



2008

Deciding on the appropriate  
JCT contract



## **Practice Note – Deciding on the appropriate JCT contract**

This Practice Note is intended to provide assistance in deciding the appropriate form of contract but it is not a substitute for professional advice.

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## Introduction

- 1 This Practice Note has five Parts: Part 1 covers the project strategy and although this mainly is concerned with the top level of contracting it also has relevance to the sub-contract level; Parts 2 and 3 respectively identify the available main and sub-contracts; Part 4 provides a tabulated comparison of provisions of some of the most used contracts and a flow chart to assist users in making their choice; and Part 5 a list of JCT publications.
- 2 When approaching the question of the appropriate JCT construction contract, the first decisions to be made are those concerning the choice of procurement and the type of contractual arrangement. Only when these two decisions have been made can the choice of a form of contract be decided.
- 3 JCT provides a wide range of forms of contract to meet the various and diverse needs of the UK construction industry.
- 4 The Scottish Building Contract Committee (SBCC), a member of JCT, has in the past prepared and published Scottish Supplements to many JCT forms of contract, for use where Scots law is to apply. SBCC now publishes integrated documents, that is a JCT contract which has been amended formally for use where Scots law is to apply. Additionally, the Royal Society of Ulster Architects continues to publish Adaptation Schedules for certain JCT contracts for use in Northern Ireland.
- 5 The concept of partnering plays an important part in procurement strategy and may impact upon the choice of contract. A discrete section on partnering is included in this Practice Note.

## Part 1 Project Strategy

- 6 Procurement is a generic term embracing all those activities undertaken by a client seeking to bring about the construction or refurbishment of a building. Various referred to as a method, path or system, procurement is initiated by devising a project strategy, which entails weighing up the benefits, risks and financial constraints which attend the project and which eventually will be reflected in the choice of contractual arrangements. In every project the concerns of the client will focus on time, cost, and performance or quality, in relation both to design and to construction of the building.
- 7 The project strategy will necessitate making an analysis of the situation, making a choice from the procurement options and then devising a method of implementing that choice, using well established rules and procedures. The client's policies, available resources, organisational structure and preferred contractual arrangements will need to be taken into account. There are inherent risks associated with using any particular procurement strategy but equally important is the need for all parties to comply with their respective obligations; this is particularly important where responsibility for design and construction are separated. Identifying and dealing appropriately with risk at the outset is an integral part of any project strategy.

### Procurement methods

- 8 There are three main procurement options, and the essential features of each are as follows:

#### **Traditional procurement (sometimes termed conventional procurement)**

- 9 A method which became standard practice in the building industry for 150 years following the emergence of the general contracting firm and the establishment of independent client consultants. The main feature is that the design process is separate from construction, and full documentation is required before the contractor can be invited to tender for carrying out the work.
  - Appointment of a contractor is commonly by competitive tender, but less usually by negotiation.
  - Full documentation is necessary for tendering purposes, including that from specialist sub-contractors, and adequate time is needed for the preparation of this.
  - The client has control over design, specified quality and standards etc through his appointed consultants. Generally there is no design responsibility on the contractor.
  - Because design and construction are separate sequential processes, the overall programme for the project tends to be relatively long.
  - There is for the client reasonable certainty on construction costs, because a contract figure is usually known at the outset, although this may need to be adjusted later, as provided for in the contract.
  - The terms of many traditional contracts require the client to appoint a professional consultant to act as an independent contract administrator.
  - Although making design decisions before work has commenced may appear to bring a measure of inflexibility, changes or variations are possible during construction of the work, usually at a price in terms of direct and related costs and extra time.
  - Administrative matters relating to valuations and payments are in the hands of the client's consultants.
  - Completion within the contract period is an obligation, although the contract administrator may need to revise the date for completion to take account of delays due to reasons listed in the contract.
  - Speculative risks are balanced as between the parties, more in the client's favour on a lump sum contract, but less so with a measurement contract. The traditional lump sum approach in terms of cost, design and quality is a relatively low risk procurement option for the client, but the time needed for the project overall is likely to be relatively longer than that of other procurement methods.

- 10 Traditional procurement, however, can be used in a wide range of situations, whether the basis for pricing results in a lump sum contract, a measurement contract or a cost plus contract, and whether the project is a single one-off project, or part of a programme under a specific term or other form of serial or continuity contract.

#### **Design and build procurement**

- 11 A method where the contractor is responsible for undertaking both the design and the construction of the work in return for a lump sum price. There are variants on this option depending on the degree to which initial design is included in the client's requirements.
- Appointment of a contractor is often by two stage tendering, thus keeping a competitive element, but not expecting every tenderer to produce full proposals.
  - The client's requirements can range from a simple accommodation schedule to a fully worked out scheme design, but generally should be matched by the contractor's proposals. Adequate time must be allowed for the client's requirements to be prepared to the appropriate level, and professional consultants will usually be required. The contractor must be given adequate time to prepare his proposals, together with an analysis of his tender figure. It should also be remembered that evaluating tenders for design and build may be difficult, because design proposals need to be balanced against price, and it is vital to check that the proposals satisfy the client's requirements.
  - The client has control over the design element included as part of his requirements, but, once the contract is let, has no direct control over the development of the contractor's detail design. The contractor assumes responsibility for design at this point, and usually appoints his own consultants (although the designers may be in-house) to formulate a design or to develop the design in the client's requirements as necessary. Although it is a common practice for the client to ask the contractor to take over his own consultants under a novation agreement, there can be problems in such arrangements in terms of design accountability.
  - Because design and construction may proceed in parallel, it may be possible for the overall programme time for the project to be shortened; by how much will depend on the extent to which the contractor is responsible for design, and for design development.
  - There can be reasonable certainty over construction costs because a contract price is known at the outset. Provided that the client refrains from ordering changes during the construction of the work, the contractor will be obliged, subject to the conditions, to complete the project for the contract sum.
  - The terms of a design and build contract make no provision for an independent contract administrator. Decisions or instructions may be required of the client from time to time, and the client may decide to appoint an agent either to advise or to act on his behalf.
  - It might be possible for the client to order design or specification changes during construction, but the consequences in terms of direct costs, cost of disturbance and additional time needed will be largely for the contractor to advise upon.
  - Matters relating to valuation and payments are often left largely in the hands of the contractor. The client may appoint his own consultant to advise, but the contract conditions do not recognise a role for such a person.
  - Completion within the contract period is an obligation on the contractor, although the client may have to accept a later completion to take account of delays due to reasons listed in the contract.
  - Speculative risks are largely with the contractor, but can reduce according to the extent of the design input by the client. In terms of cost and time this is a relatively low risk procurement option for the client, but there can be uncertainty over design and quality, particularly if insufficient attention was paid initially to the preparation of the client's requirements and the checking of the contractor's proposals.
- 12 Design and build arrangements can take various forms. The client may take a standard design from a manufacturer, sometimes called a 'package deal', or enter into a turnkey contract. The client may decide to place the design decision making with the contractor, thereby in theory opting for a single point responsibility; in practice, single point responsibility is not often achieved.

#### **Management procurement**

- 13 A method where overall design is the responsibility of the client's consultants, and the contractor is responsible both for defining packages of work and then for managing the carrying out of this work through separate trades or works contracts.
- Appointment of the contractor is usually by negotiation or tender, and interview. He is paid a management fee. The work packages are let by competitive tender.

- The client will start by appointing consultants to prepare project drawings, a project specification and a cost plan. Involvement of the contractor at an early stage can be beneficial through his expertise in such matters as buildability and programming of work packages.
  - The client retains overall design control through the professional team.
  - Detail design can proceed in parallel with construction work and much of this might be of a specialist nature relating to work packages. As a consequence an early start on site is often possible, and time for the project may be reduced overall.
  - There is no certainty over costs at the outset and work proceeds on the basis of the contract cost plan. Final costs will not be known until the last work package is let. However, the costs can be monitored by the client's quantity surveyor and action taken as necessary.
  - The client will need to appoint a contract administrator as part of the professional team.
  - Design changes are possible as construction proceeds, always provided that the changes do not affect work packages already let so as to result in abortive work.
  - With management contracts, administrative matters relating to valuations and payments are in the hands of the client's consultants.
  - Completion within the contract period is an obligation of the management contractor, who may not award extensions of time in relation to work packages without the prior approval of the contract administrator.
  - Speculative risks are largely with the client, and this procurement method calls for a measure of trust, goodwill and in-house expertise. In terms of design and quality it is a relatively low risk option for the client, but there is generally a higher risk in respect of costs and time.
- 14 Management procurement can take a variety of forms. With management contracts, the client appoints a full professional team and a management contractor who is responsible for managing the carrying out of the works. The management contractor does not directly undertake any of the construction work, which is broken down into packages and carried out by works contractors. These are appointed by the management contractor, and are directly and contractually accountable to him.
- 15 Construction management is a type of management procurement where the client appoints a design team and enters into an agreement with the construction manager or appoints an in-house manager. The construction manager does not directly undertake any of the construction work, which is broken down into packages and carried out by trade contractors. These trade contractors are appointed by the client, and are directly and contractually responsible to him. The client therefore assumes a major role in directing the project, whilst leaving the management of it to the construction manager.
- 16 With 'design and manage' procurement, the management contractor not only assumes responsibility for managing the works packages, but is also responsible for the design team.

## Types of contract

### Traditional

- 17 For traditional procurement there are three main types of contract:
- **Lump sum contracts** – *where the contract sum is determined before construction work is started.*  
The contractor undertakes a defined amount of work in return for an agreed sum. Contracts 'with quantities' are priced on the basis of drawings and a firm bill of quantities. Contracts 'without quantities' are priced on the basis of drawings and another document — usually a specification or work schedules.
  - **Measurement contracts** – *where the contract sum is not finalised until after completion, but is assessed on remeasurement to a previously agreed basis.*  
This type of contract can arise because the work which the contractor undertakes cannot for good reason be measured accurately before tenders are invited. Design will be reasonably complete and an accurate picture of the quality required will be available to the tenderer. Probably the contract of this type with least risk to the client is that based on drawings and approximate quantities. Measurement contracts can also be based on drawings and a schedule of rates or prices. A variant of this is the measured term contract under which

individual works can be initiated by instructions as part of a programme of work, and priced according to rates related to the categories of work likely to form part of the programme.

- **Cost reimbursement contracts** – *where the sum is arrived at on the basis of prime (actual) costs of labour, plant and materials, to which there is added an amount to cover overheads and profit.*  
Sometimes referred to as a 'cost-plus' or a 'prime cost' contract; the amount or fee added to cover overheads and profit can be a fixed sum, a percentage, or on some other reimbursement basis. Where the full extent of the work is not known or cannot be designed pre-tender, this is a relatively high risk option for the client and only generally acceptable where the circumstances preclude other alternatives or where a partnering ethos is established.

### Design and build

18 For design and build procurement there are three main types of contract:

- **Package deal or turnkey contract** – *where the client settles on a complete package, usually to some standard specification from a commercial firm.*  
Such arrangements sometimes result in a specially drafted contract, but they will usually be based on the provider's standard terms.
- **Design and build contracts** – *where project documents will be written with the contractor's design obligations relating to the whole of the works in mind.*  
These contracts differ fundamentally from traditional 'work and materials' contracts in that they expressly provide for contractor's design obligations. The wording used in contracts which require a material level of design input from the contractor is often the same as in those which are used for a 'develop and construct' approach.
- **Contractor's design for specific elements only**  
Strictly, these are not design and build contracts, but traditional 'work and materials' contracts which include for limited design provision relating to an identified portion of the work.

