

Training Programme Levels 1 & 2 - Sound Contract Administration - 25 Hours

(Those who have already completed Level 1 - Contract Administration-Foundation Course, have to attend only Sessions 3, 5, 6, 9 & 10)

Course Overview :- Sound Contract Administration ("SCA") is a 25 hour intensive short Course providing holistic education/training to the delegates on the Best Practice in dealing with Variations, step-by-step guidance on the preparation (or evaluation) of claims to demonstrate and secure (or identify and determine) a Contractor's entitlement to Extension of Time and Prolongation Costs (especially where the Contractor's own culpable delay is concurrent), project cost control, dispute resolution and drafting contracts/subcontracts in a legally binding manner. Due to the existence of many incorrect practices in the construction industry in administering contracts, it is essential for all Developers, Consultants and Contractors to educate their employees on such harmful practices and train them on the professional administration of the Contract, without which the Company's interests cannot be protected. Even where the employer is not providing such training opportunity, it is still in the interest of the employee to undertake such training (for better employment prospects), by gaining this unique knowledge which is not available from any other source.

Who should attend :- Already crammed University/Polytechnic Degree/Diploma programmes do not have time to educate the graduates on the above essentials or in the complex administration of contracts under FIDIC and bespoke forms of contract, and therefore all practitioners involved in a project need to undergo such training conducted by industry experts. Similar training is not available from any other source in this part of the World. Engineers, Quantity Surveyors, Project Managers, Planners, Cost Controllers, Designers and Company Executives cannot adequately protect the interests of the Company without such knowledge/training.

Course Structure :-

Session 1 - Variations and Valuation of "varied work" under FIDIC and similar Forms of Contract.

Overview - If there are no Variations (i.e. instructed changes to the original scope of work), then the administration of a contract is straight forward, but almost all projects are burdened with Variations and if the Contract Administrator is not fully competent in dealing with Variations, then disputes are unavoidable. This session provides detailed teaching on everything there is to know about Variations and their valuations, and the 12 different ways that the existing rates and prices become inapplicable / inappropriate, when variations are instructed.

Contents -

- Understanding the correct usage of the terminology associated with Variations.
- The 4 main purposes of the Variations Clause in the Contract.
- Understanding the correct interpretation of the Variation Clause and the intentions of the parties.
- How to defend when the other party attempts to misconstrue the Variations Clause.
- Who has the authority to vary ?
- What can/cannot be instructed as variations ?
- When can/cannot variations be instructed ?
- Which elements of the Works can be varied ?
- Why are variations required in a project ?
- How can variations be instructed. ?
- Can the Employer omit parts of the Works and execute them through other contractors ?
- Understanding the 10 Sub-Clauses in the Contract under which variations / varied work can arise.
- What are "variations" and what are "varied work" ?
- Understanding the correct interpretation of the valuation provisions and the intentions of the parties.
- Understanding the 5 different ways of valuing Variations.
- Varying the existing rates/prices.
- How do rates/prices become inapplicable / inappropriate to value Variations?
- What is the difference in valuing variations under Lump Sum type contracts when compared to re-measurement type contracts ?
- The 3 different types of Lump Sum contracts and how tenderers price them.
- Worked Examples.
- Authorities and Case Law.
- Discussion time (Questions & Answers).

Session 2 – Entitlement to Extension of Time and Prolongation Costs.

Overview Delayed project completion has become quite common in the industry. It is the duty of the Contract Administrator to deal with Extension of Time and Prolongation Cost Claims. If he/she is not fully aware about the entitlements of the parties and how to administrate them, then disputes are unavoidable. This session teaches in detail, on how to identify the entitlements to extension of time and prolongation costs even where such entitlements are not stated in a contract, by applying the essential tests to verify the entitlements.

Contents -

- Understanding the correct usage of the terminology associated with Extension of Time and Cost.
- Understanding the correct interpretation of the Extension of Time Clause and the intentions of the parties.
- Understanding the 22 Sub-Clauses in the Contract from which entitlement to EOT could be inferred.
- Understanding the 21 Sub-Clauses in the Contract from which entitlement to prolongation costs could be inferred.
- What are the tests to be applied to identify the entitlement to Extension of Time ?
- What are the tests to be applied to identify the entitlement to Prolongation Costs ?
- When can the Contractor claim profit in addition to cost resulting from delays ?
- What is time-at-large ?
- Express and Implied Mitigation obligations.
- Authorities and Case Law.
- Discussion time (Questions & Answers).

Session 3 - Dealing with Concurrent Delays.

