

## **JONATHAN SMITH**

### **PRINCIPAL**

#### **Qualifications**

- ▶ Bachelor of Applied Science (QIT) 1983
- ▶ Bachelor of Business (Griffith) 1996
- ▶ Professional Certificate in Arbitration (Adelaide) 2005
- ▶ Graded Arbitrator 2006
- ▶ Certificate in Adjudication 2004
- ▶ Registered Adjudicator under the Building & Construction Industry Payments Act (Qld) 2004
- ▶ Qualified Adjudicator under the Building & Construction Industry Security of Payment Act (SA) 2009
- ▶ Certificate in Probity Services (Procurement) 2010



#### **Membership**



Director and Fellow of the Institute of Arbitrators and Mediators Australia.



Member of the Dispute Resolution Board Foundation.

#### **Experience**

Jonathan is a Principal of Flagstaff Consulting Group Pty Ltd, which has delivered high value added services to the Infrastructure Industry for over 10 years.

Jonathan has 33 years' experience in Engineering, Surveying, Civil Construction, Mining, Business and Local Government Administration. He has been involved in procurement, contract development and redesign, arbitrating and adjudicating construction, mining and building contractual disputes, reporting on the commerciality of proposed contract arrangements and the outcome of completed contracts, project controls, management, supervision and estimating of civil

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construction work and in local government administration particularly in procurement of construction projects, goods and services.

Much of Jonathan's consulting work is in the area of data mining for; and then redesigning and scoping existing construction and procurement contracts so that they reflect the bargain that the two party's entered into or want to move toward and are administrable; and in the development of standard contract suites for Principals, Principal Contractors and Consulting firms.

As a consultant Jonathan practices in bid and procurement reviews, commercial and contractual advice, claims advice including cost control on existing contracts, contract development, probity advice and audit, claims preparation and responses, adjudication applications and responses and in the arbitration of commercial contract disputes. He is available for dispute resolution services (all manners of ADR) to help finalise projects.

During his short time in local government, Jonathan was chairman of the Regional Construction & Maintenance group charged with seeking collaborative construction and maintenance solutions between the nineteen councils in south-east Queensland. He also led the AT Kearney review team charged with reducing the cost of the supply of Construction Goods and Services to Brisbane City Council for which he received the Lord Mayors Award for Excellence.

Some recent examples of projects involving Jonathan's expertise include:

#### **Mining and Resources**

▶ **Millmerran Power Partners / Intergen – Commodore Mine.**

Complete procurement process from market analysis through to contract development and award of mining contract for the Commodore mine attached to the Millmerran Power Station.

▶ **Wiggins Island Coal Terminal.**

Review of Initial Terminal Works Plan to ensure compliance with the Terminal Master Plan and approvals for the Gladstone Port Authority and the State Treasury through the Wiggins Island Coal Export Terminal (WICET).

▶ **Review of Operations of Service Contracts, Morobe Mining Joint Venture, PNG**

**(Site Role FIFO)**

Undertake detailed review of controls on existing service contracts and implement those controls within the contractual, operational and corporate framework of the joint venture partners, Newcrest Mining and Harmony Gold. Interview and workshop new MARC, Camp and Construction Contracts.

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▶ **Mine Flood Rehabilitation Project, Ensham Resources. (Site Role FIFO)**

Project Controls, Preparation of the Project Delivery Plan, including Scope, Budget, Schedules, Specifications, Organisation and Procurement Plan. Develop procurement documentation.

▶ **Re-draft, Present and Negotiate State Wide Exploration Drilling Contracts, Xstrata Coal.**

Review existing contract documents and model to existing operations and desired operational outcomes. Take or Pay contract with Pain / Gain productivity bonus scheme.

#### **Infrastructure**

▶ **Dalrymple Bay Coal Terminal 7X Expansion, Queensland Competition Authority.**

Review and monitoring of; scope, project delivery processes, management of project; form of contracts, management of contracts including variations, for the regulator (\$1.2B) on complex rail, materials handling, onshore and offshore port facilities.

#### **Contractual Advice**

▶ **Pensar Civil BCIPA** Prepare Adjudication response to successfully ward off sub-contractors latent condition BCIPA claim.

▶ **Badge Constructions / Evans Harch.** Review of contract documentation for \$50M Contract and BCIPA responses through ADRS Pty Ltd.

▶ **Haald Consulting Engineers** – Develop amended special conditions and amendments for AS4122 consulting agreements

▶ **Fugen Contractors** – BCIPA Advice

▶ **Gladstone Fitzroy Pipeline, Gladstone Area Water Board.** Review of contract documentation for ECI contract.

▶ **Ensham Mine Prestrip Contract, Ensham Mining.** Review of existing mining contract, and new contract.

