

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.

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.

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.

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.

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.

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.

Determinations under Sub-clause 3.5

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

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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Valuation of Variations

Methods of measurement

- Role.
- What does FIDIC say?

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

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.

Valuation of Variations

- General rate adjustment clauses
- Dayworks

Common issues

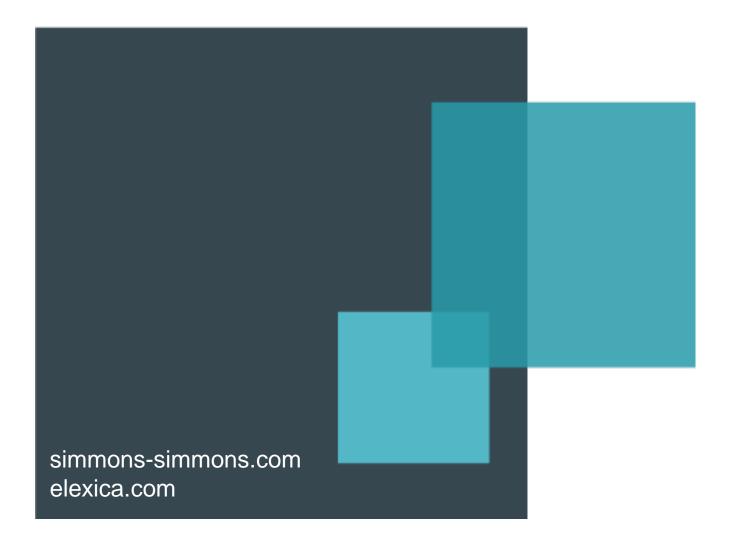
- What happens if there is no provision?
- Additional breakdown provisions do they help?
- Is it always cost?
- Particular issues on omissions.

Valuation of Variations

Measurement contracts

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