

Date: 13 July 2023
File ref.: CPB-1005-LET-0194

Worley Services Pty Ltd
Craig Ramm
Engineer Representative
Level 1, 93-95 William Street
Perth WA 6000

Attention: Mr Craig Ramm



Dear Sir,

CONTRACT NO. WR/C/CC/1005
WESTERN RANGE PROJECT – MAIN INFRASTRUCTURE BULK EARTHWORKS
Response to Rejection of Variations carried out as Dayworks

In response to recent correspondence (including but not limited to WR-GCOR-009517 and Letter 1005-0072) from the Engineer that rejects dayworks costs, asserts that some of the Variations detailed below, have not been directed by the Engineer and valuation of the referenced Variations should not be valued in accordance with Clause 9.3(a), the Contractor disagrees and sets out the below information to substantiate its reasoning.

Variation Works referred to is this correspondence:

| | |
|----------|--|
| VAR-0016 | Laydown 14/15 |
| VAR-0018 | Delays to Clearing Works |
| VAR-0033 | Changes to 4W Bypass + Traffic Control |
| VAR-0036 | Works Required for 27W Landbridge Relocation + BSA04 Soil Movement |
| VAR-0037 | Poor Condition of Camp Road |
| VAR-0046 | PMP5 to Turkeys Nest 1 Waterpipe Alignment |
| VAR-0052 | LV17 Deviation for 27W Haulage |
| VAR-0053 | HV01 Section 2 CH3900-4300 additional clearing |
| VAR-0056 | HV02A Topsoil Double Handling |
| VAR-0057 | Additional Welltech Tank In Lieu of TN3 |
| VAR-0059 | Path to PC & ROM |
| VAR-0060 | Composite Services Model (GPR Survey) |
| VAR-0069 | TF702 – LV17 Interaction |
| VAR-0077 | Cement Stabilised Fill at Primary Crusher Pad |

Contractor refers to the numerous documents and correspondence exchanges on the Variations, from February 2023 to the end of June 2023 by numerous employees, representatives and personnel of the Engineer. The Contractor has extracted over 200 documents and correspondence detailing that these Variations were all acknowledged as “Dayworks” (Variations to be valued on daywork rates) and under the Contract the Contractor considers that there is a Direction and or clear intent from the Engineer that these would all be valued in accordance with Clause 9.3(a).

The Contractor would particularly like to highlight the following abstracts of information:

1. Pricing estimates provided by the Contractor, which in response the Engineer Directed it to proceed without any objection to the Daywork rates used:
 - a. VAR-0046 – PMP5 to Turkeys Nest 1 Water Pipe Alignment (refer email from the Contractor dated 19 April 2023; and Direction received 21 April 2023, via WR-GCOR-007543).
 - b. VAR-0052 – LV17 Deviation for 27W Haulage (refer email from the Contractor dated 28 April 2023; and Direction received 3 May 2023, ref:1005-0046).

- c. VAR-0077 – Cement Stabilised Fill at Primary Crusher Pad (refer email correspondence from the Contractor between 24-30 May 2023; and Direction received 30 May 2023 in response via email; and Direction on letterhead to proceed ref:1005-0071 received 2 June 2023).
2. Pricing estimates provided by the Contractor based on daywork rates for miscellaneous works as requested by the Engineer, with no written response:
 - a. VAR-0056 – HV02A Topsoil Double Handling (refer Email from the Contractor dated 5 May 2023).
3. Correspondence related to VAR-0033 Changes to 4W-Bypass – the Contractor advised the Engineer that “As discussed with the Engineer, in order to expedite the Works, the Contractor is proceeding on the basis of Day-works” (refer CPB-1005-LET-0039, dated 13 March 2023). The Engineer subsequently confirmed the method specifications and requested the Contractor to proceed (WR-GCOR-006516, 15 March 2023) and the Contractor confirmed it would proceed as instructed (CPB Con-GCOR-000128, 15 March 2023).
4. Email request from the Engineer dated 29 May 2023, requesting hours spent and forecast hours for Site Instruction works and “Dayworks” as separate items. This was followed by subsequent emails regarding dayworks hours.
5. Email request from the Engineer dated 8 June 2023, noting the acknowledging the fast pace of dayworks occurring and requesting costing to be included in the Weekly Report for all claims, regardless, whether a formal Variation or SI had been issued.
6. Draft Assessment of VAR-0033, valued on Dayworks Rates by the Engineer (refer WR-GCOR-008317).
7. Commercial Meeting Minutes – Meeting 5 held 24 March 2023, Item 2.1.3 confirming who is to sign Daywork sheets on behalf of the Engineer.
8. Over 300 Daywork sheets submitted to the Engineer by the Contractor. With approximately 200 Daywork sheets returned signed from the Engineer. The Engineer has then subsequently argued the Variations referenced, are not considered “Dayworks”.
9. Email correspondence from the Company, dated 16 June 2023 requesting a consolidated summary of all “Dayworks” expended on Site. The Contractor in response provided a list with all Dayworks it considered it was proceeding with, with associated Variation numbers in response. This was not challenged or responded to.
10. Daily email notifications issued to the Engineer, identifying which works are planned to be undertaken as Dayworks for the following day. Emailed daily to the Engineer from mid-May 2023 to present day.
11. Email correspondence from the Engineer, dated 22 June 2023 requesting all “Dayworks” to cease except for the traffic control at the 4W Bypass Boom Gates (VAR-0033).

The above clearly demonstrates repeated acknowledgement and reference to the aforementioned Variations as “Dayworks” both prior to commencing and whilst undertaking the work, and the Contractor subsequently considers them so in its valuation under Clause 9.3(a) and claim for costs for the works completed.

It's noted that the Engineer repeatedly insists that “Dayworks” must be Directed in accordance with the Contract. With reference to the Contract a Direction is defined under Clause 1.1 as follows:

“Direction” means any decision, demand, determination, direction, instruction, order, request, or requirement of the Engineer or the company made in writing, under the Contract.

The Contractor considers that the extracted information detailed above clearly forms a Direction under the Contract and therefore, the valuation of these works should be in line with Clause 9.3(a).

Accordingly, the Contractor maintains its position that the abovementioned Variations should be valued as Dayworks, and it is misleading of the Engineer to at submission of costs change its opinion and suggest otherwise.

Please advise if any further information or clarification is required, the Contractor is available to discuss as required.

Yours sincerely

CPB Contractors Pty Ltd



Richard Walford
Contractor's Representative