

Guide

to the

Engineering and Construction Contract (Second edition)

London: The Stationery Office

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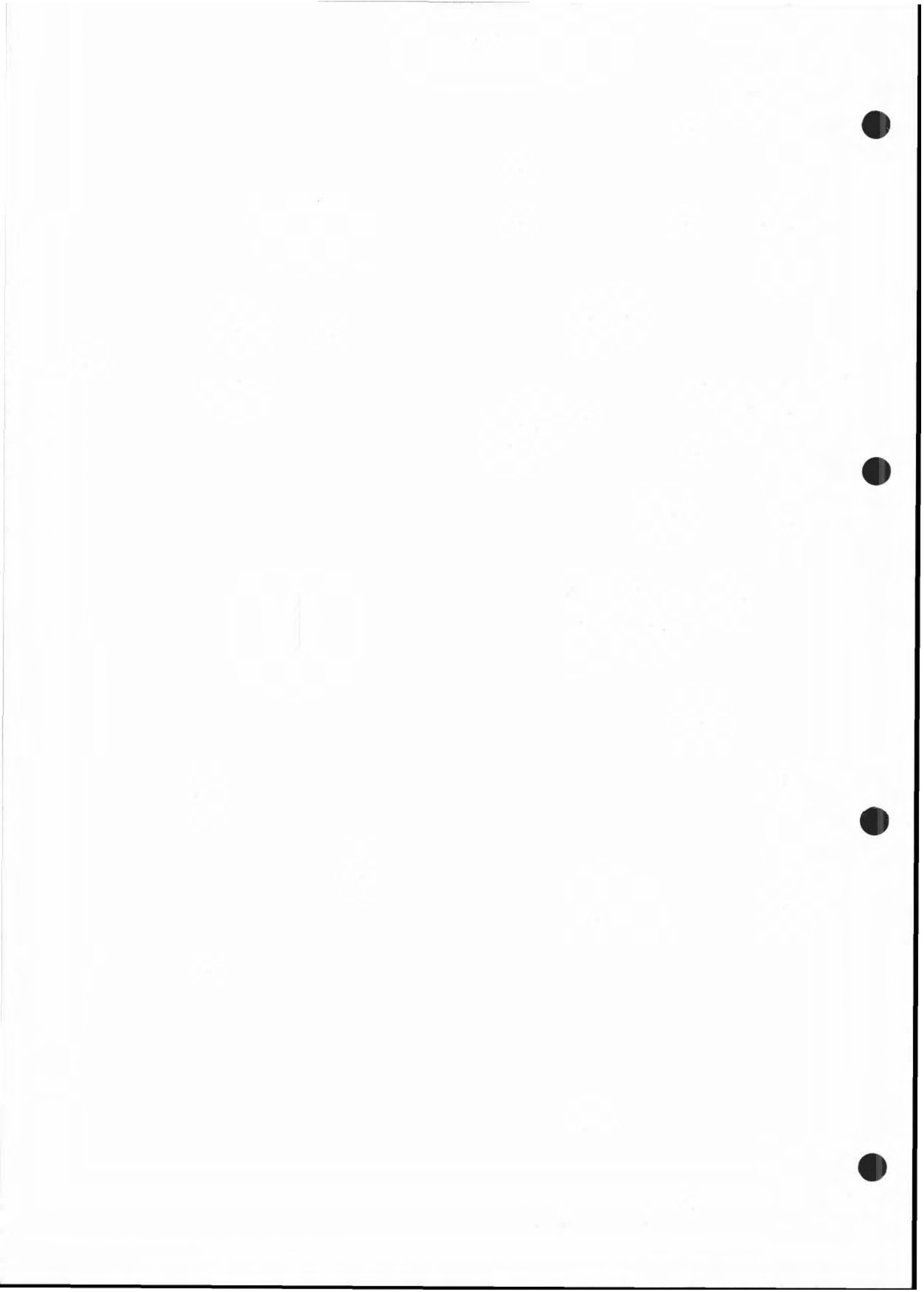
About this publication



This publication provides guidance on the Engineering and Construction Contract (Second Edition). It provides advice on the amendments necessary to the contract to comply with Government and Departmental policy, as well as good professional practice in respect of use by NHS bodies (NHS Trusts and Authorities, Family Health Service Authorities (FHSAs) and any other centrally-funded bodies).

This guide is one of the series of documents that forms part of the current version of Concode and SCOTCONCODE.





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1.0 The Engineering and Construction Contract (Second Edition)

Introduction

1.1 This guide has been produced by NHS Estates to assist NHS bodies and their professional advisors in the use of the Engineering and Construction Contract (Second Edition) for the procurement of building and engineering works in respect of healthcare facilities.

1.2 The guide has been developed on the basis of information obtained from interdepartmental user groups and experience from other public/private sector clients who have used the contract.

1.3 The contract is published for the Institution of Civil Engineers by:

Thomas Telford Services Ltd
Thomas Telford House
1 Heron Quay
LONDON E14 4JD.

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1.4 The publication of the contract is the result of a recommendation by the Council of Institution of Civil Engineers, to "lead a fundamental review of alternative contract strategies for civil engineering design and construction with the objective of identifying the needs for good practice". In 1991 the 'Consultative Edition' was issued to a selected list of employers, contractors, consulting engineers and other interested organisations. Subsequently the first edition of the 'New Engineering Contract' was issued in 1993 taking into account the comments and experiences of those who had received (and in some cases used) the Consultative Edition.

1.5 The 'New Engineering Contract' became the 'Engineering and Construction Contract' on the issue of the second edition, the reason for this change being to encourage wider use of the contracts outside the civil engineering industry. This was supported by the recommendations in 'Constructing the Team' by Sir Michael Latham (July 1994). It is important to note here that the use of an alternative form of contract will not itself resolve the problems that employers experience when procuring building or engineering works.

1.6 The contract has been developed to promote:

- flexibility;
- clarity and simplicity;

- a stimulus to good management.

The contract

1.7 The documents making up the contract are:

- form of tender;
- the schedule of contract data;
- the core clauses;
- the optional clauses;
- the schedule of actual cost.

1.8 The roles and responsibilities of the following parties are identified in the contract:

- Employer (this will be the NHS body);
- Project manager;
- Supervisor;
- Contractor;
- Subcontractor;
- Adjudicator;
- Arbitrator

1.9 The contract is structured as follows:

Core clauses:

Section 1: General;

Section 2: The contractor's responsibilities;

Section 3: Time;

Section 4: Quality;

Section 5: Payments;

Section 6: Compensation events;

Section 7: Property;

Section 8: Risks and insurances;

Section 9: Disputes and termination.

Types of contract (referred to as 'Main Options'):

Option A: Conventional contract with activity schedule;

Option B: Conventional priced contract with bills of quantities;

Option C: Target contract with activity schedule;

Option D: Target contract with bills of quantities;

Option E: Cost-reimbursable contract;

Option F: Management contract.

Secondary options:

- Option G: Performance bond;
- Option H: Parent company guarantee;
- Option J: Advanced payment to the contractor;
- Option K: Multiple currencies;
- Option L: Sectional completion;
- Option M: Limitation of the contractors liability for his design to reasonable skill and care. (applies only to options A,B,C and D);
- Option N: Price adjustment for inflation;
- Option P: Retention (applies only to options A,B,C,D and E);
- Option Q: Bonus for early completion;
- Option R: Delay damages;
- Option S: Low performance damages;
- Option T: Changes in the law;
- Option U: The Construction (Design and Management) Regulations 1994;
- Option V: Trust fund;
- Option Z: Additional conditions of contract.

Users **must** choose a 'main option' (type of contract); thereafter they **may** choose any or none of the secondary options as necessary to achieve their objectives for a specific project.

1.10 Appendix A lists the documents that are published as part of the New Engineering and Construction Contract.

Guidance notes

1.11 There are guidance notes published with the contract. NHS bodies should require staff responsible for the management of contracts to study the guidance notes and apply them except where they are incompatible with Government and Departmental policies.

1.12 In addition there is a document entitled 'Flow Charts', produced as part of the package of contract documents which explains the various contractual processes/procedures in diagrammatic format.

2.0 Government and Department of Health policy requirements

Introduction

2.1 Government and Departmental policy on matters such as:

- contract strategy;
- selection of contractors and consultants;
- contract conditions;
- EC Works Directives/UK Regulations etc

are dealt with in 'Concode (Contracts and commissions for the NHS estate) – Contract procedures', which is complementary to the 'Capital Investment Manual'; or in Scotland, ScotConcode, which is complimentary to the Scottish Capital Investment Manual for Contract and Commission Policies.

2.2 NHS bodies are reminded that they must comply with the policies laid down in 'Concode (Contracts and commissions for the NHS estate) – Policy' or in Scotland, 'ScotConcode' which is complimentary to the Scottish Capital Investment Manual for Contract and Commission Policies. These policy documents were produced to assist NHS bodies in the implementation of Government and Departmental policies.

2.3 When using the Engineering and Construction Contract (Second Edition), NHS bodies are referred particularly to the following sections of 'Contracts and commissions for the NHS estate – Policy':

- a. 3.7 Attestation;
- b. 3.16 Value Added Tax;
- c. 3.18 Fluctuations;
- d. 3.31 Loss/expense claims and settlements;
- e. 3.44 Liquidated and ascertained damages*;
- f. 5.0 Requirements of European Community Directives;
- g. 6.0 Works insurances*;
- h. 7.10 Construction industry tax deduction scheme;
- i. 8.3 NHS Trusts – insurances*.

* Further guidance on these subjects is given later in this section

Project director

2.4 NHS bodies should appoint a project director for all projects on which this contract is used. This may be a senior member of management with responsibility for a specific major contract. The project director will be an officer of the NHS body who should obtain appropriate professional support where they are not technically qualified or experienced. When referring to guidance produced by the Central Unit on Purchasing (CUP), HM Treasury, NHS bodies should substitute the term "project sponsor" for "project director". NHS bodies should refer to Section 2 of the 'Project Organisation' and Sections 1, 3 and Appendices 5 and 6 of the 'Management of Construction Projects' parts of the 'Capital Investment Manual' or in Scotland the 'Scottish Capital Investment Manual' for more details on the roles and duties of the project director/sponsor. In addition to the above, the duties/actions of the project sponsor are identified within the 'Agreement for the appointment of project managers for construction projects in the National Health Service' (see Schedule 2 of the Memorandum of Agreement).

Project manager

2.5 NHS bodies must appoint project managers for all major capital schemes of £1 million gross value or over. The contract provides for the appointment of a project manager who may be internally or externally provided by NHS bodies.

Co-ordinated project information (CPI)

2.6 The Department recommends the use of CPI, which aims to improve the technical content of documents and also the effectiveness of the co-ordination between them. CPI emphasises the relationship between quality and timeliness of project information, as well as the quality, speed and cost of construction on site. The conventions of CPI aim to promote co-ordination via recommendations concerning:

- a. procedures for production documents;
- b. technical content of documents; and
- c. arrangement of documents.

Further information is contained in 'Co-ordinated Project Information for Building Works, A Guide with Examples', obtainable from RIBA Publications Ltd.

Use of the Engineering and Construction Contract in the NHS

2.7 The contract is suitable for major works which are partly or wholly building and/or engineering works.

2.8 When considering using this contract, NHS bodies are recommended to ensure that when selecting a project manager they take into account the philosophy and provisions of the contract and that firms selected demonstrate this. This is important because of the emphasis that the contract places on effective project management.

2.9 The 'main' and 'secondary' options permit flexibility in its use by employers when procuring building works.

2.10 The main decision to be taken is that of responsibility for design; it can be partially or wholly with the contractor, dependent upon the requirements stated by the employer within the Works Information.

2.11 Where design responsibility remains with the employer and a design team of professional consultants are appointed to prepare the design, the Department recommends that the mechanical and electrical installations should be fully specified and designed prior to tenders being invited. For example, where an option has been selected that provides for the preparation of a Bill of Quantities (options B and D), the mechanical and electrical installations should be measured and included therein.

2.12 Where the contractor is responsible for any design work, the Department recommends that the Works Information either:

- a. reminds the contractor that he is responsible for the design and construction of a building that is 'fit for the purpose'; OR
- b. requires the contractor to provide professional indemnity insurance in a similar manner to that provided by professional consultants where Secondary Option M is selected by the employer.

2.13 If an NHS body requires a contractor to assume responsibility for the design, the Department recommends that Main Options A and C are normally selected.

2.14 The tender documents under the contract will comprise:

- a. instructions to tenderer (this should include instructions in respect of preparing activity schedules or using quantities provided by the Employer (see paragraph 2.15) if Options A or E are selected);
- b. form of tender;

- c. Contract Data: Part One;
- d. Contract Data: Part Two;
- e. Bills of Quantities (if Options B or D are selected);
- f. works information;
- g. site information;
- h. Health and Safety Plan.

2.15 Where NHS bodies select Options A or C, the Department recommends that they prepare quantities for issue to tenderers. If this were not undertaken, each tenderer would have to prepare their own quantities, which adds both time and cost to the tender process; the employer will be better placed to evaluate the Activity Schedules, as they will all be based upon the same data. When issuing quantities to the tenderers, the NHS bodies should make it clear that the tenderers will be using them at entirely their own risk of their inaccuracy or incompetence (see paragraphs 4.5 to 4.6).

2.16 It is worthwhile noting that the conditions of contract may also be used to make the contractor responsible for design when using either the cost reimbursable contract option (Option E) or the management contract option (Option F).

Delay damages (liquidated and ascertained damages)

2.17 The contract contains 'Option R – Delay damages' which must be selected by NHS bodies on all contracts as it provides for the employer to recover liquidated and ascertained damages in the event that the contractor does not complete the works by the completion date or by a new completion date fixed under the contract conditions. The rate of liquidated and ascertained damages must be a genuine pre-estimate of the damage likely to be sustained by the employer. The rate must be carefully assessed by the NHS body for each project in the light of its particular circumstances, and it is likely that it will include some or all of the following:

- additional costs arising from extra time spent by administrative, professional, supervisory and other staff (including the NHS body's own officers) in the management of the contract;
- direct losses and expenses arising from the necessity to rent or use alternative accommodation while a new building is not available;
- loss of revenue;
- loss of amenities for providing healthcare (that is, since health building schemes mostly provide additional facilities, there is a loss of expected amenities when the scheme is not completed on time).

2.18 Additional staff costs and direct losses and expenses can be easily estimated, but loss of amenities cannot normally be assessed by any generally acceptable calculation other than expressing the loss as being equivalent to a return, by way of interest, on the anticipated contract sum.

