Thoughts for Contractors…

CONTRACTUAL INSIGHT

Some issues to look out for…

be cautious of

Amendments to an industry standard form of contract

A deeming provision states how something is to be taken irrespective or not if it is true – *deemed to have full knowledge of the main contract* - the contractor then takes all the obligations and liabilities that the main contractor has under the main contract irrespective whether it has reviewed it.

An entire agreement clause – neither party can rely on anything previously agreed or talked about (qualifications to the offer) if not set out in the written contract.

Any condition precedent type of clause that time-bars claims for extra time or extra payment.

be aware of

All the things you need to do to claim for and be entitled to extra time or extra payment

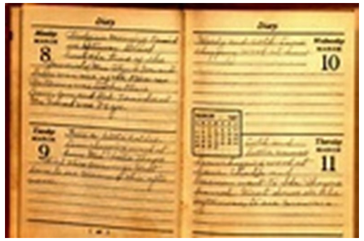
CONTRACTUAL INSIGHT

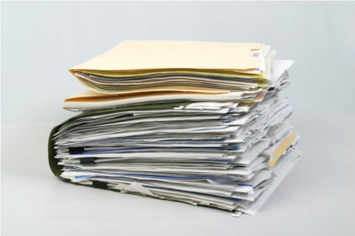
Maintaining sufficient records

A purpose of keeping records is to provide evidence to justify a claim for extra time or money or to refute an accusation

Primary records: information entered directly (diaries, time sheets)

Secondary records: summary of information contained in primary records (weekly/monthly reports, time schedules)





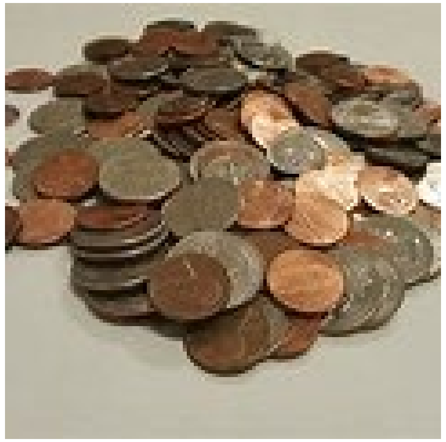
Three golden rules:

1. **the importance of records**
2. **the importance of records**
3. **the importance of records**

CONTRACTUAL INSIGHT

Losses

Loss of Profit



- Possible claim in respect of loss of opportunity
- Also applied to reduced quantities (in re-measurement contracts) and omitted work
- Mistakes in quantities
- Variations
- Work given to others

Loss of Opportunity

- This is usually the legal basis for the recovery of head office overheads and profit in respect of prolongation
- Acceptable in common law claims subject to proof of opportunity and verification of overheads and profit levels

CONTRACTUAL INSIGHT

Claims

Potential claim headings

- Direct costs – labour and materials
- Uneconomic use of plant
- Loss of productivity of labour
- Additional wastage of materials
- Cost of acceleration
- Increased costs – labour, plant and materials
- Extended overheads
- Profit on direct costs
- Loss of profit on reduced items
- Loss of profit on management resources
- Financing charges
- Interest on late payments
- Costs of preparing the claim

CONTRACTUAL INSIGHT

One final thought…

Why some contracts go wrong

- Someone planned badly
- Someone selected the wrong contract strategy
- Someone wrote a bad contract
- Someone wrote a bad specification
- Someone priced poorly
- Someone failed to comply with the rules
- SOMEONE HAD BAD LUCK

Plan for the worst and hope for the best

CONTRACTUAL INSIGHT