### Management

19 For management procurement there are two main types of contract, but variants do exist:

- **Management contracts** – *where the management contractor undertakes to manage the carrying out of the work through works contractors, who are contractually accountable to him.*  
The contract will usually include both a pre-construction phase and the construction phase. Documentation will start with project drawings, a project specification and a cost plan, and this information will allow the transmutation into documents on which competitive tenders can be obtained for the work packages. The management contractor is responsible for the administration and operation of the works contractors. However, the management contractor is not liable for the consequences of any default by a works contractor so long as the management contractor has complied with the particular requirements of the management contract. Obviously the management contract and the works contracts for each package must be compatible.
- **Construction Management** – *where the construction manager undertakes to manage the carrying out of the work through trade contractors but the client is involved in the directing of the project, and the contracts with the trade contractors are directly with him.*  
The construction management appointment will be for the services as defined in that document. Although the trades contracts are arranged and administered by the construction manager, contractually they are the client's risk. Obviously the construction management appointment and the trade contract for each package must be compatible.
- **Design – manage – construct**  
This and other variants of management procurement exist but such contracts are invariably on the basis of specially drafted forms to suit the particular situations.

### Matters which might influence choice

20 The choice of an appropriate procurement method and type of contract might be greatly influenced by external factors. Choice should never be made on some arbitrary basis but always after a careful analysis of the situation, and taking into account considerations such as the following:

- **The nature of the project**  
For example – is this a completely new detached building; an extension to an existing building; a refurbishment job; restoration of an historic structure; reinstatement after fire damage or neglect; a repair and maintenance programme involving many buildings?
- **The scope of the works**  
For example – is there something unusual about the size, complexity or location of the works; are there site problems of access, storage or movement; does the work involve the basic trades and skills of the industry; does an innovative design demand sophisticated construction methods; is there specialist subcontractor's work with a design content; is there a high content of specialist engineering installations; is this a single construction operation, phased work, or part of a term programme?
- **Measure of control by the client**  
For example – should design be wholly in the hands of the client's consultants; can some detail design be placed as a contractor's responsibility; should there be provision for design by specialist subcontractors; to what extent does the client wish to control selection of specialist subcontractors; what measure of control will the client wish to exert over materials and workmanship; how much reliance can be placed on performance specified requirements?
- **Accountability**  
For example – does the client aim for single point responsibility; is it the intention to appoint a project manager or client's representative; where is responsibility intended to lie for specific matters — with consultants, contractor, specialist sub-contractors?
- **Appointment of a contractor**  
For example – is this to be by negotiation or by competitive tendering; is the contractor to be appointed to carry out construction work only; is the contractor to have some responsibility for design; is the contractor to be appointed early to undertake primarily a management role?
- **Certainty of final cost**  
For example – is a lump sum contract preferred; will it be a fixed price or with fluctuations; do the circumstances dictate remeasurement and an ascertained final sum; must all tenders be on a competitive basis?
- **Start and completion times**  
For example – is this to be 'fast track' with the shortest overall programme a priority; is an early start date desirable; will there be adequate time to prepare full information for tendering purposes; do circumstances dictate a specific completion date; can the contractor be provided with exclusive possession right from the start?
- **Restrictions**  
For example – does the site raise security problems or problems in relation to surrounding property such as access or noise; are there restrictions on working hours; will the building be still in operation and occupied during the course of the works; is the work to be phased; is there a specific requirement concerning the sequence of operations?
- **Changes during construction**  
For example – is there a likelihood of design changes during the course of the works; can the contract satisfactorily accommodate variations and the valuing of such work; to what extent might approximate quantities or provisional sums be required?
- **Assessment of risks**  
For example – is this to be a contract with the lowest possible risk to the client overall; what are the priorities in apportioning the risks concerning cost, time, and quality or performance; where are the speculative risks intended to lie?
- **Building relationships with the supply chain**  
For example – is a long term relationship with a supplier or the supply chain required so as to provide continuous improvement? (See also Partnering in Part 2.)

## Consequences of the choice of main contract

- 21 Amongst the consequences that may follow from the selection of the procurement method and the JCT contract thought most appropriate, the following are worthy of mention:

### **Composition of the team**

- 22 The form of contract, when completed, will confirm who is to undertake certain specific duties and accept certain obligations. For example, the extent to which construction and design responsibilities are allocated as between the professional consultants, the main contractor and specialist subcontractors should be evident from the provisions of the contract.

### **Compatibility of Agreements**

- 23 It is essential, however, that what might be required of the professional consultants as expressed in the building contract is also reflected in the schedules of professional services included as part of the appointing documents for those consultants.

### **Documents for tendering purposes**

- 24 With traditional procurement, the realism (or otherwise) of lump sums will obviously depend on tenders having been prepared on the fullest possible information. Where that information is unlikely to be available at pre-construction stage, lump sum contracts are unlikely to be satisfactory and alternatives will have to be considered. JCT documents generally do not include tender procedures covering tenders for the main contract works, but, where the main contract conditions refer to the use of specific documents, for example the naming of persons as sub-contractors (Intermediate Building Contract (IC)) or the use of Works Contractors (Management Building Contract (MC)), there is a requirement that such tenders be invited in accordance with the relevant documents. Although JCT does not generally prescribe the tender procedures to be followed Practice Note – Tendering provides model forms for use in tendering for main contract works.

### **The Contract Sum**

- 25 Use of a Standard Building Contract With Quantities (SBC/Q) should ensure that all tenderers are using the same quantities. Unless stated otherwise in respect of any particular items, the contract requires the Contract Bills to have been prepared in accordance with the 7th Edition of the generally recognised Standard Method of Measurement published by The Royal Institution of Chartered Surveyors and the Construction Confederation. The accuracy of the quantities is the employer's responsibility, and the contract provides for the correction of errors with appropriate adjustment of the Contract Sum. The Contract Sum is the total arrived at in the fully priced copy of the itemised Contract Bills.
- 26 Where a Standard Building Contract Without Quantities is used, then, in addition to the contract drawings, the other required document(s) will be either a Specification or Work Schedules. The Specification or Work Schedules should be itemised in sufficient detail for the contractor to price, and the total of the pricing will be the Contract Sum. Alternatively, the contractor may state the sum he requires to carry out the work; in this case he is in addition required to supply either a Contract Sum Analysis or a Schedule of Rates on which the Contract Sum is based, also referred to as the Priced Document. The Priced Document then forms the basis for the valuation of any variations and of work carried out under Provisional Sums. There may be a reluctance on the part of contractors to tender without quantities where the project exceeds a certain size or complexity. The risk of error is largely borne by the contractor, and tenders may be increased to cover preparation costs and possible disputes over the quantity of work implied in the Contract Documents.
- 27 JCT contracts for smaller, more straightforward projects seek to avoid, and do not recognise, a need for any ancillary documents. These contracts, like Minor Works Building Contract (MW), accept that domestic sub-contracts may be necessary; they do not stipulate the use of any particular form, but only that, whatever form is used it must include certain provisions stated in the main contract. Other JCT contracts for larger work require the use of sub-contracts specifically published for use with the particular main contracts; for example, the Intermediate Named Sub-Contract documents, where the sub-contractor is a Named Person under the Intermediate Building Contract (ICSub/NAM documents), and the Management Works Contract documents, for a Works Contractor under the Management Building Contract (MCWC documents).
- 28 For the employer, most JCT contracts state that the employer has had certain contract documents prepared; the type of documents that are relevant will depend on the form of contract used. Except for some contracts for smaller works, the Design and Build Contract (DB) and the Major Project Construction Contract (MP), the employer is obliged to appoint a professional consultant to administer the terms of the contract. Under the Design and Build Contract the employer may appoint someone to act on his behalf. Contracts may refer to the administrator as the Architect, Contract Administrator or, as in the Design and Build Contract, the Employer's Agent. The employer may also be required to appoint a Quantity Surveyor. Except for very small work, projects will invariably be subject to the full CDM Regulations 1994.
- 29 With all JCT contracts the employer should satisfy himself that any desired optional clauses and supplemental provisions have been properly incorporated to indicate his intentions, that the Agreement has been properly completed, and that the contract is properly signed or otherwise executed before construction work commences.

- 30 For the contractor, the consequences of entering into a particular contract are that he must carry out and complete the work in accordance with the terms of that contract. Depending on these terms, he may submit his own valuations; be required to submit design proposals for part of the work; be required to carry out performance specified work; or be obliged to sub-let work to specified, i.e. named, sub-contractors. He will be obliged to complete on or before the completion date stated in the contract, but where the work is subject to Sectional Completion each Section must be completed by the completion date entered for that Section.
- 31 There are various obligations arising from statute, some of which will be implied in the terms of the contract, and others expressly stated. For example, responsibility for obtaining the necessary planning consents or building regulations approvals will normally rest with the employer through his professional consultants. Nevertheless, the contractor will still be liable for compliance with statute in respect of building law. Health and safety law, and in particular the CDM Regulations, impose statutory obligations on the employer, designers and the contractor. In addition to being statutory matters, some are also incorporated as contractual obligations in JCT contracts. All editions of JCT contracts dated from 1998 onwards take account of the Housing Grants, Construction and Regeneration Act 1996, except for the home owner/occupier building contracts. (The latter are for use by a residential occupier and a construction contract with a residential occupier is excluded from the provisions of the Act.) These contracts for a home owner/occupier, however, do include adjudication provisions even though the Act does not require them for residential occupiers.

## Watchpoints for choice and use

### Choice

- Check whether the JCT contract under consideration is appropriate for the procurement method adopted, and that the provisions it contains are likely to prove adequate for the particular circumstances.
- Remember that in JCT contracts, design obligations can be imposed upon constructors in various ways, for example:
  - i) by selecting the optional integrated provisions such as those contained in the Standard Building Contract.
  - ii) by using the with contractor's design version of the Minor Works Building Contract or Intermediate Building Contract.
  - iii) by using the Major Project Construction Contract or Design and Build Contract.
  - iv) by using the Intermediate Named Sub-Contractor/Employer Agreement.

### Use

- Check whether the proposed work will be subject to the full CDM Regulations.
- JCT contracts are intended to be read as a whole, and ill-conceived amendments can produce unintended results when construed at law. Ad hoc amendments should be avoided as far as practicable, particularly on points of substance. Where an amendment is considered necessary it should be done only with appropriate professional advice.
- JCT contracts are intended to be, and are generally accepted as being, fair and evenly balanced between the parties for the projects for which they are designed. This balance should not unwittingly be put at risk, e.g. by the ill-considered incorporation into a JCT contract of substantive provisions taken from another form.
- Check that the provisions for insurance are likely to prove suitable in the particular circumstances. Exceptional circumstances, e.g. contaminated land, might dictate that special arrangements have to be made, which the employer will need to discuss with insurance experts and the parties to the contract will need to agree.
- Where Employer's Requirements are required, allow sufficient time for their preparation. Also allow time for examining the Contractor's Proposals.
- Check that the JCT Contract Particulars and all contract documents are fully completed, and that the Agreement has been signed or otherwise executed before the date for the commencement of the Works.

