

Sub Contracting under the Terms and Conditions of the 1980 JCT Form of Contract

Notes given by Mr. F. H. McKeag, ARICS, Chief Quantity Surveyor, Avon County Architects Department, forming the basis of his talk given to the Berks, Bucks and Oxon Branch of the Institute at Reading University.



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Preambles:

The Standard Method of Measurement of Building Works: sixth edition: Section A: General Rules states "the term Prime Cost Sum is defined as a sum provided for work or services to be executed by a Nominated Sub-Contractor, a Statutory Authority or a Public Undertaking or for materials or goods to be obtained from a Nominated Supplier. Such sum shall be deemed to be exclusive of any profit required by the General Contractor and provision shall be made for the addition thereof.

The Alternatives for Direct works by the Employer, Sub-Contracting and the Nominated Supply of Materials can be tabulated as (the attached schedule) follows:

DOMESTIC AND NOMINATED SUB-CONTRACTORS AND SUPPLIERS

1.0 SUB-CONTRACTING

1.1 Main Changes from JCT 1963 Edition

- .1 Publication of a set of nominated sub-contract documents NSC/1 to 4 forming

an integral part of the nomination process.

- .2 Introduction of a rationalised approach to sub-contract alternatives.

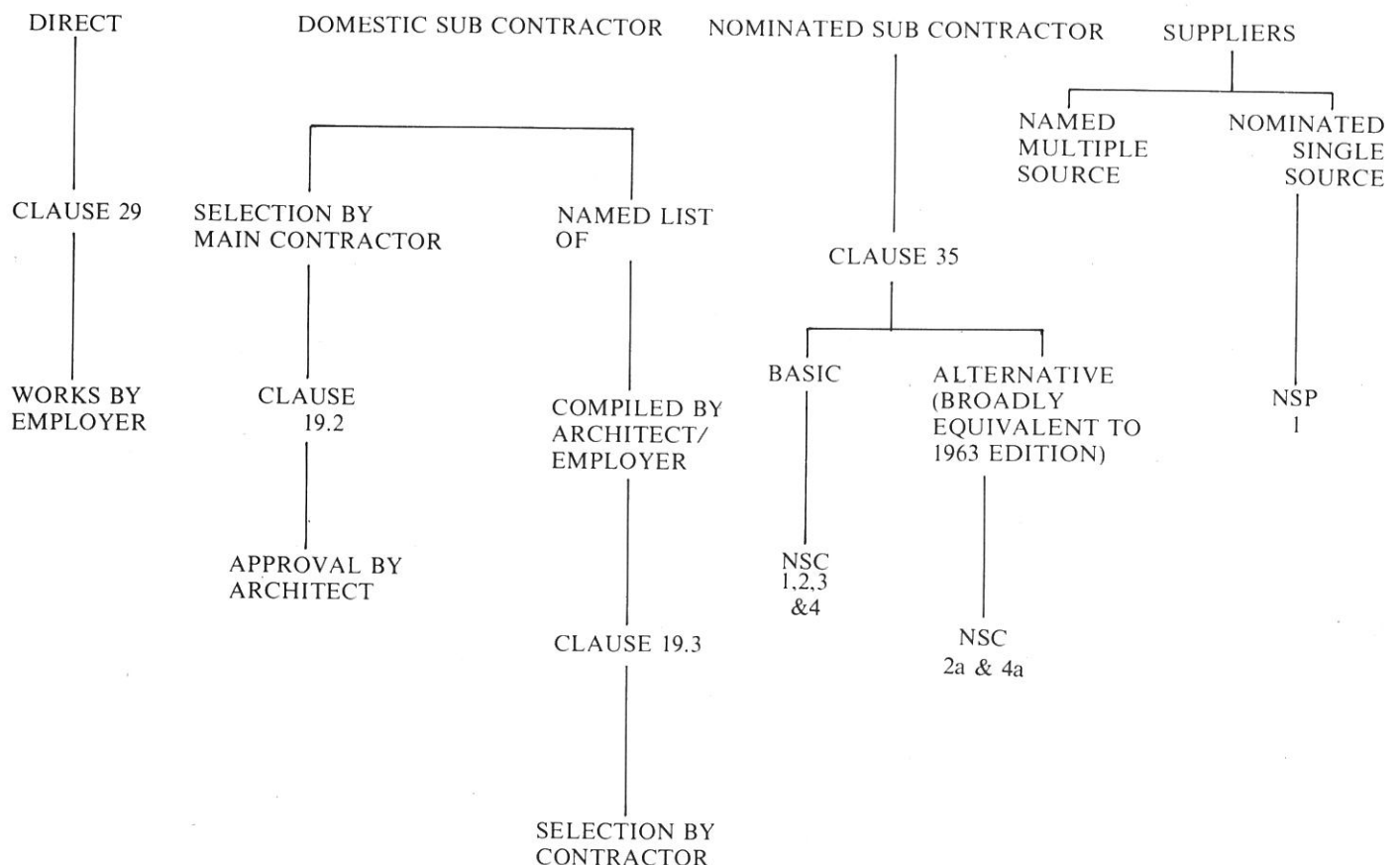
JCT Clause 19—Domestic Sub-Contractors

1. Domestic sub-contracting with choice of sub-contractor at Main Contractor's option (subject to Architect's approval).
2. Domestic sub-contracting with choice of sub-contractor at Employer's option.

JCT Clause 35—Nominated Sub-Contractors

1. Basic Method of nomination.
2. Alternative Method of nomination.
- 1.2 Nominated Sub-Contract Documents NSC/1 to 4
 - .1 NSC/1—JCT Standard Form of Nominated Sub-Contract Tender and Agreement.
 - .2 NSC/2—JCT Standard Form of Employer/Nominated Sub-Contractor

TABULATION OF ALTERNATIVES FOR DIRECT WORKS BY THE EMPLOYER SUB CONTRACTING AND THE NOMINATED SUPPLY OF MATERIALS



Agreement (Nomination under Basic Method).

- .3 NSC/2a—JCT Standard Form of Employer/Nominated Sub-Contractor Agreement (Nomination under Alternative Method).

- .4 NSC/3—JCT Standard Form of Nomination of Sub-Contractor where Tender NSC/1 has been used.

- .5 NSC/4—JCT Nominated Sub-Contract (Nomination under Basic Method).

- .6 NSC/4a—JCT Nominated Sub-Contract (Nomination under Alternative Method).

1.3 Contractual Provision for Sub-Contractors

