

Interim Payments under Clause 60 of the I.C.E. Conditions 5th Edition

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With current high rates of inflation and interest the pressure to ensure that interim valuations on Civil Engineering Contracts are accurate is intensified for both the Contractor and Employer, the former seeking to maximise cash flow while both attempt to keep financing charges to a minimum. A full understanding of the requirements of the I.C.E. 5th Edition Clause 60 is then an essential requirement for both the Contractor's Quantity Surveyor and the Engineer's Representative, even if it is a case of being familiar with the obvious.

The first requirement of Clause 60 is for the Contractor to submit to the Engineer or his Representatives a monthly written statement showing (a) the value of permanent works executed up to the end of that month (b) an itemised valuation of materials delivered to site (c) an itemised valuation of goods not yet delivered to site but for which the Contractor requires payment under Clause 54 and the property of which is vested in the Employer, the amount of such goods being restricted to those listed in an Appendix to the Form of Tender, and (d) an estimated valuation of amounts considered due by the Contractor under the terms of the contract including Temporary Works or Plant for which separate amounts are included the contract Bill of Quantities, and "all other matters" which could include Fees, Rates and Taxes due under Clause 26, variations ordered under Clause 51 and valued under Clause 52, Dayworks valued in accordance with Clause 52 and Claims made under part (4) of Clause 52, although damages for breach of contract are not paid "under the contract" and are therefore excluded from certificates and retention. Amounts due to Nominated Sub-Contractors are also to be stated separately in accordance with Clause 59A (5) and 59C. Also stated should be the amounts of any adjustments required under Clause 69 for variation in "Labour-tax matters" providing the contract is not subject to the formula price adjustment clause. It is not made clear in the conditions whether the monthly period of the statements is calendar monthly or monthly from the date of the contract and this should be clarified at the outset of the contract by the agreement between the parties of a list of valuation dates. The form in which the Statement is to be presented can be prescribed in the Specification and if this is not done it would also be prudent to agree the form of the statement at the same time as agreeing the valuation dates in order to prevent later difficulties. Early agreement of matters of contract administration also extends to



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the procedure for daywork payments which if left until the matter arises on site can lead to problems.

Clause 51 (3) requires the Engineer to give a daywork instruction in writing and if the Contractor requires daywork for an operation he must say so at the time, and not merely submit sheets for signing after the event. It is therefore essential to agree who is authorised to issue such instructions and who is empowered to sign them and in what manner; is the signature to acknowledge accuracy of the resources recorded only, or is it also an acceptance of the charge on a daywork basis? The early resolution of such items will ease the passage of monthly statements and assist speedy certification.

If the Contractor does not consider that the total of the sums due would justify a certificate he can omit to submit a statement, and as the Engineer is not bound to issue a certificate unless in his opinion the amount due exceeds an amount stated in the Appendix to the Form of Tender this would seem to be the relevant criteria for the amount of statements, unless the Contractor can make a case for special consideration.

The Engineer or his Representative is required by part (2) of the Clause to certify, and the Employer pay, the amount which in the opinion of the Engineer is due based on the monthly statement, within 28 days of the date of delivery of the monthly statement. To facilitate compliance with the time limit for certification and payment it is often desirable for the monthly statement to be prepared jointly. In the case of large contracts it is sometimes proposed that a detailed statement is prepared quarterly with abbreviated statements for

intervening months but this can be counter-productive for the contractor if the Engineer is tempted to under-certify quantities in the abbreviated statements in order not to over-pay. Should any rates require agreement this should be done monthly and recorded, or failing agreement a temporary rate should be inserted and attempts made to resolve the disagreement before the next monthly certificate. If the 28 day time is likely to cause problems for the Employer in making payment through his internal systems a revised period should be notified in the tender documents and the contract form altered accordingly in order that the contractor may take account of any extended payment period in the preparation of his tender. In contrast to the JCT forms of contract the I.C.E. Conditions include provision for interest to be charged by the Contractor on overdue payments, the rate being based on the Bank of England lending rate to Discount Houses and subject to adjustment as that base rate varies.

Payments for items (a) and (d) above of the statement are subject to the retention provided for under part (4) of the Clause but such amounts due under (b) and (c) are not subject to the retention. In the case of the latter two items the value included must not exceed the percentage of the value stated in the Appendix to the Form of Tender. The operation of part (4) means that materials delivered to site are not subject to retention until incorporated in the works.

