

Your Contractual Questions Answered.

Entrusty Group, a multi-disciplinary group of companies, of which, one of their specialisation is in project, commercial and contractual management, will be running a regular contractual questions and answers section for Master Builders members in the Master Builders Journal.

In this second instalment of this series, **Entrusty Group** will provide the answer to the frequently asked question, **Can the Contractor insist on agreeing the cost of variation work before he proceed with it ?**

Most standard forms of building contract provide for written instruction by the Architect/Engineer/SO prior to ordering any variation works. The Contractor is obliged to carry out any variation works instructed (incl. those deemed variations such as statutory compliance), unless its validity is in question.

The appointed QS (if any) is then responsible for valuation of variations under the relevant clauses of the contract. Quotations or price agreement are usually not a precondition under most standard form contract prior to carrying out the variation works.

Standard Forms of Contract (Relevant Clauses)

PAM 98 Form of Building Contract

Clause 2 allows the Architect to issue instruction to the Contractor who shall forthwith comply with it, unless the latter question his power to do so.

Clause 11 defines Variation and provides for valuation of variations by the Architect or the QS if he so instruct. Clause 11.5 (v), provides for measurement and valuation of all variations to be included in Interim Certificates and by adjustment of the Contract Sum.

There is no provision for submission of quotation or price agreement prior to carrying out any variation works.

JKR/PWD Form of Contract (203A – Rev 10/83)

Clause 5 allows the SO to issue variation instruction to the Contractor who shall forthwith comply with it.

Clause 24 defines Variation and 25 provides for valuation of variations by the SO or his authorised representative (which may be the QS). Clause 25, provides for measurement and valuation of all variations to be included in the adjustment of the Contract Sum.

There is no provision for submission of quotation or price agreement prior to carrying out any variation works.

IEM Conditions of Contract

Clause 23 allows the Engineer to issue variation instruction to the Contractor.

Clause 24 provides for valuation of variations by the Engineer or his authorised representative (which may be the QS). Clause 25 (e) requires the Contractor to submit a monthly account giving detailed particulars of all claims of all extra or additional work ordered by the Engineer for payment.

There is no provision for submission of quotation or price agreement prior to carrying out any variation works.

CIDB Form of Contract for Building Works

Similar to other forms, clauses 28 and 29 allow the SO to issue variation instruction and valuation of variations.

Whilst again there is no provision for submission of quotation or price agreement prior to carrying out any variation works, clause 29.2 however is a comprehensive provision for agreement of its valuation.

29.2 (a) requires the Contractor to provide the SO with such details and particulars pursuant to Cl 29.1 for the purpose of valuing the Variation by the SO. The value of the Variation will be notified to the Contractor by SO within 30 Days upon receipt.

29.2 (b) requires the Contractor to give written notice of any disagreement to the SO within 30 Days of the said notice receipt, together with his valuation and its particulars and detail. The Variation valuation is deemed accepted and final and binding, if the Contractor fails to give a notice of his disagreement to the SO within the said 30 Day period.

29.2 (c) requires the SO to notify the Contractor of his decision within a further 30 Days by either confirming or amending the whole or any part of valuation previously made following the said notice of disagreement (if any).

29.3 requires the SO to give effect to the valuation of the Variation in the following certificate issued by the SO under Clause 42 upon notifying the Contractor of the value of the Variation pursuant to Cl. 29.2.

Conclusion/Solution

The above standard forms do not have any provision for the submission of quotation or price agreement prior to carrying out the variation works. Therefore the contractor is required to proceed with the variation works prior to any agreement on the price

However, in good practice and to avoid unnecessary dispute or problem arising, it is prudent that the Contractor submit a quotation upon SO's instruction or prior to carrying out the variation works. This is particular so when the variation works are of dissimilar character and/or executed under dissimilar condition.

The next issue will be providing the answer the question, **Is the Contractor bound by his tendered rates, if the quantities changed substantially ?**

The **Entrusty Group** includes Entrusty Consultancy Sdn Bhd (formerly known as J.D. Kingsfield (M) Sdn Bhd), BK Burns & Ong Sdn Bhd, Pro-Value Management and Proforce Management Services Sdn Bhd. Apart from project, commercial and contractual management services, the group also provides risk, resources, quality and value

management and recruitment consultancy services to various industries, particularly in construction and petrochemical, both locally and internationally.

Entrusty Group will provide a 30 minutes of free consultancy with prior appointment to MBAM members on their contractual questions. Kindly contact HT Ong or Wing Ho at 22-2 Jalan 2/109E, Desa Business Park, Taman Desa, 58100 Kuala Lumpur, Malaysia. Tel: 6(03)-7982 2123 Fax: 6(03)-7982 3122 Email: ntrusty@entrusty.com.my