

Valuation of Variations

FIDIC and what happens when you change it

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Valuation of Variations

What we will cover

1. Background.
2. Key FIDIC provisions.
3. Sanctity of the pricing.
4. Methods of measurement.
5. Differences in work/extrapolation of rates.
6. Fair/reasonable.
7. Other provisions.
8. Common issues.

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Background

1. Clauses 13.1-13.3.
2. Right to vary.
3. Instruction/Proposal Request.
4. Entitlement to time.
5. Entitlement to Money.
6. Two competing approaches.

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Key FIDIC Provisions (1)

1. Sub-clause 13.3 (link to Clause 12.3).
2. Contractor's proposals – this can be a lump sum or any alternative method of pricing.
3. Measurement under Clause 12 is the default position.
4. The Red Book is a re-measurement contract **UNLESS YOU AMEND IT.**

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Key FIDIC Provisions (2)

1. The measurement agreed or determined in accordance with Sub-clauses 12.1 and 12.2.
2. The appropriate rate for the item
 - the rate specified for such item in the contract,
 - or if no such item, a rate specified for similar work.
3. New rate or price? When? (12.3(G))
 - I. no rate or price is specified in the Contract for this item; and
 - II. no specified rate or price is appropriate because the item of work is not of similar character, or is not executed under similar conditions as any item in the Contract.
4. The general evaluation test in Sub-clause 12.3(a) still applies.

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Key FIDIC Provisions (3)

1. How are new rates and prices determined?
 - derived from any relevant rates or prices in the Contract.
 - reasonable adjustment for the matters listed in Sub-clause 12.3(a) and 12.3(G).
 - reasonable cost plus profit taking account of any other relevant matter.
 - cost means expenditure reasonably incurred including overhead and similar charges.

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Omissions

1. Agreement.
2. Applies where:
 - I. the Contractor incurred or will incur cost which if work not omitted would be covered by a sum forming part of the Contract sum.
 - II. that the omission will lead or has lead to that sum not forming part of the Contract sum.
 - III. cost not deemed to be in substituted work.
3. Engineer then agrees or determines the cost.

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Determinations under Sub-clause 3.5

1. Consult first.
2. If agreement NOT reached, then make a fair determination in accordance with the Contract, taking due regard of all relevant circumstances.

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Sanctity of prices

- What does this mean?
- The level of the rate itself is not an “appropriate” issue.
- WELDON PLANT V COMMISSION FOR THE NEW TOWNS [2001] ALL ER (COMM) 264.
- HENRY BOOT V ALSTOM [2000] BLR 247.
- Is an employer constrained in ordering more of an item at a lower rate?
- Additional information? Can a greater degree of breakdown help?

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Methods of measurement

- Role.
- What does FIDIC say?

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Differences in work

- Not of similar character
- Different conditions
- Any conditions or those referred to in the Contract?

Extrapolation of rates

- Mixed approaches
- HENRY BOOT case
 - Plant/material/labour/overhead
- Preliminaries cost even if no applicable rate

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Fair/reasonable

- Cost based analysis.
- Market rate analysis.
- WELDON PLANT V COMMISSION FOR THE NEW TOWNS [2001] ALL ER (COMM) 264.
- Any link to pricing in the contract?
- Preliminaries, overhead and profit.

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- General rate adjustment clauses
- Dayworks


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Common issues

- What happens if there is no provision?
- Additional breakdown provisions – do they help?
- Is it always cost?
- Particular issues on omissions.

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Measurement contracts



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