

건설산업에 있어서의 Claim해결의 Approach How to approach the solve claim of construction

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지난 16호의 내용 중 비용을 증가시키는 설계 변경의 이윤은 계약금액 조정의 인정된 요소이다. 만일 설계변경이 비용을 줄이면 이윤도 통상 줄어든다. 그 반대의 경우면 가격 조정 금액은 문제가 된다. 스위스의 표준계약(주로 구조 공사)은 취소(누락)공사가 이윤 손실을 보장하는데 충분한가를 결정하는 공식을 포함한다. 누락은 첫째 가격사정하고, 그리고 10%정도 자율적으로 감한다. 그 결과 금액이 만일 계약 금액의

20%이상이면 계약자는 손실, 이윤을 보장받을 권리가 생긴다. 이상과 같이 "Variation in the work이 FIDIC의 해당 Clauses"하여서 계약자의 Claim과 발주자의 Recovery 도표로 보면 아래와 같습니다.

(16호 「기술연구논문」중 78~83쪽 참조)

Table 3-1 Claims by Contractor Under Fidic Clauses
Reprinted from Glyn P. Jones. The International Civil Engineering Contract, with the gracious permission of the Longman Group Ltd, Longman House, Bumt Mill, Harlow, Essex CM20 2JE, England

Clause	Clause Grounds for Making Claims	Clause Rights to Reimbursement	Clause Notices to be Given	Clauses for Payment	Payment Includes Profit?
5(2)	Instructions issued by the Engineer in cases of ambiguity or discrepancy arising out of the several documents forming the Contract	Delay and disruption involved Variation may be ordered to overcome the problem	None 51(2)	5(2) 52	No 'cost' only Yes

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Clause	Clause Grounds for Making Claims	Clause Rights to Reimbursement	Clause Notices to be Given	Clauses for Payment	Payment Includes Profit?
6(4)	Failure or inability of the Engineer to issue, at a time reasonable in all the circumstances, drawings or instructions requested by the Contract	Delay and disruption involved Variation may be ordered to overcome the problem	6(3) 51(2)	6(4) 52	No 'cost' only Yes
12	Unforeseen physical conditions or artificial obstruction are encountered	Delay and disruption involved Variation may be ordered to overcome the problem	12 line 9 12 line 9	12 12(a)	No 'cost' only No 'cost' only
18	Carring out exploratory excavation or boreholes required by the Engineer	Delay and disruption involved Engineer's requirements to be treated as if a variation	None	18 & 52	Yes
20(2)	Repairs and making-good damage arising from 'Excepted Risks'	Delay and disruption involved Engineer requires the repairs etc	None	20(2)	No 'cost' only
26(3)	Fees paid in respect of any Statute or regulation, etc	Engineer certifies Contractor has properly paid such fees	None	26(3)	No
27	Discovery of fossils, coins, articles of value or antiquity and structures and other remains or things of geological or archaeological interest, on the Site	Engineer's Representative orders disposal of fossils, etc.	None	27	Yes
30(2)	Protection or strengthening of highways for the movement of loads of Constructional Plant, machinery or pre-constructed units of work	Engineer requires or approves proposals to strengthen or protect highways or ridges	30(2) line 5	Check BQ* for items or see 30(2)	BQ items* Yes Under 30(2) No 'cost' only
30(3)	Extraordinary traffic has caused damage to highways or bridges	Employer indemnifies Contractor against such claims	30(3) line 3	30(3)	No

Clause	Clause Grounds for Making Claims	Clause Rights to Reimbursement	Clause Notices to be Given	Clauses for Payment	Payment Includes Profit?
31	Opportunities afforded to other contractors workmen of the Employer or duly constituted authorities. Roads or ways, scaffold or other plant, or any other service provided on the written request of the Engineer or his Representative	Delay and disruption involved Facilities afforded on the written request of the written request of the Engineer or his Representative	None	31	Yes
36(2) & (4)	Samples required which are not clearly intended by or provided for in the Contract. Tests required which are not clearly intended by or provided for in the Contract, providing the tests show work, etc. is sound	Delay and disruption involved Samples Samples provided tests carried out	None	36(2) & 36(4)	No 'cost' only
38(2)	Engineer directed Contractor to uncover work or make openings in any part or parts of the Works and such parts found to be in accordance with the Contract(after compliance with Clause 38(1))	Delay and disruption involved Uncovering making openings and the making-good of same	8(1) line 5	38(1)	Yes
40(1)	Suspension ordered involving the protection and security of the work	Dealy and disruption involved Protection and security	40(1) lines 13-14	40(1)	No 'cost' only

