

# KNOWLEDGE CENTRE

## Variations

**VAR:2**

### Relevant Facts or Questions Asked

A Procuring Entity (PE) sought guidance as follows:

- I. A Procuring Entity (PE) requested to be directed to an area, if any, of the terms and conditions whereby a PE can change the scope of works of a consultancy contract without causing any breach of the contract.
- II. This would factor in the contract sum being changed.

### Issues Arising

*The applicable policy provisions relating to a change in the Scope of Works (SOW) for consultancy services contract.*

### Advice

1. Volume three (3) of the Handbook of Public Sector Procurement Procedures (Handbook) is relevant to the subject matter and where much needed assistance can be found. Special focus is urged to section A2.7- Developing Terms of Reference and ensuing subchapters thereunder.
2. Since the SOW section of the Terms of Reference describes in detail all main activities or tasks to be performed by the consultant and expected results, post amendments, in the form of an increase/decrease in the tasks, can in fact result in an increase or decrease in the contract price.
3. Where the price of the contract is changed as a result of an increase or decrease in the SOW to be performed the necessary contract amendment procedures must be observed.

4. The Handbook offers guidance on instances where a SOW can be modified:-

*“... For instance, the scope of work for a feasibility study originally covering a number of alternatives will be reduced, if during execution of the assignment, some alternatives do not prove to be viable. Similarly, the scope of work can be expanded if more accurate studies than initially anticipated become necessary. **In such cases, the TOR must clearly indicate the circumstances under which a decision will be made by the Procuring Entity to modify the scope of work.**”*

5. A change in SOW is tantamount to a variation. Under circumstances where a variation to the SOW is considered, it is the expectation that all parties, inclusive of the consultant, must agree to the adjustment. Where an adjustment/variation to the SOW is actioned without the agreement of the all parties to the contract, a breach of contract will occur which can in fact lead to litigation proceedings.
6. A decision to vary the SOW and any resulting change in the contract price must form part of the procurement records in keeping with Section 39(a) of The Public Procurement Act, 2015.

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