## Part 2 Range of JCT Main Contracts

### Traditional or conventional: Lump sum

#### Standard Building Contract With Quantities (SBC/Q)

Appropriate:

- for larger works designed and/or detailed by or on behalf of the Employer, where detailed contract provisions are necessary and the Employer is to provide the Contractor with drawings; and with bills of quantities to define the quantity and quality of the work; and
- where an Architect/Contract Administrator and Quantity Surveyor are to administer the conditions.

Can be used:

- where the Contractor is to design discrete part(s) of the works (Contractor's Designed Portion);
- where the works are to be carried out in sections;
- by both private and local authority employers.

**32** Price is based on lump sum with monthly interim payments unless otherwise stated.

**33** This contract requires the Employer through his professional consultants to provide at tender stage a set of drawings and bills of quantities which specify the works in terms of quality and quantity. The bills of quantities provide price data for the valuation of variations. The contract contains detailed conditions regulating the rights and obligations of the Employer and Contractor, the powers and duties of the Architect/Contract Administrator and the Quantity Surveyor, and the administrative procedures appropriate to situations that may arise with projects of a complex kind. Sub-contractors may be appointed with the written consent of the Architect/Contract Administrator, or selected from a list of three names. Provisions are included for advance payment, a retention bond, a bond for the payment of off-site materials and for third party rights or collateral warranties. The contract also includes three fluctuations options in a Schedule.

#### Standard Building Contract Without Quantities (SBC/XQ)

Appropriate:

- for larger works designed and/or detailed by or on behalf of the Employer, where detailed contract provisions are necessary and the Employer is to provide the Contractor with drawings; and with either a specification or work schedules to define adequately the scope and quality of the work and where the degree of complexity is not such as to require bills of quantities; and
- where an Architect/Contract Administrator and Quantity Surveyor are to administer the conditions.

Can be used:

- where the Contractor is to design discrete part(s) of the works (Contractor's Designed Portion);
- where the works are to be carried out in sections;
- by both private and local authority employers.

**34** Price is based on lump sum with monthly interim payments unless otherwise stated.

**35** This contract requires the Employer through his professional consultants to provide at tender stage a description of the works in a set of drawings together with either a specification or work schedules. The tenderer either

prices in detail the specification or the work schedules with the total constituting the Contract Sum, or states the lump sum required for carrying out the work shown on the drawings and described in the specification. In the latter case, an analysis of that lump sum (called the Contract Sum Analysis) or a Schedule of Rates on which that lump sum is based must also be supplied. Whichever priced documents the Contractor is required to provide they will be used as a basis for the valuation of variations. In other respects the contract is similar to SBC/Q – see above.

### **Intermediate Building Contract (IC)**

Appropriate:

- where the proposed building works are of simple content involving the normal, recognised basic trades and skills of the industry, without building service installations of a complex nature or other complex specialist work;
- where the works are designed by or on behalf of the Employer, where fairly detailed contract provisions are necessary and the Employer is to provide the Contractor with drawings and bills of quantities, a specification or work schedules to define adequately the quantity and quality of the work; and
- where an Architect/Contract Administrator and Quantity Surveyor are to administer the conditions.

This contract provides more detailed provisions and more extensive control procedures than the Minor Works Building Contract (MW) but is less detailed than the Standard Building Contract (SBC).

Can be used:

- where the works are to be carried out in sections;
- by both private and local authority employers;
- where provisions are required to cover named specialists.

Not suitable:

- where the Contractor is to design discrete part(s) of the works, even though all the other criteria are met – consider the Intermediate Building Contract with contractor's design (ICD).

- 36** Price is based on lump sum with monthly interim payments unless otherwise stated.
- 37** This contract requires the Employer through his professional consultants to provide at tender stage a set of drawings together with another document. Where the other document consists of bills of quantities or work schedules, the Contractor is required to have priced it. Where the other document consists of a specification, the Contractor is required either to have priced it or, if only a lump sum is quoted, then also to have supplied a Schedule of Rates or a Contract Sum Analysis. The priced bills, specification or work schedules or, as the case may be, the Schedule of Rates or Contract Sum Analysis provide price data for the valuation of variations. The contract conditions and procedures are less detailed than those of the Standard Building Contract. All sub-contractors, whether chosen by the Contractor or named by the Employer, are domestic, and their performance is the responsibility of the Contractor, although the Employer does assume additional risks in respect of Named Sub-Contractors whose contracts are terminated because of insolvency. For Named Sub-Contractors, the use of the Intermediate Named Sub-Contract documents is required. Even though a Named Sub-Contractor is a domestic sub-contractor, the Contractor is not responsible for any design carried out by a Named Sub-Contractor. (See also Part 3 of this Practice Note.)
- 38** Provisions are included for advance payment and a bond for the payment of off-site materials. The contract only provides for limited fluctuations i.e. those arising from contribution, levy and tax changes. However, the Named Sub-Contract (see ICSUB/NAM/C) also includes provisions for fluctuations by formula adjustment and any such amounts are adjusted under the main contract.

### **Intermediate Building Contract with contractor's design (ICD)**

Appropriate:

- where the proposed building works are of simple content involving the normal, recognised basic trades and skills of the industry, without building service installations of a complex nature or other complex specialist work;
- where the works are designed and the requirements for the contractor's design of discrete part(s) are detailed by or on behalf of the Employer, and where the Contractor is required to design those part(s) of the work (Contractor's Designed Portion);
- where fairly detailed contract provisions are necessary and the Employer is to provide drawings and bills of quantities, a specification or work schedules to define adequately the quantity and quality of the work; and
- where an Architect/Contract Administrator and Quantity Surveyor are to administer the conditions.

This contract provides more detailed provisions and more extensive control procedures than the Minor Works Building Contract with contractor's design (MWD) but is less detailed than the Standard Building Contract (SBC).

Can be used:

- where the works are to be carried out in sections;
- by both private and local authority employers;
- where provisions are required to cover named specialists.

Not suitable:

- as a design and build contract.

**39** This contract is similar to IC, as described above, but additionally provides for a Contractor's Designed Portion.

### **Minor Works Building Contract (MW)**

Appropriate:

- where the work involved is simple in character;
- where the work is designed by or on behalf of the Employer;
- where the Employer is to provide drawings and/or a specification and/or work schedules to define adequately the quantity and quality of the work; and
- where an Architect/Contract Administrator is to administer the conditions.

Can be used:

- by both private and local authority employers.

Not suitable:

- where bills of quantities are required;
- where provisions are required to govern work carried out by named specialists;
- where detailed control procedures are needed;
- where the Contractor is to design discrete part(s) of the works, even though all the other criteria are met – consider the Minor Works Building Contract with contractor's design (MWD).

- 40 Price is based on lump sum with monthly interim payments.
- 41 This contract requires the Employer through his professional consultants to provide at tender stage drawings and/or a specification and/or work schedules to describe the Works. On acceptance of the tender, the documents that have been provided become contract documents, defining the Works on which the Contract Sum is based. The contract conditions and procedures are much less detailed than those in the Intermediate Building Contract, and it should be noted there is no provision for naming sub-contractors.
- 42 This contract provides for the option of limited fluctuations, i.e. those arising from contribution, levy and tax changes.

**Minor Works Building Contract with contractor's design (MWD)**

<p>Appropriate:</p> <ul style="list-style-type: none"> <li>• where the work involved is simple in character;</li> <li>• where the work is designed and the requirements for the contractor's design of discrete part(s) are detailed by or on behalf of the Employer, and where the Contractor is required to design those part(s) of the work (Contractor's Designed Portion);</li> <li>• where the Employer is to provide drawings and/or a specification and/or work schedules to define adequately the quantity and quality of the work; and</li> <li>• where an Architect/Contract Administrator is to administer the conditions.</li> </ul> <p>Can be used:</p> <ul style="list-style-type: none"> <li>• by both private and local authority employers.</li> </ul> <p>Not suitable:</p> <ul style="list-style-type: none"> <li>• as a design and build contract;</li> <li>• where bills of quantities are required;</li> <li>• where provisions are required to govern work carried out by named specialists;</li> <li>• where detailed control procedures are needed.</li> </ul>
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- 43 This contract is similar to MW, as described above, but additionally provides for a Contractor's Designed Portion.

**Repair and Maintenance Contract (Commercial) (RM)**

<p>Appropriate:</p> <ul style="list-style-type: none"> <li>• where the work involves the repair and maintenance of a building; and</li> <li>• where no independent contract administrator is to be appointed.</li> </ul> <p>Can be used:</p> <ul style="list-style-type: none"> <li>• by both private and local authority employers.</li> </ul> <p>Not suitable:</p> <ul style="list-style-type: none"> <li>• for periodic repair or maintenance over a fixed term or the regular maintenance of plant etc.; consider the Measured Term Contract (MTC);</li> <li>• for work on a dwelling by a residential occupier – consider the Building contract for a home owner/occupier who has not appointed a consultant to oversee the work (HO/B) or the Building contract and consultancy agreement for a home owner/occupier (HO/C), or if the work is of a very minor nature the Home Repair and Maintenance Contract (HO/RM).</li> </ul>
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- 44 This contract is flexible in terms of price in that it enables the Employer to seek quotes on the basis of a fixed price and/or of daywork or other rates, using either a Schedule of Rates or all-in labour rates in a Schedule of Hourly Charges. It also makes express provision for payment either by a single payment or by stage payments, at the same time noting the statutory right to instalment payments that may arise under the Housing Grants, Construction and Regeneration Act 1996.
- 45 This contract is intended for use on individual, substantially defined, programmes of repair and/or maintenance work on specified buildings or sites. The primary users of this contract are envisaged as being local authorities and other employers who regularly place small and medium-size contracts for jobbing work and are sufficiently experienced both in placing contracts and in dealing with contractors' accounts that there is no requirement for administration of the contract by an independent contract administrator.
- 46 RM 2006 is published as a single document, comprising both the Tender (with its accompanying Invitation to Tender and form of acceptance) and the Conditions.

**Building contract for a home owner/occupier who has not appointed a consultant to oversee the work (HO/B)**

Consumer contract in two parts – Arrangements and Conditions.

This is a consumer contract for use by a residential occupier, drafted in clear simple language to comply with The Unfair Terms in Consumer Contracts Regulations 1999. A construction contract with a residential occupier or someone who intends to occupy the dwelling as his/her residence is excluded from the provisions of the Housing Grants, Construction and Regeneration Act 1996; nevertheless this contract provides for adjudication in the event of a dispute between the home owner/occupier and the contractor.

Appropriate:

- for small domestic building work such as extensions and alterations;
- where the proposed works are to be carried out for an agreed lump sum; and
- where no consultant acts on behalf of the home owner/occupier to administer the contract.

- 47 Contract is based on drawings and/or a specification.
- 48 Price is based on a lump sum and the accepted quotation from the contractor. The price is to be inclusive of any VAT. There is provision for a single payment on completion, or if agreed payment by instalments.
- 49 This contract requires the customer to deal directly with the contractor and there is no provision for an independent contract administrator. However the form could be a useful recommendation to clients by consultants handling small domestic commissions on a partial service basis. After acceptance of the contractor's quotation, whatever documents are referred to in Part 1 of the contract become 'work details'. The arrangements for the work are agreed between customer and contractor and entered or signified by tick boxes prior to signing the contract.

