CONCODE

Guide to the GC/Works/1 (edition 3) General conditions of contract for building and civil engineering

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Guide

to the

GC/Works/1 (Edition 3)
General Conditions of Contract
for Building and Civil Engineering

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About this publication

This publication provides guidance on GC/Works/1 (Edition 3) General Conditions of Contract for Building and Civil Engineering. It provides advice on the amendments necessary to the contract to comply with Departmental policy, as well as good professional practice in respect of use by NHS bodies (NHS trusts and authorities, HAs and any other centrally-funded bodies).

Scotland

The principles and guidance in this publication are relevant to Scotland; however, some of the detailed references to statutes and other matters are not applicable. Where the document refers to either the Department of Health or NHS Estates, this is to be taken as referring to the Management Executive of the NHS in Scotland. References to the Capital Investment Manual and Concode should be taken as the Scottish Capital Investment Manual and ScotConcode respectively. Essential Scottish amendments are provided in the Management Executive Letter (MEL) which accompanies the distribution of this document in Scotland; copies are available from the Management Executive, NHS in Scotland, St Andrew’s House, Edinburgh EH1 3DE.
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1.0 GC/Works/1 (Edition 3) General Conditions of Contract for Building and Civil Engineering

The contract

1.1 The GC/Works/1 (Edition 3) form of contract is published under the Property Holdings/DOE heading by:

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   London, SW8 5DT.

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1.3 The contract is published in three different versions:
   a. standard form of contract – Lump sum with quantities;
   b. standard form of contract – Lump sum without quantities;
   c. standard form of contract – Single stage design and build.

1.4 The contract can be adapted by the incorporation of separately published supplements for fluctuations.
2.0 Government and Department of Health policy requirements

Introduction

2.1 Government and Departmental policy on matters such as:
- contract strategy;
- selection of contractors and consultants;
- contract conditions;
- EC Works Directives etc

are dealt with in ‘Guide to contract procedures’ which is complementary to the ‘Capital Investment Manual’.

2.2 NHS bodies are reminded that they must comply with the policies laid down in ‘Contracts and commissions for the NHS estate – Policy’. This policy document was produced to assist NHS bodies in the implementation of Government and Departmental policies.

2.3 NHS bodies are referred particularly to the following sections of ‘Contracts and commissions for the NHS estate – Policy’ when using GC/Works/1 (Edition 3):
   a. Attestation;
   b. Value Added Tax;
   c. Fluctuations;
   d. Loss/expense claims and settlements;
   e. Liquidated and ascertained damages*;
   f. Requirements of European Community Directives;
   g. Works insurance*;
   h. Construction industry tax deduction scheme;
   j. NHS trusts – insurances*.

Project manager

2.5 NHS bodies must appoint project managers for all major capital schemes of £1 million gross value or over. NHS bodies should note that the “project manager” under GC/Works/1 (Edition 3) performs a similar role to the “architect/contract administrator” under JCT contracts. To avoid confusion over the term “project manager”, the Department recommends for the sake of clarity that the term “architect/contract administrator” is substituted throughout GC/Works/1 (Edition 3). The following guidance is based on that amendment.

Co-ordinated Project Information (CPI)

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

Further information is contained in ‘Co-Ordinated Project Information for building works, a guide with examples’, obtainable from RIBA Publications Ltd.

Use of GC/Works/1 (Edition 3) in the NHS

2.7 GC/Works/1 (Edition 3) is suitable for use on major works of either a building or civil engineering nature. It has been drafted in plain English on behalf of the Department of the Environment. Unlike JCT contracts, GC/Works/1 (Edition 3) is not produced by several interested parties.
2.8 The Contractor is responsible for carrying out the work and design is substantially in the hands of the professional consultants engaged by the Authority (the NHS body). When the limited fluctuations basis is used, the project must be thoroughly pre-planned.

2.9 When using the traditional method of procurement, the Department recommends that bills of firm quantities should be prepared for building and engineering works and civil engineering works (including sub-contract works) if the project exceeds a reasonable limit of size and/or complexity and £350,000 or more at 1995 prices. Tenders are based on bills of quantities and drawings.

2.10 The Without Quantities version may be used on major projects where bills of quantities are not considered suitable. This may be due to the nature of the proposed works. Tenders are based on a specification or schedules of work and drawings.

2.11 Although the Department recommends the use of bills of quantities for engineering work for major schemes, NHS bodies have discretion as to the extent to which these are adopted, whether as part of a combined building and engineering contract or the subject of a wholly engineering contract. NHS bodies should ensure that detailed quantified schedules of rates are provided by the Contractor and Sub-Contractor for engineering services in cases where engineering bills of quantities are not used.

2.13 In respect of any building and engineering works to be carried out, the scope and extent of the Works must be fully detailed and described in the tender documents. The documents that comprise the tender are:

- a. General Conditions of Contract GC/Works/1 (Edition 3);
- b. Abstract of particulars and Addendum;
- c. the numbers of the Supplementary Condition(s);
- d. specification documents;
- e. bills of quantities;
- f. the drawing numbers; and

Liquidated and ascertained damages

2.14 GC/Works/1 (Edition 3) contains a provision to enable the Authority to recover liquidated and ascertained damages in the event that the Contractor does not complete the Works by the relevant date for completion, or by a new date for completion fixed under the contract conditions. The rate of liquidated damages must be a genuine pre-estimate of the damage likely to be sustained by the Authority. The rate must be carefully assessed by the NHS body for each project in the light of its particular circumstances, and it is likely that it will include some or all of the following:

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

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

2.16 There are two alternative methods of estimating the damages, the choice between them being dependent on the particular project:

a. where loss of amenities is not a significant feature of the project, damages may be assessed by estimating additional costs and direct losses and expenses;

b. where loss of amenities is significant (which it frequently will be for NHS projects), a rate of interest of 15% per annum of the anticipated Contract Sum (pre-tender estimate) should be adopted instead. This rate (which includes 2½% for additional staff costs) has been adopted by other Government departments and is independent of short-term changes in general interest rates.

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

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

2.19 Condition 55 of GC/Works/1 (Edition 3) requires the rate of liquidated damages to be stated in the Abstract of
Particulars to the contract as a specific sum of money per period of delay. Where the damages have been assessed by taking a percentage of the anticipated Contract Sum, the amount obtained should be divided by 365, “rounded” appropriately and stated as £ per day.

2.20 NHS bodies should note that the Courts have held that an arbitrarily fixed “penalty” is not acceptable. It is therefore not possible to incorporate “penalty” clauses into a contract that attempt to force a Contractor to perform to time.

2.21 Condition 36 sets out the detailed procedures for claiming, granting and reviewing an extension of time and fixing a new completion date so that the contract does not become “at large”.

2.22 If the Contractor fails to complete the Works by the date for completion, unlike JCT contracts there is no requirement for the Architect/Contract Administrator to issue a certificate to that effect.

2.23 Under condition 55(2) the contractor immediately becomes liable to pay liquidated damages at the rate stated in the Abstract of Particulars to the Authority.

2.24 It is Government policy that the deduction of liquidated damages, by the Authority, following unjustified delay in the completion of a project by the Contractor should be pursued vigorously.

Sub-contracting

2.25 GC/Works/1 (Edition 3) includes provisions for
   a. domestic sub-contractors to be selected by the Contractor and the Authority (condition 62);
   b. nominated sub-contractors to be selected and nominated in such ways as may be directed by the Authority or instructed by the Architect/Contract Administrator (condition 63).

2.26 Sub-letting a portion of the Works by the Contractor under condition 62(1) is at the discretion of the Contractor, provided he obtains prior consent from the Architect/Contract Administrator.

