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# **THE ROLE OF THE CONTRACT ADMINISTRATOR UNDER THE PRINCIPAL IRISH STANDARD FORMS OF BUILDING CONTRACT**

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## **Introduction**

Construction contract administration concerns the effective execution of construction contracts. The primary objectives of the individual appointed to administer a building contract typically include delivering the project safely, to the specified quality standards, on time, and within the employer's budgetary constraints. The administrator's task is to orchestrate and motivate the various designers and constructors to deliver the best possible performance both individually and as members of the team. This task is complicated by the nature of 'traditionally' procured building contracts where project teams may be assembled by the employer whose members have little or no previous experience of working alongside each other. Individuals may suspect each other's motives and have diverging, or indeed, conflicting objectives; - these must be reconciled. The administrator must know where to go, have an effective strategy of how to get there, and communicate that strategy clearly to all involved. Each participant must be clear as to what needs to be done in order to contribute to the smooth delivery of the project. The role, ideally, should be carried out by a person with expert technical knowledge of the construction process, strong leadership qualities and who possesses highly developed interpersonal skills.

The contract administrator operates within a context of various (standard) forms of construction contracts and sub-contracts and he/she must possess a detailed understanding of their contractual, legislative, and statutory underpinnings. He/she must be capable of advising the contracting parties on their contractual rights and obligations and must also be capable of implementing the administrative procedures set out in the particular contract.

Quantity surveyors (QS) are well placed to play a valuable role in assisting and supporting the contract administrator. Indeed, a QS may, be appointed as the contract administrator. This may occur where the QS offers project management services, or where the client prioritizes cost control and/or cost certainty as primary project objectives. The QS's primary contribution to administering the contract typically involves providing cost advice relating to on-going design decisions, providing the necessary financial services relating to the issue of certificates, and dealing with the financial implications of the administrator's instructions. The QS may be

called upon to advise on contractual payment issues, recommend amounts for interim payments, and to evaluate change orders and loss and expense claims. The QS may be consulted regarding completion issues such as assessing entitlements for extensions of time. In addition he/she may advise on various matters that aid the smooth running of a construction contract, for example document control techniques and systems, meetings and reporting procedures. The QS should seek to prevent needless disputes, however should a dispute arise, he/she may advise on appropriate methods to resolve it (Society of Chartered Surveyors Ireland, n.d.).

In Ireland, most private sector construction projects are carried out using one of the Royal Institute of Architects in Ireland (RIAI) forms of contract which are administered by the 'Architect'. Public sector construction projects are carried out using one of the Public Works Contract Forms (PW-CF) which are administered by the 'Employer's Representative' (ER). Abroad, various other terms are used to describe this role, all of which essentially refer to the person who is the primary point of contact between the employer and the design and construction teams. It may be useful to regard this position as being the employer's project manager. This study is concerned with the administration of the principle Irish forms of building contract: the RIAI with Quantities 2012 'Yellow' Form, and the PW-CF1 'Major Works Form' where the Employer Provides the Design.

The contract administration role on building projects has traditionally been performed by architects, however membership of the architectural profession is not always a prerequisite for performing this function. In this regard PW-CF1 defines the ER as '*the architect, engineer, quantity surveyor or other person appointed by the Employer as its representative ...*' (Clause 1). The contract administrator is typically granted considerable powers, assumes numerous responsibilities, and is required to carry out various duties in accordance with the provisions of the particular form of contract employed.

Hughes, Champion and Murdoch (2015) comment that the primary purpose of employing a contract administrator is to provide the employer with professional skill and experience. They comment that, traditionally, the contract administration role involved both formulating an effective design *and* ensuring that the design was constructed in accordance with the contract. The AQUA group (Hackett, Robinson and Statham, 2007) comment that the contract administrator is typically appointed at the project's outset and is responsible for programming, monitoring and managing the entire development process to ensure a successful outcome. The

administrator often recommends the appointment of the other design team members to the employer. Keane (2001) quotes *Hudson's Building Contract's* commentary on the issues which the contract administrator is responsible for securing:

- *a design which is skilful, effective to achieve his purpose within any financial limitations he may impose or make known and comprehensive in the sense that no necessary work or foreseeable work is omitted;*
- *the obtaining of a competitive price for the work from a competent Contractor, and the placing of the contract accordingly in terms which afford reasonable protection to the Employer's interest both in regard to price and quality of the work;*
- *efficient supervision to ensure that the works as carried out conform in detail to the design, and*
- *efficient administration of the contract so as to achieve speedy and economical completion of the contract.*

This study focuses primarily on the final two points, the delivery of the time cost and quality objectives, as under both the PW-CF1 and the RIAI 'Yellow' forms, the design and tendering processes will already have (largely) been completed at contract award stage. Nevertheless, it is practically inevitable that further design decisions will be taken during the post-contract period and the administrator will, of course, be concerned that these will be carried out in an effective and economic manner.

Hughes *et al.* (2015) point out that the design and administration functions are essentially separate activities. They add that the contract administration role involves two distinct elements: acting as the employer's agent, *and* carrying out various decision-making functions requiring the contract administrator to exercise independent judgement and to act fairly between the parties.

## **The Role of the Contract Administrator.**

### ***The Employer's Agent***

One of the main challenges encountered in implementing building contracts is the issue that, in many cases, contracts are entered into by employers who have little or no experience of the construction process. It is clear in these circumstances, that such employers will need considerable assistance from competent professionals to advise them and to perform many of the day-to-day functions and duties which they (the employers) would otherwise be required to carry out. The contract administrator in these instances may assume the role of an agent acting on behalf of the employer. The express authority of the contract administrator is normally set out in conditions of engagement agreed between the individual consultants and

the employer. So, for example, the ER's authority is set out under Sub-Clause 2.12 of the *Conditions of Engagement for Consultancy Services (Technical)* (Department of Public Enterprise and Reform (DPER) 2009).

