



Construction Industry Institute®

Impact of Various Construction Contract Types and Clauses on Project Performance

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Contracts Task Force**

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SUMMARY

The Construction Industry Institute (CII) Contracts Task Force was formed to seek ways of increasing construction cost effectiveness by improving the contractual relationship of the owner and the contractor. This publication discusses studies undertaken to assess the impact on project performance of various types of contracts and commonly used contract clauses.

The database for the studies was provided by responses from 36 CII member companies to an in-depth questionnaire, with each company citing actual experiences from a recent project. Response analyses indicate that the contract clauses most frequently involved in problems and disputes are those dealing with work scope, changes, and project control.

Further analyses concluded that the choice of the type of contract (fixed cost versus cost reimbursable) should be heavily influenced by four circumstances: (1) the extent to which the work is defined; (2) the desired allocation of risk between owner and contractor; (3) the availability of owner expertise and effort on the project; (4) the need to accommodate fast-tracking of design and construction; and (5) the general marketplace conditions.

While owner and contractor responses were reasonably consistent, some significant differences were expressed about those clauses that were most troublesome, and about the risk allocation effect of particular clauses. This emphasizes the need for a thorough discussion at the outset of a project to develop a common understanding by owner and contractor representatives of the contractual obligations.

The conclusions and recommendations of this study were distilled from the judgmental views of the highly experienced task force members, based on and supported by the quantitative analysis of the questionnaire responses. They merit attention, both because they may suggest improvements that can be made now and because of their value in prioritizing further research.

The interrelated areas listed below were identified for further research because of their high potential for improving construction cost effectiveness:

- Developing a better understanding of both the options for allocating and managing risk, and the techniques for adapting this aspect of the contract to the circumstances of a particular project
- Identifying mechanisms that will serve to more closely align the objectives of owner and contractor.

INTRODUCTION

It has long been recognized that the area of construction contracts is one in need of definite improvement, and in fact has been documented in several studies including one by The Business Roundtable.¹ The CII Contracts Task Force was chartered in 1984 with the long term goal of increasing construction cost effectiveness through improved contracting. Its scope includes the literal drafting of the contract document, and encompasses the strategies, attitudes, and enforcement principles intended by all the parties.

This publication presents the results of the task force's first study. The scope of the study included the objectives of: identifying the impact on project performance of various contract types and clauses; making remedial recommendations where feasible; and identifying areas for further research. Project performance was viewed as including the factors of cost, schedule, quality, safety, owner satisfaction, and contractor satisfaction.

It was not within the scope of this study to examine specific wording of individual clauses, which would in any case differ from company to company. Nor did the study allow for examination of model clauses. Instead, concepts in generic clauses were studied, and specific recommendations are made to those clauses that were judged by both owners and contractors to be the most problematic in construction contractual arrangements.

The data gathering focused on large-scale process plant, heavy manufacturing, and buildings projects. A special effort was made to obtain views from both owners and contractors and to identify any differences or conflicts. Since the respondents were from CII member companies, this publication reflects the perspective of owners with significant capital programs nationwide, and of larger contractors that operate throughout the U.S. Many of the conclusions, however, are thought to be applicable both to smaller and other types of projects.