Overview It is quite common for a Contractor to have slow progress during the early stages which he can recover during later stages. But at a time when he is in delay, if the Employer also delays him, generally it is difficult to establish who should bear the responsibility for delayed completion. In such concurrent delay situations, the Contract Administrator should be fully competent in identifying the entitlements of the parties, as the Contracts are usually silent on how to deal with concurrent delays. Learn the 12 arguments for the Contractor and the 3 for the Employer.

Contents -

- Concurrent Delay is not when 2 delaying events occur at the same time ! Then what is Concurrent Delay ?
- Understanding the two different types of Concurrent Delays.
- Three American classifications of delays and their British counterparts.
- Since the contract is silent about the entitlements in a concurrent delay situation, what are the 2 available means to support an Extension of Time ?
- Understanding the 12 arguments available to a Contractor regarding prolongation costs.
- Understanding the 3 arguments available to an Employer regarding prolongation costs.
- Delay and Disruption Protocol of the Society of Construction Law.
- Aristotelian Syllogism and other deductive reasoning to demonstrate probability.
- Weighing the evidence and arguments to reach judgements, awards and determinations.
- Level of proof required to succeed in a claim.
- Authorities and Case Law.
- Discussion time (Questions & Answers).

Session 4 - Notices, Detailed Particulars and Calculation of Prolongation Costs

Overview It is not always that a Contractor loses its rights if a notice or detailed particulars are not submitted within the time period stated in the Contract. Therefore the Contract Administrator should be able to identify the circumstances under which the Contractor would lose its rights. This session also guides the participant step-by-step through the claims preparation process, and about the evidence required to prove the entitlements to Extension of Time and Prolongation Costs and their Quantum.

Contents -

- Briefly visit the rights learned so far from Sessions 1, 2 and 3.
- 4 stages of securing a right.
- Circumstances under which the Contractor would be time-barred. Condition precedent provisions.
- Structure of the Claim – Facts, Law, Liability and Quantum.
- Contemporary records, witness statements and other evidence.
- Demonstrating the veracity of Facts.
- Demonstrating the contractual and/or legal entitlements.
- Expression of Liability.
- Particularising the claim to win the entitlements.
- Delay Impact Analysis to quantify the extension of time.
- 7 Heads of the cost claim and quantifying the additional payment.
- How to argue that the Contractor's entitlement is not for the time related prices found in the Preliminaries Bill, but for the actual additional costs incurred due to the delay.
- Loss of productivity claim.
- How much time is allowed for the Engineer to determine the Contractor's entitlements ?
- Worked Examples.
- Discussion time (Questions & Answers).

Session 5 - Under-Recoveries and Over-Recoveries under Sub-Clause 52.3

Overview Under a JCT Form of Contract, the Employers and Consultants always deduct the Contractor's Overheads priced within the Variations against the Overheads Claimed within Prolongation Costs, when EOT is given for delays due to such Variations, but under a FIDIC Form of Contract it is incorrect to make such adjustment. Also if the Effective Final Account is well above the Effective Contract Price, the Contract Administrator should know how to adjust the over-recoveries in favour of the Employer and vice versa. Learn the existing incorrect practices / misconceptions about this Sub-Clause, and the correct practice through worked examples.

Contents -

- Understanding why Sub-Clause 52.3 is the most misunderstood provision in FIDIC contracts.
- The 7 misconceptions about Sub-Clause 52.3.
- Understanding the correct interpretation of this Clause and the intentions of the parties.
- Restoration of the Contractor's under-recovery of overheads.
- Correction of the over-recovery of overheads in fairness to the Employer.
- Understanding the existing incorrect practices and learning the correct application of this Clause.
- The 9 arguments to demonstrate that the current practice (suitable for JCT etc.) is incorrect for FIDIC.
- Worked Examples.
- Discussion time (Questions & Answers).

Session 6 - Use of Formulae for Recovery of Overheads (Hudson, Emden, Eichleay, Hank-Laun and Samaratunga)

Overview Often the largest portion of a Prolongation Cost Claim is the Contractor's Head Office Overheads cost element, which is also the most difficult part of the Claim to demonstrate and quantify. The Contract Administrator should be fully aware of what Head Office Overheads are, which parts of such overheads can be claimed, which parts cannot be claimed and most importantly how such overheads could be apportioned to the delay period of a project. They should also know why formulae such as Hudson, Emden and Eichleay cannot be used when dealing with a FIDIC Form of Contract.

Contents -

- Understanding the correct usage of the terminology associated with Head Office Overheads.
- Method of pricing the tender (and dealing with Head Office Overheads during the pricing).
- Other 5 instances when the Contract Administrators have to deal with Head Office Overheads.
- The 19 Heads under which the Head Office Overheads are logged in the books of accounts.

