

DEMOLISHING A BILL OF QUANTITIES IN A WITHOUT QUANTS CONTRACT

West Reg. Street (Property) Limited v Central Demolition Limited [2018] CSOH 98

- ▶ Risk of asbestos to be borne by the Demolition Contractor when asbestos removal had been left off the bill of quantities, but the description of the Works was broad enough to encompass it.
- ▶ A bill of quantities is 'not truly a bill of quantities' in a Without Quants contract and should not be used to measure and value works.
- ▶ No variation had been instructed by the Employer, even where the Employer had instructed the Contractor to price and instruct an asbestos removal subcontract after the Works began.

What is it about?

In this interesting case, an SBCC XQ 2011 contract relating to works at three buildings in central Edinburgh, included the '*complete demolition of a Victorian and 1960s building to basement level with all arisings being removed from site*'. A pre-contract strip out for the removal of asbestos had already taken place. The 'bill of quantities' forming part of the tender documents omitted any sums for the removal of asbestos. The decision before the Outer House was which party was to bear the cost of the subsequent asbestos removal carried out during the demolition works.

The Employer's position was that this was a lump sum contract and although the form of bill of quantities had been used, it did not have the same function as a bill of quantities in a 'with quantities' contract. The contract documents had made clear that there was a risk of asbestos at the property.

The Contractor's position was that the lump sum was to perform defined work – and the asbestos removal lay outside this. Reference was made to two instructions given by the Employer during the contract. These instructions were for specialist subcontractors to price and remove asbestos discovered during the demolition.

The Court found that, in a without quantities contract, the inclusion of a 'bill of quantities' was for specification information only. The Contract Documents were to be considered as a whole and the 'bill of quantities' was to assist in the assessment of a lump sum tender, it was not to be used to measure and value the work. Any instruction around the asbestos removal was for the facilitation of the contract and not a variation. The amount claimed by the Contractor as a 'variation' in respect of the instructions could be recovered by the Employer.

Why does it matter?

The case demonstrates why it is important to be clear what documents are being used for the contract, and why. The inclusion of the bill of quantities in a without quants form without explanation created confusion and room for dispute. Context may vary the role of a construction document and it may not be clear to all parties how that document is intended to operate.

Now what?

The answer is not to reach for a familiar contract form without thinking through the contract documents as a whole, and care should be paid to the inclusion of any document in the tender process. If a bill of quantities is to be used to assist in a XQ contract, be sure that an explanation for this is given at the outset.

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