**Building contract for a home owner/occupier who has appointed a consultant to oversee the work (HO/C)**

This is a consumer contract for use by a residential occupier, drafted in clear simple language to comply with The Unfair Terms in Consumer Contracts Regulations 1999. A construction contract with a residential occupier or someone who intends to occupy the dwelling as his/her residence is excluded from the provisions of the Housing Grants, Construction and Regeneration Act 1996; nevertheless this contract provides for adjudication in the event of a dispute between the home owner/occupier and the contractor.

This building contract is published as part of the Building contract and consultancy agreement for a home owner/occupier and is designed for use with the consultancy agreement.

Appropriate:

- for small domestic building work such as extensions and alterations;
- where the proposed works are to be carried out for an agreed lump sum;

- where detailed procedures are not required; and
- where the home owner/occupier has appointed a consultant who will be administering the contract for the home owner/occupier.

50 This contract is similar to HO/B, as described above, but additionally provides for a contract administrator.

### **Home Repair and Maintenance Contract (HO/RM)**

This is a consumer contract for use by a residential occupier, drafted in clear simple language to comply with The Unfair Terms in Consumer Contracts Regulations 1999. A construction contract with a residential occupier or someone who intends to occupy the dwelling as his/her residence is excluded from the provisions of the Housing Grants, Construction and Regeneration Act 1996; nevertheless this contract provides for adjudication in the event of a dispute between the home owner/occupier and the contractor.

Appropriate:

- for small-scale repairs and maintenance of a straightforward nature to domestic buildings.
- where no consultant acts on behalf of the home owner/occupier to administer the contract.

51 Contract is based on a specification as referred to in the contract.

52 Price may be a lump sum or based on an hourly rate plus the contractor's invoices for materials. The price is to be inclusive of any VAT. This contract only provides for payment on completion of the work; therefore, the proposed duration of the repair and maintenance work should not exceed four weeks and generally would be much shorter.

## **Traditional or conventional: Measurement**

### **Standard Building Contract With Approximate Quantities (SBC/AQ)**

Appropriate:

- for larger works designed and/or detailed by or on behalf of the Employer, where detailed contract provisions are necessary and the Employer is to provide the Contractor with drawings; and with approximate bills of quantities to define the quantity and quality of the work, which are to be subject to remeasurement, as there is insufficient time to prepare the detailed drawings necessary for accurate bills of quantities to be produced; and
- where an Architect/Contract Administrator and Quantity Surveyor are to administer the conditions.

Can be used:

- where the Contractor is to design discrete part(s) of the works (Contractor's Designed Portion);
- where the works are to be carried out in sections;
- by both private and local authority employers.

53 Price is based on the tender figure which is converted to an Ascertained Final Sum on remeasurement and valuation of all work. Interim payments are monthly unless otherwise stated.

54 This contract requires the Employer through his consultants to provide at tender stage a set of drawings and approximate quantities. The Contractor is required to quote a tender sum, which is indicative only of the likely price of the works. The contract is broadly as described for the Standard Building Contract With Quantities, except that the work is completely remeasured on the basis of rates set out in the bills of quantities.

## Measured Term Contract (MTC)

Appropriate for use:

- by Employers who have a regular flow of maintenance and minor works, including improvements, to be carried out by a single contractor over a specified period of time and under a single contract;
- where the work is to be instructed from time to time and measured and valued on the basis of an agreed schedule of rates; and
- where a Contract Administrator is to administer the conditions.

- 55 Contract is based on a priced Schedule of Rates to be followed by a series of Orders for each separate item of work which might include a written description and drawings where relevant. Price is based on measurement and valuation for each separate Order, using the figures in the priced Schedule of Rates as adjusted by the contractor and accepted by the Employer.
- 56 The Measured Term Contract requires the Employer to:
- list the properties to be covered by the contract and state the period and the type of work which may be required from time to time during that period (the period is envisaged as being not less than 12 months and it is seldom safe or practical for it to exceed 36 months);
  - estimate the total annual value of the work for the whole contract period, and indicate the minimum and maximum value of any one Order given;
  - appoint a Contract Administrator who will issue the Orders from time to time describing the work to be completed under each Order and the completion date;
  - pay for each item of work covered by an Order, as certified by the Contract Administrator, following measurement and valuation according to the relevant rates and prices in the priced Schedule of Rates, which are to be adjusted by applying the contractor's quoted percentage addition or deduction.
- 57 This contract is appropriate notwithstanding that a large number of Orders may be placed with the contractor over the period of the contract and that they include Orders of widely differing values and cover various different trades.

## Traditional or conventional: Cost reimbursement or cost plus

### Prime Cost Building Contract (PCC)

Appropriate:

- for projects requiring an early start on site, where the works are designed by or on behalf of the Employer but where it is not possible to prepare full design information before the works commence;
- where detailed contract provisions are necessary and the Employer is to provide a specification describing and showing the items of work; drawings may also be provided; and
- where an Architect/Contract Administrator and Quantity Surveyor are to administer the conditions.

Can be used:

- where the works are to be carried out in sections;
- by both private and local authority employers.

- 58 The work proceeds on the basis of a brief specification, drawings (if any) and an estimate of its cost. Interim payments are monthly unless stated otherwise.

- 59 This contract is most often used for alteration work and for urgent repair work (e.g. after fire damage) where an early start is necessary and the exact nature and extent of the Works cannot be determined until the work is actually under way. This is a high risk contract for the Employer in terms of cost, and much depends on the efficiency of the Contractor in carrying out the Works economically. The contract contains various provisions to assist in keeping the expenditure of Prime Cost to the minimum needed to provide the Works required by the completion date.
- 60 The Contractor is paid the Prime Cost of the Works, as certified by the Architect/Contract Administrator. The Employer also pays a Contract Fee in respect of the Contractor's non-site overheads and profit. This fee may be a Lump Sum which can nevertheless be adjusted if the actual Prime Cost is more or less than the estimated Prime Cost by a percentage stated in the contract, or it can be a 'Percentage Fee' calculated on the actual Prime Cost incurred.
- 61 The Contract Fee can be revised if the Employer changes the nature and scope of the Works described in a Schedule to the contract. After the contract has been entered into, any such change is also subject to a right of reasonable objection by the Contractor.

## Design and build

- 62 Although all versions of the Standard Building Contract (SBC) contain an optional Contractor's Designed Portion in respect of design by the contractor for a defined portion of the work, this is of limited application and does not result in a design and build contract.

### Major Project Construction Contract (MP)

Appropriate:

- for major works where the Employer regularly procures large-scale construction work and where the Contractor to be appointed is experienced and able to take greater risk than would arise under other JCT contracts;
- where the parties have their own detailed procedures and where limited procedures only need to be set out in the contract conditions;
- where the Employer has prepared his requirements and provided these to the Contractor;
- where the Contractor is not only to carry out and complete the works, but also to complete the design; and
- the Employer employs a representative to exercise the powers and functions of the Employer under the Contract.

Can be used:

- where the works are to be carried out in sections.

- 63 Price is based on lump sum with monthly interim payments based on the Pricing Document.
- 64 This contract is for use on major projects where the Employer and the Contractor regularly undertake such projects and have appropriate in-house contractual procedures. The Contractor assumes more risks and responsibilities than under other JCT contracts. It is desirable, therefore, that the Employer and the Contractor, together with their respective advisors and sub-contractors, are experienced in detailed risk management and undertaking large commercial projects.

## Design and Build Contract ((DB)

Appropriate:

- where detailed contract provisions are necessary and Employer's Requirements have been prepared and provided to the Contractor;
- where the Contractor is not only to carry out and complete the works, but also to complete the design; and
- where the Employer employs an agent (who may be an external consultant or employee) to administer the conditions.

Can be used:

- where the works are to be carried out in sections;
- by both private and local authority employers.

Where the Contractor is restricted to design small discrete parts of the works and not made responsible for completing the design for the whole works, consideration should be given to using one of the JCT contracts that provide for such limited design input by the Contractor and the employment of a Contract Administrator.

- 65 Price is based on a lump sum with interim stage payments or periodic payments as stated.
- 66 The extent of the Contractor's design input can vary considerably. Adequate time and care must be given to compiling the Employer's Requirements, and this will normally mean the appointment of consultants by the Employer. In the event of any conflict between the Employer's Requirements and the Contractor's Proposals, the latter are stated to prevail. When evaluating tenders, adequate time must be given to checking these Proposals, particularly as the contract conditions refer to the Employer having satisfied himself that the Proposals are acceptable. Contractor's design responsibility will normally be that of reasonable care and skill, but the boundaries of design responsibility, particularly in cases when the Employer's Requirements include scheme design by consultants, need to be carefully defined.
- 67 This contract makes no provision for an independent contract administrator. The Employer is directly responsible for issuing statements, instructions, etc. as required under the contract. The Employer may appoint an Employer's Agent to act in his place but his responsibilities and authority should be clearly defined. It is desirable to keep any Changes to a minimum; the valuation of a Change will be carried out by the Contractor based on figures in the Contract Sum Analysis unless the Schedule 2 Supplemental Provisions apply or as otherwise agreed.

## Management

### Management Building Contract (MC)

Appropriate:

- for large-scale projects requiring an early start on site, where the works are designed by or on behalf of the Employer but where it is not possible to prepare full design information before the works commence and where much of the detail design may be of a sophisticated or innovative nature requiring proprietary systems or components designed by specialists;
- where the Employer is to provide the Management Contractor with drawings and a specification; and
- where a Management Contractor is to administer the conditions.

The Management Contractor does not carry out any construction work but manages the Project for a fee. The Management Contractor employs Works Contractors to carry out the construction works.

Can be used:

- where the works are to be carried out in sections;

- by both private and local authority employers.

- 68 Price is based on Prime Cost of the Project plus a Management Fee for the Management Contractor. Interim payments are monthly unless stated otherwise.
- 69 The Employer is required to appoint an Architect/Contract Administrator, a Quantity Surveyor and such other persons as may be necessary for the Professional Team. The contract is divided into two periods, the Pre-Construction Period and the Construction Period. The Management Contractor should be appointed early so as he can co-operate with the Architect/Contract Administrator, Quantity Surveyor and other members of the Professional Team on such matters as the Project programme; formulating and agreeing construction methods; advising on 'buildability' aspects of the Project; agreeing the Contract Cost Plan; and advising on the works packages for which the Works Contractors will tender. After the Architect/Contract Administrator has notified the Employer that it is practicable to commence construction, the Employer can then decide whether or not to proceed into the Construction Period.
- 70 In the Construction Period, the Management Contractor will be required to set out, manage, organise, supervise and secure the carrying out and completion of the project through the Works Contractors, who are directly contracted to him. Although the Management Contractor is responsible for operating the terms of the contract, the consequences of any default by a Works Contractor do not fall upon the Management Contractor if he complies with such terms.

#### **Construction Management Appointment (CM/A)**

Appropriate:

- where a Construction Manager is to manage the project on behalf of the Employer; and
- where the Employer is to enter into direct separate trade contracts using the Construction Management Trade Contract (CM/TC) or a special Trade Contract.

Can be used:

- where the works are to be carried out in sections.

- 71 This Appointment is the 'main contract' for the procurement path of construction management. It is part of a suite of documentation for use where separate contractual responsibility for the management, design and construction of the project is appropriate. It is drafted as a professional appointment for a Construction Manager. The cost of the Construction Manager is based on his fee plus certain reimbursable costs.