Virtually all the provisions relating to sub-contractors are contained either in JCT Cl. 19 (Domestic Sub-Contractors or JCT Cl. 35 and NSC/1 to 4 (Nominated Sub-Contractors)).

Two other clauses have a bearing.

JCT Cl. 29 (Works by Employer or persons employed or engaged by Employer)

This is a very much expanded and amended version of the old JCT 1963 Artists and Tradesmen clause.

JCT Cl. 30 (Certificates and Payments)

This covers all payments including those to Nominated Sub-Contractors.

1.4 Basic and Alternative Methods of Nomination

The JCT Guide states that the Basic Method by which nominations are to be made is by use of NSC/1 to 4 and where an architect does not intend to use the Basic Method he must state this in contract documents, otherwise its use is presumed.

If an architect opts for the Alternative Method he must not use NSC/1 or 3 and may use NSC/2a, a suitably adapted form of NSC/2. NSC/4a, a suitably adapted form of NSC/4 is also to be used. If no statement is made with regard to whether NSC/2a is to apply its use is presumed.

1.5 Domestic Sub-Contracting—Employers' Option

The 1980 Forms recognise the practice of some Employers who set out in detail in Main Contract documents work for pricing in full by the Main Contractor but which the Employer requires to be executed by a sub-contractor from a list of at least 3, supplied by the Employer. This list must be of firms ready, willing and able to be appointed and the Main Contractor must have complete freedom of choice. The person ultimately appointed becomes a Domestic Sub-Contractor. If at any time prior to a binding sub-contract agreement being made the Main Contractor's choice falls below three, the list has to be restored to three, or alternatively the Contractor has to be left free to carry out the work himself or through a domestic sub-contractor selected by him (but approved by the Architect). The Architect has no *right* to nominate in these

circumstances (JCT Guide Page 21 note on Cl. 19).

1.6 Notes on JCT Clause 35

35.1 Defines a Nominated Sub-Contractor as a person whose selection is reserved by the Architect.

Nomination is achieved either by naming a Sub-Contractor and/or stating a P.C. sum.

1. In Contract Bills.

2. In an Architect's Instruction related to a Provisional Sum (which includes a provision for a future nomination).

3. In an Architect's Instruction requiring a variation (but the variation must either be for completely new work or for additional work analogous to existing nominated work).