2.27 Where a project involves work which may require a specialist sub-contractor with design expertise, the sub-contractor should be nominated.

2.28 It is important to appreciate that all types of sub-contractor are under the control of the Contractor. All communications and instructions between the Architect/Contract Administrator and selected sub-contractors must be made through the Contractor.

2.29 Where the NHS body intends to select domestic sub-contractors (condition 62(1) or nominate firms as sub-contractors or suppliers (condition 63), it must ensure that their technical competence and financial stability are assessed. In any preliminary discussions with sub-contractors or suppliers, care must be taken not to give any commitment to select them before the appropriate stage of agreement has been reached.

2.30 The responsibility for the technical competence and financial stability of domestic sub-contractors selected by the Contractor (condition 62(1)) rests with the Contractor. The NHS body’s rights under the contract that the specified standard of materials, goods and workmanship are met, are not affected by the fact that the work has been sub-let. If the Contractor states the name of the proposed domestic sub-contractor, the Architect/Contract Administrator is at liberty to take into account any information or knowledge that they have about the firm when considering whether to give consent.

Suppliers

2.31 The difference between a sub-contractor and a supplier should be noted:
   a. a sub-contractor supplies and fixes any materials or goods or executes work;
   b. a supplier only supplies materials or goods which are to be fixed by the Contractor.

2.32 Suppliers may be:
   a. selected by the Contractor (this does not require the approval of the Architect/Contract Administrator);
   b. nominated or appointed in such ways as may be directed by the Authority or instructed by the Architect/Contract Administrator (condition 63(1)).

Component Data Base (CDB) building components

2.33 The current CDB (published by HMSO in 1989) is contained in a series of Health Technical Memoranda (HTMs 54–71). Although information and guidance on component specification and design is provided in the HTMs, lists of suppliers are not. The Architect/Contract Administrator should prepare his own lists of suitable suppliers. Wherever possible, preference should be given to products and services from sources which have been registered either under BSI Quality Assurance Procedures under BS EN ISO 9000 (formerly BS 5750) or acceptable equivalent quality control procedures.

2.34 Information about project documentation and procurement of components is included in the User
Manual (HTM 54.1) and in each HTM. Suppliers of components may be nominated using condition 63.

2.35 Where component suppliers offer a site fixing service there is also the option of treating them as:
   a. domestic sub-contractors under condition 62(1) (by the Contractor);
   b. nominated sub-contractors under condition 63 (see paragraphs 2.25 to 2.34).

**Insurances**

2.36 General information on Government policy can be found in Chapter 6 of ‘Contracts and commissions for the NHS estate – Policy’.

2.37 NHS trusts have been provided with Departmental approval to make their own decisions on insurance matters. Trusts should therefore make a considered judgement whether:
   a. they are prepared to carry the particular risk themselves without taking out insurance;
   b. they should take out insurance themselves; or
   c. they require insurances to be taken out by the Contractor at a cost to the NHS body.

December 1989 Revised 1990

Introduction

3.1 The contract “Standard Form of Contract - Lump sum with Quantities” is examined and guidance is given on its completion and amendment. The tender must:

a. state that the form of contract to be used will be the GC/Works/1 (Edition 3) General Conditions of Contract - Lump sum with Quantities;

b. clearly set out all amendments that the NHS body will make to the printed form when preparing the document for execution by the NHS body and the Contractor.

3.2 It should be noted that the “NHS body” is described as “the Authority”.

3.3 To avoid confusion over the term “Project Manager”, the Department recommends for the sake of clarity that the term “Architect/Contract Administrator” is substituted throughout GC/Works/1 (Edition 3). The term “Architect” applies where the person concerned is entitled to the use of the name “Architect” under and in accordance with the Architects Registration Acts, 1931 and 1938. In all other cases the term “Contract Administrator” is applicable.

3.4 Amendments are occasionally made to the GC/Works/1 (Edition 3) form of contract and are incorporated into the text of the contract at the next reprint. Amendments can be incorporated into the contract by amending the printed wording of the contract in black ink before it is signed by the parties. Each separate amendment must be initialled by or on behalf of each of the parties.

3.5 This section is based on the reprint of the form dated 1990. Amendments should be incorporated as described in paragraph 3.4.

3.6 All Authority amendments to the contract must be in accordance with those stated in the Supplementary Conditions. Amendments made by the Authority must be initialled by or on behalf of each of the parties.

Notes/Amendments

Insert the amendments contained in Appendix 5.
3.7 Where the wording of a printed condition is varied, it is recommended that the printed condition is deleted entirely and a typed amendment slip is attached with the revised wording. Additional conditions should be incorporated in a similar way.

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

3.9 The originals of the contract documents (see condition 2: Contract Documents) must be retained by the Authority in safe keeping and a certified true copy of the originals provided by the Authority to the Contractor, free of charge.

3.10 Any parent company guarantee required relating to the main contract should normally be executed as a deed before the main contract is executed. The original is retained by the Authority in safe keeping with the originals of the contract documents. Further guidance on parent company guarantees is contained in Appendix 6. Parent company guarantees may also be required relating to Nominated Sub-Contracts.

3.11 When the printed form is to be modified by an amendment, the Department recommends that an additional Supplementary Condition is incorporated.

3.12 To reflect a more fair and reasonable approach to GC/Works/1 (Edition 3), the concept of “final and conclusive” decisions by or on behalf of the Authority should be deleted. Amendments to conditions 6, 18, 24, 26, 31, 39, 40, 44, 56, 60 and 63 should be made.

The amendments to be made to Conditions 6, 18, 24, 26, 31, 39, 40, 44, 56, 60 and 63 are:

a. Condition 6(1):
   delete last sentence;

b. Condition 18(3):
   in line 3 delete “and those measurements shall for the purpose of the Final Account be final and conclusive”;

c. Condition 24(3):
   delete sub-condition and insert “(Number not used)”;

d. Condition 26(3):
   delete sub-condition and insert “(Number not used)”;

e. Condition 31(6):
   delete sub-condition and insert “(Number not used)”;

f. Condition 37(7):
   delete sub-condition and insert “(Number not used)”;

9
The Conditions

Condition 2: Contract documents

This condition deals with the priority of the contract documents to be made available to the Contractor. It should be noted that in the event of any discrepancy the Conditions will prevail over other documents.

If NHS bodies intend to amend the printed conditions this must be done by means of supplementary conditions.

Condition 3: Bills of Quantities

It should be noted that the method of measurement used for the preparation of the Bills of Quantities must be stated in them.

Condition 4: Delegations and Representatives

Under Condition 4(1) the Architect/Contract Administrator is deemed to act on behalf of the Authority unless any exclusions are set out in the Abstract of Particulars. If no exclusions are stated, the Architect/Contract Administrator can make any decision made by the Authority. It is thought unlikely that NHS bodies will delegate all their powers under the contract, and that they will reserve certain matters for themselves.

NHS bodies must consider which matters they wish to delegate to the Architect/Contract Administrator. Among the matters which NHS bodies may wish not to delegate are:

- disputes about the giving of certificates (condition 39(2));
- determination (condition 56(1));
- matters arising under the arbitration agreement (condition 60).
3.17 Condition 4(2) enables both the Architect/Contract Administrator and the Quantity Surveyor to delegate in writing any of their powers and duties. NHS bodies must decide which powers and duties, if any, they will allow the Architect/Contract Administrator and the quantity surveyor to delegate.

3.18 Any delegations under this condition, together with names of the representatives, should be given to the Contractor in writing.