#### **Construction Management Trade Contract (CM/TC)**

Appropriate:

- where the Employer is to enter into direct separate trade contracts; and
- where a Construction Manager engaged under the Construction Management Appointment is to administer the conditions on behalf of the Employer.

Can be used:

- where the works are to be carried out in sections.

- 72 This contract is to be entered into between the Employer and the Trade Contractor in conjunction with the Construction Management Appointment (CM/A) and because it is a direct contractual arrangement it is not a sub-contract but more akin to a main contract. The Construction Manager acts as agent for the Employer in issuing instructions, making decisions and preparing certifications. Price is based on either a lump sum or complete remeasurement. Interim payments are either monthly or at pre-determined stages.

## Partnering

- 73 The subject of partnering is covered by Practice Note – Partnering. Partnering is not a specific procurement method and consequently, the concept can be incorporated into most contractual arrangements. The JCT Partnering Charter (Non-binding) is for use where the parties wish to inculcate the partnering philosophy into their contractual arrangements.

### JCT - Constructing Excellence Contract (CE)

Appropriate:

- for the procurement of construction works and construction related services;
- for use throughout the supply chain including the provision of professional services;
- for use where participants wish to engender collaborative and integrative working;
- for use in partnering.

Can be used:

- whether or not the supplier is to design;
- where the works are to be carried out in sections;
- for Target Cost or Lump Sum.

- 74 Price is based either on a lump sum with interim payments in accordance with the Payment Schedule or on cost reimbursement basis with interim payments on a monthly basis.
- 75 This contract encourages collaborative behaviour and expressly underpins collaborative working and the formation of integrated teams. It provides specifically for the use of a risk register, risk allocation schedules and performance indicators.
- 76 The extent of the Supplier's design input, which may be as a consultant or as a contractor, can vary considerably.

### JCT - Constructing Excellence Contract Project Team Agreement (CE/P)

Appropriate:

- for use in conjunction with the JCT - Constructing Excellence Contract (CE); and
- where members of the project team are to enter into a multi-party pain/gain agreement.

- 77 This Agreement is collateral to the JCT - Constructing Excellence Contract; it supports the collaborative approach and formalises the integration of the project team. It includes an optional section that provides for risk and reward sharing arrangements between team members.

### Framework Agreement

- 78 Employers who carry out work regularly and wish to try and capture the benefits of long term relationships within the supply chain should consider the use of the JCT Framework Agreement in conjunction with the appropriate JCT contract for the particular project.

## Framework Agreement (FA)

Appropriate:

- for the procurement of construction/engineering related works over a period of time;
- for use by clients with contractors and/or suppliers;
- for use by contractors, sub-contractors and/or suppliers sub-letting to others in the supply chain;
- for use with most standard forms of construction and engineering contracts and sub-contracts.

Can be used:

- where compliance with the public procurement rules is required;
- on a single project.

## Part 3 Range of JCT Sub-Contracts and Sub-subcontract

- 79 JCT main contracts generally envisage the possibility of sub-letting and hence there is a need for forms of sub-contract. Some main contracts make reference to the use of a specific sub-contract but generally the choice is a matter for the contractor, although it is desirable that the appropriate JCT sub-contract is used. The incorporation of conditions by reference can and often does lead to difficulties.

### Sub-Contracts

#### Short Form of Sub-Contract (ShortSub)

Appropriate:

- for use where the main contract is a JCT contract; and
- for a small sub-contract package of work or one that is of straightforward content with low risk involved.

Can be used:

- where the sub-contract works and/or main contract works are to be carried out in sections;
- for sub-contract works that are to be carried out on the basis of an adjusted sub-contract sum (adjustment for variations etc.) or by complete remeasurement.

Not suitable:

- where the sub-contract works are of a complex technical nature;
- where the Sub-Contractor is to design any part of the sub-contract works, even though the other criteria are met;
- where provisions which are fully back to back with the main contract are required.

- 80 This sub-contract does not contain a Sub-Contract Particulars section and, therefore, its use will require such information as would normally be in the particulars to be contained in other documents except for those matters dealt with in the Articles.
- 81 The attestation provision is for execution under hand; there is no provision for executing the contract as a deed. There are no insurance provisions.

#### Standard Building Sub-Contract (SBSub/A and SBSub/C)

Appropriate:

- for use where the main contract is the Standard Building Contract (with quantities, without quantities or with approximate quantities); and
- for sub-contract works where the Sub-Contractor is not required to design.

Can be used:

- where the sub-contract works and/or main contract works are to be carried out in sections;
- for sub-contract works that are to be carried out on the basis of an adjusted sub-contract sum (adjustment for variations etc.) or by complete remeasurement.

Not suitable:

- where the Sub-Contractor is to design any part of the sub-contract works, even though the other criteria are met – consider the Standard Building Sub-Contract with sub-contractor's design (SBCSub/D/A and SBCSub/D/C).

- 82 This sub-contract is for use only with the Standard Building Contract (in any of its three versions). The Standard Building Sub-Contract is published in two parts, namely, the Sub-Contract Agreement (SBCSub/A), which includes the Recitals, Articles and Sub-Contract Particulars; and the Sub-Contract Conditions (SBCSub/C).

**Standard Building Sub-Contract with sub-contractor's design (SBCSub/D/A and SBCSub/D/C)**

Appropriate:

- for use where the main contract is the Standard Building Contract (with quantities, without quantities or with approximate quantities);
- where the Contractor is to design discrete part(s) of the main contract works (Contractor's Designed Portion); and
- the Sub-Contractor is to design all or part of the sub-contract works (Sub-Contractor's Designed Portion).

Can be used:

- where the sub-contract works and/or main contract works are to be carried out in sections;
- for sub-contract works that are to be carried out on the basis of an adjusted sub-contract sum (adjustment for variations etc.) or by complete remeasurement.

Not suitable:

- where no sub-contractor's design is involved – consider the Standard Building Sub-Contract (SBCSub/A and SBCSub/C).

- 83 This sub-contract is for use only with the Standard Building Contract (in any of its three versions) where the Contractor's Designed Portion applies and the sub-contractor is to design all or part of the sub-contract works. The Standard Building Sub-Contract with sub-contractor's design is published in two parts, namely, the Sub-Contract Agreement (SBCSub/D/A), which includes the Recitals, Articles and Sub-Contract Particulars; and the Sub-Contract Conditions (SBCSub/D/C).

**Intermediate Sub-Contract (ICSub/A and ICSub/C)**

Appropriate:

- for use where the main contract is the Intermediate Building Contract; and
- for sub-contract works where the Sub-Contractor is not required to design.

Can be used:

- where the sub-contract works and/or main contract works are to be carried out in sections;
- for sub-contract works that are to be carried out on the basis of an adjusted sub-contract sum (adjustment for variations etc.) or by complete remeasurement;
- where main contract is the Intermediate Building Contract with contractor's design if the Sub-Contractor is not required to design.

Not suitable:

- where the Sub-Contractor is to design any part of the sub-contract works, even though the other criteria are met – consider the Intermediate Sub-Contract with sub-contractor's design (ICSub/D);

- where the Sub-Contractor is 'Named' in the main contract – consider the Intermediate Named Sub-Contract (comprising ICSUB/NAM/IT, ICSUB/NAM/T, ICSUB/NAM/A and ICSUB/NAM/C).

- 84** This sub-contract is for use only with the Intermediate Building Contract and the Intermediate Building Contract with contractor's design where the sub-contractor is not designing any part of the sub-contract works. The Intermediate Sub-Contract is published in two parts, namely, the Sub-Contract Agreement (ICSUB/A), which includes the Recitals, Articles and Sub-Contract Particulars; and the Sub-Contract Conditions (ICSUB/C).

**Intermediate Sub-Contract with sub-contractor's design (ICSUB/D/A and ICSUB/D/C)**

Appropriate:

- for use where the main contract is the Intermediate Building Contract with contractor's design; and
- where the Sub-Contractor is to design all or part of the sub-contract works (Sub-Contractor's Designed Portion).

Can be used:

- where the sub-contract works and/or main contract works are to be carried out in sections;
- for sub-contract works that are to be carried out on the basis of an adjusted sub-contract sum (adjustment for variations etc.) or by complete remeasurement of the sub-contract works.

Not suitable:

- where no sub-contractor's design is involved – consider the Intermediate Sub-Contract (ICSUB);
- where the Sub-Contractor is 'Named' in the main contract – consider the Intermediate Named Sub-Contract (comprising ICSUB/NAM/IT, ICSUB/NAM/T, ICSUB/NAM/A and ICSUB/NAM/C).

- 85** This sub-contract is for use only with the Intermediate Building Contract with contractor's design and where the sub-contractor is designing. The Intermediate Sub-Contract with sub-contractor's design is published in two parts, namely, the Sub-Contract Agreement (ICSUB/D/A), which includes the Recitals, Articles and Sub-Contract Particulars; and the Sub-Contract Conditions (ICSUB/D/C).

**Intermediate Named Sub-Contract Tender & Agreement (ICSUB/NAM) and Intermediate Named Sub-Contract Conditions (ICSUB/NAM/C)**

Appropriate:

- for use where the main contract is the Intermediate Building Contract or Intermediate Building Contract with contractor's design; and
- where the Sub-Contractor is 'Named' to carry out sub-contract works, whether or not they include design.

Can be used:

- where the sub-contract works and/or main contract works are to be carried out in sections; and
- for sub-contract works that are to be carried out on the basis of an adjusted sub-contract sum (adjustment for variations etc.) or by complete remeasurement.

Not suitable:

- unless the Sub-Contractor is 'Named' in the main contract or under its provisions;
- for any sub-contract work that forms a part of the Contractor's Designed Portion.

Consider:

using an Intermediate Named Sub-Contractor/Employer Agreement (ICSUB/NAM/E) in conjunction with the

Intermediate Named Sub-Contract (see the Intermediate Building Contract Guide (IC/G)) where:

- the Named Sub-Contractor is to carry out design work or to procure or fabricate materials or goods prior to letting of the main contract; and/or
- the Employer:
  - requires undertakings from the Named Sub-Contractor in respect of the sub-contract works and any related design work which he is to carry out; and/or
  - requires the Named Sub-Contractor to give Collateral Warranties to purchasers/tenants and/or any funder of the main contract works or relevant part(s) of them.

- 86 The Intermediate Named Sub-Contract Tender & Agreement comprises three parts in a single document, namely, the Invitation to Tender (ICSub/NAM/IT), the Tender (ICSub/NAM/T) and the Agreement (ICSub/NAM/A). This together with the separate Named Sub-Contract Conditions are only for use with the Intermediate Building Contract and the Intermediate Building Contract with contractor's design where the sub-contractor is to be 'Named' by the Architect/Contract Administrator.
- 87 Although the Intermediate Named Sub-Contract is for use with both versions of the Intermediate Building Contract it should be remembered that it is inappropriate to use Naming as part of a Contractor's Designed Portion.
- 88 Naming is generally (but not exclusively) appropriate where the sub-contractor is to design the sub-contract works and, as the Contractor will not be responsible for such design under the terms of the Intermediate Building Contract (either version), the Employer should use the Intermediate Named Sub-Contractor/Employer Agreement (ICSub/NAM/E) so as to create a direct contractual relationship with the Named Sub-Contractor.