4. By agreement between architect and contractor.

A Sub-Contractor is **not** nominated if:

1. Work is sub-let with architect's consent.

2. Where work is measured and at least 3 contractors are named (see Note 1).

3. Where work is included in a Nominated Sub-Contract for sub-letting by Nominated Sub-Contractor (see Note 2).

Note 1: Where the number drops below 3 a nomination *cannot* occur, other than by agreement, either the list is brought back up to 3, or the Contractor resumes responsibility for the work. A tendering contractor's suggested firm could be added by agreement.

Note 2: P.C. Sums within P.C. Sums are apparently not permitted. A provisional sum or list of 3 are appropriate devices. Even where the Sub-Contract documents clearly intend a P.C. Sum within a P.C. Sum the terms of the Main Contract nullify the effect.

35.2. As with the JCT 1963 Edition the Main Contractor can tender for nominated sub-contract work in certain defined circumstances.

35.3. Introduces JCT Standard Nominated Sub-Contract documentation.

35.4. Preserves the Main Contractor's right of reasonable objection to a nomination but he must do so before the date of certain events.

35.5. Permits the Architect to switch between Basic and Alternative Methods of nomination up to issue of a Preliminary Notice of Nomination (see later) but if he does so this is treated as a variation subject to financial adjustment.

35.6. to 35.12. These are dealt with elsewhere in these Notes.

35.13. Requires that Main Contractor is directed to make certain payments and the Sub-Contractor is told they are due. Reasonable proof of discharge is now a mandatory requirement.

Direct payment in the event of the Main Contractor's default remains optional unless NSC/2 or 2a has been

executed. Where these have been executed direct payment in default is contractually required subject to certain limitations.

35.14. Applications for extensions of time are still made by the Sub-Contractor to the Main Contractor who cannot grant extensions without approval from the Architect, to whom application must be made by the Main Contractor on behalf of the Sub-Contractor.

35.15. Requires the Architect to certify non-completion of Sub-Contract works.

35.16. Following the JCT 1980 provision to grant early final payment to Sub-Contractors, this requires the Architect to issue a Certificate of Practical Completion of Nominated Sub-Contract Works.

35.17. Where NSC/2 (or 2a) has been entered into, early final payment is available to the Sub-Contractor as of right. At any time after Date of Practical Completion of Nominated Sub-Contract Works, the Architect may and after 12 months from that date *must*, issue an interim certificate including the full Sub-Contract Final Sum (provided defects have been cleared).

35.18 Thereafter if the Sub-Contractor fails to remedy defects for which he is liable, and which appear before the date of the Final Certificate the Architect can get this work done by others, the Employer can proceed to recover the cost of this substituted work from the Sub-Contractor under NSC/2 (or 2a). If he fails to recover all or any part of the cost of this substituted work the Main Contractor becomes liable to pay or allow the shortfall (provided he has been permitted to examine and agree the cost of the substituted work before its placement with the substituted Sub-Contractor).

35.19. Notwithstanding any of the above the Main Contractor remains liable for loss or damage to the Sub-Contract works for which early payment has been made up to the date of Main Contract Practical Completion as though such early payment had not been made.

35.20. Principle of no privity of contract still remains (as between Employer—Sub-Contractor) other than through NSC/2 (or 2a).

35.21. Provides exclusion of any liability on the part of the Main Contractor for any design element in the Sub-Contract (see NSC/2 (and 2a)).

35.22. Provides that where a limitation of Sub-Contractor's liability results from a requirement for that Sub-Contractor to enter into a contractual relationship with extra—contractual parties, this will automatically result in a similar limitation in the liability of the Main Contractor.

35.23. Where a nomination does not proceed because:

1. The Main Contractor raises a reasonable objection to the Sub-

SUB CONTRACTING

Contractor within the stipulated time.

2. The Sub-Contractor fails to agree certain terms of a sub-contract within the stipulated time.

then unless the parties otherwise agree the Architect must issue an instruction either deleting the work or proposing another firm to be nominated.