☆ BQ-Bill of Quantities

Table 3-1 Continued Claims by CONTRACTOR Under FIDIC Clauses

Clause	Grounds for Making Claims	Rights to Reimbursement	Notices to be Given	Clauses for Payment	Payment Includes Profit?
40(2)	Permission to resume work (following an order to suspend) is withheld for 90 days or more enabling work to be treated as an omission	Work omitted renders rates or prices unreasonable or inapplicable	40(2) line 4 and 40(2) line 7	52	Yes
42(1)	Employer fails to give possession of as much of the Site as may be required	Delay and disruption involved Variation may be ordered to overcome the problem	42(1) line 8	52	Yes
49(3)	Work or repair, amendment, reconstruction or rectification required	Such work arises from a defect, etc., which is not due to failure on the Contractor's part (Works are complete & no delay)	None	49(3) & 52	Yes
50	Searching for the cause of any defect	Delay and disruption involved Searching	None	50	No 'cost' only
51	Variations in Contract	Delay and disruption involved increase in quantity, change in character, or quality or kind, etc., as 51(1)(a)(c)(d) & (e)	51(2)	52	Yes
52(1)	Extra payment required under 52(1) variation of rate or price is required under 52(2) due to the nature or amount of an omission or addition (ordered under Clause 51) rendering a rate or price for any item of the Works unreasonable or inapplicable	Delay and disruption involved due to the nature or amount of an omission or addition of work Extra payment or varied rate or price	52(2)(a)	52	Yes

Clause	Grounds for Making Claims	Rights to Reimbursement	Notices to be Given	Clauses for Payment	Payment Includes Profit?
52(3)	Upon certified completion of the whole of the Works there is found to be a reduction of the sum named in the Letter of Acceptance by an amount greater than 10%	A substantial(10%) reduction in 'turnover' reduces the returns originally anticipated(based upon the datum sum named in the Letter of Acceptance)	None	52(3)	52(3) This lump sum payment is to restore the Contractor's return(profit) to the original level
59(4)	Clause 52(5) requires the Contractor to make monthly claims for any additional payment, This would appear to include sums for (a) work executed or goods materials or services supplied by Nominated Subcontractors and (b) labours in connection and (c) all other changes and profit	Engineer has ordered or directed the payments concerned and labours, etc.	59(5)	59(4)	(a) No (b) Yes (c) Yes
65	Special risks arise	Damage caused to Works, materials or other property(of the Contractor) Increased costs arising Termination of contract	None 65(4) None	65(2) 65(4) 65(8)	Yes No 'cost' only See 65(8)
66	Contract frustrated	By war or other circumstances arising outside the control of both parties preventing the Contractor(or Employer) fulfilling their obligations	None (but some notification would of course be given)	65	See 65(8)
69	Defaults(as detailed in 69(a)(b)(c)(d) committed by Employer	Termination of employment	T69(1) line 12	69(3) and 65(8)	See 65(8)
70(1)	Adjustment of Contract Price in respect of labour and/or materials, or any other matters affecting the cost of the execution of the Works have arisen as set out in Part II under Clause 70	Rises in costs occur, or any other matters affecting cost arise	None	70(1) and see Part II	No 'cost' only

Clause	Grounds for Making Claims	Rights to Reimbursement	Notices to be Given	Clauses for Payment	Payment Includes Profit?
70(2)	Changes in Statutes etc., causes additional cost to the Contractor in the execution of the Works	Statues, Ordinances, etc., have changed after the date 30 days prior to submission of tenders	None	70(2)	No 'cost' only
71	Currency restrictions are imposed in relation to the currencies in which the Contract Price is to be paid	Restriction in relation to to currencies give rise to loss or damage to the Contractor	None	71	Fiancial losses suffered are to be reimbursed

