

Contract Management Behavior and Practices of Turkish Contractors at International Contracts

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Abstract

Contract management starts with the contract negotiations and lasts until the end of the contract, and is the process that covers three fundamental functions required to compensate the goals of the project; Relationship Management, Project Delivery, and Administration of the contract. This paper briefly discusses contract management behavior of Turkish construction companies in international projects; factors influencing contractors' behaviors, key success factors for contract management, company contract management organizations, claim issues, and conflict and dispute behaviors of firms. Turkish contractors consider contract management to be significant for success at international markets. Contractors are aware of the need for a continuous contract management application although this rate cannot be achieved in practise. Considering awareness as a driving factor for improvement it can be estimated that in future Turkish contractors will be managing their contracts in more efficient, organized and systematic ways than today. Results revealed that; contract management behaviors are mostly affected by the risk and complexity of the Project, regular contract process is the most impactful process on the success, and change order requests of the owners are the most frequent reasons of claims. According to respondents contract management can reduce number of conflicts and disputes.

Keywords

Contract management, Turkish construction sector, Contractual behavior

1. Introduction

The market and organizational structure of the construction industry is highly fragmented and divisive where a large number of medium and small sized firms, make it a highly competitive environment (Li *et al.*, 2001). On the other hand construction projects have shown a trend towards becoming large complicated operations involving many parties during the last few decades (Shohet and Frydman, 2003). In such a complicated and competitive market, the construction business today suffers from low margins and has difficulties making projects profitable (Harris and McCaffer, 2001 cited in Anderson and Gunnarsson, 2002). However bad profits are one of the most important causes of business failures in the construction industry (Al-Juwairah, 1997). Zack Jr. (1993) explains one of the results of decreasing profits as "... more projects end up in major disputes now than at any time in history. It has been suggested that the project's dedication ceremony is no longer at the end of the job, but at the beginning of the final phase of the project: the dispute phase". As a result of this adversary relations and environment, management of construction claims, or "claimsmanship", which revolves around two basic tenets: "What's mine is mine, what's yours is negotiable"; and "if you don't ask, you won't get", has grown as a new project-management style or tactic (Zack Jr., 1993). The dramatic result of the market environment and diversity of the parties on project goals is given by Read and Williams (2004): "The boardrooms of

contracting organizations are filled with accountants and legal executives who (rightly, on their own terms) believe that every contractual entitlement must be applied, and that every claim potential must be exaggerated in order to maximize the company balance sheet and give confidence to banks and creditors". As a result of the adversarial environment exists within construction industry, conflict is unavoidable and one major critical characteristic of the construction industry is the high cost incurred by the resolution of arising conflict and lawsuits in projects (Thompson *et al.*, 2000; Cheung *et al.*, 2002; Harmon 2003; Fenn *et al.*, 1998; Ock and Han 2003; Mitropoulos and Howell 2001; Ng *et al.*, 2007)

Construction projects are organized by different parties linked hierarchically together by contracts with highly restricted terms and conditions (Barlow and Jashapara, 1998 cited in Li *et al.*, 2001), which framework of the working relationship of all parties to a project and detail technical as well as business relationships (Smith, 2003). Al-Juwairah's study (1997) displays contract management, which is given in the corresponding study as managing the total resources of a project as well the content of the contract to avoid any dispute, as one of the five most severe factors affecting construction cost as agreed by consultants, contractors and owners. Turner (2006) also presents "Project Contract Management" as an inherent component of project management. Turner also, confesses how he find it interesting that, even though it is one of the inherent components of project management, the contract management is also one of the most widely ignored parts of the project management.

The master thesis "Contract Management Behavior of Turkish Contractors at International Contracts", which was prepared at Civil Engineering Department of Middle East Technical University in February 2009, was a sector investigation based on the interesting point that Turner (2006) figures out. The literature contains numerous works that involves a survey study regarding specific or focused topics of contract management, such as impact of contract types or clauses, claim issues, and delay reasons. However as the overall contract management behavior is considered, especially for Turkey, this thesis study may be called to be the first which treats contract management as whole. The sector survey conducted as a part of this thesis study -targeting international contracts only- tried to investigate the answers for several questions: How does the Turkish construction sector approach to the concept of the contract management. Do the Turkish contractors ignore it or at least they are aware of its emergence? Is there any successful contract management implementation if they are already aware of the importance of it? What are the factors that release or restrain their behaviors and what are the factors that they believe are to be critical for successful contract management. How do they organize for a successful contract management and does it make a difference? Finally what are their headaches, that they struggle with most and how do they handle them?

