

Negotiating Tenders for Building Contracts in the Republic of South Africa

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This article has been written at the suggestion of the now Immediate Past President, Mr. Wilkins, whom I was privileged to meet during his recent visit to South Africa.

Important facets of the work of the private quantity surveyor are to advise the client and architect on the most advantageous tendering procedures and contractual arrangements to be employed in respect of proposed building projects, together with the preparation of the documents required for obtaining tenders and the administration of the suggested arrangements for the Contract.

Broadly speaking, there are two methods by which building contracts in South Africa are arranged, viz. by means of selection through competitive tendering or on the basis of negotiation with a single contractor, selected by the client and/or his agents, according to ability and reputation. Should these negotiations prove unsuccessful, they are terminated and recommenced with a different contractor.

The various methods by which building contracts are negotiated in the Republic are described, together with a brief assessment of the relative advantages or disadvantages and the extent to which a quantity surveyor is involved in the financial control of each type of Contract, on behalf of the client.

"Lump Sum" Contracts, or Contracts based on Specification and Drawings

No bills of quantities are prepared, therefore the contractor works out his own quantities or estimates for the building works in order to calculate his tender figure. The Master Builders' Associations throughout South Africa, according to their Tendering Rules, limit this type of contract on a competitive basis, to projects up to R50000,00 (£30,303) in value. This rule does not apply to dwelling houses. However, depending on special circumstances, the Master Builders' Associations may approve deviations from this rule.

In small country towns, where the contractors have no experience of bills of quantities, this method works reasonably well.

The disadvantages of this method are that, in the absence of accurately prepared "quantities", there is no common basis for tendering and the quantities measured or estimates prepared by each individual contractor may vary greatly amongst the different contractors; many misinterpretations of the tender documents occur; any variations to the contract are difficult to evaluate as no

details of rates, costs, etc. are available; inclusions and exclusions are often difficult to establish, making financial control almost impossible. Due to uncertainties and the safety factors built in at the time of tendering, the contractor's tender figure may actually be higher than the client's total financial outlay if bills of quantities were prepared, i.e. a tender figure based on bills of quantities *plus* the professional quantity surveyor's fee may eventually be less than the contractor's "lump sum" price.

Sometimes this method is claimed to save time because no bills of quantities need be prepared, thereby allowing the client to enjoy a quicker return on his investment, but experience has shown that the information contained in the bills removes the responsibility on the part of the contractor to establish the requirements of the works and helps to solve many problems connected with financial control immediately these problems arise, thus avoiding delays during the execution of the contract. The services of a professional quantity surveyor are not employed in this type of contract, although in many instances, he is engaged to resolve the disputes which are inherent in this type of contract.

Contracts based on Cost, plus a Percentage

In this instance, "cost" implies the sum of materials costs (less all discounts), labour costs, site establishment charges, direct construction costs (e.g. plant, transport, temporary materials, services, etc.) and sales tax as it is applicable in the Republic of South Africa. The "percentage" includes the profit and certain overhead and administrative costs as required by the contractor. The contractor's books must be checked in order to verify the various charges which make up the "cost" but the "percentage" mark up, which is based on the "cost" total, is negotiated. The disadvantages of this method are the difficulties which are experienced in estimating the final cost of the proposed scheme in advance, the definition of "cost", the exercising of cost control and the control of production, utilisation of labour and the control of materials, which may well be invoiced to the scheme, actually delivered to the site and then later removed for use in another project (some architects and clients demand a second guarantee to confirm that the materials are, in fact, used for the particular project to which they have been invoiced); there is very little incentive for the contractor to keep costs low when no competition exists; difficulties arise in attempting to

establish the contractor's productive utilisation of labour and purchasing of materials from the most competitive sources.

Generally, where time is of extreme importance, this method can be used on a negotiated basis. In the same vein, when the full extent of the building work cannot be assessed prior to the commencement of the contract, e.g. in alteration work or where the lack of sufficient information precludes the preparation of bills of quantities or even schedules of possible "building" items from which a schedule of rates could be prepared, this approach has proved reasonably successful, provided that the contractor is of excellent repute and that there is implicit trust between client and contractor. The services of a professional quantity surveyor should be employed to negotiate the form of contract and to establish the final cost.