#### **Minor Works Sub-Contract with sub-contractor's design (MWSUB/D)**

Appropriate:

- for use where the main contract is the Minor Works Building Contract with contractor's design;
- where the Sub-Contractor is to design all or part of the sub-contract works (Sub-Contractor's Designed Portion); and
- for a small sub-contract package of work or one that is of straightforward content with low risk involved.

Not suitable:

- where the sub-contract works are of a complex technical nature;
- where sub-contractor's design is not involved – consider the Short Form of Sub-Contract (ShortSub).

- 89 This sub-contract is for use only with the Minor Works Building Contract with contractor's design and where the sub-contractor is designing.

#### **Major Project Sub-Contract (MPSUB)**

Appropriate:

- for use where the main contract is the Major Project Construction Contract; and
- for sub-contract works whether or not they include design by the Sub-Contractor.

Can be used:

- where the sub-contract works and/or main contract works are to be carried out in sections;
- for sub-contract works that are to be carried out on the basis of an adjusted sub-contract sum (adjustment for variations etc.) or by complete remeasurement of the sub-contract works.

- 90 This sub-contract is for use only with the Major Project Construction Contract but is suitable regardless of whether the sub-contractor is a Named Specialist or a sub-contractor selected by the Contractor.

**Design and Build Sub-Contract (DBSub/A and DBSub/C)**

Appropriate:

- for use with the Design and Build Contract; and
- for sub-contract works whether or not they include design by the Sub-Contractor.

Can be used:

- where the sub-contract works and/or main contract works are to be carried out in sections;
- for sub-contract works that are to be carried out on the basis of an adjusted sub-contract sum (adjustment for variations etc.) or by complete remeasurement of the sub-contract works.

- 91 This sub-contract is for use only with the Design and Build Contract. The Design and Build Sub-Contract is published in two parts, namely, the Sub-Contract Agreement (DBSub/A), which includes the Recitals, Articles and Sub-Contract Particulars; and the Sub-Contract Conditions (DBSub/C).

**Management Works Contract (MCWC/A and MCWC/C)**

Appropriate:

- for use where the 'main contract' is the Management Building Contract; and
- for 'sub-contract' works whether or not they include design by the Works Contractor.

Can be used:

- where the 'sub-contract' works and/or Project are to be carried out in sections;
- for 'sub-contract' works that are to be carried out on the basis of an adjusted 'sub-contract' sum (adjustment for variations etc.) or by complete remeasurement of the 'sub-contract' works.

- 92 This 'sub-contract' is for use only with the Management Building Contract and is for Works Contractors appointed under that contract. The Management Works Contract is published in two parts, namely, the Works Contract Agreement (MCWC/A), which includes the Recitals, Articles and Works Contract Particulars; and the Works Contract Conditions (MCWC/C).

**Sub-subcontract**

**Sub-subcontract (SubSub)**

Appropriate:

- for use where the main contract is a JCT contract.

Can be used:

- with any sub-contract;
- where the sub-subcontract works and/or sub-contract works are to be carried out in sections;
- for sub-contract works that are to be carried out on the basis of an adjusted sub-contract sum (adjustment for variations etc.) or by complete remeasurement.

Not suitable:

- where the sub-subcontract works are of a complex technical nature;
- where provisions which are fully back to back with the sub-contract are required.

- 93** This sub-subcontract does not contain a sub-subcontract particulars section and, therefore, its use will require such information as would normally be in the particulars to be contained in other documents except for those matters otherwise dealt with in the Articles.
- 94** The attestation provision is for execution under hand; there is no provision for executing the contract as a deed. There are no insurance provisions.

## Part 4 Comparison of Contract Provisions

	MP 05	DB 05	SBC 05 without CDP	SBC 05 with CDP	IC 05	ICD 05	MW 05	MWD 05
<b>Client control</b>								
Contract Administrator required	no	no	yes	yes	yes	yes	yes	yes
Quantity Surveyor required	no	no	yes	yes	yes	yes	no	no
Employer's Agent provided for Clerk of Works provided for	representative no	yes no	no yes	no yes	no yes	no yes	no no	no no
Clerk of Works has power to issue directions	n/a	n/a	limited	limited	no	no	n/a	n/a
<b>Design responsibilities</b>								
Contractor responsible for completing design	yes	yes	no	no	no	no	no	no
Contractor responsible for completing part of design	no	no	no	yes	no	yes	no	yes
Ground conditions at contractor's risk	yes if default applies	silent	no	silent	no	silent	no	silent

DB: Design and Build Contract  
 IC: Intermediate Building Contract  
 ICD: Intermediate Building Contract with contractor's design  
 MP: Major Project Construction Contract

MW: Minor Works Building Contract  
 MWD: Minor Works Building Contract with contractor's design  
 SBC without CDP: Standard Building Contract without a contractor's designed portion  
 SBC with CDP: Standard Building Contract with a contractor's designed portion

	<b>MP 05</b>	<b>DB 05</b>	<b>SBC 05 without CDP</b>	<b>SBC 05 with CDP</b>	<b>IC 05</b>	<b>ICD 05</b>	<b>MW 05</b>	<b>MWD 05</b>
<b>Commencement and completion</b>								
Sections of work referred to	yes	yes	yes	yes	yes	yes	no	no
Possession of site given to contractor	no	yes	yes	yes	yes	yes	no	no
Taking over parts of the Project prior to practical completion	yes	yes	yes	yes	yes	yes	no	no
Deferment of possession provided for	no	yes	yes	yes	yes	yes	n/a	n/a
Extension of time - full list of events	no	yes	yes	yes	yes	yes	no	no
Extension of time - restricted list of events	yes	no	no	no	no	no	no	no
Extension of time for delay beyond control of contractor	no	no	no	no	no	no	yes	yes
<b>Selection of sub-contractors</b>								
Sub-letting to domestic sub-contractors	no	yes	yes	yes	yes	yes	yes	yes
Sub-letting to named sub-contractors	yes	yes	yes	yes	yes	yes	no	no
<b>Variations</b>								
Detailed rules for valuation	no	yes	yes	yes	yes	yes	no	no
Quotation provision for variations (changes)	yes	yes	yes	yes	no	no	no	no

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	MP 05	DB 05	SBC 05 without CDP	SBC 05 with CDP	IC 05	ICD 05	MW 05	MWD 05
<b>Testing and opening up</b>								
Inspection and testing provided for	yes	yes	yes	yes	yes	yes	no	no
Testing of other work where non-compliance is found	yes	yes	yes	yes	yes	yes	no	no
Code of Practice covering testing of other work	no	yes	yes	yes	no	no	no	no
<b>Fluctuations</b>								
Contribution, levy and tax fluctuations	no	yes	yes	yes	yes	yes	yes	yes
Labour and materials cost and tax fluctuations	no	yes	yes	yes	no	no	no	no
Formula adjustment	no	yes	yes	yes	no	no	no	no
<b>Payment</b>								
Advance payment provided for	reference to	yes	yes	yes	yes	yes	no	no
Advance payment bond	reference to	yes	yes	yes	yes	yes	no	n/a
Stage Payments – detailed provision	yes	yes	no	no	no	no	no	no
Retention on payments	no	yes	yes	yes	yes	yes	yes	yes
Retention held in trust	n/a	yes	yes	yes	yes	yes	no	no
Retention Bond	n/a	no	yes	yes	no	no	no	no
Bond in respect of payment for off-site materials	no	yes	yes	yes	yes	yes	no	no
Loss and expense expressly provided for	yes	yes	yes	yes	yes	yes	no	no

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SBC without CDP: Standard Building Contract without a contractor's designed portion

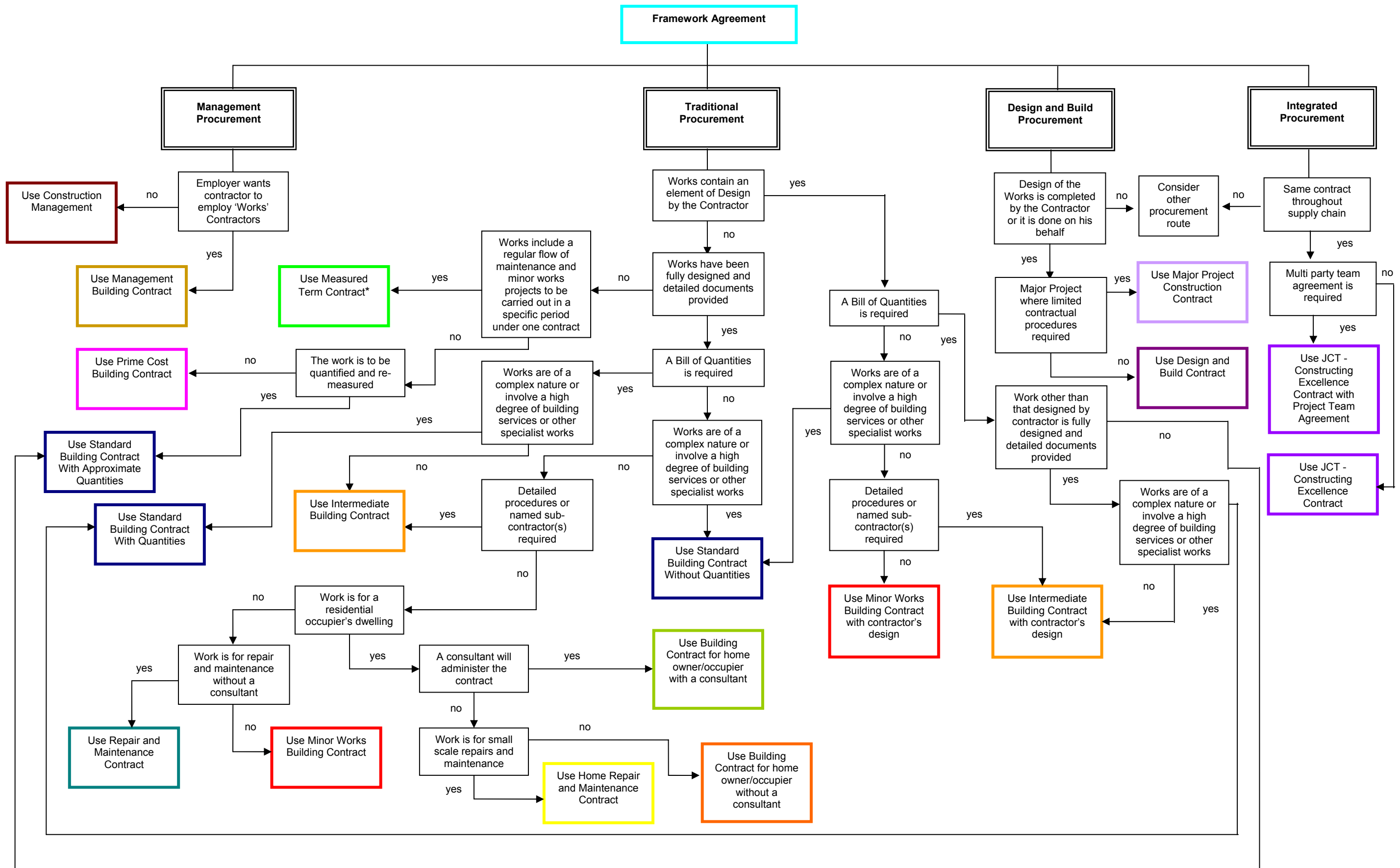
SBC with CDP: Standard Building Contract with a contractor's designed portion