Standard forms of building contract typically impose a wide range of responsibilities and duties on the employer. Appendix A, for example, sets out the employer's and architect's duties under the RIAI 'Yellow' Form of Contract<sup>1</sup>. It can be seen that these duties are extensive. By appointing a contract administrator, the employer will be relieved of many of these day-to-day responsibilities of running a project.

Keane (2001) explains that the contract administrator is not a party to the building contract *per se*, but nevertheless regulates considerable areas of it. The RIAI and PW-CF1 Forms grant the administrator specific powers and his/her decisions are generally binding on the employer. Keane notes, however, that the administrator has no authority to bind the employer to decisions which exceed his/her contractual powers, or to decisions which would not have been originally contemplated, or authorised by the employer. He describes 'normal' binding instructions as those considered 'necessary' or 'ordinarily incidental' to usual practice and comments that an instruction resulting in an extra of €1,000 on a €1M contract would be reasonable whereas an extra of €100,000 would require employer authorisation. In this regard, public sector employers may impose restrictions in Schedule Part 1A to the PW-CF1 Form on the cost of a single change order and/or the overall cost of multiple change orders which can be instructed by the ER during any three-month period unless authorised. In addition The ER shall not make an unapproved change order which reduces the safety, scope, quality or usefulness of the works.

Hughes *et al.* (2015) identify instances of instructions which have been held to exceed the contract administrator's authority, for example purporting to create direct contract between the employer and a subcontractor, acquiescing (without authority) in the contractor's alterations to the works, and ordering as extras work already impliedly included in the contract (p.284). They add that the contract administrator may be expressly or impliedly authorized to delegate certain aspects of his/her functions to others. Thus, for example, the administrator may delegate the

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<sup>1</sup> The Department of Public Enterprise and Reform have published comprehensive guidance setting out the responsibilities of the Employer and Employer's Representative at pages 44 to 50 of the *Capital Works Management Framework, Guidance Note, Implementation Process, GN 3.1* (2009) available at <http://constructionprocurement.gov.ie/guidance-notes/>

quality inspection function to an architect or consulting engineer and/or delegate the financial management aspects of the project to a QS.

### ***Advising the Employer***

As noted above, one of the contract administrator's key functions is to advise the employer – this is particularly important in cases of inexperienced employers who must be fully informed of their statutory and contractual obligations. Even experienced and sophisticated employers benefit from being reminded of their obligations and the potential consequences of failing to comply with them. It is also important to advise the employer on a regular basis whether the project is on schedule and within budget.

When entering into a contract it is important for the employer to be aware of and understand the express, terms incorporated into the contract as failure to comply with these terms may lead to a claim for breach of contract resulting in an award of damages. Likewise it is also important to be aware that implied terms of contract must also be complied with.

In general terms, the employer's primary obligation is to pay for the works in accordance with the contract (Hughes *et al.* 2015). The employer must also appoint a contract administrator, provide the site and the design including the necessary permits/approvals. In addition he/she must not hinder or prevent the contractor from carrying out the works. On certain projects the employer will be also be responsible for arranging liability and/or loss insurance. The employer will need to be advised of statutory requirements, in particular, the need appoint competent project supervisors for the design and construction stages and the obligation to retain the Safety File for future use as required by the Construction Regulations (2013) The employer is also required to submit the various Certificates of Compliance and Notices of Competence under the Building Control (Amendment) Regulations (2014).

### ***Instructions to the Contractor***

In an ideal world the contract documentation would enable the building contractor to complete the project without the need for further instructions and/or additional information from the administrator. In practice, however, the administrator will be called upon to issue further drawings and specifications in order to finalise the design, and to issue instructions to the contractor relating to various operational matters relating to the contract.

Clause 2 of the RIAI contract concerns the scope of the contract and sets out the architect's powers to issue instructions. Instructions may relate to the modification of the design, quality

or quantity of the works; the correction of discrepancies between the contract documents; the removal of materials from site, the opening up of covered work, the condemnation, replacement and remediation of defective work, the postponement of work, the dismissal of incompetent or misconducting personnel, and any other proper matters relating to the contract.

The corresponding powers under PW-CF1 are contained in clauses 4.4 and 4.5 of the contract. These authorise the ER to issue written instructions regarding any works-related matter prior to the issue of the Defects Certificate. Such instructions are classified as either *directions* or *change orders and objections*. Change orders, other than those relating to defective work, are not permitted following substantial completion of the works. Oral instructions may only be issued in situations involving risk to health and safety, in which case these must be promptly confirmed in writing. Instructions must be issued at the latest on (a) the date stated in the contract, if any; (b) the date shown in the contractor's current programme; (c) the date by which the contractor notifies the ER that it is required (subject to 10 working days prior notice); or (d) the date the contractor requires the instruction in accordance with its actual progress. In addition to issuing instructions, the ER may also give opinions, assessments, determinations, certificates, and other communications such as clarifications.

