

The background is a detailed architectural drawing on a blue background. It features a grid of lines representing a site plan or floor plan. A central rectangular area is highlighted with a darker blue. Various annotations and labels are scattered throughout, including 'SECTION DETAIL: CONNECTION TO EXISTING' and 'CONNECTION TO EXISTING'. There are also some technical notes and dimensions like '2700 AFF'.

Construction and Infrastructure Projects

TOP TEN QUESTIONS FROM CLIENTS

INTRODUCTION



- Top 10 Questions From Clients
- Three Categories
 - Pre-Contract (Bidding, Negotiating and Planning)
 - Contract Administration
 - Contract Close-Out, Warranty Period and Disputes



Q1) Do I get to pick any bid I want because of the clear privilege clause in my RFP?

- Still need to be mindful of bid requirements
- *Elan Construction Limited v South Fish Creek Recreational Association*, 2016 ABCA 215



- “...sole and unfettered discretion’ cannot include the right to depart from fundamental contents of the Instruction to Bidders...”
- A clear privilege clause is still beneficial.



Q2) We are thinking of including liquidated damages in the EPC Contract. What do you think?

- Advantages/Disadvantages of liquidated damages
- Complications with enforcement

Q3) What are some of the problematic provisions in all-risk insurance policies?

- Design Defect/Resulting Damage
- Business Interruption – Start up
- Transition to Operating Coverage
- Other Facilities – Scope of Insured Project



Q4) I am worried my contractor is insolvent. What should I do?

- Consider application of bankruptcy and insolvency law
 - Bankruptcy: property vests in the trustee



- Application of set-off
- File proof of claim
- Transfer of title



Q5) What are my notice obligations under a Performance Bond?

- The obligee has discretion
- Factors to consider:
 - Has there been a default?
 - Are you going to issue a Notice of Default?
 - Could the surety argue prejudice?



- Strategic Considerations
 - Involvement of the surety
 - Damages covered under the bond
 - *MGN Constructors Inc. v. Axa Pacific Insurance Co.*, 2013 ABQB 216.

CONTRACT ADMINISTRATION ISSUES



Q6) I know I need to hold back payments to the contractor pursuant to the *Builders' Lien Act*, but I would rather not. What are the risks? Are there alternatives?

- Requirement is mandatory under the Act
- Risk of not holding back
- The mechanics of holding back payments under the Act

CONTRACT ADMINISTRATION ISSUES



Q7) There are multiple insurance policies that may provide coverage for a loss. What do I need to be aware of when making a claim against multiple policies?

- Primary vs. Excess Coverage
- Need/Timing for Notice/Reporting
- Provision of Information to Various Insurers
- Dispute Resolution Differences
- Status of Other Insureds

CONTRACT CLOSE-OUT, WARRANTY PERIOD AND DISPUTES



Q8) The warranty provisions in the Construction Agreement have expired. Can I still make a claim for defective work?

- Overview of typical warranty provisions
- Most hurdles post-expiry
- Consideration of statutory rights including *Sale of Goods Act*, R.S.A. 2000, c. s-2 and *Limitations Act*, R.S.A. 2000, c.I-12

CONTRACT CLOSE-OUT, WARRANTY PERIOD AND DISPUTES



Q9) If my business group has a "without prejudice" discussion, is everything discussed protected? When should I label communications "without prejudice"?

- Limited protection of without prejudice privilege
- When the without prejudice label is appropriate
- Contrast with “without prejudice” positions

CONTRACT CLOSE-OUT, WARRANTY PERIOD AND DISPUTES



Q10) What is a claims consultant and do I really need one?



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