

# 'Nomination Under JCT 80 – A Practical Guide'

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K G Charmer joined the Institute in 1965 upon leaving school and commenced his career with William Moss Ltd (General Contractors). He attended the part-time RICS/IQS course at Liverpool Polytechnic.

In 1968 he joined Runcorn Development Corporation as an assistant quantity surveyor and passed the Third Examination to become an Associate in 1972.

In June of that year he joined Warrington Development Corporation as only their third quantity surveyor and has since progressed to his present post as Group Leader, Quantity Surveyor in a section of over 30 quantity surveyors. He is currently a member of one of the Architect's Departments management groups dealing with approximately 50% of the Corporation's Commercial and Industrial projects.

## Introduction

Much has been said about the 1980 edition of the Standard Form of Building Contract. Its creator, the Joint Contracts Tribunal, probably never realised how much controversy would be generated by a form which intended to clarify matters. Simplification might have been an initial thought, but as with any consensus document, the chances of it being just that must have been rather remote.

Of all the activities which JCT 80 has attempted to regularise, none has, perhaps, provoked as much discussion as the conditions relating to the nomination of sub-contractors. Accordingly, this article attempts to explain the practice and procedure relating to this aspect of the contract.

A first glance at the relevant clause, C135, would hardly suggest a rationalised approach. Indeed, it appears to make the situation impossible for a nomination to be implemented prior to, or at the same as the appointment of the Main Contractor. Closer

examination, however, reveals an improvement to the position which created much dispute and litigation under the previous 1963 edition. Notwithstanding the advent of JCT 80, it is suggested that procedures relating to the nomination of sub-contractors have been operating successfully for some years using the 1963 edition.

## Background

In order to appreciate the need for the revised procedures, we must summarise those problems that have existed with nomination generally:-

1. The desire by Architects and Consultants to place responsibility for design with a specialist sub-contractor.
2. Abuse of contractual arrangements by the insertion of prime cost sums in bills of quantities to cover sections of work which have not been properly designed at the pre-contract stage.
3. Many contractors' attitude that nominated sub-contractors are the Architect's responsibility, having been imposed upon them.
4. Many nominated sub-contractors have seen themselves as having a special relationship with the Architect and a special contractual status above that of other sub-contractors.

In an attempt to rationalise the procedure for the use of nominations, the Department of Architecture at Warrington & Runcorn Development Corporation analysed the advantages and disadvantages of nomination on its previous contracts. A working party accepted that on major projects nomination was the best approach, but recognised and then imposed a strict procedure to enable the contract to proceed from a firm financial and contractual base.

This procedure is not unique to the author's practice, but in fact follows the RIBA Plan of Work, the Code of Procedure for Single Stage Selective Tendering (1977) and depends upon the building being fully designed before tender. The procedure is adopted only for major projects containing significantly high levels of services installations.

- A. Consultants appointed at feasibility stage.
- B. Programme set for full design by tender stage (irrespective of the terms of appointment). The procedure does not change, even if detail design by the successful sub-contractor is required.
- C. Bills of quantities are prepared for issue to a select list of tenderers for the sub-contract works.
- D. Tenders are invited for the sub-contract works slightly in advance of the main contract. At this stage tender particulars relevant to the main contract works are known. This is possible only if main

contract preliminaries, special attendance and construction details are known. It is also preferable to evaluate the likely sub-contract programme period related to the main contract.

- E. Tenders are returned shortly after the main contract tenders are issued.
- F. The design team assess the sub-contract tenders and recommend a sub-contract nomination. The Employer inspects his Warranty agreement to ensure it is satisfactory.
- G. Main contract tenderers are notified of the proposed nominations one to two weeks before tender return and instructed to contact, meet and agree with the proposed nominee programme and other requirements and to allow for these nominations in their main contract tenders. The relevant PC sums are inserted into the tender bills.
- H. The returned main contract tenders are assessed in the knowledge that they make total provision for the proposed nominations.
- J. Upon appointment of the Main Contractor, the proposed nominations are confirmed. The Employer concludes his Warranty.
- K. The Main Contractor submits his programme for the project, incorporating the requirements of the nominated and domestic sub-contracts.

