

Participants of the CPD Event conducted in Abu Dhabi yesterday can now download the copies of the slides given below.

Some of the participants enquired, whether the Sound Contract Administration Course would be conducted in Abu Dhabi in the future. If there is a sufficient number interested, the Class can be conducted in Abu Dhabi for the same fee of the Dubai Class. Please email your interest to sam99@eim.ae stating which of the following options you prefer for this 25 hour course:-

A – Single Week-End of Friday/Saturday - 8.00 am to 9.30 pm with mid-day prayer breaks.

B – Two Consecutive Fridays of above timings.

C – Two consecutive Saturdays of above timings.

D – Three consecutive Friday afternoons - 2.00pm to 10pm.

E – Three consecutive Saturday afternoons - 2.00pm to 10pm.

For Options A, B & D earliest dates available are only in June. For Options C & E dates are available in March, April and May as well.

Revisiting a Dozen Causes where Rates/Prices become Inapplicable”

by

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Question

In a lump sum Contract (where the Works would not be re-measured), the Drawings show **200 m** of boundary wall, but it is given in the Bill of Quantities (by the Employer), and priced (by the Contractor) as follows:

Boundary Wall	100	m	100/=	10,000 . 00
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A variation has been instructed to delete the whole of the boundary wall. Which of the following options would you use in the valuation of this variation:

- (1) - 100 m @ 100/= = - 10,000 . 00 ?
 (2) - 200 m @ 100/= = - 20,000 . 00 ?
 (3) - 200 m @ 50/= = - 10,000 . 00 ?



- 52.1** All variations referred to in Clause 51 and any additions to the Contract Price which are required to be determined in accordance with Clause 52 (for the purpose of this Clause referred to as “varied work”), shall be valued at the rates and prices set out in the Contract if, in the opinion of the Engineer, the same shall be applicable. If the Contract does not contain any rates or prices applicable to the varied work, the rates and prices in the Contract shall be used as the basis for valuation so far as may be reasonable, failing which, after due consultation by the Engineer with the Employer and the Contractor, suitable rates or prices shall be agreed upon between the Engineer and the Contractor. In the event of disagreement the Engineer shall fix such rates or prices as are, in his opinion, appropriate and shall notify the Contractor accordingly, with a copy to the Employer. Until such time as rates or prices are agreed or fixed, the Engineer shall determine provisional rates or prices to enable on-account payments to be included in certificates issued in accordance with Clause 60.

Lump Sum (Non-Remeasurable) Contracts

- (A) With only a Schedule of Rates (plus Drawings and Specification)
- (B) With a Bill of Quantities (plus Drawings and Specification).
 - BOQ has provision for the Tenderer to price an adjustment in respect of any missing items, errors in item descriptions and differences in quantities (between Dwgs/Spec. and BOQ)
- (C) With a Bill of Quantities (plus Drawings and Specification).
 - BOQ does not have a provision for the Tenderer to price an adjustment as above.

Taker-off measures from the drawing and provides the quantity		=	200 m		
Estimator builds-up the rate (say current market price)		=	50/= per m		
Therefore, the Tender Price		=	10,000/=		
A	Boundary Wall		m	50/=	
B	Boundary Wall	100	m	50/=	5,000/=
B-1	Insert here any adjustments required due to errors.....				+ 5,000/=
C	Boundary Wall	100	m	100/=	10,000/=

52.2 Provided that if the nature or amount of any varied work relative to the nature or amount of the whole of the Works or to any part thereof, is such that, in the opinion of the Engineer, the rate or price contained in the Contract for any item of the Works is, by reason of such varied work, rendered inappropriate or inapplicable, then, after due consultation by the Engineer with the Employer and the Contractor, a suitable rate or price shall be agreed upon between the Engineer and the Contractor. In the event of disagreement the Engineer shall fix such other rate or price as is, in his opinion, appropriate and shall notify the Contractor accordingly, with a copy to the Employer. Until such time rates or prices are agreed or fixed, the Engineer shall determine provisional rates or prices to enable on-account payments to be included in certificates issued in accordance with Clause 60.