▶ **Pinkenbah Malting Plant, Built Environs Pty Ltd.** Provision of BCIPA advice on claim assessment procedures and contract risk.

▶ **Morobe Mining Joint Venture, PNG** Provision of advice on contract claims.

#### **Training**

▶ **Lecturing and Tutoring – Queensland University of Technology – Estimating Course – Engineering School** Present lectures in the estimating course in particular the effect of contract conditions on estimates.

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- ▶ **Advanced Construction & Mining Contract Negotiation and Strategic Procurement Techniques, Johannesburg South Africa 2012.** Developed and presented a three day workshop to South African, Mozambique and Botswanan based Mining Executives on methods of extracting additional value from their procurement activities utilising needs analysis to execution strategic negotiation techniques. CPD accredited by the Engineering Council of South Africa, South Africa's peak Engineering Registration body. He received a 97% rating from participants on knowledge of his subject.

#### **Dispute Resolution - Arbitration**

- ▶ Jonathan has sat as Arbitrator on a number of confidential commercial contract disputes involving both technical construction issues and contract term disputes.

#### **Dispute Resolution - Adjudication**

- ▶ Jonathan is a Senior Adjudicator with the Institute of Arbitrators and Mediators and currently takes part in training prospective Adjudicators in Qld and S.A. in the Certificate in Adjudication course which is a prerequisite to becoming an Adjudicator in those states.

#### **Selected Decisions (Approximately 60 completed to date)**

(Qld – decisions are available at [www.bcipa.qld.gov.au](http://www.bcipa.qld.gov.au) - S.A. decisions are not published)

- ▶ McNab Constructions v Lambhill
- ▶ Jacktoi v Karimbla Construction Services
- ▶ Service Stream v Ericsson
- ▶ Thomas & Coffey v Commonwealth of Australia
- ▶ Neumann Contractors Pty Ltd v Traspunt No.5 Pty Ltd
- ▶ Richard Kirk Architect v the ABC (Upheld in Qld Supreme Court)
- ▶ Persal v BMA Coal
- ▶ Kenny Constructions v York Civil
- ▶ Winlina v Silver Sands
- ▶ Cardno v McConnell Dowell

#### **Prior to Flagstaff...**

##### **Brisbane City Council - CityWorks - 2002 – 2006**

- ▶ Project leader for the procurement of, contract development for and negotiation of targeted purchasing contracts for construction materials and services under the AT Kearney review of Brisbane City Council.
- ▶ Negotiating the tendering for, and letting of high value and high volume construction materials and services contracts, panels of providers and preferred supplier agreements.
- ▶ Managing a Local Government contracts department including acting as principal's representative, overseeing the work of contract superintendents and contract administration

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staff. Development of operational policies for both contracts and bidding, to comply with Council policies, regulations and legislation.

- ▶ Developing and implementing administrative cost control strategies and providing detailed assessments of large volume purchase contracts and on civil construction contracts let including revetment works, roadworks, bridge works, drainage, water and sewer construction.
- ▶ Negotiating the tendering for, and letting of construction contracts including the management of variations and negotiation of outcomes where necessary on complex urban and central city infrastructure.
- ▶ Developing and implementing protocols for negotiation of contracts within government probity guidelines.
- ▶ External Civil Works project and bid risk analysis.
- ▶ Chairman Bid & Tender Review Boards Brisbane CityWorks.
- ▶ Chairman of the Regional Construction & Maintenance group of the nineteen councils in south-east Queensland.

#### **CB Constructions Pty Ltd, Gold Coast - 1998 - 2002**

- ▶ Estimating civil construction works in the areas of infrastructure, Main Roads projects and subdivisional, bridge, pipe and earthworks.

#### **Miller Wilson Civil Contractors, Gold Coast - 1992 - 1998**

- ▶ General Administration, Contract Administration, Cost Control Systems and Reporting, Contract Management, Estimating and Site Supervision. Was responsible for the whole of the administration of the company, a small Civil Construction and Development Company.
- ▶ When the directors were absent was responsible for the whole of the operations.

#### **South East Civil Pty Ltd, Gold Coast - 1988 - 1991**

- ▶ Site Surveyor, Estimating, Site Supervision, Contract Management.

#### **JF+P Consulting Surveyors, Brisbane - 1986 - 1987**

- ▶ Was solely responsible for a number of large residential development sites for the day to day development surveys.
- ▶ Expo 88 Russian and Swiss Pavilions, Pacific Lagoon Bridge and structures and Riverside Boardwalk.

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**University of Central Queensland - 1983**

- ▶ Sole lecturer in Surveying in the School of Engineering.

**Bovis Civil Engineering, London, UK - 1981**

- ▶ Was sole surveyor for the construction of a 140mø underground concrete reservoir in Oxley's Wood near Greenwich, South East London.