

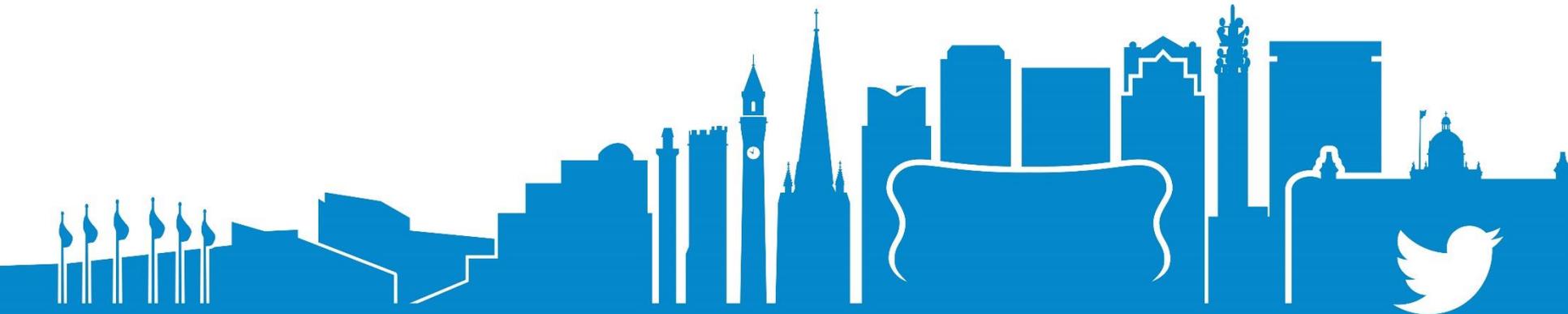
Workshop 1c:

Construction administration: why bother?

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Chaired by: Winston Williams

Room: London Room



Contract administration

- There's lots of it
- Is it all necessary?
- Are the procedures we need all available?
- Do we need to do it all?
- Do we do as much as we should?
- Who's responsibility is it?

What we will cover

- ❑ Who does it?
- ❑ What is involved?
- ❑ What are the benefits?
- ❑ What can go wrong?

Know your contract

- ❑ **NHMF SoR**
- ❑ **ACA TPC**
- ❑ **NEC TSC**
- ❑ **JCT MTC**

**They are all
(slightly) different**

Who - Roles and responsibilities

- ❑ Client
 - “powers and duties set out in the Contract” – NHF cl 3.2
- ❑ Client’s Representative
 - are there Deputy Client’s Representatives?
- ❑ Service Provider
 - Service Provider’s Contract Manager – are there delegates?
- ❑ Core Group
- ❑ Principal Contractor (CDM)
- ❑ Principal Designer (CDM)

What is involved?

- Instructing work
- Other general administration
- Variation and change
- Payment and forecast cost
- PPP
- Measuring quality
- Defective work
- Programming and planning
- Collaboration

Procedures are needed for undertaking and managing all of these

Instructing work

- ❑ How does your contract let you instruct work, and who can do it?
 - Client Representative instructs work and provides any further information as necessary – NHF cl 4.1
- ❑ Oral instructions – can they be given?
 - does your “specification” contradict your contract?
 - what is the validity of a call centre instruction?

Problem avoidance

- Ensure the contract is clear how work is instructed, ordered and valued

Other general administration - examples

- ❑ Client consents to subcontract, identity of proposed Subcontractors and the terms of Subcontracts – cl 10.3
 - JCT requires consent to subcontract
 - NEC requires acceptance of identity and terms
 - TPC requires “approval of proposed appointment”
- ❑ Client Representative objects to inadequate Service Provider’s insurances – cl 11.5
- ❑ Client issues termination notice – cl 13.1

Variation and change

- Types of change
 - amendment to individual orders, due to circumstance
 - change to specification
 - change to type of work or new elements of work
- Last two effectively the same process but remember
 - does the contract allow it?
 - is the change a “significant change” so risking that it may be a new contract?

