

An Appraisal of the 1980 Edition of the JCT Standard Form of Building Contract

By P. R. Hibberd, ARICS, ACI Arb, Senior Lecturer, Department of Surveying, Bristol Polytechnic

Generally

In my previous article I referred to those who were awaiting not only a major revision but a short succinct contract improving upon its predecessor. By now everyone will be aware that it is certainly not short, and the clauses it contains are not succinct. Opinions of the new form are already in abundance, some of which are no doubt purely based upon the comparative bulk of the documents. Others are given as a consequence of man's reaction to change, especially so if he is convinced it is change for changes sake, and a few which result from due consideration. Only the process of time will enlighten us to whether the 1980 JCT is an improvement but in the meantime there are a number of issues that will be given a great deal of consideration and some will be referred to later.

If one is unfamiliar with what is generally accepted as good practice (admittedly what this gives rise to debate) and has little aptitude for handling contract clauses, then inevitably a formidable task is imminent but on the other hand for those who adopt many of the current practices and do have such an aptitude the problem is significantly reduced. Although, in any event it will not be easy.

The Right Approach

These three words were manifestly used elsewhere and many would argue with them in that context but I am convinced that the right approach to the 1980 Forms is to:—

- (i) approach it positively;
- (ii) comfort oneself by locating all the clauses that remain the same;
- (iii) acquaint oneself with the areas of change;
- (iv) analyse the changed areas (completely ignoring anything to do with nomination) and to examine the reasons for the alterations;
- (v) tackle the nomination procedure.

The suggestion to leave the nomination procedure to last is based upon the belief that, as it creates the bulk of the amendments it is better not to get hooked up with its detail, thus preventing one from seeing the other aspects and as a consequence being put into the wrong frame of mind.

The Benefits

Naturally, if a new contract is to obtain general acceptance the changes made must be seen to be an improvement and to the overall benefit of all concerned.

The Employer has secured a number of benefits, for example:—

- (i) traditional fluctuations are now restricted in time in a similar way to fluctuations arising under formula



P. R. Hibberd

price adjustment—no longer does the Employer have to rely upon liquidated and ascertained damages to recoup payments made for fluctuation increases that occur after the contract completion date or extended period;

- (ii) extension to the definition of variation allows greater freedom to change;
- (iii) the additional reason for permitting an extension of time owing to failure of employer to give in due time ingress to or egress from the site—what would have otherwise been a breach of contract unless Clauses 21(2), 23(e) and 24(e) were deviously implemented is now a simple matter of an extension of time, which naturally permits loss and expense to be recovered.

The Contractor has likewise secured certain changes that should be of benefit and include:—

- (i) the extension of traditional fluctuations to include electricity, where specifically stated fuels, together with recovery for site staff and the introduction of the basic list of transport charges.
- (ii) the revised provisions for the valuation of variations;
- (iii) the tightening up of the procedures to be followed by the Architect, for instance, the time span for determining applications for extensions of time and the provision for review.

There are identifiable benefits for both parties, however, the benefit of one party is

usually to the detriment of the other. It is therefore a matter of balance and whether the risk is apportioned accordingly. Ironically it is often the search for the *right* balance that creates many of the problems.

To reflect upon some of the foregoing points may be worthwhile but on the other hand it may only give rise to further problems that should be unsaid. Nevertheless, let us consider fluctuations and the need to freeze recovery at a specified point. This it would seem is not unreasonable but if the applicable date is dependent upon an extension of time (and it generally will be) then is it right that the Architect decides what is a right and proper extension in those areas where he has himself caused the delay. The precise date of extension is fundamental, because, if the event that gives rise to the increased costs arises before that date then fluctuations continue to be recoverable. It would seem that there is likely to be much argument about this and the interpretation offered, in this context.

With regard to the provisions concerning site staff, these seem to be sensible in that they at least narrow the shortfall and the difference between traditional and formula price adjustment. But was the proviso concerning periods of less than two days and aggregation of part days absolutely necessary. It would seem a nit-picking absurdity that has the effect of extending the contract to no real useful purpose. It may restrict recovery but is this the purpose and if it is, then the programming of work related to fluctuations recovery must be seriously considered.

Another issue concerns the extension of time provision for not being able to give in due time ingress or egress from the site. This will no doubt be taken to be synonymous with possession of site but it is quite possible that its interpretation will be extended to cover such matters as obstructions immediately outside the site. If this is so it will change the employer's obligation appreciably as at present the contractor takes upon himself such risks as implied by *Porter v Tottenham UDC* (1915).

Conclusion

The nomination procedure is going to give much trouble, it is complex and full of pitfalls but that was always the case. The 1980 Form may be the last of its kind but that will be as a consequence of changing attitudes to how buildings get built rather than the fault of the JCT. The contract reflects the predominant practices of today but the methods of procuring buildings are continually changing. Maybe the method that requires such a contract is now largely unacceptable and with only a limited life.