35.24. Renomination of a Nominated Sub-Contractor is necessary:

1. If the Main Contractor informs the Architect of the Sub-Contractor's default in one or more of the circumstances defined in NSC/4 (or 4a) clauses 29.1.1 to 29.1.4 and has passed on the Sub-Contractor's observations and the Architect agrees they have occurred.
2. If the Sub-Contractor goes into liquidation, etc.
3. If the Sub-Contractor determines following a breach of payment by the Main Contractor, the cost is borne by the Main Contractor. The Employer bears the cost of renomination in these instances except that where it arises from determination by Sub-Contractor following default by Main Contractor, the cost is borne by the Main Contractor.

35.25. The Main Contractor shall not determine any sub-contract by virtue of his rights without an architect's Instruction.

Where the Sub-Contract is determined by the Main Contractor by reason of the Sub-Contractor's default the Architect shall issue an Interim Certificate stating the amount due to the determined Sub-Contractor.

2.0 NOMINATED SUPPLIERS

Provisions relating to Nominated Suppliers are contained in JCT Cl. 36.

A Form of Tender has been drafted for use with nomination under Cl. 36—but is not yet available as at date of talk (October, 1980).

2.1 Notes on Clause 36

36.1. Defines Nominated Supplier.

A Supplier is nominated (or is deemed to be nominated) if:

1. A P.C. Sum is included in Contract Bills (or Specification) and the supplier is named therein (or is subsequently named in an architect's Instruction under 36.2—issued for the purpose of nominating a supplier in respect of a P.C. Item).
2. A Provisional sum is included in Contract Bills (or Specification) and in a subsequent instruction in regard to the expenditure of that sum the supply of materials is made the subject of a P.C. Sum and the supplier is named by the Architect in that instruction (or in a later instruction under 36.2).
3. A Provisional sum is included in Contract Bills (or Specification) and in a subsequent instruction in regard to that Provisional Sum materials are specified for which there is a sole

source of supply (ie. there is only one supplier from whom they can be obtained). The materials shall be made the subject of a P.C. Sum in the instruction issued (and the sole supplier shall be deemed to be nominated).

4. The Architect issues a Variation Instruction specifying materials with a sole source of supply, the supply of such shall be made the subject of a P.C. Sum in the instruction (and the sole supplier shall be deemed to be nominated).

It should be noted that a supplier who is named in the Contract Bills (or Specification) is not automatically a Nominated Supplier unless there is also a P.C. Sum in the Bill. This remains true even if the named supplier is the sole source of the materials in question. The JCT Guide Page 15 Cl. 19.1 states that such a situation is a matter for tenderers to take up with the Employer's professional agents prior to contract, if they consider a nomination to be appropriate.

36.2. Requires Architect to issue instructions nominating suppliers where P.C. Sums are included in Contract Bills (or Specification) or arise from Provisional Sum expenditure or from variations.

36.3. States coverage of amounts properly chargeable against a P.C. Sum and permits discretionary payments for expenses properly incurred over and above reimbursement for certain defined items.

36.4 Provides that other than by mutual agreement the Architect cannot nominate a person who will not enter into a Contract of Sale containing (among others) certain conditions listed in the clause. These cover:

1. Quality and standard of materials and approval.
2. Replacement of defective materials.
3. Programme for delivery.
4. Cash discount (5%).
5. Protection of supplier in event of Main Contractor's liquidation (etc).
6. Payment within 30 days.
7. Passage of ownership on delivery.
8. Tripartite arbitration.
9. Provision that no specific additional clause in a specific Contract of Sale can override clauses introduced into that Contract of Sale by reason of the requirements of 36.4. This clause also provides (36.4.2) that the Nominated Supplier's liability continues up to the end of the Defects Liability Period.

36.5. Provides that where a specific Contract of Sale limits the liability of the supplier the Main Contractor's liability is limited in line. The Architect must approve such limitation on request from the Main Contractor. The Architect has no authority to appoint a supplier who will not contract under the terms in 36.4.

(Note—The revised Form of Tender

(yet to be published) will probably provide for all the above provisions and its use is strongly recommended by the JCT.)

3.0 CONSIDERATION OF NOMINATION

3.1 General

In an article in Building (9.5.80) Geoffrey Cutting stated 'Specialist Sub-Contractors have emerged as a vital element of the construction process and in the 1980 Edition of the JCT contractual machinery that status has been recognised. The Committee of Associations of Specialist Engineering Contractors (CASEC) whose representations brought an invitation to join the JCT in 1963, expect that the changes in the new documents will make the forms more popular with sub-contractors. CASEC feels they will provide certainty and harmony for all parties to the contract.'

