Abstract:

Construction contracts document the way risks are distributed between contracting parties such as the client, contractor, and subcontractor. They are typically written in traditional legal language. Research was done to establish if construction contracts could be written in modern plain language resulting in a ‘lean’ contract without losing end-user’s intent. A lean contract uses minimal number of words and adopts a structure and writing style that is consistent with modern drafting style guides.

The research method used was a combination of document content analysis and action research with in-depth collaboration between the researcher and end-users. Two contrasting cases on writing contracts were involved. In the first case a 40,000-word design and build contract was re-written into a 29,000-word leaner plain English contract. It was restructured more logically with similar clauses grouped together under time, financial, and quality obligations. The author of the original contract and an industry committee validated and confirmed the revised contract had preserved the core concepts. In the second case a new renovation and small projects contract was written afresh based on an industry policy committee’s concept outline. Following iterative reviews, the committee confirmed the final 4,800-word plain English contract fulfilled their requirements and end-user needs. The Plain English Commission, UK, subsequently accredited the contract with its ‘Clear English Standard’. The Construction Industry Development Board Malaysia will publish this contract in December 2014.

End-user validations in both cases helped draw the conclusion that by adopting a modern legal drafting structure and style, construction contracts for any project type can be leaner without losing end-user intent – whether writing a new contract or re-writing an existing contract. The finding could lead to other traditionally styled contracts to be re-written to make them leaner. Lean construction contracts serve the needs of regular users and occasional users like dispute resolvers better.

Keywords:

Construction contracts, contract law, lean contracts, modern legal drafting, plain language