

# The Claim of Escalation Beyond Contract By FIDIC

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**Abstract-** *this paper analyze the importance of the claim of escalation beyond contract terms by following the FIDIC red book and by calculating the escalation by following the Economic advisor of India due to an abnormal increase in price due to COVID-19 and after that, the rise in central bank rates to fight inflation and Russia's war in Ukraine continue to weigh on economic activity. According to my investigation, it is found that global inflation is expected to fall from 8.8 percent in 2022 to 6.6 percent in 2023 and 4.3 percent in 2024 which are still above pre-pandemic (2017-2019) levels of about 3.5 percent. The basic design of my study is to make understand the working of the claim for escalation in the construction project and to forecasts the amount of escalation required for budgetary and bidding purposes*

**Keywords-** claim, escalation, FIDIC, construction project, economic advisor of India.

## I. INTRODUCTION

The Escalation Clause is a clause in a contract that guarantees any specified change in the agreed price that has been determined by the two consenting parties on an individual element outside of either party's control and is subsequently affecting the agreement value. In industries that rely heavily on specific raw materials and have seen price fluctuations, it has become common practice to include an escalation clause in the contract.

If the cost of labor, raw materials, equipment and machinery, workforce, and other costs rise by more than 5% or 10%. The Clause gives the contractor permission to produce greater returns for the deal. When a set price for the contract is given, as well as when a cost-plus contract is signed, an escalation clause is advised. Escalator Clauses, also known as Price Escalation Clauses when dealing with inflation or price rises or Material Escalation Clauses when dealing with Raw Materials, are frequently used in the construction industry where unexpected costs are secured due to fluctuations in the prices of raw materials, fuel, labor, and workforce during the course of the Contract. Fossil fuel is frequently common in these sectors.

## II. LITERATURE REVIEW

It's the fore most preliminary step for proceeding with any research work writing. While doing this go through a complete thought process of your Journal subject and research for it's viability by following means:

- A. It was noted in research by Daoud et al. (1999) that construction contracts in the Middle East experience delays and cost overruns. The project owners' modifications, the lack of awareness of fundamental contractual concerns, the constant changes to laws and regulations, etc., are some of the causes of cost overruns
- B. Knight et al. (2000) investigated the elements influencing cost escalation from the perspective of the contractor and found that these factors are difficult to quantify and are judged in a subjective and imprecise manner.
- C. Dawood et al., 2001, conducted a study on Japanese civil engineering projects to analyze cost inflation and risk assessment of infrastructure projects, evaluate the viability of infrastructure projects, and establish a forecasting approach for cost indices. By focusing on issues including eliminating delays, keeping a stable workforce, and forming partnerships with subcontractors, Xiao's 2003 investigation into the factors impacting contractor performance came to this conclusion. Three elements, including the size of the project, the type of project ownership, and the length of the project implementation phase, were taken into account as the causes of cost inflation in the case of infrastructure projects related to transportation.
- D. Cost overrun issues were also cited as being caused by issues with the contractor, the materials, and the owner's finances (Patil et al., 2011; Ibrahim Mahamid, 2013). For forecasting the cost of escalation, analytical techniques were also applied. Analytical techniques such as simulations, neural networks, and trend effect analysis were also used to determine historical escalation rates and trends.
- E. A Case Study of Iyer and Kalidindi – The year 2002. Escalation is one of the most dispute-prone clauses in construction contracts as per the study of Iyer and Kalidindi. Various claims related to escalation were studied.

### III. NEED FOR AN ESCALATION CLAUSE

The aftermath of COVID-19, the Russian invasion of Ukraine, and other factors have all added to the almost unheard-of cost inflation that is currently occurring worldwide. The price and availability of supplies and equipment necessary for construction projects are already being impacted by the conflict in Ukraine and the associated sanctions. This industry in the UK usually has low-profit margins but needs substantial funding to advance work. As a result, any change to supply chains rapidly results in increased financial pressure. A market already in turmoil due to Brexit, COVID-19, disruptions in shipping, inflation, and increasing energy and fuel prices will be made worse by the conflict.

In particular, Russia is a significant worldwide supplier of wood, chemical products, nickel, steel, iron, and other metals. Other important exports from Ukraine include machinery and transport apparatus, as well as steel, iron, nickel, and chemical products. Supply chains will be placed under strain due to the increased price volatility in the commodities market brought on by the disruption to these supplies brought on by the conflict and the sanctions that followed.

Due to Europe's heavy reliance on Russian oil and gas supplies, the conflict has also had an effect on the price of fuel, with both gas and oil prices rising considerably. The cost of materials used in projects that require significant energy input to manufacture and produce, such as steel, bricks, plastics, and ceramics, will likely rise as a result of these prices, which may stay high or could rise further. The expense of transporting construction-related machinery, equipment, and supplies is also likely to increase.

By making use of the FIDIC Red Book (2017), I have taken into account the potential effect on ongoing projects in this case study. (FIDIC). I have also thought about how these factors might affect upcoming initiatives and how they might be funded.

### IV. CONFLICT TO BE OCCURRED FOR THE CURRENT PROJECT DUE TO ESCALATION

The potential effects of the conflict in Ukraine on ongoing initiatives will vary, and each project will need to carefully weigh the facts. Cost overruns, changes in the scope or nature of the works (variations), delays caused by shortages of materials and products, arguments over the imposition of suspension or termination rights, and others are possible effects.

