Contract administration, security of payment, and disputes

A reflection

Craig Jepson
Senior Project Manager, Livingstone Shire Council

Darren Williams
Lawyer, McCullough Robertson

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Overview

- Why this is important
- A reflection on the key principles
- **The front end**: Procurement and contract formation
- **The middle**: Contract administration
- **The back end**: Dispute mitigation and resolution
- A refresher on key risk mitigation measures for security of payment
Why this is important
Some common observations

- Similar across all projects
- The key fundamentals remain the same
- Risk mitigation: consider the consequences if done poorly
- A rather simple cost-benefit exercise
A reflection on the key principles
Record keeping

What we all know:

- Accurate records
- Which are comprehensive
- For the duration of a project

Disputes about facts are often the most costly part of a dispute

Consider direct proof against expensive modelling to establish that something *may* have been the case

Proof minimises the chance of their being a dispute

Consider: in six months time (or later), what can you prove?
Programming

- Accurate baselines
- Regularly revised
- Logic links – do these change?
Other records

- The importance of daily diaries – what do they contain?
- Inculcate the habit of diarising
- Photographs
- Minutes of meetings
# Site Construction Diary

**DATE**

**JOB NUMBER**

**Inspector:**

<table>
<thead>
<tr>
<th>Weather Conditions</th>
<th>Contractors Plant</th>
<th>Location</th>
<th>STATUS (work / idle)</th>
<th>Contractors Staff On site</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dry/wet/other</td>
<td>PLANT ITEM</td>
<td>Location</td>
<td></td>
<td>Project Manager</td>
</tr>
<tr>
<td>Time Loss</td>
<td></td>
<td></td>
<td></td>
<td>Project Engineer</td>
</tr>
<tr>
<td>Rain mm &amp; time</td>
<td></td>
<td></td>
<td></td>
<td>Safety Officer</td>
</tr>
<tr>
<td>Wind</td>
<td></td>
<td></td>
<td></td>
<td>Quality Engineer</td>
</tr>
<tr>
<td>High Tide</td>
<td></td>
<td></td>
<td></td>
<td>Admin / QS</td>
</tr>
<tr>
<td>Low Tide</td>
<td></td>
<td></td>
<td></td>
<td>Site</td>
</tr>
<tr>
<td>Todays Planned Work and Work Progress</td>
<td></td>
<td></td>
<td></td>
<td>Superintendent</td>
</tr>
</tbody>
</table>

**Subcontractors**

**Visitors to Site**

**Inspections, Safety and Photos Taken, including materials delivered**
The Front End
Procurement

- Consider the model of contract
- Who bears the design risk, for example?
- Consider separable portions versus separate works packages
- When is access to or possession of site granted?
Pre-start

- The benefits of pre-start meetings
- What should these cover?
The Middle
Apply the key principles

- Good contract administration *throughout* the project
- Records – how organised are you?
- Correct the record where necessary
Directions

- Who has authority?

- Project-level agreements and commercial matters
Be careful about waiver ‘and/or’ estoppel

- A common refrain by claimants
- Know closely what you have agreed to govern the works – the contract
- Why do we have closely drafted and negotiated contracts?
Payment claims

- Make sure to respond to payment claims within time
- No requirement now to be endorsed
- Failure to respond – liable to pay the **whole** claimed amount
- You are stuck with your reasons in a payment schedule
The Back End
Particular issues for civil works projects

- Consider productivity or disruption claims or disputes (common on civil works projects)
- The peril of the global claim (recall – daily diaries)
- Labour and plant records
- What about haul routes?
Adjudication

- Claimant friendly

- Now under the *Building Industry Fairness (Security of Payment) Act 2017* (Qld)

- Often at the end of a project – consider issues of proof

- Limited grounds to review an adjudicator’s decision
Questions?