This paper presents briefly the discussions of the referred thesis study.

2. Contract Management

In the simplest terms, a contract is a promise or agreement that, the law enforces (Semple *et al.*, 1994), recognizes as a duty, and provides a remedy (Currie and Dorris, 1986). New regulatory requirements, globalization, increases in contract volumes and complexity, as noted by Aberdeen Group (2004), have resulted in an increasing recognition of the importance and benefits of effective contract management (cited in: Elsey, 2007).

Anderson and Gunnarsson (2002), argues that the role of a contract manager is not defined or evaluated in the literature, and Von Branconi and Loch (2004) marks that Project management literature treats contracts largely as a technical issue, rather than characterizing priorities like: "How is the project's business related to the contract?". Besides 'the contracts' and 'role of a contract manager' similar arguments can be claimed for contract management. First, the literature mostly focuses on issues that has a direct impact on project success such as contract clauses, claims, delays, resolutions of disputes. Second, the literature handles these issues in a technical manner and it mostly presents checklists or

procedures to be followed by the professionals. Moreover the literature frequently investigates previously experienced cases and tries to formulize these examples in order to supply route-maps to professionals. The literature dealing with contracts and contract management in a conceptual manner is relatively little and it can be said that the literature rather than discussing “what is the relationship between the parties”, and its place in contract and project execution, discusses contract clauses about it and what to do when a conflict arises. However especially commercial documents of various organizations widely treat relevant issues that if alternatively discussed, these issues would converge to a definition and explanation of contract management.

Considering various definitions of contract management and arguments on its goals and benefits three major issues that are relevant to contract management raises with significance; the relationship between the parties, the requirements of the agreement, and the contract itself. The contract management thus is expected to, aim to successfully capture any benefits regarding these three headings during its execution in other words, it should run three different functions simultaneously for a complete achievement where all relevant issues are adequately and effectively handled. Therefore contract management can be defined as:

“Contract management starts with the contract formation negotiations, lasts until the end of the contract, and is the process that covers three fundamental functions required to compensate the goals of the contracted project.

- Relationship Management: To provide an agreement between the parties in sharing and fulfilling the obligations and to adjust the relationship in between.
- Project Delivery: To ensure that the maintenance of the obligations and the completion of project targets are as in the contract.
- Administration of the contract: To perform contractual bureaucratic procedure. (Recording, preparation of forms, communication, etc.)

Exact understanding, fulfillment and control of contract clauses, settling and recording the changes that may arise during application, minimization of risk by foreseeing of future needs and development of appropriate strategies in case of unexpected situations are all involved in this process.”

It can be claimed that contract management is a naturally emerged project management concept, which is forced by changing business environment. Therefore, for any business who makes contracts as a part of its trade, the question is not whether they apply contract management or not, but is whether they can successfully adopt themselves to this new business way or not. The emergence of contract management can be illustrated as it is given in the Figure 1. The U-shaped path is the path that the contractor’s profit may follow, where the half on the left represents so called “good old days of high profits” and is past. The right half on the other hand represents claimsmanship which is a relatively aggressive and sometimes opportunistic way of project management that focuses on own interests rather than seeking mutual benefits. The circle which is “the profit” in this case was initially at a comparatively high point on the left hand side, until the changing environment of increasing competition acts as a gravitational force and pushed the profit down. The profit once pushed down from the left wall might attempt to climb up through claim management wall on the right. However this attempt to increase the profit, once again would be responded by a perhaps even stronger gravitational force, which is the costs of adversary environment, conflicts and potential litigations. Under the influence of these downward stresses the profit is supposed to settle at the flat area in between. The comparative depth of this naturally evolved area depends on the contract management capabilities of the firms. It is vital to note that: This flat area is not the ground where the profit maximizes but it is the ground that the profit optimizes. At what level does the profit optimizes is still a result of contract management talents of the team.

