

JBCC ADVISORY NOTE: EDITION 6.2

DOCUMENT/S Principal Building Agreement Nominated/Selected Subcontract Agreement

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1.0 DEFINITIONS and INTERPRETATION – “Lump sum agreement”

In previous editions (up to edition 4.1 of March 2005) the following definition appeared for ‘lump sum’ contracts:

“**LUMP SUM DOCUMENT**” means the document providing the lump sum amount priced by the **contractor** to reflect the **contract sum** and is based on the **contract documents** where **bills of quantities** are not used. Such a document may include the **JBCC Preliminaries** and a schedule of rates drawn up according to the measuring system as stated in the **schedule**

In edition 5.0 (Reprint 1) of July 2007 the definition was left out and reference to ‘lump sum’ contracts appeared under **The Agreement Structure** where it is stated “The Agreement, in catering for both bills of quantities and lump sum contracts, brings about ...”

No reference to ‘lump sum’ contracts is made in edition 6.2 of May 2018

INTERPRETATION

The definition cited above is not correct as, strictly speaking, the term “lump sum” refers to building contracts where it is the employer’s obligation to pay the contractor for the works as properly executed. Thus, whether the price tendered by the contractor has been used on a set of drawings or on bills of quantities, the contract is for a “lump sum” contract. However, confusion has existed for a long time already what exactly the difference is between ‘bills of quantities’ contracts, ‘lump sum’ contracts or ‘fixed price’ contracts. There is in fact no distinction between ‘bills of quantities’ and ‘lump sum’ contracts as they mean the same thing. Finsen’s book: *The building Contract – A Commentary on the JBCC Agreements – Third Edition* (Footnote 6, 2018: 20) confirms this view by pointing out that:

It is a common misconception that the term ‘lump sum contract’ refers only to those contracts where bills of quantities are not employed. This is not so; the term applies to all contracts where the tenderer quotes an all-inclusive price for carrying out the full extent of the works, regardless of whether he was provided with bills of quantities for pricing the work or not, as distinct from cost-plus contracts or contracts based on schedules of rates, where the cost is only capable of being determined when the work is complete

However, a clear distinction can be made between ‘bills of quantities’ / ‘lump sum’ contracts and ‘fixed price’ contracts as detailed below:

BILLS OF QUANTITIES / LUMP SUM CONTRACTS

- The **contractor** tenders a single predetermined lump sum amount for the erection and completion of the works in terms of the tender requirements
- The tender may be based on:
 - **Bills of quantities** and **preliminaries**
 - Drawings and specifications only
- The tenderer, in compiling his tender, makes provision in his **contract sum** for all labour, material, plant, risk involved, market conditions and mark-up, but not necessarily for escalation/cost fluctuations as the **contract value** may be subject to contract price adjustment

FIXED PRICE CONTRACT

- The **contractor**'s tender is compiled in a similar manner as that for 'bills of quantities' / 'lump sum' contracts
- The **contract value** will not be subject to any adjustment for escalation/cost fluctuations in any form whatsoever where the date for **practical completion** is met or the extension thereof is due to the default of the **contractor**

COMMENT

'Bills of quantities' / 'lump sum' contracts can be either a 'fixed price' contract or a contract subject to adjustment for cost fluctuations in accordance with an agreed method such as the Contract Price Adjustment Provisions (CPAP). A 'fixed price' contract is where the adjustment of the **contract value** for cost fluctuations is not applicable in terms of subclauses 25.3.4 and 26.9.5 and where so stated in the **contract data** under B 12.0 Payment