The "QS" function in Europe

An Introduction to Construction Contracting Practices in the Countries of the European Economic Community

Many papers have been given and technical articles written on the contractual practices in this or that country of the Common Market. Most of them have given information useful for a q.s. thinking of practising in one of those countries and in fact it was considered by some that our profession had so much to offer that the UK's accession to the Treaty of Rome would lead to a large number of British q.s's starting to practise on the Continent and that the information would give them them a necessary introduction.

Actually, a comparatively small number of UK quantity surveyors have gone to practise on the Continent. The profession has a lot to offer, but all of its functions are already carried out by assistants in architects', engineers' and contractors' offices and for cost planning even by financial institutions. The independent authority of the quantity surveyor with its foundation in our forms of contract could be our major contribution but, since Continental methods are not geared to such a concept and especially not to yet another professional fee, it will take a very long time indeed before we can make a significant contribution.

Those UK quantity surveyors who work on the Continent are bilingual in the technical as well as the domestic sense: they work as advisers to property companies or as technical assistants in contractors' offices. They do not themselves negotiate contracts, settle final accounts or prepare tender bills of quantities. A significant development, however, is the employment of British quantity surveyors by Continental contractors on international contracts where the Main Contract system is in use, and it is reasonable to suppose that any move away from the present separate trades system, referred to later in this paper, will lead to further opportunities.

The continental procedures in business transactions, and the methods that are the consequences of those procedures have been influenced by the historic background, the national characteristics, and the lack of traditional professional institutions as differentiated from academic institutions.

Perhaps the principal historic influence was Roman Law with the Napoleonic and other legal codes derived subsequently. One effect of this is that legal decisions are not binding as precedents in continental courts although they may be cited in legal argument. Another fundamental difference is that whereas in the UK a promise or contract not under seal is unenforceable unless supported by consideration (usually an undertaking to pay) this does not apply on the Continent. This means that the implied obligation to pay which sometimes figures strongly in our legal cases does not have the same force on the Continent where payment or other form of consideration is not an essential component of a contract.

On the Continent the law in each particular case is determined according to the appropriate legal code. These codes are lengthy and complicated tomes and those who in their business role have to take account of legal considerations commonly have the relevant legal codes close at hand.

An example of the matters that may be covered by legal code books is the regulations for public contracts in France. Whereas in the UK the DoE and other public authorities draw up their own regulations, these are covered in France by the "Code des Marchés Publics". This document contains about 300 articles on 200 pages and includes, for instance, Article 255 giving precise definition of the minimum content of the contract documents such as defining the contracting parties, the object of the contract and the tendering and acceptance procedures.

Another example of the effect of legal codes which directly affects the professions is that, in general, professional qualifications are defined by law and not by professional institutions, although the latter are usually consulted by government in formulating the requirements. In several continental countries the consultation has not been very effective in that, for instance, requirements for the education of architects are very long and detailed but there is no necessity for practical experience before being fully qualified to practise the profession. In France this has been severely criticized and changes are said to be in train.

In contrast to this over-riding control by the legislature, arbitration decisions on the Continent cannot be questioned at law. If a contract provides for matters to be settled by arbitration. or parties otherwise agree that differences between them shall be so settled, they abandon their rights to legal process in the courts. This is similar to the position in Scotland up until a few years ago. In England the courts have the power, however infrequently used, to set aside an award and long delays are frequent awaiting the result of cases of legal interpretation submitted to them.

Another instance of government control on the Continent is the setting of basic minimum standards to be achieved in many industries in Germany: this is in contrast to the British Standard Specification and the National Building Specification in the UK which define standards but have no legal force. The German control most closely affecting construction is a document referred to by the initials VOB. This document sets out rules for tendering, defines contract terms and the preparation of bills of quantities; it gives trade by trade instructions for writing preambles, item descriptions, appropriate national standard references and methods of measurement. In Germany specification preambles and item descriptions are commonly referred to the VOB instead of being written out in full.

In Italy, perhaps partly due to the Latin temperament, there is less regulation but nevertheless professional matters such as qualifications, fees and conduct are decreed by Law.

