

Week 1 Lecture

Construction Contract Administration

WHAT:

- It covers the management issues related to construction contracts
- It covers the administration of a building project in accordance with the contract between two parties who have agreed that one will construct a building for the other

WHEN:

- During the construction phase of a building project
- During the defects liability period (DLP) – usually 1 year, sometimes more or less
- After handing over, until the paper work is completed

WHO:

Who is the project administrator?

Any one of:

- The Architect (not usually recommended) or Superintendent (for e.g. engineer)
- The Project Manager (independent) or 'contract administrator – look after client's interests
- The Construction Manager – not always required – **not** head contractor. Useful for big complex projects but not a lot of responsibility on them
- Another consultant
- The contractor

WHY:

To ensure that each party to the contract:

- fulfils its responsibilities
- is treated fairly by the other party

HOW (is the project administered?):

- Contract law is an adversarial system
- Each party employs a project administrator to protect its interests under the contract
- Prompt and clear communication is the key to effective project administration

Subject Objectives

- Understand major aspects of a contract
- Understand rights and responsibilities of the parties to a contract
- Understand project reporting and forecasting systems
- Be able to administer project scope, quality, cost and time

DEFINITIONS – AS4000

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| Bill of quantities | a document which states the estimated quantities of work to be carried out and which is issued to tenderers by or for the Principal |
| Compensable cause | an act, default or omission by the Principal or any of its agents, or any cause listed in item 26, 'Delay damages, other compensable causes', of annexure part A |
| Construction plant | all equipment used in carrying out the work under the Contract, but which is not part of the 'Works' (that is, not required to be handed over to the Principal) |
| Contract sum | <ul style="list-style-type: none"> • either the lump sum, or • the product of the rates and quantities in a 'bill of quantities' or a 'schedule of rates', or • the aggregate of both. <p>It includes provisional sums, but excludes any adjustments.</p> |
| Contractor | the person named in item 3, 'Contractor', of annexure part A who will carry out the work under the Contract, and whose address is stated in item 4, 'Contractor's address', of annexure part A |
| Date of acceptance of tender | the date of the written notice of acceptance of the tender |
| Date for practical completion | the date by which practical completion is required to be achieved; stated as either item 7(a), 'Date for practical completion', or item 7(b), 'Period of time for practical completion', of annexure part A |
| Date of practical completion | the date on which practical completion is actually achieved or is subsequently determined to have been achieved |
| Direction | any written contractual communication from the Superintendent to the Contractor |
| Intellectual property right | a non-material protected right |
| Item | an item in annexure part A |
| Legislative requirement | a requirement of the state or territory in which any of the works under the Contract are being carried out, including the requirement to provide or obtain a formal document in connection with those works |
| Practical completion | that stage when the Works are complete except for minor omissions and defects, all tests have been passed and all operating and maintenance manuals and other information have been supplied |
| Principal | the person named in item 1, 'Principal', of annexure part A, and whose address is stated in item 2, 'Principal's address', of annexure part A |
| Qualifying cause of delay | the cause of any delay which is beyond the Contractor's control, excluding industrial conditions or inclement weather occurring after the date for practical completion and excluding any cause stated in item 23, 'Causes of delay for which EOTs will not be granted', of annexure part A |
| Schedule of rates | a schedule which shows rates of payment for carrying out of items of work |
| Security | <ul style="list-style-type: none"> • cash • retention moneys • bonds or inscribed stock or their equivalent issued by a national, state or territory government • an interest-bearing deposit in a bank carrying on business at the address stated in item 9(c), 'Place of business of bank', of annexure part A or, if nothing is stated, the place nearest to where the site is located • an approved unconditional undertaking (the form in annexure part C is approved) or an approved performance undertaking given by an approved financial institution or insurance company • any other form approved by the party benefiting from the security |
| Separable portion | a portion of the works so identified in the Contract or so directed by the Superintendent |
| Site | the lands and other places which are to be made available to the Contractor by the Principal for carrying out the Works |
| Superintendent | the person named in item 5, 'Superintendent', of annexure part A, or appointed by the Principal, and whose address is stated in item 6, 'Superintendent's address' of annexure part A |
| Superintendent's Representative | a person so appointed by the Superintendent |
| Survey mark | any mark used for setting out, checking or measuring the work under the Contract |

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| Temporary works | works which are used in carrying out the work under the Contract but which do not form part of the Works (that is, work that is not required to be handed over to the Principal) |
| The Works | the work to be carried out in accordance with the Contract, including all variations, which is to be handed over to the Principal |
| Work under the Contract (WUC) | the work to be carried out under the Contract, including all variations, remedial work, plant and temporary works. |

Intro to Conditions of Contract:

Overview

Building projects differ greatly to commercial transaction contracts, as they are influenced by far more factors, such as weather/delays, availability of subcontractors, physical injury and availability of material goods preventing work/progress and so on.

They also have **factors** like physical neighbours and their complaints, council regulations and project-stopping or delaying factors which can only be known once the project has started (such as discovering a hidden water pipe once piling has begun).