Variation and change (2)

- ❑ What are the procedures in your contract?
- ❑ NHF example:
 - clear procedures for Order variation – cl 4.2
 - self authorised variations by Service Provider – cl 4.2
 - Service Provider seeks Client Representative's instruction for change beyond self authorisation limit – cl 4.2
 - Service Provider seeks further authorisation if change caused by Customer damage – cl 4.2
 - cost of variation is by reference to SoR for price – cl 9.1

Variation and change (3)

- ❑ Cost of change to the work is by agreement
- ❑ Is there a quotation procedure?
- ❑ For example, there is NHF quotation procedure for proposed
 - Instruction
 - change to any of the Client's Policies
 - change to the Tenancy Agreement(s)
 - change to the Void Lettable Standard – cl 8.5

How is this managed and documented?

Variation and change (4)

- ❑ Valuation of extensions of time – what is awarded to the Service Provider?
 - paid – cl 8.2
 - unpaid – cl 8.3
 - not always this distinction in contracts
- ❑ Are overheads and profit paid on variations and change?

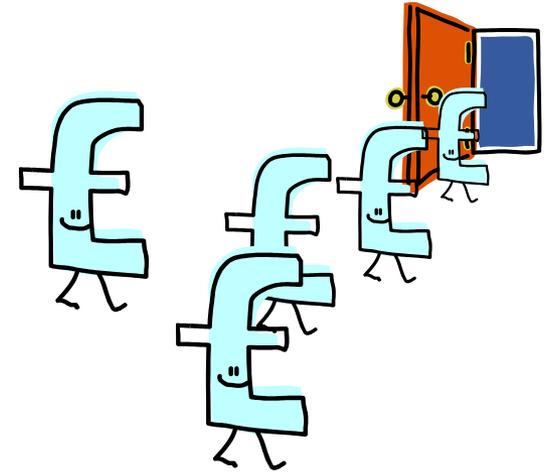
Payment and forecast cost procedures

- A payment procedure is needed that is
 - appropriate to the complexity of the work
 - provides the Service Provider/Contractor with prompt payment and predictable cashflow

- A forecasting procedure is needed that
 - provides the Employer/Client with an accurate forecast of outturn cost

Why cost forecasts? - managing cost overruns

- ❑ Identify the problem
 - inadequate budget
 - over-specification
 - overpayment
 - variations
- ❑ Look at
 - work ordering and job specification – accuracy and level (consider individual call centre operators) – pre-inspections
 - variations – post-inspections, audit the satisfaction statistics
 - invoicing – check validity of amount claimed
- ❑ Review the payment mechanism
 - is it being followed?
 - how do you control costs under it?



Do you have this information?

Payment procedures - NHF

- ❑ Valuation by Service Provider – cl 9.2
 - invoice or application for payment
- ❑ Requires such documentation as required in Contract Details – cl 9.2.3
- ❑ Client Representative approves or rejects Valuation – cl 9.7
- ❑ Client Representative issues Pay Less Notice if appropriate
- ❑ Client Representative authorises payment
- ❑ Service Provider issues invoice – cl 9.8 & 9
- ❑ Interim and final account – cl 9.10

Price Per Property – is it simpler?

- ❑ What does PPP include?
- ❑ How do you value any cap?
- ❑ How do you manage changes to, for example, the property numbers, and when? How is this change managed?
- ❑ How is vandalism and other damage managed?
- ❑ How do you manage obsolete assets?
- ❑ How do you manage leaseholder costs?
- ❑ How do you know what has been done?

Managing quality

- ❑ How is this done? And by whom?
- ❑ For example in NHF
 - Service Provider post inspects work – preliminaries 12.1
 - Client may post inspect if Service Provider does not – preliminaries 12.1
 - Service Provider provides Order Completion Date and details of work when post inspection done – preliminaries 12.2
 - Client Representative issues interim and final Completion Certificates – cl 13

Defective work

- ❑ We need a process to
 - identify any defects
 - advise the Service Provider/Contractor of them
 - check they are corrected
 - manage the financial implications
- ❑ Keep the distinction clear between
 - Defects
 - “fair wear and tear”
 - vandalism
- ❑ Identify trends
- ❑ Require remedial plans

Contractual performance management

- ❑ KPIs
 - are they defined?
 - are they realistic?
- ❑ Have you got any KPI data?
- ❑ Can you trust it?
 - who collected it?
 - does it measure the right things?