In only one of the other Common Market countries is a profession analogous to quantity surveying in existence and therefore dealt with by legal requirements, namely the technicians of construction economy (Tecniciens de l'Economie de la Construction) in France. This profession is in its early stages, and is developing from the metreurs-verificateurs, which translates inexactly as "measurers and verifiers". In the other countries, and still to a large extent in France, the functions of a quantity surveyor are carried out by members of the Architects', Engineers' and Contractors' organisations, and in the case of budgeting and cost planning even by banks, loan companies and planning authorities. Estimating in contractors' offices is usually part of the function of management. Large organisations may have management assistants who specialise in estimating but since most contractors handle only one trade this is not common. In Germany, Holland, Belgium and France there are also small firms who specialise in estimating for each of the principal trades as a service to contractors.

Another difference in the law, as compared with the UK, which has considerable effect on construction contracting is the joint responsibility of all those contractually linked with the building owner for the sufficiency of the works. This may extend to a period of ten years after completion as in France, Belgium and Holland. This does not mean that the contractor is liable for such design as can be proved to be the responsibility of the architect, but since the contractor may participate in the design this may be difficult to prove. In any case the law appears more in favour of ensuring adequate recompense to the building owner or occupier than intent on the precise allocation of liability. If the actual designer has not the resources to pay, the contractor may have to anyway.

The ten year legal liability has naturally lead to insurance to cover it, and to insurance company requirements that control organisations be employed to check design and construction and these bodies in their turn require contractors to be officially registered as competent in those trades they are carrying out. From the requirement of control organisations has followed their design advice function and even precontract preparation of working drawings; also the development of sometimes independent detail design and drawing offices who also may serve architects, engineers and contractors. In France and Belgium these designs and drawing firms are known as Bureaux d'Etudes.

The method of tendering on the Continent is almost universally on drawings and specification. The drawings are very often design drawings to a 1/100 scale and not working drawings. The specification is usually more of the performance type than a precise description of constructional items. For instance, floors may be specified by loadings and walls and partitions by U values and bearing loads: it is left to each individual tenderer to make his own proposals for the construction detail.

This of course means that it is more difficult than in the UK to compare tenders and the architect or engineer may be involved in lengthy negotiations in defining with the contractor exactly what his tender includes. It is also quite common for the foundation, carcass and services contracts to be let before the tender documents for the finishing trades are prepared. This is facilitated by the separate trades organisation of the industry.

Bills of Quantities or Schedules are sometimes provided but very seldom have any contractual force other than as a means for pricing variations. Valuation of variation in the majority of cases where there is no bill or schedule usually causes considerable difficulty and argument as one would expect and it is therefore common to agree the price for a variation before it is ordered, which would appear to give the contractor some advantage.

Co-operation between tenderers, is common, particularly in Holland and Belgium. All recognised contractors in these two countries have to be registered with their trade organisation and to ratify the organisation regarding all tenders they are preparing. Before the tenders are submitted the central organisation requires the tenders to be sent to them and to be increased to include the tendering costs of all the tenderers. There is some point in favour of this process as it obviously discourages long lists of tenderers and it is more logical for each project to bear the cost of all tenders applicable to it rather than the UK method which results in a contractor's successful tender having to bear the cost of all his unsuccessful tendering. This co-operation has been estimated to increase tenders by an average of 5% but Government enquiry puts the figure at 12-15%. Since contractors, however, do not have to include tendering costs in their original tenders, the actual increase over what the tenders would have been if tenderers' costs had been included might theoretically be nil. The disadvantages of the method may of course be overwhelming as the opportunity it provides for including unrealistic prices and for collusion, even if not taken makes it impossible to ensure proper competition.