Condition 7: Conditions affecting the Works

3.19 This condition places the risk that the site and allied conditions may be more burdensome than expected on the Contractor. Apart from unforeseeable ground conditions, the Contractor is not entitled to any additional payment on the grounds of any misunderstanding or misinterpretation of the matters to which the condition refers. As a result of this, the Contractor is not released from any contractual risks or obligations imposed on or undertaken by him, or because he did not foresee any matter affecting the works.

Condition 8: Insurance

3.20 This condition imposes an obligation on the Contractor to maintain relevant insurance up to the end of the longest maintenance period. There are two alternative insurance conditions available to NHS bodies.

3.21 Insurance under Alternative A covers the standard contractor’s “all risks” insurance. Alternative B covers for joint names insurance: that is, it includes the Contractor and the Authority. It is necessary to state in the Abstract of Particulars which alternative is to apply. The back of the conditions contains examples of model forms regarding certificates of insurance for Alternatives A and B. NHS bodies should adapt these to suit their own specific requirements.

3.22 The following insurance policies must be maintained by the Contractor:
   a. employers’ liability insurance covering persons in his employment;
   b. insurance against loss or damage to the works and things for which the Contractor is responsible for under the contract; and
   c. insurance against personal injury to any persons, and loss of or damage to property (that is, third-party liability) not already covered.

3.23 Condition 8(2) states that any insurance policy must be for the “full reinstatement value”. It is essential that
NHS bodies regularly review that the insured sum is adequate. Recognition should be taken of the cost of any instructions of the Architect/Contract Administrator and the increased costs that will be incurred when reinstatement takes place, including that resulting from inflation.

3.24 The term “full reinstatement value” is used in the contract to emphasise that the sum insured must reflect the actual cost of reinstatement at the time of reinstatement, whenever that may be. The term is intended to cover:

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

b. materials lost or damaged;

c. the cost of removing debris in order to prepare for reconstruction.

It also appears to cover consequential loss—for example, loss to the Authority due to delay in completing the works or any cost of carrying out the work not done at the time the damage happened.

3.25 NHS bodies should note that condition 8(2) does not cover any allowance for professional fees. NHS bodies must take into account the range of design consultants and clerks of works (both NHS bodies’ own officers and private consultants) engaged on the contract. The cost of their services, together with allowances for expenses and VAT, should be expressed as a percentage applied to the pre-tender estimated cost of the works. To allow for the recovery of professional fees the notes/amendments opposite (together with an assessment of the percentage addition) should be added to the end of condition 8(2).

Condition 10: Design

3.26 This condition requires the Contractor, either by himself or by means of any servant, agent, sub-contractor or supplier, to carry out the design of any part of the Works that is required under the contract. The appropriate design information must be submitted to the Architect/Contract Administrator for approval. The contractor must also receive the Architect/Contract Administrator’s prior written approval before making any alterations to the approved design.

Contractor’s liability for design

3.27 Condition 10(2) places on the contractor a similar obligation with regard to design work carried out by him/her under the contract as would be placed on an architect under a commission from a client. Under the
latter arrangement no limit is placed on the architect’s liability to the client and the Department sees no reason why any limit should be set when a Contractor designs instead of an architect.

3.28 It is, however, important to appreciate that the conditions do not include any requirement that the Contractor’s liability (which could be substantial) be covered by insurance. The Department considers it important that NHS bodies should adopt a procedure to ensure that suitable insurance cover is taken out by the Contractor and maintained not only during the period of the contract, but also for a reasonable period of years thereafter. (Design defects may well not become apparent for a considerable time after completion of the Works.)

3.29 The Department recommends that NHS bodies should adopt a procedure broadly similar to that used in regard to professional consultants’ insurance. At tender stage, the NHS body should require submission of the Contractor’s insurer’s certificate and make it a condition of the contract that the Contractor take appropriate cover lasting six years from the date of completion of the Works. The NHS body should make an annual check that the necessary cover is being maintained, by obtaining further certificates from the insurer.

3.30 The certificates, which should be given by the Contractor’s insurer/insurance broker (not by the Contractor him/herself), should be to the effect that the contractor is currently insured for the period ending ........ (date) for all claims arising as a direct result of any negligent act, error or omission in the conduct and execution of designs entrusted to him or entrusted by him to any other party. The limit of indemnity for each and every claim and the amount of any excess (if any) carried by the contractor on each and every claim should be stated.

3.31 Should it be found that the Contractor does not carry insurance covering liability for design work, his/her suitability for the award of the contract should be considered.

3.32 Passing responsibility for design for a portion of the works from professional designers to contractors is contrary to the Department’s view that NHS bodies should prepare as full design details as possible prior to inviting tenders if a traditional contract strategy is being used. However, there may be circumstances involving specialised design where it is advisable to draw on the expertise of manufacturers. This can normally be achieved by nominating a sub-contractor or a supplier which will also secure warranties to the employer with regard to the design work.
3.33 Should the Authority obtain any direct warranty agreement with specialist sub-contractors and other designers, this will not affect the Contractor's liability in any way.

Condition 19: Loss or Damage

3.34 This condition relates to the Contractor's liability for any loss or damage. It is not limited to loss, or to the Contractor's liability for any loss or damage. It includes loss of or damage to third-party property, personal injury and loss of property. Any loss or damage arising under this condition is dealt with under the provisions of conditions 8: Insurance; 13: Protection of Works; 30: Vesting.

Condition 21: Defects in Maintenance Periods

3.35 The Abstract of Particulars and Addendum allows for different maintenance periods to be stated. It is important to note that under sub-condition 4 the maintenance period recommences after the defects have been remedied. Where the works include mechanical and electrical types of engineering work, it may be considered necessary to specify a period of 12 months in order to give test operation through one complete climatic year, but the period should never extend beyond 12 months. On no account should any attempt be made to specify different periods for "building" and "engineering". There must be only one period, and this will apply to the whole of the Works. Longer-term protection against latent defects is given under the law of contract or the law of tort. It is important to note that under sub-condition 4, the maintenance period recommences after the defects have been remedied.

Condition 22: Government Premises

3.36 This condition is generally not applicable to NHS bodies and should be deleted.

Delete condition 22 in its entirety.

Condition 23: Racial Discrimination

3.37 NHS bodies are subject to the legislation on racial discrimination (including the penalties for contravention). They are required to remind contractors of the need to comply with the provisions of the Race Relations Act 1976 or any statutory modification or re-enactment thereof relating to discrimination in employment. The onus of complying with the requirements of the legislation rests with the Contractor.

NHS bodies need to consider whether to take out any direct warranty.
Condition 26: Site Admittance

3.38 NHS bodies should remind contractors that the provisions of sub-condition 26(1) will be applied by the Architect/Contract Administrator in cases of breach of health, safety and welfare requirements.

Condition 32: Excavations

3.39 Under sub-condition (1), all materials and objects of any kind obtained from the excavations remain the property of the employer. Under sub-condition (2), the Authority may allow any of the materials arising from the excavations to be used ‘for any Things . . . which the Contractor would otherwise have provided’. In these circumstances the quantity surveyor ascertains the amount of any savings and reduces the amount of the contract sum by this sum.

Condition 33: Programme

3.40 This condition requires the Contractor to produce a programme that shows the sequence of working, details of any temporary work, labour and plant proposed and also events that, in the Contractor’s opinion, are critical to the satisfactory completion of the works. The programme should also allow for reasonable periods of time for the provision of information required from the Authority. It should be noted that the programme must show the whole period of construction and is not to show a shorter construction period.

3.41 Sub-condition (2) allows for the programme to be submitted either as part of the tender or within 21 days after acceptance of the tender. NHS bodies are recommended not to ask for a programme to be submitted with the tender.

