

KNOWLEDGE CENTRE

Variations

VAR:3

Relevant Facts or Questions Asked

- I. The Procuring Entity (PE) issued three emergency contracts for Civil Engineering, General Road and Pipe Laying Works;
- II. During the performance of these contracts, it was realized that the existing scope of work was inadequate to complete the project.
- III. The PE further outlined that its project team in an effort to manage these projects, may have incorrectly applied the procedures set out in 13.1 – *Right to Vary*, and 13.2 – *Value Engineering* of the contract;
- IV. Consequently, there were a number of variations which were not approved in accordance with the established policy and likewise the contingency and provisional sums included in the subject contracts were in some situations used to enable the completion of these works;
- V. In recognition that its project team may not have acted appropriately/ followed the correct procedures, the PE sought to be advised on how the subject variations are to be treated and the corresponding procedures.

Advice

1. The established variation policy and procedures require the prior approval of the head of entity for all contract variations.

2. Therefore, any variation that was not previously approved by the head of procuring entity in keeping with the procedures outlined in the Handbook of Public Sector Procurement Procedures (“Handbook”) cannot be subsequently approved by either same head of the procuring entity or the Public Procurement Commission (PPC).
3. Where a procuring entity is faced with the situation of the nature under guidance, the PE must submit the matter to the Cabinet for its consideration and approval.
4. This Ministry also submit that in circumstances where either the *Right to Vary* or *Value Engineering* approach is to be used, the prior approval of the head of entity, which in the instant matter is that of the Engineer, is also an imperative.

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