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ADVICE NOTE

Question:

Can the Contractor be paid for works done between the date of the Taking-Over Certificate (TOC) and the submission of the Statement at Completion under FIDIC Red Book 1999?

Answer:

First, let us examine the conditions for the works being taken over as per Sub-Clause 10.1 [Taking Over of the Works and Sections]:

- i) The Works have been completed in accordance with the Contract
- ii) A Taking-Over Certificate has been issued (or is deemed to have been issued).

This clause explicitly states that the Taking-Over Certificate may only be issued once the Works have been completed. It further specifies that the date of the Taking-Over Certificate shall be the date on which the Works or Section was completed.

Yet, your question refers to some works being done between the date of the Taking-Over Certificate and the date of submission of the Statement at Completion. What works, then, are these that were carried out after the date of the Taking-Over Certificate?

If the works are not complete, the Engineer is entitled to reject the application, and the Contractor must complete the Works as specified in Sub-Clause 10.1 Paragraph (b). The subclause allows for minor outstanding works and defects to be completed. It is unlikely that FIDIC RB 1999 envisages these as major works for which the Contractor would be due payment.

Based on the foregoing, it is my opinion that there is no basis for any works to be done after the Taking-Over Certificate is issued.

Secondly, let us review the provisions for the Statement at Completion. The Statement at Completion should contain three major components.

- i) The value of all work done up to the date of the Taking-Over Certificate.
- ii) Any further sums which the Contractor considers to be due.
- iii) Other estimated sums.

If any work was done after the Taking-Over Certificate was issued, it is, in principle, incorrect that the Taking-Over Certificate was issued in the first place. However, if the Contractor did carry out any further works, then the Contractor is rightfully entitled to payment for these works under item (ii) above, as “any further sums which the Contractor considers to be due.” The Engineer should evaluate these sums and certify payment under Sub-Clause 14.6, stating the amount that the Engineer fairly determines to be due to the Contractor

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