

Contractor's Issues with Interim Payments

Under the FIDIC MDB 'pink book'
Conditions of Contract 2010 edition
(Japan International Cooperation Agency)

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- Basis of this presentation is the FIDIC MDB 'pink book' 2010 edition
- A free download is made available at the website of the Japan International Cooperation Agency (JICA):

https://www.jica.go.jp/english/our_work/types_of_assistance/oda_loans/oda_op_info/guide/tender/c8h0vm0000aoesst-att/civil_02.pdf

Application for Interim Payment

- Sub-clause 14.3 of the General Conditions of Contract ('GCC 14.3') deals with applications for interim payment ('IPA')
- GCC 14.6 deals with the Engineer's evaluation and certification of Interim Payments ('IPC')
- Under FIDIC pink (and red) book contracts, interim payments are based on measured quantities of work done (as per GCC 12.3)

GCC Sub-clause 14.3

The Contractor submits an application (for interim payment):

- ...at the end of each month
- ...in a form approved by the Engineer
- ...together with supporting documents
- ...such as the monthly progress report (Sub-clause 4.21)

Sub-clause 14.3 (a) to (g)

The Statement includes:

- The measured works (estimated value of works completed)
- Adjustments under GCC 13.7 and GCC 13.8 (changes in law and escalation)
- Deductions for retention, advance payment repayment, additions for claims and Determinations under GCC 20.1 or Dispute Board Decisions etc.

What are the supporting documents?

- Monthly Progress Report submitted under **Sub-clause 4.21** - including all attachments (!)
- **Sub-clause 14.3 (a)**: Quantities of Work done
 - usually as shown and calculated in Inspection Reports but sometimes as shown in shop drawings and/or As-Built drawings
- Statements and calculations as shown in **Sub-clause 14.3 (b) to (g)**, including amounts for Variations and Claims (if any)

What are the supporting documents?

- Are any further supporting documents required for interim payments under the Specifications?
 - Usually these are described in the General Specifications
 - Sometimes they are described in the 'Measurement and Payment' chapters of the Special Specifications or Technical Specifications
 - Sometimes requirements are in a separate document, issued by Engineer after Commencement (usually not a binding Contract Document)

Checklist: is an IPA complete?

- Check first: GCC 14.3 (a) to (g) – all complete?
- Check second: GCC 4.21 – all complete?
- Check third: Contract Data / PCC 14.6 – any minimum amount for interim payments?
- Check fourth: Specifications – any requirement for supporting documents?
- Check fifth: Supporting documents – complete?
- Check sixth: Formatting agreed with Engineer or complying with Engineer's guidelines/instruction?

What if the supporting documents are incomplete?

- **Sub-clause 14.6** entitles the Engineer to deduct part of the Interim Payment if that part has no supporting documents, or if the Engineer finds them incomplete or incorrect.
- However, under **Sub-clause 14.6 (b)**, the Engineer shall give notice about this
- Also, the Engineer must give '*all supporting particulars*' for such deduction.

What if the supporting documents are incomplete?

- The FIDIC Contracts Guide says that:
 - if a supporting document has not been submitted, the time for payment under **Sub-clause 14.7(b)** does not begin;
 - However, under **Sub-clause 14.6**, the Engineer must certify rest if a missing document supports (only a) part of the IPA, this part will be withheld.
 - Guide doesn't address document format issues

*The FIDIC Contracts Guide, Edition of 2000, available at:

https://rockwelleng.com/blog/downloads/fidic/fidic_contracts_guide.pdf

Disagreements about the IPA and supporting documents

- There can be disagreement or between Engineer and Contractor about whether supporting documents are complete and accurate, or not.
- There can also be disagreement about the format or level of detail of supporting documents. Engineer decides the format in **GCC 14.3**, sometimes their requirements are unreasonable or keep changing!
- Some Engineers do not issue IPC if there is disagreement about completeness, accuracy or format of some or all supporting documents.

What to do in case of disagreement on IPA and supporting documents?

First steps for Contractors: Ask and discuss with the Engineer.

- There may be a good reason for his/her disagreement. If so, change it.
- Or it may be a misunderstanding. If so, explain it
- Try to agree about the format and content of supporting documents for IPA to avoid repeating issues with interim payments.

What to do in case of disagreement on IPA and supporting documents?

In case of no agreement and no way to get paid: Notify Employer and Engineer formally

- Inform Employer about financing charges under **GCC 14.8** – this is a claim for interest on delayed payments, it has no notice period but fair warning should be given.
- If cashflow issues threaten to slow down the works, notice should also be given under **GCC 8.3, GCC 8.4, GCC 20.1** and **GCC 16.1**

What to do in case of disagreement on IPA and supporting documents?

In case of notice given and still no solution/payment:

- **GCC 16.1** applies. This allows Contractors to slow down or suspend the Works 21 days after notice.
- If the delayed payment and slowdown/suspension delays completion, the Contractor can claim Extension of Time under **GCC 8.4** and **GCC 20.1**
- If the delay persists 42 days after notice was given, the Contractor can terminate the Contract under **GCC 16.2**

Summary of GCC Provisions for IPA

- **GCC-14.3** deals with applications for interim payment – further details can be in the PCC or GSS!
- **GCC-4.21** describes the contents of the MPR – further details can be in the GSS!
- **GCC-12.3** deals with measurement of quantities of work done and materials supplied – further details are in the TSS, BOQ and sometimes GSS!
- **GCC 14.6** deals with IPCs, **GCC 14.7** with payments and **GCC 14.8** with delayed payments – further details can be in the **PCC**!
- **GCC 16.1** deals with suspension after delayed payment and **GCC 16.2** with Termination. Notices under **GCC 8.4** and **GCC 20.1** need to be given in time!

End of Presentation

- Good luck with your interim payments!
- Summary:
 - There are requirements for what needs to be in the Statement applying for Interim Payments, better make sure they are met
 - It is worth agreeing the format of the application and supporting documents with the Engineer
 - If no agreement is possible and payments are delayed there are contractual remedies available