

CONTRACTUAL CHANGES – CONTROL VALUE AND MANAGE RISKS

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1. ABSTRACT

Changes during a project are more of a rule than an exception. This is why everyone involved in project business should realize the importance of change management. In the global contracting environment where emphasis is placed on minimizing costs and maximizing performance, poorly managed changes are hazardous.

Change management has to be considered already when planning and negotiating a contract. Proactive contracting will strengthen project performance and eliminate communication difficulties among contracting parties. For a project, it is crucial to carefully define the scope and the other key contractual provisions, which should include a workable dispute resolving mechanism before signing a contract.

Contractors and employers often rely on standard terms and conditions (STCs) to govern their relationship. No doubt, these are helpful instruments, but they should be used with awareness and care. When STCs constitute a part of a contract, it is essential for the contracting parties to truly understand how they allocate costs and risks between the parties and what requirements they set for variations and the communication of claims, notifications, etc.

In this paper, the variations clauses of two STCs, namely Orgalime turn key General Conditions 2003 and FIDIC Silver Book for EPC/turnkey projects, are examined in respect of the following three questions: Who is entitled to initiate variations? When and how is the variation established? Who bears the costs for the variation? The STCs are evaluated from both the employer's and the contractor's point of view and their main differences are discussed. Not surprisingly, the Orgalime turn key conditions seem to be more contractor friendly and the FIDIC Silver Book more employer friendly. Neither of them, unfortunately, seems to provide sufficient detailed change control procedures. Contracting parties should take this into account and address change control issues upfront in their negotiations.

An outline of change control procedure and issues to be addressed are presented in the last chapter. The task of such procedures is to provide efficient tools to agree on changes before they occur and to keep the project on track and within budgetary limits.

2. KEYWORDS

Change management, FIDIC, Orgalime turnkey, variations, changes, standard terms and conditions (STCs), proactive contracting, claim, scope, change control procedures

3. INTRODUCTION

In any project there are likely to be changes to the original plan during the course of the project. This is true also for turn key projects, which are used as examples in this paper. Over the time of project implementation, new issues evolve. When negotiating a contract change management is often overlooked by the dealmakers. The acknowledgement of the mere fact that changes and variations are likely to occur may be seen as a weakness in the contracting process. The members of project teams should, however, not be "blue eyed": On one hand, there are contractors who see an opportunity in changes: charging for changes may improve your results from the project. Employers should be aware of this when negotiating contracts and change clauses. On the other hand there are employers who take an uttermost restrictive view on changes and who will reserve the right to say the final word on a proposed change.

In contractual vocabulary, change is a wide concept. Usually thereby is meant changes to the contract for both external and project internal causes. Herein we use change for claims, variations etc., which

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under the supervision of Ralph V Seep Law Revision Counsel Grateful acknowledgment is made of the contributions by all who helped in this work particularly the staffs of the Office of the Law Revision Counsel and the Government Printing Office

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