

**Practice Note on the Introduction of
the Standard Form of Domestic Sub-contract
(for specialist works)**

Introduction

This Practice Note is not a contract document. Its purpose is to provide the basis for consistent interpretation of the Special Conditions of Contract and the procedures and to give guidance on when to use the Standard Form of Domestic Sub-contract.

General Guidance

2. The Form does not have to be used for specialist works to be executed in an easily definable part of the Works and where execution does not cause substantial co-ordination problems (e.g. lifts, switch gear). Separate contracts may continue to be used in these circumstances.

3. Where specialist works are to be executed using the Form, thought must be given to suitably extending the main contract tender period to allow the main contract tenderers sufficient time to call tenders for the specialist works.

4. Where the specialist works are complex and require the completion of substantial schedules of equipment, it may not be possible for the tenderers for the specialist works to obtain the necessary information in time for the main contract tenderers to complete their tender documents within their tender period. It is essential therefore, if tendering is not to be aborted because of a technicality, that those putting the tender documents together keep arrangements flexible (e.g. permit the submission of technical information after the award of the contract).

5. To help overcome the problem of lengthy tender periods for specialist works, the Special Conditions of Tender (at Annex 1) are also converted into Special Conditions of Contract (where appropriate).

Special Conditions of Contract

6. Only specialist contractors (SC) on the appropriate Government list(s) may tender for and undertake the specialist works. A Special Condition of Contract requires the Contractor to only enter into sub-contracts with SC's on the said list(s). The Contractor does not have to invite all SC's in any one category.

7. To alleviate the concern of works departments over the reduction in direct communication with SC's in agreeing equipment schedules, a Special Condition of Contract requires the SC's to obtain the approval on the Architect/Engineer for equipment schedules.

8. One major concern expressed by the SC's is their objection to "dutch auctioning" i.e. a second (or further) round of tendering arranged by the Contractor, having looked at the first set of bids, in order to drive down the tender price. A Special Condition of Contract is included which makes "dutch auctioning" a breach of contract. Complaints of "dutch auctioning" shall be investigated and a report made to Head of Department and copied to WB (attention PAS/CCC).

9. Another major concern of the SC's is the right of appeal to Government in case money certified for payment is wrongfully withheld by the Contractor. Clauses 78 and 79 of the GCC are amended to include a checking procedure. Since Government has no right to know the prices included in the sub-contract, which may be different from those in the main contract, the procedure requires -

- (1) The Contractor to make a claim for payment under GCC Clause 78 with the work by any SC separately identified as a sum of money split between work done and materials on site.
- (2) The claim for payment under GCC Clause 78 for the specialist works elements shall be supported by a statement from each SC setting out the total percentage of quantities of work claimed to be done and a list of the materials claimed to be on site.
- (3) GCC Clause 79 payments are certified based on the percentage of work done and the value of materials on site. Each SC is sent a statement, setting out the percentage of work certified as being done and a schedule of materials (not the value) included in the payment certificate. It is suggested that this can be conveniently achieved by amending the SC's statement and returning a photocopy of it. The SC is not told the value included in the certificate because they are not entitled to know the price included in the main contract for the specialist works.

- e.g.
- The Contractor claims payment at the main contract prices of a sum equivalent to 20% of the total value of the specialist's works (plus materials).
 - The SC supports this by a statement claiming that 20% of the work has been done (plus materials).
 - The Engineer/Surveyor values the SC's work done at the equivalent of (say) 18% of the total value of the SC's work as set out in the main contract (plus materials), certifies accordingly and notifies the specialist.

- (4) The Contractor and each SC notify Government when the money has been paid/received.

(5) If money has been withheld by the Contractor, the Engineer/Surveyor must ask why. If not satisfied with the explanation, the Engineer/Surveyor should write to the Contractor stating his dissatisfaction and copy it to the Contractor's confidential report file. No direct payment is made. Such problems are to be resolved by the dispute mechanism in the sub-contract. It is intended that persistently bad payers (i.e. for no good reason) will be disciplined through list management procedures.

10. The Special Condition of Contract for providing a warranty is only needed in special circumstances, particularly where the SC is fixed with some design responsibility (as opposed to the usual selection of materials and equipment).

11. One of the Special Conditions of Contract requires that the standard form of domestic sub-contract must be used. It is recognised that, as with nominated sub-contracts, the parties can make ancillary agreements about which we will know nothing. We are not trying to restrict commercial agreements. We are trying to stop abuse of the process.

12. There is no policy objection to the Contractor and any SC notifying Government that they intend to use a joint-venture approach, rather than the domestic sub-contract one. Joint-venture provides a "higher" contractual relationship between the Contractor and the SC(s) and satisfies the basic policy requirement of a reasonably balanced and practical relationship. We do not need to see the terms of the joint-venture agreement. When a joint-venture is used, payments are made to the main contractor, without the need for checking that payment is passed to the SC joint-venture partner. If the Contractor informs us that a joint-venture agreement has been agreed for a specified part of the works otherwise subject to the mandatory use of the form, we only need conformation from the SC.