

DISPUTE RESOLUTION

EXPERIENCE

The Frisby Group, a construction-consulting firm, has been involved successfully in the following projects:

WEST

- Aloha Stadium, Honolulu, HI
- Waste Water Treatment Facility, Las Vegas, NV
- Library, Las Vegas, NV
- Central Arizona Project (CAP), Phoenix, AZ
- Small Energy Plant, Imperial Valley, CA
- Sludge Incinerator, CA
- Nerve Gas Destruction Center, Johnson Atoll, P.I.
- Barracks, Anchorage Alaska

CENTRAL

- Siemens Plant, Chicago, IL
- Registry Hotel, Dallas TX
- TDCJ Hospital, Galveston, TX
- Barracks, Ft. Riley, KS
- C-5A Hangar, Altus AFB, Oklahoma
- GM Truck Assembly, Oklahoma City

EAST

- Mass Transit, Washington, D.C.
- Barracks, Meridian, MS
- Pump Storage Project, Bad Creek, SC
- Upgrade Fossil Power Plant, Solvay, NY
- Hospitals, Charlotte, NC
- Hospitals, Greenville, SC
- Roche Plant, Florence, SC
- Hangar, Jacksonville, NC

In addition, **Tom Frisby**, the principal of **The Frisby Group**, has been a Mediator in numerous construction conflicts on both privately owned projects and governmental agencies as well as a member of Dispute Resolution Boards (DRB's), such as for the Department of Criminal Justice, Texas.

THE FRISBY APPROACH

The Frisby Approach is actually threefold:

- Institute procedure to PREVENT disputes to the maximum degree. In many litigations, there are no winners but only varying degrees of losers.
- When a dispute does exist, take control of it early BEFORE significant costs are incurred, while there still exist "trade off" decisions that can mitigate damages. At this point and all the way through any dispute process, attack ISSUES and not people.

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- If the dispute cannot be worked out expediently, the line of action is to PREPARE and PERFORM EVERYTHING PROPERLY!

The contractor may have a good claim, but it may go "down the drain" due to poor workmanship, failure to properly update the schedule and/or to maintain documentation of losses being experienced. The owner may have a good defense but has a history of dilatory decision-making. (If both parties really commit to improve their individual performance, the result is generally that they will resolve their differences on their own, or at least reduce the magnitude of the conflict).

In each of the three situations, **The Frisby Group** is involved to provide guidance targeted at a timely, objective, and cost effective resolution. Where necessary Tom Frisby is qualified as an expert witness.

QUALIFICATIONS

- A. Tom Frisby, the principal of **The Frisby Group**, has legal, engineering, financial, and construction education and experience. (Please reference Tom's Curriculum Vitae.) He has performed work both nationally and internationally.
- B. Experts in construction scheduling, and impact analysis assist Tom.

FEE SCHEDULE

- A. The fee schedule for Tom Frisby's services is \$1,200 per day, in addition to actual expenses. However on most claims a budget estimate is preferred and a billing schedule is developed based upon milestones. Payment is then based upon achievement of the milestones, not just the incurrence of hours. There will be a "deliverable" as a condition of payment.
- B. Scheduling principals are charged at \$65 to \$85 per hour in addition to actual expenses.

PRELIMINARY INTERVIEW

- A. On the first interview, there is no charge. Tom Frisby will review key documents involved in the dispute (contracts, schedules, key correspondence, etc.) and discuss the issues. However, he will develop from the documentation review an independent impression of the issues prior to having extensive interviews with personnel in a dispute or claim to avoid forming a premature bias or conclusions. He will then develop an outline of the steps he believes will be required to assist the client, prepare a budget for the client to facilitate a cost effective solution, and also develop a tentative schedule for completing each activity.

EXECUTION

- A. To illustrate, in an "impact" or delay damages dispute, the following steps are often involved:
 - * Contract analysis
 - * Document organization by issue
 - * Issue analysis
 - * Schedule analysis
 - Planned
 - Monthly update showing as-built conditions.

- * Cost analysis
 - * Interview
 - * Coordination with clients attorney
- B. Presentations will be scheduled at interim steps so the client may review progress along the way. Billings are based on production of work products.
- C. Honest and objective evaluations are provided early - if we believe the claim is not justified, we say so early before the client has spent a bundle only to be told he doesn't have a claim.
- D. Tom Frisby will participate in negotiations.
- E. If necessary, he will assist the client's counsel in litigation proceedings.

PARTNERING

EXPERIENCE

The Frisby Group, has been the FACILITATOR on the following projects (among others):

- DOE Headquarters, Las Vegas, NV
- Waste Water Treatment Facility, CCSD, Las Vegas, NV
- DAFT Facility, CCSD, Las Vegas, NV
- Bar Screen, CCSD, Las Vegas, NV
- Filter Project, CCSD, Las Vegas, NV
- Aloha Stadium, Honolulu, HI
- Pump Storage Facility, Duke Power, Bad Creek, SC
- Medical Facilities, MUSC, Charleston, SC
- Laboratory Facilities, USC, Charleston, SC
- Co-Generation Facility, Syracuse, NY
- Hotel Renovation, Charleston, SC
- Port Royal Condominium, Augusta, GA
- Hospital (U S Marine Corp.), Quantico, VA

And many others, all of which have been successful projects. We began facilitating projects year before the fad began.

THE FRISBY APPROACH

- A. The Frisby approach is unique. It is a CONSTRUCTION DRIVEN APPROACH, instead of a "social science" approach.
- B. We read the plans and specifications before a partnering session and review the preliminary schedule. We then tailor the program to real life situations that only occur on this project. For example we provide scenarios on:
 1. How to handle differing site conditions.
 2. How to handle "no damages" for delay clauses.
 3. How to handle scope of work disputes.
 4. How to effectively use the schedule as a management tool instead of a claims or payment document.
 5. How to work together; How to cause decisions to be made on a timely and effective basis.
 6. How to "look ahead" to avoid problems.

