

SBCC Constructing Excellence Contract Briefing sheet

Introduction

The first edition of CE/Scot was issued in 2008

The current edition is 2014

There is an online CDM Amendment sheet to take account of the CDM Regulations 2015

The contract suite consists of Constructing Excellence Contract (CE/Scot)

The Constructing Excellence Project Team Agreement (CE/P/Scot)

The Constructing Excellence Guide (CE/G/Scot)

The contracts were drafted to underpin collaborative working. It is intended to:

- Encourage collaborative behaviour
- Get participants to recognise the importance of risk management at the tender stage
- Provide flexibility in use
- Be used throughout the supply chain

Approach

This is based on the premise that the identification, collaboration and management of the supply chain is essential to eradicate waste and the successful delivery of a project. Participants are encouraged to work together and the occurrence of disputes is reduced.

Objectives

These are achieved through:

- A series of bilateral contracts that adopt a collaborative approach within a common framework
- A multi-party Project Team Agreement which reinforces a collective approach
- Use of a risk register
- Flexible allocation of identified risks to the party best able to manage the consequences

Key features

- A pain/gain share mechanism
- The Project Team Agreement is optional
- Intended for use by all parties including clients, contractors, consultants or sub-contractors of any tier. Parties are referred to as 'Purchaser' and 'Supplier'
- Provision for key personnel of Supplier and by members of the supply chain
- Design obligations and alternative standards of care
- Risk register and Risk Allocation Schedule
- Performance indicators
- Overriding principle of good faith, mutual trust and respect
- Dispute resolution provisions to resolve any disagreements before parties proceed
- Project Protocol
- Alternative payment options (target cost requires the separation of empirical costs and the agreed margin)
- Collateral warranties or TPR

Key aspects of collaborative working

- Cost not price
- Identifying and managing risks with encouragement to arrange a single policy of insurance
- Proper planning of the construction period
- Early engagement of key suppliers-suggestion of 2 stage approach
- Engagement and integration of supply chain
- Measuring relevant performance as work proceeds

Contract Documents

CE-Conditions, bi-lateral agreement and Contract particulars

PTA-can be entered into once a project team is established. Sets out in greater detail than the Conditions the functions and role of the project Team and allows for sharing of risk. All parties are participants.

Robust Contractual Provisions

The overriding principle

That the purchaser and Supplier must work together and with all the project participants in a cooperative and collaborative manner in good faith, in a spirit of mutual trust and respect. The overriding principle is intended to sit above all the other contractual obligations

Use of the documents to engage all the project participants

Conditions are intended to remain unchanged with optional clauses provided. Supplementary conditions are possible..It can be used as a sub-contract. The Purchaser is obliged to use reasonable endeavours to consult the Supplier before a decision is made.

Entry into PTA

It is intended to have precedence over other documents. The Project Team has a role in relief events and dispute resolution

Preparation of Project Protocol

It will set out parties joint objectives for the project and working relationships. It is not intended to create contractual obligations

Provision of information

Design obligations

Standard of duty is the level of skill and care reasonably to be expected of an appropriately qualified and competent professional designer providing services in relation to projects of a similar size and scope. A lower alternative is given

The role of the lead designer and lead supplier

Key Personnel and supply chain

Goods and materials

The risk register (Not a contractual document)

The Risk Allocation Schedule (Contractual allocation of risk)

Relief Events

Measurement of performance

Payment provisions

- Target cost
- Contract sum

Project programme

Insurance

Completion and rectification period

Assignment

Warranties and TPR

Termination

Dispute resolution

- Early notification, direct negotiation in good faith.
- Statutory adjudication and court

H&S and sustainable development

This briefing sheet is based on information given in the SBCC CE guide. The Guide is not only to assist users of SBCC Constructing Excellence Contract and Project Team Agreement but also to help those less familiar with aspects of collaborative working. Care has been taken in preparing the briefing sheet and presentation but they should not be treated as a definitive legal interpretation or commentary.

Ann O'Connell
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