It is clear that both contracts are widely drafted in relation to the power of the contract administrator to issue instructions during the course of the contract. It should be noted, however, that all instructions should be channelled through and issued by the contract administrator. Keane (2001) commenting on Clause 2 of the RIAI Contract states that '*only the Architect can order a variation. The Employer is not entitled to order variations, and the Contractor is entitled to refuse to carry out any such order from the Employer.*' It is suggested that similar conditions apply to any consultant's instructions. Clause 13 of the RIAI Contract sets out the procedure for formalising verbal and site instructions. These may be confirmed in writing by the contractor to the architect within five working days and, unless dissented from by the architect, are deemed to be architect's instructions given in writing.

### ***Information to Contractor***

The contract administrator is the focal point for information for the contractor. He/she is required to provide the necessary documentation to enable the contractor to complete the works. The documentation comprises copies of the contract documents supplemented by the additional 'for construction' drawings, setting out information, specifications, and blank bills

of quantities. Further drawings and details may be issued from time to time during the course of the contract.

Information must be provided to the contractor in a timely manner. The deadlines for issuing instructions under PW-CF1 are summarised above. The RIAI Contract is less specific in this regard. Keane (2001) commenting on Clause 30(g) (extensions of time due to late instructions) warns that contract administrators must be vigilant in providing timely information. He advises contract administrators to obtain, at the earliest opportunity, a schedule of information requirements, from the contractor identifying deadlines for the release of information. He adds that contract administrators must meet these deadlines. The administrator has the right to challenge the schedule if he/she considers the deadlines to be unreasonable.

### ***Administration of the Contract***

The contract administrator will aim to carry out '*efficient administration of the contract so as to achieve speedy and economical completion of the contract*'. The contract administrator is the 'first officer' of the contract and is expected to administer the contract impartially in a fair and professional manner. He/she is also instrumental in ensuring that the various participants are aware of and carry out the procedures set out in the contract. In summary, these principally concern:

- effectively managing the day-to-day running of the project;
- paying the contractor in accordance with the contract;
- dealing with and valuing variations;
- expediting timely completion of (sections of) the project;
- ascertaining and evaluating contractor's delay and loss and expense claims;
- implementing prescribed supply chain procedures;
- ensuring prescribed and necessary insurances are in place;
- implementing procedures in the event of employer or contractor default or insolvency, and
- avoiding and resolving disputes.

Effective administration requires vigilance and prompt attention to the various issues which arise during the contract. The contract administrator is deemed to have the necessary skill to effectively administer the contract and failure to do so may incur legal liability<sup>2</sup>.

While adherence to the procedures set out in the particular contract cannot guarantee that the project objectives will be fully achieved, it is more likely that failure to implement these procedures will cause frustration and will generate additional, unproductive and/or abortive work. In particular cases, such as in issuing late information and/or instructions, these may cause delays and/or result in additional costs being incurred by the contractor which will, in turn no doubt, be passed on to employer. Failure to pay contractors on time or in full is one of the main causes of friction affecting working relationships on site. More serious consequences, including possible suspension of the work and/or termination of the contract, may result where fundamental aspects of the contract, such as failure to pay the contractor or failure of the contractor to build occur.

In this regard, regular cash flow is considered to be essential to the smooth operation of contracting organisations; - interim payments to contractors are viewed as a core obligation of most building contracts. Late or inadequate certification can cause severe cash flow difficulties throughout the supply chain; particularly if these occur on a number of projects and can be a significant factor leading to a contractor's insolvency. Contractors should be paid promptly and fully unless there are valid contractual reasons for withholding (part of) the payment. Keane (2001) notes that under the RIAI Contract '*The employer must honour the Certificate within seven days of presentation. Failure to do so is a ground for the Contractor to determine his own employment under the contract*' (p. 267).

### **Meetings**

*'What is the secret to success? Well, by meetings- bloody meetings'.*  
(Attributed to John Cleese by Cooke and Williams, 2009)

Meetings are a central means of communication on construction projects. Meetings are convened, chaired and typically minuted by the contract administrator. They provide a forum which updates the current status of the project, enabling issues to be identified and corrective action to be taken at the earliest opportunity. Discussions serve to inform the employer, the consultants and the contractor, and enable the participants to clarify matters, discuss ideas

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<sup>2</sup> In *Sutcliffe v Thackrah (1974) HL 1 LI Rep 318* an architect who had certified defective work was successfully sued by the client for the cost of rectifying the defective work.

and/or proposals and to take decisions regarding the on-going progress of the works. Ideally the process helps to resolve problems and to avoid conflicts arising or needlessly escalating.

The agenda for construction-stage meetings typically focuses on the contract's key performance criteria: safety, quality, schedule and cost (see below). The meetings typically involve the contractor and the various consultants in presenting progress reports which enable the contract administrator to form a complete view of what is happening on the project. The process of reporting is, in itself, a powerful element in maintaining discipline within the design and construction teams.

The contractor's report reviews progress relative to the master programme, raises any matters affecting the progress of the works, and records information received and required. Where the contractor is appointed as Project Supervisor for the Construction Stage he/she will report on and highlight health and safety matters. The various design consultants typically raise issues relating to the quality aspects of the project and may present test results, and/or observations made during site inspections. These reports often highlight aspects which need to be rectified by the contractor. Likewise, the QS report updates the current cost situation and may identify matters such as unconfirmed variations and/or notifications by the contractor for compensation.

The minutes of the meeting record the action points to be resolved by the various contract participants.

### ***Certification***

Decision-making and certification are a key aspect of contract administration. Certification requires the contract administrator to exercise judgement on various matters arising from the performance of the contract. The certificates may be routine, or may record the occurrence (or non-occurrence) of a particular event. The issue of certificates usually has a financial implication and typically provides for payment to be made to the contractor. Table 1 sets out the various certificates that may be issued under the RIAI and PW-CF1 contracts.

