Editorial

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It gives me great pleasure you to welcome to the February 2013 issue of the *Management Procurement and Law* Journal. This year marks an important milestone in the development of the journal. From this year, we are increasing the number of issues published annually from four to six. I am sure this will be welcome news for both our authors and readers. For authors, this will reduce the duration it takes from submission of a manuscript to the time of publication. A number of themed issues are also planned to cover topics including education and training of civil engineers, management procurement and law in the European Union, and building information modelling.

This issue contains one briefing article, five full papers, a discussion and two book reviews. The briefing by Bastable (2013) details the nature of the offence, investigations, prosecution and sentencing of the first company convicted of the offence of manslaughter under the Corporate Manslaughter and Corporate Homicide Act 2007 (2007). The company received a fine amounting to 115% of its annual turnover payable over a period of 10 years. This case serves as a warning to all companies. Large companies in particular found guilty of this offence in future should expect to pay fines amounting to several millions even where the fine could potentially put a company into liquidation. Anderson's (2013) paper traces the origins of the Health and Safety at Work Act 1974 (1974). On the subject of legal draftsmanship, the author argues that legal language should be clear and without ambiguity so that all those concerned can read and understand what they should do or not do. The author examines international alternatives in use of language drawing on examples from South Africa, New Zealand, Republic of Ireland, Sweden, the USA and concludes that the phrase '*so far as is reasonably practicable*' used in some sections of the Health and Safety at Work Act 1974 and the various Regulations passed under the Act create ambiguity and uncertainty.

Wamuziri (2013) presents an evaluation of the payment options in collaborative procurement of major construction projects based on a literature review and a case study from the rail sector. Key features of each procurement option are discussed followed by an analysis of the risk allocation implied in each of the options. The strategies assessed include fixed-price contracts, cost-reimbursable contracts and target-cost contracts. Early contractor involvement (ECI) design and build is assessed. It is concluded that although ECI design and build is gaining widespread popularity, experience of its use is still

limited. Further research is therefore recommended to develop best practice that will guide industry on how to build effective incentive mechanisms into such contracts in order to capture their full benefit and potential.

The NEC Engineering and Construction Contract 3rd edition (NEC, 2006) and the Fidic (1999a, 1999b) suite of conditions of contract are all now widely used in international construction. Heaphy (2013) compares and contrasts these two families of contracts and demonstrates that they have a lot similarities and differences too. The comparative analysis is with respect to style of language in which the contracts are drafted, flexibility of use, contract design and payment options, effective management and procedures for contract administration. Content of contract documents and roles and responsibilities under the two forms are evaluated. The implications of each set of forms for partnering and collaboration are provided. The procedures to compensate the contractor for events involving changes, extensions of time, claims and variations are discussed. Both Fidic and NEC contract forms can be used on any type of construction project and in any legal jurisdiction. Each suite of standard forms has advantages and disadvantages. It is likely that both will continue to be used in international construction for the foreseeable future.

Arbitration is widely used in dispute resolution in the construction industry. Its use offers a number of attractions compared to litigation including, for example, lower costs, choice of arbitrator to suit the nature of the dispute, privacy of the proceedings and speed. Problem areas that often lead to disputes and ultimately litigation in construction include incomplete contract documentation, multiplicity of people with decision making powers leading to lack of continuity and supporting documentation, and a lack of co-ordination between the contractual obligations of the various project participants. Ramírez *et al.* (2013) assess on the arbitration process in civil engineering in Spain and conclude that engineers working in the area of legal engineering very often have gaps in their training, knowledge and experience. This situation is unlikely to be unique to Spain. The authors suggest that industry, professional institutions and universities have a role to play in plugging this educational gap.

The paper by Supriadi and Low (2013) analyses the role of business continuity management (BCM) in construction with

specific reference to Indonesian contractors. An outline of BCM is provided including its principles and guidelines for effective implementation. BCM aims to prepare an organisation to continue its operations in the event of high impact unforeseen events, such as floods, earthquakes, terrorist attacks, tsunamis, riots, fires, sabotage, extensive computer malfunction and data losses, etc. These are crisis events that would threaten the existence of a firm and its mission if its senior managers did not put in place business continuity plans. The role of project management fundamentals and critical success factors in implementation of BCM and planning are given.

Finally, thoughts and reflections on the practical use of the analytic hierarchy process in multi-criteria contractor selection are provided in the discussion by Oladapo and Patterson (2013). This is followed by two book reviews. Readers interested in getting a flavour of the content of these books before committing themselves to a purchase will find the reviews helpful. I thoroughly enjoyed reading the papers. I found them to be informative and rigorous. I commend them to you and look forward to reading your own views.

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