



THE HIGHWAYS AGENCY

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THE SCOTTISH OFFICE DEVELOPMENT DEPARTMENT



THE WELSH OFFICE
Y SWYDDFA GYMREIG



THE DEPARTMENT OF THE ENVIRONMENT FOR
NORTHERN IRELAND

Engineer/Contractor Relationship on Trunk Road Contracts

Summary: This Advice Note distributes the document: "NOTES FOR GUIDANCE ON THE RELATIONSHIP BETWEEN ENGINEER AND CONTRACTOR ON DEPARTMENT OF TRANSPORT TRUNK ROAD CONTRACTS".

VOLUME 5	ASSESSMENT AND PREPARATION OF ROAD SCHEMES
SECTION 2	PREPARATION AND IMPLEMENTATION

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**ENGINEER/CONTRACTOR
RELATIONSHIP ON TRUNK ROAD
CONTRACTS**

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1. INTRODUCTION

1.1 DEPARTMENTAL ADVICE NOTE HA/12/81 issued a copy of a joint document prepared by the Department of Transport and the Federation of Civil Engineering Contractors entitled; "NOTES FOR GUIDANCE ON THE SUBMISSION OF CONTRACTUAL CLAIMS ARISING ON DEPARTMENT OF TRANSPORT TRUNK ROAD CONTRACTS".

1.2 This ADVICE NOTE issues a companion joint document entitled; "NOTES FOR GUIDANCE ON THE RELATIONSHIP BETWEEN ENGINEER AND CONTRACTOR ON DEPARTMENT OF TRANSPORT TRUNK ROAD CONTRACTS", a copy of which is attached.

2. SCOPE

2.1 The document relates to contracts for the construction or maintenance of trunk roads which have been let under the ICE Conditions of Contracts, 5th Edition. It sets out the contractual position of the Engineer and the Contractor to delegate the powers they exercise under the terms of the contract and gives guidance on how good relationships can be established between the Engineer's and the Contractor's organisations.

3. STATUS

3.1 The joint document is advisory only and it does not circumscribe in any way the contractual provisions, including the powers given to the Engineer to the Contract, as established by the Conditions of Contract.

3.2 The joint document is a statement of what the Department and the Federation consider to be good contract management practice. Neither the Employer nor the Contractor may seek to determine how the Engineer should exercise the powers conferred on him by the Conditions of Contract and the Note is not addressed to that subject it is addressed to the management procedures which, of necessity, precede or give effect to the exercise of those powers. On the basis of their experience both parties recommend them as procedures which lead to good understandings between those directly concerned with the management of the contract and the efficient execution of the works.

3.3 The Department commends the joint document to all its own officials, officials of Agent Authorities and Consulting Engineers who are engaged in the management of contracts for trunk road works.

3.4 The Federation is likewise commending the document to its members through its own arrangements for dissemination.

4. ENQUIRIES

NOTES FOR GUIDANCE ON THE RELATIONSHIP BETWEEN ENGINEER AND CONTRACTOR ON DEPARTMENT OF TRANSPORT TRUNK ROAD CONTRACTS

NOTES FOR GUIDANCE

1. OBJECTIVES

1.1 DTp and FCEC recognise that for the efficient execution of a contract there is a need for procedures by which those concerned can communicate at appropriate levels on matters concerning the day to day problems encountered.

1.2 These notes have been prepared with the object of:-

- (1) improving the understanding between those concerned with DTp Trunk Road Contracts;
- (2) suggesting efficient means of communication which will help to speed the execution of the contract by removing uncertainties and misunderstandings and which will contribute positively to those concerned working more closely together.

2. CONTRACTUAL POSITION

2.1 The formal contractual provisions under which the Engineer may delegate his powers, the extent to which he may delegate them, the notices required and the Contractor's obligations in relation to instructions received are set out in the Conditions of Contract.

2.2 Except as to any decision to be taken or certificates to be issued under Clauses 12(3), 44, 48, 60(3), 61, 63 and 66, the formal contractual provisions under which the Engineer may delegate his powers, the extent to which he may delegate them, the notices required in relation to instruction received are set out in Clause 1(1)(d), 2(1), 2(2), 2(3) and 2(4) of the Conditions of Contract (see Appendix A for full text).