2.19 There are two alternative methods of estimating the damages. The choice between them is dependent on the particular project:

- a. where loss of amenities is not a significant feature of the project, damages may be assessed by estimating additional costs and direct losses and expenses;
- b. where loss of amenities is significant (which it frequently will be for NHS projects) a rate of interest of 15% per annum of the anticipated contract sum (pre-tender estimate) should be adopted instead. This rate (which includes 2.5% for additional staff costs) has been adopted by other Government departments and is independent of short-term changes in general interest rates.

2.20 It is emphasised that the loss of amenities method is an alternative to estimating direct costs, losses and expenses, but nevertheless the Department would not expect to see a rate which represented much less than 15% per annum on a contract without special features.

2.21 When calculating the rate of liquidated damages, an NHS body's Director of Finance should be asked whether there are any special revenue features of the project which would warrant a sum different from that based upon the loss of amenities method.

2.23 'Option R, clause R11' requires the rate of liquidated and ascertained damages (delay damages) to be stated in the contract data as a specific sum of money per period of delay. When the damages have been assessed by taking a percentage of the anticipated contract sum, the amount obtained should be divided by 365, "rounded" appropriately and stated as £ per day.

2.24 NHS bodies should note that the courts have held that an arbitrarily fixed "penalty" is not acceptable: It is therefore not possible to incorporate "penalty" clauses into a contract to attempt to force a contractor to perform to time.

2.25 Section 6 (Compensation events) of the contract conditions sets out the detailed procedures for claiming, granting and reviewing completion events; extensions of time; and fixing a new completion date so that the contract does not become "at large".

2.26 The detailed procedures specified in Section 6 of the contract conditions are conditions precedent to the

employer being entitled to deduct liquidated and ascertained damages.

2.27 It is Government policy that the deduction of liquidated damages by the employer following unjustified delay in the completion of a project by the contractor should be pursued vigorously.

Sub-contractors

2.28 The engineering and construction contract only contains provisions in respect of domestic sub-contractors to be selected by the contractor. There are no provisions for naming or nominating sub-contractors within the conditions of contract.

2.29 Should NHS bodies wish to provide a list of "named" sub-contractors they may do so within the Works Information for specific tasks. When doing so it is prudent to list a minimum of four firms. Difficulties may arise where fewer than three firms can be listed, thereby affecting the contractor's ability to ensure effective competition. When compiling the list of "named" sub-contractors, NHS bodies may wish to select firms from their approved list of contractors should they have one, as well as taking advice from their project manager and design team members.

2.30 In all cases the contract provides that the contractor must obtain the project manager's approval of the sub-contractors that they propose to appoint, prior to their appointment.

2.31 To ensure that an NHS body is not deprived of the benefits of competition when the contractor is given a wider choice, the words "or equivalent" should be inserted after the list of named firms. This will also ensure that the requirements of both EC Directives and the Treaty of Rome are complied with. Any "equivalent" proposed by a tenderer must be accepted by the NHS body and the project manager prior to acceptance of the tender.

2.32 Where the works information specifies that the contractor must carry design responsibility, NHS bodies may require any sub-contractors carrying out design on the contractor's behalf to provide a "design warranty" (and this includes design consultants appointed by the contractor). Where this is required it must be stated in the Works Information together with the form of warranty.

2.33 All communications and instructions between the project manager and sub-contractors must be made through the contractor.

2.34 Where the NHS body or the project manager (on its behalf) intends to provide a list of named sub-contractors or suppliers within the Works Information, they must

2.0 Government and Department of Health policy requirements

ensure that their technical competence and financial stability are assessed. In any preliminary discussions with contractors or suppliers, care must be taken not to give any commitment to select them before the appropriate stage of agreement has been reached. The contractor's rights of objection must be preserved.

2.35 The responsibility for the technical competence and financial stability of domestic sub-contractors selected by the contractor (clause 26.1) rests with the contractor. NHS bodies' rights under the contract – that the specified standard of materials, goods and workmanship are met – are not affected by the fact that the work has been sub-let. If the contractor states the name of the proposed domestic sub-contractor, the project manager is at liberty to take into account any information or knowledge that he/she has about the firm when considering whether to give consent.

Suppliers

2.36 The difference between a sub-contractor and a supplier should be noted:

- a. a sub-contractor supplies and fixes any materials or goods or executes work;
- b. a supplier only supplies materials or goods which are to be fixed by the contractor.

2.37 The general situation in respect of the appointment of suppliers is reflected in that previously stated in paragraphs 2.28 to 2.35 in respect of sub-contractors.

Building Components HTMs

2.38 The current component database (first published by HMSO in 1989) is contained in a series of Health Technical Memoranda (HTMs 54–80). Although information and guidance on component specification and design are provided in the HTMs, lists of suppliers are not. The project manager should prepare their own lists of suitable suppliers with appropriate advice from other members of the design team. Wherever possible, preference should be given to products and services from sources which have either been registered under BS EN ISO 9000 or equivalent quality control procedures, or are implementing a policy of Total Quality Management (TQM).

2.39 Information about project documentation and procurement of components is included in the 'User Manual' (HTM 54) and in each Building Components HTM. Suppliers of components may be named in the Works Information (see paragraphs 2.29 to 2.31).

2.40 Where component suppliers offer a site fixing service there is the option of treating them as sub-contractors (see paragraphs 2.28 to 2.35).

Insurance

2.41 General information on Government policy can be found in paragraph 6.2 of 'Contracts and commissions for the NHS estate – Policy' or, in Scotland, ScotConcode and the 'Scottish Capital Investment Manual'.

2.42 NHS trusts have been provided with Departmental approval to make their own decisions on insurance matters. NHS trusts should therefore make a considered judgement on whether:

- a. they are prepared to carry the particular risk themselves without taking out insurance;
- b. they should take out insurance themselves;
- c. they require insurances to be taken out by the contractor at a cost to the employer (the NHS trust).

2.43 If NHS bodies are in any doubt whatsoever on a particular situation, the Department recommends that they should obtain appropriate professional advice – see paragraph 1.2 of 'Contracts and commissions for the NHS estate – Policy' or, in Scotland, ScotConcode and the 'Scottish Capital Investment Manual'.

Finance (No 2) Act 1975 – Statutory Tax Deduction Scheme

2.44 NHS bodies are not "contractors" for the purpose of the construction industry tax deduction scheme. However, although not legally bound by the Act, NHS bodies must observe the spirit of the Act and ensure that the procedures set out in paragraphs 7.10 to 7.13 of 'Contracts and commissions for the NHS estate – Policy' are followed.

3.0 The Engineering and Construction Contract, Second edition (November 1995): core clauses

Commentary

Notes/Amendments

Introduction

3.1 In this section the "core clauses" of the contract are examined and guidance is given on them.

This guidance applies to Scotland, and reference should be made to ScotConcode and the 'Scottish Capital Investment Manual'.

3.2 Tender documents must state:

- a. that the form of contract to be used will be the Engineering and Construction Contract, Second Edition;
- b. published amendments to the contract;
- c. the 'Main Option' and 'Secondary Options' that have been selected;
- d. all amendments, if any, that the employer will make to the printed form when preparing the documents for execution by both parties.

3.3 It should be noted that the "NHS body" is described as the "Employee".

3.4 Amendments are occasionally made to the contract by the publishers, and are usually incorporated into the text of the contract at the next reprint. Meanwhile, separately issued amendments can be incorporated by either:

- a. amending the printed wording of the contract in black ink before it is signed by the parties. Each separate amendment must be initialled by or on behalf of each of the parties; or
- b. attaching the relevant printed sheets carrying the amendments firmly to the form of contract. Each page must be initialled by or on behalf of each of the parties.

3.5 The Department recommends that option (b) – attaching the printed sheets carrying the amendments – is used.

3.6 All employer amendments to the contract must be in accordance with those stated in the Works Information or Contract Data Part 1 (additional conditions of contract). As with JCT amendments (paragraph 3.1), each amendment made by the employer must be initialled by or on behalf of each of the parties.

Commentary

3.7 Where the wording of a printed clause is varied, it is recommended that the printed clause is deleted entirely and a typed amendment slip is attached with the revised wording. Additional clauses should be incorporated in a similar way.

3.8 It is good practice for each amendment to be identified for initialling by the parties.

3.9 All other contract documents such as contract drawings and contract bills of quantities must be suitably identified and signed by or on behalf of the parties.

3.10 The originals of the contract documents must be retained by the employer in safe keeping, and a certified true copy of the originals should be provided by the employer to the contractor, free of charge.

3.11 Any parent company guarantee required relating to the main contract should normally be executed as a deed before the main contract is executed. The original is retained by the employer in safe keeping with the originals of the contract documents. Further guidance on parent company guarantees is contained in Appendix F.

Form of agreement

3.12 A model form of agreement for use with the contract is included at Appendix C. The contract date will normally be entered after both parties have executed the contract, and should be before the starting date stated in the 'Contract Data: Part 1'.

3.13 The names and addresses of the parties should be entered. The addresses will normally be the addresses to which certificates, instructions, notices etc should be sent. If either party wishes to have documents, communications etc delivered to addresses other than those entered in the form of agreement, this should be clearly stated here.

General

Actions 10

3.14 Clause 10.1 should be noted by NHS bodies, as it establishes the philosophy on which the contract is based.

Identified and defined terms 11

3.15 Clause 11.1 sets out where specific information is identified in the contract; for example, items in italics can

Commentary

be found in the "Contract Data" and items with capital initials are defined under clause 11.2.

3.16 Clause 11.2 defines certain items used within the contract. As the contract uses different terminology to that normally used in other standard forms of contract with which NHS bodies are familiar, they are advised to read this clause.

Interpretation and the law 12

3.17 NHS bodies should ensure that the country whose law applies to the contract is inserted into the "Contract Data: Part 1", that is, England, Scotland or Northern Ireland.

Communications 13

3.18 NHS bodies should note that the provision of communications sent by post, telex, cable, electronic mail, facsimile transmission and on disk, magnetic tape or other electronic means are covered by the provisions of Clause 13.1.

3.19 Clause 13.3 requires the Employer to insert a "period of reply" in the "Contract Data: Part 1". This period of reply may be extended by agreement under the provision of clause 13.5.

The project manager and the supervisor 14

3.20 This section deals with the:

- project manager;
- supervisor.

3.21 The project manager is the key person involved in the management of the contract from the employer's viewpoint. His/her duties are described in the clauses of the contract and he is identified in "Contract Data: Part 1".

3.22 The supervisor is the person normally appointed by the employer whose main functions are:

- to check that work is completed in accordance with the 'Works Information';
- to identify defects and ensure that they are corrected.

The supervisor is identified in "Contract Data: Part 1"

Commentary

Notes/Amendments

3.23 Both the project manager and the supervisor are provided with the power to delegate any of the actions (Clause 14.2) provided that they notify the contractor of:

- the person to whom they are delegated; and
- the specific duties delegated.

3.24 It is important that NHS bodies ensure that the project manager keeps them informed of the current status on the contract at all times and particularly in respect of any important issues such as quotations for compensation events, instructions for acceleration of work etc.

3.25 Where NHS bodies have not delegated the authority to make a particular type of decision to the project manager, they must make certain that procedures are in place to ensure that decisions are made by the appropriate person and communicated to the contractor via the project manager within the contractual time limits.

3.26 If the contractor does not agree with any actions of the project manager or supervisor, the only means of resolving the dispute during the construction period is via the adjudicator.

3.27 NHS bodies should note that only the project manager is provided with the authority to change the Works Information (Clause 14.3) and therefore they must ensure that there is effective liaison between the project director and project manager.

Early warning 16

3.28 The provisions of clause 16.1 require both the contractor and the project manager to provide warning as soon as possible of **anything which may affect the cost, timing of completion, and quality of the works**. NHS bodies should ensure that the provisions of paragraph 3.29 which provide a mechanism for informing them are effectively implemented.

3.29 Clause 16.2 provides for early warning meetings to be held to discuss potential problems, for example discovery of unexpected ground conditions, effects of bad weather, design problems etc. NHS bodies should establish a mechanism in their project execution plan to ensure that this is effectively achieved.

3.30 The objective of the provision is to ensure co-operation, thereby enabling action to be taken and decisions made which avoid or mitigate the effects of problems on cost, quality and time.

Commentary

Notes/Amendments

The contractor's main responsibilities

The contractor's design 21

3.31 The contractor may be required in the Works Information to design parts or the whole of the works. Work cannot commence until the project manager has ascertained that the proposed designs comply with the Works Information and do not appear to contravene any applicable law.

Insert against 'Contract Data: Part 1 – The Contractor's liability for defects due to his design that are not listed on the Defects Certificate is limited to':

3.32 In respect of the design liability of the contractor, NHS bodies should refer to paragraphs 2.10 to 2.13 and 5.26 to 5.31. In all cases there should be no limitation on the contractor's design liability. It is important to note that where a contractor is responsible for the whole of the works and Option M is not selected, the contractor's design liability appears to be that of "fitness for purpose".

'Not applicable'

Using the contractor's design 22

3.33 NHS bodies are provided with the right to use the contractor's design for any purpose associated with the works in future, for example maintenance, refurbishment, demolition etc.

Design of equipment 23

3.34 The project manager may require the contractor to submit particulars of the design of an item of equipment for acceptance. Specific reasons for non-acceptance are provided.

Co-operation 25

3.35 If NHS bodies require access to the site to carry out the work whilst the contractor is completing the works, this requirement must be included in the Works Information. This should only be required by NHS bodies in exceptional circumstances; wherever possible, sectional completion (Option L) should be used by NHS bodies to obtain early occupation of parts of the Works in which they wish others to carry out work on their behalf.

3.36 As NHS bodies will require the use of tender documentation for statistical or indexation purposes, for example by the Building Cost Information Service (BCIS), an additional clause 25.2 should be inserted into the contract.

Commentary

Subcontracting 26

3.37 The contract makes no provision for nominating subcontractors or suppliers; however, NHS bodies may, as stated in paragraphs 2.28 to 2.35, insert lists of named firms for specific tasks within the Works Information.

3.38 The contractor must submit the name of each domestic sub-contractor to the project manager for acceptance; therefore NHS bodies must ensure that the project manager has established criteria for evaluating the sub-contractors.

3.39 The sub-contract conditions for each sub-contractor must be submitted to the project manager for acceptance, unless:

- the NEC Engineering and Construction Sub-contract' is to be used; or
- the project manager has agreed that no submission is required (NHS bodies should use their discretion and may consider it prudent to ensure the sub-contracts for major/important elements of the works are examined by the project manager to ensure that there are no conditions that are likely to result in adversarial relationships between the parties which may affect time, quality and cost).

3.40 No sub-contractor may be appointed by the contractor until the project manager has notified the contractor of his acceptance of the proposed form.