In the case of less substantial service installations, the work is included in the main contract bills on the basis of a performance specification against a single item or even measured in full. In either case, the work can be the subject of a nomination or accepted as being domestic sub-contract work.

This overall procedure produces a satisfactory tendering approach for all parties and adapts readily to suit the JCT 80 form.

In analysing the JCT 80 requirements, the main objective is that the Basic Method should always be used in the following circumstances:-

- (i) Where sub-contract design information is required during the pre-contract period.
- (ii) Where the sub-contract performance significantly affects the main contract progress.
- (iii) Where a closely integrated relationship must exist between the Main Contractor and sub-contractor with prior agreement on matters of programme performance and attendance.

## Procedure

The actual procedure, as required under JCT80, is identical for Stages A to D above (1963 edition). At Stage D the specific detailing of form NSC/1 is accomplished.

This entails the completion of some 14 sections by the employer (or the Architect on his behalf) on the form. Although, essentially similar to the requirements of the previous 1963 Form, there is scope to include for further information, as may be necessary.

The sub-contractor must then accept these conditions and complete with the Architect the fluctuations schedule, programme particulars schedule and Form of Tender itself. The Employer/sub-contractor Form of Agreement 1963 is replaced by Agreement NSC/2 which is also issued with the Form of Tender.

The tender completion then proceeds as follows:-

1. The tenderers complete forms and return signed.
2. The Form of Tender for the selected sub-contractor is approved by the Architect and Agreement NSC/2 (Warranty) is completed by the Employer. The sub-contractor's copy is then returned for his retention.
3. The preliminary notice of nomination is issued to the Main Contractor. This should be during the tendering period for the main contract. The major requirements are:-
  - (a) Sufficient time for tendering parties to check details, evaluate programme times and agree any special requirements. This should be two to three weeks prior to return of the main contract tenders.
  - (b) The main contract tenderers must be required to confirm by completion of Form NSC/1 that they have:-
    - (i) examined the preliminary notice of nomination,

- (ii) checked the main details in Schedule 1 of NSC/1, and
- (iii) agreed all other items with the sub-contractor.

- (c) The contractor signs the tender to indicate his acceptance of it and returns it with his tender.

The Architect can then obtain the sub-contractor's signature upon appointment of the Main Contractor and issue the completed formal nomination with the first issue of information on the main contract. The procedure is diagrammatically expressed in Fig. 1.

The procedure stated above, if carefully planned and implemented, produces a satisfactory contract situation for the Employer upon commencement of the main contract offering him and the design team the following advantages:

- (a) The total cost of the project is known upon commencement if all major nominations are handled in this way.
- (b) The contract relationships are clearly established before work on site commences and the Contractor has all reasonable information to enable him to plan and carry out the project successfully.

However, some disadvantages may occur with this procedure:

- (i) The design of mechanical and electrical installations, for example, may not reach the required stage to enable the tender exercise to be completed at such an early stage. Often decisions on design within the building cannot be made early enough for the Services Engineer. This can be overcome, but only with a high level of team work between the

Architect and the Services Engineer and the understanding and desire to achieve the corporate objective.

- (ii) The sub-contractor may complain that he is having to make contractual arrangements with, perhaps, six main contractors who may all have different requirements. This obviously takes careful handling, but if the Architect has taken care to establish a likely programme for the construction of the project, he will have identified the major sub-contracts which will be fairly well fixed within the construction programme. There is a limited degree to which different Main Contractors could programme the construction and, therefore, the range of different requirements will be limited. The nominated sub-contractors' help and co-operation is essential, however, to ensure main contract tenderers are able to complete forms NSC/1 by the tender return date.
- (iii) Main contract tenderers may complain that they have insufficient time to conclude discussions with the Nominated Sub-Contractor. This, however, would not be a valid criticism provided they are given the ten days that the JCT 80 requires prior to return of their tender and signed NSC/1.