Type of Certificate	PW-CF1 Contract	RIAI Contract	Application
Interim	11.1.3	35 (b)	Routine
Practical completion	9.6	31	Routine
Penultimate	11.5.2	No RIAI equivalent	Routine on PW-CF1 contracts
Completion / Defects	8.7	32A (vi) (ii)	Routine
Final	11.5.3	35 (i)	Routine
Possession	9.7	32	Phased Contracts
Non-completion	9.8.3	29(a)	Delayed contracts (common)
Default / Termination	12.2.9 & 12.6.4	33 & 34	Contract default (rare)

**Table 1 – Certificates provided for in the PW-CF1 and RIAI Forms.**

Hughes *et al.* (2015) claim that certification is the most important aspect of the contract administrator's powers. Contract administrators when certifying are required to act as independent professionals and to act impartially. They approve of Wallace's definition of a certificate as: '*the expression in a definite form of the exercise of the judgement, opinion or skill of the engineer, architect or surveyor in relation to some matter provided for by the terms of the contract.*' They note that not every contract administrator's opinion or decision amounts to a certificate. '*It will only be a certificate if it is so described in the contract, or can be so treated by implication.*' They note that where a contract is silent on how certificates may be given, it need not be given in any specific format, but, there is a clear assumption that certificates should be in writing.

Contract administrators also routinely issue various certificates which are not required by the contract itself, but which may be necessary to comply with statutory requirements, or to provide warranties to third parties. Examples of such certificates include certificates of compliance with building regulations, fire certificates, etc. Likewise, contractors may be required to provide evidence in the form of certificates that certain requirements have been carried out e.g. test certificates, or that prescribed arrangements are in place e.g. certificates of compliance with registered employment agreements.

### *Interim Certificates*

The purpose of interim certificates is to pay the contractor during the course of the project and this has been commented upon above. Clause 35 of the RIAI Form provides that contractors are to be paid at four week intervals unless otherwise agreed. The certificate states the amount due to the contractor and identifies the amounts included for nominated subcontractors. Section 11 of the PW-CF1 Form is broadly similar in approach but includes a number of different payment particulars: payments are monthly, the payment timetable is longer, minimum value thresholds for payments may be stipulated, and that these contracts do not cater for nominated subcontractors.

### *Practical Completion*

Practical completion occurs when the contract administrator is satisfied that the works may be handed over to the employer. This event is recorded by the *Certificate of Practical Completion* under Clause 31 of the RIAI contract, and the *Certificate of Substantial Completion* under Section 9.6 of the PW-CF1 contract. These certificates record that the work has been satisfactorily carried out and can be occupied by the employer. These certificates may be issued despite the existence of minor defects provided these do not interfere with, or interrupt the occupation of the building. Such ‘snags’ are subsequently rectified by the contractor during the defects liability period. This stage can be intensive for employers and administrators.

### *Penultimate Certificate*

The penultimate certificate is a requirement of Section 11.5.2 of the PW-CF1 Form and is used primarily to expedite settlement of the final account. The RIAI Form has no specific requirements to issue a penultimate certificate *per se*, although the term is occasionally used to describe the last interim certificate before the Final Certificate. The PW-CF1 Certificate certifies ‘*the amount that, in the Employer’s Representative’s opinion, will be due from the Employer to the Contractor, less any final retention to be paid after the Defects Certificate is issued, or from the Contractor to the Employer.*’ In practical terms this would normally only leave the final release of retention as a balance to be paid in the Final Certificate.

### *Completion / Defects Certificates*

These certificates are issued following the final snagging of the work and the contract administrator is satisfied that the defects have been rectified. These certificates release the remainder of the retention due to the contractor and satisfy one the prerequisites to issuing the

Final Certificate. The procedures relating to these certificates are set out in Clause 31 and 32B of the RIAI Form where the architect issues a *Certificate of Completion of Making Good Defects* and Section 8.7 of PW-CF1 Form where the ER issues a *Defects Certificate*.

#### *The Final Certificate*

The Final Certificate documents final performance, or discharge, of the contract and in effect signals that the contract is completed. Final certificates are generally *conclusive* that the contract administrator is satisfied that the completed work is in accordance with the contract and that the contract sum and the contract period have been properly adjusted. The Final Certificate certifies any outstanding balance on the final account, this is usually in favour of the contractor. Procedures relating to the Final Certificate are set out in Clause 35 of the RIAI Contract and Section 11.5. 2 of PW-CF1.

#### *Possession Certificates*

Possession certificates are issued on phased contracts or where the employer takes over part of the works before overall practical completion. These certificates have similar payment and insurance implications to practical completion certificates on non-phased works. Under Clause 32A of the RIAI form the *Possession Certificate* describes the relevant part and provides an estimate of the 'relevant percentage' of the overall contract value. The certificate is issued at least three days before handover to employer. A *Certificate of Substantial Completion of a Section of the Works*, is the corresponding certificate issued under Section 9.7 of the PW-CF1 Contract. The contractor must request this certificate and the ER has 20 days in which to issue it.

#### *Certificates of Non Completion*

Hughes *et al.* (2015) note that non-completion certificates record the contractor's failure to complete the works on time. These certificates trigger the employer's right to apply liquidated damages. Under Clause 29 (a) of the RIAI Contract if the contractor fails to complete the works by the completion date, or any extended period granted by the architect, the architect is required to issue a certificate to the effect that the work ought reasonably to have been completed. A similar procedure is contained in the PW-CF1 Contract at section 9.8.

