

## The Meaning of "Extra Over"

By John B Molloy, LLB (Hons), BSc (Hons), FHKIS, FRICS, ACI Arb Managing Director, James R Knowles (Hong Kong) Limited

When disputes arise and the matter is referred to arbitration the representatives of the parties often spend a considerable amount of time arguing over who should be the arbitrator. Quite often the argument centres as much on the qualifications of the person to be appointed as much as his identity.

The difficulties that may arise where an inappropriate choice of arbitrator is made can be seen from the 1998 case of *A and J Rogers v Northern Ireland Housing Executive* where a dispute of a matter of a purely quantity surveying nature was referred to an arbitrator who clearly was not a quantity surveyor by profession.

The case concerned the term "extra over", a term common in Bills of Quantities and well known to all quantity surveyors.

For example Section 6 of the Hong Kong Government Standard Method of Measurement for Civil Engineering Works requires that items for pipes be measured in linear metres and that the length shall be calculated along the centreline of the pipe through pipe fittings and the like. Pipe fittings such as bends are then measured by number as "Extra Over" items.

Therefore if one wishes to assess the price for a bend it is the rate for the pipe, plus the extra over rate for the bend itself. The concept of this is clear and one would have thought well understood.

However it seemed to caused considerable difficulty to the arbitrator whose decision was the subject of an appeal in the above.

In that matter a contract was let adopting the JCT Form of Contract 1980 Edition under which *A and J Rogers* were required to modernise twenty four houses. As part of

the works, temporary accommodation in the form of mobile homes were required to house the tenants and their belongings whilst the individual houses were modernised.

Provision was made in the Bills of Quantities for the mobile homes in the following terms.

### Mobile Homes

a) Four berth mobile homes. BSI mobile homes (B.S. 3532 1981 amended 1983) duration not exceeding one week, supplying, connecting temporary electricity supply, rates and charges, all maintenance, cleaning out and disinfecting as necessary, removing from site, making good.

12 No. at £280.00 each total  
£3,360.00

b) Extra over for each additional week

288 No. at £40.00 each total  
£11,520.00

To a quantity surveyor the meaning of these items appears clear. There were twenty four homes to be modernised. Twelve mobile homes were to be provided which would allow the work to be carried out in two phases of twelve houses at a time. The price was £280.00 for each mobile home for the first week. This price would include supply, deliver, set up connecting temporary supplies, rates and removal on completion. For each week beyond the first the prices would be £40 per week for each mobile home which presumably would include for maintenance and utility charges.

However the contractor argued that the price of each mobile home for the first week was £280.00 and thereafter for each additional

week the price should be £280 plus ?40 totalling £320.

The matter went to arbitration and the arbitrator agreed with the contractor that for each additional week beyond the first the price for each mobile home would be £320.

The point was appealed and the Court, whilst commenting on the "ingenious arguments" put forward by the contractor, came to a speedy conclusion that the arbitrator was incorrect in his decision.

The arbitrator whilst appreciating that the price for an extra over item such as a bend in a pipe was a combination of the rate for the pipe and the extra over rate for the bend, failed to appreciate that the base item of the mobile home for the first week had already been measured and paid for and therefore the rate for each additional week was the extra over rate alone.

In simple terms, and using the previous example, if you have items in the Bills of quantities for pipes - 10 metres and 'extra over for bends' - 10 no. If the one extra bend is required the additional sum is simply the extra over rate for the bend. The base rate for the pipe has been paid for already.

Had the parties chosen an experienced quantity surveyor as arbitrator the problems should never have arisen. Nor, it should be noted, would the problems have arisen if the works had been measured under the Hong Kong Government Standard Method of Measurement for Civil Engineering Works, where items for establishment, maintenance and removal of the temporary homes would have been provided which would have left no room for confusion.

(adopted from the HKIS Newsletter 8(3) March 1999)