Undoubtedly specialist sub-contractors have been on the receiving end of a chain of vested interests over the years and the JCT 1980 Forms significantly changes the onus of responsibility between the various parties involved. Arguably there will now be a number of situations where an Employer previously could have avoided financial liability due to lack of specificity in the contracts but under the JCT 1980 Forms he cannot. One example of this is where the Architect may now be required to select another person to be nominated, at the Employer's expense, failing agreement of terms between the Main Contractor and a proposed sub-contractor.

No matter what the real root causes of problems have been from the point of view of the Employer, the problems themselves have often proved disruptive and divisive and more expensive to solve than the Employer (and his agents) could anticipate.

Given a future desire to minimise disruption and possible extra expense for the Employer (and his agents) what are the factors in considering domestic and nominated sub-contracting in future? The following are suggested points for consideration:

1. In the past, many architects have sought to obviate nominations. But nomination of engineering sub-contractors has been widely accepted. Having achieved considerable betterment of their position via JCT, engineering sub-contractors will be likely to react with hostility against any widespread movement away from nomination.

2. From the point of view of the Consultant, one line of approach to forming a policy for nomination, is to consider engineering services specifically, accepting that such a consideration may well apply to other types of arrangement.

3.2 Engineering Services

There are five possible methods of arranging for them:

1. Nomination (i) Basic
(ii) Alternative
2. Domestic (i) Contractor's Option
(ii) Employer's Option
3. Separate Contract

Regarding (3) this has been tried variously over the years, sometimes successfully. But engineering services are usually so inter-active with the non-engineering part of a contract that disruption, delay, and claims are likely. Direct contracting for engineering services is not recommended in normal circumstances.

In deciding whether to handle engineering services by domestic arrangements or by nomination a number of factors are relevant including:

1. Size and complexity of job and its engineering content.
2. Whether a fixed-price basis will apply.
3. Criticality of programme of the Main Contract.
4. Degree of competition and/or amount of choice between specialist firms.
5. Whether it is possible and/or desirable to arrange sub-contract tenders in advance of Main Contract.
6. Whether there is a significant design input from engineering specialist firms (within the overall consultant's design).

As a general principle for small contracts, particularly plan and specification-based jobs, engineering services can be included by domestic arrangement (if desired). At Consultant's discretion the 'Employer's Option' introduces a measure of control in selection of a Specialist. But in these circumstances competition for engineering services cannot be held in advance of Main Tender, and thereby the lowest competitive prices incorporated into Main Tender documents.

Larger jobs on a fixed price basis can pose a problem. The time between sub-contract tender price base and sub-contract commencement on site can be very extensive under the Basic Method where it is desired to invite sub-contract tenders in advance of main contract tenders, in order to tie up the nominations early. With a fixed price a sub-contract tenderer could be having to price up to 18 months in advance of sub-contract commencement on even moderately sized contracts, without hope of subsequent adjustment for inflation. There will be a marked reluctance to do this. Domestic sub-contracting offers an alternative, as does a nomination arranged later under the Alternative Method. But this latter possibility perpetuates all the old risks of dispute over sub-contract terms between the main and sub-contractor with work in progress which the Basic Method is intended to avoid.

Another consideration in handling engineering services by domestic sub-contracting is that under Cl. 19 such services have to be 'measured or otherwise described' in the Bills. The adequacy of description is obviously a key factor. However, in the speaker's experience on pilot schemes, Contractors are proving to be flexible over interpretation of the phrase "measured or otherwise described."

As a final point the Main Contractor is excluded from design liability for engineering services under JCT 1980 and some measure of detailed design by the sub-contractor is a feature of most engineering design solutions. Some answer to this will have to be derived in individual cases.

For the big jobs on a fluctuations basis with complex engineering content, with sub-contractor design and perhaps early ordering of key components being necessary, nomination is still likely to be desirable.

3.3 Choice between Basic and Alternative Methods

1. It is the advice of the JCT that where Nominated Sub-Contract Works are of major significance, in terms of cost or critical timing, the Basic Method will ensure the Contractor and sub-contractor have agreed in advance all matters related to programme and the integration of sub-contract works. Under the Alternative Method there will be no such assurance (JCT Guide Page 62, Para 34.2).
2. It is suggested by the JCT that:
 - (i) Basic Method is more convenient for sub-contract tenders requiring approval *in advance* of Main Contract;
 - (ii) Preference of proposed sub-contractors for Basic or Alternative Methods should be a consideration;
 - (iii) The Alternative Method may be suitable where the timing of sub-contract work is not critical;
 - (iv) One major point of concern with the Basic Method is the number of formal situations in which parties can withdraw from entering into (or progressing) a nomination, leading to the Employer's agents having to sort out alternative arrangements. This problem may prove to be considerable.

