

South Site Utility Tunnels, Qatar Foundation, Doha

| Year | Contract | Employer | Project | Our Client |
|------|----------|--------------------------|----------------|------------------------------------|
| 2012 | Bespoke | Zublin (Main Contractor) | Education City | Mideco (Specialist sub-contractor) |



Summary

The works involved the excavation of over 7km of box shaped tunnel (7m x 5m) in Simsima limestone that would provide the utility corridors for future development at Education City, Doha. The works were subject to significant variation when the alignment of parts of the tunnel changed, parts were deleted and a new tunnel section was added. It was also the case that the Employer denied the contractor the use of the planned material processing yard, which was moved several kilometres from its original location. These changes, among others, completely changed the sequence order and timing of the works and significantly increased the cost of performance. Having completed the varied works our client made continued attempts to secure formal variation orders that it required to secure payment. The contractor refused, stating that many of the changes had a neutral cost effect and in any case it had not been given any formal variation orders from its Employer that related to the varied sub contract works. After numerous failed attempts to negotiate a settlement, our client had no alternative but to submit the matter to Arbitration.

The Quarrel

Much of the varied work was orally instructed and our client executed that work in good faith, having been told that a single formal variation order would be issued to “wrap up” the many changes that had occurred. In the event the contractor did not issue that variation order, inately relying upon a “pay when paid” mechanism which had actually been struck out of the sub contract. The parties were unable to resolve the dispute that then crystallised and the matter was referred to Arbitration in Doha under the Doha Chamber of Commerce Arbitration Rules. Following that referral, the contractor terminated the sub contract and called the sub contractor’s performance bond.

The Challenge

The single greatest challenge was to understand the rules of the arbitration (which were newly drafted) and how the proceedings were affected by the Qatari civil code which was the law applicable to the arbitral process. For example, we were required to appoint a Qatari national as legal counsel in addition to the English counsel that had already been appointed. This was to ensure that no part of the arbitral proceedings contravened the civil code. It was also the case that our client had initiated proceedings in the Qatari Courts for matters related to the arbitration, which led to jurisdictional challenges from the

defendant and ultimately the withdrawal of those actions to enable the arbitration to continue.

Actions

Having prepared the statements of case and compiled the evidence, Fraser and the team guided the client through the entire legal process. This included the issuing of Notices and the claims, responses to the defence, defending all counterclaims and the drafting of Witness Statements. The team worked closely with legal counsel and with the witnesses when preparing them for their examination during the 3-day hearing.

Outcome

The arbitral committee found that the contractor had no justification in terminating the contract and in calling the performance bond, which they were instructed to repay. The committee also awarded our client full payment for the varied works it had executed and awarded 60% of his legal costs, where it found that the respondent had taken and maintained an untenable position throughout the negotiations and entire legal process.

Expert Profile

QUALIFICATIONS & ASSOCIATIONS

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

Fraser Van Nuil

Executive Consultant

CONTACT DETAILS

UK t: +44 (0) 7880 704376
 UAE t: +971 (0) 566 99 2034
 e: fraser.vannuil@qualsurv.ae



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.