce, Zweig Group

HOT FIRM SPONSORS





Expert opinion

The decision to pursue an M&A growth strategy can benefit your firm, but it helps to know what you're doing on the front end.



Jamie
Claire
Kiser

M&A
INSIGHTS

At our annual Hot Firm and A/E Industry Awards Conference in September, I had the pleasure of moderating a powerhouse panel of M&A experts during an hour-long breakout session. We had two seasoned buyers represented, our own Mark Zweig, and an M&A attorney with almost 200 deals within the A/E industry.

I won't be able to do justice to the conversation, but I can share some of the key takeaways from that remarkable session.

- 1) **Vest authority to the smallest group of people that are essential to the actions they are approved to take.** We know of firms that have an M&A committee that is larger than the firms they seek to acquire! If your firm wants to pursue inorganic growth options, agree ahead of time who is going to be involved, make that group as small as possible, and establish the limit of their authority to evaluate opportunities before you begin the process. Once that leader or small team crosses the pre-determined hurdle, whether it's an in-person meeting, building a financial model, or discussing deal terms, they will be responsible for reporting their recommendations to the larger group.
- 2) **The seller's leadership is valuable.** If you are considering an external sale as part of your exit strategy, make sure you have plenty of time to devote to ensuring the success of the transaction after closing.

The buyers on our panel reiterated that they are acquiring the skills and talents of the employees of the firm, and the buying firm needs the management experience and leadership of the seller's key folks to make that happen. This means that firms that want to sell need to start years in advance – at least five years – of their targeted retirement date if they want to receive the highest value for their enterprise.

“The less restrictive your criteria for identifying a target firm, the more likely you are to find a great deal that makes sense.”

- 3) **Bring in the experts.** Firms that try to avoid retaining external support – especially legal advisors – until the last possible second are not doing themselves any favors. M&A attorneys with experience in

See JAMIE CLAIRE KISER, page 10



ON THE MOVE

CLAIRE RUTKOWSKI NAMED BENTLEY SYSTEMS' CIO

Bentley Systems announced that **Claire Rutkowski** has joined Bentley as chief information officer and will lead Bentley's global IT organization, shaping and delivering a technology agenda across Bentley's global business. She will collaborate with executive and business leadership teams to ensure Bentley leverages the most advanced technology solutions to achieve the business goals of Bentley and its users. Rutkowski joins the company's executive cabinet and reports to David Hollister, operations advancement officer at Bentley.

Rutkowski comes to Bentley from **MWH Global** where she served as CIO and was responsible for delivering IT strategy, services, and support to 7,000 engineering professionals globally.

Commenting on Rutkowski's appointment, David Hollister said, "Claire is an accomplished IT professional and a strategic thinker who has a history of executing with precision. Her career has thrived with a commitment to quality, a passion for collaboration, and a knack for helping her colleagues leverage technology to improve the way they collaborate across global teams. She also brings to Bentley a valuable perspective gained from serving as CIO at one of our large user organizations. We are confident that Claire will energetically advance our IT organization and our cloud

and managed services infrastructure to the next level, bringing further innovation, quality, credibility, and value to our internal stakeholders and external users alike."

Rutkowski holds a bachelor's degree from Penn State University, a professional project management certification, and a specialist certificate in IT project management. She has won several awards, notably **iCMG's** Global CIO of the Year Award, *Constructech's* Top 50 Women in Construction Award, a Stevie Award for Women in Business, and a Vision Award for the application of virtual reality to engineering and construction projects.

PHIL ULLMAN, PE, JOINS RPS KLOTZ ASSOCIATES AS DALLAS TRANSPORTATION MANAGER **RPS Klotz Associates** is expanding its transportation practice in Dallas with the addition of **Phillip Ullman, PE**, as transportation manager.

Ullman holds bachelor's and master's degrees from the University of Texas at Arlington and brings 30 years of experience to his role at RPS Klotz Associates. He is a roadway geometric design and preliminary engineering specialist with extensive experience in major investment studies, feasibility studies, preliminary engineering evaluations, environmental analysis and final roadway design.

Ullman is a member of the American Society of Civil Engineers.

ALION SCIENCE AND TECHNOLOGY NAMES NEW CTO

Alion Science and Technology announced that **Christopher Zember** will join the company as chief technology officer.

"Christopher is well known for his vision and leadership throughout the DoD community," said Bahman Atefi, CEO of Alion. "His background with the DoD gives him a unique perspective on the technology needs of the military services. We're pleased that our customers will be able to benefit from his insights and experience."

Formerly, Zember was director of the Center for Technology and National Security Policy, a DoD think tank that draws on expertise from the military, academia, and industry to address pressing problems of national security.