Difficulties in payments for materials can arise where the contractor is required to provide a storage area as this will not be part of the site within the contract definition in Clause 1 and deliveries to this storage area are not strictly "delivered to the site". If payment is to be made for such materials, and this would seem only fair to the Contractor, then account must be taken of this in the compilation of the contract documents. However, it should be remembered in this case and also "offsite" materials that in the event of the Contractor going into liquidation the onus of proof of ownership will fall on the Employer.

Generally payment will only be made for materials delivered to site but when payment is required for offsite materials, particularly purpose made units entailing a high finance cost before delivery, then the materials in question need to be listed in an Appendix to the Form of Tender. If this list is not submitted until after the submission of tenders then the Employer can expect some financial consideration for its inclusion as he would be entitled to assume the finance cost is incorporated in the tender.

It is also essential that, bearing in mind the effects of the "Romalpa" case the actions required of the Contractor to transfer the property in goods, under Clause 54 (2) are adhered to in the case of offsite materials to safeguard the Employer's interest.

The rate at which retention is to be deducted is stated as 5% of the amount due to the Contractor, subject to a limit of 5% of the Tender Total, but not exceeding £1500, for contracts of less than £50,000 in value and a limit of 3% of the Tender Total for contracts over £50,000. This limit is subject to reduction for any payments of retention money made to the Contractor under part (5).

The procedure for payment of retention monies to the Contractor is clearly stated in part (5) of the Clause but the revision of January 1979 should be noted which limits the release of retention monies to half the amount deducted under part (2)(a) as otherwise the amount of retention left with the Employer could be less than half of the retention fund as envisaged by part (5)(b). If there are different maintenance periods applicable to different sections of the works then the "expiration of the Period of Maintenance" which governs the final release of retention is deemed to be the latest of such periods. Although the Contractor is not required by the contract to apply for release of retention he may be well advised to do so in order to avoid unnecessary delay.

Adjustment of the amount due to the Contractor for fluctuations is covered by part (6) of Clause 69 in respect of changes, introduction or abolition of any labour-tax matter as defined in part (1) of that clause and the Contractor is required to submit records and full details of any adjustments with his monthly statement. This duty of the Contractor to submit details is essential as the Engineer is empowered to take account of any deductions even if the Contractor omits to submit the records. It should also be noted that if a change in a labour-tax is known but not operative at the date of tender it is not incorporated in the tender but becomes claimable from the date in which it becomes operable. The effect of Clause 69 covers only labour matters and a separate Contract Price Fluctuations Clause is available for incorporation in the contract to introduce adjustment for labour plant and materials in accordance with the Baxter Formula based on DoE indices, with a 10% "non-adjustable" element included unless altered by agreement. In the event of the Formula Price adjustment being adopted then the adjustments required by Clause 69 do not apply unless it can be shown that any matter subject to adjustment under Clause 69 is not covered by the formula adjustment. The formula is applied to the sum due to the Contractor under a monthly certificate as required by part (1) of the Contract Price Fluctuations clause.

Should the Engineer be dissatisfied with any work executed, goods or materials supplied or services rendered he is empowered by part (7) of Clause 60 to delete, correct or modify any sum previously

certified to the Contractor for the cause of the dissatisfaction. The exception to this is payments previously certified as due to Nominated Sub-Contractors and which have been or are bound to be paid by the Contractor. If a reduction or deletion is made in the Final Account to a sum due to a Nominated Sub-Contractor then the Employer becomes liable to reimburse to the Contractor the amount of any overpayment to the Nominated Sub-Contractor which the Contractor cannot recover.

The foregoing covers the outline of interim payments due under Clause 60 of the I.C.E. 5th Edition with a few comments on salient points in the payment procedure. Perhaps the most important consideration for Contractor and Engineer is the desirability of agreeing the procedure to be adopted early in the Contract and ensuring that agreed dates are adhered to and re-measurement and rate agreement progressed along with the certification of payments in order to avoid delays in payment costly to the Contractor and wasteful of time and effort for both parties.

Major London Building Show Scores in Second Year

In only its second year, the London Building Products and Services Exhibition tripled its number of exhibitors, and as Britain's major trade building show in 1980 attracted a high level of visitors.