As a result of unforeseen circumstances, it may not be possible for main contract tenderers to conclude their arrangements with the Nominated Sub-contractor prior to return of their own tenders. In these circumstances, the design team members would have to pursue the conclusion of these arrangements during the tender assessment period for the main contract.

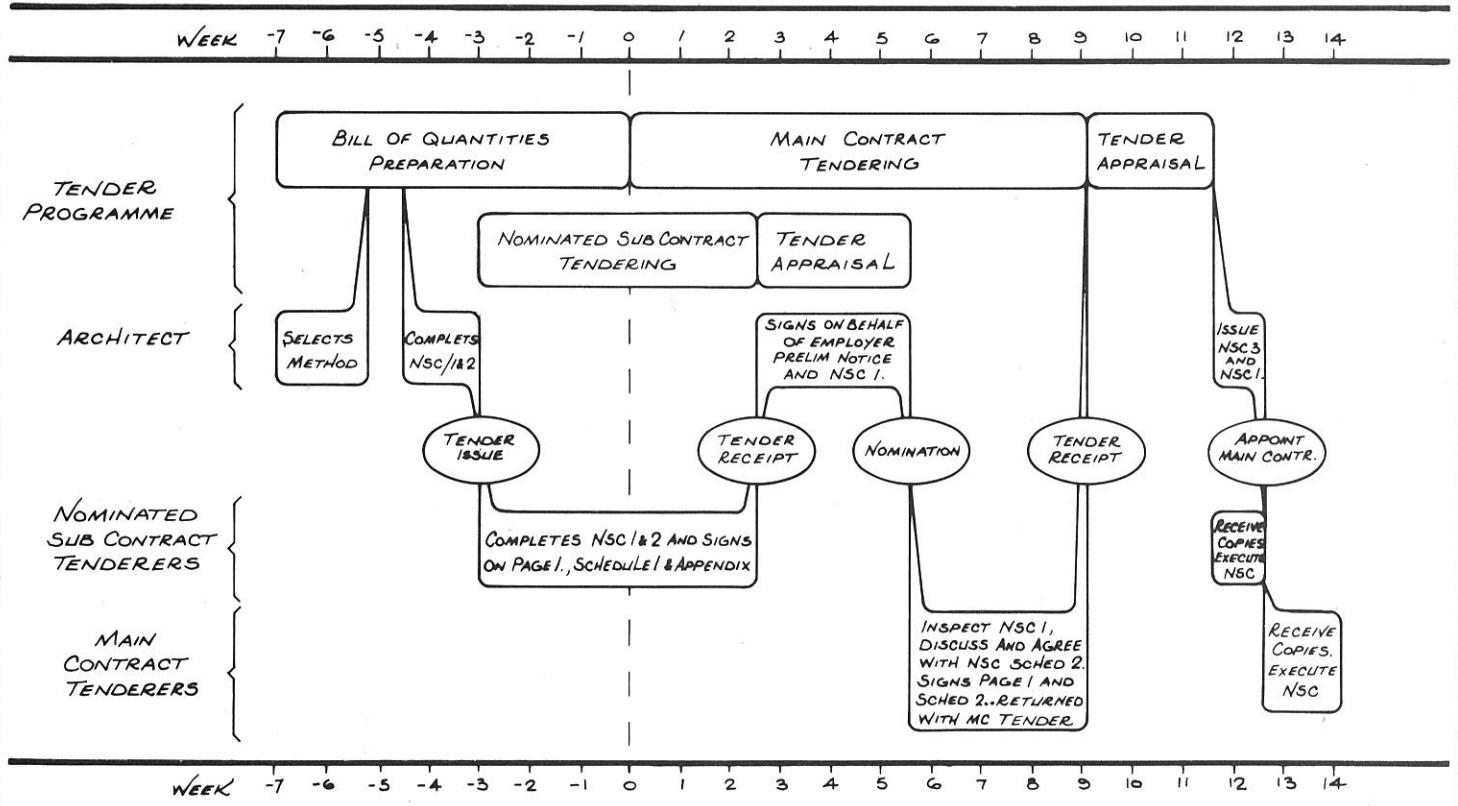


FIG 1: Procedure Programme For The Nomination Of Sub-Contractors Under The JCT 80 Basic Method