#### *Termination Certificates*

These certificates are rarely required in practice. Where one of the contracting parties commits a fundamental breach of contract, such as where the employer fails to pay, or where the

contractor fails to build, the building contract will usually provide that the injured party may determine the contract. Section 12 of the PW-CF1 Contract sets out the various issues which entitle the parties to determine the contract. Section 12.2.9 requires the ER to certify '*the termination amount*' which sets out the value of the works on termination, plus the cost of the 'completion contract'. In effect this establishes the additional costs borne by the employer in completing the contract. Section 12.6.2 of the PW-CF1 provides for where a contract is terminated by either the contractor or at the employer's election, the ER will be required to issue a certificate within ten working day of receiving a statement of the 'termination sum' from the contractor. This is likely to create a balance due to the contractor which the employer is required to honour within 15 days.

Similar procedures are set out in the RIAI contract at Clauses 33 and 34, (Determination by the Employer and Determination by the Contractor respectively). Clause 33 (c) (iv) requires that '*the Architect shall certify the amount of expenses properly incurred by the Employer*'. Likewise, Clause 34 provides that outstanding work, loss and expenses incurred by the '*Contractor shall thereupon be paid by the Employer*'.

### **Achieving Project Objectives**

It may be said that the achievement of project objectives is an outcome of effective contract administration. The contract administrator plays a central role in ensuring successful project delivery. The primary objectives are to deliver the project safely, to the specified quality standards, on time, and within the budgeted costs. The critical factors in successfully achieving these objectives are engaging in comprehensive detailed planning and preparation, implementing effective procedures, providing clear and timely communications, ensuring prompt action, and promoting an effective team approach. The basic control procedure involves comparing the original plans with actual delivery and detecting at the earliest opportunity variances from the plan to enable appropriate corrective action to be taken to rectify the deviation.

### ***Health and Safety Issues.***

*Every employer shall ensure, so far as is reasonably practicable, the safety, health and welfare at work of all his or her employees. (The Safety Health and Welfare at Work Act 2005 - Section 8.1)*

The issue of health and safety has become increasingly important following the introduction of the Safety Health and Welfare at Work Act in 1989. The Act, (revised in 2005) and associated regulations (for example the Construction Regulations 2013) impose duties on the various participants involved on construction projects including employers, employees, designers, manufacturers and constructors. Failure to comply with the legislation is a criminal offence and may result in fines and/or imprisonment in serious cases. It should be noted that blame for accidents may be apportioned across the various participants, including the employer and design team, in situations where an accident was foreseeable and reasonably practicable precautions were not taken to control the hazard. The contract administrator as chief advisor to the employer may therefore be viewed as a regulator to ensure that health and safety concerns are competently resolved.

The contract administrator must be aware of the provisions of the legislation and ensure that all participants involved in the project comply with it. It is clear that many clients will need considerable advice regarding their legal responsibilities and duties arising from the legislation and common law in this area. In particular, the Construction Regulations require the employer to appoint competent project supervisors for both the design process and the construction stage. In each case the employer must obtain written confirmation from each project supervisor that they accept their appointment. The employer, (who often makes these appointments on the recommendation of the contract administrator) must be satisfied that the project supervisors are competent and that they have allocated or will allocate adequate resources to perform their duties under the Regulations. In many cases the contract administrator is appointed as Project Supervisor for the Design Process and the main contractor is appointed as Project Supervisor for the Construction Stage. However the same person may be appointed to perform both functions. Alternatively, independent consultants may carry out these roles.

The RIAI Form is silent on the matter of health and safety and any employer's requirements in this regard are normally contained in the preliminaries section of the bill of quantities or specification. In many instances these requirements merely reflect the legal requirement to comply health and safety legislation. Sections 2.4 and 2.5 of the PW-CF1 address the appointment of the Project Supervisor for the Construction Phase and compliance with the Health and Safety Acts and Construction Regulations. Contractors are required to ensure the works are constructed safely and without risk to safety and health. They must also warrant that they are competent persons within the meaning of the 2005 Act and are required to provide sufficient resources to construct the project in a safe manner.

### *Achieving Quality Requirements*

In the long run, perhaps the greatest source of disappointment for construction clients is where a project fails to meet their expectations, either because of an ineffective design or because of defects and/or poor workmanship. The aesthetic and functional qualities of the design are not directly addressed by either the RIAI or PW-CF1 Contracts. The contracts do, however, set out inspection procedures and specify how defective work is to be managed.

As noted above, one of the primary objectives of the contract administrator is to provide efficient supervision to ensure that the works as carried out conform in detail to the design. Site visits to inspect and monitor the works are critical elements in this process, allowing the early detection and rectification of defects and non-compliant work. The purpose of site visits is to observe whether the quality of the work complies with the specifications and to comment where necessary. Visits may be at regular intervals, or programmed to coincide with particular events on site, alternatively they may be unannounced spot checks. The requirements for and frequency of inspection is not generally regulated the building contract *per se*. Rather, these are covered within the conditions of engagement agreed between the employer and the architect/other specialist consultants.

In the first instance construction work carried out under the RIAI and PW-CF1 Forms must comply with the latest Building Regulations and the contract administrator must ensure that the necessary Notices and Certificates of Compliance are completed by a (competent) design certifier, assigned certifier<sup>3</sup>, and builder. The purpose of these certificates and notices is to ensure that minimum statutory requirements of construction are complied with.

