

Further information

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Welcome to the May 2015 edition of Quaystone, the newsletter from the Construction and Engineering Team at Burgess Salmon. As the market begins to gather momentum we focus on a couple of issues concerning the procurement of real estate developments – early risk management and the versatility of the D&B approach. This coincides with the [Developer Forum 2015](#) run by Construction News in partnership with Burgess Salmon. We also consider a recent government initiative to help ensure the upturn is not hampered by a skills shortage.

Risk Management: Early identification and the importance of flexibility

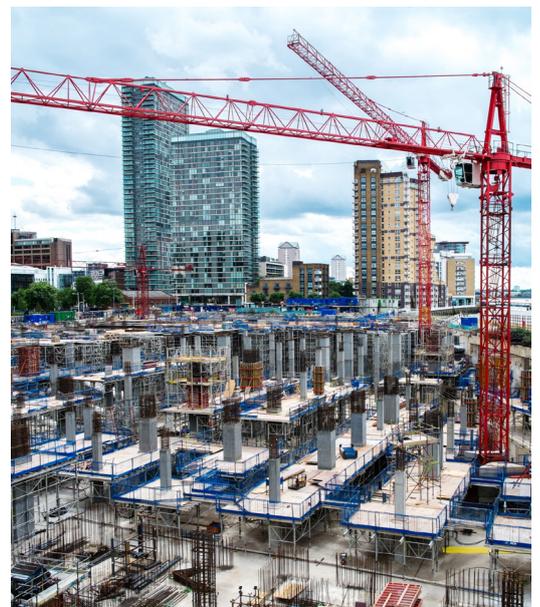
A multitude of things can go wrong on a project – supply chain availability, adverse ground conditions, inclement weather, delays with consents and approvals, costs increases, late delivery of supplies, defective materials, insolvency of the contractor or its suppliers, defective workmanship, defective design, industrial action, accidents on site – the list is endless.

It is impossible to eliminate all risk from a project. But the early identification and proper management of risk can significantly de-risk a project and secure the best opportunity for the effective delivery of a project in line with budgetary and programme constraints.

Identifying key risks at the outset of a project is paramount but the risk management process needs to adopt a holistic approach: it needs buy-in from everyone and should continue throughout the lifecycle of the project.

Some standard form building contracts contain helpful tools in managing project risk. The NEC 3 ECC contract, for example, contains a “Risk Register” to help the parties manage risk in a collaborative and farsighted manner. The NEC sets out a minimum content for the Risk Register: it should describe the risk along with the actions needed to avoid or reduce it. The idea is that by listing risks, they can be managed and avoided or minimised. This requires a level of foresight before the contract commences, but risks that were not or could not have been foreseen may be added to the register at a later date. The Risk Register should be flexible.

Having contractual mechanisms in place for managing risk is not enough in itself though. The education and regular monitoring of the key members of the project team responsible for delivering the project is vital to



ensure that they are able to either pre-empt risks or identify and manage risks before they escalate and become more costly. This involves briefing the project team on change management during the course of a project, proper reporting and record-keeping procedures and generally ensuring the project team are aligned with the employer’s approach and systems. This significantly reduces the risk of members of the project team breaching any contractual requirements. This in turn reduces the risk of formal claims and disputes on the project, limits any damage to working relationships and avoids unnecessary costs.

Successful risk management needs a pro-active, ongoing, consistent and holistic approach, drawing on technical, legal and practical resources from the start right through to the completion of a project.

Plugging the skills gap

27,000 building projects will be at risk by 2019 due to a lack of skilled surveyors according to a recent report by RICS. Similar skills shortages have been reported by other sectors of the industry. In an attempt to alleviate the problem the government has recently announced a new initiative to encourage more construction training and apprenticeships.

The idea is to incentivise the private sector supply chain to invest more in training by making it a requirement of eligibility for government contracts. The initial scheme, which came in on 1 April 2015, will be limited to contracts over £50 million. The obligation to provide training will be made a contract term, adherence to which will be monitored during the project. Compliance may also be used to decide whether to award future government work.

Details of what training will be required is currently limited. The government has asked the Construction Leadership Council to decide what a company's "good skills performance" actually looks like.

According to a government spokesman "This new approach to procurement will generate real and lasting change in the sector's investment in people, helping to avoid skills shortages." Some may well counter that another way of avoiding skills shortages is to invest in



a pipeline of government projects to keep the industry active during recessions so that skilled workers do not leave in the first place.

The new proposal may also struggle due to a perception in parts of the industry that public sector clients are often the most difficult to work for. Now that many in the supply chain can pick and choose their projects, will they simply avoid public sector projects (and therefore the new training initiative) by choosing to work for better payers in the private sector instead?

Versatile design and build procurement

When choosing a project procurement method, design and build ("D&B") remains an appealing option for employers, providing a single point of responsibility for project delivery. The original approach to D&B involved the employer specifying an operational output in its Employer's Requirements and the contractor providing a fixed price, lump sum for designing and building the project to meet that output.

This approach may work well on routine buildings, or projects where the employer does not want, or require, any significant input into the design process. There are also likely to be programme advantages - the contractor can, for example, start on site before the design is fully complete or place orders for any long lead items.

However, if the employer requires greater control over the design of its project, or input into how the output specification is achieved, the above approach will not be suitable. This has led to a different approach to design and build, with employers taking the design of the project as far as RIBA Stage 3 (Developed Design) or Stage 4 (Technical Design) and involving the contractor at that much later stage. The professional team is novated to the contractor to maintain the "single-point responsibility" advantage of D&B contracting.

As well as design control, there are other advantages to

this employer-led design approach. As the Employer's Requirements can be more detailed and developed there is a reduced risk of the contractor "interpreting" the Employer's Requirements in a way not intended. The employer can also be more certain that the Employer's Requirements do in fact meet its requirements, reducing the risk of costly variations on the project.

However, this approach may be more expensive as the contractor will have to price for the risk of errors in another party's design. The programme is also likely to be impacted as there is less scope for the contractor to get on site early and it may well have to "start from scratch" in terms of assessing the design and buildability after the design has been developed by the employer. This approach may also be considered to be less collaborative. That said, these issues can be mitigated through early involvement of the contractor (for example, through adopting a two stage procurement process).

The choice between the two above approaches (or whether you land somewhere in between) will ultimately come down to the particular project and requirements of the employer involved, but it should be remembered that D&B is not a "one size fits all" procurement method, and can be tailored to the particular needs of any employer or project.

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