

# Types of sub- contractors



**ASSIGN  
BUSTER**

## **1. 1 Introduction**

A sub-contractor has its own principal obligation to carry out his own sub contract work and complete in accordance to sub-contract documents.

Contractor rarely complete a building all by himself without the help of a sub-contractor. A nominated sub-contractor has a contract under contractor who is usually instructed to construct the part of the building work under his expertise such as plumbing, electrical, roofing, cement work and plastering.

A sub-contractor may be in individual or an incorporated company who perform his job partly in the project. According to Alberta Labour Relations Board (2002), when an officer is trying to decide which party is the true employer, it does not matter if the subcontractor's work is:

- Part of an existing contract
- Contract between a general contractor and an owner
- Portion of work the owner is carrying n the owner's account

Under the standard form of the JCT contract there are 3 types of subcontractor:

### **Domestic subcontractor**

A sub-contractor chosen from the list by the contractor becomes a domestic sub-contractor. Contractor will remain his responsible for domestic sub-contractor works and for any defects therein to the employer.

### **Nominated subcontractor**

The principal acts as the middle man between the sub-contractor and the main contractor, whereby he independently invites tenders as sub-contractors and handles the negotiation of the subcontract and hence the

main contractors are directed by the principal to enter into a subcontract with the subcontractor selected on terms and condition negotiated by the principal.

### **Named subcontractors**

The employer is involved hands-on in the process of inviting and selecting tenders and after the final decision on the sub-contractor, the employer instructs the main contractor to enter into the sub-contract with that respective company.

According to Chappell (2007), are 2 situations where a person to be ' named'

Where work is included in the contract documents and priced by the contractor to be carried out by a person named in the documents

Where there is a provisional sum and the architect issues an instruction naming a person to carry out the work it represents.

## **2. 0 Review of appointing a specialist contractor JCT 98**

A contractor and sub-contractor has a common relationship in construction industry where the responsibility to complete a building relies on contractor. Sub-contractor will enter into a contract by signing a contract with contractor and provide part of the building work to the sub-contractor by contractor.

According to Standard Form of Building Contract (1998), a nominated contractor is being nominated when the Architect/the Contract Administrator uses a prime cost sum or by naming a sub-contractor, reserved to himself selection and approval of the sub-contractor to the Contractor who shall supply and fix any materials or goods or execute work, the sub-contractor so

named or to be selected and approved be nominated in accordance with the provisions of clause 35 and a nominate sub-contractor should be Nominated Sub-Contractor.

If a Contractor's tender has been accepted he should not sub let his work to a Domestic Sub-Contractor without the consent of the Architect/the Contract Administrator. Clause 13. 1 nomination of a sub-contractor to supply and fix materials or goods to execute work of which the measured quantities have been set out and priced by the Contractor in the Contract Bills fir supply and fixing or execution by the Contractor.

Any variation under clause 13. 2 Nominated Sub-Contractor in connection under such additional work is of a similar kind to supply and fixing of materials or the execution of work for which the Contract Bills provided that the Architect/the Contract Administrator would nominate a sub-contractor

## **2. 2 Procedure appointing a specialist contractor**

JCT has issued some following documents which related to Nominated Sub-Contractors and are referred in the Conditions by the use either of the name or the identification term. According to standard form of building contract (1998) the following procedure is the Standard Form to nominate a Sub-Contract Tender 1998 Edition (NSC/T):

Part 1: The Architect/the Contract Administrator will send an invitation to tender a Sub-Contractor

Part 2: Tender by a Sub-Contractor

Part 3: A Contractor and nominated Sub-Contractor under clause 35. 5 will agreed into particular conditions

**Therefore the following steps are to nominate a sub-contractor should be:**  
Architect/the Contract Administrator will complete the invitation to standard tender of Part 1 NSC/T and together with relevant section of employer/nominated sub-contractor agreement, NSC/W. A complete drawings/specification/bill of quantities describing the work will send to the tenderer.

In part 2 Sub-Contractor and Employer signed as approved together with a copy of the numbered tender documents listed in and enclosed with NSC/T part 1 together with any additional documents and/or amendments where have been approved by the Architect/the Contract Administrator and to execute the warranty NSC/W

The Architect will then nominate the sub-contractor using the standard nomination, NSC/N instruction to the main contractor.

A copy of the invitation tender and the successful sub-contractor's tender will be submitted to main contractor, the drawings/specification/bills of quantities on which the tender was bases and the executed warranty.

Once the main contractor has received the documents, in within 7 days he should make a reasonable objection to the selected tenderer in writing.

