

Conditions of Contract – 2. Contractual Claims (Costs)

*Presentation for RAP3 Senior Technical
Management (STM) Course*

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Conditions of Contract - Topics

1. Extensions of Time & Control
- 2. Contractual Claims (Costs)**
3. Disputes and Termination

Causes of Changed Costs

1. Variations (GCC 38)
2. Compensation Events (GCC 42.1)
3. Changes in Quantity (GCC 43.1)

Variation Order

- ❖ Definition: ‘A **Variation** is an instruction given by the Project Manager which varies the Works’. (GCC 1.1.ii)
- ❖ International Context – Law (FIDIC MDB 13.1):
 - ❑ changes to the quantities of any item of work included in the Contract (however, such changes do not necessarily constitute a Variation),
 - ❑ changes to the quality and other characteristics of any item of work,
 - ❑ changes to the levels, positions and/or dimensions of any part of the Works,
 - ❑ omission of any work unless it is to be carried out by others,
 - ❑ any additional work, Plant, Materials or Services **necessary for the Permanent Works**, or
 - ❑ changes to the sequence or timing of the execution of the Works.
- ❖ An ‘**Amendment**’ – changes not necessary for completion of Works.

Valuing a Variation (1 of 2)

- ❖ *'The Contractor shall provide the PM with a quotation for carrying out the Variation when requested to do so by the PM. The PM shall assess the quotation, which shall be given within seven (7) days of the request' (GCC 38.2)*
- ❖ *'If the Contractor's quotation is unreasonable, the PM may order the Variation and make a change to the Contract Price, which shall be based on the PM's own forecast of the effects of the Variation on the Contractor's costs.'* (GCC 38.3)

Valuing a Variation (2 of 2)

- ❖ 3 usual methods in order of priority:
 - ❑ if the work in the Variation corresponds to an item description in the BofQ the rate in the Bill of Quantities shall be used, or
 - ❑ If similar rates exist these may be used as the basis for deriving new rates, or
 - ❑ If no rates or prices are relevant for the derivation of a new rate or price, it shall be derived from the reasonable Cost of executing the work, together with profit. [Reference to GoN Norms may be appropriate]
- ❖ The PM has to obtain the specific approval of the Employer for issuing a VO except :
 - ❑ except in an emergency situation, (e.g. protective measures for the safety of life or of the works or of adjoining property). (SCC 64.e)

Compensation Events

- ❖ *'If a Compensation Event would cause additional cost ... , the Contract Price shall be increased The Project Manager shall decide whether and by how much the Contract Price shall be increased'* (GCC 42.2)
- ❖ *'As soon as information demonstrating effect of each Compensation Event upon the Contractor's forecast cost has been provided by the Contractor, it shall be assessed by the Project Manager, and the Contract Price shall be adjusted accordingly. If the Contractor's forecast is deemed unreasonable, the Project Manager shall adjust the Contract Price based on the Project Manager's own forecast'. (GCC 42.3)*

Compensation Events (GCC 42) 1 of 2

- a) Employer delays giving possession of site
- b) Changed schedule of Employer's other contractors
- c) PM orders a delay or does not issue drawings, instructions etc. on time
- d) PM orders additional tests which prove compliant
- e) PM unreasonably refuses to approve a sub-contract
- f) Ground conditions are substantially more adverse than could be expected

Compensation Events (GCC 42) 2 of 2

- g) Instructed additional work or unforeseen condition caused by Employer
- h) Non performance of utilities or Employer's other contractors
- i) Advance payment is delayed
- j) Effects on the Contractor of any of the Employer's Risks
- k) PM unreasonably delays issuing a Certification of Completion
- l) 'Force Majeure' event as determined by PM (added in 2014 rev. but not in WB GCC)

Changes in Quantity (1 of 4)

- ❖ If the final quantity of the work done differs from the quantity in the BoQ for the particular item by more than **25 percent**, provided the change exceeds **2 percent** of the Initial Contract Price, the PM shall adjust the rate to allow for the change. (GCC 37.1.a)
- ❖ One of the most abused clauses, wrongly interpreted as:
 - ❑ Always implying a cost increase (can be a decrease),
 - ❑ A given right to derive a new rate,
 - ❑ The right of a Contractor to correct an erroneous rate

Changes in Quantity (2 of 4)

- ❖ Normally an **increase** in quantity implies a **decrease** in unit cost and a **decrease** in quantity implies an **increase** in cost (due to 'fixed cost' recoveries e.g. purchase / establishment of plant and equipment).

Changes in Quantity (3 of 4)

Item	Unit	Unit Cost	Quantity (sq.m)		
			5,000	10,000	15,000
Purchase of new roller	Item	10,000,000	10,000,000	10,000,000	10,000,000
Materials	sq.m	1,000	5,000,000	10,000,000	15,000,000
Labour	sq.m	500	2,500,000	5,000,000	7,500,000
Equipment running	sq.m	200	1,000,000	2,000,000	3,000,000
Total Cost			18,500,000	27,000,000	35,500,000
Equivalent Unit Cost / sq.m			3,700	2,700	2,367

Changes in Quantity (4 of 4)

- ❖ The Contractor shall be deemed to have satisfied himself as to the correctness and sufficiency of the Accepted Contract Amount. (FIDIC GCC 4.11.a).
- ❖ ‘ .. *this change in quantity directly changes the Cost per unit quantity of this item by more than 1%.*’ (FIDIC GCC 12.3(a)(iii)).
- ❖ ‘ .. *if, in the opinion of the PM, the quantity of work above the limit stated in GCC 37.1 does not cause the cost per unit of quantity to change, the rate in the BoQ shall be used ...*’ (GCC 38.6)
- ❖ Again needs Employer’s prior consent (SCC 64.f)
[‘**cost**’ means expenditure reasonably incurred by Contractor].

Case Study

END



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