3.4 Use of Form NSC/2 and 2a

Use of Form NSC/2 is mandatory under the Basic Method and use of NSC/2a is optional under the Alternative Method. NSC/2 is the JCT 1980 equivalent of the Employer/Sub-Contractor Form of Agreement used with the JCT 1963 Edition.

In deciding whether to use NSC/2a with the Alternative Method consideration must be given to the advantages and disadvantages of its use.

1. NSC/2 and 2a give the Employer the right of financial redress in circumstances of culpable delay by a

Nominated Sub-Contractor (JCT Guide Page 62 Para 34.3 and 34.4).

2. NSC/2 and 2a give the sub-contractor the right of direct payment in the event of Main Contractor's default. Although there are safeguards built into this arrangement there is a small residual risk for the Employer that he might pay twice.
3. NSC/2 and 2a give the sub-contractor the right of early final payment.
4. NSC/2 and 2a give the Employer the right of financial redress in circumstances of failure by the sub-contractor in design aspects for which he is responsible.
5. Provides for early design and ordering and payment therefore in advance of nomination.

4.0 PROCEDURE UNDER THE BASIC METHOD

4.1 Documents to be used

- NSC/1 Tender
- NSC/2 Agreement
- NSC/3 Nomination
- NSC/4 Sub-Contract

4.2 Notes on NSC/1

1. NSC/1 when completed is the final offer of the proposed sub-contractor. It is structured to deal with the fact that while the tender of the proposed sub-contractor is initially made to the Architect, the legal acceptance of the tender and the resulting Nominated Sub-Contract is a matter for the Main Contractor.
2. The Architect, proposed sub-contractor and the Main Contractor all contribute to its completion:
 1. The Architect in sending out NSC/1 will have settled or will intend to settle such matters as the scope and nature of the sub-contract work, the extent of any design service by the proposed sub-contractor, the ability of tenderer(s) to carry out the sub-contract work within the already agreed or intended Main Contract Programme and the price
 2. The Main Contractor upon becoming involved (and obviously he cannot be so until appointed) needs to know what arrangements have been agreed by the Architect and proposed sub-contractor on all the matters at (1) above but additionally needs to settle with the proposed sub-contractor matters in detail affecting the carrying out of the sub-contract works on site.
3. NSC/1 *may* be used by the Architect in obtaining competitive tenders. In the case of a negotiation with a single firm it *may* be used by the firm as the basis of an initial offer upon which negotiation could then take place and a settlement be reached.
4. Alternatively the Architect *may* use other documents for selecting a proposed sub-contractor. An initial offer by a single firm in the case of a negotiation might also be in a different form.

SUB CONTRACTING

- .5 But in any event under the Basic Method the Architect and proposed sub-contractor (either initially or eventually) must complete a copy of NSC/1 insofar as the document requires them to do so, before the Architect can issue a Preliminary Notice of Nomination to the Main Contractor who is then involved.
 - .6 **NSC/1 Page 1**

This provides for lump sum quotations (VAT exclusive *sub-contract* sum) or unit rate quotations (VAT exclusive *Tender* sum) ie. subsequent measurement and valuation are necessary to arrive at the price. It also provides for the identification of sub-contract documents.

The proposed sub-contractor and the Architect are required to sign on Page 1, as is the Main Contractor, but only when he has settled details with the proposed sub-contractor (see Schedule 2 of NSC/1). As soon as NSC/1 is signed by the proposed sub-contractor and Architect, NSC/2 can come into force (provided this latter has been signed by the proposed sub-contractor and Employer).
 - .7 **NSC/1 Page 2—Stipulations**

These qualify the initial offer but cease to be effective on the issue of NSC/3. They also take account of the fact that certain parts of NSC/2 are operative before issue of NSC/3 (Stipulation 1). Stipulations 2, 3 and 4 give the Tenderer the right to withdraw in certain circumstances.
 - .8 **Schedule 1**

This sets out the Main Contract conditions to be taken into account by sub-contractor(s) in tendering. Only those Main Contract terms notified in Schedule 1 are binding on the Nominated Sub-Contractor. It is vitally important that Schedule 1 accurately reflects the Main Contract, particularly where sub-contract tenders pre-date Main Contract tenders.