If main contractor fails to do so, he will tend to reach an agreement with the selected tenderer on the ' Particular Conditions' in Part 3 of NSC/T.

When the Particular Conditions has been reached, contractor and sub-contractor will sign Part 3 of NSC/T and execute the sub-contract agreement articles, NSC/A which incorporate by the reference the sub-contract conditions NSC/C

Lastly, a copy of NSC/T Part 3 and NSC/A signed by the contractor will submit to Architect for his records.

### **3. 0 Review of appointing a specialist contractor Post JCT 2005**

#### **3. 1 Review on a specialist contractor Post JCT 2005**

Based on JCT SBC 05, there is no longer nominated sub-contractor in the contract due to numbers of problems arise because when a project is not ready to start work on the commence date, sub-contractor uses this opportunity to demand for extra money. Therefore there are only domestic sub-contractors in Standard Building Contract (SBC).

#### **3. 2 Procedure appointing specialist contractor**

Under JCT SBC05 clause 3. 7 stated contractor should not without the consent of Architect/Contract Administrator's sub-contract the whole or part of the work to a sub-contractor. He should responsible carrying and completing the Works in all respect in accordance with Contract Documents which is the same condition in JCT SBC 98 under clause 35. 2.

Furthermore, it stated if there is a Contractor's designed Portion, Contractor should not sub-contract the design without Employer's consent and should not in affected his obligations as a Contractor.

Employer can narrow in choosing sub-contractor when the “ work must be measured or describe adequately in some other way in the bills of quantities so that it can be priced by the contractor.”(Chappell, 2007)

When selecting a domestic sub-contractor, the lists must at least contain three names to be chosen by the contractor to carry out the work in project. Employer or contractor may add in additional to the list before an agreement to a sub-contract is entered into respect of particular work. Architect will ensure that the list of domestic sub-contractors are willing and has the expertise to carry the work.

Once the main contract is let, additional names are still able to be added where it has given a maximum opportunity for the contractor to take advantage on the competitive prices. If there is a circumstance before entered into a binding contract where the list name is below three therefore:

Employer and contractor must agree on the addition of the names must contain at least three in the list

Or, contractor carries the work by naming himself in the list and may sub let his work later with architect’s consent

Lastly, a sub-contractor is chosen form the list by the contractor becomes a domestic sub-contractor where employer will not have responsibilities on domestic sub-contractor. Contractor will wholly responsible on domestic sub-contractor whether the “ problems of delay, financial claims or termination of employment.”(Chappell, 2007)

#### **4. 0 Review the method of appointing a specialist contractor NEC 3 ECC 2005 (Option B)**

##### **4. 1 Review the method of appointing a specialist subcontractor NEC 3 ECC 2005**

The NEC 3 Engineering and Construction Contract (ECC) 2005 (Option B) have been designed in order to sub-contract work to sub-contractor. A sub-contractor in NEC 3 ECC 2005 (Option B) has a contract with contractor in performing his duties such as

Construct or install part of the works

Provide a service necessary to provide the works or

Supply the plant and materials which the person or organisation has wholly or partly designed specifically for the works

Based on NEC 3 ECC 2005 (Option B) under clause 26. 1 stated, Contractor is responsible in providing work to the sub-contractor regardless whether there is a sub-contract work.

In NEC 3 ECC 2005 (Option B), Project Manager who is the one to approved whether a sub-contractor is allowed to enter a contract unlike in JCT SBC 98 and JCT SBC 05 where Architect in charge in approving sub-contractor. In order to have a sub-contractor, Contractor must submit the name of proposed Subcontractor to the Project Manager for acceptance. If there is a situation where a Project Manager does not accept a sub-contractor therefore Contractor is not allowed to Provide the works to sub-contractor until the Project Manager has accepted him into the contract which stated under clause 26. 2.



Before nominate a sub-contractor, according to NEC 3 Engineering and Construction Contracts Option B (2005), Contractor is required to propose contract conditions for each sub-contractor to Project Manager for acceptance unless:

- an NEC contract is proposed
- the Project Manager has agreed no submission is required

Contractor is not allowed to appoint a sub-contractor if the proposed contract conditions to the Project Manager is not accepted. If Project Manager rejects the Contractor's proposal of the conditions in the contract regarding the subcontractor, it is because of:

- the conditions do not allowed Contractor to Provide works
- the conditions do not include a statement that the parties to the subcontract shall act in a spirit of mutual trust and co-operation.

