



Post-Contract Award Contract Management: The Dos and Don'ts for reducing risk

Contract Administration Article Series

Effective contract management post-award is essential for minimising risk and ensuring that both parties to a contract fulfil their obligations. Whether you are the principal or contractor, clear communication, thorough documentation and timely responses are key to smooth project execution. Below, we explore the dos and don'ts of contract management to avoid common pitfalls and reduce risk.

The Dos: Best Practices for Effective Contract Management

Efficient contract administration is essential for minimising disputes and ensuring smooth project execution. A well-structured approach can protect both parties and enhance project efficiency.

Maintaining comprehensive written records is critical. Every decision, instruction and approval should be documented in writing, creating a clear paper trail that serves as evidence if disputes arise. Properly scoping the work before commencement helps prevent misunderstandings, unexpected costs and conflicts later in the project.

Additionally, timely written notification of claims, variations and extensions of time (EOT) is essential. Clear communication of these matters ensures that all parties understand their rights and obligations.

Prompt responses to claims, variation requests and EOT claims help avoid unnecessary delays and legal disputes. Internally, teams must stay aligned through effective communication, ensuring everyone is informed of contract performance, claims and emerging issues. Externally, communication with contractors, clients and third parties should be clear and consistent, confirming key contractual matters to prevent ambiguity.

By implementing these best practices, organisations can streamline contract management while reducing risk and maintaining strong professional relationships.

The Don'ts: Pitfalls to Avoid in Contract Administration

Effective contract administration requires proactive management and strict adherence to contractual obligations. Neglecting key responsibilities can lead to disputes, delays and financial consequences.

A common issue is 'bottom drawer syndrome', where tasks like reviewing compliance or addressing variations are deprioritised until they become urgent issues. By regularly reviewing contract obligations and staying proactive, costly oversights can be prevented.

Similarly, failure to address issues as they arise can escalate minor concerns into major disputes. Prompt action helps maintain smooth project execution and preserves working relationships between parties.

Compliance with contract terms is equally critical. Ignoring notice requirements, timelines, or approval processes can create serious legal and financial risks. Strict adherence to the contract ensures transparency, minimises conflicts and protects both parties' interests.

By staying proactive, responsive and compliant, contract administrators can avoid common pitfalls and ensure smoother project delivery.

What does poor contract administration look like?

One of the most common issues when contracts are ineffectively managed is the failure to respond to claims. When a principal receives an EOT claim but does not acknowledge or assess it, the contractor is left uncertain about their entitlements, while the principal may miss the opportunity to challenge or limit the claim.

Equally problematic is the blind acceptance of claims. If an EOT claim is submitted outside the required timeframe and is approved without scrutiny, the principal may unintentionally accept delays. This lack of diligence can often increase the risk of unnecessary project delays.

Verbal instructions without written confirmation create further complications. If a principal directs a contractor to carry out additional work without formalising the instruction in writing, disputes may arise over whether the work qualifies as a variation and whether additional payment is due. Many contracts require written confirmation of scope changes and failing to comply with these requirements can lead to disagreements over project costs and timelines.

Similarly, assumptions of payment for extra work can cause disputes. Contractors may proceed with work based on verbal directions, assuming they will be compensated. However, if the contract stipulates that variations require prior written approval, the contractor may struggle to recover the costs if the principal disputes their entitlement. Clear documentation and adherence to contract procedures are essential in avoiding these pitfalls and ensuring smooth contract administration.

Effective record keeping in contract management: what should be kept?

Proper record keeping is vital in contract management. Parties must ensure that all relevant information is documented and easily accessible should any disputes arise. Comprehensive and organised records can protect the interests of all parties involved in a project, particularly when it comes to compliance, claims and potential legal proceedings.

Key records to keep

Meeting minutes should be documented to capture key discussions, decisions and agreed actions, ensuring alignment between parties. Project timelines including original and revised programmes, must be recorded to track progress and assess any delays. Changes to drawings should also be documented to maintain clarity on scope and prevent disputes over agreed work.

All correspondence, whether formal or informal, should be retained, as it can be critical in resolving disagreements. Records of EOT claims and assessments help track delay justifications and their evaluations. Similarly, directions for variation work, variation claims and contractor quotes should be well-documented to maintain transparency in contract variations.

Financial records are crucial, including payment claims, payment schedules and actual amounts paid, ensuring accuracy in financial management and mitigating payment disputes. Photographic evidence of defects provides an objective record of issues and assists during negotiations and claims.

