

Claims for preliminaries

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Introduction

Preliminaries, often referred to as “prelims” or “site overheads”, are costs that the contractors allow for in their tenders within their price built-up. They could form part of either the activity schedule or the contract sum analysis or bill of quantities etc., depending on the contract form used.

Issues regarding the preliminaries emerge when there is a claim regarding additional work or delay, especially the latter which results in prolonged site presence. The “prolongation cost” is a common head of claim, however, often misconceived with regards to its assessment principles.

An assessment method frequently adopted is the calculation of the additional overhead costs incurred during the extended period, beyond the original contract completion date; although it seems sensible at first glance, it could result in preliminaries being assessed incorrectly.

Which costs are included in the preliminaries?

There are no hard and fast rules about what items a contractor can include in preliminaries. It would not be inaccurate to say that preliminaries comprise the project related indirect costs, and they are not necessarily restricted to site establishment.

The *RICS New Rules of Measurement - NRM 2: Detailed measurement for building works, 1st edition*, in section 1.6.3 defines the (main) contract preliminaries as:

“...items that cannot be allocated to a specific element, sub-element or component. Main contract preliminaries include the main contractor’s costs associated with management and staff, site establishment, temporary services, security, safety and environmental protection, control and protection, common user mechanical plant, common user temporary works, the maintenance of site records, completion and post-completion requirements, cleaning, fees and charges, sites services and insurances, bonds, guarantees and warranties...”

The impact of delay on preliminaries

Prolongation costs are usually claimed by demonstrating the qualifying delay and how it affects the critical path. The delay, which could also be the nett result of various concurrent/overlapping delays, would translate to additional preliminaries calculated for the same period, apart from any direct costs which pertain to the change under the loss and/or expense, variation or compensation event headings.

However, it is important to make clear that the prolongation costs do not refer to the added period beyond the completion date, but rather to the costs incurred when the delay occurred. Although it could be the case that the two options produce the same result, if for example the preliminaries are distributed evenly throughout the contract period, (which is highly unlikely), adopting the first option – calculating the prelims of the extended period – could lead to an erroneous assessment, resulting in the additional preliminaries being either understated or even overstated; this is explained in the simplified example below.

A contractor, within its successful tender submission, allowed for preliminaries/management costs of £1,000,000 for a project the duration of which was scheduled for 40 weeks. For convenience (but most likely due to time and estimating resource constraints), it spread its preliminaries evenly at £25,000/week.

The works started, and from week 20, a critical delay of 8 weeks occurred due to the client introducing a substantial change/additional work, for which a variation was ordered – the parties agreed an extension of time for 8 weeks and the completion date was changed accordingly.

The direct cost of the variation was assessed separately from the additional preliminaries related to prolongation; those were calculated (erroneously) in the sum of £200,00 after multiplying the extension of time (8 weeks) with the monthly allowed sum of £25,000.

However, when the contractor later did its cost review, it realised that between weeks 12 and 25, the project had more management resources because of the project requirements during that period (concurrent activities, multiple sub-contractors, major plant deliveries). Consequently, the management/preliminary costs exceeded the sum of £25,000/week during the 8 weeks of delay, and the prolongation costs claimed were proven understated.

Conversely, in the scenario that the delay occurred closer to the completion date (e.g. in week 36) the contractor's management resources would possibly be reduced and the prolongation cost assessed by the above method would be overstated.

How should the prolongation costs be assessed?

The contractor, when submitting its claim, should take into account the management resources employed during the period of delay; even if those exceed the ones allowed for in the tender, but can be properly justified as reasonable and necessary, the contractor's claim could have merit.

The principle behind this logic is that, the contractor had allowed for a project duration (and for preliminaries to suit that duration) within its price and if a qualifying delay occurs (by means of a variation order or otherwise) resulting in additional preliminaries, those need to be assessed independently, although they might as well be at the same level as the ones originally allowed for.

The Impact of change (other than delay) on preliminaries

In circumstances where the work is varied, it is possible that the preliminaries are affected, even if there is no critical delay. By way of example, additional scope or change of sequence could lead to requirement for additional management staff and/or site facilities (thickening of resources) or other costs such as increased project insurance premiums.

Subject to the contract provisions that apply and proper justification, the contractor's preliminaries could be adjusted according to the additional cost incurred or expected to be incurred, when compared with the original allowances.

Most commonly used contract forms deal with the adjustment of preliminaries, albeit not necessarily in the same context; in JCT Design & Build 2016, the Valuation Rules for Change provide for the valuation of additional or substituted work to include the addition to or reduction of site administration and facilities; in a similar manner, the JCT Design & Build Sub-Contract 2016 provides for adjustment (addition or reduction) of preliminaries in the valuation of Variations; in NEC3 ECC the preliminaries would form part of the assessment of the compensation event for People, Equipment, Plant & Materials and Charges as set out in either the Schedule of Cost Components or the Shorter Schedule of Cost Components (depending on the Option).

Conclusion

As set out above, preliminaries can be claimed in relation to -

- i) Prolongation; and/or
- ii) Required adjustment (increase or reduction) to address the varied scope

When claiming for additional preliminaries pertaining to prolongation, contractors need to consider the level of preliminaries during the delay period, and how is this compared with the originally allowed for. A detailed and realistic estimate of the allocation of these costs throughout the project programme at tender stage would be of great benefit. It should also be combined with regular programme updates reflecting any delays together with the actual level of resources during those periods.

For assistance in related matters, you can contact us at info@pronea.co.uk

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