

HOW TO REDUCE CONFLICTS ON CONSTRUCTION PROJECTS?

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Abstract

Client has to share the processes, obligations and risks of a construction project with the parties, directly involved in it. The delivery system selected for a project basically affects the risk of conflicts concerning the main characteristics: cost, time and quality. This paper describes how traditional and modern delivery systems as well and contractual resolutions serve the client's interest and how they help to reduce the risk of claims.

Keywords: delivery and procurement system, design and build, contractual relationships, construction management

1. Construction claims

Sadly enough, disputes, claims and litigation - also in Hungary- appear to be an inevitable part of construction projects.

It is preferable that after disputes the contracting parties come to an agreement or arrive at a specialist-supported decision. Should, however, all other means of resolving disputed issues fail, the result may be the long process of litigation.

Though disputes seem to be inevitable, it is crucially important to minimize the risk related to conflicts so the dispute itself as a process should not increase the time of the execution of the project and its costs.

Reasons for disputes and claims vary. Most of them, however, may be related to the chosen procurement system. It is fairly clear from analysing building contracts or disputed cases that the contracting parties (or at least one of them) were not clear or did not understand the peculiarities of that specific contracting system.

The type of the selected contracting –system and the tightly related contract determine the factors which are crucially important for the success of the projects. These are on one hand the costs, construction delivery time and quality, and on the other hand the possibilities for sharing the activities, responsibilities and risks which are typically the sources of construction related litigation and disputes.

2. Procurement systems

The main actor of the construction project is the client who shares its activities, responsibilities and risks with all the other contracting parties directly involved in the project.

As all construction projects are unique the working strategy for contracting should be tailored to the needs of the particular case.

Clients and constructors still favour the so-called traditional type or price-based contracts worldwide. Though it can involve a fairly long construction period and a lot of consecutive organisation, the popularity of it relies in the well understood contracting relations.

The construction market and the “time is money” discipline forced new contracting systems –such as design & build, turnkey, construction management, contracting management, project management and other varieties – come into existence. These are mainly to ensure decreased construction time. However, at the same time, just because of their peculiarities, they increase the risk of misunderstanding and disputes generated by the ever changing conditions.

According to construction-specialists, disputes leading to litigations may be avoided, if fitted to the procurement system and

- the client is professionally represented
- the contract has clearly stated the activities, responsibilities and risks
- partnership is being practiced during the process.

3. Representing the client’s interest in the various contracting-systems

The client’s interest and the demand for representing it are equally important in public and private financed investments. In Hungary legislative regulation makes the employment of site inspectors only in public procurement related projects compulsory.

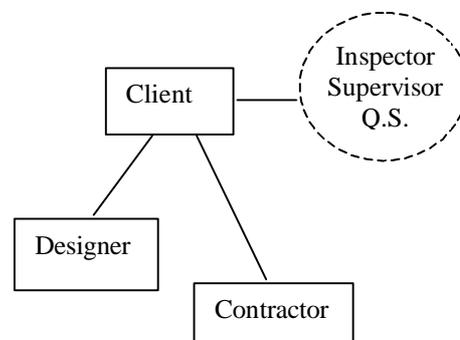
The site inspector representing the client’s interest checks if

- everything goes according plans
- in the prescribed manner and demanded quality
- within the agreed time limits and
- on budget.

Taking the necessary measures due to the continuous control decreases the number of later disputes and claims.

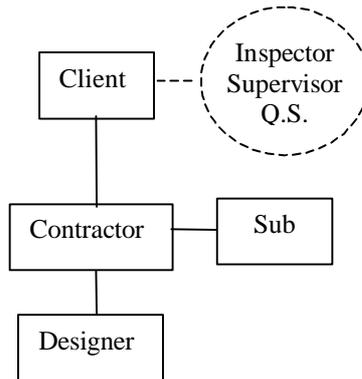
The main point of the next items: is there any need to represent the client’s interest in the different delivery systems.

3.1 Traditional system



It is proven through time that the basics of traditional system -complete design followed by construction thus the traditional separation of designers and contractors – may offer quality –product to the client, but it is incapable of eliminating the long disputes generated by the elongation of construction time and the increase of construction cost. The client’s interest may be represented by the site inspector.

