

Project : E60 F2 Georgia / Caucasus
 Subject: **Task / Responsibilities of the Key Expert Contract Specialist**
 Ref 1: Supervision of Works Contract based on Pink FiDiC Book MDB 2010;
 Conditions of Contract fro Construction for Building and Engineering Works
 designed by the Employer
 Ref 2: Service Contract, IV Appendices, Appendix A,
 Terms of Reference TOR, F Team composition
 File Name: [Contract 20200803 Contract Administration + Change Management + Quantity Survey Billing.docx](#)

Appraisal of E60F2 - Contract Administration Point of View: Contract Specialist

Referring to the Requests to provide my views about isolated communicated correspondence about my sphere of responsibility in reference to the requirements of the Service Contract / Terms of Reference.

I feel it is essential to sensitize the Engineer and Employer about my observations.

A _ In General:

I receive the relevant information, when the “decision” is already send away.
 Hence interventions are not of value.

B _ In Particular:

I have not full access to the required documents, I cannot retrieve the cause-effects relationships, entitlements, I have no information about the position of the Employer to the “case”-. I get patchwork information, which leads to the impression, some rules are not complied with the contract.

C _ Quintessence:

The current procedure puts me in a quite uncomfortable situation. It does not allow me to identify, verify, analyse and evaluate the occurrences on site in a holistic and timely manner.

I use to perform my duties with due care / diligence of a prudent business man, so I look for a way to maintain the repudiation.

My thoughts are demonstrated below with the five Headings A_Task / Responsibility, B_Understanding Contract Administration, C_ Observation, D_ Way Forward, and E_ Appendices

A _ Tasks / Responsibilities Contract Specialist

The Terms of Reference / Service Contract characterize the task and responsibilities of the Contract Specialist.

| Task | Tasks / Responsibilities of the Key Expert Contract Specialist |
|------|--|
| T1 | Identify the responsibilities of the Employer, Contractor and Consultant in terms of Conditions of Contract for compliance each |
| , | Ensure submission of the contractor's insurance policies and provide general advices on these policies |
| T3 | Assist Team Leader in administration of the contract agreement under the Condition of Contract, subject to certain requirements for the Engineer to seek approval of the Employer, prior taking action under specified clauses of the Conditions of Contract |
| T4 | Assist Team in assessing and, where appropriate, making recommendations on applications for extension of time, claims for additional payments and other contractual disputes |
| T5 | Assist in issuing Variation Orders as appropriate |
| T6 | Advise and assist the Employer in adjudication and arbitration procedure, as the case may be |

B _ Understanding Contract Management

Correlation of

B1 ... Quality Management, Quality Assurance and Quality Control compared with

B2 ... Contract Administration, ex-ante Change Mgmt and ex-post tech+fin aspects

| Key word | issues | Key word | Issues |
|--------------------|--|-------------------------|--|
| Quality Management | <p>Organisational approach to coordinate the process and ensure the quality/workmanship of the final result / permanent works by meeting the requirements / Specs based on the "Contract" with all the integral parts.</p> | Contract Administration | <p>Contract comprises out</p> <ol style="list-style-type: none"> 1 _ Procedural Rules - as illustrated in the GCC / SCC – with the Timelines 2 _ Substantial Contract Law: Requirements to be entitled for cause-effects (i.e. the Employer, Engineer, Contractor defaults his obligations, Adjustment for Changes in Cost SC 13.8), 3 _ Specifications 4 _ Employer's Docs (Employer's Design) 5 _ Bill of Quantities), other schedules like the Method of Measurement and Payment i.c.w. precedence order / priority of Documents acc. to SC01.5. |
| Quality Assurance | <p>Product- and process-oriented approach, preview of actions</p> <p>a pro-active procedure to prevent mistakes, errors, defects ahead of commencement of works.</p> <p>(Quality Assurance Plan subject to SC04.9 SC07.4 records in SC04.21</p> | Change Management | <p>Main Tasks / Responsibilities to "apply / fulfil the requirements of procedural / formal / adjective and substantial / material Contract law" with the national Legislation. – ex ante - :</p> <ol style="list-style-type: none"> 1_ Depict precisely and exhaustively OCCURENCES (Events / Circumstances) in reference to the contractual Sub-Clauses, which causes will entitle for compensation of the EFFECTS (disruption, delay, Costs and profit) with documentary proofs. 2 _ Adduce evidences to substantiate the EFFECTS 3 _ Engineers examination of site and Engineer requests contemporaneous records to assessment of technical and delay impacts 4 _ Consultation to get the Position of the Employer as well (confirmed by correspondence) 5 _ EVALUATION of the Changes SC12.3 6 _ Notice of Determination SC03.5 <p>The modus operandi serves the goals to justify a. technical changes / Employer's design variations, and b. economic implications (value for monies)</p> <p>Note:</p> <p>(1) An early Instruction can be given, if the Engineer has issued a notice of determination with a provisional rate or price for the purpose of IPA / IPC</p> |
| Quality Assurance | | Change Management | |