3.42 Sub-condition (1) provides for period(s) of time to be stated in the Abstract of Particulars in which the Authority will notify the Contractor of the date of possession of the site or parts thereof. This period of time should run from the date of acceptance of the Contractor’s tender. The date of possession should normally not exceed 60 days (including the period of notification) from the date of acceptance of the contractor’s tender. Additionally, the date for completion should be given as a specific number of consecutive calendar weeks after the date of possession. Specific dates for possession and completion should not be given at tender stage since they will need to be established with the successful tenderer.

Commentary

3.43 Tenderers, if they wish, should not be precluded from submitting an alternative tender for consideration based on a different construction period to that stated in the tender documents. However, a conforming tender based on the tender documents must also be received so as not to disqualify the tender as being qualified. These alternatives should be carefully evaluated before acceptance.

3.44 The period for the execution of the Works stated in tender documents is normally assessed by the Architect/Contract Administrator in consultation with the design team and the Authority.

3.45 The Works or any relevant section are to be completed to the satisfaction of the Architect/Contract Administrator by the date(s) for completion. The Architect/Contract Administrator must certify when the works or any section thereof are completed to his satisfaction (Condition 39: Certifying Work). A further certificate has to be issued at the end of the longest relevant maintenance period.

Condition 35: Progress Meetings

3.46 This condition makes it a mandatory requirement to hold monthly progress meetings unless instructed otherwise. Five days before each progress meeting the Contractor must submit to the Architect/Contract Administrator a comprehensive written report. Within seven days of each progress meeting, the Architect/Contract Administrator has to give a written statement covering similar matters.

3.47 Subsequent to each progress meeting, the Architect/Contract Administrator should review and, where necessary, amend the stage payment chart (see condition 48(3)).

Condition 36: Extensions of Time

3.48 Condition 36 sets out the detailed procedure for the claiming and granting of an extension of time for completion of the Works, and lists the grounds on which an extension of time may be granted. It should be noted that there is no entitlement to an extension of time due to weather conditions; these are entirely at the Contractor’s risk. The Authority should take into account any likely effects of weather when calculating the contract period that is stated in the tender documents.

3.49 Under Condition 36(1), the Architect/Contract Administrator must consider the possibility of an extension of time when he receives a notice requesting an extension.
of time and also where he considers that there has been, or is likely to be, a delay which will prevent completion of the Works or any relevant section by the relevant date of completion.

3.50 Condition 36(1) states a maximum time limit (42 days from the date any notice is received) for the Architect/Contract Administrator to inform the Contractor of any decision regarding any extension of time. This time limit and the other time limits contained in condition 36 are mandatory and cannot be extended (see condition 1(4)).

3.51 The Architect/Contract Administrator should take into account any authorised omissions which have the effect of saving time. It should be noted that the Contractor will not be entitled to an extension of time where the delay or likely delay is, or would be attributable to, the negligence, default, improper conduct or lack of endeavour of the Contractor.

Condition 37: Early Possession

3.52 This condition provides a facility for the employer to take possession of a part of the works prior to completion of the works as a whole. It applies to a section of the works or part of the works in respect of which the parties agree, or the Architect/Contract Administrator has given an instruction, that possession should be given before the completion of the works or relevant section.

3.53 The Architect/Contract Administrator should issue a certificate to the Contractor identifying the part or parts of the works taken in possession. From the date on which the Architect/Contract Administrator certifies satisfaction with the completed part, it no longer forms part of the works for the purposes of conditions 19 (Loss and damage), 30 (Vesting), 8 (Insurance).

3.54 Condition 37(2) provides that the defects liability period for a part of the works taken over by the Authority must commence on the date of the Architect/Contract Administrator’s certificate.

3.55 As soon as possible after the date of the Architect/Contract Administrator’s certificate the Architect/Contract Administrator must certify the value of the completed part for the purposes of liquidated damages and release of the reserve to the contractor. The rate of liquidated damages must be reduced by the same proportion as the value of the part taken over to the contract sum. The Authority must immediately pay to the Contractor the first half of the reserve.

Condition 39: Certifying Work

3.57 This condition imposes a duty on the Architect/Contract Administrator to certify the date when the works or a section are completed to his satisfaction, and starts the operation of condition 49 (Final account). It also allows any difference or dispute to be referred to arbitration.

Condition 41: Valuation of Instructions - Principles

3.58 It is important to note that this condition requires the cost (if any) of any disruption to or prolongation of both varied and unvaried work to be included in the valuation of the instructions.

Condition 42: Valuation of Variation Instructions

3.59 This condition allows variation instructions to be valued by either:

a. acceptance of a lump sum quotation; or

b. valuation by the quantity surveyor along conventional lines.

It is important to note that this condition lays down a timetable for ascertaining the cost of variation instructions. The time limits may be extended by agreement under condition 1(4).

3.60 Where variation instructions are valued by acceptance of a lump sum quotation, it is for the Architect/Contract Administrator and not the Quantity Surveyor to decide whether to accept or reject the Contractor’s quotation.

Condition 46: Prolongation and Disruption

3.61 The attention of NHS bodies is particularly drawn to the very limited list of matters in Condition 46(1) which may give rise to a claim for prolongation and disruption from a contractor. NHS bodies must manage contracts so that, as far as possible, situations are avoided which may give rise to claims for additional payments.

3.62 Claims and settlements are discussed in Chapter 4 of ‘Contracts and commissions for the NHS Estate – Contract procedures’.

3.63 It should be noted that the cost of valuing the disruptive effect of variations is not included under this condition. Expense incurred does not include for any consequential loss, and excludes interest or finance charges however incurred. This condition contains time
limits for the supply of full details to support any claims, and for the decision of the Quantity Surveyor. These time limits maybe extended by agreement under Condition 1(4).

**Condition 47: Finance Charges**

3.64 If money is withheld from the contractor in specified circumstances which are due to the Authority or its representatives, an amount for finance charges is added to the relevant payments. It is not necessary for the contractor to claim these charges, as they must be automatically added to the payments. The rate of finance charges is 1% over the rate charged during the relevant period by the Bank of England for lending money to the clearing banks.

**Condition 48 : Advances on Account**

3.65 Condition 48 needs to be read in conjunction with Condition 49: Final account and Condition 50: Certifying payments.

3.66 This condition contains the provisions regarding:
- monthly advances;
- reserve.

3.67 Payment under GC/Works/1 (Edition 3) is made by reference to a stage payment chart(s) which is normally issued to the main contractor and any nominated subcontractors with the tender documents. These charts are exclusive of any reserve (retention). An example of a stage payment chart is included at the back of the conditions. This chart will need to be adapted to suit the individual requirements of each scheme.

3.68 Assuming contractors achieve the necessary rate of progress, they know in advance how much they will receive each month. These advances will need to be adjusted to take account of variations, prolongation and disruption claims and finance charges. This chart is subject to adjustment where the works are delayed or ahead of programme, where the Architect/Contract Administrator has recorded this in a statement after a progress meeting.

3.69 Where the value of a variation has been agreed, no “reserve” is held on the variation. This should provide an incentive for the contractor to agree the value of variations.

3.70 It should be noted that condition 48 does not cover for payment of materials either on or off site. Reliance must be placed by the Authority on Condition 30: Vesting...
of what is on site, which does not cover all eventualities. There are no provisions regarding payment for materials off-site.

**Condition 49: Final Account**

3.71 This condition contains a strict timetable for the preparation and agreement of the final account.

3.72 When the works are completed to the satisfaction of the Architect/Contract Administrator, the Authority must revise its assessment of the final sum and release half of the reserve as soon as possible.

