Book review

DISPUTE AVOIDANCE – A NON-CONFRONTATIONAL APPROACH TO THE MANAGEMENT OF CONSTRUCTION CONTRACTS

D. Bryan Morgan, RIBA Publishing, London, 2008.
ISBN 978-1-85946-297-3, £30.00, 38 pp.

Bryan Morgan has been involved in building and engineering projects, both internationally and within the UK, for 45 years. During this time, as emphasised by the author, the dispute avoidance and claims management techniques described in this book have been employed to great advantage.

In his first book, *International Construction Contract Management* (also published by RIBA Publishing, London), a broad overview of construction management from a largely international perspective was given. It touched briefly on contractual claims and discussed in some detail the various aspects of contract administration under a number of individual headings.

This second book assumes that the reader is versed in basic contract administration. It aims to demonstrate how those skills can be used and developed further so that disputes can be avoided, or at least managed effectively. The book is also intended to help the reader understand the various kinds of dispute, the circumstances under which one can arise, and the measures that can be taken in order to prevent minor disagreements developing into major disputes that by their very nature are only resolvable by one of the recognised systems of alternative dispute resolution (ADR), arbitration or litigation.

The book contains a preface and five chapters, covering an introduction to dispute management, the nature of disputes, potential sources of dispute, dispute avoidance techniques and dispute management.

It is heartening to see that the preface contains a most important reminder of the significant and often misunderstood difference between disputes and claims under a contract. Claims, which can be a legitimate means of recouping both additional time and additional costs expended by a party to a contract due to some reason or reasons not attributable to the claimant, and usually made in accordance with provisions included within the terms and

conditions of the contract, namely 'contractual entitlements', and disputes, where the contractual entitlements are not so clear or are dubious. As the author rightfully states, 'if the word "claims" were referred to as "contractual entitlements" then the dissociation of the words "claims" and "disputes" would result in significant savings in time, effort and money currently expended fighting claims'; as an aside it is noteworthy that the NEC Engineering and Construction Contract also supports this proposition and initiated the term 'compensation event'.

The book properly recognises the importance of knowing your contract and keeping good records, through to the 'softer' skills of active listening, body language and managing expectations. Each of the five chapters ends with a very useful summary – a checklist of the main points covered.

Mediation is mentioned but the application of the process is not explained in detail; instead the reader is referred to the many books in the marketplace dedicated to the subject. The absence of any detail about the various alternative dispute resolution processes is understandable but it is disappointing that the opportunity was missed to alert readers to the dispute board (DB) procedures now used widely, particularly for international contracts. It is not so well known that a DB appointed at the outset of a contract can operate on an informal level. During the routine site visits, matters of concern and potential dispute can be brought to the attention of the DB and grievances can be aired and a dialogue established between the parties, under the watchful eye of the DB. However, caution must be exercised and the DB should not give informal pronouncements or attempt to pre-judge issues that may later be the subject of a formal dispute reference. It is not difficult, however, to steer the parties towards new understandings and thereby help clarify matters in contention. This role of the DB has obvious similarities to mediation or conciliation.

All in all, however, the book is an excellent resource and a valuable reference textbook for all those versed in basic contract administration skills. The book achieves its aim of demonstrating how those skills can be used and developed further so that disputes can be avoided, or at least managed effectively.

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