

CASE STUDY – Contractual Claims

1. BACKGROUND

Review and discuss the following contractual situations before preparing your recommendations in the capacity of Project Manager's representative.

2. CASE 1: VARIATION ORDERS

Scenario 1: Contract has been awarded and Contractor is part way thru constructing Road Construction Project 'A' which is 20 km in length and near the Southern end of the District. DDC find they have spare funds and have a sudden need to urgently build a further 3 km road section in the North of the District. The nature of the works seems very similar both in terms of work nature, access and cost / availability of materials. The DDC's PM prepares a VO for the additional road section using same unit rates and presents it the Contractor for his concurrence. The Contractor refuses to accept the VO stating that his current unit rates are loss-making. What are the implications / options available to DDC / PM?

Scenario 2: Having decided not to proceed with the 2nd Road, works continue but encounter unstable cutting mid-way necessitating a change of alignment into rocky ground. PM prepares a VO giving revised setting out information and revising the BoQ to reflect an increase in hard rock excavation (an additional 10% on the total quantity) and a corresponding decrease in the amount of ordinary soil. As the work is of exactly similar nature to elsewhere on site the PM proposes to use existing BoQ rates. The Contractor again claims that his rates are loss-making and refuses to do the work unless he receives a 20% mark-up. What are the implications / options available to DDC / PM?

Scenario 3: Employer finds that the plum concrete 'U' drains specified in the drawings are the wrong height and needs to increase the wall height from 600 mm to 750 mm (all other dimensions remaining identical). The PM's request for quotation is met with a totally new rate being more than double the original rate. What should be the PM's course of action?

3. COMPENSATION EVENTS

Scenario 4 (Late issue of drawings): The contract documents for an improvement project include the approximate location and quantities of a major gabion retaining wall but no information on foundation levels. The Contractor has noted that this information is vital for him to be able to commence the works and has shown a milestone date on his accepted programme as 'receive setting out details from PM for gabion Structure'. One week before he is due to start the work Contractor has still not received the details and writes to the PM reminding him of his intended start date (1st April 2016) and that he is making preparations to mobilise the excavator. On the 1st April the PM notes 1 x tracked excavator, 2 trucks and 10 labourers stood idle at the site. PM tells Contractor 'sorry but my designer is sick' and eventually issues the drawings on the evening of 10th April. One day later the Contractor's letter arrives on PM's desk requesting a 10 day EoT and containing a substantial bill for costs including 10 days hire charge of tracked excavator and its delivery charges, 2 dump trucks and 10 work men. What are the contractual cost implications here and how could the situation have been better handled?

4. CHANGES IN QUANTITY

Scenario 5 (nominal increase in quantities): The following are details of a Contract:

- Nature:** Labour-based Specific Maintenance
- Scope:** Majority comprises a series of new gabion structures
- Value:** NRs 6M (total) of which NRs 2M are stone filled gabions
- BoQ:** 500 cum gabions at unit rate NRs 4,000 / cum

Due to slight changes in site conditions PM issues a VO before Contractor starts works for **25 cum** extra gabions making **525 cum total**. Discuss the implications for valuing the Variation.

Scenario 6 (substantial change in quantities): Contract conditions same as above, except:

Due to much softer ground conditions than expected the PM is compelled to issue a VO for **150 cum** extra gabions making **650 cum total**. Discuss the implications for valuing the Variation.

Scenario 7 (decrease in quantities): The following are details of a Contract:

- Nature:** Heavy road 'backlog' / Periodic maintenance
- Location:** Remote mid-western
- Scope:** Spot improvements including renewed sub-base surfacing in sections
- Value:** NRs 6M of which NRs 2M is for provision of compacted sub-base
- BoQ:** Provide and compact sub-base 1,000 cum at unit rate NRs 2,000 / cum

Due to errors in the original design survey it is found that many more structures are required whilst far less sub-base is actually justified. As a result the PM issues a Variation to reduce the total quantity of compacted sub-base from **1,000 cum to just 200 cum**. The Contractor had previously submitted a break-down of his rate for sub-base incorporating a mobilisation / demobilisation charge from KTM of NRs 100,000. Discuss the implications for valuing the Variation.