This tendering method provides an example of how errors can be made by not finding out about contractual practices in a country before operating there. A UK quantity surveyor managed to persuade a UK property company who were starting to operate in Holland to adopt UK methods and send out complete bills of quantities to twelve contractors. He stressed the advantages of standard quantities, free competition and of having detail prices for variation. The twelve tenders were duly returned complete but they all arrived in one envelope from the contractors' central organisation and with only the totals for each trade. In addition to being ignorant of the Dutch co-operative tendering system, the British quantity surveyor had also not appreciated that, since the Dutch have not got a recognised SMM, each contractor as is common on the Continent develops his own units of measurement and pricing system which could not be adapted to the particular units of measurement of the bills of quantities provided for tendering. SMM's do exist, at least in Holland and France, but they are little used and have no contractual force. In discussing contract forms, a principal assistant of a Government department in Paris said that a form was being drafted which would make bills part of the contract, but there was no intention of defining the method of measurement or knowledge that a French SMM was in existence.

Conditions of contract are not standardised although each government department may have its own: each

local authority will also have its own form of contract and sometimes considerable jealousy exists between one authority and another, as between the Lander in Germany who carefully preserve their long standing methods. In none of the Common Market countries other than Ireland which is taken as synonymous with the UK for the purpose of this paper, is there a universally accepted parallel to either the JCT or GC/Works/1 forms of contract.

Separate trades contracting is another, to us, unusual feature of Continental practice. This does not mean to say that general contractors do not exist but as an example the 1974 figures in Germany showed that over 90% of contracts by value were placed on a separate trades basis.

In Germany the separate trade guilds, and there may be up to forty separate trades, carefully guard their prerogatives and make it very difficult for general contracting to develop. In France, the National Federation of Metreurs – Verificateurs Specialistes register their members under trade headings, and none of the members practises in more than one trade. This is not the principal organisation of metreurs-verificateurs in France but the fact of separate trade registration does once again illustrate the separate trades practice on the Continent.

The purpose of the Annual Conference of the NMFVS in 1976 was a comparison between the work of the French metreur-verificateur and that of the English quantity surveyor. The results were not very profound and the principal difference identified was the fact that in the UK there is a quantity surveyor engaged by the building owner with measurement and valuation responsibilities laid down by the standard form of contract while in France measurement and valuation are left to architect and contractor to negotiate as best they can. In both countries similar functions are carried out but in France there is no universal recognition of a separate specialist profession.

An interesting detail was a French standard priced schedule, called the Sérié des Prix which the French sometimes use for pricing new items. They had difficulty in understanding our *pro-rata* pricing because they are quite unaccustomed to a bill of quantities and prices having any contractual force. It was previously understood that the purpose of the Sérié des Prix was to calculate recoverable cost increases and it is possible that it serves a dual function.

At the conference several individual members were contacted and in each case they were self employed, working from an office at their home with their wives to do the working up and typing in addition to looking after the house and children. The wives were very envious of the wives of English quantity surveyors who were able to enjoy a normal family life.

Other interesting facts learnt from our French colleagues were scale deductions from professional fees if budget estimates were either too low or too high and a common practice of pricing omissions at 85% of schedule rates.

Another major difference of course, is that of language and it is an extremely difficult matter for a Briton even with the appropriate language at degree level to overcome. There are quantity surveyors in England and their nearest equivalent on the Continent who have thoroughly mastered the language of another country to the level that they are accepted as speaking it like a native. These are, however, very few indeed but it is very difficult to find even one who can translate contractual terms and their exact meaning sufficiently well to be able to differentiate between specification and conditions, tender and estimate, price and cost.

In France there are the simple examples of "society" and "union". If one takes what appears to be the French equivalent, and this is supported by most dictionaries, one is lead astray because "société" most often means a commercial company and "union" is commonly applied to a professional association. In operating on the Continent it is essential to work through nationals of the country concerned and in setting up an office the proportion of three nationals to one UK staff member is advised as the minimum.

In conclusion an extract from a letter sent to the Institute by a quantity surveyor currently working in France and Belgium.

"The role of the quantity surveyor in Europe is different in many respects from that in the UK. Much greater emphasis is placed on precontract advice, cost planning and preparation of different types of tender documents rather than the traditional bills of quantities. It is essential that proper legal and financial advice be sought from local lawyers and accountants.

Unfortunately several quantity surveyors have tried to impose English quantity surveying methods on the Continental construction industry. This has in some cases had disastrous results for the profession. Fortunately this has not been so in the majority of cases and now the quantity surveyor is reasonably well established and respected."