	MP 05	DB 05	SBC 05 without CDP	SBC 05 with CDP	IC 05	ICD 05	MW 05	MWD 05
<b>Insurance</b>								
Detailed provision for new buildings insured by contractor	no	yes	yes	yes	yes	yes	yes	yes
Detailed provision for new buildings insured by Employer	no	yes	yes	yes	yes	yes	no	no
Detailed provision for existing buildings/works insured by Employer	no	yes	yes	yes	yes	yes	yes	yes
<b>Warranties</b>								
Third party rights provided for	yes	yes	yes	yes	no	no	no	no
Collateral warranties provided for	no	yes	yes	yes	yes	yes	no	no
<b>Dispute Resolution</b>								
Arbitration agreement provided for	no	yes	yes	yes	yes	yes	yes	yes

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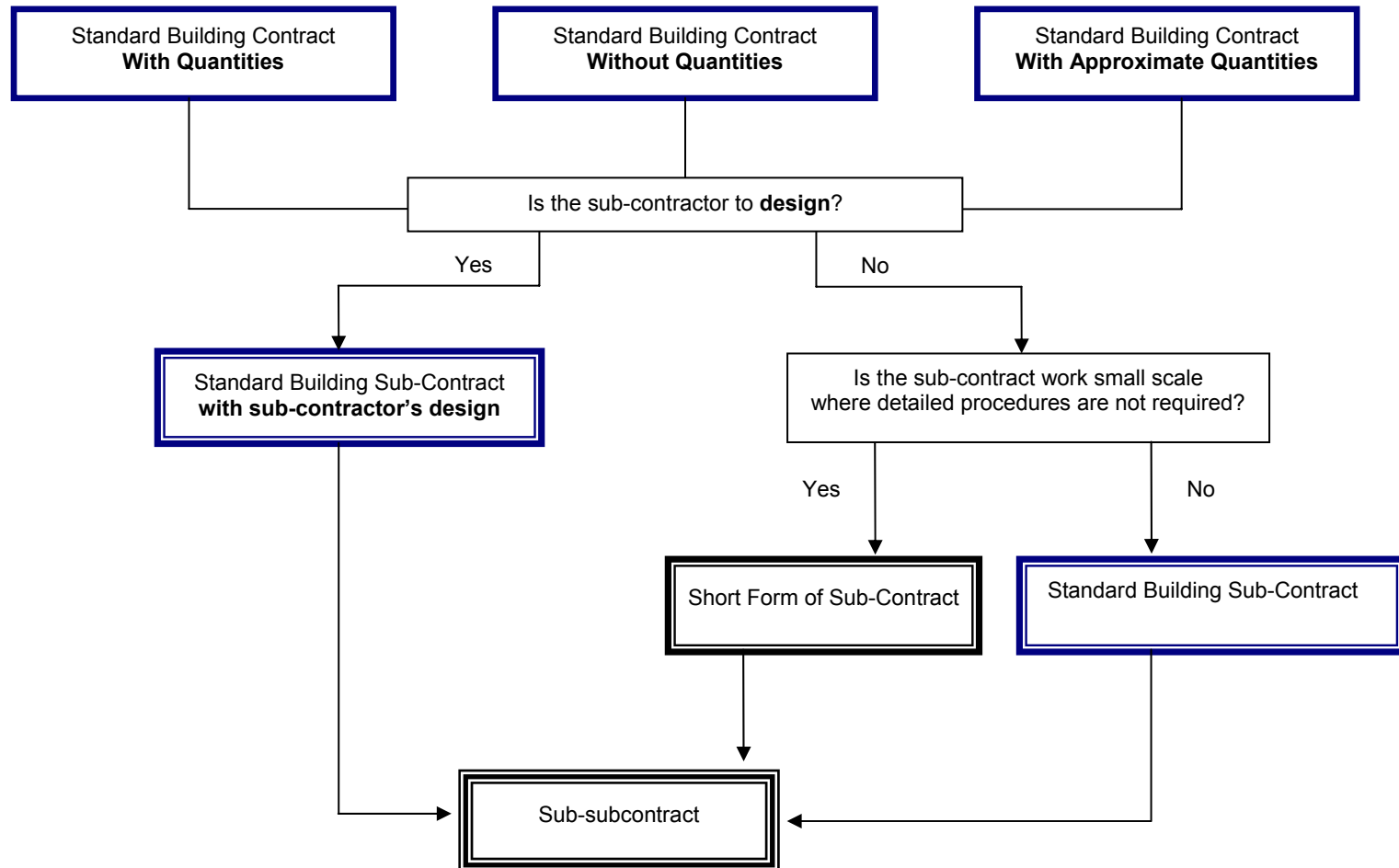
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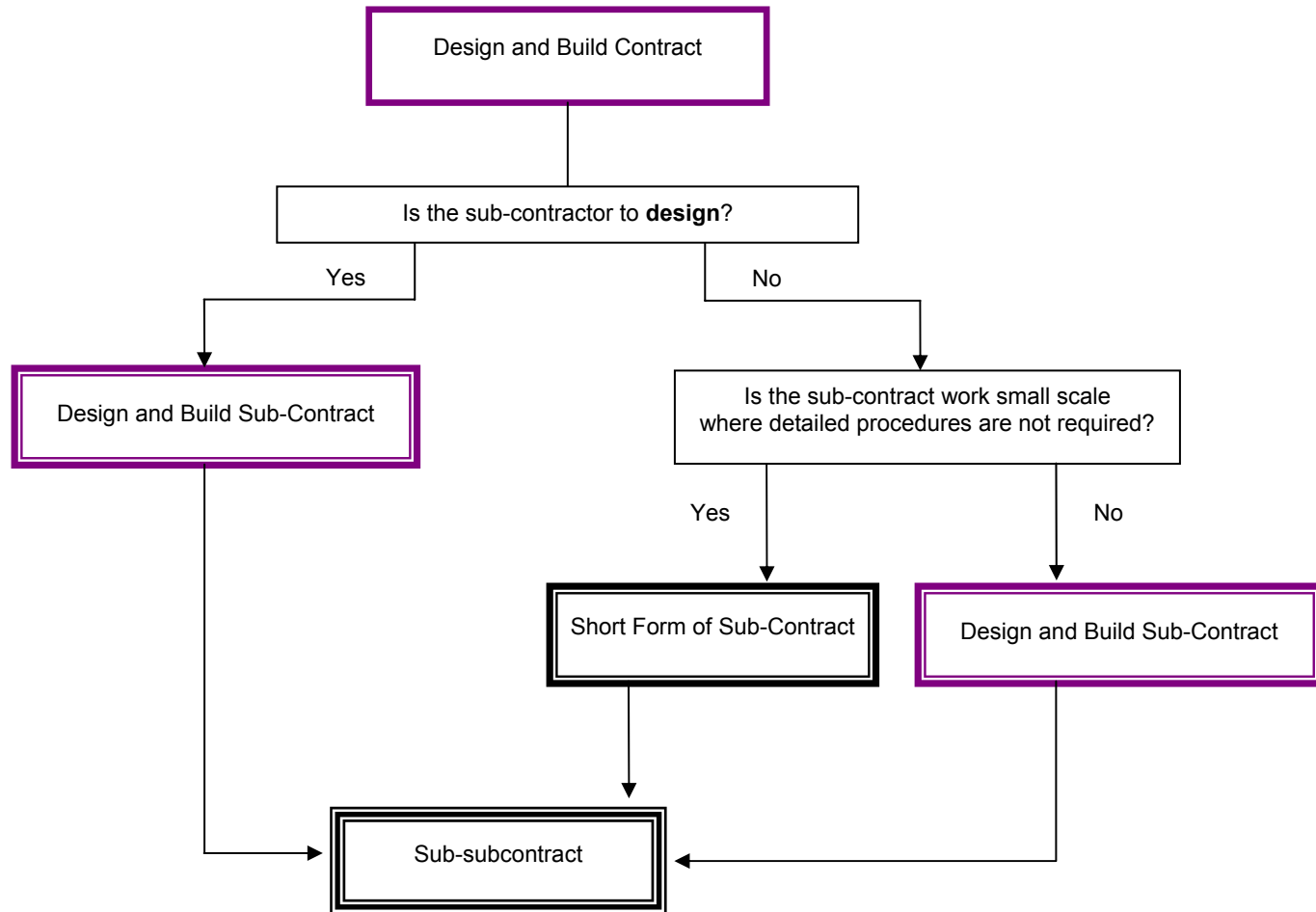
# Guide to selecting the appropriate JCT main contract

