

The 1980 JCT Design and Build Contract

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Introduction

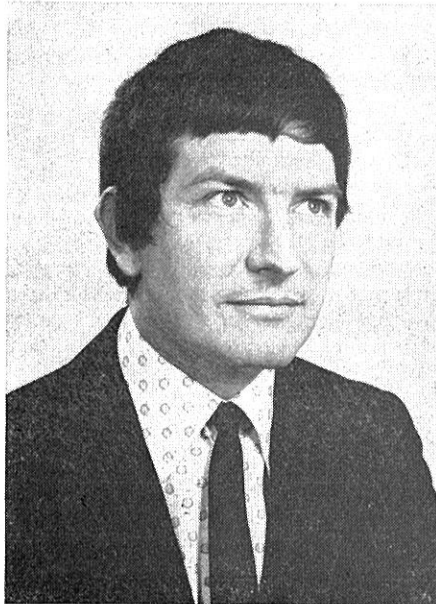
After many months of discussions, references and argument, the Joint Contracts Tribunal finally produced their Design and Build Contract. There was obviously a reluctance in certain quarters to producing such a form, perhaps because of vested interest. This is understandable, but, nevertheless, it is not justifiable. It was also a mistaken belief that if the JCT refrained from producing a Design and Build contract, it would reduce any tendency to follow this procedure as opposed to what others may consider to be traditional methods of letting contracts.

There was in my mind, the feeling that the production of a Design and Build form by the JCT was inevitable. There already existed a number of Design and Build forms of contract and in particular the Form of Contract for use where the Contractor is to Design and Build issued by the NFBTE. These forms of contract were devised to meet a need which over the past decade had shown itself and with the possibility that others would move towards this type of contractual arrangement, the JCT, had to become involved. This involvement was both politically necessary and necessary to overcome the shortcomings or misgivings of the other contracts.

The 1980 Form

The new design and build contract is entitled "The JCT Standard Form with Contractors Design" and is for use where the contractor is required to execute the whole of the design and erection. In addition to this basic form, there is the "Addendum to the Standard Form with Quantities and Contractors' Proposals", which can be modified accordingly if it is required to use the Addendum in conjunction with the Approximate Quantities or Without Quantities Editions of the Standard Form.

The purpose of the Addendum is to provide for the situation where only a portion of the works is left for the contractor to design. The other areas of design will have been produced by or on behalf of the Employer and contract drawings together with specifications and or bills of quantities for the relevant part will be given to the Contractor. If this alternative is used



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in a specific way, it could be likened to the method known as Develop and Construct as distinct from Design and Build. Unfortunately, to pursue this point further, leads one to discuss the various meanings attributed to these procedures. Little benefit is gained from this, other than to establish that Design and Build means different things to different people and in the context of the JCT forms it is taken to have a meaning wider than some would accept.

This new form of contract for use where the contractor is designing the works follows a similar format to the 1980 JCT Standard Form of Building Contract and as such, assists in its comprehension for those who have already started to grapple with these other new forms.

Many of the contract clauses are similar to those of the SFBC 1980 with most clause numbers corresponding directly. The detail of many of these clauses is virtually identical, i.e. Fair Wages, Insurance, Fluctuations, Extension of Time, and with the majority of the other clauses only slightly modified to suit. Therefore, thankfully, one is not confronted with yet another entirely new set of clauses.

The Specific Provisions

However, as the new form attempts to meet a specific type of contractual arrangement, there are obviously going to be new provisions. For, example, Article 4 refers to the employers requirements, e.g. performance specification, site layout drawings (or whatever else the employer wishes to provide) which outlines what the employer wishes to achieve and these requirements are detailed in Appendix 3 to the Conditions. It is intended that subsequent change to such requirements should not be made readily and where the employer does wish to make such a change, he requires the approval of the contractor.

The contract makes no provision for the use of priced bills of quantities or schedule of rates but in order that there is a basis for valuation, it does provide for a Contract Sum Analysis. The form of the Contract Sum Analysis is left to be specified by the employer in his requirements. In addition, the interim payment procedure is different from the SFBC 1980 and how this is to be approached has to be separately and specifically defined.

Notwithstanding, the fact that there are others, two very specific clauses to the Design and Build contract are clauses 2 and 6 and special attention must be paid to the Contractors Design Warranty (clause 2.5.1) and to Planning Permission and Development Control Fees (clause 6.2).

Conclusion

No doubt that Local Authorities and private clients alike are now going to be very much more likely to use the JCT Design and Build Form where they have opted for this method of procuring buildings. The new JCT form will almost certainly usurp the NFBTE Form, which is perhaps sad, in as much as at least it is a relatively short contract. There is a tendency for relatively short contracts to emerge where they are unilaterally prepared and perhaps there is a lesson to be learnt here.

A final thought concerns whether we are prepared to pay the cost (voluminous contracts) of the search for equity created by the use of the words we use, when equity can exist in practice, without the use of such words. In my next article, I will pursue this thought.

Construction Surveyors' Institute and The Faculty of Architects and Surveyors

In a joint statement, the Construction Surveyors' Institute President, Brian K. Green, and the President of the Faculty of Architects and Surveyors, Basil J. Rushton, announced the setting up of a joint organisation aimed at exploring links via federation, which will lead to the ultimate merger of the two bodies.

Both Presidents stressed that whilst there was no strict time limit on the period of federation, they hoped that matters would reach

fruition within two years. During the federation period it is hoped to interest other professional organisations to join in the discussions.

The CSI and FAS Councils were agreed that no action would be taken to merge into one organisation without the whole-hearted support of the respective memberships. It is hoped that the federation period would show members that the natural progression was towards a merger.

The objects initially in federation were to hold joint Council and Committee Meetings,

which would help stimulate better attendances at Branch and other functions, to provide a central administration, and likewise, a joint examinations structure to formulate a standard qualification.

The joint statement was made on the occasion of the CSI's president's Luncheon held at the Tallow Chandlers Livery Hall, London EC4, on Friday, 21st November, 1980, which was attended by the Presidents of kindred institutes and the employer organisations.