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<th><strong>Title</strong></th>
<th>Report on Review of General Conditions of Contract Part 2</th>
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Detailed Recommendations
The report made a number of important detailed recommendations that should be noted:

1. Government should accept the risk of unforeseeable physical conditions.

Comment – this is at the top of the list for good reason. It remains subject to divisions of opinion on Government and Jesse Grove’s (the consultant who authored the report) part. It presents a clear policy choice in terms of the standard that should be employed; be it fault, management or foreseeability. This recommendation will likely remain the last of any if they were to be agreed upon.

2. Do notemasculater the proviso in clause 15 of the GCC regarding legal or physical impossibility.

Comment – recent impossibility claims indicate a fundamental difference to how the issue is being approached by government and contractors. That poses a problem and obviously raises the question of why. One suggestion is that designs have become too aggressive. Whether or not this is the case some refinement in either the GCCs or how the concept is dealt with in practice by Government should take place.

3. Government should require All Risk Insurance coverage.

Comment – insurance is a useful and recognised tool for risk allocation and not only should it be made use of here but better use should be made of it in the industry as a whole.

4. Government should accept the risk of lawful third party interferences including utility undertakings.

Comment – some quick questions follow from this:
(a) who is a utility,
(b) how to reconcile current GCCs and
(c) whether costs should be ever given. If (a) can be agreed, eg utilities include government departments Water Supplies or Drainage Services for all purposes, then (b) would almost answer itself. That still leaves (c) though, and this will likely remain a fundamental issue or one of principles that might not be resolved it isolation.

5. Government should accept the risk of changes in law.

Comment – this seems justifiable at both accepted principles of risk allocation eg it is within the government’s control is likely in the long term interest of the construction industry as a whole in that it accords with fairness as well.

6. Let market forces operate regarding subcontractor payment.

Comment – I think that more can be done here. In other jurisdictions industry goes much further to protect subcontractors, eg recent legislation in the UK, mechanics’ lien legislation in North America. The market appears to be not working efficiently.

7. Failure of notice should give rise to damages not forfeiture.

Comment – in effect this would mean the removal of time bar language from the current GCCs while maintaining the government’s right to recover additional costs for late notice. Once again this follows more recent contractual precedents. Such a change in emphasis could operate as an incentive and disincentive in affecting the Contractor’s actions. Surely this would be a progressive development.

8. Variation valuation should be simplified and tightened.

Comment – There are a series of recommendations which go to simplifying these valuation provisions. It is a task which the Joint Contracts Committee drafting the new private form building contract for Hong Kong has taken on board. Some of the features of a simplified procedure have been outlined in the report and include:
(a) elimination of the dichotomy between cost and priced compensation;
(b) expression or elimination of preference for lump sum forward pricing;
(c) elimination or fixing of a rate for home office overhead recovery;
(d) fixing of the rate for profit mark up;
(e) prohibiting of global claims;
(f) eliminating overlap in some key GCCs; and
(g) requiring subcontractor pricing to be compliant.

A great deal of support of can be offered to these features. Valuation is subject to some anomalies which these features bring out. It can be seen first and foremost that they seek to bring greater certainty to the process of valuation. If these or like principles can be agreed in advance it will serve to reduce disputes.

Conclusion
It can be seen that the report, in both the general recommendations examined last month, as well as its detailed recommendations examined here, contains some very worthwhile suggestions. It may be that the cumulative influence of new private conditions of contract, concurrent actions being taken by some quasi-government bodies, eg the Housing Authority as well as the Report itself will be enough to create some momentum so that change can take place. As they say after all, there is no time like the present.

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