

# CONTRACTOR'S RIGHT TO CLAIM FOR EXTRA WORKS

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## ABSTRACT

Extra works are works which are not explicitly included and considered by the contracting parties at the time of the execution of the contract. Hence, these extra works are executed without the instruction from the contract administrator. All standard forms of construction contract used in Malaysia state that for a contractor to claim for extra works done, there must be an official and formal variation order issued by the contract administrator under the specific contract. However, there are times when these extra works are executed without any written order. Therefore, the issue is can the contractor claim for extra work which is not ordered by the contract administrator in writing? Hence, this research is conducted to identify the contractor's entitlement to claim for extra works which are not issued as written instructions by the contract administrator. Legal cases were analysed and results showed that there were two consequences of the entitlement with supporting reasons and principles. The first result is that the contractor is not entitled to claim payment for the extra work because the extra work is intentionally required under the scope of the contract, extra work must be in written order as provided under the standard forms of contract, the contractor has never requested for written order for the extra work, extra price is not agreed by the client, contractor failed to prove the extra work, and the contract administrator refuses to order extra work. On the other hand, the contractor is entitled to recover payment for extra work when the contract administrator improperly refuses to issue written order, client waives the right to deny the contractor's entitlement, the contractor has managed to prove the extra work, and when the extra work is executed outside the contract whereby contractor can claim for quantum meruit. Therefore, all parties in the construction project should know their own rights and obligations in claiming and issuing payment for extra work.

## ABSTRAK

Kerja tambahan ialah kerja yang tidak dimasukkan secara langsung dan dipertimbangkan oleh pihak berkontrak pada awal kontrak. Maka, kerja tambahan ini dijalankan tanpa arahan daripada pentadbir kontrak. Semua borang kontrak pembinaan di Malaysia menyatakan bahawa bagi kontraktor yang ingin menuntut pembayaran untuk kerja tambahan, perubahan kerja secara bertulis harus dikemukakan secara formal dan rasmi oleh pentadbir kontrak. Walau bagaimanapun, sesetengah kerja tambahan dijalankan tanpa sebarang arahan perubahan kerja secara bertulis. Maka, persoalannya ialah bolehkah kontraktor menuntut kerja tambahan yang tidak diarah oleh pentadbir kontrak secara bertulis. Oleh itu, penyelidikan ini dijalankan untuk menentukan kebolehtuntutan kontraktor terhadap kerja tambahan yang tidak diarah oleh pentadbir kontrak secara bertulis. Analisis kes-kes perundangan telah dijalankan dan dua kategori keputusan telah diperolehi. Keputusan pertama menunjukkan kontraktor tidak layak menuntut kerja tambahan kerana kerja tambahan ini sememangnya telah disebut dalam kontrak, kerja tambahan ini mesti dalam bentuk arahan bertulis seperti yang disebut dalam borang kontrak, kontraktor langsung tidak pernah meminta arahan kerja tambahan secara bertulis, harga kerja tambahan tidak disetujui oleh majikan, kontraktor gagal membuktikan kerja tambahan, dan pentadbir kontrak tidak bersetuju terhadap kerja tambahan tersebut. Sebaliknya, kontraktor boleh menuntut pembayaran bagi kerja tambahan sekiranya pentadbir kontrak secara tidak amanah menafi arahan bertulis, majikan kehilangan hak untuk menolak tuntutan kontraktor, kontraktor berjaya membuktikan kerja tambahan tersebut, dan sekiranya kerja tambahan itu dijalankan di luar skop kontrak, kontraktor boleh menuntut secara *quantum meruit*. Oleh itu, semua pihak dalam projek pembinaan harus mengambil kira hak dan tanggungjawab masing-masing dalam tuntutan terhadap kerja tambahan.