- Long duration
- Large sums of money
- Many parties – design team, local authorities/councils, subbies, contractors, PM, owner etc.
- Building on someone else's land - under Australian law: improvement to land means it belongs to land owner - at least need a letter of intent (equivalent to contract)
- need adequate evidence of contract
- Must define clearly the project scope, quality, time and cost
- Formal mechanism required for varying the project parameters

Key Questions:

- Who are the parties?
- What are the contracts documents? E.g. geotechnical reports
- What are the owner's obligations with regards to the site?
- Who has possession of site?
- Who has access to the site?
- What are the works?
- What special conditions may be used?

Contract

- Definition of a building and construction contract
= an agreement to build a specified structure to a specific standard and within a specified time for a specified sum of money
- Any contract where one person/corporation agrees for valuable consideration to carry out construction works which may include building or engineering works, for another (Furst & Ramsey)
- **Defined by:**
 - start date
 - contracting parties
 - scope
 - quality
 - contract sum
 - completion date

- **Contract Type:**
 - Turnkey <http://globalnegotiator.com/files/Turnkey-contract.pdf>
 - Design and construct
 - Construction only (traditional) – head contractors have no design responsibility
 - Project management
 - Construction management

Enter the contract

These may be used in the entry of contract:

- Letters of intent (sent by owner to contractor – ‘I intend to award the project to you’)
- Preliminary agreement
- Letter of acceptance
- Formal contract agreement

Types: Standard and Tailored Contracts

Criteria for selection

- Is the project unique or not?
- **Standard** contracts are for general use: (e.g. residential tower, hospital, houses etc.)
 - wide applicability
 - wide familiarity – used and known by many
 - can reuse - more time convenient and cheaper (advantage)
 - written by industry bodies (e.g. AIA – Australian Institute of Architects, MBA- Master Builders Australia)– lawyers are involved but not as much
 - risk more evenly allocated between owner and contractor
- **Tailored** contracts are for specific use: (unique, written only for 1 project) e.g. nuclear reactor
 - specific applicability
 - lack of familiarity – different understanding of same term
 - have to get lawyers to write specific contract each type = more risk on contractor (written by owner’s lawyers)
 - more expensive

Selecting a Standard Contract:

Criteria for selection:

- Type of project = housing or non-housing
- Magnitude of project (major projects = more than \$10 million)
- Complexity of project
- Principally alterations of principally new work
- Who will administer the contract?
 - AS4000 can be in house, QS, engineer etc. – anybody
 - MW1 can only be architect
- Bill of quantities provided? Usually not part of contract in Australia
 - = extra risk to you if errors in BQ
 - some countries it is, like Singapore
- Staged practical completion?
 - 3 stages: separable portions (SP) – all within 1 contract - so don't have to sign 3 different ones.
 - Each with different completion dates
- Payment method:
 - lump sum
 - schedule of rates
 - cost plus (not recommended)

Standard Conditions of Contract

- Housing sector: individual states (state-based)
 - e.g. HC5 – 2001 Major Domestic Contract
- Non-housing sector = Australia-wide
 - e.g. PC1 – 1998 Project Contract
 - e.g. AS2124 – 1992 – Public Sector and/or engineering

Contracts to be studied

- ABIC MW1:
 - intro
 - Section S
- AS 4000
 - clause 1 etc.

Contractual Obligations

- Law governing the contract
- Contractor's obligations:
 - Completion of the works on time
- Owner's obligations:
 - payment of contract sum
- Assignment of contract
- Possession of site
- Times for commencement and completion

Contractor's major obligation is timely and satisfactory completion of the works

(MW-1 Subclause A2.1)

- Commence works within 10 working days after being given possession of the site
- Carry out works diligently and in accordance with the contract
- Obtain approvals from statutory bodies that may be required for the works from commencement to completion
- Bring the works to practical completion by the date
- Comply with any instruction from the architect
- Comply with all other obligations under the contract including any relevant legislation

Contractor's Limitations:

- (subclause 8.6) can not disclose any information about the project to the media with the Principal's prior approval

Owner's major obligation is payment of the contract sum in exchange

(MW-1 subclause A4.1)

- Obtain from statutory authorities and give to the contractor any approvals from those statutory bodies required to commence the works
- Obtain from neighbouring owners any 'easements' required before the works can commence
- Give possession of the site to the contractor in accordance with the contract
- Pay the contractor the contract price
- Comply with all other obligations under the contract

Contract Documents = documents which together constitute the contract.

- Completed Contract Form
- Specification
- Drawings
- BOQ
- Schedule of rates
- Other documents either listed in the contract (MW-1) or which the owner is contractually obliged to provide to the contractor (AS4000).

Order of Precedence of Documents (MW1) – AS4000 has no order

- 1) Any special conditions stated in schedule 2, (Special conditions)
- 2) The conditions of the contract, including the 'Introduction' and schedule 1, 'Contract information' (Contract)
- 3) The specifications, in the order in which they are listed in schedule 3 (specifications)
- 4) The drawings listed in schedule 3, but with large-scale drawings taking precedence over small-scale drawings (Drawings)
- 5) Any other documents, in the order in which they are listed in schedule 3 (other documents)
- schedule of rates, or Principle project requirements: what owners want