"Alion is positioned to respond to the DoD's need for technology solutions that are developed and fielded quickly and more cost-effectively," Zember explained. "I have long been aware of Alion's combination of engineering and technical skill and deep understanding of the customers' challenges. All this means Alion is well-suited to helping the DoD meet both emerging threats and evolving opportunities, and I am very excited to be helping them achieve those goals."

He holds a master's degree in public administration from American University.

JAMIE CLAIRE KISER, from page 9

the A/E industry are worth the premium. Your regular corporate attorney (or your brother-in-law public defender), is not oriented at closing deals. Attorneys are generally focused on identifying risks. M&A attorneys are focused on finding the way to the closing table with solutions to these risks.

4) Entrepreneurial firms are creative and opportunistic.

The less restrictive your criteria for identifying a target firm, the more likely you are to find a great deal that makes sense. When you have a stringent set of parameters that the seller must meet for your firm to consider them, once you find that unicorn, you'll end up overpaying. Each of the panelists identified a few examples of unexpected firms that ended up combining effectively.

"The decision to pursue an M&A growth strategy – especially if your firm has not done so in the past – is a bold move that can change the course of your company's future in ways that are impossible to know on the front-end."

5) The purchase price is not what you think. M&A neophytes often express concern that they cannot afford the cash outlay for a firm valued at, say, \$5 million. The value can be paid in a variety of ways, and no one is going to need to pay \$5 million at closing in cash. Notes paid over time, incentives and

"Every participant agreed that they are thrilled with their firm's decision to pursue M&A as part of their growth strategy."

bonuses for hitting certain performance metrics, stock in the buying firm, compensation bumps, liquid assets (cash and A/R), retained by the seller – these are all different forms of compensation that we can use to get to that \$5 million figure. To determine the form and the timing of the payment, you have to understand the motivations of the seller – why are they participating in this negotiation? What are their challenges? What are their goals? Just asking what the seller wants will reduce the time spent negotiating and will make for a much more pleasant experience.

These are just a few examples of the wisdom shared by M&A experts during our panel. The decision to pursue an M&A growth strategy – especially if your firm has not done so in the past – is a bold move that can change the course of your company's future in ways that are impossible to know on the front-end.

If your firm is considering M&A in the future, I have one more piece of insight from this panel that I'd like to share: every participant agreed that they are thrilled with their firm's decision to pursue M&A as part of their growth strategy. ▀

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Offers and counteroffers

We all know negotiating enforceable contracts is part of the game, but in case you forgot a few things, here's a refresher.



William
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In 1904, author Mark Twain wrote, “I am a pretty versatile fool when it comes to contracts, and business and such things. I have signed a lot of contracts in my time, and at some time I probably knew what the contracts meant, but six months later everything had grown dim and I could be certain of only two things, to wit: One, I didn’t sign any contract. Two, the contract means the opposite of what it says.”

Twain’s comments reflect the reason we want clearly written, signed contracts before starting any new project. When the deal goes sour, people begin to forget the terms agreed to, or deny ever making such an agreement. Contracts can be oral (“handshake deals”), or written, customized forms or industry standard forms, all of which are legal and binding. Even an email exchange or a signed cocktail napkin can form a legal contract. Here is a refresher on some things you should know about contracts that you may not have learned in school:

- **Clear terms of the offer.** The offer is a most critical part of every contract. It must be communicated in sufficiently clear terms to make any resulting agreement enforceable. Key elements include certainty as to the parties (which company or LLC is entering into the contract), scope, price and time of performance. The phrase “scope creep” is sometimes used to define a contract whose scope was left vague or ill-defined, resulting in more work or services being requested than originally contemplated. Lock in the scope, schedule and price in clear terms to avoid disputes with your clients and contractors.

“When the deal goes sour, people begin to forget the terms agreed to, or deny ever making such an agreement.”

- **Counter-offers and acceptance.** When an offer is made (by the “offeror”), this creates the “power of acceptance” in the other party (the “offeree”). The person receiving the offer has the power to either accept or to reject the offer. The offer may restrict the manner of acceptance, such as requiring signature by an officer of the company, or place a time limitation on acceptance before the offer expires. In such cases, the offer must be accepted in the manner required to form a valid contract. Silence alone is generally not deemed acceptance, but there are exceptions. Contracts are based on our outward actions, not secret intentions, so that acceptance must be communicated to the offering party to be valid. An exception can arise, however, where the parties have a course

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ON THE MOVE

MASER CONSULTING P.A. HIRES FRANCIS J. MILLER, III, P.E. TO LEAD RAIL ENGINEERING SERVICES Maser Consulting P.A. (Hot Firm #16 for 2016), an engineering firm headquartered in Red Bank, New Jersey, announced that it has hired Francis J. Miller, III, P.E. to lead its rail engineering service division. Miller was formerly chief track engineer and director high speed rail for **Jacobs Engineering Group**. He is the current director of the passenger and transit functional group for the American Railway Engineering and Maintenance-of-Way Association and is based in Maser Consulting's Hamilton, New Jersey office.

