

## Time extension, Price Adjustment and Escalation in Contracts including Design Build Contracts

Dinker Sharma  
30 Fagun, 2076

3/17/2020



## Extension of Time EOT (PPA Clause 56/PPR Rule 120)

2



## Project Delays

- Contracts have completion dates - Bonus and Liquidated Damages are tied to completion date
- Delay by the Employer can frustrate Liquidated Damages clauses
- Delay by the Contractor can result in Termination of Contract
- Also leads on to financial matters

3

## Extension of Time

- Time is essence of the contract
- Obtain program from the contractor in the form specified in the contract
- Revise program from time to time. Assess and compare program achieved against original program
- Obtain monthly or biweekly program
  - To monitor the actual progress of the work
  - To check that escalation is not claimed for work done later
  - To take actions and resolve issues in time
  - To assess the effect of variations on completion of the Project.

4

## Major causes that have Implication on Time

- Variations that involve time and additional cost
- Design change
- Scope of work is changed
- Time lag between project preparation and implementation
- Unrealistic estimate
- Incompetent contractors
- Improper plant and equipment

5

## Major causes that have Implication on Time

- Litigation
- Slack in supervision
- Slow decision making
- Absence of fund flow
- Delay in Land Acquisition
- Local Law and problems
- Delay in shifting of utilities

6

**५६. सम्झौताको अवधि थप सम्बन्धी व्यवस्था**

(१) खरिद सम्झौताको अवधि थप सम्बन्धी व्यवस्था सम्बन्धित खरिद सम्झौतामा उल्लेख भए बमोजिम हुनेछ ।

(२) उपदफा (१) मा जुनसुकै कुरा लेखिएको भए तापनि कावूवाहिरको परिस्थिति, सार्वजनिक निकायले उपलब्ध गराउनु पर्ने कुरा उपलब्ध गराउन नसकेमा वा अन्य मनासिव कारणबाट खरिद सम्झौताको अवधि नबढाई नहुने भएमा सम्झौता प्राप्त गर्ने व्यक्तिको निवेदन बमोजिम अधिकार प्राप्त अधिकारीले तोकिएको आधारमा अवधि बढाउन सक्ने छ ।

7

**५२० खरिद सम्झौताको अवधि थप गर्न सकिने**

**Salient Features**

- Request for EOT within 7 days
- If unable to request due to certain reason within 7 days, can request EOT within 15 days
- Entity must decide EOT within 60 days.
- LD does not apply under this rule for the extended period, but LD applies from the beginning if the works are not completed within the approved period.
- No participation in new procurement process due to the Contractor's negligence. Entity to inform PPMO.

8

**Case I**

A contract was concluded on May 15, 2004 for completion of construction works within 4 months from the date of 'Conclude of Agreement'. After completion of 40% of works, a 15 days long Local Bandh was announced. The Contractor requested an extension of time for a period of 40 days more showing cause that there was no transportation for 15 days during the Bandh, transportation was halted for 3 days before and 3 days after the Bandh, 9 days was disturbed due to strike in the manufacturer's factory and it took 10 more days to arrange transportation for the delivery of the goods.

**Question: Discuss the Time Variation?**

9

**Case II**

A three months long bandh between Chaitra 01, 2071 to Jesta 30, 2072 occurred due to disturbance by the political party at the Project Area. The Contract which was concluded on 01 Fagun 2071 was to be completed by 31 Ashad 2072. The Contractor requested an extension of time under Clause 27 of the General Conditions of Contract on 30 Ashad 2072

**Question: Discuss the Time Variation?**

10

**Case III**

A road contract in Kohalpur-Surkhet was concluded to be completed in one year. The Contractor requested an extension of time under Clause 27 of the General Conditions of Contract on 30 Ashad 2072 citing that there was blockage of transport in Mugling Narayanghat road and that he was unable to transport any construction materials to the Site.