Quality Assurance

Quality Control

Product-oriented procedure to approve that the requirements / Specifications were met.

Testing “after” execution of the modules in all phases of the execution of temporary and permanent WORKs
Product-oriented

Quality Control

Change Management

Technical Aspects

of Stability of Soil, Workmanship, fit for purpose
Geotechnical / Structural engineers competencies

Financial Aspects

of Quantity Survey and Billing

IPA-Structure
SC14.3
SC14.6

Quantity Survey and Billing

as soon as the Works commences – SC12.3 p7 i.c.w. SC03.5) or
(2) a **Notice of Determination** subject to SC03.5 is given (mostly based on an ENG’s request to an CON’s submitted Variation Proposal (SC13.3)- ahead of commencement of the Works – , otherwise the Contractor is not entitled for payment according to the contractual guidelines.

Main Tasks / Responsibilities (technical justifications)

Inspections and tests to confirm the Requirements of the Specification, **Release** for execution
Testing for preliminary **acceptance** to go ahead for MoM&P of permanent works.

Main Tasks / Responsibilities (financial considerations) – ex post -

1 _ Abide to **Employer’s Docs**, Notice of Determinations for Variations, Claims, and other matters, Methods of Measurement and Payment (MoM&P) for permanent works.

2 _ Scrutinize the **IPA Structure** (SC14.3) with the required quantities of permanent works, Variations, plus Changes (SC13.7 / SC13.8), apply **RETENTION monies** of this intermediate sums, consider Payment of advances and repayments, add 80% value of **Plants and Material on Site (MoS)** [not unit rate!] ought to incorporate in permanent works, plus substantiated EMP + CON claims, “provisional sums” (SC13.5)– all these items are not part of retention. It would deprive the Contractor’s rights for the Employer’s benefits (unjust enrichment).

3 _ **Measure** the Quantities required for the IPA / IPC and **certify As-build drawings** of implemented net quantities of permanent works, and to respect all Notices of Determinations about Variations, Claims, Price Adjustments and financial impacts of change in legislation (SC13.7 / SC13.8).

4 _ Follow up the **financial flow** in the reports (SC04.21), the Contract Price and **Payment** proceedings (i.e. late payments entitles the Contractor for interests automatically) and reports SC04.21.

© HFG2404

C _ Observation

C1 ... Patch Work

Due to the comments given to isolated topics, I did not recognize that obviously some procedures, time bars or esp. the substantiations of cause-effects relations are not applied in a compliant way to the Contractual obligations.

i.e. technical justifications to change the Employer's documents, requesting variation orders after giving already instructions without clarifying the issue, consultations with both parties is said has been done, but if the Notice of Determination (apparently send to the Engineer and signed) is sent away to request consent from the Employer. The Determination of the Variation shows payment by BoQ. The Contractor shall sign that he takes over all the responsibility for the design.

Step by step – due to my patchwork - I get the impression now, something does not run smoothly.

Mostly I receive the isolated correspondence, which have already issued.

Subsequent Interventions / Comments from my side will fail in this case, esp. if a notice of determination subject to SC03.5

C2 ... Specific matter

Currently there is a catch 22 situation:

If I review all the observed discrepancies, without an request to do so, I will not get paid.

Hence how can I improve the situation?

Catch 22 situation: Requirement that cannot meet, until a pre-requisition requirement is met. It is a Paradox situation, mostly caught in a contradiction

C3 ... Sensitize

I am compelled to write this letter to point out about my restrictions of a holistic assessment of the CASES in Claims, Variations, Progress Reports, IPA-Requirements, Insurance premiums, a.s.o.