The Exhibition opened in the Grand Hall of Olympia on 15th June, for five days, and featured around 300 exhibitors.

The entire gallery area of the Exhibition has been taken by Graham-Ford Ltd, who presented Graham Expo '80, a major presentation featuring 147 exhibitors. This display included many builders' merchants products, with particular emphasis on home improvements and refurbishment, including heating, kitchens, bathrooms, decorating supplies and ironmongery.

Centrepiece on the ground floor of the Exhibition was a partly-furnished, Powell Duffryn timber frame, detached, three bedroomed house of special interest to developers.

Made at the Palgrave Brown timber building components factory at Loddon, Norwich, this demonstration house, one of the company's standard range, illustrated the merits of timber frame construction and the facilities offered by Powell Duffryn Timber. The enclosed shell of the house can be erected on a prepared site within a matter of a few hours by a small gang of workmen.

The house had two walls finished with a brick veneer, the roof tiled and the bathroom and kitchen fully furnished, but the remainder of the house was left part-finished to show construction techniques and the exceptionally high built-in thermal and sound insulation qualities.

A record number of entries were received for the special Cost Saving Award, first instituted at the Exhibition last year. Any building product which offers a direct cost saving to the building industry was eligible to enter for this award which was presented at the Exhibition. Entries included a new type of wet, underfloor central heating, with up to 60 per cent saving on fuel; a self-feed electric screwdriver; one-man portable, collapsible scaffolding; water saving devices for unoccupied buildings and low cost products for building restoration.

Claims and Government Contracts

Reg Wood, the well known lecturer and author on contractual matters, has written the seventh paper in the IOB's Studies in Contractual Claims series. This deals with the GC/Works/1—Edition 2 form of contract.

Starting with a definition of types of claim, and the initiation of a claim, Mr. Wood goes on to identify heads of claims and to define star items and star rates.

The major emphasis of the 68 page booklet is directed to those conditions of the contract which have some relevance to finance and claims. These Conditions are examined in detail and reference made, where appropriate, to case law.

Appendices provide worked examples of a claim in respect of increased working hours, and of a prolongation claim.

Contractors' claims under the GC/Works/1—Edition 2 form of contract provides an easy understanding of the complexities of the contract and as such will be invaluable to all who use it.

Copies of the booklet are available from the Sales Office, Institute of Building, Englemere, Kings Ride, Ascot, Berkshire, SL5 8BJ, price £3.20 to members of the Institute, plus 40p postage, and £4.00 to non-members, plus 40p.

Machine laid edge details for paved areas

Extruded asphalt kerbing was introduced into the United Kingdom from the USA in 1964 and concrete some years later. Since then substantial experience of their use has been gained, over 15 years satisfactory performance having been observed with some kerbs. The British Standards Institution has now published BS 5931 *Code of practice for machine laid in-situ edge details for paved areas*, which gives general information aimed to indicate good practice based upon this experience.

BS 5931 is concerned with the use of extruded asphalt or extruded concrete, and slip-formed concrete, for road-edge features such as kerbs or channels. Details of asphalt and concrete mixes that are suitable for the processes are given together with construction details.

An introduction to BS 5931 points out that most forms of road-edge detail may be successfully extruded or, for concrete, slip formed. Raised kerbs may be formed on both rigid and flexible pavements during new construction projects. The principal use of machine laid in-situ sections in the UK has been at the back of hardshoulders on motorways, as a drainage detail. However, there are now many cases where these sections have been adopted immediately adjoining carriageways on all purpose roads and on housing estates. Other suitable situations include surrounds to vehicle parking areas, as a means of channelling traffic, and for the delineation of individual parking bays. The introduction goes on to discuss the advantages and disadvantages of machine laid in-situ sections.

BS 5931 gives recommendations common to asphalt and concrete in four main sections, dealing with: General considerations; Machines for forming in-situ edge details; Section size and tolerances; Trial lengths. Recommendations for asphalt and concrete sections are then dealt with separately.

This code of practice includes a useful appendix giving characteristics of extrusion machines.

Copies of BS 5931 may be obtained from BSI Sales Department, 101 Pentonville Road, London N1 9ND. Price £4.50. (BSI Subscribing Members £2.70).