Both internal and external communications should be documented to maintain a complete project history. Additionally, communications with lawyers should be carefully recorded, bearing in mind legal professional privilege, which may protect certain legal advice from disclosure.

By maintaining these key records, contract administrators can safeguard project integrity and reduce the risk of contractual disputes.

Legal professional privilege considerations

Not all communications are protected

Just because communication occurs with a lawyer or an internal legal counsel, does not automatically mean it is protected by legal professional privilege.

This protection depends on the context and purpose of the communication – specifically, whether it pertains to legal advice or the preparation of legal proceedings. If the communication is primarily business related, it may not be covered.

Labelling doesn't guarantee privilege

Labelling a document or communication "without prejudice" or "subject to legal professional privilege" does not automatically confer protection. The content of the communication and the context in which it is made will determine whether the privilege applies.

Seek legal advice if unsure

When in doubt, it is important to seek legal advice regarding whether specific communications are protected by privilege. This is especially relevant when dealing with internal legal counsel, as their advice can straddle both legal and commercial matters.

Effective payment claim management

Managing payment claims efficiently is essential for maintaining financial control and ensuring smooth project delivery. A structured approach helps mitigate risk and ensures compliance with contractual and legal obligations.

Upon receiving a payment claim, the principal must promptly review the details and assess the claimed amounts against the work performed. Delayed or responses with insufficient detail can create unnecessary financial liabilities. Issuing a payment schedule or certificate within the required timeframes is equally important – failure to do so may result in an obligation to pay the full claimed amount, even if there are grounds for dispute.

A genuine assessment of claimed amounts is necessary to ensure that payments align with the actual work completed. Care should be taken with variations, as paying them without proper scrutiny may create difficulty should disputes arise.

By carefully evaluating claims, adhering to contractual timeframes and ensuring rigorous assessment of variations, contract administrators can maintain financial discipline and reduce the risk of payment disputes.

Waiver and estoppel in construction contracts

Waiver

Waiver most commonly occurs when a party makes a decision, communicated to the other party, not to insist upon a right or exercise a power in its favour under a contract. It can also arise when a party chooses to exercise one right that is inconsistent with another, thereby waiving the second right.

In the context of construction contracts, waiver may provide a contractor with a valid defence to a claim, as it means the other party has effectively given up a particular right. While "no waiver" clauses exist in many contracts to prevent unintended waivers, they do not necessarily override the legal implications of a party's conduct.

Example of waiver

A contract allowed the Principal to cancel the contract if the Contractor failed to complete its work on time.

When the Contractor could not meet the contract deadline, the parties agreed that the Contractor would pay the Principal \$4,000 as compensation for the delay. Later, the Principal attempted to terminate the contract due to the same delay.

The court ruled that by accepting the \$4,000 as compensation, the Principal had waived its right to terminate for delay, making its attempted termination unlawful.

Estoppel

Estoppel arises when one party makes a promise (often implied) not to exercise a contractual right and the other party relies on that promise to its detriment. In such cases, the party who made the promise may be prevented (or "estopped") from enforcing that right.

Example of estoppel

A contract specified that variations were only effective if provided in writing by the Principal. However, the Principal verbally instructed the Contractor to undertake additional work.

The Contractor asked for written confirmation before proceeding to ensure they would be paid. The Principal insisted that the work was urgent and assured payment, despite not providing written instruction.

If the Principal later refused to pay for the variation, the Contractor could argue estoppel, as they relied on the Principal's assurance to their detriment.

Avoiding issues: key takeaways

To prevent unintended waiver or estoppel issues, parties should:

- know the contract and follow its terms strictly; and
- if allowing deviations, be explicitly clear that it applies only to a specific instance, not as a precedent for the entire contract.

Conclusion

Effective contract administration is essential for project success, requiring clear communication, adherence to contractual terms and proactive issue resolution. Proper record-keeping, including meeting minutes, variation instructions and payment records, protects the rights of both principals and contractors, reduces disputes and ensures legal compliance.

Understanding legal principles like waiver, estoppel and legal professional privilege further strengthens contract management. By following these best practices, businesses can mitigate risk, maintain financial control and foster stronger working relationships.

Muscat Tanzer offers a comprehensive contract administration training program comprised of 6 sessions delivered either remotely or in person (depending on your preference) on topics including a contract law refresher, variations, time, payment and security of payment, legal applications of contract breaches and the dos and don'ts of contract administration. Each session provides participants with practical knowledge and examples for proper contract administration and is designed to be interactive to maximise retention of the training.

If you would like further information on the training program or have any questions regarding this article, contract administration, or contract disputes, please do not hesitate to contact us.



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