Time

Starting and completion 30

3.41 The starting date and the completion date are given in the "Contract Data: Part 1".

Possession dates (including Possession of the site 33)

3.42 Where phased or serial possession of the site by the contractor is envisaged, the "Contract Data: Part 1" must be completed to reflect this requirement. More detailed information may be included within the Works Information. Option L (Sectional Completion – see paragraphs 5.22–5.24) should be selected in respect of the employer's sectional completion requirements.

3.43 In order that all tenders are based on the same information, the Department recommends that for tender purposes the starting date is normally given as a number of days (normally not exceeding 60) from the date of acceptance of tender. In addition, the date for

Notes/Amendments

Insert the following additional Clause after Clause 25.1:

'25.2 The Employer shall be permitted to use the contract documents (specification, drawings, prices etc) for compiling cost records and statistical analysis of the cost of construction works.'

Commentary

completion should be given as a specific number of consecutive calendar weeks after the starting date. Specific dates for starting and completion should not be given at tender stage since they will need to be established with the successful tenderer and inserted in the "Contract Data: Part 1". When the contract is executed, specific dates should be inserted by NHS bodies.

3.44 Tenderers, if they wish, should not be precluded from submitting an alternative tender for consideration based on a different construction period to that stated in the tender documents. These alternatives should be carefully evaluated before acceptance by NHS bodies. It is important to ensure that the earlier completion date is acceptable to the NHS body for various reasons, for example cash flow, commissioning, decanting/removals programme.

3.45 The period for the execution of the works stated in the tender document is normally assessed by the project manager in consultation with the supervisor, the design team and the employer.

The programme 31

3.46 The programme becomes a contract document under the contract, and the contractor must submit it to the project manager for acceptance. Clause 31.2 details the information that should be included on the programme. There are stated reasons for the project manager not accepting a programme. Clause 50.3 enables 25% payment to be withheld if the first programme is not provided for acceptance.

3.47 The Department recommends that NHS bodies include the requirement for a programme in the Works Information for all projects on which this contract is used.

Revising the programme 32

3.48 The contractor is required to submit a revised programme in specified circumstances (clause 32.2). In any case a revised programme must be submitted at the intervals specified in the "Contract Data: Part 1".

3.49 NHS bodies would be prudent to ensure that their project managers obtain a revised programme whenever they are made aware (clause 16 – early warning) of problems or changes which could have an impact on the progress of the Works, particularly the completion date(s).

Commentary

Acceleration 36

3.50 There are contract provisions for bringing the completion date forward. The project manager may request a quotation from the contractor, but if it is either not produced or not acceptable, there is no action the employer can take. Acceleration can only be implemented by agreement between the parties and not enforced on the contractor by the employer.

3.51 Acceleration is more easily implemented if NHS bodies are using Main Options C, D or E.

3.52 This clause does not provide for accelerating the contract to recover time lost as a result of delays that have already occurred. In such cases the project manager may instruct the contractor to produce a revised programme under the provisions of clause 32.2 to demonstrate how he intends to recover the time he has lost.

Testing and defects

Tests and inspections 40

3.53 Tests required by the employer should be specified in the Works Information. Any additional tests required by the project manager will be a compensation event under clause 60.1⁽¹⁾.

Testing and inspection before delivery 41

3.54 The Works Information may require plant and materials to be tested prior to delivery to the Working Areas.

Correcting defects 43

3.55 The Defects Date is effectively a means of defining the Defects Liability Period as referred to in JCT contracts. The Department recommends that NHS bodies use '52 weeks', being the equivalent of 12 months, to calculate the Defects Date.

3.56 The Defects Correction Period provides for the employer to decide how quickly the contractor should correct defects of which he has received notification after completion. This period will be dependent upon:

- the nature of the defects and the time needed to correct them;
- the urgency of the requirement for correction by the employer; and
- ease of access for the contractor.

Commentary

NHS bodies should use their discretion when inserting a period and should take into account the above factors together with any other project-specific constraints.

3.57 Clause 43.2 provides for the project manager to issue a Defects Certificate at the later of the Defects Date or the end of the last Defect Correction Period which will list outstanding defects if there are any or state that there are no defects.

Accepting defects 43

3.58 Clause 44 provides for either the project manager or the contractor to propose a change to the Works Information with the sole objective of avoiding the correction of a defect.

3.59 The proposal does not have to be accepted by either party, and the contractor must submit a quotation for reduced prices and/or an earlier completion date for acceptance.

3.60 The Department recommends that

- NHS bodies should not normally accept such proposals, as they may limit the contractor's liability in the event of latent defects arising in connection with the defective work; and
- NHS bodies should utilise the provisions of Option S (Low Performance Damages) in those exceptional circumstances where they decide to consider such an approach.

Uncorrected defects 45

3.61 This clause provides that where any notified defects are outstanding at the end of the Defect Correction Period the contractor must pay the employer the assessed value of having the defect correct by others.

3.62 Wherever possible, NHS bodies should liaise with the contractor to ensure that all notified defects are corrected within the Defects Correction Period to avoid any difficulties that may arise in respect of liability for latent defects or defects in adjacent work or even potential future operational disruption.

Commentary

Payment

Generally

3.63 This section contains provisions in respect of :

- a. payment mechanisms;
- b. payment periods;
- c. liability for interest on late payments;
- d. certification of payments.

3.64 General guidance on the prompt settlement of accounts and the provision of facilities for auditing accounts by NHS bodies' finance departments is given in paragraph 3.30 of 'Contracts and commissions for the NHS estate – Policy'. The provisions of Part II of the Housing Grants, Construction and Regeneration Act 1996 when they come into force will support the policy of prompt payment and the contract will have amendments issued by the publishers where appropriate. No amendments should be made to the clause to make the completion of auditing a condition for the certification of payments due after either the issued of the 'Defects Certificate' or the completion of the whole of the works. This is, in any case, largely unnecessary as clause 50.5 allows payment to be corrected if it is subsequently found that there have been any mistakes, for example accidental inclusion or exclusion of work, materials or goods, or any arithmetical error in any computation.

3.65 The following paragraphs draw attention to particular parts of the provisions on payment.

Payment mechanisms

3.66 These are one of the key differences between the 'Main options' in the contract, and guidance can be found in Chapter 4 of this document.

3.67 When determining the amount due for payment to the contractor, NHS bodies must ensure that the property of any materials and goods on-site has been vested in the employer in accordance with 'Section 7' of the contract conditions (Title) (see paragraphs 3.95 to 3.101).

Effects of secondary options on payment

3.68 When assessing amounts due to contractors, NHS bodies must ensure that any secondary options selected which affect payment must be taken into account.

Commentary

Notes/Amendments

3.69 Those secondary options which affect payment are:

Option J: Advanced payment to the contractor ;

Option L: Sectional completion

Option N: Price adjustment for inflation

Option P: Retention

Option Q: Bonus for early completion

Option R: Delay damages

Option S: Low performance damages

Option V: Trust fund.

3.70 If the contractor fails to submit a first programme to the project manager for acceptance, 25% of any sums due to the contractor may be retained by the employer under the provisions of clause 50.3. NHS bodies should note this, as the Department recommends that a programme be required on all contracts (see paragraph 3.47).

Prompt payment to sub-contractors and suppliers

3.71 To comply with Government policy designed to encourage prompt payment to subcontractors, NHS bodies must ensure that the contract incorporates the requirements of Part II of the Housing Grants, Construction and Regeneration Act 1996 and that consequential amendments are incorporated into all sub-contracts.

3.72 In order to provide additional safeguards for NHS bodies in the event of contractors becoming insolvent after having received payment for unfixed materials and goods on-site, the Department recommends that clause 50.8 be inserted after clause 50.5 in the 'Core Conditions'.

Insert the following additional clause 50.8 after 50.5 in the "Core Conditions":

'50.8 Prior to payment of any certified amount due the contractor shall if requested by the project manager satisfy him that any amount due to a sub-contractor or supplier of materials or goods for incorporation in the Works which is included in any previous payment has been paid.'

Payment periods ("assessment dates")

3.73 Clause 50.1 details the periods at which payments shall be made to the contractor. It is important to note that 'the First Assessment Date' is to be agreed by the parties but it is the assessment intervals inserted in the "Contract Data: Part 1" that determine the overall payment periods. The Department recommends that NHS bodies insert an "Assessment Interval" of 30 days in the "Contract Data: Part 1".

Commentary

3.74 Payments are made:

- at the end of each assessment interval, until completion of the whole of the works;
- at completion of the whole of the works;
- four weeks after issue of "Defects certificates";
- when an amount due is corrected or a late payment is made after the completion of the whole of the works.

Payment for equipment, plant and materials outside the working areas (for example off-site)

3.75 If the provisions of Section 7 (Title) of the contract conditions have been complied with (see paragraphs 3.95 to 3.101), payment for equipment, plant and materials outside the working areas may be made. NHS bodies should note that whilst they become the property of the employer, the contractor remains responsible for any loss or damage and the cost of storage and handling.

3.76 It is therefore important that the insurance cover provided by the contractor for loss of or damage to the works, plants or materials provides adequate cover for that which is outside the "Working Areas" (for example off-site). This should include cover whilst they are in transit to the site of the works.

Liability for interest on late payment

3.77 The provisions of clauses 51.2, 51.3 and 51.4 entitle the parties to receive interest on sums paid late.

3.78 Sums may be paid late as a result of:

- a. failure to pay sums due within the time limits specified in the contract (clause 51.2);
- b. correction of amounts due in a later certificates as a result of:
 - (i) a mistake; or
 - (ii) compensation events; or
 - (iii) a decision by an adjudicator or tribunal (clause 51.3);
- d. failure to issue a certificate when one was required (clause 51.4).

3.79 NHS bodies should note the above and ensure that they comply with the Government policy on prompt payment, statutory legislation and the contract conditions in respect of payment periods to avoid incurring any liability for interest payments.

Commentary

3.80 NHS bodies should also be aware that any payments due to them from the contractor that are paid late incur interest under these provisions.

Compensation events

Compensation events 60

3.81 These are events which may occur but are not the fault of the contractor, thereby entitling the contractor to be compensated for any effect on the prices and completion date. There may be time and cost implications for the contractor.

3.82 The main list of compensation events can be found in clause 60.1 but events applicable to specific main options can be found in the following clauses:

B and D – clauses 60.4, 60.5, 60.6.

Some "secondary options" make provision for compensation events:

Option J – Clause 1.2

Option T – Clause 1.1

Option U – Clause 1.1.

3.83 Additional compensation events can be inserted in "Contract Data: Part 1"; NHS bodies should only insert additional compensation events if they are satisfied that the contractor is not the appropriate party to manage the risk.

3.84 Guidance on the compensation events listed in the contract can be found in the 'Engineering and Construction Contract Guidance notes' (pages 57-61).

Notifying compensation events 61

3.85 There are conditions precedent to compensation events being assessed and implemented.

3.86 The key conditions precedent are as follows:

- notification as soon as there is awareness of the event; and
- submission of a quotation in respect of the event.

3.87 The project manager may make assumptions (clause 61.6) in the event of uncertainty to enable the effect of a compensation event to be assessed. In the event that those assumptions are incorrect they may be corrected at a later date. NHS bodies should note that these assumptions should not be confused with "forecasts"

Commentary

which cannot be corrected if they are found to be wrong (see clause 65.2)

Quotations for compensation events 62

3.88 There may be more than one means of dealing with a compensation event, and the contractor can be instructed to provide quotations for the alternatives. In addition the contractor can submit quotations for any other alternative solution that he has identified using his own knowledge and technical expertise.

3.89 Quotations should include:

- a. any proposed change to the prices; and
- b. any delay to the completion date (this will require the submission of a revised programme); and
- c. details of the contractor's assessment.

Assessing the compensation events 63

3.90 The provisions of this clause are the criteria for assessing its effects on compensation events. Any such assessment must include both the cost and the time risk.

3.91 Any assessment includes all costs associated with the event, as no consideration will be given to any future submissions by the contractor in respect of the compensation event being assessed.

Project manager's assessment 64

3.92 In specific circumstances, the contract provides for the project manager to assess the cost and time effects of a compensation event.

Implementing compensation events 65

3.93 The project manager will notify the contractor of acceptance of the quotation or the project manager's assessment of a compensation event, after which the contractor must proceed to implement the proposals.

3.94 NHS bodies should note that the provisions of clause 65.2 do not permit review of an assessment of a compensation event if forecast information upon which it was based subsequently proves to be wrong.

Commentary

Title

The employer's title to equipment, plant and materials 70

3.95 In respect of equipment, plant and materials there are two categories:

- a. within the Working Areas;
- b. outside the Working Areas.

3.96 With regard to equipment, plant and materials within the Working Areas:

- title passes to the employer when brought within Working Areas;
- title returns to the contractor when removed from the Working Areas provided that the project manager has approved their removal.

3.97 With regard to equipment, plant and materials outside the Working Areas:

- title passes to the employer if the supervisor has marked it.

3.98 The requirements of clause 10 as identified in paragraphs 3.99 and 3.100 above are important in the event of termination (see paragraph 3.104), therefore they must be effectively implemented.

3.99 Where the contract involves the manufacture and/or storage of large, expensive or important items of equipment, plant and materials outside the working areas, NHS bodies should take the appropriate steps to ensure the title passes to them.

Marking equipment, plant and materials outside working areas 71

3.100 The following procedures should be followed:

- a. the Works Information must identify items subject to marking, and should state that as part of preparing the items the contractor must demonstrate that he/she has title, as a condition precedent prior to receiving payment;
- b. bills of quantities or activity schedules must identify them separately;
- c. the contractor must prepare items for marking as required in (a), and the supervisor must ensure that the requirements are met – this includes confirming that the contractor has title;

Commentary

- d. the supervisor must mark items if criteria in (a) have been met.

3.101 The effective implementation of the provisions of this clause should provide protection for NHS bodies to ensure that the property of the materials and goods on-site becomes vested in the employer when the value of materials and goods on-site is included in any payment to the contractor. This is important as a result of the decision in the Romalpa case (Aluminium Industry Vaasen B.V. Romalpa Aluminium Ltd (1976) 1WLR 676), which suggests that the employer may be required to pay the contractor for materials and goods which the contractor does not own. Should the contractor subsequently become insolvent without having paid for the materials and goods, the employer may find himself having paid for them but having no title.

Risks and insurance

Generally

3.102 This section of the contract provides for allocation of risks and provisions of insurance cover where appropriate. The following paragraphs draw attention to specific points of detail.

Employer's risks 80

3.103 Clause 80.1 details the notes for which the employer is responsible and NHS bodies should note that in the event of termination they will be responsible for "loss or damage to the works and any equipment, plant and materials retained on the site". This is a consequential provision arising from both Section 7 (Title) and clause 96.2.