Miller has more than three decades

of experience in the planning, design, construction, inspection, and project management of major railway, track, and facility engineering projects. Specializing in transit/railway engineering, his undertakings have included major rehabilitation, design-build, and new start projects for mass transportation systems throughout the U.S., including light- and heavy-rail transit systems and commuter, high-speed, and freight railroads.

"Maser Consulting has been focusing on building up its railway survey and engineering service division through a combination of geospatial and conventional survey methods specific to commuter transit, light- and

heavy rail and street car systems," explained Leonardo E. Ponzio, vice president and director of survey services for Maser Consulting. "The addition of Frank Miller to our team to oversee the services we already have in place is truly an asset."

Maser Consulting offers advanced survey services to rail customers nationwide through the use of GPS, geospatial survey including mobile LiDAR and the AMBERG GRP system. The firm has been employing standard and creative solutions for capturing comprehensive track geometry and corridor data in the unique rail and tunnel environments backed by a full-range of engineering and design services.

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of dealing between them which leads the offeror to understand that silence means acceptance, or where the parties have agreed by contract that silence means acceptance. Many court cases hold that acceptance can be shown by a party's actions, such as proceeding with work or accepting payment. Be careful about starting work or services without rejecting the terms of an unreasonable contract proposed by your client.

"Contracts can be oral or written, customized forms or industry standard forms, all of which are legal and binding. Even an email exchange or a signed cocktail napkin can form a legal contract."

■ **Rejection.** Offers are terminated by an express rejection. A "counter-offer" is common where one side makes an offer, by sending a proposal or contract, and the other side sends back a different proposal or a marked up contract. This is not an acceptance of the original offer, but it is a rejection of the offer coupled with a counter-offer. This now creates the "power of acceptance" in the original offeror, who can accept the counter-offer, or reject it. We normally see a series of offers and counter-offers before the parties eventually agree on a set of terms and price that they can live with. Until that time, however, there is no contract. Acceptance must be the "mirror image" of the offer, so that the terms match. This is also known as "mutual assent" or a "meeting of the minds." If the two do not match, you have a counter-offer – not a contract.

■ **Bargained exchanges and adhesion contracts.** The law prefers fair bargaining in contracts, where there is some give and take in the negotiations (offers and counter-offers). Contracts which are presented on a "take-it-or-leave-it" basis are known as "adhesion contracts" because the terms are merely adhered to by the weaker party, rather than negotiated. Adhesion contracts are usually pre-printed forms forced by a stronger party on a weaker party. This does not mean that all AIA, EJCDC, or DBIA contracts are unenforceable. To the contrary, courts only strike those parts of a standardized form which fail to live up to reasonable expectations and which are unconscionably unfair. Normally, there is unequal bargaining power involved as well, where the weaker party is compelled to sign under some economic duress. If an adhesion contract is so one-sided that no fair-minded person would view it as just or

tolerable, that portion of the agreement which is unconscionable will be struck as adhesive if it is against public policy.

■ **Intent.** The intent of the parties is sometimes an issue where one party thinks one thing and the other party thinks another. Our intent is judged by our outward conduct, not internal thoughts, as would be interpreted by the average reasonable person. Courts try to determine the intent of the parties by looking only at the "four corners" of the written contract. There is great reluctance to go "outside" the contract, because this opens the door to evidence that is not part of the contract terms. Such evidence is called "parol evidence" and is usually not admissible in court unless the contract is so ambiguous that the court cannot determine the parties' intent without the aid of such evidence. For this reason, it is common to see an "integration clause" in contracts like: "This Agreement supersedes the parties' prior proposals, offers and communications and constitutes the entire agreement." It is, therefore, very important to include all relevant details of the scope of work, and fee and negotiations in the written agreement. Parties often do this by incorporating written proposals into the contract by reference, and attaching them as an exhibit.

"You want to be sure you have a proper contract that protects you and your company. Get it in writing, negotiate acceptable terms, and don't start work until both parties have signed!"

In Abraham Lincoln's 1861 first inaugural address he asked, once a contract is entered into, "can it, as a contract, be peaceably unmade, by less than all the parties who made it? One party to a contract may violate it – break it, so to speak; but does it not require all to lawfully rescind it?" The answer is "yes," both parties can lawfully rescind a contract by mutual agreement. But more often, it is one party who breaches the contract and that is when you want to be sure you have a proper contract that protects you and your company. Get it in writing, negotiate acceptable terms, and don't start work until both parties have signed! ■

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