**Period of final measurement and valuation.**

3.73 Condition 49(2) requires the Quantity Surveyor to forward a draft of the final account to the Contractor within six months of completion. The Contractor then has three months in which to notify agreement or disagreement with the draft final account. If the Contractor disagrees, he must state the reasons why and his own valuation. If the Contractor fails to respond or disagrees without giving proper reasons, he is deemed to have agreed the draft final account as the final account.

**Condition 50: Certifying Payments**

3.74 This condition states that the Architect/Contract Administrator must certify the sums that the Contractor is entitled to. No mention is made of sums due to nominated sub-contractors or suppliers. It is recommended that sums due to each nominated sub-contractor and supplier are shown separately.

**Prompt payment to suppliers and subcontractors**

3.75 In GC/Works 1/(Edition 3) there is no provision for any period within which the Authority must make payment to the Contractor. To comply with Government policy, NHS bodies must amend new contracts, where necessary, for building and maintenance to encourage prompt payment.

3.76 NHS bodies must also incorporate amendments to encourage prompt payments to sub-contractors. These require the main contractor to pay its sub-contractor within 30 days of receipt of a valid demand for payment as defined for the contract.

Insert the following additional sentence at the end of condition 50(1):

“The Authority shall pay to the contractor each certified sum within 14 days of its certification.”

Insert the amendments contained in Appendix 3.
### Condition 52: Cost Savings

3.77 This condition provides contractors with the incentive to suggest possible savings:

- a. in the cost of the works;
- b. in the cost of maintenance; or
- c. through an increase in the efficiency of the completed works.

Any proposals by the Contractor must be submitted to the Architect/Contract Administrator in writing. The proposals must state that they are for consideration under this condition, and must include an estimate for consideration by the Authority. Savings made due to any accepted proposals are shared equally.

3.78 Should the Authority accept any proposal, or agree with the Contractor any amended proposal:

- a. the date for completion and the programme should be amended accordingly; and
- b. the Architect/Contract Administrator should issue any agreed extension of time which is necessary.

### Condition 55: Liquidated Damages

3.79 The abstract of particulars requires the rate at which liquidated and ascertained damages will be deducted to be specified when the contract is drawn up for execution, notice of which will have been given in the tender documents.

3.80 The method of assessment of the rate for damages is discussed in paragraphs 2.14 to 2.24.

### Condition 59: Adjudication

3.81 Adjudication is a form of dispute resolution that is intended to prevent disagreements from lingering during the works. The time limits laid down by this condition are tight, and comply with the requirements of the Housing Grants, Construction and Regeneration Act 1996.

Delete existing Condition 59 and insert the amendments contained in Appendix 4.

### Condition 60: Arbitration

3.82 Attention is drawn to the guidance contained in Chapter 4 of ‘Contracts and commissions for the NHS estate – Contract procedures’.

3.83 It should be noted that the time limits laid down by this condition envisage that a maximum period of nine months should elapse before the arbitration is settled.
Condition 62: Sub-letting

3.84 It should be noted that the Authority may accept a sub-letting proposal at tender stage and that the contract may specify or nominate the sub-letting of work.

Condition 63: Nomination

3.85 Nomination may be provided for in the contract documentation or named in any direction or instruction given under the contract. If the nomination is in the contract documents, the Contractor has no right of objection. Once a sub-contractor has been nominated and accepted by the Contractor, he is the main contractor’s responsibility. There is no right to an extension of time if the nominated sub-contractor causes delay or fails.

Department’s recommendations on nomination of sub-contractors and suppliers.

3.86 Except for work or materials and goods of a specialised nature or where a design input is required from a nominated sub-contractor or supplier, the Department recommends that nomination of sub-contractors and suppliers should be avoided wherever possible.

Condition 65: Other Works

3.87 Condition 65 provides for work either not forming or forming part of the works to be executed by the contractor, to be carried out by the Authority. The exercise of this condition may give rise to a claim by the contractor for an extension of time under condition 36 and to a prolongation or disruption claim under Condition 46.
4.0 GC/Works/1 (Edition 3): General Conditions of Contract for Building and Civil Engineering Standard Form of Contract - Lump sum without Quantities

**Introduction**

4.1 The “With Quantities” form and “Without Quantities” form are similar in many respects but there are, nonetheless, some important changes which flow from the use of a specification or schedules or rates instead of bills of quantities. The principal differences are highlighted in the following paragraphs.

4.2 The commentary and contract amendments set out in Chapter 3 regarding the “With Quantities” form apply equally to the “Without Quantities” version and should be followed with only such changes as are clearly necessary to preserve sense.

4.3 Care must be taken to select the appropriate fluctuation conditions for inclusion in the executed contract.

**Principal changes from the “With Quantities” form**

**Tendering**

4.4 Tendering takes place based on drawings and specifications instead of the Contractor pricing bills of quantities.

4.5 The Contractor is required to supply a schedule of rates. This requirement is not seen as preventing the employer from preparing the blank (that is, unpriced) document in which the Contractor enters his rates. The Department considers that the employer’s interest is best served if the blank schedule of rates is prepared by the Quantity Surveyor and issued for the Contractor to price.

**Priced document**

4.6 The schedule of rates is essential to the financial management of the contract, as it is required to be used in the valuation of variations and of expenditure of provisional sums, and in the final adjustment of the contract sum.

4.7 It is recommended that the schedule of rates should be returned at the same time as the tender but in a separate package endorsed with the tenderer’s name. In this way, the schedule of rates of tenders not considered for acceptance can be returned unopened.

4.8 It is considered that the employer can be best assured that the schedule of rates separately identifies all the items and their rates and prices that may need to be referred to in using the document for the purposes which the contract requires if it is examined by the Quantity Surveyor prior to acceptance of the tender.
Appendix 1 - GC/Works/1 (Edition 3) Supplementary Conditions

1.0 This appendix lists the GC/Works/1 (Edition 3) supplementary conditions that may be applicable for use with the above contract.

Supplementary conditions

a. Supplementary Condition No 146(M)(3): VOP Formula Price Adjustment on Building Contracts;

b. Supplementary Condition No 146(S)(3): VOP Formula Price Adjustment for nominated Works Sub-Contracts for Building Contracts;

c. Supplementary Condition No 147(S)(3): VOP Formula Price Adjustment for nominated Sub-Contracts for Electrical Installations;

d. Supplementary Condition No 148(S)(3): VOP Formula Price Adjustment for nominated Sub-Contracts for Heating, Ventilating and/or Air Conditioning Installations;

e. Supplementary Condition No 148(S)(3): VOP Formula Price Adjustment for Sprinkler Installation;

f. Supplementary Condition No 149(S)(3): VOP Formula Price Adjustment for nominated Sub-Contracts for Lift Installations;

g. Supplementary Condition No 150(S)(3): VOP Formula Price Adjustment for nominated Sub-Contracts for Structured Steelwork Installations Buildings – Works;

h. Supplementary Condition No 154(S)(3): VOP Formula Price Adjustment for nominated Sub-Contracts for Catering Equipment Installations;

i. Supplementary Condition No 155(S)(3): VOP Formula Price Adjustment for nominated Sub-Contracts for Specialist Engineering Installations.
Appendix 2 - Bibliography

1. Bibliography of additional recommended reading and addresses where the various documents listed may be purchased.


GC/Works/1 (Edition 3). The Stationery Office

Concode: Contracts and commissions for the NHS estate - Policy. The Stationery Office 1993


Concode: Guide to procedures for commissioning building and engineering consultants. The Stationery Office 1994

Concode: Contracts and commissions for the NHS estate - Guide to the requirements of the European Community Public Procurement Directives. The Stationery Office 1995

Scotland: The Scottish Capital Investment Manual

Appendix 3 - Prompt payment

1. The following amendments should be made to GC/Works/1 (Edition 3) in order to comply with Government requirements regarding prompt payment of sub-contractors.