Commentary

3.104 Therefore, if termination should occur, NHS bodies must ensure that appropriate steps are taken to protect their interests.

Indemnity 83

3.105 NHS bodies should note that clause 83.2 covers the extent to which parties are responsible for loss or damage when establishing liability for any claims, proceedings, compensation and costs. Therefore they should ensure that they manage the scheme in such a way that they do not incur any liability in this respect.

Insurance cover 84

Insurance against loss or Damage to the works, plant and materials

Insurance against loss or damage to equipment

3.106 In order to ensure that contracts awarded by the NHS correctly implement Government policy, NHS bodies should observe the following guidance and make the stated amendments to the contract (see paragraphs 6.1 to 6.5 of 'Contracts and commissions for the NHS estate – Policy' or, in Scotland, ScotConcode and the Scottish Capital Investment Manual) and paragraphs 2.39 to 2.40.

3.107 The insurance options available to NHS bodies are shown in Table 1.

	New building Existing building	New building	In, or extension to, existing structures	In, or extension to, existing structures
	Insurance by Contractor	Insurance by Contractor	Insurance by Employer	Risks taken by Employer
NHS authorities	Yes	Yes	No	Yes
NHS trusts	Yes	Yes	Yes	Yes
Guidance paragraphs	3.115 to 3.120 3.122 to 3.125	3.121	3.126 to 3.131	3.132 to 3.138

Table 1 Insurance options available to NHS trusts

Commentary

Notes/Amendments

3.108 Particular attention is drawn to the guidance notes contained in 'The Engineering and Construction Contract – Guidance Notes'.

3.109 The contract provides for the contractor to have the required insurances whether the works are for new buildings or in extensions to/or works within existing buildings. If NHS bodies want to either take out insurance themselves or take the risk without insuring they should refer to paragraphs 3.132 to 3.138.

3.110 NHS bodies should ensure that insurances in respect of loss or damage to the works, equipment, plant or materials, take into account a realistic provision for the list of professional design consultants and clerks of works (both NHS bodies' own officers and private consultants engaged on the contract). The loss of their services should include allowances for expenses and VAT and may be assessed as a percentage applied to the pre-tender estimated cost of the works.

Single policy of insurance for specific contract

3.111 It is essential that NHS bodies regularly review the adequacy of the insured sum of single policy insurance. Recognition should be taken of the cost of any compensation events and the increased costs that will be incurred when restoration takes place, including that resulting from inflation.

3.112 Where a single policy for the works is taken out, its duration will normally be expressed as ending at the completion date for the whole of the works. However, if:

- a. the completion date for the whole of the work is extended so that a new completion date for completion of the whole of the works is fixed; or
- b. it is essential that the single policy is extended so as to expire on the completion date,

it is essential that NHS bodies regularly review the anticipated completion date(s) to see that insurance policies are kept in force until those dates are achieved.

Should it become apparent that the completion date for the whole of the works of a project will exceed the duration of the policy, NHS bodies must take steps to ensure:

- a. the issue of necessary extension endorsements; **and**
- b. payment of additional premiums by the contractor.

3.113 The insurance policy will only provide over for:

- a. the actual cost the contractor incurs in reinstating the works;

Commentary**Notes/Amendments**

- b. site materials lost or damaged;
- c. the cost of removing debris in order to prepare for reconstruction;
- d. any additional sum prescribed in the contract for professional fees.

3.114 The insurance policy will not include cover for consequential loss such as:

- a. the increased cost of carrying out work not undertaken at the time of the damage and delayed in its completion by reason of that damage;
- b. loss suffered by the employer (the NHS body) due to the delay in securing the completed works.

New buildings

Insurance by contractor

3.115 The contract provides for this insurance to be provided by the contractor in the joint names of the contractor and employer. Therefore the contractor is responsible for any loss or damage to the works, plant, materials and equipment.

3.116 The contractor may provide these insurances in one of the following ways:

- a single joint names policy for both the insurances;
or
- separate joint names policies for each of the insurances.

The policy/policies may be for the particular contract or an annual policy maintained by the contractor.

3.117 The Department recommends that NHS bodies do not amend the contract provisions requiring the contractor to provide these insurances where the works are new buildings. Only in the event of failure by the contractor to provide the required insurances should NHS bodies provide them as required under clause 86.1.

3.118 In respect of loss or damage to the works as a result of fire or explosion caused by terrorism, NHS bodies must ensure that the contractor has taken out the appropriate insurance cover and the "Contract Data: Part 1" should be completed as shown.

3.119 A sum could be inserted as the level of cover/indemnity if one has been estimated by the employer.

Insert in 'Contract Data: Part 1 – The Contractor provides these additional insurances:

Insurance against – loss or damage to the works plant and materials as a result of terrorism.

Cover/indemnity – The replacement cost, including the amount stated in the Contract data for the replacement of any Plant and materials provided by the Employer.'

Commentary

Notes/Amendments

3.120 The address of the insurance company from which terrorism cover can be obtained is:

Pool Reinsurance Company Limited,
51 Gresham Street,
London, EC1V 7HQ
(Tel: 0171 216 7534)

New buildings

Insurance by the employer

3.121 In exceptional circumstances the employer may wish to take out this insurance. Where this is the case the "Contract Data: Part 1" should be completed to reflect this requirement. See paragraphs 3.126 to 3.131 for further information on where the employer is taking out insurances.

Works in/to existing buildings

Insurance by contractor

3.122 The contract provides for these to be provided by the contractor in the joint names of the contractor and the employer. Therefore the contractor will be responsible for any loss or damage to the works, equipment, plant and materials. It is important that NHS bodies accurately define the limit of the "area" for which the contractor is responsible to avoid any difficulties in agreeing whose insurers are responsible in the event of loss or damage occurring.

3.123 The contractor may provide these insurances in the ways stated in paragraph 3.116.

3.124 In respect of loss or damage to the works as a result of fire or explosion caused by terrorism, NHS bodies must ensure that the contractor has taken out the appropriate insurance cover and the "Contract Data: Part 1" should be completed as advised in paragraphs 3.119 and 3.120.

3.125 Where NHS bodies are satisfied that the provision of such insurances by the contractor represents value for money, they should ensure that the contractor provides these insurances in accordance with the contract provisions.

Commentary**Notes/Amendments****Works into existing buildings**

Insurance by employer (NHS body)

3.126 This option provides for the employer to be responsible for loss or damage to the works, equipment, plant and materials where the contract is for work into existing buildings.

3.127 NHS bodies may wish to adopt this approach because:

- a. they may have existing insurance cover for their estate that provides its required cover;
- b. an existing insurance policy as mentioned above may be extended for an additional cost lower than that submitted by the contractor for his insurance;
- c. the contractor's insurance policy may have to provide for protection of a larger area than that in which he is working, thereby making the cost of his insurance prohibitively high (for example if there is work being undertaken on the ground floor of a tower block, the entire block may be at risk of damage as a result of the works).

3.128 In such cases, provision of insurance by an NHS body may represent better value for money. Particular attention should be paid to ensure that both the contractor and the NHS body are not unknowingly providing the same cover at the same time.

3.129 Where the employer provides this insurance, the appropriate sections of "Contract Data: Part 1" should be completed to reflect this.

3.130 A sum could be inserted as the level of cover/indemnity if one has been specified in the insurance that the employer has obtained.

3.131 Unless their insurance policy provides otherwise, NHS bodies should normally insert "Nil" against deductibles. If an amount is inserted, NHS bodies will themselves be liable for the sum stated; the situation is similar to that of an excess on an insurance policy. It may be that they can achieve a lower premium as a result of accepting "deductibles".

Works into existing buildings: risk taken by employer (NHS body)

3.132 Where the work is into an existing building and the risk of loss or damage to works, equipment, plant or materials is taken by the employer then amendments to the clauses 60.1(14) and 84.2 of the contract conditions

Insert in "Contract Data: Part 1" – The Employer provides these insurances from the insurance table:

Insurance against – loss or damage to the works, plant and materials.

Cover/indemnity – The replacement cost, including the amount stated in the Contract Data for the replacement of any plant and materials provided by the Employer.

Deductibles – Nil

Insurance against – loss or damage to equipment.

Cover/indemnity – The replacement cost.

Deductibles – Nil.'

Insert at the end of clause 60.1(14):

' provided that this is not due to any negligence, omission or default of the Contractor, his servants or agents or of any Sub-contractor his servants or agents.'

Commentary

are required together with the appropriate insertion in the "Contract Data: Part 1".

3.133 Where NHS bodies are taking the risk of loss or damage themselves, that is, "self-insuring", Clause 60.1(14) will require amendment to comply with the Government policy of not placing itself in a position where it is not possible to recover the cost of loss or damage caused by the negligence of the other parties.

3.134 NHS bodies should note that it is necessary to prove negligence, and that the project manager will be required to value the work and the employer to deny payment as well as seeking the recovery of delay damages. In the event of a serious delay these damages may prove to be very substantial.

3.135 An alternative would for the NHS body to arrange insurance which covers loss of revenue/additional cost resulting directly from the delayed completion date which would be part of the associated compensation event. In order to offset the cost of such insurance, alternative quotations can be sought from the contractor without amending clause 60.1(14) and completing the appropriate section of the "Contract Data: Part 1".

3.136 NHS bodies should amend the insurance table in clause 84.2 to delete the requirement for the contractor to insure for loss of or damage to the works, material, plant and equipment (the associated minimum amount of cover or minimum level of indemnity requirements should also be deleted).

3.137 In accordance with the provisions of clause 80.1 where it says "Additional Employer's risks stated in the Contract Data", NHS bodies must insert the appropriate information within the "Contract Data: Part 1".

3.138 NHS bodies may or may not include the underlined section; its inclusion will remove any liability from them for loss or damage resulting from theft of plant, materials and equipment or vandalism, whether or not there is negligence.

Liability for loss of or damage to property (not the works, plant, materials and equipment) and liability for bodily injury or death of a person (not an employee of the contractor) caused by an activity in connection with the contract

3.139 The 'Contract Data: Part 1' contains an item where the employer must state the sum of insurance cover required in this respect. This clause does not cover insurance required under the Employer's Liability

Notes/Amendments

Insert appropriate requirements in Contract Data: Part 1 – The Contractor is to provide these insurances – the requirements for each project will be different so it is not possible to make a recommendation with general application. NHS bodies should seek appropriate professional advice eg insurance broker, their finance department.

Clause 84.2, *delete* the following joint names insurances from the insurance table:

- 'Loss of or damage to the works, Plant and Materials
- Loss of or damage to Equipment'

Insert in "Contract Data: Part 1": 'These are additional employer's risks:

1. Loss of or damage to the works, plant, materials and equipment except where such loss or damage is caused by the negligence of the Contractor, his servants or agents or any Sub-contractor, his servants or agents employed upon or in connection with the works or any part thereof including that resultina from theft of plant, materials and equipment or vandalism including their failure to take precautions to prevent the loss or damage.'

Commentary

(Compulsory Insurance) Act 1969 etc. Any sum stated will be a minimum sum of cover as the contractor may insure for a greater sum if he so chooses.

3.140 The sum that the employer should state must depend upon the particulars of each contract, for example value, location, extent of risk etc. While it is not possible for the Department to recommend a sum that has general applicability, it is recommended that a minimum sum of £5 million at 1994 prices be inserted.

3.141 This cover should remain in force until the completion date, defects date or the end of the last defects correction period, whichever is later.

Liability for the death of or bodily injury to employees of the contractor arising out of and in the course of their employment in connection with this contract

3.142 This requirement is consequential to Employer's Liability (Compulsory Insurance) Act 1969 etc and the Department recommends that there should be no limit on the contractor's liability. Therefore the "Contract Data: Part 1" should be completed to reflect this.

3.143 This cover should remain in force until the completion date, defects date or the end of the last defects correction period, whichever is later.

Data Protection Act 1984

3.144 NHS bodies are subject to the legislation on data protection (including the penalties for contravention of the provisions of the Data Protection Act 1984 or any statutory modification or re-enactment thereof relating to data protection. They must ensure that any contractors whom they employ indemnify them against any contravention of the provisions of the Data Protection Act 1984 or any statutory modification or re-enactment thereof relating to data protection. NHS bodies must therefore include an additional clause 83.3 in the contract after clause 83.2.

Notes/Amendments

Insert in "Contract Data: Part 1":
'Unlimited'

Insert additional clause 83.3 after clause 83.2

'Data Protection Act 1984 Indemnity to Employer

83.3 If during the subsistence of this contract the Contractor or any Sub-contractor, or any employee servant or agent of them, is furnished by the Employer upon any medium with, or otherwise obtains (with or without the knowledge or consent of the Employer), access to confidential or personal or commercial data owned or held by the Employer either in relation to the Employer's own affairs or those of others and at any time either directly or indirectly discloses or copies or makes improper use of any such data to a third party or allows a third party unauthorised access to them or if the Contractor or any Sub-contractor, or any employee servant or agent of them, is responsible for or causes the loss, damage or destruction of all or any such data, the contractor shall be liable in damages for any loss or damage suffered by the Employer and shall indemnify the Employer against all or any claims proceedings costs or expenses to which the Employer may be or become liable at the suit of any third party in respect thereof.

Commentary

Insurance policies 85

3.145 The party responsible for providing insurance must submit policies and certificates of insurances to the other party for acceptance. NHS bodies are recommended to ensure that this is done prior to execution of the contract documents. Therefore these documents must be provided by the contractor when requested.

3.146 Where the contractor is providing insurances, NHS bodies should note that:

- a. they will be liable for any excesses on the policies should they be unable to recover from the contractor; and
- b. they will be liable for any sums not recovered from the insured.

3.147 Clause 85.2 requires that all insurance policies include a "waiver of subrogation rights" by the insurers; NHS bodies should ensure that all policies incorporate appropriate provisions.

3.148 Where either party does not insure as required under the contracts, the other party may take out appropriate insurance cover and recover the cost (clause 86.1 and 87.3).

Disputes and termination

Adjudication

3.149 Under the provisions of clause 90.1, all disputes arising during the course of the works shall be referred to an adjudicator.

3.150 The adjudicator should be appointed jointly by the employer and the contractor. In the event of a failure by the parties to agree, the person nominated in "Contract Data: Part 1" should select an adjudicator. Persons that are suitable for nomination are the presidents or vice-presidents of:

- a. the Royal Institute of British Architects;
- b. the Royal Institution of Chartered Surveyors;
- c. the Association of Consulting Engineers;
- d. the Chartered Institute of Arbitrators; or
- e. other appropriate professional bodies.

