



Don't give an excuse not to pay – understand and use your construction contracts!

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Yet another survey that identifies that subcontractors are being poorly treated and are suffering with late and reduced payments.

The latest Construction News survey; 'Late Payment: The state of the construction Industry' concluded that respondents to the survey indicated that 25% of payments are not made on time with 40% of respondents stating that their payment terms exceeded 40 days. In addition, only 55% of respondents from tier one contractors indicated that they pay in accordance with their contractual terms, with 25% of Main Contractors and 20% of subcontractors' respondents indicating that contractual disagreements affect prompt payment.

Unsurprisingly, these depressing results are not new, as the recent BIBBY Financial Services Subcontracting Growth report also highlighted; "27% saying that late payment is the biggest threat to their business over the next 12 months...with, on average, subcontractors waiting 42 days for payment from main contractors", and only "29% of firms indicating they 'always' get paid the full amount they bill contractors for".

These surveys paint a bleak picture of the construction industry's payment landscape. So why are only 55% of respondents from tier one contractors paying in accordance with contractual terms, and why do subcontractors have to wait approximately 40 days for payment? Well, it could be that some businesses higher up the supply chain use other businesses' money lower down to temporarily support their own cash flow. Which, interestingly, is how the Farmer Review of the UK Construction Labour Model reported unjust payment practices:

- *"...The multiple and tiered sub-contracting interfaces within the industry and between industry and its clients has generated a further non-value add process whereby some businesses higher up the supply chain will use other businesses' money lower down to temporarily support and enhance their own cash flow."*

Furthermore, the surveys suggest that prompt payment is affected by contractual disagreements and that the majority of firms do not always receive the payment that they have billed for. How could this happen? An answer may be, as indicated in the Farmer report:

- *"...Clients tend to fixate on lowest initial tendered price and this is often perpetuated by their advisors, who, in a traditional procurement model, are implicitly employed (at least partly) to manage a fixed and adversarial transactional interface between clients and industry"*

Another reason may be that, as indicated in the BIBBY Financial Services Subcontracting Growth report, 19% of subcontractors do not thoroughly check contracts before they sign them; which is madness. And with 38% stating that construction contracts are too complex to understand - not checking contracts and not understanding contracts makes it far too easy for Main Contractors not to pay. Subcontractors do not help themselves as the majority do not send their staff on contract training courses; including, Contractual Dispute Avoidance courses. And as indicated in all surveys, disputes affect prompt payment.

We at the Confederation of Construction Specialists promote the best way to win and to avoid a dispute is to completely understand contractual positions, understand contract law, understand contract processes and procedures. In short, book on to contractual training courses that will instil contractual knowledge and the confidence to interrogate contracts, so that they can be used as intended.

There is not an excuse not to train staff as there are many contractual CPD courses to choose from, including a University Construction Contractual Dispute Avoidance L4 qualification. After all, Main Contractors see it as a priority, subcontractors should do also.

For over 30 years the Confederation of Construction Specialists has been supporting construction specialist companies. By providing up-to date relevant contract training courses, professional advice and contractual guidance, the Confederation of Construction Specialists enables specialist companies to optimise the ways in which they operate contractual arrangements when dealing with Main Contractors or clients.

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