

CHCH REBUILD: THE PROCUREMENT JOURNEY – A LEGAL PERSPECTIVE

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GROUND COVERED

- Introduction
- Reference Projects
- Observations
- Lessons learned

INTRODUCTION

- Some major projects have come to the market since the devastating CHCH earthquakes
- Requests for Proposals (**RFPs**) for many projects have been hastily put together, as tight timeframes have often applied



INTRODUCTION

- For large projects in particular:
 - considerable resources are required on the Owner side to compile the RFPs and associated documentation e.g. forms of construction contract and early contractor involvement contracts and the design documentation



INTRODUCTION

- a large co-ordination effort is required on the part of the various project team disciplines e.g. project management, quantity surveyors, design team, legal team
- government procurement rules often apply as well as internal approval procedures



INTRODUCTION

- There have, in the past, been grumblings from Contractors on the forms of contract being used on some of the major projects, particularly during the course of 2014
- However, we have seen these grumblings diminish significantly in 2015
- Why were there such grumblings and why have they dropped off? What are the lessons learned in this regard?



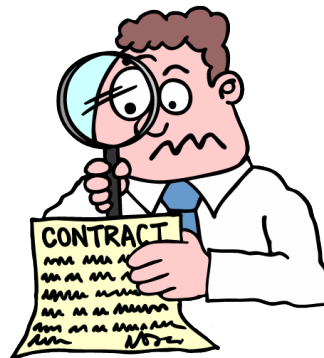
REFERENCE PROJECTS

<p>Burwood Hospital Redevelopment Project, Main Contract RFP, Oct 2013 (NZS 3910:2003)</p>	<p>Justice & Emergency Services Precinct Project, Main Contract RFP, Dec 2013 (NZS 3910:2003 with ECI Contract)</p>	<p>Bus Interchange Project, Main Contract RFP, Q2 2014 (NZS 3916:2013)</p>
<p>University of Canterbury Regional Science & Innovation Centre, Main Contract RFP, Oct 2014 (NZS 3910:2013)</p>	<p>Chch Hospital Redevelopment Project, Main Contract RFP, Q1 2015 (NZS 3910:2013 with ECI Contract)</p>	<p>Convention Centre Project, Main Contract RFP, Q1 2015 (NZS 3910:2016 with ECI Contract)</p>

Subjective colour coding: darker orange box denotes a contract that is perceived to be more Owner-friendly than a lighter orange box

OBSERVATIONS

- It is fair to say that the Contractor grumblings arose from the 2013 and 2014 forms of contract
- The 2015 forms of contract have been well received by the market – little in the way of contractor ‘tags’. This would seem to indicate a meeting of the minds between Owners and Contractors on market risk allocation



OBSERVATIONS

- In a way it is not surprising that the 2013 and 2014 forms were more 'robust' forms from an Owner's perspective: they were the first contracts out of the blocks and leveraged off one another, and many Contractors were keen to get on-board



OBSERVATIONS

- It is also noticeable that the 2013 and 2014 forms of contract were signed up, as far as we know, without major alteration from the RFP forms, as some Contractors placed considerable value in obtaining first mover status or even first NZ project status. Or put another way, there was a significant divergence in risk appetite amongst the Contractors



OBSERVATIONS

- However, in Q3 2015 the Ministry of Health – one of the big players in the CHCH Rebuild Programme – revised its form of construction contract for the commencement of its CHCH Hospital Redevelopment Project. Why?
 - The contracting market had changed – it had become ‘hotter’



OBSERVATIONS

- A new project presented the opportunity to establish a fresh start on the contracting side
- NZS 3910:2013 had been published since Burwood, and it made sense to move to that form of contract



OBSERVATIONS

- The result is that the Ministry's contract has a more balanced risk allocation
- We consider it likely that other major projects will also adopt a more balanced approach – at least in the short to medium term – given the Ministry's lead. This can be seen already from the Convention Centre Project



OBSERVATIONS

- Don't get me wrong: the Ministry's contract is still robust from the Owner's perspective, but it is not as tough on Contractors as the contract used on Burwood



LESSONS LEARNED

- The CHCH Rebuild has clearly presented many challenges
- Contracting is no exception to this: establishing a general consensus amongst the Owner and Contractor fraternity on appropriate risk allocation has, understandably, taken some time to achieve



LESSONS LEARNED

- There are lessons from both sides here:
 - Owners:
 - In a hot contracting market, it is important to carefully assess your form of contract, as you are effectively competing with other projects
 - Grumblings from Contractor's can be justified, but sometimes they should be taken with a grain of salt. Where appropriate, learn from these and be nimble enough to address or at least consider them next time around



LESSONS LEARNED

— Contractors:

- Appetite for risk needs to be carefully assessed, particularly when there are others in the market e.g. Contractors wanting to gain entry into the big ticket project 'space' or foreign Contractors wanting to gain entry into the NZ market, that may be willing to take on more risk than has traditionally been the case.
- Can you afford to be left behind?
- Can the risks be mitigated?