3.151 The decision of the adjudicator is binding until the completion of the Works, whereupon it may be referred to the Tribunal. The Department recommends that NHS

Commentary

bodies should endeavour to ensure that all parties agree to the decision of the adjudicator being binding on the parties both during and after completion of the Works.

3.152 In the event of dissatisfaction of one of the parties with the adjudication decision, it can only be referred to the Tribunal on completion of the Works. The Department recommends that NHS bodies insert 'Arbitration using the JCT Arbitration Rules – 18 July 1988' in "Contract Data: Part 1" in respect of the Tribunal.

3.153 There are specified timescales in the contract in respect of:

- a. the adjudication procedures; and
- b. the notification of intention to refer the matter to the Tribunal by one of the parties.

These must be complied with by NHS bodies at all times to ensure that they do not disadvantage themselves in any disputes.

Termination (clauses 94-97)

3.154 Under the provisions of clause 94.1 the project manager must issue a Termination Certificate as a condition precedent to the termination procedures identified in respect of termination by either party to the contract.

3.155 There are reasons specified in clause 95 in respect of termination by either the employer or the contractor.

3.156 NHS bodies should note that in the event of the contractor terminating the contract, the employer is entitled to use any plant or materials to which the employer has obtained title under the provisions of Section 7 (Title) to complete the Works. It is therefore important that the provisions of Section 7(Title) are effectively implemented.

3.157 Payment due on termination is defined in clause 97.

4.0 The Engineering and Construction Contract, Second edition (November 1995): Main options

Introduction

4.1 The primary difference between the Main Options A-F is that of the basis of establishing payment for the Works. The main options are:

Option A: Conventional contract with activity schedule;

Option B: Conventional priced contract with bills of quantities;

Option C: Target contract with activity schedule;

Option D: Target contract with bills of quantities;

Option E: Cost-reimbursable contract;

Option F: Management contract.

4.2 Appendix G summarises the key points in this respect.

4.3 Detailed guidance can be found in 'The Engineering and Construction Contract – Guidance Notes'.

Main options with bills of quantities (options B and D)

4.4 The basis of pricing and payment using these options is the bills of quantities.

Main options with activity schedules (options A and C)

4.5 The basis of pricing and payment using these options will be the activity schedule(s). Any quantities provided by the employer as recommended in paragraph 2.15 may be of assistance in establishing the cost implications of compensation events in addition to the information provided in the schedule of cost components.

4.6 Activity schedules are a form of stage payment and therefore encourage the contractor to progress the Works, as the contractor will not receive payment for an activity until he has completed it.

Target cost contracts (options C and D)

4.6 These options provide for the lump sum for the activity schedule or the bills of quantities to become a target cost. The contract conditions make no other

reference to the target cost other than in the title of these options.

4.7 Any cost savings are shared between the employer and the contractor. NHS bodies should ensure that any savings made by the contractor do not affect the quality of the Works at practical completion, to ensure that value for money is obtained. If a reduction in quality is proposed, NHS bodies must be permitted to evaluate cost savings before they are implemented.

4.8 NHS bodies should ensure that they include an adequate definition of the target cost within the Works Information to avoid any difficulties that may be encountered when agreeing the sharing of any cost savings.

Cost-reimbursement contracts (options E and F)

4.9 The basis of pricing and payment is that of the contractor being reimbursed a "fee" (overheads, management, profit, common site facilities etc) together with:

- Option E – actual amount paid by the contractor;
- Option F – the actual cost that the contractor has accepted for payment (that is, the sub-contractor's tenders), which will not necessarily equal the actual amount paid.

4.10 These options put the least financial risk on the contractor and provide the employer with least certainty of price.

4.11 If these options are to be used by NHS bodies, the principles of "open book accounting" should be applied in respect of the contractor's cost records.

5.0 The Engineering and Construction Contract, Second edition (November 1995): Secondary options

Commentary

Introduction

5.1 The choice of secondary options is up to the Employer, the only exception being that of 'Option U : The Construction (Design and Management) Regulations 1994', which must be selected by NHS bodies for all contracts where these regulations apply.

5.2 It is important to note that some of the secondary options do not apply to all of the main options (see paragraph 1.7 and Appendix B).

Secondary options

Option G: Performance bond

5.3 This option provides for the Employer to require the contractor to provide a performance bond. The form of the bond should be included within the Works Information and the amount of the bond should be stated in "Contract Data: Part 1" (see Appendix H).

5.4 The use of performance bonds by NHS bodies is not recommended unless there are exceptional circumstances. They should not be used to replace proper financial and technical investigation of contractors during the selection and appointment stage. NHS bodies should refer to Appendix F for more detailed guidance on performance bonds. Guidance on the key provisions of this secondary option is given in the following paragraphs.

5.5 In respect of the provisions regarding the amount of the bond, this should be assessed by the Employer but will not normally exceed 10% of the contract value.

5.6 Clause G1.1 provides for the performance bond to be provided either:

- a. before the 'Contract Date' (the date the contract is executed by both parties); or
- b. within four weeks of the Contract Date.

5.7 Where a performance bond is required, the performance bond should be provided prior to:

- a. the Contract Date; and
- b. the contractor being given possession of the site.

Commentary

5.8 If a separate price is required for the performance bond, an item should be included in either:

- a. the activity schedule (Option A and C); or
- b. the bill of quantities (Option B and D); or
- c. the fee breakdown (Option E and F).

Option H: Parent company guarantees

5.9 This option provides for the employer to require the contractor to provide a parent company guarantee. The form of the parent company guarantee should be included within the Works Information.

5.10 If a separate price is required for the parent company guarantee, an item should be included in either:

- a. the activity schedule (Option A and C); or
- b. the bill of quantities (Option B and D); or
- c. the fee breakdown (Option E and F).

5.11 NHS bodies should refer to Appendix F for more detailed guidance on parent company guarantees.

5.12 Clause H1.1 provides for the parent company guarantee to be provided either:

- a. before the Contract Date (the date the contract is executed by both parties); or
- b. within four weeks of the Contract Date,

5.13 The Department recommends that in all cases where NHS bodies require a parent company guarantee they ensure that it is provided prior to:

- a. the Contract Date; and
- b. the contractor being given possession of the site.

Option J: Advance payment to the contractor

5.14 This option provides for the employer to make advanced payments to the contractor. Such payments should only be made in exceptional circumstances, and in all cases an advance payment bond must be obtained by NHS bodies (see Appendix F).

Commentary**Notes/Amendments**

5.15 The following information must be included in the "Contract Data: Part 1":

- a. start time for commencement of repayment by contractor; and
- b. repayment amounts.

5.16 Any advance payment **must be repaid during the first half of the construction period.**

5.17 All advance payments are made exclusive of VAT.

5.18 Clause J1.2 provides for the employer to require the contractor to provide an advance payment bond. The form of the advance payment bond should be included in the Works Information. As stated in paragraph 5.13, NHS bodies must require the provision of an advance payment bond should they make many advanced payments.

5.19 Clause J1.2 provides for the advance payment bond to be provided either:

- a. before the Contract Date (the date the Contract is executed by both parties); or
- b. within four weeks of the Contract Date.

5.20 The Department recommends in all cases where this option is selected that NHS bodies ensure that the advanced payment bond is provided prior to:

- a. the Contract Date; and
- b. the contractor being given possession of the site.

Option K: Multiple currencies

5.21 This option is used when it is intended that payment to the contractor is to be made in more than one currency and the risk of exchange rate fluctuation is to be borne by the employer.

5.22 This option should not be used by NHS bodies.

Option L: Sectional completion

5.23 This option should be selected when the employer requires parts (sections) of the Works to be completed before the whole of the Works.

5.24 Each section of the Works should be identified in "Contract Data: Part 1" together with its completion date. The work within each section should be described within the "Works Information".

Commentary

Notes/Amendments

5.25 When using the option it is important to apply the following options to each section of the Works:

Option Q: Bonus for early completion (see paragraphs 5.40 to 5.44)

Option R: Delay damages (see paragraphs 5.45 to 5.49).

Option M: Limitation of the contractor's liability for his design to reasonable skill and care

5.26 This option places a similar obligation on the contractor with regard to design work carried out by him under the contract as would be placed on an architect under a commission from a client. Under the latter arrangement, no limit is placed on the architect's liability to the client and the Department sees no reason why any limit should be set when a contractor designs instead of an architect.

5.27 The Department therefore recommends that the option of a limit in "Contract Data – Part 1" regarding clause 21.5 should be deleted. That is to say, no limit will be placed upon the contractor's liability set out in his option or clause 21.5.

5.28 It is important, however, to appreciate that the form does not include any requirement that the contractor's liability (which could be substantial) be covered by insurance. The Department consider it important that NHS bodies should adopt a procedure to ensure that suitable insurance cover is taken out by the contractor and maintained not only during the period of the contract, but also for a reasonable period of years thereafter (design defects may well not become apparent for a considerable time after completion of the works).

5.29 The Department recommends that NHS bodies adopt a procedure broadly similar to that used in regard to professional consultants' insurance. At tender stage, an NHS body should require submission of the contractor's insurance certificate and make it a condition of the contract that the contractor takes appropriate cover until expiration of six years (where the contract is executed as under hand) or 12 years (where it is executed as a deed) from the date of completion of the contract. NHS bodies should make an annual check that the necessary cover is being maintained by obtaining further certificates from the insurer.

5.30 The certificates, which should be given by the contractor's insurer/insurance broker (not by the contractor himself) should be to the effect that the contractor is currently insured for the period ending (date) for all claims arising as a direct result of any

Contract Data – Part 1:

delete 'the contractor's liability for Defects due to his design that are not listed on the Defect certificates is limited to . . . '

Commentary

negligent act, error or omission in the conduct and execution of designs entrusted to him/her or entrusted by him/her to any other party. The limit of indemnity for each and every claim and the amount (if any) of any excess carried by the contractor on each and every claim should be stated.

5.31 Should it be found that the contractor does not carry insurance covering liability for design work, his/her suitability for the award of a contract requiring design work to be undertaken by the contractor should be reconsidered.

Option N: Price adjustment for inflation

5.32 This secondary option can only be selected for use with main options A, B, C and D.

5.33 An outline description of provisions in tenders and contracts for fluctuations and a statement of the Government's policy relating to them is given in paragraphs 3.18 to 3.26 of 'Contracts and commissions for the NHS estate – Policy' or, in Scotland, ScotConcode and the Scottish Capital Investment Manual. This policy can be briefly summarised as requiring tenders to be on a limited fluctuations basis where the estimated execution of the works does not exceed two years, but permitting tenders on a full fluctuation basis where the estimated duration exceeds two years.

5.34 The selection of Option T: Changes in the Law effectively provides for "limited fluctuations".

5.35 Where NHS bodies require adjustment for inflation, that is, on a contract exceeding two years' duration, the Department recommends that NHS bodies apply the following building cost indices:

- a. NEDO building cost indices to 90% of the value of the work where bills of quantities are required as part of the Works Information, that is, Options B and D have been selected;
- b. APSAB (Movement of Average Building Cost Index) combined index to 90% of the value of the work where bills of quantities are not required as part of the Works Information in Options A, C, E and F.

5.36 In all cases where Option N is selected by NHS bodies, the appropriate sections of "Contract Data: Part 1" should be completed as follows:

- base date: this should normally be four weeks prior to that which the employer has laid down for receipt of tenders;

Commentary

- non-adjustable element: it is Government policy that this should be 10%.

Option P: Retention

5.37 This secondary option can only be selected for use with main options A, B, C, D and E.

5.38 This option enables the employer to retain a proportion of the price for work done to date as security and as motivation for the contractor to complete the works.

5.39 The employer is required to complete "Contract Data: Part 1" to show:

- a. the retention-free amount;
- b. the retention percentage.

5.40 The Department recommends that NHS bodies should:

- a. insert "nil" in respect of the retention-free amount; and
- b. insert the following retention percentages as applicable:
 - (i) contracts up to £1m – 3%;
 - (ii) contracts over £1m – 2½%.

Option Q: Bonus for early completion

5.41 This option provides for the employer to provide an incentive to the contractor to complete the "whole of the Works" earlier than the completion date specified in the programme.

5.42 The employer is required to insert an amount "per day" in "Contract Data: Part 1". This sum may be based upon a proportion of any financial benefit to the employer resulting from being able to occupy the "whole of the Works" early.

5.43 Option Q: Bonus for early completion must not be confused with an instruction in respect of acceleration under clause 36. The contractor should only be entitled to the bonus for early completion as a result of his own endeavours.

5.44 NHS bodies may want to use this option where:

- a. earlier occupation of the site permits early disposal of an existing site/assets;
- b. earlier occupation results in improved operational efficiency;

Commentary

- c. existing assets do not meet current stability standards.

(This list is not meant to be comprehensive; however, the overriding objective is to ensure value for money is being achieved.)

5.45 When selecting Option L: Sectional Completion, NHS bodies should ensure any incentive for the early completion of the works relates to each section of the works (see paragraph 5.25).

Option R: Delay damages

5.46 This option permits the employer to deduct liquidated damages from the contractor if the Works are not completed by the Completion Date.

5.47 NHS bodies must select this option on all contracts and complete the appropriate part of "Contract Data: Part 1.

5.48 It is important that NHS bodies ensure that the Completion Date is unlikely to be changed prior to deducting liquidated damages, as any overpayment of liquidated damages by the Contractor will be subject to interest.

5.49 The method of assessment of the rate for liquidated damages is discussed in paragraphs 2.17 to 2.27.

5.50 When selecting Option L: Sectional Completion, NHS bodies should ensure that liquidated damages are applied to each section of the Works (see paragraph 5.24).

Option S: Low performance damages

5.51 This option provides for the employer to recover liquidated damages suffered as a consequence of the "performance" of the works failing to reach that specified in the Works Information as a result of design or other faults of the contractor, with the defect remaining uncorrected and therefore remaining outstanding at the issue of defects certificates.

5.52 Examples where such provisions may be of benefit to NHS bodies are:

- incinerators;
- combined heat and power facilities;
- boilerhouses.

Commentary

5.53 The calculation of the liquidated damages may be based on the estimated net present value (npv) of the lost performance over the life of the asset. Provision has been made in the "Contract Data: Part 1" to enable differing amounts of liquidated damages to be inserted against differing levels of performance.

5.54 Certification of "performance" should follow a performance test specified in the Works Information to be carried out between completion and the defects date.

5.55 NHS bodies should only select this option on contracts where it is appropriate (see paragraph 5.51) and should ensure that:

- a. they are satisfied with the reduced performance levels and will continue to be satisfied over the life of the Works;
- b. the acceptance of the reduced performance levels does not affect the contractor's or designer's future liability for latent defects.