Alternative Appendices A and B state the Fluctuations provision applicable to the sub-contract.
 - .9 **Schedule 2**

Following issue of a Preliminary Notice of Nomination this schedule requires completion vis-a-vis the Main Contractor and the proposed sub-contractor. The JCT Guide (Page 55) stresses the importance that where preliminary details are set out and agreed (as between Architect and proposed sub-contractor) as a basis of tender these preliminary details are deleted and the deletions initialled where they are superseded by more explicit details agreed between the Main Contractor and proposed sub-contractor. It is vitally important that the details of Schedule 2 are unambiguous and accurate as they are incorporated into NSC/4 and form the basis for operating NSC/4 Cl. 11 dealing with progress, completion, extensions of sub-contract works, etc.
 - .10 Note that under JCT Cl. 35.8 if the Main Contractor is unable to reach agreement on the details of Schedule 2 within 10 working days from receipt of a Preliminary Notice of Nomination he continues trying to reach a settlement but informs the Architect of the reasons for lack of settlement. The Architect may then be required to issue such instructions "as may be necessary."
- 4.3 **Notes on NSC/2**
 - .1 As with NSC/1, NSC/2 comes into operation in two steps, viz. Cl. 1 and 2 after approval of NSC/1 by Architect (at Page 1 thereof) and the remaining Clauses after issue of NSC/3.
 - .2 **Recitals**

These contain the essence of agreement and refer to the submission of a sub-contract tender, the appointment of an Architect, approval of tender, the intention to issue NSC/3 and exclusion of any liability of the Architect to the sub-contractor.
 - .3 **Clause 1**

Provides that following issue of a Preliminary Notice of Nomination (JCT Cl. 35.7.1) the sub-contractor will seek to settle the details of NSC/1 Schedule 2 and upon settlement will inform the Architect.
 - .4 **Clause 2.1**

The sub-contractor Warrants (insofar as he has undertaken responsibility therefor):

 - (1) Design
 - (2) Selection of materials
 - (3) Proper performance
 - .5 **Clause 2.2**

This comes into effect once NSC/1 has been signed by Architect at Page 1 thereof and after NSC/2 has been completed by both parties. Thereafter (and before issue of NSC/3) the Architect can instruct the proposed sub-contractor to proceed with (1) design insofar as he has a responsibility (2) ordering of materials. The Employer thereby becomes responsible for payment.

The Employer is liable to make such payment *direct* up to the time when NSC/3 is issued at which time liability to do so ceases.
 - .6 **Clause 3** (et seq) becomes operative only after NSC/3 has been issued. It provides redress for the Employer if because of the Sub-Contractor's default the Employer (or his Architect):
 1. are late in giving the Main Contractor instructions and thereby incur liability for extensions and/or for loss or expense.
 2. are obliged to tell Main Contractor to determine the employment of the Sub-Contractor (with consequential renomination)
 3. are obliged to extend Main Contract (as a result of Sub-Contractor's delay).

Such default could be either in respect of delay in supplying information and/or poor performance.
 - .7 **Clause 4**

Provides that the Architect must inform the Sub-Contractor of Sub-Contract payments to Main Contractor (this creates a direct redress against the Employer for the Architect's default).
 - .8 **Clause 5**

Provides a direct right for the Sub-Contractor against the Employer to ensure that the provisions of JCT Cl. 35.17 are carried out, ie. that following the issue of a Certificate of Practical Completion of Sub-Contract Works, the Architect (1) *may* immediately but *must* within 12 months certify the Final Sub-Contract Sum (always provided completion of defects and provision of necessary documentation by Sub-Contractor has occurred).

Furthermore, the Sub-Contractor remains responsible for Sub-Contract defects up to date of Main Contract Final Certificate (see provisions of JCT Cl. 35.18).

