

RB2017 Variation – Sub-Clause 13.1(a)



Have you ever thoroughly read **SC13.1(a)** of the Read Book edition 2017?
Do you **observe any ambiguity** in the text of SC13.1 (a) ?

*“...The Unforeseeable **scope and nature of works**
described in the SPECIFICATION ...”*

*Some parties are confused and have difficulties to interpret
without misconception and misunderstanding.*



Relevant Questions:

Q1: Where do you usually describe the **Scope of Works with the Nature and Extent** in the Conditions of Contract?

Q2: **Why is reference made to Unforeseeable & Specification?**

Red Book Edition 2019 Sub-Clause 13.1 Right to Vary

Full Text of SC13.1 para 3 RB2019

- ▶ The Contractor shall be bound by each Variation instructed under Sub-Clause 13.3.1 [*Variation by Instruction*], and shall execute the Variation with due expedition and without delay, **unless the Contractor promptly gives a Notice to the Engineer** stating (with detailed supporting particulars) that:
 - (a) the **varied work was Unforeseeable** having regard to the **scope and nature** of the Works **described in the Specification**;
 - (b) the Contractor cannot readily obtain the Goods required for the Variation; or
 - (c) it will adversely affect the Contractor's ability to comply with Sub-Clause 4.8 [*Health and Safety Obligations*] and/or Sub-Clause 4.18 [*Protection of the Environment*].
- ▶ Promptly after receiving this Notice, the Engineer shall respond by giving a Notice to the Contractor cancelling, confirming or varying the instruction. Any instruction so confirmed or varied shall be taken as an instruction under Sub-Clause 13.3.1 [*Variation by instruction*].

Engineer's Instruction to change the Design

(requires the Employer's approval to amend Contract SC03.1 p2)

- ▶ Definition Variation SC13.1 (a) – (f) [Right to V
 - (a) Change in **Quantities** (Time impact!)
 - (b) **Quality** and other characteristics of any item of works
 - (c) change in level, positions, and/or **dimensions**
 - (d) **omissions** (SC12.4)
 - (e) additional works, Plant, Materials or **Services** necessary for the Permanent works, tests, boreholes, testing, **exploratory works**
 - (f) changes to the **sequence or timing** of the execution of works

- ▶ The Contractor has to await the **approval OR instruction** for a Variation!

„Works Contract“ Functional Parts of Contract

- ▶ B1 _ Employer's Design / Employer's Documents
 - Scope of Works (i) Nature and (ii) Extent for re-measurement
- ▶ B2 _ Method of Measurement Book
 - How to derive my Contract Price? Method of Measurement
 - B21 > Make up of Unit Rate with main works, ancillary and auxiliary works, temporary works and B22 > Re-measurement procedures.
- ▶ B3 Conditions of Contract >
 - Under which rules shall the Contract be implemented
 - PCC Part A = legal issues + Part B = technical / special provisions
- ▶ B4 Spec B5 Method of Measurement ... to be continued

„Works Contract“ Functional Documents

▶ B4 Tech Specification > Quality Assurance System

Quality Assurance QA: product- and process-oriented approach, **pro-active procedures** to prevent mistakes, errors, defect “**ahead of commencement**” of works;

Quality Control / QC: product-oriented procedure to approve the Requirements were met, **testing “after execution”**.

How to carry out (a) appropriate resource input, (b) Method and sequencing to execute—Contractor’s Duty, (c) Inspection and Testing

▶ B5 Bill of Quantity > icw. Method of Measurement and Payment Book. Re-Measurement out of As-Built-drawing and Payment

- ▶ The Contractor shall **NOT** otherwise be responsible for the **DESIGN** or **SPECIFICATIONS** of the Permanent works.

GCC SC04.1 p4 CON responsibility

- ▶ Contractor shall responsible for the
 - ❖ Adequacy,
 - ❖ Stability, and
 - ❖ safety
 - ❖ of all Site operations and of
 - ❖ all methods of construction

B4 Tech Specification > Quality Assurance System

▶ Very often, Procurement Departments **mix up the rationale behind the main functions** of the integral parts of the CONTRACT : Drawings / Design, Rules, Method of measurement for Breakdown of Prices, Quality Assurance System and Re-measurement of the Permanent Works for Payment (BoQ).

▶ Observed Errors in the Technical Specification

A _ Contractor's Design Works are hidden or listed in the Specification. **GCC SC04.1p6 states clearly,**

then unless otherwise stated in the Particular Conditions.

B _ Measurement items are hidden in the Tech Specifications to **mislead the Contractor's estimators** to derive a proper Bid Price.

B5 > Bill of Quantity:

Re-Measurement out of As-Built-drawing and Payment

▶ Any item of work included in the Bill of Quantities for which **no rate or price was specified** shall be considered as included in other rates and prices in the Bill of Quantities and **will not be paid FOR SEPERATELY** (MDB SC12.3 para 3)

But this applies only, (i) if the **Scope of Works/Quantities can be identified** in the Drawings in order to be able to **compute the time and efforts and regard these costs plus overheads in other BoQ-items**. (ii) If the **Contractor shall execute** Design for specified structures, **the Particular Conditions of Contract** have to precisely describe the **NATURE and EXTENT** of the Design Services and the method of measurement and payment consistently. The Contractor must be able to compute his **efforts in time and costs + overheads in an unambiguous manner** to get paid fairly for his rendered Design Services.

Vulnerable Information 2022 Contract Administration

A _ Design: www.ppe61.de/S+DesignResponsibility.pdf

B _ Award: www.ppe61.de/S+ByPassCompetition.pdf

C _ Spec SC13.1 RB2017

[www.PPE61.de/13.1\(a\)+UnforeseeableSpecificationRB2017.pdf](http://www.PPE61.de/13.1(a)+UnforeseeableSpecificationRB2017.pdf)

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