Option T: Changes in the law

5.56 This option removes from the contractor the risk of any changes in the law which occur after the contract date. Changes in the law could include the following:

- taxation;
- import duties;
- planning/building legislation;
- health and safety legislation.

5.57 The Department recommends that NHS bodies select this option on all contracts.

Option U: The Construction (Design and Management) Regulations 1994

5.58 As all construction contracts for which the contract will be used will be subject to the requirements of the Construction (Design and Management) Regulations 1994, the Department recommends that NHS bodies select this option for all contracts.

Option V: Trust fund

5.59 This option provides for a Trust Fund to be established into which the employer pays sums due to the contractor at the beginning of the period during which they become due, the sum being released to the contractor at the end of the period. The objective is to protect contractors from the inability of the employer to

Commentary

pay for work properly completed at the end of the period, the most common reason being the insolvency of the employer.

5.60 This option should not be selected by NHS bodies because:

- a. as publicly funded bodies they are unlikely to become insolvent; and
- b. as the NHS capital investment programme is financed from public funds it would be contrary to Government accounting rules to take funds earlier than they are required.

Option Z: Additional conditions

5.61 Where additional conditions of contract are required, they should be inserted in the 'Contract Data: Part 1' by NHS bodies.

5.62 As there are certain specific amendments to the contract required as a result of Government or Department policy, NHS bodies are recommended to select this option for all contracts.

Commentary

6.0 Contract data

Commentary

Introduction

6.1 The guidance in Appendix H will assist NHS bodies in completing this section of the contract. Where appropriate, cross-references have been made to contract clauses and information elsewhere within this guidance.

Part 1 – Data provided by the employer

6.2 "Contract Data: Part 1" – data provides for information to be provided by the employer. Appendix H provides guidance on the completion of this, with cross-references to contract clauses where appropriate.

Part 2 – Data to be provided by the contractor

6.3 "Contract Data: Part 2" – data provides for information to be provided by the contractor.

7.0 Works information, site information and schedules of cost components

Commentary

Works information

7.1 The Works Information is a document or series of documents provided by the contractor containing such information as that listed in Appendix D.

7.2 The list in Appendix D is only meant to provide an indication of those matters that should be considered for inclusion in the Works Information. It is not a comprehensive list and NHS bodies must ensure that they include all relevant information pertaining to a particular contract.

Site information

7.3 The Site Information is a document or series of documents provided by the employer to the contractor, containing such information as that listed in Appendix E.

7.4 The list in Appendix E is only meant to provide an indication of those matters that should be considered for inclusion in the Site Information. It is not a comprehensive list and NHS bodies must ensure that they include all relevant information pertaining to a particular contract.

Schedules of cost components

7.5 The contract allows for two schedules of cost components:

- a. the schedule of cost components;
- b. the shorter schedule of cost components.

7.6 NHS bodies are recommended to state which alternative applies.

7.7 These schedules are included for the following reasons:

- a. Options A, B, C, D and E – compensation events;
- b. Options C, D and E – the identification of costs which will be directly reimbursed to the contractor

7.8 The Contractor's Fee-related costs are not identified in these schedules, that is, head office overheads, insurance, taxes.

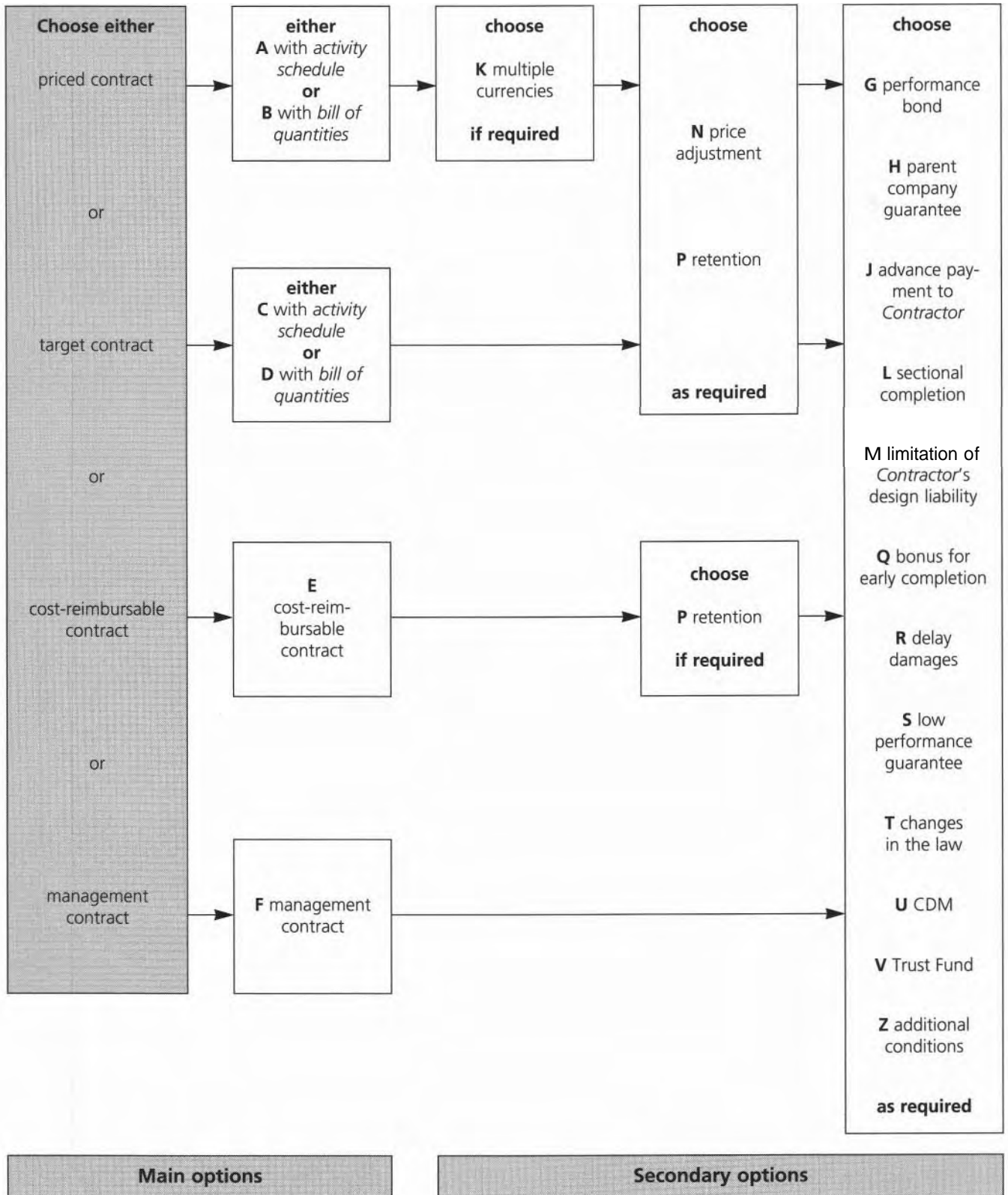
Appendix A – The Engineering and Construction Contract (Second edition): published documentation

- The Engineering and Construction Contract: Guidance Notes
- The Engineering and Construction Contract
- The Engineering and Construction Contract:
 - A. Priced Contract with Activity Schedule
 - B. Priced Contract with Bill of Quantities
 - C. Target Contract with Activity Schedule
 - D. Target Contract with Bill of Quantities
 - E. Cost-Reimbursable Contract
 - F. Management Contract
- The Engineering and Construction Sub-contract
- The Engineering and Construction Contract: Flow Charts

(The above listed documents are published for the Institution of Civil Engineers by Thomas Telford Services Ltd, Thomas Telford House, 1 Heron Quay, London E14 4JD)

Appendix B – Options using the Engineering and Construction Contract

(Extract from 'The Engineering and Construction Contract: Guidance Notes')



Appendix C – Model form of agreement

Model form of agreement

This agreement is made on theday of19.....

•

of

.....

.....

(the NHS body)

and

•

of

.....

.....

(the Contractor)

NOW IT IS AGREED THAT

1. The Contractor will provide the works in accordance with the conditions of contract
2. The Employer will pay the Contractor the amount due in accordance with the conditions of contract
3. The documents forming part of this agreement are:
 - the Contractor's tender
 - the Employer's letter of acceptance
 - the Contract Data part one
 - the Contract Data part two
 - the following documents:

.....

.....

.....

.....

EXECUTED AS A DEED BY THE NHS BODY

*
.....
(the NHS body)

by affixing his common seal in the presence of

AND AS A DEED BY THE CONTRACTOR

*
.....
(the Contractor)

by affixing his common seal in the presence of

or* by (name of Director)

.....
(signature of Director)

and

.....
(name of Director or Company Secretary)

.....
(signature of Director or Company Secretary)

* Delete as appropriate

Appendix D – Works information: Model checklist of items

Description of the Works	CLAUSE	<ul style="list-style-type: none"> • General description, general arrangements and location drawings; • Detailed drawings, specifications, models etc for work designed by employer; • Constraints on site e.g. restrictions on access phasing etc
Plant and materials		<ul style="list-style-type: none"> • Specifications for workmanship/materials; • Storage requirements; • Spares provision
Health and Safety	18.1	<ul style="list-style-type: none"> • Employer's site safety regulations; • Health and Safety Plan
Contractor's design	21.1	<ul style="list-style-type: none"> • Parts of Works contractor is to design; • Professional indemnity insurance (PII) requirements; • Design warranties; • Design performance specifications ("Employer's Requirements"); • Procedures contractor is to follow when carrying out his design, particularly those associated with the submission of designs to the project manager for checking and requirements for any design certificates as included in the Capital Investment Manual (Management of Construction Projects) • Any requirements for the employer in respect of a licence to use/copy the contractor's design in the future in connection with the 'Works' eg maintenance. refurbishment etc.

	CLAUSE	
Completion	11.2 (13)	<ul style="list-style-type: none"> Work to be done by the completion date for each of the sections (Option L) or the whole of the works
Services	25.1	<ul style="list-style-type: none"> Details of any other contractor or others (e.g. equipment suppliers/installers) who will require access to the site and when they will require access Facilities and services provided by: <ol style="list-style-type: none"> Employer to contractor; and Contractor to employer
Sub-contracting	26	<ul style="list-style-type: none"> List of named sub-contractors/suppliers; Statements of any work: <ol style="list-style-type: none"> to be subcontracted; and not to be subcontracted
Programme	20.2	<ul style="list-style-type: none"> Statement of work to be subcontracted (Main Option F)
	31.3	<ul style="list-style-type: none"> Information to be included by contractor in programme; Format of programme, together with any other specific requirements
Tests	40.1	<ul style="list-style-type: none"> Description of tests including: <ol style="list-style-type: none"> specification of materials/facilities/ samples provided by Contractor to Employer for tests; specification of plant/materials to be inspected/tested before delivery; specification of tests of plant/ materials "off-site" which must be passed
Title	73.2	<ul style="list-style-type: none"> Details of any materials found on the site to which the contractor will have title (e.g. materials from demolition works after any credits due to employer)
Acceptance or procurement procedures	11.2 (30)	<ul style="list-style-type: none"> Details of acceptance or procurement procedures which contractor is to comply with. (See 'Main Options C, D or E')
Accounts and records	52.2	<ul style="list-style-type: none"> Details of any additional requirements to those stated in the contract
Performance bond	G1.1	<ul style="list-style-type: none"> Details of performance bond
Parent company guarantee	H1.1	<ul style="list-style-type: none"> Details of parent company guarantee
Advanced payment bond	J1.2	<ul style="list-style-type: none"> Details of the advanced payment bond
Performance test	51.1	<ul style="list-style-type: none"> Details of tests to be used to measure performance of the works/item of plant for which low performance changes have been specified

Appendix E – Site information: Model checklist of items

- Subsoil investigations:
 - a. borehole results;
 - b. trial pit results;
 - c. geological surveys;
 - d. hydrographic data;
 - e. hydrological information.

- Employer's information on matters such as:
 - a. existing buildings above/below the surface of the site, e.g.:
 - survey details;
 - information on hazardous material e.g. asbestos, chemical contamination;
 - existence of basements, storage tanks etc.

 - b. existing services above/below the surface of the site, e.g.:
 - power supply (electricity cables) and substations etc;
 - gas mains;
 - water mains;
 - steam mains;
 - medical gas supplies (oxygen etc);
 - sewers/drains.

- Information on buildings and structures adjacent to the site.

Appendix F – The use of bonds and guarantees in NHS contracts

1. Introduction

1.1 A bond is a legally enforceable financial guarantee given by a third party (the guarantor) to a purchaser (the client) to guarantee the obligations of a supplier of goods, works or services (the contractor) under a contract. The guarantor agrees to pay the client a sum of money if the Contractor defaults on their obligations. The purpose of requiring a bond is to help the client meet the extra expenses to remedy the default and/or complete the contract.

2. Scope of guidance

2.1 This guidance covers some of the practical considerations in respect of the use of bonds, the issue of calling "on demand", and deals with five types of bond or guarantee:

- a. unconditional on-demand bonds;
- b. performance bonds;
- c. parent company guarantees;
- d. advance payment bonds;
- e. retention bonds.

2.2 Performance bonds are not recommended for use by NHS bodies as a result of the requirement to carry out proper financial and technical checks as part of the selection and appointment procedures for contractors. However, if exceptional circumstances do arise and an NHS body requires a performance bond, they are strongly advised to seek appropriate professional and legal advice on the use, choice and drafting of a bond for a particular contract.

3. Practical considerations

3.1 Bonds are generally provided by the financial market, either by a bank or by a surety company. The Contractor and the guarantor will seek to establish the terms and conditions under which the bond can be called. Employers, for their part, should want to know that the guarantor issuing the bond is a sound, reliable and responsible corporate body and be satisfied that if there is need to call the bond for payment, the guarantor will comply promptly.

3.2 There are at present no standard forms of bond for use in the NHS. The wording of commercial bonds can

vary depending on which organisation is providing the bond, who is involved in drawing it up, and what the bond is expect to deliver. There is often intense negotiation over the precise wording of bonds, and legal advisers should always be involved.

3.3 Generally, the additional cost of a bond is relatively small in comparison with the price of the contract. This will depend to some extent on the terms and conditions the client requires (whether the bond is on-default, or – more onerous – on-demand) and the degree of risk the guarantor attaches to the ability of the contractor to give a counter-indemnity and to repay any sum that is called.

3.4 The size of the bond is very important, because this impacts on a contractor's bonding capacity. To require a large value bond has the same effect as an equivalent number of smaller bonds. Generally, contractors will be unwilling to use up their bonding line on large bonds for smaller projects, and this can restrict competition.