Problem avoidance

- Regular meetings
- Don't let the measurement slip
- “On the ground” intelligence

Defective work

- For example – in NHF contract
 - if work is late, Client Representative instructs Service Provider - cl 12.2
 - to complete late work or
 - not do the work at all
 - Client Representative instructs Service Provider to rectify Defects – cl 12.2
 - Client Representative may instruct others to complete work or rectify Defects – cl 12.2 & 3
 - Client issues Default notice – cl 12.4
 - Client requires Remedial Plan and approves it – cl 12.6

Defective work

- For example – in TPC
 - “Following Task Completion the Service Provider shall attend the Site of a Task whenever notified by the Client of any defects in that Task which may appear within the Defects Liability Period(s)..... Such defects shall be rectified by the Service Provider...within the period(s) for rectification” – cl 6.8

Level of administration

- Is this sufficient detail or
- Do we need more detail in contract documentation of how defects are managed?

Planning and programming

- ❑ Different contracts have different contractual requirements
- ❑ For example - NHF
 - there are no specific provisions in the (Voids and Responsive Repairs) Contract
 - some requirements in the Preliminaries
 - provide details to Client Representative before any work starts of how work will be done, particularly with respect to health and safety (5.2)
 - discuss programme monitoring at review meetings (14.2)

Planning and programming

- For example - NEC
 - there is a full requirement for a “plan” for the service and a “programme” for any specific mini-project or Task

Problem avoidance

- Without some indication from the Contractor/ Service Provider of methodology and timescales, how can the Contract Administrator manage the contract?

Collaboration

- A standard approach in most contracts
 - “The Parties agree to work with each other in a collaborative manner, in good faith and in a spirit of mutual trust and co-operation. Each Party agrees to support collaborative behaviour and address behaviour which is not collaborative” NHF cl 3.7
 - “The Partnering Team members shall work together and individually in the spirit of trust, fairness and mutual co-operation ... and in all matters governed by the Partnering Contract they shall act reasonably and without delay” TPC cl 1.1

Collaboration

- “The Employer, the Contractor and the Service Manager shall act as stated in the contract and in a spirit of mutual trust and co-operation” TSC cl 10.1
- “The Parties shall work with each other and with other project team members in a co-operative and collaborative manner, in good faith and in a spirit of trust and respect. To that end, each shall support collaborative behaviour and address behaviour which is not collaborative” JCT Supplemental provision

Collaboration

- ❑ It must depend on relationships
- ❑ Also depends on ethos/culture of the contract itself
- ❑ But it does not mean you can avoid running the contract properly
- ❑ What contract procedures assist collaboration – and are they being used?

For example - early warning

- ❑ Now a standard approach in most contracts
 - for example, NHF clause 8.1, TPC cl 1.8, TSC cl 16
 - JCT only has early warning of disputes
- ❑ Early warning itself
- ❑ Risk reduction meeting

Problem avoidance

- How many early warnings have been notified?
- Are they understood?
- Beware re-allocating risk

Why do we need (good) administration?

- ❑ Important to know who does what
- ❑ Important to know what has been done
- ❑ Good financial management is vital
 - cashflow is the lifeblood of the Service Provider
 - accurate charging of costs on to others, such as leaseholders or independent budget holders
- ❑ Identifies good and bad practice;
good and bad management
- ❑ Consistency leads to efficiency

Can we say “it’s much more enjoyable”?

What can go wrong?

- ❑ Following the contract procedures is taken as being contractual or contentious
- ❑ Administration not undertaken because
 - lack of resources
 - lack of understanding of what is expected
- ❑ Overload of administration – contractual “games”?
- ❑ Lose sight of what is “appropriate”
- ❑ Lose financial control
- ❑ End up with disputes with no “evidence” available

So perhaps that's why we bother



Any Questions?

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