Contracts based on Cost, plus a Fixed Fee

This type of contract is similar to the latter, except that instead of a percentage mark-up, the contractor is paid a fixed fee for executing the building work. Difficulty is usually experienced in agreeing on the value of this fixed fee.

Target Figure Contracts

The client, together with his professional consultants, decides on a net target figure (or net final cost) based on labour and material costs, *before* approaching a contractor, who will then be informed of this predetermined cost limit, the basis on which it has been established and the constructional methods which have been envisaged. The contractor is invited to submit his fixed fee amount (or fixed percentage mark-up) which is intended to cover profit and administration costs, etc. If the final cost of the labour and material for the building works exceeds the net target figure, the contractor himself must bear this extra cost or he may be required to pay a predetermined fine (penalty). However, if the final cost of the building works is less than the original net target figure, the contractor is paid a predetermined bonus, which may be a percentage of the "savings". It is of the utmost importance that the basis on which these penalties and bonuses are to be calculated is established *prior* to the commencement of the building work.

The greatest problem encountered in this method is the establishing of the net target figure - the time spent on this aspect could be longer than that needed to prepare accurate bills of quantities. Further difficulties are caused by variations to the building works, which will obviously result in re-adjustment of the original cost limit, during construction. Employment of a professional quantity surveyor will be on the same basis as for the "cost plus" method.

Once again, it is difficult to estimate the final cost of the project at an early stage, there is no competitive element and accurate pricing without quantities is difficult for the contractor because he can only roughly assess the extent of possible bulk-buying, resulting in more advantageous discounts, etc. or other similar possibilities which will influence the build-up of his rates.

Although this method is claimed to take less time to reach tender stage than the preparation of accurate bills of quantities, this is not always true, especially in the case of the post-contract work, when the time spent on

the site during the remeasurement of the building works as executed, is taken into consideration. A professional quantity surveyor prepares the schedule, measures up as the work proceeds and negotiates the final cost, including the costs of all items which were not included in the original schedule.

Contracts based on Provisional Bills of Quantities

The bills are prepared on the basis of approximate measurement, which can sometimes be done reasonably quickly. However, care should be taken to include all the required items of building work. The contractors are invited to tender on these approximate bills of quantities, the building work is later remeasured as it progresses on the site and the costs are recalculated accurately from the exact quantities, using the original rates of the successful tenderer.

The value of this method depends on the balance achieved between accuracy and time - the more approximate the measurement, the more time saved but the less accurate the tender figure!

A professional quantity surveyor prepares these provisional bills, later remeasures the building work, recalculates the quantities and prices them out again, using the contractor's original rates to arrive at the final cost.

Before accurate bills of quantities are discussed, just a word about combinations of the foregoing six methods of negotiating tenders. Quite feasibly, a schedule of rates could be used in conjunction with the target figure method. Alternatively, provisional bills of quantities could be prepared for use with the target figure method. Whatever method or combination of methods is employed, when there is no competition, there is little incentive to keep costs as low as possible. As far as other approaches to negotiated contracts are concerned, the employment of the package deal (design - and - construct) and turn-key systems may equally involve any of the foregoing types of arrangements.

Contracts with accurate Bills of Quantities

All the items of labour and material that will comprise the completed building project, are accurately measured. This preparation of the bills of quantities takes time, but results in the following advantages:-

The bills provide a common basis for tendering, under optimum competitive conditions.

Excellent financial control of project costs can be exercised.

The client is aware of the total cost of the proposed scheme.

A basis is provided on which the costs of all variations to the contract can be calculated and the detailed information which is required for the preparation of the final account is immediately to hand.

The bills provide the information necessary for calculating the values of the monthly progress-payments to the contractor.

The bills can be used for building costs research work, building costs analysis, etc.

The professional quantity surveyor is able to undertake complete financial control of the building project, executed under this type of contract.

In conclusion, I trust that these comparisons will have been of interest to Institute Members.