2.3 The Conditions of Contract make no specific provisions for delegation of the Contractor's obligations except as set out in Clauses 15(1) and 15(2) (see Appendix B for full text).

3. POWERS OF ENGINEER AND ENGINEER'S REPRESENTATIVE

3.1 The Engineer is appointed by the Employer. The Engineer may appoint an "Engineer's Representative" whose functions are "to watch and supervise the construction, completion, and maintenance of the Works". The Engineer or the Engineer's Representative may appoint any number of persons to assist the Engineer's Representative in the exercise of those functions.

3.2 A person (including the Engineer's Representative) who has been authorised by the Engineer to act on his behalf cannot sub-delegate his power to any other person. Only the Engineer himself can delegate his powers under the Conditions of Contract.

3.3 The Engineer's approval of the Contractor's Agent or Representative is required. The Contractor submits the name of his proposed Agent or Representative for the Engineer's approval which is notified to the Contractor in writing.

Notes for Guidance

4. GUIDANCE ON RELATIONSHIPS

4.1 Problems can arise due to misunderstanding between Contractor and Engineer as to how the obligations and powers outlined above are to operate in the context of a given contract. Such misunderstandings can lead to unnecessary disputes and can delay and impede the efficient completion of the Works.

4.2 Under the ICE Conditions of Contract, the Engineer is required to be impartial and is independent of both the Employer and Contractor, neither of whom may seek to determine how the Engineer should exercise his powers under the contract. However, in the interests of good working relationships, Engineers and Contractors may find the following notes helpful.

4.3 Good means of communications between those concerned help the efficient execution of the contract in that uncertainties and misunderstandings are removed and they are able to work closely together.

4.4 It is impractical for all the decisions on large contracts to be made by the Engineer himself. Engineers on such contracts therefore should make use of the provisions in the Conditions of Contract which permit them to delegate some of their powers to the Engineer's Representative and other site staff.

4.5 The Engineer is required by the Conditions of Contract to notify the Contractor of all written delegations of his powers. It is suggested that it would be helpful for a copy of the letter of delegation to be sent to the Contractor.

4.6 Contractors similarly should delegate some powers to their Site Agent and other staff.

4.7 Contractors should notify the Engineer in writing of the Contractor's Representatives who are authorised to deal with the Engineer or members of his staff on relevant contractual matters. It is suggested that it would be helpful for a copy of the letter of authority to be sent to the Engineer.

4.8 Persons who are acting under powers which have been delegated to them, although unable to sub-delegate those powers can, and indeed in some cases should, take advice from others connected with the contract to assist them in making decisions.

4.9 A person acting under powers delegated to him by the Engineer normally will be expected by the Contractor to exercise those powers himself. If, therefore, the Contractor seeks a decision from such a person and that person refers the matter to the Engineer, the Contractor should be notified of that fact.

4.10 A system of correspondence and meetings which ties in with the delegation used by both Engineer and Contractor should be established at the outset of the contract. This should set out who is to receive primary letters and who is to receive copies. It is recommended that all letters to or from the Engineer on Clause 12 matters (and other matters which cannot or have not been delegated) should be copied to the Resident Engineer and the Contractor's Site Agent.

4.11 The Conditions of Contract permit the Engineer or someone with his powers to give instructions verbally in certain circumstances, to be followed by confirmation in writing. Verbal instructions should be kept to a minimum but if it is necessary to give such instructions it is recommended that written confirmation be given without delay to avoid any misunderstanding.

4.12 Wherever possible all matters requiring resolution should be examined and resolved by the Engineer and the Contractor or by those persons with delegated power to do so. Negotiations are most speedily concluded when the parties conducting them have full authority to reach agreement because the chain of communication is then at its shortest.

4.13 In some circumstances it may be necessary for persons with delegated powers to allocate time consuming tasks to assistants in order to produce facts or recommendations to assist in reaching a decision or evaluation. In such circumstances it is recommended that the decision maker and his opposite number meet to determine the method to be used and the personnel who will undertake the tasks.

4.14 It is important that staff of the Engineer and the Contractor should know precisely their delegated functions and powers and those of the persons with whom they are negotiating. Subordinates without power to make a decision should not be left to decide what information will be required by the person who will make the actual decision.