**Question: Discuss the Situation?**

11

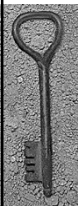
**Application of Price Adjustment**

**Concept and Practice**

PPA Clause 55/ PPR Rule 119

3/17/2020

12

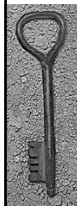


## Basic Ingredients of a Contract

1. Proposal
2. Acceptance
3. Consideration

Considerations are either in cash or kind. Normally in a contract considerations are in cash. It relates to Contract Price. Disbursement of cash is defined by Payment Terms. Price Adjustment is an important component of Payment Terms.

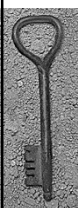
13



## Adjustment of Price in the Contract

- ◆ Variations
- ◆ Claims
- ◆ Extension of Time
- ◆ Disputes
- ◆ Contract Price Adjustment (CPA)  
(Necessary to address it in Documents)

14



## Contract Price Adjustment

- ◆ Shows additional coverage
- ◆ Better balance of rights or obligations between Employer and Contractor
- ◆ Invites competitive bidding
- ◆ Gives a Sense of security
- ◆ Leads to Economic Prices

15



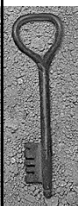
## Procurement Act 2063

२५. **खरिद सम्झौतामा मूल्य समायोजन** : (१) खरिद सम्झौतामा अन्यथा व्यवस्था भएकोमा बाहेक **१२ महिना भन्दा बढी अवधिको** खरिद सम्झौता कार्यान्वयन गर्न क्रममा मूल्य समायोजन गर्न आवश्यक देखिएमा अधिकार प्राप्त अधिकारीले मूल्य समायोजन गर्न सक्नेछ।

तर सार्वजनिक निर्माण कार्य खरिद गर्दा **राष्ट्रिय स्तरको बोलपत्र** आव्हान भई खरिद सम्झौता भई सकेको अवस्थामा अप्रत्यासित रूपमा कुनै निर्माण सामग्रीको मूल्य साविक मूल्यको **दश प्रतिशत भन्दा बढी घटबढ भएमा** त्यसरी घटेको वा बढेको रकममा दश प्रतिशत कट्टा गरी तोकिएवमोजिम मूल्य समायोजन गरिनेछ।

(२) उपदफा (१) मा जुनसुकै कुरा लेखिएको भए तापनि खरिद सम्झौता प्राप्त गर्ने व्यक्तिको ढिलाईको कारणबाट सम्झौता बमोजिमको काम सो सम्झौतामा उल्लिखित अर्वाधि भित्र सम्पन्न नभई बढी समय लागेकोमा वा एकमुष्ट कार्य सम्पादन (लम्प सम कन्ट्राक्ट) वा निश्चित बजेटको आधारमा खरिद सम्झौता भएकोमा मूल्य समायोजन गर्न सकिने छैन।

16



## Procurement Regulation 2064

### ११९. मूल्य समायोजन:

- (३) यस नियम बमोजिम गरिने मूल्य समायोजनको अधिकतम रकम सामान्यतया शुरु सम्झौता मूल्यको पच्चीस प्रतिशत भन्दा बढी हुने छैन। मूल्य समायोजनको रकम सो मूल्य भन्दा बढी हुने भएमा सार्वजनिक निकायले खरिद सम्झौता अन्त्य गर्न, सम्झौता मूल्यलाई स्वीकृत बजेट भित्र पार्नको लागि निर्माण ब्यबसायी, आपूर्तिकर्ता, सेवा प्रदायक वा परामर्शदातासंग वार्ता गर्न वा खर्च घटाउने अन्य उपाय अबलम्बन गर्न सक्ने वा थप बजेट ब्यबस्था गरिने व्यवस्था खरिद सम्झौतामा गर्न सकिनेछ।

17



## Adjustment Formula

The coefficients and indices for adjustment of prices in Nepalese Rupees shall be as specified in the Table of Adjustment Data submitted by bidder together with the Letter of Bid which is approved by the Project manager and attached as Annex-1. The formulae will be of the following general type:

$$pn = A + b \frac{Ln}{Lo} + c \frac{Mn}{Mo} + d \frac{En}{Eo} + \text{etc.}$$

Pn = Price Adjustment factor

18

Where,

$P_1$  is a price adjustment factor to be applied to the amount for the payment of the work carried out in the subject month, determined in accordance with Sub-Clause 41;