Condition 62: Sub-letting

a. Condition 62 (2)

(i) After the first sentence insert "No subcontract shall include any provision purporting to make payment under the subcontract conditional on the payer receiving payment from a third person unless that third person, or any other person payment by whom is under the subcontract (directly or indirectly) a condition of payment by that third person, is insolvent within the meaning of [Section 110 (Prohibition of Conditional Payments) of the Housing Grants, Construction and Regeneration Act 1996]."

(ii) insert the following condition after condition 62(2)(f).

(g) Provisions entitling the sub-contractor to stage payments for any work under the subcontract unless:

(a) it is specified in the subcontract that the duration of the work is to be less than 60 days; or

(b) it is agreed between the Contractor and the sub-contractor that the duration of the work is estimated to be less than 60 days;

and stipulating the amounts of the stage payments and the intervals at which, or circumstances in which, they become due.

(h) Terms and conditions:

(a) providing an adequate mechanism for determining what payments become due under the sub-contract, and when; and

(b) providing for a final date for payments in relation to any sum which becomes due;

and stipulating how long the period is to be between the date on which a sum becomes due and the final date for payment.

(j) Any sub-contract terms and conditions, or form of sub-contract, prescribed by the contract.
Appendix 4 - Adjudication

1. The following amendments should be made to GC/Works/1 (Edition 3) in order to comply with the Housing Grants, Construction and Regeneration Act 1996.

Condition 59: Adjudication

(1) The Contractor or Authority may by notice ask for any dispute, difference or question arising out of, or relating to, the Contract during the course of the Works to be referred to the adjudication of a person to be agreed between the parties as adjudicator, or, failing agreement within 14 days of the notice to the person named in the Abstract of Particulars.

(2) The notice shall specify the matter in dispute and shall set out the principal facts and arguments relating to it. Copies of all relevant documents in the possession of the party shall be attached to the notice. A copy of the notice and enclosures shall be sent by the party giving the notice to the Architect/Contract Administrator, the Quantity Surveyor and the other party.

(3) The Architect/Contract Administrator, the Quantity Surveyor and the other party may submit representations to the adjudicator not later than 7 days from the receipt of the notice.

(4) The adjudicator shall notify his decision (for which he need not give reasons) to the Architect/Contract Administrator, the Quantity Surveyor, the Authority and the Contractor not earlier than 10 and in any event not later than 28 days from receipt of the notice. The decision shall state how the cost of the adjudicator’s salary (including overheads) or fee shall be apportioned between the parties. Each party shall otherwise bear his own costs of adjudication.

(5) In coming to a decision the adjudicator shall have regard to how far the parties have complied with any procedures in the Contract relevant to the matter in dispute and to what extent each of them has acted promptly, reasonably and in good faith.

(6) The decision of the adjudicator on any matter referred to him will be binding unless and until varied or overruled in arbitration or litigation.

(7) The Authority and the Contractor shall comply forthwith with any decision of the adjudicator.
1. The following amendments should be made to GC/Works/1 (Edition 3) to avoid confusion over the term “Project Manager”.

Contents

CONDITION

Instructions and Payment

Delete “40 PM’s Instructions”

Insert “40 Architect/Contract Administrator’s Instructions”

Condition 1: Definitions etc

Insert the following definition after (d) of the definition of “Abstract of Particulars”:

“the Architect” means the person entitled to the use of the name “Architect” and named in the Abstract of Particulars, and appointed by the Authority to act on his behalf in carrying out those duties described in the Contract (subject to the exclusions set out in the Abstract of Particulars), or such other person as may be appointed in that capacity of the time being by the Authority;”

Insert the following definition after the definition of “the Contract”:

“the Contract Administrator” means the person named in the Abstract of Particulars, and appointed by the Authority to act on his behalf in carrying out those duties described in the Contract (subject to the exclusions set out in the Abstract of Particulars), or such other person as may be appointed in that capacity of the time being by the Authority;”

In the second line of the definition of “Unforeseeable Ground Conditions” delete “PM” and insert “Architect/Contract Administrator”;

In sub-condition (4) line 3, delete “PM” and insert “Architect/Contract Administrator”.

Condition 2: Contract Documents

In sub-condition (2) line 1 delete “PM” and insert “Architect/Contract Administrator”;

In sub-condition (3) line 1 delete “PM” and insert “Architect/Contract Administrator”;

In sub-condition (5) lines 1, 4 and 5 delete “PM” and insert “Architect/Contract Administrator”.

Condition 4: Delegations and Representatives

In sub-condition (1) line 2 delete “PM” and insert “Architect/Contract Administrator”;

In sub-condition (2) lines 1, 3 and 4 delete “PM” and insert “Architect/Contract Administrator”;

In sub-condition (3) line 1 delete “PM” and insert “Architect/Contract Administrator”.

Condition 5: Contractor’s agent

In line 3 delete “PM” and insert “Architect/Contract Administrator”.

Condition 6: Contractor’s employees

In sub-condition (1) lines 1, 3 and 4 delete “PM” and insert “Architect/Contract Administrator”;

In sub-condition (2) line 3 delete “PM” and insert “Architect/Contract Administrator”.

Condition 7: Conditions affecting works

In sub-condition (3)(i) delete “PM” and insert “Architect/Contract Administrator”;

In sub-condition (4) lines 1 and 5 delete “PM” and insert “Architect/Contract Administrator”.

Appendix 5 - Project Manager (Architect/Contract Administrator)

In the third line of the definition “the Programme” delete “PM” and insert “Architect/Contract Administrator”;

In the second line of the definition of “Unforeseeable Ground Conditions” delete “PM” and insert “Architect/Contract Administrator”;
In sub-condition (5) line 4 delete “PM” and insert “Architect/Contract Administrator”.

**Condition 9: Setting out**

In sub-condition (1) line 1 delete “PM” and insert “Architect/Contract Administrator”.

**Condition 10: Design**

In sub-condition (1) lines 4 (twice), 7, 8 and 9 delete “PM” and insert “Architect/Contract Administrator”.

**Condition 15: Returns**

In lines 1 and 2 delete “PM” and insert “Architect/Contract Administrator”.

**Condition 16: Foundations**

In line 2 delete “PM” and insert “Architect/Contract Administrator”.

**Condition 25: Records**

In sub-condition (1) line 2 delete “PM” and insert “Architect/Contract Administrator”;

In sub-condition (2) line 1 delete “PM” and insert “Architect/Contract Administrator”.

**Condition 26: Site Admittance**

In sub-condition (1) lines 1 and 2 delete “PM” and insert “Architect/Contract Administrator”;

In sub-condition (2) lines 1 (twice) and line 4 delete “PM” and insert “Architect/Contract Administrator”;

In sub-condition (3) in line 1 delete “PM” and insert “Architect/Contract Administrator”;

In sub-condition (4) in line 2 delete “PM” and insert “Architect/Contract Administrator”.

**Condition 27: Passes**

In lines 1, 2, 3 and 5 delete “PM” and insert “Architect/Contract Administrator”.

**Condition 28: Photographs**

In line 5 delete “PM” and insert “Architect/Contract Administrator”.

**Condition 30: Vesting**

In sub-condition (4) lines 2 (twice) and 4 delete “PM” and insert “Architect/Contract Administrator”.

