

Build UK Contracts Working Group Meeting – 08th March 2017

1. This was the second meeting of the Build UK Contracts Working Group and was held under the chairmanship of former Government Chief Construction Adviser, Paul Morrell, in advance of the JCT Council Meeting scheduled for 16th March 2017.
2. **JCT REPRESENTATION.** Discussions have continued with JCT over representation on the JCT Council. The current proposals are for Build UK to apply to JCT for a name change for the Sub-Contractors College representatives, substituting Build UK for NSCC. Sub-Contractor members of Build UK and Build UK officials will continue to fill the 9 seats on the Sub-Contractors College. Negotiations with CLG over representation on the Main Contractors College have irretrievably broken down with Build UK believing that CLG's commercial interests have led to the impasse. Build UK intends to ask JCT for it to be recognized as a separate representative entity within the Main Contractors College. The JCT Board will have to approve both proposals with a 75% majority for them to take effect. At least five of the eight Board members have confirmed their support. JCT has acknowledged that its legitimacy is achieved through its breadth of representation. If the proposals for the Main Contractors College are accepted then further meetings will be required with other College members to agree how representation will work. The intention must be to try and find a way to avoid disputes within the College being aired in JCT Council meetings. The ultimate aim of Build UK is to have one voice at JCT Council representing both Main Contractors and Sub-Contractors.
3. **THE FUTURE OF CONSTRUCTION CONTRACTS.** The regular use of heavily amended standard forms of contract and sub-contract was discussed. The Group agreed that a means must be found to restrict this practice as far as possible. It was suggested that the drivers for Government funded projects are different to the drivers for Private Sector projects. The Group agreed to capture data regarding the most common forms of amendments to standard forms to ascertain if this suggestion is actually correct. Why would Government want to use amended forms? Are privately funded project amendments driven by funders' requirements? Suzanne Reeve reported that since the recession funders have become more risk averse with every decision having to go back to committee for approval which results in delays. Hence it is simpler to pass on all risk to the Main Contractor. Change must come from the top as Main Contractors inevitably pass amendments down the supply chain. Early engagement involving Sub-Contractors as well as Main Contractors would assist in avoiding conflict. JCT expended a great deal of time and effort in drafting the Major Project Form but this is hardly ever used and when it is even that is heavily amended. A simple definition in a standard format of the risks being transferred from the standard form document would assist rather than numerous bespoke amendments being made. JCT will be asked to consider if it could draft standard amendments. Transparency of risk transfer should be the goal. Build UK should eventually have Client/Employer members to assist in resolving these issues. Feedback on major amendments to standard forms is required by the end of April 2017.
4. **GOVERNMENT CONSULTATIONS.** Two Government Consultations are expected shortly. The first on the changes to the Construction Act is expected to concentrate on whether the changes have produced the anticipated cost savings for the industry. It is not yet clear what direction the second Consultation, on retentions, will take but it may simply be an exercise to identify the mechanisms used and the amounts withheld. It has been mooted that the Government may require all retentions to be put into trust to avoid the insolvency risk but this poses its own problems over Inland Revenue

liabilities and the removal of cash currently used to fund other projects. Build UK proposes to hold a meeting in early April to discuss both Consultations.

5. **JCT CURRENT ISSUES.** JCT continues to finalise the drafting of the 2016 suite with all suites now using the SBC template. The question was asked as to whether JCT contracts would benefit from early warning provisions similar to those used in NEC3.

Dave Colven
FPS Representative