Provided also that no varied rate or price, or extra payment shall be used in the valuation of varied work or their effects unless, within 14 days of the date of such instruction and, (other than in the case of omitted work), before the commencement of the varied work, notice shall have been given either:

(a) by the Contractor to the Engineer of his intention to claim extra payment or a varied rate or price, or

(b) by the Engineer to the Contractor of his intention to vary a rate or price

How Rates / Prices become Inapplicable

1. Economies of Scale (Larger quantities attract lower rates & vice versa)
2. Varied work being carried out under different circumstance
3. Lack of provisions in a BOQ to price the errors / differences

to be continued

51.1 The Engineer shall make any variation of the form, quality or quantity of the Works or any part thereof that may, in his opinion, be necessary and for that purpose, or if for any other reason it shall, in his opinion, be appropriate, he shall have the authority to instruct the Contractor to do and the Contractor shall do any of the following:

- (a) increase or decrease the quantity of any work included in the Contract,
- (b) omit any such work (but not if the omitted work is to be carried out by the Employer or by another contractor),
- (c) change the character or quality or kind of any such work,
- (d) change the levels, lines, position and dimensions of any part of the Works,
- (e) execute additional work of any kind necessary for the completion of the Works, or
- (f) change any specified sequence or timing of construction of any part of the Works.

No such variation shall in any way vitiate or invalidate the Contract, but the effect, if any, of all such variations shall be valued in accordance with Clause 52. Provided that where the issue of an instruction to vary the Works is necessitated by some default of or breach of contract by the Contractor or for which he is responsible, any additional cost attributable to such default shall be borne by the Contractor.

49.2 To the intent that the Works shall, at or as soon as practicable after the expiration of the Defects Liability Period, be delivered to the Employer in the condition required by the Contract, fair wear and tear excepted, to the satisfaction of the Engineer, the Contractor shall:

(a) complete the work, if any, outstanding on the date stated in the Taking-Over Certificate as soon as practicable after such date, and

(b) execute all such work of amendment, reconstruction, and remedying defects, shrinkages or other faults as the Engineer may, during the Defects Liability Period or within 14 days after its expiration, as a result of an inspection made by or on behalf of the Engineer prior to its expiration, instruct the Contractor to execute.

How Rates / Prices become Inapplicable

1. Economies of Scale (Larger quantities attract lower rates & vice versa)
2. Varied work being carried out under different circumstance
3. Lack of provisions in a BOQ to price the errors / differences
4. Instructing variations which are neither necessary nor appropriate
5. Instructing variations after the Works is taken-over (except as in Cl. 49.2)

to be continued

Cost	Cost+P	Provisions in the Contract
6.4 (b)	5.2 (a)	<p>Sub-Clause 44.1</p> <p>(a) Extra or Additional Work</p> <p>(b) Delay referred to in the Conditions of Contract</p> <p>(c) Climatic Conditions</p> <p>(d) Delay, impediment or prevention by Employer</p> <p>(e) Other Special Circumstances</p>
12.2 (b)	7.1 (a)	
	13.1 (a)	
	17.1 (a)	
	18.1 (a)	
	20.3 (a)	
27.1 (b)		
31.1 (d)	31.2 (a)	
36.5 (b)		
38.2 (a)		
40.2 (b)		
42.2 (b)		
	49.3 (a)	No Cost
50.1 (a)		44.1(c)
59.1 (d)	51.1 (a)	
69.4 (b)	65.3 (a)	

Loss lies where it falls

How Rates / Prices become Inapplicable

1. Economies of Scale (Larger quantities attract lower rates & vice versa)
2. Varied work being carried out under different circumstance
3. Lack of provisions in a BOQ to price the errors / differences
4. Instructing variations which are neither necessary nor appropriate
5. Instructing variations after the Works is taken-over (except as in Cl. 49.2)
6. Where Rates / Prices become the vehicle for paying prolongation costs

to be continued

CONTROL

FORECAST

Time	Clause 14 Programme
Quality	Specifications/Drawings/ Standards
Cost	Priced Bill of Quantities

Objects of the Bill of Quantities

2.4 The objects of the Bill of Quantities are :

- (a) to provide such information of the quantities of work as to enable tenders to be prepared efficiently and accurately.
- (b) when a contract has been entered into, to provide for use of the priced Bill of Quantities in the valuation of work executed.

