

JBCC ADVISORY NOTE: EDITION 6.2

DOCUMENT/S Principal Building Agreement

DISCLAIMER *The purpose of this publication is to give advice on the most effective use of the JBCC documents. Advice is given in good faith and JBCC disclaims all liability for any loss, damage or expense that may be incurred through acting on such advice*

16.0 DIRECT CONTRACTORS

- 16.1 The **contractor** shall:
- 16.1.1 In accordance with a **contract instruction** [17.1.16] permit **direct contractors** [CD] to execute and/or install work as part of the **works**. Such access to the **works** shall not constitute deemed achievement of **practical completion** or occupation by the **employer** [19.6]
- 16.1.2 Make reasonable allowance in **programme** for such work or installation
- 16.1.3 Be entitled to claim expense and/or loss caused by **direct contractors** [23.2.9; 27.1.7]
- 16.2 Payment of **direct contractors** shall be responsibility of the **employer** outside this **agreement**
- 16.3 There shall be no privity of contract between the **contractor** and a **direct contractor** appointed by the **employer**

INTERPRETATION

This clause permits the **employer** to appoint certain persons or specialist contractors to execute work on **site** during the currency of the **contractor's** contract for which a *N/S* subcontract would not be appropriate. Examples are:

- Work to be executed by artists or craftsmen related to the adornment of the building
- The installation of the manufacturing and processing plant in industrial buildings
- The installation of medical equipment in hospitals
- The installation of telephone and computer cabling, security and access systems
- 'Tenant installations' - the fitting-out of shop and office premises by tenants

The **contractor** has no right to object to such work being executed by **direct contractors**. The only limitation is that its type and extent must be described in the **contract data** of the pre-tender information. Accordingly this information must be supplied to the **contractor** in the tender documentation. Clearly sufficient detail should be given to enable the **contractor** to make allowances in terms of subclause 16.1.2 and in his tender price for any expense associated with the **direct contractors**

Although not stated, the **contractor** must allow **direct contractors** space on **site** to deposit their material and plant. However, the **contractor** is not obliged to permit the use of scaffolding, toilet facilities, electric power, water supply or any other facilities on the **site** which he is generally obliged to make available to **subcontractors**

If a **direct contractor** causes a delay to **practical completion** despite reasonable allowance having been made for his work in the **contractor's** programme, the **contractor** is entitled to a revision of the date for **practical completion** with adjustment of the **contract value** in terms of subclause 23.2.9. This right must be interpreted as entitling the **contractor** to additional time only where the delay goes beyond the allowance reasonably made in his **programme**. **Direct contractors** must order

16.0 DIRECT CONTRACTORS (Continued)

their activities so that they cause the least possible inconvenience and disruption - this is implicit in the requirement that they are subject to the reasonable controls required by the **contractor**

Subclauses 8.5.3 and 9.2.2 place the risks associated with **direct contractors** on the **employer**. The **employer** should, in terms of his contracts with **direct contractors**, hold them liable for such risks. Further - damage caused by **direct contractors** to the **contractor's** work. would entitle the **contractor** to recover the cost of making good from the **employer**, who in turn would have to recover from the **direct contractors** concerned

The definition of **works** in the Principal Building Agreement excludes work or installations executed by **direct contractors**. Works insurance and indemnities relating to **direct contractor's** work or installations are therefore not the responsibility of the **contractor**. Where work by **direct contractors** is substantial it would probably be in the best interests of the **parties** that insurances are taken out by the **employer** thereby avoiding the potential problems of split responsibilities

The **principal agent** should ensure that the **employer** fully understands the nature of the risks associated with direct contract appointments and recommend to the **employer** that he obtains satisfactory indemnities from such contractors or the tenants making use of them. In subclause 9.2.2 the **employer** indemnifies the **contractor** against loss arising from an act or omission of **direct contractors**. The **employer** should seek an appropriate indemnity from the **direct contractors**, or the tenant employing them and ensure that the risks are covered by third party indemnity insurance

In terms of the **agreement** the type and extent of work to be performed by **direct contractors** contemplates that this would be known by the **employer** at the time tender documents are prepared. Provision is made in the **contract data** for the extent of work to be provided (see B9.0). But what if the need for such work transpires only after the contract has been let? Provision in later editions of the JBCC **agreements** has been made for further work by **direct contractors** to be added after the **contractor** has been appointed (see subclause 17.1.16). If the need for such additional work arises, the **employer** may need to carefully manage such situation, as it has the potential for causing disruption and delay to the **contractor**, particularly in the closing stages of the **construction period**. The alternative open to the **employer** is to wait until after **practical completion** for such work to be done

COMMENT

From what has been said, it must be apparent that the **employer** is exposed to potentially greater risks when work is performed by **direct contractors** in terms of clause 16.0 than when it is done by *nominated or selected subcontractors*. He is liable for the cost of making good loss or damage to the **works**. Where **practical completion** is delayed due to the default of *nominated subcontractors* or **direct contractors**, the **contractor** is entitled to additional time and the **employer** will be deprived of **penalties** for late completion due to such circumstances

Where the **employer** himself employs **direct contractors** he would probably be able to recover such costs from the **direct contractors**, but where they are employed by anyone else such as a tenant, he would have no contractual nexus with them that would enable him to recover damages. His recovery of damages would be difficult and uncertain. He would be well advised to require **direct contractors** to provide him with satisfactory indemnity for any costs and losses that might arise from their actions or inaction