

Editorial

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Welcome to this latest edition of the Institution of Civil Engineers' (ICE) *Management, Procurement and Law* (MPL) journal. As a member of MPL's editorial board one is 'persuaded' to 'offer' to draft an editorial once in a while. When the email reminder comes the first reaction is 'oh no, another chore to fit in alongside the day job'! But this time, genuinely, it was a pleasure to have to read our five papers. As usual with MPL, they cover a wide range of subjects from managing stakeholders to acting as an expert witness. As befits an international journal we have authors from Dubai, Hong Kong, Malaysia, New Zealand, the USA and the UK. I hope something grabs your attention. All are worth the investment of your time.

We have put them in order roughly from the 'broad' to the 'specific'

- managing stakeholders in an alliance
- lessons from project failures
- nominating subcontractors
- a mobile biometric authentication system
- what the lawyers need from an expert witness.

Academics from Malaysia and New Zealand have put together an excellent case study (Baharuddin *et al.*, 2017) of the workings of an alliance for a road megaproject, the M2PP Expressway in New Zealand. It gives you high-level procurement details of the alliance but focuses on how that alliance structure supported the critical issue of stakeholder management in the early stages of the project. Radical, for New Zealand at least, was that the alliance was appointed prior to even 'concept design' and any public consultation. Key messages include the benefits of bringing one important stakeholder, the local council, on the board of the alliance. Also, having the alliance manager from an 'independent' consultant rather than the lead contractor was agreed to have been a good plan. The paper also provides a fine list of references on all aspects of alliances in a wide range of journals. That includes recent papers in this journal (Botha and Sheepbrouwer, 2015; Tamburro and Wood, 2014).

In passing, NEC (formerly the New Engineering Contract) has, as part of NEC4, released a consultative version of the *NEC4 Alliance Contract* (NEC4, 2017) – NEC's first multiparty contract. The drafters are very keen to get your feedback, especially if you have hands-on experience of setting up or working as part of an alliance.

Please do so as soon as possible – the closing date is 30 November 2017. Use the following URL to register for your free copy and for full details of the consultation: <https://www.neccontract.com/NEC4-Products/NEC4-Contracts/NEC4-Alliance-Contract>.

Sometimes when things go wrong, they can go really, really wrong! Delatte (2017) tells the stories of the fantastic pieces of infrastructure that are the Boston Central Artery/Tunnel and the San Francisco–Oakland Bay Bridge. But their design and construction was clearly beset by many a problem. These problems are (now) very public and are set out succinctly in the paper. 'Are megaprojects doomed to cost overruns and performance problems?' (Delatte, 2017: p. 165) the paper asks. As a specialist in collaborative procurement and NEC contracts that really can help, I would like to say no! And there are also good examples of megaprojects that have gone well (e.g. see Cornelius *et al.* (2011) who look at the procurement aspects of the successful delivery of facilities for London's 2012 Olympics). Delatte – after detailing the problems – goes on to draw conclusions and recommend a little more openness and honesty with the media – who will find you out eventually – and the critical importance of 'expectation management'.

Nominated subcontractors. Now there's a 'blast from the past'...at least to a UK-based user of modern contracts! The idea of telling your main contractor who to use as a subcontractor and then trying to make the main contractor responsible for the performance of that subcontractor has always been fraught with problems. There was the option for this in the old 'ICE contracts' (ICE, 2001). That has been retained as clause 59 in the Infrastructure Conditions of Contract (ICC) version of the contract (ACE and CECA, 2011). Lawrence (2017) gives a very thorough history and explanation of the pros and cons of the concept as used in Fidic (the International Federation of Consulting Engineers) Red Book contracts (Fidic, 1987, 1999) – and especially as dealt with, and apparently supported, by the law of the United Arab Emirates. (It will be interesting to see if Fidic makes any changes in its 'soon to be released' updates.) Under Fidic, it is explained that once a contractor has accepted a nominated subcontractor (there is a process to object), it accepts full responsibility for the subcontractor. In the much-used NEC contracts (e.g. NEC3, 2013), there is no concept of a nominated subcontractor. If the client wishes to add any requirements or

restrictions on subcontracting they must be put in the scope document. Commonplace, in the UK at least, is for the client to give the contractor a choice of its 'preferred suppliers' for certain activities in the scope. The paper is an interesting read.

Who was where and when? That is the basic issue addressed by Yeung (2017). His paper describes in some detail the requirements for a system to check on the people working on your construction project. He describes the problems of contracts with many different sites needing a robust, small and inexpensive system, partly to meet Hong Kong regulations. The system developed combines construction-worker-proof fingerprint recognition, a smart card reader and a global positioning system (GPS). Some are using the system for daily attendance records and timekeeping; others are using the smart cards to keep track of the specific skills of the workforce and where they are on a particular day. The potential for a range of applications is clear.

Remember how things can go wrong? If they go very wrong you might need an 'expert witness'. Caiden (2017) gives us very clear, concise and readable guidance on appointing one and being one – full of references to more detailed guidance in the UK and the USA. It makes very clear that, whoever appoints the witness, the witness must give their factual, professional opinion. You are not, in Caiden's words, a 'hired gun': your duty is to the court, irrespective of who is paying for your time. As Caiden explains, that can lead to interesting discussions with your client's lawyers, who may be keener to push one point of view! In summary, a very good read!

Thanks to all the authors for the effort of putting pen to paper and sharing their thoughts with you, the MPL community. Please find a few minutes to share your comments on the papers here, which will be passed on to the authors and, along with their response, may well appear in the next issue. You can do that by sending an email of up to 500 words to journals@ice.org.uk.

Even quicker and more 'open' you are more than welcome to comment on MPL's Linked-in site here: <http://www.linkedin.com/groups/8507360>. Let's get the conversation going.

And please do think what you and your colleagues might share with the MPL community in a future issue.

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