4.15 Recording matters mutually agreed and matters which are unresolved is vital. It is recommended that this should be done at all meetings.

5. CONCLUSION

5.1 It is important that staff engaged in negotiations should know what are their delegated functions and powers and what are those of their counterparts with whom they are negotiating.

5.2 When, during negotiations, one of the parties becomes aware that he does not have delegated authority to conclude an agreement, he should immediately declare this to be so and give the other party the option of discontinuing to negotiate at his level and of remitting the matter to the person who does have that authority.

5.3 It is costly and frustrating for those involved to negotiate agreements only to find subsequently that the arguments employed have then been relayed by one of the parties to a higher level only to be rejected, whereupon the whole process of negotiation has to be gone over again at this higher level.

5.4 For a contract to proceed smoothly, efficiently and therefore economically through to completion with fair payments properly and duly authorised in accordance with the provisions made for this under the Conditions of Contract, it is essential that the staff of both the Engineer's and Contractor's organisations should co-operate with a clear understanding of their respective duties, powers and responsibilities.

ICE CONDITIONS OF CONTRACT, 5TH EDITION

DEFINITION OF ENGINEER'S REPRESENTATIVE, FUNCTIONS AND POWERS OF ENGINEER'S REPRESENTATIVE, APPOINTMENT OF ASSISTANTS, DELEGATION BY ENGINEER, REFERENCE TO ENGINEER OR ENGINEER'S REPRESENTATIVE

- Clause 1(1)(d) "Engineer's Representative" means a person being the resident engineer or assistant of the Engineer or clerk of works appointed from time to time by the Employer or the Engineer and notified in writing to the Contract by the Engineer to perform the function set further in Clause 2(1).
- Clause 2(1) The functions of the Engineer's Representative are to watch and supervise the construction completion and maintenance of the Works. He shall have no authority to relieve the Contractor of any of his duties or obligations under the Contract nor except as expressly provided hereunder to order any work involving delay or any extra payment by the Employer nor to make any variation of or in the Works.
- Clause 2(2) The Engineer or the Engineer's Representative may appoint any number of persons to assist the Engineer's Representative in the exercise of his functions under sub-clause (1) of this Clause
- Clause 2(3) The Engineer may from time to time in writing authorise the Engineer's Representative or any other person responsible to the Engineer to act on behalf of the Engineer either generally in respect of the Contract or specifically in respect of particular Clauses of these Conditions of Contract and any act of any such person within the scope of his authority shall for the purposes of the Contract constitute an act of the Engineer Provided that such authorisation shall not be given in respect of any decision to be taken or certificates issued under Clause 12(3) 44 48 60(3) 61 63 and 66.
- Clause 2(4) If the Contractor shall be dissatisfied by reason of any instruction of any assistant of the Engineer's Representative duly appointed under sub-clause (2) of this Clause he shall be entitled to refer the matter to the Engineer's Representative who shall thereupon confirm reverse or vary such instruction. Similarly if the Contractor shall be dissatisfied by reason of any act of the Engineer's Representative or other person duly authorised by the Engineer under sub-clause (3) of this Clause he shall be entitled to refer the matter to the Engineer for his decision.

ICE CONDITIONS OF CONTRACT, 5TH EDITION

CONTRACTOR'S SUPERINTENDENCE AND CONTRACTOR'S AGENT

- Clause 15(1) The Contractor shall give or provide all necessary superintendence during the execution of the Works and as long thereafter as the Engineer may consider necessary. Such superintendence shall be given by sufficient persons having adequate knowledge of the operations to be carried out (including the methods and techniques required the hazards likely to be encountered and methods of preventing accidents) as may be requisite for the satisfactory construction of the Works.
- Clause 15(2) The Contractor or a competent and authorised agent or representative approved in writing by the Engineer (which approval may at any time be withdrawn) is to be constantly on the Works and shall give his whole time to the superintendence of the same. Such authorised agent or representative shall be in full charge of the Works and shall receive on behalf of the Contractor directions and instructions from the Engineer or (subject to the limitations of Clause 2) the Engineer's Representative. The Contractor or such authorised agent or representative shall be responsible for the safety of all operations.