Nominated sub-contractors do not seem to have come out of the revised forms too badly, indeed it will be suggested that they are about the only ones to show a net gain, although even that can be disputed. If one asks why nomination exists a not uncommon reply is that because architects wish to reserve certain parts of the work. If this is so they pay a high price for it in the new forms as the extent of their administration has increased appreciably.

I am not going to predict the demise of the 1980 JCT Form as I still live with a much earlier prediction concerning bills of quantities but I will say that nominated sub-contracting as it currently exists will certainly accelerate its obsolescence.

VAT—Cancellation of Registration

In his Budget statement the Chancellor announced increases in the turnover limits above which a person is liable to be registered for VAT. The limits for relief from tax on certain stocks and capital assets, when a person ceases to be liable to be registered, were also increased.

Details of the new limits, effective from 1st June 1980 are given in a revised VAT leaflet "Cancelling your registration" (No. 700/11/80). The leaflet also explains when a registration must or may be cancelled and what the effects of de-registration will be.

Copies of the leaflet are available from any local VAT office.

Construction Industry and Micro Computers—Major Training Programme Announced by

The Construction Industry Computing Association; and The Building Business Unit

A major and sustained educational programme, to speed the introduction of micro-computers to the Construction Industry, is announced by the Construction Industry Computing Association (CICA) in conjunction with the Building Business Unit (BBU).

Commencing in November 1980 with initial programmes of 3-day Workshops covering the main sectors of the industry: architects, quantity surveyors, engineers, contractors and suppliers: it will run for at least three years, or longer as demand requires. The target is to train up to 1,000 professional and management staff in the initial series of Workshops.

The Department of Industry Microprocessor Application Project have made a substantial grant towards the cost of the series.

The Workshops will be highly practical in two senses. The three days will include programming exercises and the use of programs on microcomputers. Also, the programs chosen will be specifically related to the types of design and construction problems and applications, which delegates encounter in their own offices and companies.

An unusual feature of the Workshops will be the opportunity for delegates to take the micro-computers used on the courses back to their office for a short period, so that they may demonstrate to their colleagues, or further develop, the techniques they have been learning.

The first Workshop will be for Contractors on 17-19th November 1980, followed by

separate Workshops for Surveyors, Architects, Structural and Civil Engineers, and Building Services Engineers early in 1981. The series will then be repeated at regular intervals throughout 1981, 1982, 1983.

For further details of the Workshops contact: David Cochlin, Director, Building Business Unit, Builder House, 1-3 Pemberton Row, Red Lion Court, Fleet Street, London EC4P 4HL. Tel: 01-353 2300. Telex: 25212 Builda G. CICA: The Construction Industry Computing Association was formed in 1980 from the original Design Office Consortium. Its new title and programme of work reflects the need to establish a reputable, non-profit making body, which will give expert and impartial education and consultancy advice, to all sectors of the construction industry in the field of computer applications. It is supported by the Department of the Environment. The Association (via its predecessor, DOC) has many years of experience in providing advice, information and seminars. Its membership includes some of the largest and best known design, surveying, and contracting organisations in the country, as well as central and local government departments and agencies.

BBU: The Building Business Unit was formed in June 1978 in collaboration with the leading weekly magazine *Building* to supply expert, specialist research in the field of business, to the construction industry. It provides research material and data for *Building*, as well as for the other commercial interests and companies of the Builder Group. Recent major conferences organised by the BBU have included micro-computers and Contel, the Construction Industry's data base on Prestel.



cem

College of Estate Management

WHITEKNIGHTS READING RG6 2AW Tel: (0734) 861101

Civil Engineering Claims, Variations and Contract Procedures

A CALUS residential course 23-25 September 1980, Mansfield Hall, University of Reading

- General introduction to civil engineering contracts at home and abroad
- Principles of estimating and procedure in submitting and reviewing tenders
- Functions, powers and responsibilities of the engineer and his representative, the contractor and his agent, and the sub-contractor
- How claims under the contract should be prepared and presented.
- Principles in costing claims and fixing new rates
- Procedures for reception and settlement of claims
- ICE Clause 66 – procedure for referring disputed claims to the engineer for his formal decision
- Taking a dispute to arbitration
- Effect of the Arbitration Act 1979 on the resolution of disputes under ICE and FIDIC forms of contract

Sponsored by the Institution of Civil Engineers

- This course covers material needed by candidates for the ICE's Endorsement Paper to the Examination of the Chartered Institute of Arbitrators

COURSE CHAIRMAN

Geoffrey F Hawker TD BSc(Eng) CEng
FIStructE MSocIS(France) FICArb
Barrister

COURSE DIRECTOR

Michael T Phipps BSc(Eng) ACGI CEng
MICE FCIArb

SPEAKERS TO INCLUDE:

Charles K Haswell BSc(Eng) CEng
FICE FIStructE

Alan Fieldhouse FIQS FIArb

- For further details write to Pam Gardner, Centre for Advanced Land Use Studies at the address above, or ring ext 66

Fee: £135

CALUS