Table 3-2 Recovery by OWNER Under FIDIC Clauses

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Clause	Grounds for Recovery of Sums Due	Rights to Recovery	Notices to be Given By the Engineer in Respect of the Dues	Method of Recovery of Sums Due
25	Contractor fails to produce satisfactory evidence that insurance, referred to in the Contract, is in force	Employer has paid the Premium necessary to obtain the insurance required	None	1. Deduct the amount so paid from any money due, now or in the future, to the Contractor 2. Recover the amount as a debt
30(3)	Highways or bridges communication with the Site are damaged in the transporting of Contractural plant, machinery, etc., due to failure on the part of the Contractor to observe and perform the obligations detailed in Clause 30(1) and (2)	Engineer has certified an amount to be due to the failure on the part of the Contractor	None	Payment to be made by the Contractor to the Employer

Clause	Grounds for Recovery of Sums Due	Rights to Recovery	Notices to be Given By the Engineer in Respect of the Dues	Method of Recovery of Sums Due
39(2)	Contractor fails to carry out the Engineer's orders to remove or substitute materials, or re-execute any work	Employer employs and pays other persons to carry out such removal or re-execution, etc	None	As for Clause 25 above
47(1)	Contractor fails to complete the Works within the relevant time	Liquidated damages arise as stated in the Contract	46 line 3	See Clause 47(1)
49(4)	Contractor fails to finish certain work required by the Engineer pursuant to Clause 49, which, in the opinion of the Engineer, the Contractor was liable to do at his own expense under the Contract	Employs and pays other persons to carry out such work	49(2) line 7	As for Clause 25 Above
52(1) & (2)	A decrease under 52(1) is applicable in the Engineer's opinion. The nature or amount of an omission or addition (ordered under clause 51) relative to the nature or amount of the whole or any part of the Works renders a rate or price unreasonable or inapplicable	Engineer varies a rate or	52(2) (b)	Adjustment of Contract or prices
52(3)	Upon certified completion of the Works there is found to be an increase of the sum named in the Letter of Acceptance by an amount greater than 10%	A substantial (10%) increase in work increases the return originally anticipated (based upon the datum sum named in the Letter of Acceptance)	None	This lump sum 'due' to the Employer is to consist of any excessive return (profit) gained by the Contractor from the increase in work without any increase in his fixed costs. The Contract Price is to be adjusted by the sum to be agreed.

Clause	Grounds for Recovery of Sums Due	Rights to Recovery	Notices to be Given By the Engineer in Respect of the Dues	Method of Recovery of Sums Due
59(5)	Contractor fails to show reasonable proof of payment (or discharge) to Nominated Subcontractors	Employer has paid the Nominated Subcontractor direct	Certification under 59(5) lines 11 & 12	Deduction by way of set-off
63	Default by the Contractor leading to his expulsion from the Site	Costs of execution and maintenance together with damages for delay(if any) and all other expenses incurred providing the amount exceeds the sum payable to the Contractor under 60(3) Costs of execution and maintenance together with damages Employer may sell Constructional Plant, etc	Certification under 63(2) and 63(3) As above 64 last line	Payment on demand(as a debt) by the Contractor to the Employer Apply proceeds towards the debt owing 1. Deduct the amount so paid from any money due, now or in the future, to the Contractor 2. Recover the amount as a debt
70(1)	Adjustment of Contract Price in respect of labour and/or material cost reductions or any other matter affecting the cost of the execution of the Works (arising as set out in Part II under Clause 70 to reduce the cost)	Reductions in costs occur	None	Adjustment of Contract Price
70(2)	Changes in Statutes, etc., cause a reduction in cost to the Contractor in the execution of the Works	Statutes, Ordinances, etc., have changed after the date 30 days prior to the submission of tenders	Cetification under 70(2)	Adjustment of Contract price