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It would obviously be in the interests of the lowest tenderer to conclude matters with the nominee and return the NSC/1 as soon as possible. Failure to do so could affect the design team's advice to the Employer as to which main contract tender should be accepted.

### Conclusion

This article has endeavoured to condense and communicate a procedure which may cover a time scale of twelve months (or longer).

Questions will inevitably arise in many professionals' minds on how, in certain circumstances, the procedure can work. Whilst it may not have been possible to deal with individual requirements, it is hoped that the article may, at least, have provided a useful guide on the subject.

## National Home Enlargement Bureau Launch Bonded Builder Scheme

The National Home Enlargement Bureau launched the Bonded Builder Scheme – an insurance based consumer protection

scheme – at a press conference held at the Royal Institution of Chartered Surveyors in London on Friday, 16th July.

The aim of the scheme is to produce a national register of Bonded Builders, so that house-owners can be protected from the severe effects of a building firm which goes into receivership, liquidation or bankruptcy during the course of a contract.

The scheme which has been given a clean bill of health by the Office of Fair Trading – in that it is not deemed registerable under the Restrictive Trade Practices Act 1976 – has the full support of the Royal Institute of British Architects, the Royal Institution of Chartered Surveyors and the Builders' Merchants Federation.

Advertisements appearing in the house journals of these institutions will urge their members to recruit builders into the scheme.

To become a Bonded Builder and display the new logo, a firm will be thoroughly vetted and must pay a once-only bonding fee of £200, plus the annual subscription of £50. It is mandatory that all Bonded Builders must offer to have their home enlargement contracts made the subject of a 'Contract Completion Guarantee' by the NHEB, although it is optional for house-owners to accept it.

The insurance cost is on a per contract basis at a rate of .75% of the contract price, plus a flat rate administration charge of £10. Provided only that payment accompanies the Contract Completion Guarantee certificate, it is up to the builder how the charge is made. Some members will include the cost as part of the contract, while others may

absorb it as a general overhead. It is thought that very few will ask the client to pay direct.

'We think that most builders will consider the overall cost a small price to pay for a marketing tool which will really help them to win orders', said Bill Eykyn, the NHEB's Executive Director. 'The Office of Fair Trading has highlighted in their recent report that of all the bankruptcies in this country 20% were builders and this will make house-owners much more conscious of a firm's status. The symbol of the Bureau Bonded Builder will become the hall-mark by which house-owners can judge for the first time, an easily identifiable source of soundly based firms which take on residential work and will prove a real boon for house-owners, as well as a business opportunity for builders'.

The NHEB will produce Regional Lists of the Bonded Builder, which will have a wide distribution through architects, chartered surveyors and builders' merchants and, when the scheme becomes operative after 1st October, an explanatory consumer leaflet will be available to help builders with their sales presentation.

The Bureau has liaised closely with the OFT on this consumer protection scheme and feels that it has created a real opportunity for builders to improve their image. Because the scheme has been produced by an 'umbrella' organisation which is made up of all the main institutions concerned, it is, by virtue of that fact alone, one in which both house-owners and builders can have confidence – especially when considering its potential for future development.

# Annual Dinner

to be held at

PLASTERERS HALL, No. 1 LONDON WALL, LONDON EC2

on

FRIDAY, 5th NOVEMBER 1982

Reception by the President Mr. R. S. Clarkson at 7 p.m.

Dinner at 7.30 p.m.

Tickets including wine etc: £35.00