$A$  is a constant, specified in the Bidding Forms- Table of Price Adjustment data, representing the nonadjustable portion in contractual payments;

$b, c, d, \text{ etc.}$ , coefficients representing the estimated proportion of each cost element (labor, materials, equipment usage, etc.) in the Works or sections thereof, net of Provisional Sums, as specified in the SCC;

$L_n, M_n, E_n, \text{ etc.}$ , are the current cost indices or reference prices of the cost elements for month "n," determined pursuant to Sub-Clause 45.4, applicable to each cost element; and

$L_o, M_o, E_o, \text{ etc.}$ , are the base cost indices or reference prices corresponding to the above cost elements at the date specified in Sub-Clause 45.4

19

### Base Rate / Current Rate / Provisional Rate

- ◆ Base rates are the price figures applicable on the date 28 or 30 days prior to the latest date for submission of bids.
- ◆ Current rates are the price figure applicable on the last day of the period to which the particular statement relates ( FIDIC ) / 28/ 30 days prior to the last day of the period to which a particular payment certificate is related.
- ◆ Base rate does not change while current rate varies

20

### Base Rate / Current Rate / Provisional Rate

- ◆ Current rates are adjusted on the basis of change in cost of labor/material that affects the cost of execution of work
- ◆ Current rates are also adjusted based on changes to any National or State Statute, Ordinance, Decree or other Law/ Regulation/ By-Law that affect the contract
- ◆ In absence of availability of current rates Provisional or Proxy Rates are fixed

21

### Payment Adjustment Formula

$$P_1 = P_0(P_n - 1)$$

$P_n$  = Price Adjustment factor

22

### Adjustment Formula / Fixed and Variable Portion

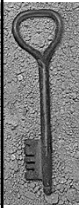
$$P_1 = P_0 \left\{ X + a \frac{EL_n}{EL_o} + b \frac{LL_n}{LLO} + c \frac{PL_n}{PLO} + d \frac{FU_n}{FU_o} + e \frac{BL_n}{BL_o} + f \frac{CE_n}{CE_o} + g \frac{RS_n}{RS_o} + h \frac{ST_n}{ST_o} + i \frac{CW_n}{CWO} + j \frac{MI_n}{MI_o} - 1 \right\}$$

23

### Adjustment Factor for LCB Contracts

	X	b	c	d	e	f	g	h	i	j	
1. General Works	0.1	0.20	0.35	0.25	-	-	-	-	-	0.1	1.00
2. Drainage	0.1	0.20	0.20	0.05	-	0.30	0.05	0.05	-	0.05	1.00
Gabions	0.1	0.25	0.05	0.05	-	-	-	0.10	0.40	0.05	1.00
Masonry	0.1	0.55	0.05	0.05	-	0.10	-	0.10	-	0.05	1.00
3. Earthworks	0.1	0.40	0.30	0.15	-	-	-	-	-	0.05	1.00
4. DBST Works	0.1	0.15	0.05	0.05	0.45	0.05	-	0.05	0.05	0.05	1.00

24



### Formula for Consulting Services

$$P_n = 0.1 + 0.7 \frac{LL_n}{LL_0} + 0.2 \frac{FL_n}{FL_0}$$

or

$$P_n = 0.9 \left( \frac{LL_n}{LL_0} + \frac{FL_n}{FL_0} \right)$$

25



### Price Adjustment Formula Goods

$$\Delta P = P_0 \left( a + \frac{b L_1}{L_0} + \frac{c M_1}{M_0} \right) - P_0$$

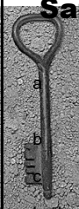
$\Delta P$  = Adjustment amount payable to the Supplier

$P_0$  = Price at the time of Payment

**Condition : Sum of all coefficients**

$$a + b + c = 1$$

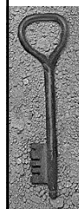
Example a = 0.15, b = 0.25, c = 0.6



### Sample Price Adjustment Formula Goods

- a = fixed element representing profits and overheads included in the Contract Price and generally in the range of five (5) to fifteen (15) percent.
- b = estimated percentage of labor component in the Contract Price.
- $L_0, L_1$  = estimated percentage of material component in the Contract Price.
- $L_0, L_1$  = labor indices applicable to the appropriate industry in the country of origin on the base date and date for adjustment, respectively.
- $M_0, M_1$  = material indices for the major raw material on the base date and date for adjustment, respectively, in the country of origin.