After Final Certificate he continues to owe to Main Contractor such responsibility as the Main Contractor owes to the Employer.
 - .9 **Clause 6**

The Sub-Contractor indemnifies the Employer against re-nomination costs following Sub-Contractor's default from which re-nomination follows consequentially.
 - .10 **Clause 7**

Provides Sub-Contractor with entitlement to direct payment following default of payment by Main Contractor. The Sub-Contractor's right ceases on Main Contractor's liquidation, etc. and the Employer's liability to pay direct is limited to that sum which Employer is holding as due to Main Contractor. If by mistake money is paid direct in default after liquidation, etc. this Clause creates a legal liability to repay.
 - .11 **Clause 8**

Requires the Sub-Contractor to notify the Main Contractor when the Sub-Contract conditions oblige him to enter into a Contract of Sale, with a third party which includes an 'exclusion of liability' clause (see JCT Cl. 35.22).
 - .12 **Clause 9**

In respect of the operation of NSC/2 (as between Employer and Sub-Contractor) where conflict exists between NSC/2 and Tender, NSC/2 shall prevail.
 - .13 **Clause 10**

Provides (among other things) for arbitration between Sub-Contractor and Employer on the terms of NSC/2. It also provides for tri-partite arbitration where appropriate. The clause accepts that the tri-partite arbitration provision may be deleted from the Main Contract (and consequentially from NSC/2).
 - 4.4 **Notes on NSC/3**

When this is issued a Sub-Contract can come into existence and the Main Contractor and Sub-Contractor exe-

cute NSC/4 under hand or under seal as provided.

4.5 Summary of Procedures under Basic Method

Pads of NSC/1 are issued with "Notes on use of Tender NSC/1 and Agreement NSC/2".

These notes contain precise directions as to actions by Architect, proposed Sub-Contractor and Main Contractor. They are reproduced at JCT Guide Pages 57 to 59.

5.0 PROCEDURE UNDER THE ALTERNATIVE METHOD

5.1 Documents not to be used

Tender NSC/1
Agreement NSC/2
Nomination NSC/3

Sub-Contract NSC/4

The above documents are inappropriate

Agreement NSC/2a—use optional
Sub-Contract NSC/4a—use obligatory

5.2 Relationship to JCT Cl. 35.11 and 35.12

If Contract Bills (or Specification) or an Architect's Instruction giving rise to a nomination state that the nomination will be under JCT Cl. 35.11 and 35.12 then the Alternative Method will apply. The aforementioned documents should also state whether NSC/2a (a suitably amended form of NSC/2) is to apply. If nothing is said its use is presumed.

5.3 NSC/4 and NSC/4a

The main difference between NSC/4 and NSC/4a is that the latter contains

at appendices, information otherwise included at NSC/1 under Basic Method.

5.4 Characteristics of Alternative Method

The Alternative Method is broadly analogous to traditional practices in nominating sub-contractors. With the Alternative Method, the precise requirements (and related time scale) of matters covered under Basic Method by NSC/1 are a matter for ad hoc discussion and agreement prior to execution of NSC/4a.

JCT Cl. 35.23.3 provides for re-nomination where a sub-contractor having been nominated nevertheless fails to enter into NSC/4a in a reasonable time.

(Also see Nominated Sub-Contractors and Suppliers of these notes, Para 3.3).

MARKET ENTRY GUARANTEE SCHEME EXTENDED TO NON-MANUFACTURING EXPORTERS

The Market Entry Guarantee Scheme has been extended to non-manufacturing exporters and the upper limit of funding has been increased from £125,000 to £150,000 per venture. The extension and the increased limit will apply to all applications dated from June 24, 1981. The minimum funding will remain at £20,000 per venture.

The British Overseas Trade Board's scheme is designed to help smaller and medium-sized firms to break into new markets—or to mount a new initiative designed to capture a significantly increased amount of business in an existing overseas market. The BOTB shares with the firm

risks involved. Subject to defined maximum and minimum limits, the scheme offers 50 per cent of certain overhead costs such as staff costs, office accommodation and warehousing which are particularly at risk in opening up a new venture.

The funding provided is repayable with a commercial rate of interest through a levy on sales receipts in the chosen market over the agreed venture period. In addition, a fee of 3 per cent of the scheme's funding is payable in respect of the "guarantee" that, if sales do not materialise sufficiently to repay the scheme with interest by the end of the agreed period, no further payments are required.

The scheme came into operation in January 1978. Currently there are 70 agreements with

manufacturing exporters in force covering markets in Western Europe, North America and the Middle East. A wide variety of products are involved from toiletries to heavy road vehicles.

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