3.5 In most cases, on-demand bonds are provided by banks, who may regard them as open credit notes and may require provisions to be made from borrowing facilities against contingent liabilities. This can affect the contractor's financial resources and their ability to compete for and undertake other work. A requirement for an on-demand bond may therefore deter firms who would otherwise have tendered for the contract and/or inhibit their ability to tender in the future.

3.6 In raising a bond or a line of bonding credit from a bank or a surety company, the Contractor may undergo independent professional financial vetting. Whilst the extent or the cover which the market is willing to provide may give some indication of the contractor's financial standing and prospects, the procedures applied vary greatly and will not always involve a detailed check of performance or record.

3.7 A guiding principle of procurement best practice is that normally a contract should not be placed with a contractor if there are reasonable doubts about the contractor's ability to meet the terms and conditions of the contract satisfactorily. Such doubts may arise in relation to the adequacy of the contractor's management and technical resources to deliver on time and to the required quality standard, or where information available suggests that the contractor may have inadequate financial resources, with consequent risk to Exchequer funds.

4. Unconditional on-demand bonds

4.1 The terms and conditions of a bond determine the circumstances and mechanism by which the bond can be called. An unconditional on-demand bond allows the client to call the bond at any time. Unconditional on-demand bonds are only provided by banks and are in effect certified cheques.

4.2 Because they are not linked to the performance of the contractor, unconditional on-demand bonds can be called by the client at any time and without having to show any cause or justification. The findings of the courts have been consistent that there is no implied requirement for the calling to be fair or reasonable. Unconditional on-demand bonds can therefore be used unfairly, usually as a threat to persuade the contractor to do something they would not otherwise do, or which they are not contracted to do.

4.3 Unconditional on-demand bonds are essentially unfair and should not be used in NHS procurement.

5. Performance bonds

5.1 A performance bond is usually provided at contract award, for an agreement percentage of the total contract value (normally about 10 per cent). Normally the value does not reduce, but performance bonds should have an expiry date (not necessarily a calendar date – it can be linked to an event so that time slippage is automatically taken into account). If the value of the contract increases, or the duration of the contract extends, the value of the bond needs to be amended accordingly.

5.2 A performance bond will not of itself ensure that contracts are carried out efficiently and to time, but it will be one of a number of commercial pressures on the contractor to perform well. A performance bond can provide some compensation if the contractor defaults on their obligations.

5.3 There are two basic forms of performance bond: the "conditional on-default bond" and the much more onerous "conditional on-demand bond".

Conditional on-default performance bonds

5.4 Usually these can only be called following a serious breach by the contractor of the agreed terms and conditions of the contract (which will include becoming bankrupt and would normally allow the client to terminate the contract).

5.5 Conditional on-default performance bonds are fairly common within UK industry and are mainly provided by surety companies. They have been criticised because they

are often written in outdated and obscure language. This has meant that when calls have been made, guarantors have sometimes looked to the wording of the bond for reasons not to pay.

5.6 Properly expressed conditional on-default performance bonds provide a third-party guarantee that the contractor will not default from a contract they have freely entered into. They should be required where there are identifiable risks of default by the contractor, subject to value-for-money considerations. Legal advice should be obtained to ensure that the wording clearly expresses the true transaction and not assume that "traditional" wording will be appropriate. NHS bodies must be prepared to pursue this with the guarantor.

Conditional on-demand performance bonds

5.7 These are bonds which although "on-demand" should include within their terms and conditions:

- a mechanism for calling (so that the bond may be called only if certain procedures have been followed, requiring senior personnel within the client's organisation to approve the calling);
- a requirement for the client to identify the reason for calling (which reason may be questioned and contested);
- a cooling-off period (during which the contractor may remedy the default).

5.8 There is a place for the use of conditional on-demand performance bonds where the cost or other consequences of default by the contractor are very high and, provided it is properly called, the guaranteed sum will be paid without risk of dispute. Such bonds retain some features of an unconditional on-demand bond. They can be called at the sole discretion of the client, but only if the agreed conditions for calling are met. This should prevent the client from acting in an arbitrary or unreasonable way and protect the contractor from the bond being called without the due and proper consideration of responsible people in the client's organisation. A cooling-off period should allow the contractor time to investigate and remedy the default.

5.9 Employers should be aware of the burden that on-demand bonds can place on a contractor. Conditional on-demand performance bonds should be used sparingly on high risk and/or high value projects where the costs and/or other consequences of default by the contractor are high, and only after careful consideration, including appropriate professional and legal advice.

6. Parent company guarantees

6.1 This form of guarantee is given by a parent company (or holding company) to guarantee the proper performance of a contract by one of its subsidiaries (the contractor), and can only be given where the contractor is owned by a parent company or is the subsidiary of a larger group. Such a guarantee is free of cost to the client but may give less certainty of redress than a bond because it is not supplied by an independent third party. However, whilst accepting less independence, parent company guarantees for the proper performance of the contract can be more advantageous than bonds. Rather than receiving a fixed amount in compensation, the parent company is obliged to complete the contract (see paragraph 6.3 below). Costs for completion are borne by the parent company – and these costs may be significantly more than the compensation provided for in a bond. In addition, further recompense can be sought for time delays in completion through the normal clauses incorporated in the contract.

6.2 The conditions of a parent company guarantee will usually give the parent company the opportunity to remedy any default within a period of notice before the guarantee of completion of the project itself, or the employment of another contractor to complete the project.

6.3 Where problems arise under the contract, this form of guarantee should discourage the parent company from putting the contractor into liquidation solely to avoid losses in completing the project or in paying damages for late or non-completion. Provided that the parent company is financially sound and the guarantee is properly worded, the performance and the completion of the contract can be safeguarded, but the way in which the project is completed if the contractor defaults can, to some extent, be at the discretion of the parent company.

6.4 Because the financial strength of the parent company may be linked to that of the contractor, a parent company guarantee will be acceptable only if the parent company (or holding company) is financially strong and its financial resources are largely independent of those of the contractor.

6.5 NHS bodies should be aware when vetting contractors that a parent company guarantee is only as good as the parent company (or holding company) itself. If the financial position of the holding company is inadequate, the guarantee should be given by the ultimate parent company, if this is justified by its own financial standing.

7. Advance payment bonds

7.1 The Treasury has issued guidance explaining why advance payments should be avoided (see DAO letter 8/93, dated 2 June 1993 – extract attached) and has informed the Public Accounts Committee that "any advance payment made under a contract should be secured by a bank guarantee".

7.2 Where the advance payment reduces with time as, for example, stage payments are made against goods and/or services delivered under the contract, the value of the guarantee should reduce to reflect the outstanding amount of the advance payment.

7.3 Normal practice is to require a conditional reducing on-demand advance payment bond issued by a bank so that provided it is properly called, the guaranteed sum will be paid without risk of dispute.

7.4 Advance payments should be avoided wherever possible. In all cases where they cannot, they must be independently secured by a conditional on-demand advance payment bond issued by a bank. Legal advice should be obtained to ensure that the wording expresses the true intention of the transaction.

8. Retention bonds

8.1 These bonds are still rare in the UK, but their use is likely to increase. They are provided so that contractors (and their sub-contractors) may be paid without the client deducting retention money. As work is completed, the contractor is paid fully under the terms of the contract. Normal practice is to provide conditional retention bonds issued by a surety company that increase in value as payments are made in accordance with the contract. The client is protected against default at the end of the defects liability or guaranteed maintenance period up to the amount of the bond.

8.2 The traditional retention system is to withhold a percentage from payments made during the course of the contract to accumulate a fund that is available to the client if the contractor fails to rectify defects in accordance with the contract (typically 3.0 to 5.0 per cent of the value of the contractor's work up to certified completion, reducing to 1.5 to 2.5 per cent up to final acceptance). Usually, the first moiety of retained money is released to the contractor on certified practical completion and the second on final acceptance that the contractor has fulfilled its contracted obligations. The cost of that anticipated loss of cash flow is reflected in a contractor's tender pricing. Retention bonds give contractors better and more certain cash flow through full payment at all stages (without deduction of retention money).

8.3 The use of retention bonds transfers financing cost from the contractor to the client (who is required to pay in full earlier) and will pass cash-flow benefits to the contractor. Their use will only result in a lower cost to the client if contractors are prepared to reduce their tender prices accordingly. The option to offer a retention bond should be included in the tender documents at enquiry stage.

8.4 The conditions of a retention bond should relieve the client from failure by the Contractor to rectify defects in accordance with the contract up to the value of the bond. NHS bodies will need to consider the balance of costs and benefits in deciding whether to require and/or accept retention bonds. When used they should be conditional on-demand, issued by a surety company. Legal advice should be obtained to ensure that the wording expresses the true intention of the transaction.

Extract from DAO Letter 8/93 dated 2 June 1993

Advance payments

4. Subject to the Government's policy that when payments have become due they should be made promptly, payment is as a general rule made in arrears after the specified goods or services have been satisfactorily provided, unless the contract provides for interim payments . . . However, suppliers sometimes seek advance payments, usually in return for a price discount.

5. An advance payment will lead to higher Exchequer financing costs. Requests for advance payments should be rejected in any cases where the extra financing cost falling on the Exchequer exceeds the value of the discount. Even if the discount offered by a contractor appears to be greater than the extra Exchequer cost of paying in advance, it is not Government policy to act as a source of loan finance for contracts in competition with the market and advance payments should be resisted.

6. EC public procurement rules demand a level playing field in the letting of public contract above a stipulated financial threshold. If an advance payment is to be offered for a particular requirement, this should be made known at the time tender documents are issued to all potential suppliers. It would not be acceptable for an advance payment to be offered to the successful contractor to secure a further price advantage.

7. Although advance payments are the normal practice in certain types of procurement, such as international contracts for capital works and contracts for the design, manufacture and supply of heavy capital equipment, these are areas in which most central Government departments are not normally involved.

8. Advance payment by Government departments should therefore be very much the exception. In any cases where departments feel that such payment may be desirable, they should carry out a financial appraisal to establish whether there is a value for money case. For advance payments, the appropriate cost of Government lending is the National Loan Fund rate plus 2 per cent (see Annex G, paragraph 12 (iv) of the Treasury's guide "Economic Appraisal in Central Government – A Technical Guide for Government Departments" (the Green Book)). NLF rates are available from the Treasury's Monetary Group.

9. If they wish to proceed, departments should ensure that they seek the approval of the Treasury, unless they have the appropriate delegated authority to do so. Advance payments should never be used for the purpose

of avoiding an underspend in a particular financial year by making a payment before the liability to pay has matured.

10. Where, exceptionally, an advance payment is made, departments should ensure that adequate steps are taken to protect the taxpayers' money. The intended purpose of the advance payment should be stipulated clearly in the contract. Unless adequate guarantees are obtained, the department may receive nothing in the event of the contractor going into liquidation or otherwise failing to meet its contractual obligations. The Treasury has informed the Public Accounts Committee, in the Government's reply to the Committee's 13th report, 1990–91 (A New Ship for St Helena), that it "considers that any advance payment made under contract should be secured under an adequate bank guarantee (and that in such cases the contract should require that the advance payment is not itself used as security for the bank guarantee)".

11. Departments should act accordingly, typically by requiring a bond or financial guarantee issued by a reputable bank for the value of the advance, and payable in the event of the contractor's non-performance. Departments should note that the cost of such a guarantee is bound to be reflected in the overall contract price, thus eroding some of the price advantage that may appear to make the advance payment attractive. Departments should consult their legal advisers about the terms of any guarantee, to ensure that their interests are protected fully and the undertakings given to the Public Accounts Committee are fulfilled.

12. Some service and maintenance contracts typically require payments at the point the contract commences. Payments made under such contracts are not subject to the advance payment rules set out in paragraphs 4 to 11 above, provided the service is already operationally available and can be called on from the date of payment. Consideration should be given to whether the guarantee arrangements at paragraph 11 may be appropriate and, wherever possible, departments should seek alternative arrangements (e.g. quarterly payments in arrears) for these types of contract.

13. The above guidance does not apply in relation to grants or grants in aid to NDPBs and other institutions, such as local authorities; to the prefunding of other public sector bodies in relation to functions which they carry out on behalf of departments; or to inter-department transactions. The arrangements for the timing and phasing of such payments should be set out in the financial memorandum or any other documentation between the department and the body concerned (see Government Accounting paragraph 21.2.6(c)). The guidance is also not intended to preclude departments from exercising sensible discretion on payment in advance for minor services such as training courses, attendance at

conferences, etc, but such payments should not be made in advance of need.

14. Special considerations may apply in joint venture cases covered by the guidance for departments issued by the Treasury on 16 March 1993. Further guidance on the timing of payment in such cases will be issued by the Treasury in due course. In the meantime, the Treasury should be consulted by departments if a joint venture would appear to involve an advance payment as defined in paragraph 1 above.

Appendix G – Main options: Prices and price for work done to date

Option	The Prices	Clause Refs	The Price for Work Done to Date (PWDD)	Clause Refs
A: Priced Contract with Activity Schedule	Activity Schedule prices for activities	11.2(20)	Total of the Prices for completed activities	11.2(24)
B: Priced Contract with Bills of Quantities	Bills of Quantities rates and prices	11.2(21)	Quantities of completed work at Bills of Quantities rates and proportions of lump sum prices	11.2(25)
C: Target Contract with Activity Schedule	Activity Schedule prices for activities	11.2(20)	Actual Cost paid + Fee	11.2(23)
D: Target Contract with Bills of Quantities	Bills of Quantities rates and prices	11.2(21)	Actual Cost paid + Fee	11.2(23)
E: Cost-reimbursable Contract	Actual Cost + Fee	11.2(19)	Actual Cost paid + Fee	11.2(23)
F: Management Contract	Actual Cost + Fee	11.2(19)	Actual Cost accepted for payment + Fee	11.2(22)

Appendix H – Contract Data: Part 1

Commentary

1. General

- Conditions of contract
- The Works
- The Employer
- The Project Manager
- The Supervisor
- The Adjudicator
- Works information
- Site information
- Boundaries of site
- Language contract
- Law of contract
- Period for reply to a communication



2. The Contractor's main responsibilities

- Design liability

3. Time

- Starting date
- Possession date
- Revised programme

4. Testing and defects

- Defects date
- Defects correction period

5. Payment

- Currency of contract
- Assessment interval
- Interest rate

Notes/Amendments

Selected options must be inserted; identify any other amendments to standard form of contract if any.

Insert brief description of Works.

Insert details of parties (name of individual, firm etc as appropriate).

Insert schedule of documents detailing Works Information (see paragraphs 7.1 to 7.2).

Insert schedule of documents detailing Site Information (see paragraphs 7.3 to 7.4).

Insert details of site boundaries (cross-reference to drawing may be appropriate).