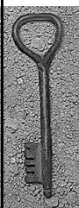
The coefficients a, b, and c shall be specified by the Purchaser in the bidding documents. The Bidder shall indicate the source of the indices and the base date indices in its bid.



### Sources of Indices

- ◆ Should be asked for to be submitted at the time of bid submission
- ◆ Determined on the basis of availability and source of material
- ◆ Import materials – indices are derived from their country of origin with source from official publication. Materials are e.g. expatriate labor, constructional plants, bitumen, cement, reinforcing steel, gabions etc.
- ◆ Local materials -- indices are derived from employers country with source from official publication.

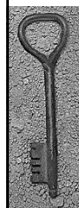
28



### Risk Areas

- ◆ Distortions due to periodic exchange rates
- ◆ Risk for countries where there is high increasing fluctuation in prices
- ◆ Selection of fixed and variable portion in Adjustment Formula
- ◆ Availability and application of current indices
- ◆ Use of correction factor when payment is made in different currency

29

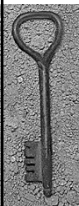


### Case I

### Is Price Adjustment a Variation ?

- a discussion

30



## CASE II Price Adjustment Vs Work Plan

31

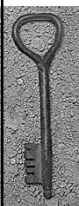


1 If the contractor fails to complete the Works within the time of completion. Is Price Adjustment applicable?

Thereafter use indices or prices that exist at the time of prescribed completion date or Use current indices or prices whichever is less after completion.

2 During the Work Period if the Contractor completes only those items that fetch him high returns but does not follow the Work Plan, do you pay the Interim Payment and the Price Adjustments?

32



## CASE III

**Sindhuli District Court Vs Sidda Baba Anjana Jv**  
The Contractor was required to fill the value of a, b, c, d etc at the time of submission of bid.

The Employer had prescribed that the range should be as follows:

a= 15

b=25 to 35

c=30 to 40

d= 30 to 35

The Contractor did not submit any range and left it blank.

Status of Price Adjustment? The Contract prescribed that the Price Adjustment will be provided.

33



## Case IV

A Contract was signed between NEA and Sinohydro China for construction of Kulekhani Hydroelectric Project Phase III. A Price Adjustment Clause read: The Contractor shall be paid a price adjustment as per Adjustment Data provided in the Appendix.

After reaching 25 % of Contract Amount the Employer denied to pay any adjustments stating that the Law did not allow payment after 25% of Contract Price is reached.

Discuss this situation.

34



## Case V

A Contract was signed between NEA and CHINA GEZOUBA (CGGC) for construction of UPPER Trishuli 3 A Hydroelectric Project on EPC was concluded on 09 January 2009 with an understanding that commencement would be given by 6 months time after conclusion of NEA/GoN and China Exim Bank agreement was made.

NEA/GON and China Exim Bank (Donor) agreed to fund the project on 20 December 2010.

NEA gave commencement letter on 01 January 2011.

CGGC claimed compensation on adjustment of Contract Price - Discuss

35



## CASE VI

**Is Price Adjustment applicable in Design and Build Contracts?**

36

## Remember



- ◆ Price Adjustment is not a Variation
- ◆ No price adjustment shall be payable on the portion of the Contract Price paid as advance payment.
- ◆ Deduct remaining Advance Payment each time price adjustment is made in Payment Certificate
- ◆ Consider adjustment in favor of Employer for a period of delay in which the contractor is responsible.
- ◆ Use correction factor when payment is made in different currency
- ◆ Price adjustment is limited up to the scheduled period of completion and any agreed extension thereof.

37



# Thank You

38