It is crucial to comprehend both the contractual position and the position under the contract's governing legislation. Before discussing two general ways that non-performance risk is allocated, force majeure and frustration, I have outlined below how time and cost problems are handled under the standard form contracts under English law.

Additionally, it's crucial to keep in mind that parties are required by law, and frequently in accordance with the explicit conditions of contracts, to take reasonable steps to minimize their loss.

For instance, it will be important to carefully consider sourcing materials from other places as part of any evaluation of entitlement. Causation-related issues, such as those that already existed, should be closely taken into account since they suggest that the conflict's effects are not the main issue. Each of the contractual provisions listed below is subject to a notification requirement, and parties risk losing their contractual rights if notice provisions are not followed in terms of timing and/or content. This is another important consideration.

### V. CLAIM FOR ESCALATION BY FIDIC RED BOOK

The contractor is entitled to an EOT for delays caused by and for extra cost as follows:

*Sub clauses 8.5(d) and 8.6: "Unforeseeable shortages in... personnel or goods... caused by... governmental actions," as well as "Unforeseeable delays or disruptions" brought on by public authorities of the nation where the location is situated.*

B. Sub-clause 18.1: "Exceptional Event" or "Force Majeure" is defined as an occurrence that is

1. beyond [the contractor's] control;
2. Against which [the contractor] could not reasonably have provided before entering into the Contract;
3. Having arisen, [the contractor] could not reasonably have avoided or overcome; and
4. Is not substantially attributable to the [Employer]". "War, hostilities (whether war be declared or not), invasion, and the act of foreign enemies" are explicitly listed as such events. (Whether in the country in which the works are being carried out or not).

C. Clause 13.6. Changes to the legislation of the nation where the works are performed (including changes to permits and licenses). The contractor is eligible for reimbursement for additional expenses incurred because of the following:

1. Sub-clause 18.4(b): an 'Exceptional Event' if the particular event relied on is "war, hostilities (whether war be declared or not), invasion, the act of foreign enemies".
2. Sub-clause 13.6: Alterations to the legislation of the nation where the works are being performed (including changes to permits and licenses).

D. Sub clauses 13.1–13.3: In the event of unforeseen circumstances, the parties may propose "Variations" and "Value Engineering" proposals to modify the works.

E. Schedules of expense indexation may be included in the contract, per sub-clause 13.7's optional language. If so, the contractor's payments will be modified by adding or subtracting amounts determined in accordance with the schedules to account for increases (or decreases) in the cost of labor, goods, and other inputs into the Works.

F. Termination rights under the standard form contracts for force majeure

1. Sub-clause 18.5: Either party may terminate the contract if an "Exceptional Event" causes a delay of 84 continuous days or multiple delays which total more than 140 days.
2. Sub-clause 18.6: Either party is also entitled to serve a termination notice if any event arises outside the control of the parties which makes it impossible or unlawful to perform their contractual obligations, and the parties are unable to agree on an amendment to the contract. This might be relevant but the 'impossibility' of performance is a high threshold.

## VI. CALCULATION OF ESCALATION

Escalation formulae used in construction contracts adopted by CPWD

$$V = W * (X/100) * ((CI - CI_0) / CI_0)$$

V = variation in the cost of the item i.e., increase or decrease in the amount in rupees to be paid or recovered.

W = cost of work done for the period to which escalation is applicable

X = component of the item expressed as a percentage of the total value of work

CI = All India Wholesale Price Index for an item for the period under consideration as published by Economic Advisor to Government of India, Ministry of Industry and Commerce.

CI<sub>0</sub> = All India Wholesale Price Index for an item as valid on the last stipulated date of receipt of tenders including extensions, if any (base index).

## VII. CONCLUSION

Due to the regularly shifting prices of the construction industry's essential building blocks, such as steel, cement, labor, and POL, escalation is a crucial contract clause. It's critical to identify the factors that contribute to an escalation in construction projects in order to control or measure it. With the volatility of the present market, it can be quite challenging to foresee or estimate what prices will be taken into consideration for a bid. Escalation is typically used for long-term projects, therefore it is best to estimate rates that take future price increases into account. Instead, you can quote rates based on the fundamental costs of materials and labor, with the contractor being responsible for any variations in those costs.

The WPI is the core of escalation and should be used as a guide when determining price escalation. WPI is presented and occasionally, usually monthly, updated by the RBI or the GOI, and it is crucial in determining their monetary and fiscal policies. Also, escalation clauses in the supply of equipment, construction work, and raw materials are used as a result of the WPI index. The weekly index numbers of wholesale prices have acquired considerable \ significance over time since this is the only index that gives \ an idea of the week-to-week fluctuations in the prices of all the \traded commodities and which will help to obtain nearly \forecasts rate for fixed price contracts.

## REFERENCES

- [1] <https://www.ijert.org/research/wholesale-price-index-and-its-effect-on-price-escalation-of-materials-for-indian-construction-industry-IJERTV1IS3203.pdf>
- [2] <https://www.imf.org/en/Publications/WEO/Issues/2023/01/31/world-economic-outlook-update-january-2023>
- [3] <https://www.ashurst.com/en/news-and-insights/legal-updates/conflict-in-ukraine>
- [4] <https://www.ashurst.com/en/news-and-insights/legal-updates/conflict-in-ukraine>
- [5] [https://www.ijresm.com/Vol\\_1\\_2018/Vol1\\_Iss10\\_October18/IJRESM\\_V1\\_I10\\_91.pdf](https://www.ijresm.com/Vol_1_2018/Vol1_Iss10_October18/IJRESM_V1_I10_91.pdf)