And other potential conditions and conflicts that may arise on the project.

THE ROLE OF THE FIRST 25% OF THE PROJECT; THEN THE ROLE OF THE LAST 10% OF THE PROJECT.

- A. We know that if we can establish and meet the key objectives and priorities of the first 25% of the project that we have established the momentum that can carry us forward. We know that if we get behind, even a couple of percentage points, in the first 25% we are likely to cram that 2-3% into the last 10% and end up with the inefficient use of crews, extended duration and often excessive punch lists.

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- B. Thus, in our partnering sessions, we emphasize the activities and functions, which will assure success on the front-end of the project and success on the tail end of the project.

CONCEPTS THAT WE BELIEVE IN

- A. $1 + 1 = 1$ (meaning unity of purpose).
- B. Built-in-Quality (BIQ), instead of inspect and correct.
- C. Trust being the backbone of successful projects where trust is a function of Competence, Character, and Consistency.
- D. We believe in empowerment but that enablement must precede empowerment.
- E. Successful contractors must assist in the decision-making process and should be solution providers (or solution assistors).
- F. Neither party should use partnering to simply get something for nothing. There must be accountability.
- G. The work force must be the beneficiary of the partnering, so that it can get the information, tools, equipment and space needed when they need it.
- H. We must deal with RFI's quickly and early in the project so that the engineer and owner can never be an obstacle to the contractor's progress. Let's make this a construction project, not a continuation of the design phase.
- I. Let's not worry about how good our hindsight is, let's do first things first and improve our foresight.

FEE

- | | |
|-------------------------|---------------------------------------|
| A. First Session: | \$2,500 plus actual expenses. |
| B. Subsequent Sessions: | \$1,200 per day plus actual expenses. |
| C. Telephone Calls: | Expenses Only. No fee charged. |

STRATEGIC PLANNING and ORGANIZATIONAL CONSULTING

EXPERIENCE

The Frisby Group, a construction consulting firm, has provided strategic planning and organizational consulting services to the following companies, among other: (For further listings please reference Tom's Curricula Vitae.)

<u>Company</u>	<u>Nature of Service</u>
Pennsylvania Power & Light	Assisted in managing the mechanical contractor consortium (producing \$350,000,000 in annual revenue) and embarking upon energy services (ESCO) markets in the Northeastern United States.
McClure Company	For five (5) years assisted in market planning, organizational improvement, dispute resolution and assisted in the sale of the company to a large Fortune 500 energy company. Company has been ranked Contractor of the Year.
Dillingham of Hawaii	For ten (10) years assisted in market strategy, training, and dispute resolution. Helped develop an Asian market. Assisted Mainland companies and Canadian company in organizational and dispute issues.
Boeing/NASA	Assisted in overcoming obstacles on the Saturn S-1C Program (Apollo - Moon Program).

THE FRISBY APPROACH

The Frisby Approach is:

1. To determine the real needs of the customer.
2. Then to design the solution to the needs instead of presenting a "canned" program.
3. This is accomplished through detailed analysis of documentation and financial records, but more importantly, extensive confidential interviews with company employees, as well as third parties with whom the client does business.
4. Findings and recommendations are reviewed with management and a plan of action is developed for implementation.
5. Our success is to "eat an elephant one bite at a time," and not to overwhelm an organization with a flood of new things to do. Our success is also that we recognize that all improvement is change, but all change is definitely not improvement. We focus on the priority issue first - the ones that can truly make a difference and then measure the difference made.
6. For the first year, Tom Frisby has quarterly visits (more if warranted) to help implement the action items.

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7. We generally facilitate the company's annual strategic planning meeting, assisting the company with market research, trends, niches, and opportunities to maximize margin rather than attempt to grow by revenue alone.
8. "Do not follow where the may lead. Go instead where there is no path and leave a trail."

SOME OF OUR BUSINESS ORGANIZATION CONCEPTS

Business success follows the following P's

PAIN	Chose one: not doing thing right creates pain.
PLEASURE	Doing them right usually results in pleasure.
PRINCIPLES	Like a mission statement, what are you really about? What is your character, your reputation in the community - inside your own company?
PEOPLE	What is your plan to hire, develop and reward "A" players. Do you have the best work place in the community?
PLAN	What strategic plan have you thought out? Are you willing to be flexible with the strategic plan? What risk are you willing to take? What tactical planning do you do? Daily planning?
PROCESS	Are processes in place? Known by all? Performed? Revised as required?
POWER	How is power exercised: thru command and control or by EMPOWERMENT? If empowerment, does ENABLEMENT precede empowerment and do you still maintain the right level of involvement?
PERSERVERANCE	The successful companies hang there! Failure is not an option!
PROFIT	There is nothing wrong with making a profit; it is essential. The issue is: How do we make it? At the expense of others? Through claims instead of performance, creativity, and productivity? Is profit always measured by the bottom line on this project (i.e., are there times when future relationships can be considered "profitable," or to resolve this conflict now rather than after two years of litigation will be profitable resolutions?)? For owners who may think that profit is a dirty work, think about this: What would be the quality of the contractors if they did not earn a profit?

FEE

A. A one-day complementary interview with management is followed by a detailed scope of work and budgetary estimate.

B. Typical fees are set forth below:

Option #1 Annual retainer fee (Perform all the functions listed above and be on call to assist in specific issues that may arise, such as claims.) \$30,000 to \$45,000

Option #2 Conduct initial analyses, conduct strategic planning meeting. \$7,200 to \$18,000

Option #3 Follow-ups (by the week.) \$7,200 (includes expenses)