

Should Additional Preliminaries Be Evaluated On Recurring Costs Basis Or Actual Costs Incurred?

By the Entrusty Group

The Entrusty Group, a multi-disciplinary group of companies, of which, one of their specialisations is in project, commercial and contractual management, has been running a regular contractual question-and-answer section for MBAM members in Master Builders Journal.

In this instalment of the series, the Entrusty Group will provide the answer to the frequently asked question above.

Preliminaries is that part of the Bills of Quantities which describes the project and contract particulars, lists the contractor's general obligations, states works, goods, materials by others, parties obligations and liabilities, general facilities, etc.

Typically, preliminaries comprise of the following items:

1. Preliminaries particulars – project and contract details, works, goods & materials by others, parties obligations and liabilities, etc.;
2. Plant, tools, and vehicles;
3. Scaffolding;
4. Site administration and security;
5. Transport for workpeople;
6. Protection of work;
7. Water, lighting and power;
8. Temporary telephone;
9. Temporary roads, hardstandings, crossings, etc.;
10. Temporary accommodation;
11. Traffic regulations;
12. Safety, health and welfare;
13. Maintenance of public and private roads;
14. Removal of rubbish, debris, etc.;
15. Control of noise, pollution, etc.;
16. Statutory compliance and obligations;
17. Surety or performance bond;
18. Insurances;
19. Shop drawings, co-ordination and record drawings;
20. Progress photographs and reports;

21. Schedules, charts, etc showing progress of trades, works, activities;
22. Clearing, cleaning and handover.

Preliminaries, which form part of the Bills of Quantities is normally priced by the Contractor separately from the trade or elemental bills for the duration of the contract.

In the monthly progress payment valuation, the Quantity Surveyor (QS) often divides the Preliminaries items into three categories, namely initial, recurring and final costs. Whilst the initial and final portions are fixed costs payable during commencement and at completion, the recurring cost items are usually spread proportionately over the whole contract completion period.

When there is a disruption or delay in the works, which leads to an extended period of the contract, it is usual that additional preliminaries are claimed and payable over the extended period. Additional preliminaries are in fact part of a loss and/or expense claim. These additional preliminaries should be based on actual cost incurred by the Contractor.

However, in practice, a simple and quick method to account for these additional preliminaries costs is using the recurring costs, based upon estimation or pro-rated time basis from the priced preliminaries in the Bills of Quantities. The initial and final preliminaries items are usually not

included in the calculation as these are one off cost and usually not increased over an extended period of the contract.

STANDARD FORMS OF CONTRACT (RELEVANT CLAUSES)

PAM Form of Building Contract

Additional preliminaries claim will fall under Clause 24 – loss and expense, and/or Clause 11.6 – valuation of direct loss and/or expense the provisions of which have been addressed in previous issues of this series of articles.

The Contractor needs to notify the Architect in writing if the regular progress of Works has been or is likely to be materially affected which he had incurred or is likely to incur direct loss and/or expense.

The claim must fall under the specific circumstances allowed under that clause.

The Contractor needs to submit together with the application the relevant information substantiating his claim to the Architect for his ascertainment and certification.

JKR/PWD Form of Contract

Under the JKR PWD 203 Form of Contract, additional preliminaries claim will fall under Clause 44 – loss and expense caused by delays, and/or Clause 5(d) – claims for compliance with SO's instructions, the provisions of which have

also been addressed in previous issues of this series of articles.

Again, the Contractor needs to notify the SO in writing of his intention to claim if the regular progress of Works has been materially affected which he has incurred direct loss and/or expense due to the specific reasons (limited to three).

IEM Conditions of Contract

Under the IEM Conditions of Contract, additional preliminaries claim will fall under IEM Clause 43 and 5(d), which is similar to JKR PWD 203 clause 43, except that IEM has an additional sub-clause, sub-clause 43(g) to cover for reason of delay in giving possession of the site as provided under Clause 38(b)(i).

CIDB Form of Contract

Additional preliminaries claim will fall under the clauses relating to Loss and expense are Clause 1.1 - Definition and Clause 31 - Claims for Loss and Expense, Clause 32 - Procedure for Claims.

In Clause 1.1 Definitions, loss and expense comprise of actual costs and percentage of the said costs.

Loss and expense may comprise of:

- (a) the direct relevant costs of labour, equipment, materials, or goods actually incurred on the site by the Contractor; and
- (b) costs of an overhead nature actually and necessarily incurred on the site by the Contractor; and
- (c) the amount equivalent to the percentage named in the Appendix of such cost referred to in (a) and (b) above, such amount shall be deemed to be inclusive of any profits, head office or other administrative overheads, financing charges (including foreign exchange losses) and any other costs, loss or expense of whatsoever nature and howsoever arising. This percentage shall exclude interest payable pursuant to sub-clause 42.9(b).

As to the procedure to claim for such loss and expense, this is set out in Clause 32:

- Clause 32.1 - Notice of Claim;
- Clause 32.2 - Contemporary Records;



- Clause 32.3 - Substantiation of Claims;
- Clause 32.4 - Access to Contractor's Books and Documents;
- Clause 32.5 - Payment of Claims;
- Clause 32.6 - Failure to Comply.

Conclusion/Solution

Additional preliminaries should be based on reasonable actual costs which flow from the claim event.

In practice, it is common to use recurring costs based upon estimation or pro-rated

time basis from the priced preliminaries in the Bills of Quantities. Such contractual loss and expense claims are often ascertained on recurring costs basis by the QS.

Where additional preliminaries is a subject of claim or dispute in an arbitration or court proceedings, damages as opposed to contractual loss and expense claim should be based upon actual costs supported by relevant information and documents to substantiate the claim. **MBAM**

The next issue will be providing the answer to the question, **What is a Performance Bond, its purposes and implications?**



The **Entrusty Group** includes Entrusty Consultancy Sdn Bhd (formerly known as J.D. Kingsfield (M) Sdn Bhd), BK Burns & Ong Sdn Bhd (a member of the Asia wide group BK Asia Pacific), Pro-Value Management, Proforce Management Services Sdn Bhd/Agensi Pekerjaan Proforce Sdn Bhd and International Master Trainers Sdn Bhd. Apart from project, commercial and contractual management services, the group also provides risk, resources, quality and value management, recruitment consultancy services and corporate training programmes to various industries, particularly in construction and petrochemical, both locally and internationally.

Entrusty Group apart from providing consultancy services also provides cost effective bespoke in-house training programmes / seminars in both soft and hard skills. Those who like to discuss and know more about the training programmes / seminars that are conducted kindly e-mail us at enquiry@entrusty.com or by phone on 03-7982 2123.

Entrusty Group will provide 30 minutes of free consultancy with prior appointment to MBAM members on their contractual questions. Kindly contact HT Ong or Wing Ho at 22-1/2 Jalan 2/109E, Desa Business Park, Taman Desa, 58100 Kuala Lumpur, Malaysia. Tel: 6(03)-7982 2123 Fax: 6(03)-7982 3122 Email: enquiry@entrusty.com.my Website : www.entrusty.com