- CESMM3

Method of Measurement

The object of a good method of measurement is to set forth the procedure/rules according to which, the Bill of Quantities should :

- (a) describe as accurate (but as simple and brief) as possible, the work to be priced.
- (b) distinguish between items of work of different nature, and between work of same nature but having different cost considerations.
- (c) allow for separating any costs not proportional to quantities.

How Rates / Prices become Inapplicable

1. Economies of Scale (Larger quantities attract lower rates & vice versa)
2. Varied work being carried out under different circumstance
3. Lack of provisions in a BOQ to price the errors / differences
4. Instructing variations which are neither necessary nor appropriate
5. Instructing variations after the Works is taken-over (except as in Cl. 49.2)
6. Where Rates / Prices become the vehicle for paying prolongation costs
7. Single item in BOQ for several circumstances requiring average rate/price
8. Lack of provisions in the BOQ to separate costs not proportional to quantity

to be continued

Changes in Cost and Legislation

Increase or Decrease of Cost	70.1	There shall be added to or deducted from the Contract Price such sums in respect of rise or fall in the cost of labour and/or materials or any other matters affecting the cost of the execution of the Works as may be determined in accordance with Part II of these Conditions.
Subsequent Legislation	70.2	If, after the date 28 days prior to the latest date for submission of tenders for the Contract there occur in the country in which the Works are being or are to be executed changes to any National or State Statute, Ordinance, Decree or other Law or any regulation or bye-law of any local or other duly constituted authority, or the introduction of any such State Statute, Ordinance, Decree, Law, regulation or bye-law which causes additional or reduced cost to the Contractor, other than under Sub-Clause 70.1, in the execution of the Contract, such additional or reduced cost shall, after due consultation with the Employer and the Contractor, be determined by the Engineer and shall be added to or deducted from the Contract Price-and the Engineer shall notify the Contractor accordingly, with a copy to the Employer.

How Rates / Prices become Inapplicable

1. Economies of Scale (Larger quantities attract lower rates & vice versa)
2. Varied work not being carried out under similar conditions as original scope
3. Lack of provisions in a BOQ to price the errors / differences
4. Instructing variations which are neither necessary nor appropriate
5. Instructing variations after the Works is taken-over (except as in Cl. 49.2)
6. Where Rates / Prices become the vehicle for paying prolongation costs
7. Single item in BOQ for several circumstances requiring average rate/price
8. Lack of provisions in the BOQ to separate costs not proportional to quantity
9. Fluctuation of labour, material & other costs (Subsequent Legislation- 70.2)
10. Instructing variations beyond the fixed/firm price duration
11. Necessity to restore an under-recovery when an omission is instructed
12. *Quantum Meruit*

Henry Boot Construction v Alstom Combined Cycles (1999)

..... the rate in the contract for steel sheet piling was twice what it should have been. When a variation was instructed for more sheet piling, the Contractor argued that the contract rate should apply. The Employer countered that a fair valuation should be made for the additional sheet piling. (Additional work was carried out under similar conditions to the original work).

Held that the work is of similar character and executed under similar conditions to the work priced in the Bill of Quantities and therefore the BOQ rate will apply. The fact that the BOQ rates are too high or too low is irrelevant. The parties to the contract have agreed in the contract that they will be used to value variations.

Sound Contract Administration

1. Variations and Valuation of "varied work"
2. Contractor's Entitlement to Extension of Time and Prolongation Costs.
3. Dealing with Concurrent Delays.
4. Notices, Detailed Particulars and Calculation of Prolongation Costs
5. Sub-Clause 52.3 & its Effect on Prolongation Costs.
6. Formulae for the Recovery of Head Office Overheads. (Hudson, Emden, Eichleay, Hank-Laun and Samaratunga)
7. Drafting the Contract Agreement.
8. Cost Control & Methods of Measurement.
9. Dispute resolution, Arbitration and ADR.
10. Sound Management & Administration.

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