Contract Control International

CCI provides training and consulting services in contract formation, contract management and contract finalisation to:

• Local Government
• Road Authorities
• Mining Companies
• Energy Authorities
• Principals
• Consulting Engineers
• Construction Contractors
Contract Control International

CCI services Principals and Contractors from the following industry groups:

• Civil and Heavy Engineering
• Transport
• Mining and Processing
• Power Generation and Transmission
• Building and Construction
• Information Technology
• Telecommunications
• Petrochemical
• Defence
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CCI’s range of services includes:

- Preparation of Contract Documents
- Tender Advice & Probity Audits
- Contract Reviews & Audits
- Contract Administration Support & Systems
- Construction Claims & Commercial Negotiations
- Mediation, Arbitration & Litigation Support
- Process Analysis, Mapping & Procedure Development
“Seachange for Work Supervisors” – Defining and Understanding your Role under the Contract

Mr George Strohfeldt
Supervisor’s Role

- Background
- Possible roles
- Responsibilities
- Surveillance
- Conclusions
Background

Two main approaches to Local Government works:

– Day Labour – Principal carries out the work using own resources
– Outsourcing (or by contract) – Principal engages a Contractor to carry out the work under a construction contract
Background

Two approaches:

- Day labour approach – the Supervisor manages the entire works with engineering input as required
- Contract approach – independent but related spheres of responsibility and control
  - Supervisor acts as contract Superintendent’s Representative or Inspector who represents the Principal on site
  - And makes decisions impartially and fairly
  - May also have a project management role
  - Contractor’s Representative who acts for the Contractor on site.
Project Management Model

Cost

Contract = Rules

Time

Quality
Possible roles

- Principal
- Superintendent
- Superintendent’s Representative
- Inspector
- Contractor
Possible roles

Traditional contract:

– Superintendent – normally the Director of Construction Services (ie Shire Engineer or equivalent)
– Superintendent’s Representative
  • May be part of the Supervisor’s role
  • Makes some decisions and may issue certificates under the contract
    – May also include inspection duties
– Inspector
  • Supervisor’s role may be limited to inspection duties under the contract
  • Inspects works as they proceed
Possible roles

Traditional contract:

– Superintendent’s Representative
  • May be supported by an Inspector
  • Or may include the inspection role

– Contractor
  • Undertakes work under the contract
  • May engage subcontractors and suppliers
  • Liable for its work
Possible roles

**Typical Inspector’s role**

- To be the “eyes and ears” of the Superintendent
- Understand project specifications
- Assess construction practices
- Measure works for payment processes
- Inspect, accept and reject work
- Maintain records
- Prepare reports
Possible roles

As a Supervisor - What is your role under the contract?

– The role can vary significantly
  • Between Local Authorities
  • And with the experience level of the Supervisor
– Shortages of Engineers and senior Supervisors is resulting in a widening of Supervisor’s duties under the contract
– Lets examine the various roles contemplated by the contract
– Perhaps this will help clarify the situation for you
Responsibilities

Superintendent

- AS 2124 – 1992 clause 23 states:

  The Principal shall ensure that at all times there is a Superintendent and that in the exercise of the functions of the Superintendent under the Contract, the Superintendent:
Responsibilities

Superintendent

(a) acts honestly and fairly;
(b) acts within the time prescribed under the Contract or where no time is prescribed, within a reasonable time;
(c) arrives at a reasonable measure or value of work, quantities or time.
Responsibilities

Superintendent
- Is appointed by the Principal
- Is not a party to the contract
- Is required to direct and administer the Contract in an independent and impartial manner
Responsibilities

Superintendent

- Has a dual role, acting as
  - Agent for the Principal; and
  - Certifier when issuing certificates and making decisions

- May delegate certain functions to a Superintendent’s Representative (and Inspector)
Responsibilities

Superintendent’s Representative

- AS 2124 – 1992 clause 2 defines a Superintendent’s Representative as:
  - *A person appointed in writing by the Superintendent under Clause 24*
Responsibilities

Superintendent’s Representative

Clause 24 states:

- The Superintendent may from time to time appoint individuals to exercise any functions of the Superintendent under the Contract but not more than one Superintendent’s Representative shall be delegated the same function at the same time
Responsibilities

Superintendent’s Representative
- Is appointed in writing by the Superintendent
- Is delegated certain functions by the Superintendent
- Is required to direct and administer the Contract to the extent of their delegated functions, in an independent and impartial manner
Responsibilities

Superintendent’s Representative

• Typically responsible for:
  – The day-to-day running of the Contract, including record keeping, conducting regular progress and other meetings
  – Providing technical support and advice to the Contractor
  – A range of financial matters (sometimes within limits)
Responsibilities

Superintendent’s Representative

- Coordination of
  - Suppliers and manufacturers;
  - Accounts and secretarial personnel;
  - Outside consultants; and

- Ensuring everything necessary to complete the Contract is expedited, seen, acted upon and documented
Responsibilities

Superintendent’s Representative

• Must also know the “rules” of contracting
• Needs to understand:
  – The basic workings of the Contract
  – Each party’s obligations and responsibilities
  – Each party’s rights under the Contract
  – The importance of the commercial conditions of the Contract
Responsibilities

Inspector

• AS 2124 – 1992 clause 22 states:
  – *The Superintendent shall forthwith notify the Contractor in writing of the name of any Clerk of Works or inspector appointed by the Principal or the Superintendent*
Inspector

- Usually in the Superintendent’s organisational structure
- Role defined in the contract
- Primarily concerned with workmanship and quality control
- Can be responsible for full inspection role or surveillance
Responsibilities

eg materials and work

• AS 2124 – 1992 clause 30.1 states:

The Contractor shall use the materials and standards of workmanship required by the Contract. In the absence of any requirement to the contrary, the Contractor shall use suitable new materials.
Responsibilities

eg defective materials or work

- AS 2124 – 1992 clause 30.3 states:

  If the Superintendent discovers material or work provided by the Contractor which is not in accordance with the Contract, the Superintendent may direct the Contractor to:

  (a) remove the material from the Site;
  (b) demolish the work;
  (c) reconstruct, replace or correct the work; or
  (d) not deliver the material or work to the Site.
Surveillance

Surveillance – defined as:

• *The continuing evaluation of the status of procedures, methods, conditions, products, processes and services, and analysis of records to ensure that specified requirements will be met.*
Surveillance processes include:

- Audit
- Hold point
- Witness point
- Inspection
- Test
- Measurement
- Observation
- Management plan review
Surveillance

Surveillance frequency based on

- Risk assessment
- Nature of the activity
- Requirements of the contract specifications
Surveillance

Typical (surveillance) Inspector’s role:

• Evaluation of the Contractor’s ability to carry out the works in accordance with contractual requirements;
• Surveillance of the Contractor’s activities to ensure the required material quality levels and workmanship standards are achieved; and
• Acceptance of the final works.
Surveillance

Typical (surveillance) Inspector’s role:

• Not directly responsible for the inspection and testing program
• Needs to understand the methods used
• Needs to understand the specific requirements, drawings and specifications relating to the contract
• Can only direct the Contractor if delegated with the relevant Superintendent’s powers
Conclusions

Supervisors should ensure they:
• Understand their specific areas of responsibility under the contract
• Are aware of relevant plans and specifications to know:
  – When quantity and quality checks and inspections are to be undertaken
  – How and by whom the work will be done
Conclusions

Supervisors should ensure they:
• Understand their limits of authority under the contract
• Know whether and within what limits they can direct the Contractor’s Representative
May need to be briefed by the Superintendent or Superintendent’s Representative:
• Especially if their role involves inspection duties only