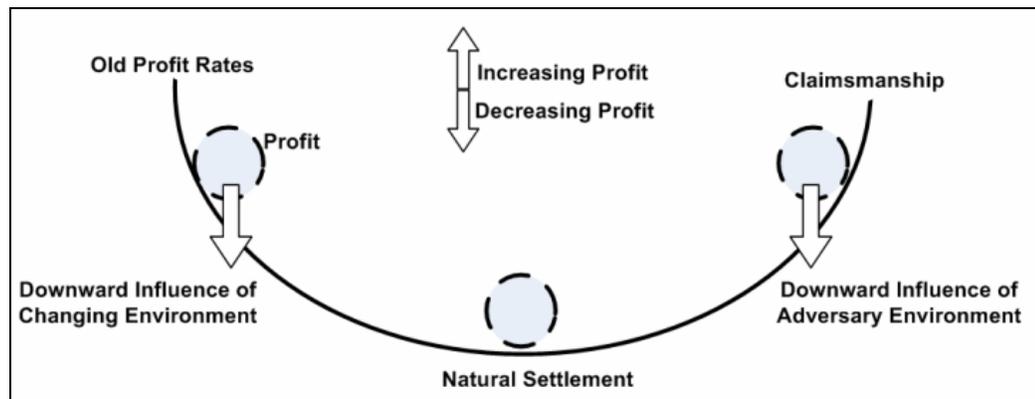


Figure 1: The Emergence of Contract Management

2.1 Contract Management and Turkish Construction Companies

Modern business behavior can be thought of as a product of internal and external forces that impinge upon the enterprise (McGuire, 1964) and according to Lowe and Leiringer (2006); behavior is dependent upon values and beliefs. Zwikael *et al.*, (2005) mention that project managers in different countries run projects of similar nature, in different ways and one of the reasons of differences is the cultural distinctions which, according to Lowe and Leiringer, can be learned and are manifested through facets of behavior. One of the major factors that shape the contract management culture of Turkish contractors is based on ethics of culture in Turkey.

The means of contract management for Turkish contractors are mostly influenced by the very strong bureaucracy of Turkey, which is originated from Ottoman Empire age and still holds its normative character (Şahin, 1998). Bureaucracy initially after the set up of the modern republic sensed Turkish contractors as a part or branch of public organizations (Akkaya, 1989 cited in Demir, 2006), however after this bond broken out around 1950's (Akkaya, 1989 cited in Demir, 2006 and TCA, 2006) this relation turned to be unilateral and with its values from the history bureaucracy played the role of the decisive and unquestionable owner of the projects. Contractors, who are used to work with such an owner during their growth stage, develop their behaviors accordingly. This common behavior (or business culture) can be summarized as waiving contractual rights in order to be able to receive further projects of the owner. The contractors as they expanded to international markets, faced with perhaps less decisive, more questionable but on commercial basis more cruel owners. The first impacts of their developed behavior for several contractors in their former works were painful but educative. However Turkish contractors, in time, gained experience in international markets. In a changing environment where high competition pushes the profit rates down for everybody, they further adopt themselves to the changing environment and achieved success with their ability to complete their contracts which requires formal, systematic and organized means of processing. Today Turkish contractors perform a growing success is their ability to satisfactorily deliver the projects or the contracts they undertake and this almost continuous achievement of project delivery is an indicator of that Turkish construction companies, somehow, instinctive or technically but effectively manage their contracts.

3. The Survey

Survey is based on a wide questionnaire, which treat contract management with its many more specific topics. The major factors that shaped the questionnaire design were the need to do a comprehensive survey and contradictory with it the need to keep it as short as possible. To overcome this dilemma it was chosen to use closed end questions. For any question and option presented at the questionnaire the background gathered from various sources like previous academic surveys or studies, and the Turkish

sector analyzed through Turkish Contractors Association (TCA) publications to correlate these sources with their reflections in current Turkish contracting sector. The resulted questionnaire, which was total of 11 pages, was consist of a cover page, which introduces the scope of study, and 5 sections of questions; company profiles, contract management, company contract management organization, claims, and disputes and resolutions. The required time to complete the questionnaire was 35 minutes.

As the survey method rather than resorting to hundreds of companies via mails and trusting fate for kindness of respondents it was decided to chose the right and representative small number of companies and resort them with references for face to face interviews. By doing so three major advantages achieved; first the responses on determined sample was ensured, second the study did not limited with the survey and everything that the respondents would like to share gathered, and finally it was ensured that the respondent has understood the purpose of the research and the questions. In order to decide the sample companies a detailed research done and over 300 firms searched through the World Wide Web and websites for over 200 firms visited. As a result of this detailed research, total 63 companies were considered to be able to represent the sector and chosen to be targets. 22 of these companies were listed in Engineering News records The Top 225 International Contractors lists and 58 of them are TCA members. It should be noted that around 70% of all domestic and 90% of all international works of Turkish contractors are executed by members of TCA, who are less than 150 companies (www.tmb.org.tr).

