

Legal Scope

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Advertising Material

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Unit Pricing: Legal Food for Thought

Construction work can be priced under various methods. A common method, unit pricing, can lead to ambiguities and legal disputes. When entering contracts with unit pricing, contractors and subcontractors should consider legal issues that can arise.

Unit pricing is most common for work that can be measured by individual units, and it generally relieves the bidder from the constraints of a lump sum bid. Thus, a bidder can price the and receive a per unit value of compensation based upon the actual “as built” work performed.

When setting unit price points for the bid, most bid instructions provide an estimated quantity of units. Most contractors and subcontractors realize that pricing of per unit work may depend on the total amount of work actually performed.

Also, certain contract terms can provide predictability and decrease the amount of disputes on unit pricing contracts.

Under a “Variations in Estimated Quantities” clause, the pricing is adjusted if the actual units of work are a certain percentage deviation from the estimated (anticipated) units of work. For example, if there are 15% more units of “as built” work than the

original bid estimates, the VEQ clause would trigger a change in unit pricing. VEQ clauses can use various percentages and pricing amounts accordingly, and some contracts are unique and creative in this regard.

Unpredictability and disputes can also arise from the payment schedule on unit pricing contracts. Are progress payments based upon estimated units or actual “as built” units? If based on “as built” units, when does the reconciliation of the actual “as built” units occur for purposes of payment—monthly, quarterly, or at the end of the project? These are all items that a thoughtful contractor/subcontractor will clarify in its contract, in advance.

In some instances, contracts include a base price lump sum for certain work, with the potential for unit pricing to be triggered. The contract should clarify as to when and under which conditions the unit pricing is triggered, and for which amount of work the unit pricing is applied and covers (including any incidental work, costs, or profit).

Unit pricing issues can also arise in cost plus fee with guaranteed maximum price contracts. If a cost plus fee with GMP contract includes specific unit pricing, the contract should clarify whether the unit pricing is a cost within the GMP cap, or if those unit priced items are unknown work that is additional to the GMP on a strict per unit addition. Similarly, the contract should clarify whether the unit pricing includes all incidental work, overhead, management, and profit.

Special care needs to be taken when entering unit pricing contracts for excavation. Notably, the contract should identify whether the unit pricing is classified or unclassified and whether excavation depths allow for adjusted compensation per unit. It is further recommended that the contract clarify pricing for hand removal versus mechanical removal, trenching versus mass cutting, and also whether the pricing includes any related costs for unsuitable backfill material caused by the type of soil.

When entering construction contracts, or when a dispute arises on a project, it is best to seek legal advice immediately to ensure that all rights are protected.

The Numbers:

56.9

- 56.9 is the September 2017 Architectural Billing Index (“ABI”) for the Northeast region of the U.S.
- An ABI above 50 indicates an increase in firm billings from the previous month.
- The Northeast region was best in show, with the highest ABI of all four U.S. regions.

Source(s): AIA Architectural Billings Index, September 2017.



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