**Condition 31: Quality**

In sub-condition (3) line 2 delete “PM” and insert “Architect/Contract Administrator”;

In sub-condition (4) lines 1 (twice), 3, 7 and 8 delete “PM” and insert “Architect/Contract Administrator”;

In sub-condition (5) line 1 delete “PM” and insert “Architect/Contract Administrator”;

In sub-condition (7)(a) line 2 delete “PM” and insert “Architect/Contract Administrator”;

In sub-condition (7)(b) line 2 delete “PM” and insert “Architect/Contract Administrator”.

**Condition 32: Excavations**

In sub-condition (3)(d) line 1 delete “PM” and insert “Architect/Contract Administrator”;

In sub-condition (4) line 1 delete “PM” and insert “Architect/Contract Administrator”.

**Condition 33: Programme**

In sub-condition (2) line 3 delete “PM” and insert “Architect/Contract Administrator”;

In sub-condition 3 line 2 delete “PM’s” and insert “Architect’s/Contract Administrator’s”.

**Condition 34: Commencement and Completion**

In sub-condition (1) lines 7 and 8 delete “PM” and insert “Architect/Contract Administrator”;

In sub-condition (2) line 6 delete “PM” and insert “Architect/Contract Administrator”.

**Condition 35: Progress meetings**

In sub-condition (2) line 2 delete “PM” and insert “Architect/Contract Administrator”;

Appendix 5 – Project Manager (Architect/Contract Administrator)
Appendix 5 - Project Manager (Architect/Contract Administrator)

Condition 36: Extensions of time

In sub-condition (1) lines 1 and 2 delete “PM” and insert “Architect/Contract Administrator”;
In sub-condition (2) line 1 delete “PM” and insert “Architect/Contract Administrator”;
In sub-condition (2)(b) delete “PM” and insert “Architect/Contract Administrator”;
In sub-condition (3) delete “PM” and insert (twice) “Architect/Contract Administrator”;
In sub-condition (4) lines 2 and 4 delete “PM” and insert “Architect/Contract Administrator”;
In sub-condition (5) lines 3 and 4 delete “PM” and insert “Architect/Contract Administrator”.

Condition 37: Early Possession

In sub-condition (1) line 3 delete “PM” and insert “Architect/Contract Administrator”;
In sub-condition (1)(b) line 2 delete “PM” and insert “Architect/Contract Administrator”;
In sub-condition (3) line 1 delete “PM” and insert “Architect/Contract Administrator”;
In sub-condition (4) line 8 delete “PM” and insert “Architect/Contract Administrator”;
In sub-condition (5) lines 2 and 6 delete “PM” and insert “Architect/Contract Administrator”;
In sub-condition (6)(b) line 1 delete “PM” and insert “Architect/Contract Administrator”;
In sub-condition (7) line 1 delete “PM” and insert “Architect/Contract Administrator”.

Condition 39: Certifying Work

In sub-condition (1) line 1 delete “PM” and insert “Architect/Contract Administrator”.

Condition 40: PM’s Instructions

Delete heading and insert “Condition 40: Architects/Contract Administrators’ Instructions”;
In sub-condition (1) line 1 delete “PM” and insert “Architect/Contract Administrator”;
In sub-condition (2)(0) line 1 delete “PM” and insert “Architect/Contract Administrator”;
In sub-condition (3) line 1 delete “PM” and insert “Architect/Contract Administrator”;
In sub-condition (5) line 1 delete “PM” and insert “Architect/Contract Administrator”.

Condition 42: Valuation of Variation Instructions

In sub-condition (1)(a) lines 1 and 3 delete “PM” and “PM’s” and insert “Architect/Contract Administrator” and “Architect’s/Contract Administrator’s”;
In sub-condition (2) line 2 delete “PM” and insert “Architect/Contract Administrator”;
In sub-condition (3) line 1 delete “PM” and insert “Architect/Contract Administrator”.

Condition 45: VAT

In sub-condition (1) line 2 delete “PM” and insert “Architect/Contract Administrator”.

Condition 46: Prolongation and disruption

In sub-condition (2)(a) line 2 delete “PM” and insert “Architect/Contract Administrator”;
In sub-condition (2)(c) line 1 delete “PM” and insert “Architect/Contract Administrator”;
In sub-condition (3)(a) line 3 delete “PM” and insert “Architect/Contract Administrator”;
In sub-condition (4)(b) line 2 delete “PM” and insert “Architect/Contract Administrator”.

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Commentary

**Condition 47: Finance Charges**

In sub-condition (1)(a) line 1 delete “PM” and insert “Architect/Contract Administrator”;

In sub-condition (5)(b) line 2 delete “PM” and insert “Architect/Contract Administrator”.

**Condition 48: Advances on Account**

In sub-condition (1) line 4 delete “PM” and insert “Architect/Contract Administrator”;

In sub-condition (3) line 1 delete “PM” and insert “Architect/Contract Administrator”;

In sub-condition (4) line 2 delete “PM” and insert “Architect/Contract Administrator”;

In sub-condition (6) lines 2, 5 and 6 delete “PM” and insert “Architect/Contract Administrator”.

**Condition 49: Final Account**

In sub-condition (1) line 1 delete “PM” and insert “Architect/Contract Administrator”;

In sub-condition (2) line 2 delete “PM” and insert “Architect/Contract Administrator”;

In sub-condition (5) line 2 delete “PM” and insert “Architect/Contract Administrator”.

**Condition 50: Certifying Payments**

In sub-condition (1) line 1 delete “PM” and insert “Architect/Contract Administrator”;

In sub-condition (2) line 2 delete “PM” and insert “Architect/Contract Administrator”;

In sub-condition (3) line 1 delete “PM” and insert “Architect/Contract Administrator”.

**Condition 52: Cost Savings**

In sub-condition (1) line 1 delete “PM” and insert “Architect/Contract Administrator”;

In sub-condition (2) line 2 delete “PM” and insert “Architect/Contract Administrator”;

**Notes/Amendments**

In sub-condition (3) line 1 delete “PM” and insert “Architect/Contract Administrator”;

In sub-condition (4)(b) delete “PM” and insert “Architect/Contract Administrator”.

**Condition 53: Non-Compliance with Instructions**

In line 1 delete “PM” and insert “Architect/Contract Administrator”.

**Condition 54: Emergency Work**

In sub-condition (1) line 2 delete “PM” and insert “Architect/Contract Administrator”.

**Condition 56: Determination**

In sub-condition (6)(b) line 4 delete “PM” and insert “Architect/Contract Administrator”.

**Condition 57: Consequences of Determination for Default**

In sub-condition (1)(d) line 2 delete “PM” and insert “Architect/Contract Administrator”;

In sub-condition (1)(e) line 1 delete “PM” and insert “Architect/Contract Administrator”;

In sub-condition (2)(a) line 1 delete “PM” and insert “Architect/Contract Administrator”.

**Condition 58: Consequence of other Determination**

In sub-condition (2)(a) line 1 delete “PM” and insert “Architect/Contract Administrator”.

**Condition 62: Sub-letting**

In sub-condition (1) lines 4 and 5 delete “PM” and insert “Architect/Contract Administrator”;

In sub-condition (2) line 5 delete “PM” and insert “Architect/Contract Administrator”;

In sub-condition (5) line 3 delete “PM” and insert “Architect/Contract Administrator”.
Commentary

Condition 63: Nomination

In sub-condition (2) lines 3 and 4 delete “PM” and insert “Architect/Contract Administrator”;

In sub-condition (6) line 6 delete “PM” and insert “Architect/Contract Administrator”.