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- Reasons as to why the Contractor is not entitled to claim the costs logged under 1/3 of those Heads.
- Hudson Emden Eichleay and Hank-Laan formulae and why they cannot be used with FIDIC contracts.
- Other 6 formulae existing in the industry and why they too cannot be used with FIDIC contracts.
- Building up a formula that can be used with FIDIC contracts to quantify the Head Office Overheads component of the Prolongation Cost claim.
- Worked Examples.
- Discussion time (Questions & Answers).

Session 7 - How to Draft a Contract Agreement.

Overview Without knowing what a contract is, it cannot be administrated. This session explains what a legally binding contract is, how contracts are made and provides knowledge on the essential provisions one should draft into a contract, and educates the practitioner on what to look for before his/her Company signs a contract thus protecting the Company's interests. This session also deals with drafting Subcontracts. Should the limit of Subcontract penalties be 10% of Subcontract Price or 10% of Main Contract Price ?

Contents -

- Understanding Contract Law Terminology.
- 8 steps of drafting.
- 8 requirements of a legally binding contract.
- Remedies in the absence of a contract.
- Letters of Intent.
- *Quantum Meruit*.
- Definition of a Contract.
- The art of drafting.
- Incorporation of documents.
- Check List to verify adequacy of contracts /subcontracts before signing.
- Amending existing standard provisions.
- Drafting Conditions of Particular Application.
- Drafting the Appendix to Tender.
- Subcontractor's liability under the Subcontract for Main Contractor's Liquidated Damages under the Main Contract.
- Discussion time (Questions & Answers).

Session 8 - Project Cost Control, and Methods of Measurement.

Overview This covers project cost control mechanism, art of preparing the BOQ and a brief introduction to Methods of Measurement such as CESSM3, SMM 7 and POM(I). Irrespective of the method used, the BOQ should be capable of serving its objective, which is to produce a set of rates/prices that cannot be challenged as inapplicable/inappropriate for valuing variations/original scope of work, thus ensuring effective cost control of projects.

Contents -

- Understanding the Control in general, and Project controls (of Time, Quality, Cost) in particular.
- Objectives of the Bill of Quantities.
- Use of Standard Methods of Measurement (SMM7, CESMM3, POMI).
- Some more causes of rates/prices becoming inapplicable.
- Stages of preparing a Bill of Quantities.
- Why POM(I) should not be used.
- Worked Examples.
- Discussion time (Questions & Answers).



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Arbitrator / Expert - Dubai International Arbitration Centre, UAE
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Session 9 - Arbitration and Other Dispute Resolution Techniques.

Overview Before the parties become eligible to refer their disputes to arbitration, their Contract Administrators should follow many procedures in resolving any issues at lower tiers. Contract Administrators should be fully knowledgeable on the multi-tiered dispute resolution process written in contracts. In addition to providing them with such knowledge, this session also explains the step by step arbitration process including a video clip of an arbitration hearing. Also an introduction to Mediation, Conciliation and other ADR.

Contents -

- Understanding the multi-tiered dispute resolution provision in FIDIC contracts.
- Necessity to exhaust the prior tier attempts before invoking the arbitration provision.
- Engineer's Decision.
- Amicable Settlement.
- Rules of Arbitration.
- Composition of the Tribunal.
- Arbitral Proceedings.
- The Award.
- Challenge and Enforcement of the Award.
- Alternative Dispute Resolution (ADR).
- Disadvantages of Litigation.
- Disadvantages of Arbitration.
- Discussion time (Questions & Answers).

Session 10 - Sound Contract Administration.

Overview How to protect the interests of the Company and its Clients. The What, Who, When and Why of Contract Administration. Also presents The DOs, The DON'Ts and a code of conduct/ethics for Contract Administrators. This Sessions also introduces the procurement routes that the Contract Administrators should be aware of.

Contents -

- Definition of Contract Administration.
- Project Management in procurement Routes.
- 6 stage process of administrating the contract.
- Who administrates the contract ?
- Why should the contract be administrated ?
- Ethics for Contract Administrators.
- How to become a Sound Contract Administrator.
- Discussion time (Questions & Answers).
- Certificate presentation.

On completion of the SCA course and receipt of the certificate, the delegate joins the SCA Alumni free-of-charge and receives online 900+ case studies dealing with day to day contract administration issues that the practitioners have to face in their projects, and the solutions to them.

Thereafter they qualify to attend the Contract Administration – Advanced Course (“CA-AC”).



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