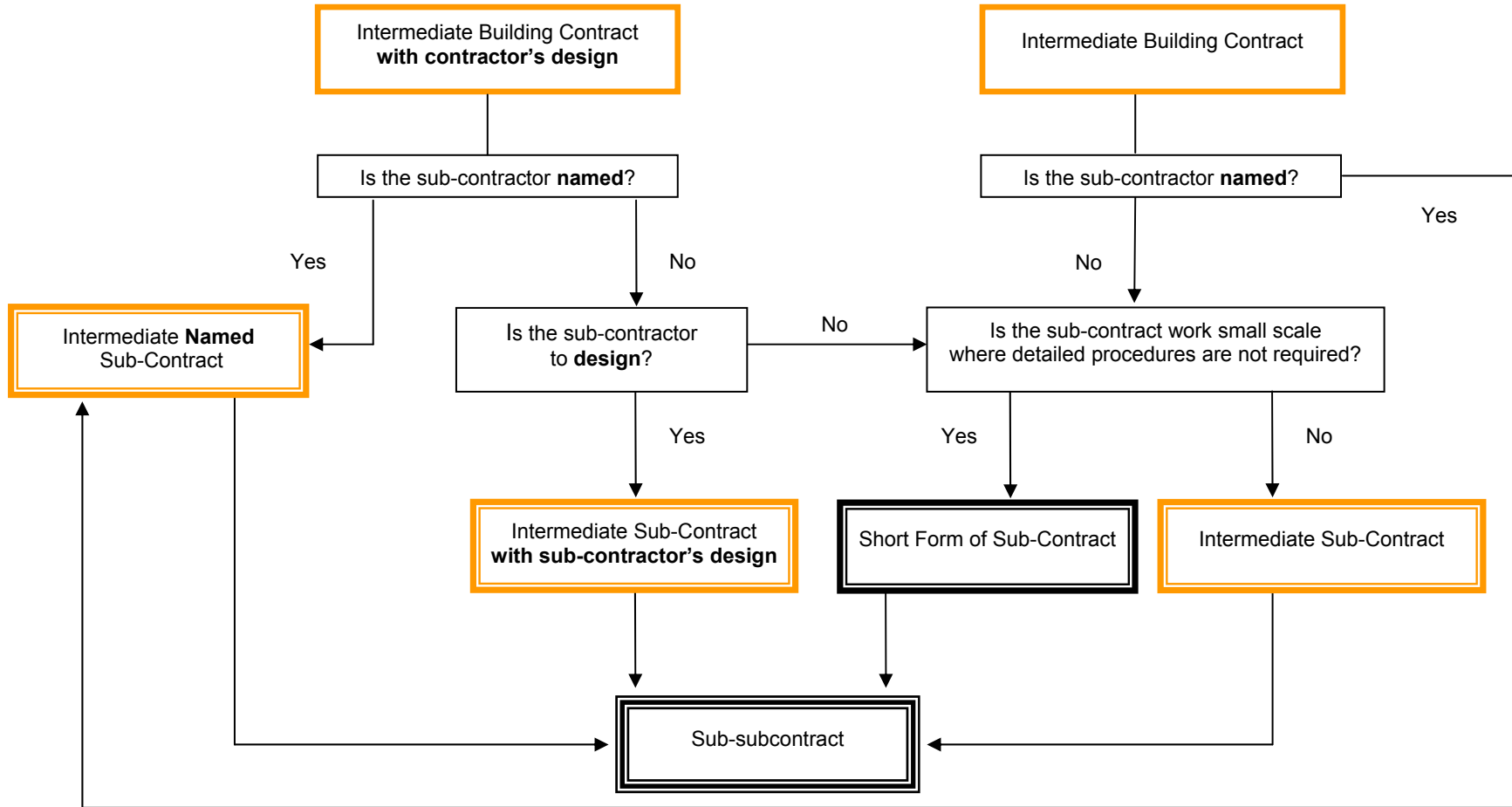


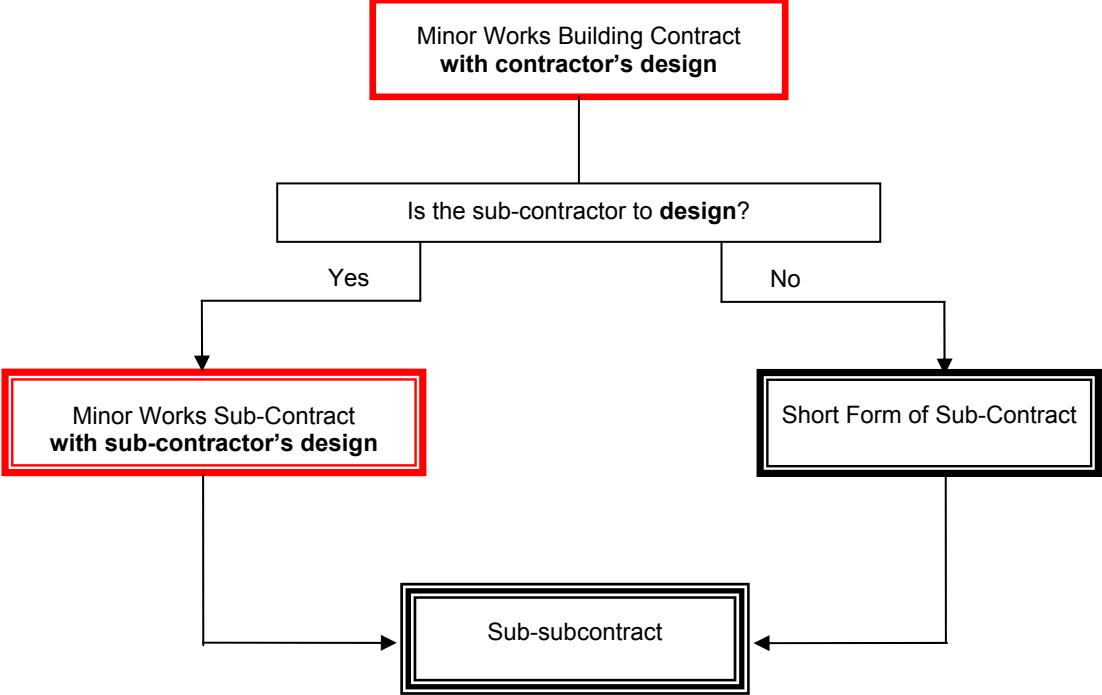
\*Not for use with the Framework Agreement

## Guide to selecting the appropriate JCT sub-contract









## JCT Construction Contracts

	Framework Agreement	Framework Agreement		Framework Agreement	Framework Agreement	Framework Agreement	Framework Agreement	Framework Agreement	Framework Agreement	Framework Agreement
<p><b>Building contract for a home owner/occupier without a consultant</b></p> <p><b>Building contract and consultancy agreement for a home owner/occupier</b></p> <p><b>Home Repair and Maintenance Contract</b></p>	<p><b>Repair and Maintenance Contract (Commercial)</b></p> <p><b>Minor Works Building Contract</b></p> <p><b>Minor Works Building Contract with contractor's design</b></p>	<p><b>Intermediate Building Contract</b></p> <p>Intermediate Building Contract with contractor's design</p>	<p><b>Measured Term Contract</b></p>	<p><b>Standard Building Contract With Approximate Quantities</b></p> <p>Standard Building Contract With Quantities</p> <p>Standard Building Contract Without Quantities</p>	<p><b>Design and Build Contract</b></p>	<p><b>Major Project Construction Contract</b></p>	<p><b>Prime Cost Building Contract</b></p>	<p><b>Management Building Contract</b></p>	<p><b>Construction Management Trade Contract<sup>1</sup></b></p>	<p><b>JCT - Constructing Excellence Contract</b></p>
	<p><b>Minor Works Sub-Contract with sub-contractor's design</b></p> <p>Short Form of Sub-Contract</p>	<p>Intermediate Sub-Contract</p> <p>Intermediate Sub-Contract with sub-contractor's design</p> <p>Intermediate Named Sub-Contract</p> <p>Short Form of Sub-Contract</p>	<p>Short Form of Sub-Contract</p>	<p><b>Standard Building Sub-Contract</b></p> <p>Standard Building Sub-Contract with sub-contractor's design</p> <p>Short Form of Sub-Contract</p>	<p><b>Design and Build Sub-Contract</b></p> <p>Short Form of Sub-Contract</p>	<p><b>Major Project Sub-Contract</b></p> <p>Short Form of Sub-Contract</p>	<p>Short Form of Sub-Contract</p>	<p><b>Management Works Contract</b></p> <p>Short Form of Sub-Contract</p>	<p>Short Form of Sub-Contract</p>	<p><b>JCT - Constructing Excellence Contract</b></p>
	Sub-subcontract	Sub-subcontract	Sub-subcontract	Sub-subcontract	Sub-subcontract	Sub-subcontract	Sub-subcontract	Sub-subcontract	Sub-subcontract	<p><b>JCT - Constructing Excellence Contract</b></p>

<sup>1</sup> Used in conjunction with the Construction Management Appointment

## Part 5 JCT Publications

### Standard Building Contract (SBC)

- SBC/AQ Standard Building Contract With Approximate Quantities
- SBC/Q Standard Building Contract With Quantities
- SBC/XQ Standard Building Contract Without Quantities
- SBC/G Standard Building Contract Guide

#### Sub-Contracts

- SBCSub/A Standard Building Sub-Contract Agreement
- SBCSub/C Standard Building Sub-Contract Conditions
- SBCSub/D/A Standard Building Sub-Contract with sub-contractor's design Agreement
- SBCSub/D/C Standard Building Sub-Contract with sub-contractor's design Conditions
- SBCSub/G Standard Building Sub-Contract Guide

### Intermediate Building Contract (IC)

- IC Intermediate Building Contract
- ICD Intermediate Building Contract with contractor's design
- IC/G Intermediate Building Contract Guide

#### Sub-Contracts

- ICSub/A Intermediate Sub-Contract Agreement
- ICSub/C Intermediate Sub-Contract Conditions
- ICSub/D/A Intermediate Sub-Contract with sub-contractor's design Agreement
- ICSub/D/C Intermediate Sub-Contract with sub-contractor's design Conditions
- ICSub/NAM Intermediate Named Sub-Contract Tender & Agreement
- ICSub/NAM/C Intermediate Named Sub-Contract Conditions
- ICSub/NAM/E Intermediate Named Sub-Contractor/Employer Agreement
- ICSub/G Intermediate Sub-Contract Guide

### Minor Works Building Contract (MW)

- MW Minor Works Building Contract
- MWD Minor Works Building Contract with contractor's design
- MWSub/D Minor Works Sub-Contract with sub-contractor's design

### Design and Build Contract (DB)

- DB Design and Build Contract
- DB/G Design and Build Contract Guide

#### Sub-Contracts

- DBSub/A Design and Build Sub-Contract Agreement
- DBSub/C Design and Build Sub-Contract Conditions
- DBSub/G Design and Build Sub-Contract Guide

### **Major Project Construction Contract (MP)**

- MP Major Project Construction Contract
- MP/G Major Project Construction Guide

#### Sub-Contracts

- MPSub Major Project Sub-Contract
- MPSub/G Major Project Sub-Contract Guide

### **JCT - Constructing Excellence Contract (CE)**

- CE JCT - Constructing Excellence Contract
- CE/P JCT - Constructing Excellence Contract Project Team Agreement
- CE/G JCT - Constructing Excellence Contract Guide

### **Construction Management (CM)\***

- CM/A Construction Management Appointment
- CM/TC Construction Management Trade Contract
- CM/G Construction Management Guide

### **Management Building Contract (MC)**

- MC Management Building Contract
- MCWC/A Management Works Contract Agreement
- MCWC/C Management Works Contract Conditions
- MCWC/E Management Works Contractor/Employer Agreement
- MC/G Management Building Contract Guide

### **Prime Cost Building Contract (PCC)**

- PCC Prime Cost Building Contract
- PCC/G Prime Cost Building Contract Guide

### **Measured Term Contract (MTC)**

- MTC Measured Term Contract
- MTC/G Measured Term Contract Guide

### **Repair and Maintenance Contract (Commercial) (RM)**

### **Adjudication Agreement (Adj)**

- Adj Adjudication Agreement
- Adj/N Adjudication Agreement (Named Adjudicator)

*\* To be published – 2002 edition only is currently available*

## Framework Agreement (FA)

- FA Framework Agreement
- FA/G Framework Agreement Guide

## Generic Contracts

- ShortSub Short Form of Sub-Contract
- SubSub Sub-subcontract

## Home Owner Contracts

- HO/B Building Contract for a home owner/occupier who has not appointed a consultant to oversee the work
- HO/C Building Contract for a home owner/occupier who has appointed a consultant to oversee the work
- HO/CA Consultancy Agreement for a home owner/occupier appointing a consultant in relation to building work
- HO/RM Home Repairs and Maintenance Contract – *web based*

## Collateral Warranties

- CWa/F Contractor Collateral Warranty for a Funder
- CWa/P&T Contractor Collateral Warranty for a Purchaser or Tenant
- SCWa/E Sub-Contractor Collateral Warranty for Employer
- SCWa/F Sub-Contractor Collateral Warranty for a Funder
- SCWa/P&T Sub-Contractor Collateral Warranty for a Purchaser or Tenant
- CMWa/F Construction Manager Collateral Warranty for a Funder\*\*
- CMWa/P&T Construction Manager Collateral Warranty for a Purchaser or Tenant\*\*
- TCWa/F Trade Contractor Collateral Warranty for a Funder\*
- TCWa/P&T Trade Contractor Collateral Warranty for a Purchaser or Tenant \*
- MCWa/F Management Contractor Collateral Warranty for a Funder
- MCWa/P&T Management Contractor Collateral Warranty for a Purchaser or Tenant
- WCWa/F Works Contractor Collateral Warranty for a Funder
- WCWa/P&T Works Contractor Collateral Warranty for a Purchaser or Tenant

## Construction Industry Model Arbitration Rules (JCT/CIMAR) – *web based*

## Formula Rules (FR) – *web based*

## Practice Notes

- Deciding on the appropriate JCT contract – *web based*

\* *To be published – 2002 edition only is currently available*

\*\* *To be published*




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- British Property Federation Limited
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