

Managing the Scheduling Risk of Provisional Sums

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The term 'Provisional Sum' is generally used to describe a sum of money provided in the contract document in relation to future works which is normally an undefined scope of work at the time the parties entered into the contract.

Provisional Sums are often used in the contract where the details of the works have not been finalised by the principal and/or where the works involve the appointment of specialist subcontractors which are difficult to price accurately in advance.

In a case where a project involves a specific technology for a highly specialised building such as nuclear research building, the Provisional Sums might make up a significant amount of the contract price and when crystallised into a fixed scope of work, may have a corresponding impact on the programme.

Because of the uncertain nature of Provisional Sum works, they are often not scheduled by contractors in the contract programme, and when they are scheduled, they are not properly accounted for by schedule activities in a programme.

RICS Standard Method of Measurement 7th Edition (SMM7) identifies that Provisional Sums can be either defined or undefined. Defined Provisional Sums cover works which are not completely designed, but the works to which it pertains are described in sufficient detail to allow the contractor to include these works in the programme.

The criteria for a defined Provisional Sum are set out as follows:

- a) The nature and construction of the works;
- b) A statement of how and where the work is fixed to the building and what other work is to be fixed thereto;
- c) A quantity or quantities which indicate the scope and extent of the work; and
- d) Any specific limitation regarding the works.

Undefined Provisional Sums cover unforeseen works and as such the contractor normally does not make any allowance for programming the work or any indirect costs associated with the works.

The Australian Standard Suite of General Conditions of Contract (AS 2124-1992, AS 2127-1992, AS 4000-1197 and AS 4902) are silent in relation to how Provisional Sum works should be included in the programme. However, they do prescribe how the costs should be evaluated.

The Society of Construction Law Delay and Disruption Protocol (SCL Protocol) recommends that the programme submitted by the contractor shall include the following for Provisional Sums:

- The works contained in defined Provisional Sums; and
- Activities representing the likely work content of undefined Provisional Sums, complete with logic links but with durations set to zero (unless specified otherwise).

We concur with the SCL Protocol's recommendation in relation to the contractor incorporating undefined Provisional Sums as activities with zero duration into its updated programme, and subsequently completes and updates the detail as soon the Provisional Sum scope becomes defined.

In our experience, we find that contractors normally fail to include the activities associated with Provisional Sum works altogether in updated programmes, even when the scope of the Provisional Sum works becomes defined during the course of the contract. This makes it extremely difficult for the contractor to demonstrate cause and effect when claiming an extension of time for qualifying or compensable causes of delay under the contract.

Further, the absence of the Provisional Sum activities reduces the contractor's ability to manage the delivery of any information required from principal and to use the programme as a time management tool for the entire scope, including the Provisional Sum works. This also has adverse consequential impacts on the contractor's ability to mitigate the effects of the delaying event.

We recommend that each party agree as much as possible early during the contract on the detail for Provisional Sum works, including how the works are to be included in the programme. Any assumption and qualification in relation to the relevant works should be clearly documented so that any departure from what was agreed can be clearly identified and corrected.

The authors have referred to the following resources in preparing this article:

1. The Society of Construction Law (2002) *SCL Delay And Disruption Protocol*, Oxon ; England, p.67
2. Doe, J., (2008) *Who Holds the Programme Risk?* London, England: Herbert Smith.
3. Keily, P., & MacNamara, P., (2003) *Smm7 Explained and Illustrated*, RICS Books, London : England, p.6