Insert English.

Insert England/Scotland/North Ireland as appropriate.

A specific period must be inserted (see paragraph 3.19).

In all cases insert "not applicable" (see paragraph 3.32).

A specific date must be inserted (see paragraph 3.43)

Specific dates for each section must be inserted (see paragraph 3.43)

A specific period must be inserted (see paragraph 3.48).

A specific date must be inserted (see paragraph 3.55)

One period only to be inserted not exceeding the equivalent of 12 months (see paragraph 3.54)

Insert "UK sterling".

Normally insert "30 days" (see paragraph 3.73).

Normally insert "2% above the bank base rate" (see paragraphs 3.77 to 3.80).

Commentary**Notes/Amendments****6. Compensation events**

- Location of weather measurements
- Weather measurements to be recorded
- Weather data
- No weather data available

}

Complete as required – see Engineering and Construction Contract: Guidance Notes pages 59–60

Normally delete this section

8. Risks and insurance

- Loss or damage to property (the Works, Injury or death of person (not employee of Contractor) for anyone event.
- Injury or death of employees of Contractor.

The Employer must decide cover required (see paragraph 3.139)

In all cases insert "unlimited" (see paragraph 3.142)

9. Disputes and termination

- Appointment of adjudicator if parties cannot agree.
- Tribunal

Insert appropriate professional body (see paragraph 3.150)

Insert "Arbitration using the JCT Arbitration Rules – 18 July 1988" (see paragraph 3.150)

10. Optional statements

- Arbitration procedures
- Completion date for the whole of the Works.
- Employer not willing to take over the Works before the completion date.
- Contract programme – period for submission by Contractor if programme not identified in 'Contract Data: Part 2'
- Period of payment **NOT** three weeks
- Additional compensation events
- Additional employer's risks
- Provision of plant and materials by Employer
- Provision of additional insurance by the Employer
- Provision of additional insurance by the Contractor

}

See above

A specific date must be inserted (see paragraph 3.41).

This should be completed in conjunction with the requirements for Sectional Completion (see paragraphs 5.22–5.24)

NHS bodies should always require a programme (see paragraph 3.47)

A specific period must be inserted (see paragraph 3.73)

Where employer is taking risk of loss of or damage to the works, plant materials and equipment, information will require insertion (see paragraphs 3.132 to 3.138)

(See paragraphs 3.102 to 3.148)

Commentary

Notes/Amendments

Option B or D

- Standard method of measurement

Insert "SMM7 as published by the Royal Institution of Chartered Surveyors" where bills of quantities are required

Option C or D

- Contractor's share percentages

(see paragraphs 4.6 to 4.8)

Options C, D, E, or F

- Contractor prepared forecasts

A specific period must be inserted (normally not exceeding "4" weeks)

Option G

- Amount of performance bond

The Employer must decide cover required (see paragraph 5.4)

Option J

- Amount of advance payments
- Commencement of repayment
- Instalments



This should not normally be used (see paragraph 5.13)

Option K

- Payment for items/activities in currencies

This option should not be required (see paragraph 5.21)

Option L

- Sectional completion

Description of each section and specific dates for completion must be inserted (see paragraph 5.23)

Option L and Q

- Bonuses for completion of the Works Option L and R
- Delay damages

Description of each section and specific sums must be inserted (see paragraphs 5.40 to 5.44).

Description of each section and specific sums must be inserted (see paragraphs 5.45 to 5.49).

Option N

- Proportions of Price Adjustment factor
- Base date for indices
- Indices

Insert 90% linked to index and 10% non-adjustable element (see paragraph 5.34)

Insert date four weeks prior to tender date (see paragraph 5.35)

Insert NEDO or APSAB as appropriate

Option P

- Retention free amount
- Retention percentage

Insert "Nil"

Insert "3%" or "2½%" (see paragraph 5.39)

Option Q

- Bonus for whole of Works

Insert rate per day (see paragraph 5.41)

Commentary**Notes/Amendments**

Option R

Delay damages

Insert rate per day (see paragraphs 2.16–2.25 and 5.48).

Option S

Low performance damages

Insert amount and performance levels (see paragraphs 5.50 to 5.54).

Option V

Trust funds

Delete this section in all cases(see paragraph 5.59)

Option Z

Additional conditions of contract

Normally retain this in all cases (see paragraph 5.61)

Appendix J – Bibliography

Bibliography of additional recommended reading

National Joint Consultative Committee for Building (NJCC) Codes of Procedure as follows:

Single Stage Selective Tendering; RIBA Publications, 1994

Selective Tendering for Design and Build; RIBA Publications, 1985

Two Stage Selective Tendering; RIBA Publications, 1994

Selection of a Management Contractor and Works Contractors; RIBA Publications, 1991

Concode: Contracts and Commissions for the NHS Estate: Policy, HMSO, 1993

Contract procedures, HMSO, 1994

Guide to procedures for commissioning building and engineering consultants, HMSO, 1994

Guide to the requirements of the European Public Procurement Directives, HMSO, 1995

Agreement for the appointment of project managers for commissions for construction projects in the National Health Service (1995 edition)

SCOTCONCODE

Capital Investment Manual

Scottish Capital Investment Manual

Constructing the Team, by Sir Michael Latham, HMSO, 1994

Construction Procurement by Government – An Efficiency Unit Scrutiny, HMSO, 1995

The New Engineering Contract, A Commentary, by Brian Eggleston

Public Sector Construction Works; Quarterly Building Prices and Cost Indices, Department of the Environment

Additional information in Scotland may be obtained from:

Healthcare Engineering Unit
The University of Strathclyde
Room 8:51
Graham Hills Building
50 George Street
Glasgow G1 1QE
Tel 0141 552 4400 Ext 3446

References

New Engineering Contract. Institute of Civil Engineers. Thomas Telford, 1993.

NEC Engineering and Construction Contract 1995. Institute of Civil Engineers. Thomas Telford, 1995.

NEC Engineering and Construction Sub-contract. Institute of Civil Engineers. Thomas Telford, 1995.

Co-ordinated project information for building works, a guide with examples. Coordinating Committee for Project Information, Royal Institute of British Architects (RIBA) Publications Ltd. 1988.

Advanced, interim and deferred payments (DAO 8/93). HM Treasury, 1993.

Economic Appraisal in Central Government – Technical Guide Government Departments (the Green Book). HM Treasury, The Stationery Office, 1991. (new edition in preparation).

Acts and Regulations

SI 1340: 1994 – The Construction (Design and Management) Regulations 1994. The Stationery Office, 1994.

Housing Grants, Construction and Regeneration Act 1996. The Stationery Office, 1996.

British Standards

BS EN ISO 9000
Quality management and quality assurance standards.

NHS Estates publications

Health Technical Memorandum (HTM) 54.1 – User Manual. NHS Estates. The Stationery Office, 1993.

Other publications in this series

Given below are details of other documents in the Concode series which are either published by The Stationery Office or in preparation. Information is correct at the time of publication of this document.

Contracts and commissions for the NHS estate: Policy, 1993

Agreement for the appointment of project managers for commissions for construction projects in the National Health Service, 1995

Guide to the Agreement for the appointment of architects, surveyors and engineers for commissions in the National Health Service, 1995

Guide to the Agreement for the appointment of project managers for commissions for construction projects in the National Health Service, 1995

Agreement for the appointment of architects, surveyors and engineers for commissions in the NHS.

Vol 1: Scheme particulars, memorandum of agreement, conditions of appointment, provision for fees and expenses, specimen certificates, definitions, 1995

Vol 2: Supplementary annexure, 1995

Vol 3: Duties under the Construction (Design and Management) Regulations 1994, 1996

Contracts and commissions for the NHS estate: Contract procedures, 1994

Guide to procedures for commissioning building and engineering consultants, 1994

Guide to the requirements of European Community public procurement directives, 1995

Guide to contract strategies for construction projects in the NHS, 1995

Guide to the JCT Standard Form of Building Contract, 1980 Edition, Local Authorities (as amended), 1995

Guide to the JCT Standard Form of Building Contract With Contractor's Design 1981 Edition (as amended), 1996

Agreement for the appointment of architects, surveyors and engineers for commissions for minor works in the NHS, 1996

Guide to the JCT Agreement for minor building works, 1994 (new edition in preparation)

Guide to the JCT Intermediate Form of Building Contract for works of simple content 1984 Edition (as amended), 1996

Guide to contract procedures, 1996

Documents published by The Stationery Office can be purchased from Stationery Office Bookshops in London (post orders to PO Box 276, SW8 5DT), Edinburgh, Belfast, Manchester, Birmingham, Bristol and Cardiff, or through good booksellers.

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Estatecode – user manual for managing a health estate. Includes a recommended methodology for property appraisal and provides a basis for integration of the estate into corporate business planning. *SO*

Concode – outlines proven methods of selecting contracts and commissioning consultants. Reflects official policy on contract procedures. *SO*

Works Information Management System – a computerised information system for estate management tasks, enabling tangible assets to be put into the context of servicing requirements. *NHS Estates*

Health Building Notes – advice for project teams procuring new buildings and adapting or extending existing buildings. *SO*

Health Guidance Notes – an occasional series of publications which respond to changes in Department of Health policy or reflect changing NHS operational management. Each deals with a specific topic and is complementary to a related HTM. *SO*

Health Technical Memoranda – guidance on the design, installation and running of specialised building service systems, and on specialised building components. *SO*

Health Facilities Notes – debate current and topical issues of concern across all areas of healthcare provision. *SO*

Encode – shows how to plan and implement a policy of energy efficiency in a building. *SO*

Firecode – for policy, technical guidance and specialist aspects of fire precautions. *SO*

Capital Investment Manual Database – software support for managing the capital programme. Compatible with Capital Investment Manual. *NHS Estates*

Model Engineering Specifications – comprehensive advice used in briefing consultants, contractors and suppliers of healthcare engineering services to meet Departmental policy and best practice guidance. *NHS Estates*

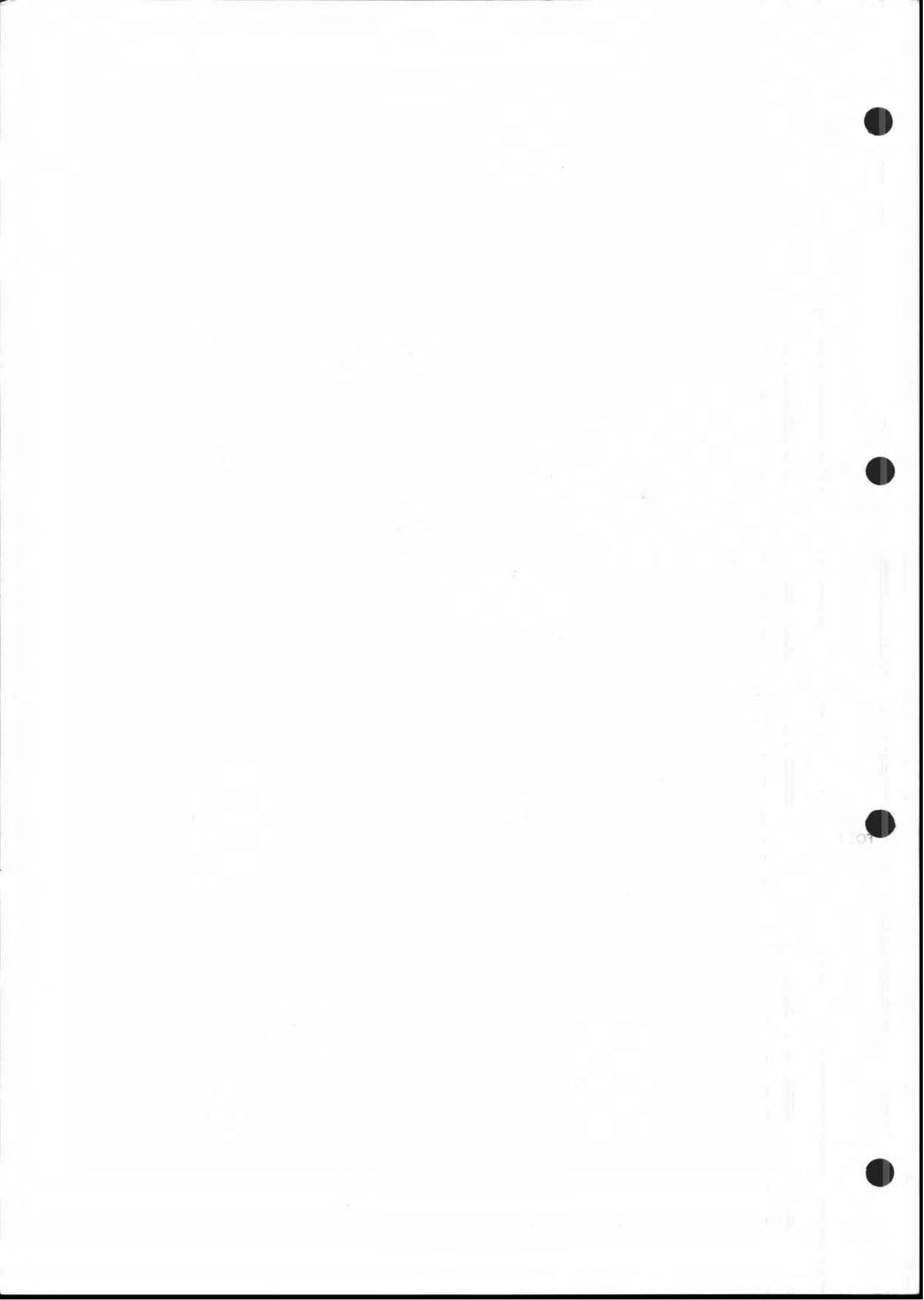
Quarterly Briefing – gives a regular overview on the construction industry and an outlook on how this may affect building projects in the health sector, in particular the impact on business prices. Also provides information on new and revised cost allowances for health buildings. Published four times a year; available on subscription direct from NHS Estates. *NHS Estates*

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Will you be purchasing future editions in the series?			YES <input type="checkbox"/>	NO <input type="checkbox"/>

Other comments/areas for improvement?

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Do you have any suggested subjects for the future?

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.....

Do you receive copies of our Newslink newsletter? YES NO

Do you wish to receive a copy? YES NO

Have you purchased other products/services from us recently?

Please tick

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|--------------------------------|--------------------------|-----------------------------------|--------------------------|
| Other publications | <input type="checkbox"/> | Activity DataBase | <input type="checkbox"/> |
| Consultancy services | <input type="checkbox"/> | Wims software enhancements | <input type="checkbox"/> |
| Other software products | <input type="checkbox"/> | Other: please specify | <input type="checkbox"/> |

Are there other ways in which NHS Estates can assist you?

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