3.2. Design and build, turnkey, package deal

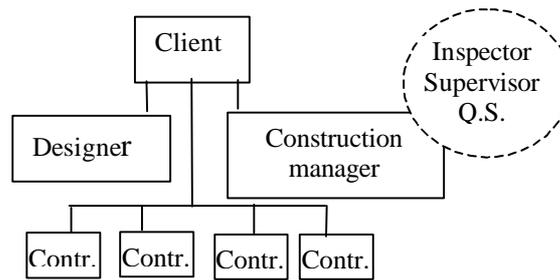


The construction companies interested in D&B turnkey projects make their bid for the design, delivery time and construction cost at the same time.

The most attractive characteristic of D & B to the client is the “single point responsibility” that this delivery system offers. The fact that this single – point responsibility exists in the event of a building failure as well as one specific responsible person is advantageous to the client. The contractor is responsible for the whole package-which includes the design even if the contractor has sub-let the design.

The weakness of this method is that the client depends on a firm with an “opposite” interest and doesn’t have an independent professional adviser to protect his/her interest. An alternative to that may be the employment of site inspector as the client’s agent. In this role the client’s agent has to ensure that the client gets what he/she asks for, the right quality at the right price and on time.

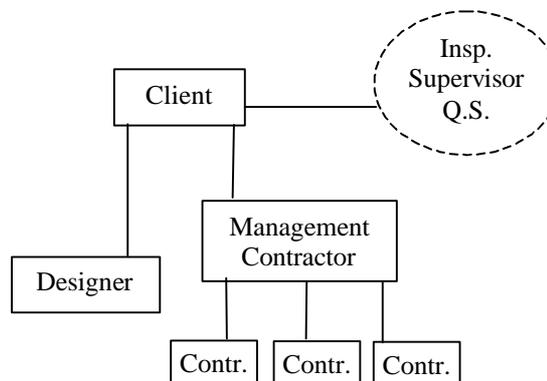
3.3. Construction management, CM



The construction manager delivers professional management for an agreed fee which may include cost control and supervision.

The construction manager is identified as an impartial professional having equal status with the designer. His or her managerial contract may include budget control and site inspection as well. Mediatory and coordinating activity may help to solve problems right on the spot.

3.4. Management Contracting, MC



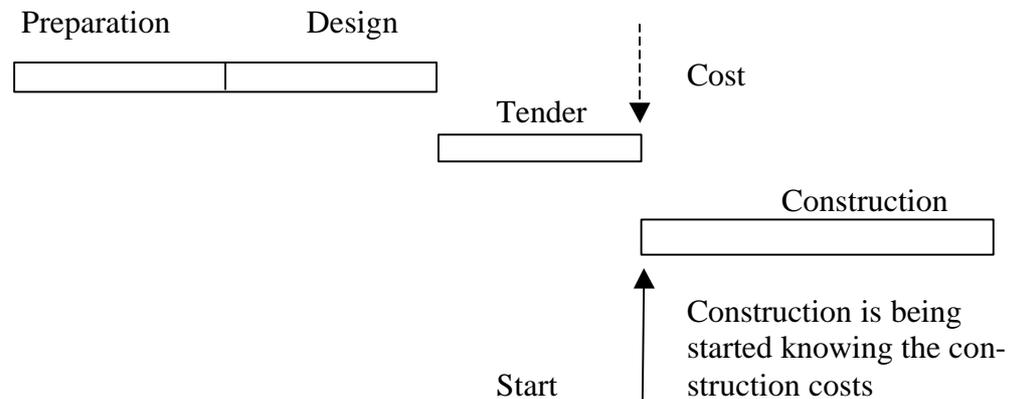
The management contractor is mainly perceived as a contractor (apparently not on client's side) who is in charge of planning, organizing, leading and commanding but not controlling.

The representation of client's interest has to be ensured by an independent supervisor.

