



## Clause 13

### Summary

Sub-Clause 13.1 deals with the right of the Engineer to vary the Contract. This right can be exercised at any time up to the issue of the Taking-Over Certificate. Sub-Clause 13.2 deals with value engineering and permits the Contractor to propose a change which will benefit the Employer. The proposal is prepared at the cost of the Contractor, who designs the change. Sub-Clause 13.3 deals with the procedure prior to the Engineer instructing a variation. The Engineer may request a proposal from the Contractor. However, while the Contractor is preparing the proposal it must proceed with the works.

Sub-Clause 13.4 deals with payment in applicable currencies. Sub-Clause 13.5 deals with Provisional Sums and ought to be read with Sub-Clause 13.4.19 which defines Provisional Sums as follows: "a sum (if any) which is specified in the Contract as a provisional sum, for the execution of any part of the Works or for the supply of Plant, Materials or services under Sub-Clause 13.5 (Provisional Sums)." The Provisional Sums can only be used where there is an Engineer's instruction and the Contractor receives payment for only the work done to which the Provisional Sums relate. Sub-Clause 13.6 deals with daywork. This is where work of a minor or incidental nature is to be carried out. The work is then valued in accordance with the Daywork Schedule in the Contract or if there is no Daywork Schedule then the alternative method of payment as prescribed in the Contract.

Sub-Clause 13.7 deals with the Cost arising from changes in the Law of the Country which affect the Contractor in performance of his obligations under the Contract. Where the Contractor suffers delay or additional Cost then it must give notice under Sub-Clause 20.1 of the Contract. Sub-Clause 13.8 deals with adjustments for changes in cost. This Sub-Clause only applies where the "table of adjustment data" included in the Appendix to Tender has been completed. If the Sub-Clause does apply then the amounts payable to the Contractor for cost and bill in the end of the Works are adjusted by a formula.

### Origin of clause

The right to vary work was found in Clause 71 of the Red Book (1<sup>st</sup> edn) and 7<sup>th</sup> edn. There are, however, substantial differences. In particular the classification in Clause 71.2 regarding an increase or decrease in quantities has been removed from FIDIC 1999. This is a surprising gap. Sub-Clause 13.2 (Value Engineering) is a new clause – although it had been included in Sub-Clause 14.2 of FIDIC's Orange Book. Sub-Clauses 13.1 and

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