The interviews lasted for 4 months and 51 of the 63 target companies participated to the survey. The great majority of these companies are active in construction sector for more than 20 years with an average of 32.6 years and the majority has less than 30 years international experience with an 18.2 years average. Respondents described 30 companies as large and 15 companies as middle-large firms. Among 51 contributing companies 22 were represented at top management level, 25 were represented at middle management level and 4 were represented by contract managers or other positions. Even though the required time to complete the questionnaire was only 35 minutes, only 5 of them took less than 1 hour and some interviews lasted for more than 3 hours. The reason for these long interviews mostly lasted 1 to 2 hours was the willingness of contributors to share their precious experience in addition to responding the survey questions. Gathered raw data, finally converted to information by means of statistics software, applications, and techniques.

4. Findings and Discussions

4.1 Contract Management Approach

The survey results revealed that Turkish contractors consider contract management to be significant for success at international markets, as their experience in international markets increases. Turkish contractors are also well aware of the need for a continuous contract management application even though this rate cannot be achieved in current application. Among its 3 functions the relationship management function of the contract management is the function that most weight is given by firms in current application. On the contrary the least weight is given to the administration of the contract function. However as the companies consider activities of the contract administration function as key factors for contract management, it can be claimed that this is a reflection of high awareness and the willingness to fill the gaps between the weights given to the functions.

4.2 Factors Effecting Behavior

The contract management behavior of Turkish contractors most impacted by risk and complexity of the project, and three owner related factors; country of the project or country of the owner, relations with the owner, and type of the owner. These factors lead contractors to change their behaviors, and emphasis on application of contract management. Even though the country of the owner does not lead to a significant difference in behavior for private owners, for public owners the country changes the contractors'

behaviors significantly. Contractors give more emphasis on contract management while they are working for owners from EU countries, USA and other countries with tight laws and regulations. One interesting result is that while the contractors are working for owners from Turkey they give little emphasis to contract management. From this perspective Turkey is one of the countries that least rated. This most probably is due to a trauma, which is originated from their former experiences in Turkey that they were used to work for Turkish public owners who are traditionally decisive and unquestionable.

4.3 Key Factors For Success

When the key factors for success or in other words the contract management strategies are concerned, contractors mostly value the actions taken during the regular contract process. Following pre-tender and pre-contract processes rated. These three processes are called to be processes that impact the whole success of the project. Claim and dispute processes however considered to be significant only when potential losses are of issue. According to results companies employing contract managers at project sites consider claim process to be significant for the success of the project. The reason for this finding might be that as these companies have more contractual control on construction progress they feel more comfortable in claim process and manage claims more effectively.

4.3.1 Regular contract process

Among regular contract process strategies four activities of contract administration function rated as the most important key factors for success. As previously noted although the least weight in current application is given to the administration of the contract function, this result is a reflection of high awareness of its importance and the willingness to fill the gaps between the weights given to the functions. These four activities rated most are; instant recording of changes, appropriate and on time data gathering together with an efficient documentation and record system, recording any kind of communication, and continuous contract administration based on knowledge to the contract. This result also uncovers the emphasis given to the importance of documentation and record keeping.

4.3.2 Pre-tender process

Among pre-tender process strategies complete and comprehensive examination of tender documents and determination of potential risks rated to be more important strategies. However although it was ranked first, most contractors confessed that they are not able to evaluate the tender documents satisfactorily. The reason for this circumstance is given as the workloads of the tendering departments. As a result of this situation the tender departments mostly focus on technical and commercial documents leaving administrative ones behind.

4.3.3 Pre-contract process

For pre-contract process, ensuring the clarity of the contract is rated as the most important strategy for success. Although it is almost impossible to negotiate contract terms for public projects this activity is rated to the second rank.

4.3.4 Claim process

For claim process the respondents were presented elements of a formal claim process framework together with some other activities. All activities required for a systematic claim process rated more than other activities. This shows that Turkish contractors are well aware of importance of chasing their money in an environment where profits rates are declining every day. These elements of the framework are; identification of the claim, notification of the claim, examination of the claim, documentation of the claim, presentation of the claim and negotiation of the claim. The notification of the claim, duration of which is generally limited by the contract, naturally rated as the most important activity of the claim process. Moreover, excluding the negotiation of the claim, all other elements of the claim process have strong relations, which means that rather than evaluating individually the contractors consider these

activities as a pack together. The negotiation, which different that other activities, is dependent on talents of the negotiator rather than techniques and regarded separately most probably due to its nature.