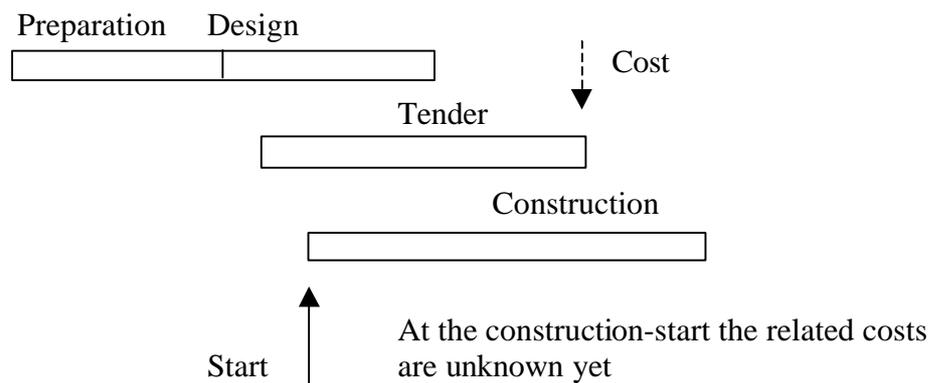
4. Source of disputes arising from the nature of constructing systems

As opposed to the consecutive phases of the traditional system, the typical activity-overlapping of the modern managerial systems implies huge risks for the client as the decision for the construction-start precedes the final agreement over the construction costs.

Traditional system



Modern managerial type system



Naturally the interested parties aim to put in contractual form all of the burden generated by uncertainty related risks on each other's shoulder.

Clients tend to make their decision for selecting the adequate procurement system by looking solely on the offered advantages and not keeping in mind that the considerable time overlapping implies a great deal of risk equally related to the design phase, to the acquisition of the building permission and to the construction site. The advantages of the modern –contemporary – managing system may only prevail if the client's agent ensures that the decrease of the construction time, the client's project and design modifications, the smooth relation of the design and construction are all put forward.

As an outcome of activity overlapping the tendering of a project happens in so-called "packages" where the different works are consecutively awarded to the corresponding construction companies. It implies full coordination of detailed planning right from the very early phase of designing and undoubtedly increases the risk for disputes. The client is often unwilling to ensure a reasonable duration of time for the architects and engineers to develop the detailed set of plans and specifications .

5. Another source of dispute – the responsibility and risk in building contract

There are many construction contracts prepared so professionally in legal terms that it is often difficult –if possible at all- to find anyone responsible for the failure of the project goal.

Accepted that “risk has two dimensions: uncertainty (the probability that risk might occur) and effect (the potential impact on objectives if the risk does occur)”^[1], no client can avoid dealing with it in any construction project .

Risks must be acknowledged and clearly allocated in the contractual agreements between the client and other parties.

The client is usually exposed to a high risk. It has to be shared with the parties in the frame of the construction contract. The simple solution is: the responsibility for a risk should be carried by that party best able to assess, evaluate and control it.

Practically:

- If there is a party having direct control over that process, which creates the risk, it has to be allocated to that party.
- Where no party has direct control, risk should be allocated to that party who is best able to protect against an unexpected damage, loss, casualty or event.

Sadly enough the contractual agreement over sharing risk and responsibilities does not alone guarantee the avoidance of the arising disputes. One of the main causes of claims and disputes will arise because the parties doesn't recognise or doesn't want to accept – acknowledge – their responsibility.

Construction projects are exposed to and influenced by many unexpected factors. The settling of the arising disputes often comes from the immediate recognition of the generating sources and from the adequate – under no circumstances hostile- reaction.

One of the possible answers to prevent litigation is the partnering. The process is being introduced in Hungary based on an understanding of common interest and, thus, can help client, designer and contractor to identify their separate (shared) interest and understand, how to achieve the common goals for a successful construction project.

Conclusion

The avoidance of disputes, claims and litigation is the common interest of all the stakeholders in the construction project. The generating source of disputes are mostly related to the selected procurement system. The peculiarities and risks of the management systems shall be identified. The sources for disputes, claims and litigation may well be minimized, if:

- I. The client makes every effort at the selection of the contracting system to ensure that his/her interest is being represented in an adequate manner (site inspector and/or management)
- II. The contracting parties are after the reasonable share of activities, responsibility and risk – avoiding the power-forced one –sided contracts.
- III. The contracting parties are prepared for the immediate solution of recognized disputes and often employ specialized professionals to help them in doing so or may accord the rules of partnership.

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