The RIAI contract requires the contractor to *'carry out and complete the Works in accordance with the Contract Documents ... to the reasonable satisfaction of the Architect.'* and authorises the architect to instruct the contractor to open up work for inspection, remove and replace non-compliant work and materials and incompetent personnel. (Clause 2). The architect may request the contractor to provide *'vouchers to prove that the materials comply'* and to *'carry out any test of any material and workmanship'* (Clause 8). The architect and other authorised persons, in addition to carrying out site visits may, *'access ... workshops of the Contractor or other places where work is being prepared'* (Clause 11). A clerk of works may be appointed

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<sup>3</sup> The Assigned Certifier must be a registered architect, building surveyor or chartered engineer to exercise this function

to act as an inspector under the direction of the architect. (Clause 12). These provisions, therefore, identify that the contractor is responsible for the quality of the work, and that the architect is the judge of that quality. Non-compliant/defective work may be condemned and the cost of rectifying such work is borne by the contractor.

These quality requirements are echoed in Clause 8 of the PW-CF1 Form. This clause adds that the works must comply with other legal requirements and be carried out in a workmanlike manner observing proper practice, and materials must be of good quality and, unless otherwise specified, new. In addition a number quality related measures are included, which may be said to formalise and clarify, rather than extend, the authority of the ER with regard to inspection and testing, and the rectification of non-compliant work. The ER is also entitled to receive Quality Assurance reports and to carry out spot checks to ensure that the plans are being properly implemented. There is also an option for the employer to accept defective works, in which case the ER will determine the reduction in the value of the work which shall be deducted from the contract sum. As noted above, the ER is prohibited from issuing ‘... *any Change Order causing or contributing to a reduction in safety, quality, usefulness, of the Project*’ without the Employer’s approval.

### ***Achieving Schedule Targets***

The timely delivery of projects is a primary objective of most private and public sector clients. Effective contract administration will enable the contractor to complete the works on time or will minimise delays arising from unforeseen circumstances such as weather events, strike and accidental damage. In particular, the contract administrator will be concerned with managing the project so that the contractor is not prevented from completing on time due to the actions, or failings, of the employer and/or design team, for example due to change orders, delayed site possession or late instructions.

Providing a complete design at tender stage is a major contributor in facilitating timely project completion and should serve to reduce the number of requests for information during the construction stage thereby reducing potential delays.

Where delays occur which are beyond the contractor’s control, the contract administrator must act to minimise such delays and award the contractor a fair extension of time or allocate the Programme Contingency (see below). Extensions of time may be awarded for the matters set out in Clause 30 of the RIAI Form. The Programme Contingency may be applied on PW-CF1 in respect of Delay Events listed in Schedule Part 1K for which the employer has retained the

risk. The normal sanction of liquidated damages for late delivery caused by the contractor is incorporated in both the RIAI and PW-CF1 contracts as is the employer's option to suspend the work and/or determine the contractor's employment in the event of serious failure to progress the works.

The PW-CF1 Form contains a number of measures designed to secure timely completion of the project and prescribes detailed particulars to be provided in the contractor's construction programme; the programme may form part of the contract documents. Section 9.4 of PW-CF1 requires contractors to produce a detailed programme and to keep this up-to-date throughout the project. Programmes are required to include details of when instructions or employer supplied items are required and to identify the critical path, float and any flexibility within the programme. In addition they are also required to identify the workforce and resource requirements. These measures are designed to provide management information to allow contractor and ERs to quickly identify variances from the programme and take appropriate action to remedy the situation. The ER may direct that the programme be revised within a fifteen day period and this requirement is enforced through a power to deduct 15% from the contractor's interim payments. Clause 4.10 requires contractors to give monthly progress reports to the ER. These reports must contain specific information and are designed to facilitate the ER in effectively monitoring and controlling progress against the programme and to highlight any information requirements at an early stage.

The incorporation of a 'Programme Contingency' is perhaps the most radical innovation in the PW-CF1 Form relating to delays. The contract period now includes a time allowance to cover delays resulting from the occurrence of one or more of the 'Delay Events' which refer to employer-retained risk events. The allowance and thresholds are inserted in Schedule Part 1K to the Contract.

The RIAI Form is silent on the matter and programme and planning information to be provided to architects. Requirements however, are routinely prescribed in the preliminaries sections of bills of quantities or specifications. Such requirements however, differ between individual projects and among practices. Simple bar charts are often the only programmes called for and these may make schedule management more difficult to predict accurately.

### ***Achieving Cost Targets.***

Clients frequently expect the final cost of their project to be no more than the original estimate and, indeed for many, this may be their top priority. Cost overruns, however, are a common

occurrence on building contracts and arise as a result of numerous events which are often interlinked. The likelihood of cost overruns increase relative to the complexity, scale and duration of the project (Rowland, 1981). Employers must be advised to retain an appropriate contingency sum to cover the finalisation of the design and to provide for the possibility of unforeseen difficulties causing additional costs. Effective cost management therefore, is vital to the successful outcome of building projects and is one of the most challenging aspects of contract administrators brief.

The RIAI and PWC contracts set out the circumstances under which the contract sum may be adjusted. In summary, these cater for variations, fluctuations in material prices and labour costs (inflation) and contractor's claims for compensation for loss and expense arising primarily from architects' instructions or employer default. In addition, the RIAI Contract provides for the adjustment of provisional sums for work which could not have been accurately established at tender stage and prime cost sums for work carried out by nominated subcontractors or materials supplied by nominated suppliers.

