

Medina Centrale at the Pearl, Doha, Qatar

Year	Contract	Employer	Project	Our Client
2012	FIDIC (yellow book)	United Development Company (UDC), Qatar	Medina Centrale forming part of the Pearl, Doha	Power Line Engineering



Summary

The works involved the design and construction of residential, commercial and retail premises at Medina Centrale, which formed part of The Pearl development in Doha, Qatar. Whilst the contractor was responsible for the detailed design, the Client instructed significant alterations to it during the construction works on site. These changes were massive, such as the addition of a covered shopping mall and the alteration to the layout of many of the retail areas when the client had secured tenants with specific requirements which were not understood at the design stage. These changes, among others, led to a delay in the completion of the project of some 18 months. The Engineer determined that the changes did not entitle the contractor to any additional time to complete the varied works and this exposed the contractor to the threat of the levying of LAD's and increased costs due to the prolonged performance. Fraser and the team were engaged to review, update and improve upon the contractor's previous claim submissions. This would aid subsequent negotiations and, if unsuccessful, provide claims of an arbitration ready standard.

The Quarrel

In his determinations of the many claims the contractor submitted during the course of the construction works on site, the Engineer relied upon exceptionally onerous time bar provisions in the contract to deny the contractor the additional time he rightly required to complete the varied works. The Engineer alleged that the contractor had not satisfied the conditions precedent to the award of an extension, which required the full and detailed submission of all time effects within 28 days of becoming aware of any employer culpable event that was likely to delay the works. The contractor argued that the changes were so significant that it was impossible to provide full and detailed particulars of the delays within the prescribed timescales and that the terms were exceptionally onerous and in many cases, inoperable.

The Challenge

The most significant challenges faced were the lack of suitable site records or proofs required for the preparation of the as built programme, and the availability of key personnel to assist in this and our other work. This was a live site, the contractor's personnel were fully occupied in managing the completion of the project and it was vital that they were not distracted during our work. Fraser and the team were measured and flexible in their approach and this ensured the efficient use of everyone's time, allowing the

claims and delay analysis to be prepared in a timely manner, whilst allowing the effective and continued management of the on site activities.

Actions

Initially Fraser and the team carried out a comprehensive review of the contractor's previous claim submissions. They then prepared a factual analysis (as built programme and delay schedule) to establish the full extent to which the Employer culpable delay events had contributed to the 18 month delay. Once the analysis was complete, the claims were updated to include the factual analysis and were re-presented to the Engineer.

Outcome

Following the submission of the updated claims the Employer engaged an external consultant to review them and to provide his independent assessment of any additional time the contractor was entitled to and which flowed from any Employer culpable delay events. Following that assessment, the parties then entered into a period of negotiation with the intention of settling the disputes amicably and avoiding any referral to the courts. Those negotiations continue.

Expert Profile

QUALIFICATIONS & ASSOCIATIONS

- BEng (Hons) Civil Engineering
- LLM Construction Law & Arbitration

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Executive Consultant

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Previous Expert Appointments

A representative example of disputes referred to arbitration, litigation and adjudication.

Arbitration: Claim for cost of prolongation

Delay Expert on behalf of a Joint Venture Contractor as part of their pleadings in preparation for an Arbitration with the Hellenic State. Favourable settlement before proceedings were enacted.

Arbitration: Recovery of damages for late completion

Delay Expert for a Contractor in an adjudication with the Employer relating to the construction of a £30 million mixed use development in Bristol, UK. The contractor was successful in recovering a significant portion of the liquidated damages that had been levied following the late completion of the project.

Arbitration: Wrongful termination and prolongation costs

Delay Expert for the contractor in an arbitration with the Employer relating to the construction of a 9km (10m x 5m) utility corridor on the Education City site in Doha. The Employer had terminated the contract citing performance issues and delays and called the contractor's performance bond. The analysis Fraser prepared helped the arbitral panel to find that the Employer had been responsible for much of the delay and the grounds for termination cited by the Employer were unfounded. The Employer was required to repay the performance bond, pay the costs of the arbitration and pay the contractor damages flowing from the wrongful termination.

Litigation: Evidencing contractor's right to terminate

Appointed as one of two Delay Experts for a Joint Venture Contractor in a litigation relating to the construction of a 38 km section of motorway in Poland. This was a complex linear project in which the records available for the production of the required factual and retrospective analysis were limited. Fraser, along with the co-expert designed a method that satisfied the demands of the legal advisors and utilised the records available.

Professional Profile

Fraser is a Civil Engineer with almost 20 years experience in construction who, in the formative part of his career, worked for contractors on large scale infrastructure projects including a number of years on the first phase of the Channel Tunnel High Speed Rail Link. He made the transition from contractor to consultant in 2007.

Fraser specialises in dispute resolution work and in particular, as an expert in matters of delay and programme, causation and its effect on time, cost and efficiency for a wide variety of construction projects. Fraser has substantive arbitration experience in the UK, Ireland and the Middle East. Fraser's experience extends to drafting expert reports and the preparation of retrospective delay analyses using all techniques in common use.

Amongst other things, previous work has involved demonstrating the cause, extent and cost consequences of varied work, delay and disruption involving:

- Mechanical and electrical services installations
- Bulk earthmoving and major road works
- Power stations
- Gas platforms and pipelines
- Reinforced concrete and composite structures
- Clean/wastewater treatment plants

Fraser is familiar with the need to collaborate closely with legal counsel and other legal advisors and is used to working to the deadlines that the arbitration and litigation processes demands of the expert.

Confidentiality prevents our disclosing details of the parties to the above contracts.