



Welcome to the March edition of *Insight*, Fenwick Elliott's newsletter which provides practical information on topical issues affecting the building, engineering and energy sectors.

**In this issue we consider the types of projects for which CPC 2013 is suitable and its main features.**

# Insight

## The CIOB Complex Projects Contract 2013

In April 2013 the Chartered Institute of Building (CIOB) launched the CIOB Complex Projects Contract 2013 ("CPC 2013").

It is said to be the first contract that is specifically aimed at the good management of major national and international construction projects with a view to projects being delivered to specification, on budget and on time.

### Suitability

CPC 2013 is for use on complex domestic or international projects that are likely to have one or more of the following characteristics:

- work involving (i) complex mechanical, electrical or plumbing services, (ii) more than one

structure, (iii) a structure taller than 15m (or 50 feet) above ground level, or (iv) a substructure;

- a construction period of more than one year;
- multiple main contractors and/or more than 20 subcontractors;
- continuing design during the construction period by specialist design subcontractors;
- multiple possession and/or access dates, short possession periods, or multiple key/sectional completion dates.

### Main features of CPC 2013

The main focus of CPC 2013 is on avoiding disputes through collaboration; time and cost management; management of the causes and consequences of delay; and a two-tier dispute resolution process. Each of these is examined in turn below.

#### Collaboration

CPC 2013 echoes the well-known wording of clause 10.1 of NEC3 by requiring that:

*"The parties shall work together in the manner set out under the Contract and shall co-operate in a spirit of mutual trust and fairness."*

CPC 2013 is based on the premise that true collaboration cannot be achieved unless those who have continuing responsibilities during the course of the works are all in possession of the same information. CPC 2013 does this by requiring the parties to transfer all management information to those who have responsibility for the management, design or supervision of the works. Information is shared and published electronically in native file format, either into a Common Data Environment to which all parties have access, by electronic transfer, or by email. A Data Security Manager

is responsible for the security of and access to all electronic information.

#### Time management

CPC 2013 has a working look-ahead dynamic planning schedule known as the Working Schedule which is used to analyse the cause and effect of any events that arise. The Working Schedule includes the calculated critical path network and a time model which is accompanied by a Planning Method Statement. The Planning Method Statement contains the rationale behind and assumptions upon which the Working Schedule is based. A Project Time Manager reviews progress and advises the project teams on procedures and programming and any additional time that might be needed in consequence of each event.

CPC 2013 requires the contractor to publish progress records regularly which are subject to checks by the Project Time Manager for conformance with the specification. The Working Schedule is updated with any new information from the progress records and each time the Working Schedule is re-published, the publication is made independently of any impacted schedule. This provides an auditable trail of cause and effect as regards programming, which should (in theory) reduce the incidence of delay and disruption disputes.

#### Cost management

Not only does the Working Schedule manage time, it is also capable of managing cost. The contractor is required to incorporate its pricing document into the Working Schedule so that the values appearing in the pricing document (as well as those of any subcontractors it might have) are properly represented on an activity-by-activity basis, and all time-related costs can be related to their respective activities. The Working Schedule can also advise as to the quantity and value



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of work done from one time period to another, including the value of any variations and the cost of any suspension of the works as might appear from the progress records. The Working Schedule therefore also forms the basis of interim valuations which are calculated according to the previously predicted cost of the whole of the works, less work not yet done, less work done badly, and finally, less work or materials for which the employer is not otherwise liable to pay at the time.

## *Risk allocation and management*

Appendix F of CPC 2013 has a table that sets out which risks are employer risks and which are contractor risks, and whether those risks relate to time or cost. There is also provision for 11 project-specific risks that can be defined and allocated to either the contractor or employer in terms of cost and time. It is important that Appendix F is carefully considered and populated from the outset to ensure that it is project specific and sensitive to the parties' commercial requirements.

CPC 2013 also makes provision for the management of risk by requiring the contractor to produce a risk description, consider the impact on the programme and attend a risk management meeting with a view to the cause and consequences of the risk being identified and dealt with in a transparent and collaborative manner.

## *Dispute resolution*

The dispute resolution process appears in two parts: Issue Resolution and Dispute Resolution, in addition to which (under English law) the parties

can refer any dispute to mediation at any time.

Issue Resolution is similar to a mini-DAB or adjudication process. It requires the parties to meet in the first instance to try and resolve the disputed issue. If the meeting is unsuccessful (with some limited exceptions), the parties refer the dispute to an independent expert who is required to determine the issue and any other questions that are identified or required by the parties within 20 working days of the dispute being referred to the expert. The determination will be binding on the parties within 21 days of being issued, unless the outcome of the Issue Resolution process is challenged by one of the parties, or a formal dispute is notified.

If a formal dispute is notified, then Dispute Resolution will take effect by adjudication or arbitration. It should be noted that parties cannot invoke the Dispute Resolution process unless they have first attempted to resolve their dispute through the Issue Resolution process.

Unusually (and unless the parties agree otherwise), any adjudicator's decision or arbitrator's award will be a public document, and will therefore be open to scrutiny. This has the potential advantage that the interpretation of CPC 2013 will be transparent, but that said, it is probably a clause that parties will wish to amend.

CPC 2013 aims to make any disputes that arise less contentious and shorter in duration by bringing issues to the fore immediately through the Issue Resolution process. However, the timescales are very short compared, say, with FIDIC, which provides for an 84-day dispute resolution process. It therefore remains to be seen whether

the Issue Resolution process will be effective in the short timescales that are contemplated.

## **A side note: CPC 2013 and BIM**

CPC 2013 is the first standard form to cater for Building Information Modelling ("BIM") and there are a number of BIM protocols for the parties to select from.



CPC 2013's default protocol provides that any contractor who is required to design the whole of the works using BIM shall select, and remain solely responsible for, the suitability and integrity of the selected software, as well as any information, drawings, specification or other information extracted from the model, as would be expected.

## **Conclusion**

In theory, CPC 2013 provides a scientific approach to risk management (particularly in terms of time and therefore cost) which is intended to minimise the likelihood of disputes and lessen the duration of any disputes that do arise by ongoing proactive management.

In practice, it remains to be seen how effective CPC 2013 will be and whether it will achieve its stated aims. Its first flagship project may be determinative of its success, at least in the short term.

**Should you wish to receive further information in relation to this briefing note or the source material referred to, then please contact Lisa Kingston. [lkingston@fenwickelliott.com](mailto:lkingston@fenwickelliott.com). Tel +44 (0) 207 421 1986**

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Fenwick Elliott LLP  
Aldwych House  
71-91 Aldwych  
London WC2B 4HN  
[www.fenwickelliott.com](http://www.fenwickelliott.com)