I am not in the communication loop to the Employer. So I have no knowledge about the position of the Employer. It might be, the Employer thinks, the correspondence reflects my invisible advice /input.

My positions might differ due to the isolated pictures / knowledge level.

D _ Way forward

D1 ... Case File / Case Document

All documents belonging to a "Case" like Variation #13077 and Claim #20123 should be collated in one documents, with a precedence order old bottom, recent top.

This helps to get a very fast overall impression about the procedure, entitlements, cause-effect relations, evaluation and notice of determination. The "single case document" can easily re-used for Audits, Disputes, at an later stage and reflects transparent evidences.

File Transfer software (free downloads) are available to send "huge" files up to 50 GB (!!!)

Note: I want to point out, I do not like to link the company's internal data management system on my PRIVATE computer. On the other side I do not request a company's laptop for project related matters.

If the "case file" is forwarded with the complete documents (correspondence, attachments, notes) this will work for home-based as well field missions.

D2 ... Request for Services and agreement about the time input to efface the risk of reimbursement

If the case file is sent to the Contract Expert to Germany. The Contract Expert will be able to easily to identify the required time input in order to provide a qualified assessment to the specific case.

The Contract Expert will communicate his time input ahead of commencement of services.

When both parties have agreed about the time input the Contract expert starts to judge the case.

This procedure will make sure, that the performance of the Contract Expert will be paid.
Everybody will understand, that not going to work for nothing.

D3 ... Training Unit

Usually Donors requests transfer know how to the local engineers / MBAs / staff

It is not included in my task. However no obstacles should arise to prepare and facilitate a Workshop.

The content should be communicate.

Usually I provide the following workshop topics in Contract Management in all facets to get familiar with contractual matters of SCC, GCC, Specs, Drawings, MOM + BoQ at all.

A _ General OVERALL VIEW about the CONTRACT LAW

Responsibilities, variation + claim management, method of measurement and payment, IPA / IPC Structures, Progress Reports, Plant and Material on site, Price Escalation, Contract Price adjustment, advanced payment, repayment, provisional sums, sureties and insurances, retention monies/sureties, statements of accounts. Discharge.

B_ Time- and Cost planning based on a proper WBS / Work Breakdown Structure Work Program with the Resources + Time input + Cost / Turnover aspects, Critical Path, Slacks, Float) with sophisticated project tracking and trending of disruptions / delays to identify deficiencies in physical and financial progress.

C _Variation Procedure, Responsibilities, Instructions to Contractor (Contract Change), Entitlements of the Contractor to request Design Costs / indirect costs.

D _ Claim Notices / Claim Requests./ Dispute Avoidance / time-bound procedures

The Contract provides more as 13 cause-effects relations. Practical examples to defend / asset a Claim

E _ Understanding between Advance Payments (Cash flow / financial considerations) and indirect costs (physical works) of Site Establishment, value- and time related costs, site dismantling, wear and tear, transport, Site Demobilization correlation to Variation / Claim Evaluations (subject to SC12.)

[Eligible / non-eligible expenditures]

F _ Monthly Progress Reports as a most valuable contract administration tool to identify the discrepancies of the Contractual Requirements and the actual technical and financial progress with the achieved workmanship/Quality.

G _ Adjustment for changes in Legislation and Costs, preservation of evidences (records, records, records). and which turnover will be eligible / non-eligible for payment.

H _ IPA-Structure e.g. to apply properly MoS and Retentions Monies

These start up workshop of five to six days would help to identify his own knowledge level and compare it with his contract administration.

Later on the procedures for Adjudication Boards, Referrals, Amicable Settlements, Mediations, Arbitration, Take-over Certificates, Statements, DNP, Prolongation, Performance Certificates, and dealing with all type of sureties.

Preparation time for one day work shop requires 5 days preparation. The time input for the workshop sums to 15 service days.

E _ Appendices

E1 ... Overall Contract Administration procedure with EMP, ENG, CON-Responsibilities
{ 22 yellow pages }

E2 ... Sample of "Change Management"
Quantity Increase with modified Employer's Documents SC01.8 (Design)
{ 4 green pages }

E3 ... Measurement and Payment esp. Earthworks UNIT Rate (SC12.2)
for net quantity of permanent works (SC 12.
including all ancillary / auxiliary temporary works (backfill, haulage, dumping)
{ 6 white pages }