



Survey report 2010

What are the biggest challenges in managing construction contracts and why?

Thank you to all those who participated in this research survey. We truly value your generous contribution. Congratulations to those who won a free pass to the [5th annual Contract Management Masterclass](#).

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Introduction to this report

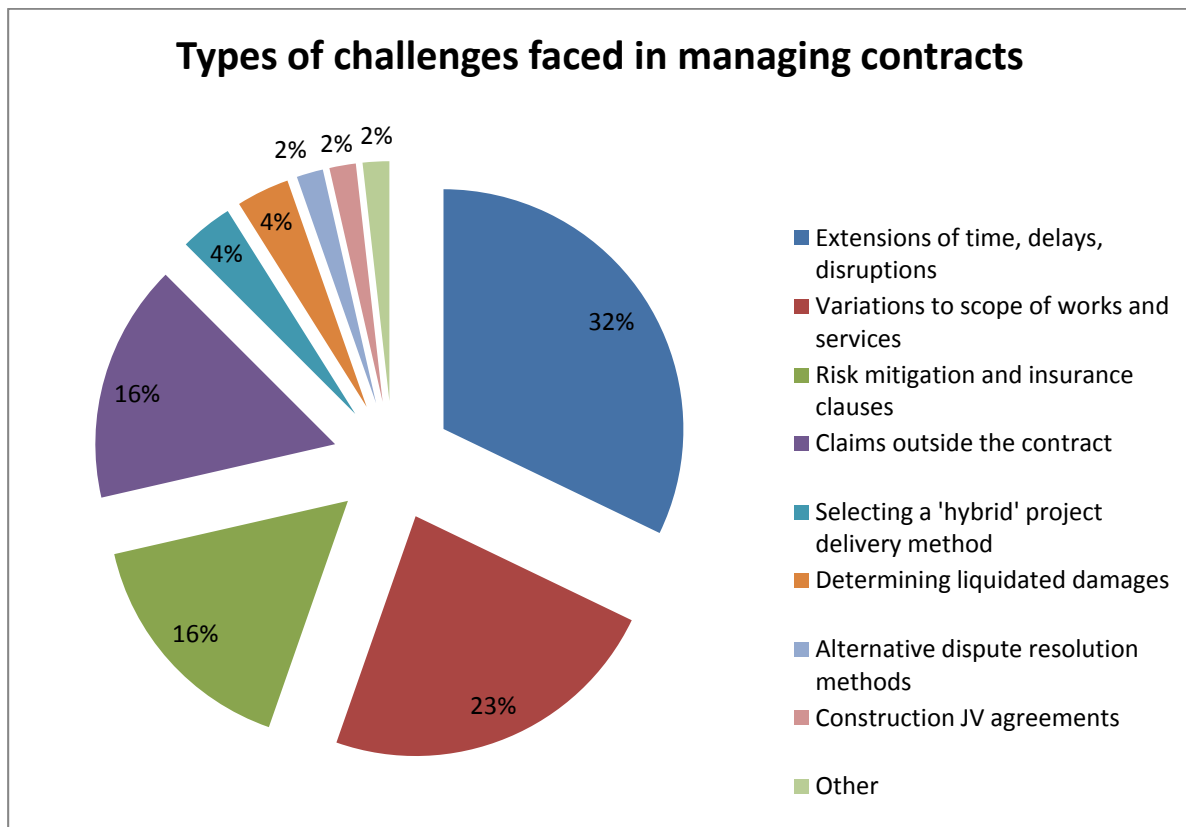
In April 2010, we asked project managers and contract superintendents as to what they find is the biggest challenge to managing contracts.

The top four challenges to managing contracts in construction projects are:

- Extensions of time, delays, disruptions
- Variations to scope of works and services
- Risk mitigation and insurance clauses
- Claims outside the contract

Other challenges include:

- Selecting a 'hybrid' project delivery method
- Determining liquidated damages
- Alternative dispute resolution methods
- Construction JV agreements



Most of those who responded to this survey find 'Extensions of time, delays and disruptions' and 'Variations to scope of works and services' as being the two biggest challenges in their work of supervising and managing construction contracts.

We have listed some of the main reasons respondents gave for why they found these challenges particularly difficult to deal with.



