

# Draw a clear line round design

When it comes to the Contractor Design Portion of a contract, clarity can often prevent costly disputes



PARTNERING

JONATHAN  
BOWCOTT

There is more to reducing conflict than simply introducing a new form of contract.

Experience shows that many disputes emanate from poor management and an inability to get the basics right.

This applies to both the professional team and contracting organisations and can affect the viability of projects, either by

**“ The rule is that the contractor designs what the words say he is to design, no more and no less”**



FOTOLIA

inflating the client's budget so that it is forced to act in a manner that does not foster "mutual trust and co-operation" or the contractor is forced to advance poorly particularised claims to recover his trading position.

One problem is the demarcation of design responsibility.

When using the JCT Standard Form, circumstances may dictate the use of a Contractor

Design Portion to transfer design responsibility to the contractor for specified elements of the work.

Under JCT 2005, clause 2.2 states, where the work includes a CDP, the contractor will:

1. Complete the CDP design;
2. Comply with the directions of the architect/contract administrator for the integration of the design of the CDP with the

design of the work as a whole.

The basic requirement of the professional team is to get the description of the work that forms the CDP right.

If it does not adequately describe the full scope of the contractor's design then there is potential for dispute. The rule is that the contractor designs what the words say he is to design, no more and no less.

## Dodgy interface

This has caused problems, particularly with the design of interfaces - the junctions between CDP and non-CDP work.

For example, a project for the refurbishment of an office building where the CDP description included the words 'lantern lights' required the contractor to design, supply and install new lantern lights.

Issues arose regarding responsibility for the design of the cold

bridge between the lantern lights and the structure upon which they sat. It was successfully argued that the architect was responsible for designing the work as a whole, with the exception of the work in the CDP.

If it was the intention that the contractor should design this interface, the CDP should have been worded accordingly.

Similar issues arose on a project where the CDP required a contractor to design, manufacture and install a 'glazed bridge' to connect two buildings.

In all these instances the parties became entrenched in their positions, particularly when confronting their mistakes.

In such circumstances a concept of mutual trust and co-operation becomes secondary.

Jonathan Bowcott is managing director of construction and project consultancy MBM Consulting