Condition 64: Provisional Sums

In line 6 delete “PM” and insert “Architect/Contract Administrator”.

Index – Part 1: General

After “Arbitration” and before “Assignment” insert the following:

“Architect/Contract Administrator:

definition of 1
instructions of 40
non-compliance with instructions 41, 42, 43
valuation of Architect’s/Contract Administrator’s instructions 41, 42, 43”;

and delete the following:

“PM:

definition of 1
instructions of 40
non-compliance with instructions 41, 42, 43
valuation of PM’s instructions 41, 42, 43”.

Index – Part 2: Time Limits

Condition 35(3) under “Subject” delete “PM” and insert “Architect/Contract Administrator”; 

Condition 35(4) under “Imposed on” delete “PM” and insert “Architect/Contract Administrator”; 

Condition 36(1) under “Imposed on” delete “PM” and insert “Architect/Contract Administrator”; 

Condition 36(4) under “Imposed on” delete “PM” and insert “Architect/Contract Administrator”; 

Condition 36(5) under “Subject” delete “PM” and insert “Architect/Contract Administrator”; 

Notes/Amendments

Condition 40(3) under “Imposed on” delete “PM” and insert “Architect/Contract Administrator”; 

Condition 42(3) under “Imposed on” delete “PM” and insert “Architect/Contract Administrator”; 

Condition 59(4) under “Imposed on” delete “PM” and insert “Architect/Contract Administrator”; 

Condition 59(5) under “Subject” delete “PM” and insert “Architect/Contract Administrator”. 

Model Form

Abstract of Particulars and Addendum

Delete “The Project Manager shall be” and insert “The Architect/Contract Administrator shall be”;

In line 3 of the paragraph beginning “Other than the services . . .” delete “PM” and insert “Architect/Contract Administrator”;

At the end of the paragraph beginning “The Maintenance Period . . .” delete “PM” and insert “Architect/Contract Administrator”.

Addendum to Abstract of Particulars

Schedule of Design Information

In line 2 delete “PM” and insert “Architect/Contract Administrator”.

Appendix 5 – Project Manager (Architect/Contract Administrator)

Commentary Notes/Amendments
Appendix 6 - The use of bonds and guarantees in NHS contracts

1. Introduction

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

2. Scope of guidance

2.1 This guidance covers some of the practical considerations in respect of the use of bonds, the issue of calling “on demand”, and deals with five types of bond or guarantee:
   a. unconditional on-demand bonds;
   b. performance bonds;
   c. parent company guarantees;
   d. advance payment bonds;
   e. retention bonds.

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

3. Practical considerations

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

3.2 There are at present no standard forms of bond for use in the NHS. The wording of commercial bonds can vary depending on which organisation is providing the bond, who is involved in drawing it up, and what the bond is expect to deliver. There is often intense negotiation over the precise wording of bonds, and legal advisers should always be involved.

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

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

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

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

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

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

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

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

5. Performance bonds

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

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

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

Conditional on-default performance bonds

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

5.5 Conditional on-default performance bonds are fairly common within UK industry and are mainly provided by surety companies. They have been criticised because they are often written in outdated and obscure language. This has meant that when calls have been made, guarantors have sometimes looked to the wording of the bond for reasons not to pay.

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

Conditional on-demand performance bonds

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

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

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

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

6. Parent company guarantees

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

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

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

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

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

7. Advance payment bonds

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

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

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

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

8. Retention bonds

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

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

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

8.4 The conditions of a retention bond should relieve the client from failure by the Contractor to rectify defects in accordance with the contract up to the value of the bond. NHS bodies will need to consider the balance of costs and benefits in deciding whether to require and/or accept retention bonds. When used they should be conditional on-demand, issued by a surety company. Legal advice should be obtained to ensure that the wording expresses the true intention of the transaction.
Appendix 6 - The use of bonds and guarantees in NHS contracts

Extract from DAO Letter 8/93 dated 2 June 1993

Advance payments

1. The term advance payment is used to describe payments made to contractors before the customer has received equivalent value in return. An advance payment provides a contractor with working capital, to enable the commitments under the terms of a contract to be fulfilled.

2. The term interim payment is used to describe payments which are made at prescribed stages or intervals during the progress of a project. They are normally linked to work done and/or physical progress satisfactorily achieved, as defined in the contract.

3. Subject to the Government’s policy that when payments have become due they should be made promptly, payment is as a general rule made in arrears after the specified goods or services have been satisfactorily provided, unless the contract provides for interim payments (see paragraphs 15–19 below). However, suppliers sometimes seek advance payments, usually in return for a price discount.

4. Subject to the Government’s policy that when payments have become due they should be made promptly, payment is as a general rule made in arrears after the specified goods or services have been satisfactorily provided, unless the contract provides for interim payments (see paragraphs 15–20 below). However, suppliers sometimes seek advance payments, usually in return for a price discount.

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

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

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

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

9. If they wish to proceed, departments should ensure that they seek the approval of the Treasury, unless they have the appropriate delegated authority to do so. Advance payments should never be used for the purpose of avoiding an underspend in a particular financial year by making a payment before the liability to pay has matured.

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

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

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

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

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

15. Where it is decided, in the light of these considerations, that interim payments would provide value for money, adequate contractual conditions should be drawn up to protect the Department’s position. Payments of this sort should be framed within the contract as ‘a payment on account towards the total price’ rather than a final payment for part of the work done, as this will ensure that they are subject to review and are recoverable, if necessary. Interim payments should be related to value already received and wherever possible be linked firmly to physical performance. Payment on the basis of elapsed time should be avoided as it encourages the contractor to let completion slip. If progress slips departments should not seek to avoid an underspend in a particular financial year by making interim payments before the relevant physical performance has been achieved.

16. Departments should seek to ensure in contract conditions that ownership of the assets (goods, intellectual property, etc) covered by each interim payment is transferred to the department when payment is made. They also ensure that the arrangements do not detract from or obviate the obligations on the contractor under the Government’s prompt payment policy, for paying his own suppliers and contractors promptly.

17. Departments should also consider whether contract performance should be covered by a performance bond in the form of a guarantee (issued by a bank or surety company), which can be ‘called’ if the contractor’s performance under the contract is not satisfactory. Departments should consult their legal advisers about the terms of any guarantee, to ensure that their interests are protected fully. The need for a guarantee should be considered on the merits of the case taking account of the risks involved from a breach of contract (for example the extra costs likely to be incurred to complete the project satisfactorily), together with the costs of the guarantee (which the contractor will pass on to the customer).

18. It is the responsibility of project managers to ensure that expenditure on a project is fully matched wherever possible by physical performance. A comparison of the rate of actual expenditure with the forecast rate of expenditure is not relevant to the appraisal of project manager’s performance.

19. A number of departments have already adopted these principles and have achieved significant benefits. Their application has meant that payments are not made before they are justified; and has resulted in more realistic estimates of cost and time and a greater likelihood of completion within budget and on time.

Appendix 6 – The use of bonds and guarantees in NHS contracts
References

Acts and Regulations

Architects Registration Act 1931. The Stationery Office, 1931. (printed on demand)

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British Standards

BS EN ISO 9000 Quality management and quality assurance standards.

NHS Estates, Department of Health and Scottish Office publications


Capital Investment Manual


Scottish Capital Investment Manual

Overview. NHS in Scotland Management Executive (in preparation)

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

Contracts and commissions for the NHS estate: Policy, 1993

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

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

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

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

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

Vol 2: Supplementary annexure, 1995


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

Guide to procedures for commissioning building and engineering consultants, 1994

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

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


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


Guide to contract procedures, 1996

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