During the project implementation phase the contract administrator performs a key role in ensuring that the construction costs are maintained within the contract sum and approved budgets. The contract administrator is usually supported in this task by the QS who is typically engaged to carry out the day-to-day cost management function, advising on the financial position of the project. Effective activities in controlling costs include avoiding issuing instructions which increase project costs; balancing cost overruns with corresponding savings from other areas of the project and regularly recording and reporting the current financial status and forecasted outturn costs of the project to the contract administrator and employer. The client must be in a position to approve any extra expenditure in advance, whether this is for unavoidable adjustments in design, client modifications, and/or adjustments because of unforeseen expenditure. Best practice advises that variations are costed before an instruction is implemented.

Regular cost reports should be prepared by the QS. In this regard the QS is expected to provide realistic cost advice, to plan how (remaining) budgets should be allocated within the various construction elements, to actively monitor and communicate the likely cost implications of the evolving and completed design to the contract administrator and employer, and to propose workable solutions where costs appear to be exceeding the approved budgets.

As noted above time slippage and cost overruns commonly arise from incomplete tender and contract documentation which fails to define the scope and extent of the proposed works with sufficient precision. In particular, the nature of the site or the condition of existing/retained structures may be unknown or be under provided for in the documentation. Incomplete information typically results in the need to incorporate cost variables such as prime cost sums and provisional sums within the tender or contract sum. These sums are subsequently adjusted and reimburse the contractor's actual costs or value the true extent of the work at contract rates. Similarly incomplete briefing or underdeveloped designs and/or specifications inevitably generate variations (change orders), which may give rise to significant cost overruns.

The contract administrator may minimise the risks of cost overruns arising from these sources by insisting that the client's brief and the works requirements are fully developed in advance of seeking tenders and entering into the building contract. On public sector projects, the project co-ordinator (who usually becomes the ER at construction stage) must ensure that this objective is both fully observed and delivered (DPER 2011) It should be noted that the removal of the mechanisms of prime cost sums and provisional sums on public works contracts means that 'unknowns' and specialist work must be (more) fully established and co-ordinated during the pre-tender stage.

Best practice suggests that contract administrators on private sector projects should also seek to deliver fully developed designs at contract award stage. However, commercial pressures may prioritise early project delivery and render the achievement of this objective more challenging.

Cost increases may arise due to inflation. It is normal practice for private sector employers to transfer inflation risk to the contractor, either by striking out, or agreeing a premium to buy-out, the fluctuations clause (Clause 36) of the RIAI contract. In this regard it should be noted that PW-CF1, in the absence of hyper-inflation, is a fixed price contract for 36 months. Cost overruns under this heading are therefore unlikely to apply except on extremely large projects.

With regard to potential contractor's claims for additional reimbursement due to unforeseen events for which the employer retains the risk (Compensation Events), the contract administrator and QS should be vigilant to detect potential problems at the earliest opportunity in order to take corrective action. In this regard contractors are required by PW-CF1 to notify the ER in writing promptly or as soon as they become aware of a delay or compensation event which may impact on the contract sum or project completion date and must provide further details

within 30 working days. Contractors who fail to observe these requirements lose their entitlement to reimbursement. As with delay claims, the Programme Contingency operates in these circumstances and, in effect, establishes a contingency sum which will accrue to the contractor in the event that the Contingency is not fully utilised. This measure provides a strong incentive to the contractor to complete the project promptly.

## **Conclusion**

The role of the contract administrator is arguably the most important appointment made by employers in commissioning building construction projects. This study has investigated the contribution made by the contract administrator in administering construction projects. The tasks and responsibilities undertaken by the contract administrator are extensive and challenging. The role involves managing, (bossing) the various construction participants, who frequently have competing objectives to achieve the common goal of delivering a successful project. The study has outlined the decision-making, advisory and information roles undertaken by the contract administrator in the context of the RIAI 'Yellow' and PW-CF1 Forms of contract and has examined how the contract administrator may contribute to the achievement of the primary project objectives.

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## **APPENDIX A**

### **Employer's and Architect's Responsibilities under the RIAI Yellow Form of Contract**

CLAUSE	DUTY/RESPONSIBILITY EMPLOYER
2 Scope of Contract	Employ others in default of the Contractor obeying Architect's instructions, and recover any costs.
3 Drawings and Bills of Quantities	Retain custody of Contract Documents
9 Work to be opened up	Open up work if instructed. Notify the Architect that foundations or other urgent work is available for inspection.
12 Clerk of Works	Appoint and pay the Clerk of Works (or others).
13 Ascertainment of prices for variations	Request a copy of the Bill of Variations if appropriate. Consult with the Architect in respect of the value of omissions.
15 Assignment and subletting	Consider any request from the Contractor for assignment
16 Nominated Subcontractors	Pay directly the Nominated Sub-Contractor.
17 Nominated suppliers	Select and nominated required suppliers.
21 Insurance against damage to persons and property	Take out and maintain until appropriate the necessary insurance policies as set out in the clause.
22 All Risks Insurance	Take out and maintain All Risks Insurance if required. Arrange the joint bank account with the Contractor. Retain any money not expended after variations.
23 Insurance policies	Approve, if appropriate, the Contractor's insurance policies or produce the insurance policy for the Contractor's approval. Ensure that insurance cover is in place if he proposes to take possession of any part of the Works. Insure for any risk on which the Contractor has defaulted.
24 Damage due to excluded risks	Decide whether or not to seek determination, and/or arbitration.
26 Insurance of existing structures	Take out and maintain insurance Produce insurance policies and receipts.
28 Dates for possession and completion	Provide possession of site.
29 Damages for Non-Completion	Consult with the Architect and determine the appropriate rate of damages. Deduct the Ascertained or Liquidated damages (if any) from the moneys due to the Contractor. Pay or allow to the Contractor the loss or expense caused by his own act or default, after consulting with the Architect.
30 Delay and Extension of Time	Extend the time, if appropriate, for practical completion.