## **5. 0 Review of nomination sub-contractor in construction industry**

### **5. 1 Reasons to nominate sub-contractor**

According to Atkinson (1999), the reasons for nominating sub-contractor(s) into a project are:

(a.) the nominated sub-contractor is selected by the employer

(b.) the company choice which the employer wishes to use is in his hands and that decision is not required to be objected to pricing.

(c.) in regards to the timing of involvement and appointment of sub-contractor(s), it is left to the employer to meet his requirements

(d.) a nominated sub-contractor's design expertise, contract knowledge and services coordination can be utilised since he can be involved in the early stage

(e.) if required, the sub-contractor can be made part of the contract team and be fully involved in the project.

(f.) the distinct line of responsibility to the employer is established through a clear contractual liability.

(g.) the introduction of formal links between sub-contractors and the consulting engineer, promotes efficiency as architect, QS and employer time is saved since long chains of correspondences are absent and price, design, programme, and variation are acted quickly on.

(h.) delays can be avoided by establishing direct links and involvement

## **5. 2 Why nominated sub-contractor has been omitted?**

In JCT SBC 05, nominated sub-contractor has been omitted from the standard form due to it has caused problems arise. The main problem is having a conflict relationship between the main contractor and subcontractor where “one party and the responsibility for that choice being put on another party.”(Chappell, 2007)

Furthermore, the reason sub-contractor has been omitted due to demand for extra money when a project is not ready to be started on the commencement date but if there is no law implied when is the commencement date therefore contractor must come up with a reasonable date.

The numerous frequency of the existing business relationship occurrence between the nominated subcontractor and the client gave rise to the issue of nominated subcontractors dominating the construction industry since the overall pricing is under the influence of the nominated subcontractor which gives them the power to affect the overall construction cost. The reason behind the ability of the subcontractors to gain such power to influence pricing in the construction industry is because subcontractors are lacking competition amongst each other.

### **5. 3 Appraising the advantages and disadvantages nominating Employer**

In nominating Employer, there advantages and disadvantages

#### **Advantages:**

- Employer has the right to nominate his decision which sub-contractor to carry out the work
- Employer will have the power on sub-contractor's design through early design stage.
- With warranty NSC/W Employer will have a direct contractual link with sub-contractor in design and selection of materials by sub-contractor.

#### **Disadvantages**

- Employer has no right against main contractor if they were defected design caused by sub-contractor
- If there was a delayed caused by sub-contractor therefore contractor is entitled for to an extension of time and will not have to pay for liquidated damages as warranty NSC/W will recover damages caused by nominated sub-contractor

- Lack of management on site because contractor is not responsible delay by nominated sub-contractor
- Employer will bear all the extra cost when there is determination of nominated sub-contractor employment's either default or insolvency except delay caused by architect taking reasonable time for renomination.

## **6. 0 Conclusion**

In my opinion, JCT SBC 05 had omitted nominated sub-contractor which gives simpler to the construction industry. It is clearly defined with nominated sub-contractor in the industry it has caused numerous problems to the employer and main contractor.

Therefore without sub-contractor, it will help to decrease the proper parts of the risks which they have received under the main contract for sub-contractor to create its own risk beyond contractor's control.

However, each standard form of contract has own critics towards nominating a sub-contractor whether it has benefited more to employer or contractor.

## **7. 0 References**

Atkinso. D, (1999). Subcontracting [online] 1 June. <http://www.atkinson-law.com/cases/CasesArticles/Articles/SubContracting.htm> [Accessed 25 July 2009]

Alberta Labour Relations Board, (2002). True Employer and Subcontractor [online] 1 June. [http://www.alrb.gov.ab.ca/procedure/24\(f\)\(ii\).pdf](http://www.alrb.gov.ab.ca/procedure/24(f)(ii).pdf) [Accessed 25 July 2009]

Brand, D., 2009. Contract nominations. [Online] 5 January. Available at: <http://cmguide.org/archives/315> [Last accessed on 23 July 2009]

Chappell, D. (2007). Understanding JCT Standard Building Contracts. 8th Edi. Taylor & Francis. London & New York.

Karnick, M., 2009. Nominating the best project subcontractors. [Online] 12 July. Available at: <http://cmguide.org/archives/1357> [Last accessed on 23 July 2009]

Office Of Government Commerce (2005). NEC3 Engineering and Construction Contract: Option B: Priced Contract with Bill of Quantities. 3rd ed., Great Britain, Bell & Bain Limited.

Price, J. (1994). Sub-Contracting under the JCT Standard Form of Building Contract. Macmillan.

Standard Form of Building Contract (1998). Local Authorities with Quantities. Great Britain, The Joint Tribunal Limited