Extensions of time, delays, disruptions

- Validating your entitlement under the contract for the extension of time
- Assessment methods, actual occurrences
- Delays due to wet weather
- Determining its validity
- Clauses are more complex i.e. terms of justifying EOT claims - in terms of critical path. In most cases in hard dollar tendering, at times, there is insufficient time/resources as required to properly comply with head contract clauses.
- Processes involved with respect to timing and justifying the claim
- Obtaining suitable construction program from the contractor. Many contracts are a previously tendered legacy from past persons with insufficient provisions regarding programs particularly in regard to identification of critical path. Assessment of extent of delay in relation to a complex delay - approaches to take.
- Negotiating fair clauses and quantifying entitlement
- Delay claims sometimes become hypothetical about what could be done if this was/was not the case. When dealing with delay claims well after an event it can be very difficult to objectively quantify.
- Establishing what information is accurate and realistic when dealing with programs that are vague, misleading and lacking in detail.
- Contracts are generally not clear on what is the contract program and builders do not generally have a good understanding of what the contract state. We need to ensure that an EOT is clearly and EOT.
- Variations to scope of works and services leads into extensions of time, delays and disruptions and the pressure to just keep moving tends to multiply the error
- Agreeing with a contractor about valid periods of delays that are claimed, and claiming only the amount of days that have caused delay are valid, and not manufacture dates
- Contractors pushing the boundaries of these aspects
- Maintaining programme whilst changes in the scope of works constantly occur
- If there is a legitimate reason for an EOT but the Contractor does not adhere strictly to the Contract - i.e. time bar, submission of form and details, does the Superintendent have a strong position to deny the EOT just on processing grounds. How would this be interpreted in arbitration



Variations to scope of works and services

- Contracts are generally not written particularly well and do not anticipate the circumstances.
- Number one is actually managing the variations required when details are not specified and/or drafted correctly or when those details do not corroborate across various documentation. This problem is getting worse
- Explaining to a client that additional extras outside the original scope will need to be paid for additional to the original agreed contract sum, and that not everything they think of after the contract has been signed is included at no additional cost
- Contractors not understanding the scope
- Tying the subcontractors to scopes of works and having them honour the agreed scope of works
- Variations with respect to work already completed and involve abortive components
- Again in hard dollar tenders at time variation claims are not black and white. It is common for the Client / Superintendent to reject all claims which then leads to more conflict and dispute. Additional resources and or time is spent in claim justification - time which could have been better spent on other project activities - probably a major resultant of the GFT.
- Clearly identifying what constitutes change in scope and therefore a legitimate variation
- Scope definition
- Assessment of value of variation works. Profit and overheads - what % values are reasonable where the contract is silent?

Claims outside the contract

- why was it required? -justifying costs incurred
- Can general damages be applied together with Liquidated Damages, etc
- Variations requested for scope outside the contract - the client never wants to pay for the works
- dealing with liability issues for instance environmental compliance
- Matching and juggling building works and work done by principal at the same time
- being absolutely certain that I as a Superintendent am right in determining them outside the contract
- How are these dealt with fairly

Risk mitigation and insurance clauses

- Contractors can sometimes use risk as an excuse not to complete a task in a particular way. Because a risk assessment is reasonably subjective, some may see this as conveniently utilising risk to avoid doing things they don't want to do.
- Transfer of risk to contractor/client
- Structuring contract to minimise risk for client whilst at same time not creating a cost prohibitive environment
- Increasing liability for principal contractors when sub contractors are still a law to themselves



- To include all risks, generally the one you don't include in the register is the one that bites you
- Risk and ground conditions. In most cases in again hard dollar tenders the Client / Developer spends minimal costs and time in determining ground conditions. Their intention is to pass on that risk to the builder. Who in most cases will not, because of the associated cost. The acceptance of this risk is always vague and when there are latent conditions nobody wants to pay for this additional cost.
- Trying to find a way to manage project risk in total when insurance spread over builder and other contracts
- dealing with indemnity issues and what is fair
- Understanding the limitations

Selecting a 'hybrid' project delivery method

- They take a lot of time to make sure that they are correct.
- Matching lump sum contracts to projects that are essentially construction management but Client insists on lump sum

Determining liquidated damages

- Having clear cost implications in place if project is late, in most cases client can not justify the costs as their business is still operating regardless of delays. Would be good if this was considered in some projects at the start rather than suggesting a figure.
- Can loss of opportunity be included in LD calculations

Other challenges

- Management of Requests for information. Ensuring reasonable response times. What is a reasonable response time? what is a reasonable query? What is a reasonable number of queries? how to manage contractor who swamps you with RFIs.

About Kite

Kite is a boutique company, specialising in providing quality conferences, training and professional development courses to leading businesses and professionals across a number of industries - building and construction, property and major projects/infrastructure.

Shuba Paheerathan is the company's director.

Why the Construction industry?

The construction industries – building and major projects – are the engines of our economy. Our communities cannot survive without homes for shelter, schools and offices for education and livelihood and roads and civil infrastructure for transport, water and utilities. The businesses and the people in those businesses who make all this happen need to have a range of skills and knowledge at their fingertips. Such skills include:

- Project management
- Business writing and tender writing
- Communication and Negotiation
- Relationship and team management
- Self-management
- Leadership

Why Learning and Professional Development?

Continuous learning of skills is the only way you can make sure it sticks. This can be done through face-to-face seminars, reading whitepapers and articles, participating in online webinars, listening to podcast interviews and participating in discussion.

By keeping up with what's happening in your industry and understanding the principles behind what you actually do, you are giving yourself the best chance of developing yourself for consistent progress in your professional career.

Kite's only mission is to provide you with the knowledge and current day expertise you need to succeed in the complex world of construction management.

How high do you want to go?

How to Contact Kite

Speak to us about how we can help you with your professional development goals through customised training and conferences.

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