The FIDIC Standard Conditions of Contract for Construction

Variations and Adjustments

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Introduction

• Overview of Clause 13
• Value Engineering Proposals
• Review of Rates and Prices
• Can Increased Quantities Constitute Unforeseeable Conditions?
• Changes in the FIDIC/MDB version
• Disclosure of the Contractor’s pricing Information
Clause 13: Variations and Adjustments

13.1 Right to Vary:

- Engineer has right to initiate
  - By issuing instruction, or
  - Requesting a proposal from contractor
- Contractor has limited grounds to refuse a Variation order: he cannot readily obtain the goods required for the Variation
- Engineer may instruct in spite of refusal
- Contractor to refer dispute to DAB
Clause 13: Variations and Adjustments

13.2 Value Engineering
- Contractor may submit a proposal which will:
  - Accelerate completion
  - Reduce the cost to Employer
  - Improve the efficiency or value of the Completed Works
  - Otherwise be of benefit to the Employer
- Contractor to bear cost of the proposal
Clause 13: Variations and Adjustments

– Proposal shall include:
  • Description of proposed work and programme
  • Proposal for modifications in the programme as per Sub-clause 8.3
  • Proposal for the evaluation of the Variation
Clause 13: Variations and Adjustments

If proposal is accepted, unless otherwise agreed:

- Contractor shall design this part
- Subparagraphs (a) to (d) of Sub-clause 4.1 [Contractor’s General Obligations] shall apply
- If the change results in a reduction in the Contract value the Engineer shall determine (Sub-clause 3.5) a fee to be included in the Contract Price:
  - 50% of the reduction in contract value, excl. Reductions from 13.7 or 13.8 MINUS reduction in value to the Employer of the varied Works
Clause 13: Variations and Adjustments

13.3 Variation Procedure

Upon request of the engineer to propose a Variation the Contractor may:

– Give reasons of why he can not comply with the request
– Or submit:
  • A description of proposed work to be performed and programme for its execution
  • A proposal for modifications to the programme and to the Time for Completion
  • A proposal for the evaluation
– Engineer is to respond asap
– Contractor shall not delay any work while awaiting response

Last sentence rather theoretical, often a requirement to carry out substantial work before decision on a proposal. Will cost be reimbursed if Variation is not executed? Contractor to ask for clarification pre tender.
Clause 13: Variations and Adjustments

13.4 Payment in applicable Currencies
   • Self evident

13.5 Provisional Sums
   • Self evident

13.6 Daywork
   – Procedure for work of a minor, incidental nature on the basis of a Variation
   – Engineer to be enabled to check quotations for goods before they are ordered
   – Contractor is to submit accurate statements on Personnel, Equipment, Plant and Materials used
Clause 13: Variations and Adjustments

13.7 Adjustments for Changes in Legislation

- Cost increase (or decrease) due to changes in law of the Country

- Note: the Country: defined term so this is limited to changes in law in the country where the Permanent Works are executed. So changes in law in other countries that do have an effect on the Cost will not lead to an Adjustment

- Adjustment can be:
  - Extension of Time for Completion
  - Payment of additional Cost
Clause 13: Variations and Adjustments

13.8 Adjustment for Changes in Cost
- Though complicated rather self evident
Review of Rates and Prices

Subclause 12.3 Evaluation

- Revising of Rates when,
  - 10% or greater increase in any quantity, or
  - The change in quantity multiplied by the Contract rate exceeding 0.01% of the Accepted Contract Amount, or
  - The change in quantities changes the cost per unit by more than 1%
Can increased quantities constitute Unforeseeable conditions?

OR:

Can a Contractor claim extra money (and time) because increased quantities constituted Unforeseeable conditions rather than claiming under 12.3 Evaluation?

Unforeseeable means not reasonably foreseeable by an experienced Contractor by the date of submission of the Tender.
Can increased quantities constitute Unforeseeable conditions?

Unforeseeable:

4.6 Unforeseeable cost due to an instruction to cooperate with the Employers personnel, etc....

Such Instruction gives the right to a Variation if it causes Unforeseeable cost, and the question raised becomes irrelevant.
Can increased quantities constitute Unforeseeable conditions?

4.12 Unforeseeable Physical Conditions may give rise to:
- An Extension of Time for Completion
- Payment of Cost due thereto

Increase quantities are not Unforeseeable Physical Conditions but may be due to Unforeseeable Physical Conditions. Then Sub-clause 4.12 comes into play and if the physical conditions were unforeseeable they may give rise to Payment of Cost due to these Unforeseeable Physical Conditions.

The question above is once again irrelevant.
Can increased quantities constitute Unforeseeable conditions?

Subclause 17.3 sub h relates to Unforeseeable operation of the forces of nature. If they cause physical damage to the Works the Contractor may claim compensation in time and money on the basis of Subclause 17.4. The question is once again irrelevant.