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32A Independent Contractors, Artists and Tradesman	Pay all artists and tradesmen and indemnify the Contractor. Pay the Contractor for attendance and plant.
32 Partial or Phased Possession	Obtain the Contractor's consent to partial possession. Pay the Contractor any retention money due. Make the appropriate insurance arrangements.
33 Determination of Contract by Employer	Determine the employment of the Contractor, as advised by the Architect. Employ other to complete the Works.
34 Determination of Contract by Contractor	Pay the Contractor as provided in sub-clauses (i) to (v)
35 Certificates and Payments	Provide Two months payment in Guarantee Account or furnish Bank Certificate confirming adequate funds are available to finance the Works. Honour certificates when presented. Hold retention money 'upon trust'. Comply with 'Joint Account' provisions.
38 Dispute Resolution	Decide whether arbitration is to be sought.

### **ARCHITECT**

1 Definitions	Ensure Designated Date is set out in the contract
2 Scope of Contract	Issue instructions as required. Ensure that valuation under Clause 13 is carried out without undue delay. Ascertain any loss or expense involved following compliance with instructions.
3 Drawings & Bills of Quantities	Decide on the necessity or otherwise of the Contractor's claims for remeasurement. Retain custody of the Contract Documents. Furnish copies of drawings, specifications, instructions to the Contractor. Return documents to the Contractor. Ensure confidentiality of the Bill of Quantities or Schedule of Rates.
4 Variations arising from legislative enactments	Certify any increase or decrease in the Contract Sum.
5 Contractor to provide everything necessary	Decide on any matter raised by the Contractor.
6 Local and other Authorities' notices and fees	Issue any instructions following the Contractor's notice.
7 Setting out of Works	Provide the information to set-out the Works. Direct the Contractor as to the rectifying of errors.
8 Materials and Workmanship to Conform to Description	Obtain vouchers, if required, confirming the correctness of materials. Order any necessary tests of workmanship or materials. Adjust the Contract sum if required to allow for the cost of tests.

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9 Work to be opened up	Order work to be opened up if he is satisfied that there are good grounds for so doing. Inspect work 'opened up' within a reasonable time.
12 Clerk of Works	Recommend the appointment of a Clerk of Works (or others). Direct the Clerk of Works as to his duties. Notify the Contractor of any proposed appointment. Consider any objections from the Contractor to an appointment
13 Ascertainment of Prices for Variations	Acknowledge and confirm (if appropriate) the Contractor's confirmation of a variation within five working days. Measure and value (or instruct the Quantity Surveyor) without undue delay any variation. Advise the Contractor if measuring and valuing is being undertaken. Provide the Contractor with a copy of the Bill of Variations. Decide if omissions vary subsequent works. Decide if daywork prices are appropriate. Check on the providing of 'daywork sheets'.
14 Omissions	Ascertain 10% value of omitted work.
15 Assignment and sub letting	Consider any request from the Contractor for assignment or subletting
16 Nominated Subcontractors	Nominate any necessary Sub-Contractors. Consider any reasonable objection by the Contractor to such nomination. Endorse the certificates to the Contractor with any necessary list of payments due to Nominated Sub-Contractors. Obtain from the Contractor any necessary proof of payment to Nominated Sub-Contractors. Certify, if appropriate, final payment to a nominated Sub-Contractor. Re-nominate if necessary in case of default on the part of the original Nominated Sub-Contractor.
17 Nominated suppliers	Select and nominated required suppliers.
18 Provisional sums	Issue directions with regard to the expenditure of provisional sums.
19 Prime Cost sums	Make directions with regard to payments to Nominated Sub-Contractors or nominated suppliers
22 All Risks Insurance	Ensure that the items relating to professional fees and site clearance are set out in the appendix. Certify any monies due for making good damage to the Works under the All Risks policy.
26 Insurance of existing structures	Advise Employer as to occupancy.
28 Dates for Possession and Completion	Ascertain and certify any loss due to late possession.
29 Damages for Non-Completion	Ensure that the dates for Possession and Completion are set out in the appendix. Certify that the building ought to have been complete on the date in the appendix. Ascertain any delay caused by the Employer and certify the delay. Decide if the Contractor has taken all reasonable steps to minimise any loss caused by the delay
30 Delay and Extension of Time	Make a fair and reasonable extension of time. Note if any delay occurs under sub-clause (d).

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31 Practical Completion and Defects Liability	Certify that the Works are practically complete. Issue instructions to the Contractor to make good defects.
32 Partial or Phased Possession	Issue a certificate describing the ‘relevant part’ and the ‘relevant percentage’. Issue a certificate of practical completion for the relevant part. Issue a certificate of making good defects for the relevant part.
33 Determination by the Employer	Decide if the Contractor is in default, and issue the necessary notice. Decide if any necessary assignments have been made. Direct the removal of any necessary temporary buildings, plant, materials, etc. Certify the cost (or saving) or the determination to the Employer. Decide if site protection is necessary.
35 Certificates and Payments	Issue interim certificates at appropriate intervals and deduct the appropriate retention. Explain any differences, if so requested, between the Contractor’s Statement and the issued certificate. Conform to the contractual requirements with regard to the certification of materials. Release one moiety of the Retention Fund on Practical Completion. Arrange, if requested, a joint account for the Retention Fund and administer that account. Give notice of, and issue a Final Certificate.
36 Wages and Price Variations	Certify, if satisfied, any monies due under Clause 36

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