4.3.5 Dispute process

In case of disputes contractors mostly concerned with the speed of the resolution, this is followed by the manageability of the resolution. The bindingness of the resolution is the third key factor in dispute process. This indicates that rather than non-binding alternative dispute resolution methods contractors prefer arbitration and litigation. The manageability of the resolution is also a factor in this preference. Contractors do not prefer these methods because as well as methods are not binding contractors also are not familiar with them. When arbitration and litigation are considered, since speed of the resolution is voted as the most important strategy, it can be argued that arbitration is more desired than the litigation. As a matter of fact, at the last part of the study, it is found that arbitration is the most consulted resolution method following the negotiation.

4.4 Contract Management Profiles

It was found that Turkish contractors, with a great majority assign contract management task to either individuals or groups at both corporate and project management levels. This means that the relevant personnel clearly requested to conduct contract management functions. However these personnel not necessarily employed for this task. Several companies assign this task to personnel already employed with other tasks. The groups listed in the project organization charts were also investigated for their contributions to the contract management processes and decisions. Not surprisingly, the contract management activities are mostly carried out at the corporate level before the contract and at project level after this point. The biggest responsibility regarding the contract management, especially for critical decisions, rather than contract managers is still at project managers and top management of the company. The survey revealed that the international experience of company and existence of contract administration department both have an influence on participation of different company or project groups to different contract management processes and decisions.

4.5 Claim Issues

When claim issues are investigated for their severity, as a product of occurrence and conflicting frequencies, it was found that the most severe claim issues are change requests, payment failures, and contractual failures of the owners. The change requests are not at the heart of the conflict but the owners' denial of consequences of changes is. It was found that the weight given to the contract administration function of contract management and employing contract managers at site has an influence in reduction of claim issues regarding contractors' procurement failures. Considering that numerous parties are involved in procurement stage and it requires vast amount of documentation such a relation is not surprising. The contractors, those rated factors caused by owners' awkward and slow organizations such as contractual, administrative, and procurement failures, are found to be similar. Knowing that such organizations are mostly public organizations it was mentioned that these contractors might be those who works for public owners. However because the contractors were not asked for their owner types such a comment could not be proved.

4.6 Conflict and Dispute Resolutions

Turkish contractors with a great majority believe that contract management is effective in reducing the numbers of conflicts and disputes. Contractors very often employ negotiation to solve their disputes and mostly consider themselves as successful in negotiation for time extensions. In resolutions with negotiations for cost claims, they also consider themselves as successful with a decreasing rate. They rarely apply to arbitration and litigation, and almost never apply alternative dispute resolution methods.

5. Conclusions

The adversarial and competitive environment of construction sector, together with increasing sophistication of projects and declining profit rates, force construction companies to review and change their corporate and project management habits. The costs and discussion of many issues and matters, which perhaps were negligible years ago, are a matter of survival in today's construction business. Similarly many management theories and techniques, which perhaps were only defining the difference between success and outstanding success, are key requirements today that separate the success from failure. A successive contract management is one of such techniques that evolved from the changing business conditions and getting more significant everyday. Contract management, today, can be the stand-alone indicator for the success or failure of a project.

Turkish construction sector, which competes at international markets for over 40 years, in order to be able to stand and compete in these markets for future should continuously improve itself by following the changing market conditions, tracking for developments, adopting to new business trends and applying all relevant business techniques. The strong positions of Turkish contractors today proves that up to now they instinctive or technically but effectively accomplished in adopting to changing conditions. This also can be claimed for contract management, which is one such major issue that needs adoption for business success. However any instinctive achievement that seems to be working today would not necessarily promise anything for future. Therefore this investigation on contract management behavior of Turkish contractors was held to examine whether their ability to complete undertaken contracts based on systematic management of them.

The results can be called as promising. One of the major findings is the high awareness of the respondents. Respondents for most of the cases illustrated their responses with previous experiences of their firms and mentioned lessons learned and current actions to prevent similar experiences. Respondents moreover frequently compare their current practices with the best practice cases and did never abstain to confess the shortfall of their approaches. Considering awareness as a driving factor for improvement it can be estimated that in near future Turkish contractors will be managing their contracts in more efficient, organized and systematic ways than they do today.

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