

## 專論

### • 工程合約中一式計價項目相關爭議

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工程實務上有所謂「一式計價」項目，此係指特定工作項目因為數量或範圍無法事先確定，難以於訂約前估算價格，締約兩造遂依據過往經驗，同意以一定金額或以契約價金之一定比例約定此類項目之價格，且由於此類工作項目通常以「式」(set)為單位，故稱為一式計價項目。

行政院頒佈之「公共工程施工綱要規範」第 01271 章「計量與計價」第 1.2.1 條將一式計價項目定義為：「此類工程項目包含不同種類的單獨工作內容，為方便計量與計價、成本控制及施工管理，而將其合併為單一工作項目。上述單獨之工作項目雖可在契約文件中個別列出及計量，但付款時仍合併為一單獨項目金額。」此定義特別強調一式計價項目雖然有可能列出其下各工作細項，甚至包括數量，但無論如何在付款時應視作同一項目。

實務上有關稅捐、利潤及管理費等項目通常另以一式計價方式估列，如遇有契約變更等增減契約價金情事，前述一式計價項目是否按變動之契約價金比例調整，不無疑問。行政院公共工程委員會發布之採購契約要項第 32 條即建議可約定依結算金額與原契約金額之比率增減之，可資參考。

## Focus

### • Controversies Relating to Lump Sum Priced Items in Construction Contract

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In construction practices, there are so-called lump sum priced items, which are special work items whose prices can hardly be estimated before a contract is executed due to the inability to determine their quantity or scope in advance. As a result, the parties to the contract agree to price such items by a certain amount or a certain percentage of the contractual price based on past experience. In addition, since such work items are usually denominated by “set,” they are referred to as lump sum priced items.

Lump sum priced items are defined under Article 1.2.1 of Chapter 01271 entitled “Quantification and Pricing” of the Framework Regulations Governing the Construction of Public Projects promulgated by the Executive Yuan. Under such Framework Regulations, “such construction items include independent work of different categories, and, for the ease of quantification, pricing, cost control and construction management, are combined as one single work item; and although such independent work items can be separately listed and quantified in contracts or documents, they are nevertheless paid as a stand-alone payment item at the time of payment.” It is stressed in such definition that although it is possible to list the detailed sub-items (or even their quantities) of a lump sum priced item, such item shall be treated as one item at the time of payment.

In practice, tax, profit and management fee items are usually estimated and listed as lump sum priced items. However, in the event of any contractual change such as any addition or reduction of the contract price, it calls into question if such lump sum priced

其次，工程契約依價金決定方式之不同，可粗分為總價承包契約及實作實算合約。總價承包合約之總價金於締約時即決定，原則上不因實作數量與契約文件之差異而更易總價；實作實算契約之契約價金則必需以廠商實際施作之數量計算，遞以結算金額為實際契約價金。由於實作實算契約之結算金額通常不等於締約時預估之金額，則一式計價項目之金額應否等比例增減，實務上亦可能產生疑義。

就類此爭議，最高法院 100 年度台上字第 1015 號判決謂：「就工程項目包含不同種類之單獨工作內容，為方便計量與計價、成本控制及施工管理，工程實務上存在有所謂一式計價之方式，即不論該工作項目實作數量為何，原則上固均以約定之數額為給付。惟倘當事人之契約就計價方式另有約定，或依工程項目性質該一式計價僅係雙方事前因方便而為約定，雙方即非不得因實作數量之增減或工期之遲早而請求調整。」

再者，最高法院 101 年度台上字第 729 號判決亦稱：「按工程實務上所謂一式計價之方式，即不論該工作項目實作數量為何，固均以約定之數額為給付，惟倘當事人依工程項目性質該一式計價僅係雙方事前因方便而為約定，雙方即非不得因實作數量之增減而請求調整，始屬公允。」

綜合最高法院前述判決意旨，有關「實作實算工程契約之實作金額與締約時契約金

items are adjusted in proportion to the changed contract price. Article 32 of the Guidelines for Procurement Contracts promulgated by the Public Construction Commission, which recommends adjustment based on the ratio of the settled amount to the original contractual amount, may be referenced.

In addition, construction contracts can be roughly categorized into lump sum contracts and unit price contracts based on the different manners in which the contract price of a construction project is determined. The total price of a lump sum contract is determined when the contract is executed and does not change in principle due to differences between the quantity of actual work and the contract, while the contract price of a unit price contract has to be calculated based on the actual quantity of work done by the contractor and the settled amount so calculated should be the actual contract price. Since the settled amount for a unit price contract is usually not equal to the amount estimated when the contract is executed, this may in practice also bring up the question if the amount of a lump sum priced item should be increased or decreased by the same ratio.

With respect to such issue, the Supreme Court rendered the 100-Tai-Shang-1015 Decision, holding that 「“for the convenience of quantification and pricing, cost control and construction management for project items, which include stand-alone work of different categories, there is so-called ‘lump sum priced items’ in construction practices, which means that although the agreed-upon amount shall be paid in principle regardless of the quantity of work involved for such project items, it is not true that the parties shall not request adjustment to the amount based on any increase or decrease of the actual amount of work or any acceleration or delay of construction completion if the parties have agreed under the contract to

額有差異時一式計價項目應否等比例增減」問題，最高法院係認為在契約約定不明之情況下，法院應探求兩造對於一式計價項目金額約定之真意，歸納起來有三種可能，包括：

- (1) 兩造之真意是一式計價金額無論如何不變，則縱結算金額高於締約時所列契約金額，仍依原訂一式計價項目金額給付；
- (2) 兩造就一式計價項目金額有約定計算方式（例如本即以公示表列，按契約金額一定比例計算），經按實作數量結算後之契約金額既有變動，一式計價金額自應套入公示相應改變；
- (3) 依契約約定可推知締約時所列一式計價金額僅供參考，則一式計價金額應按結算金額與原契約金額之差異等比例計算。

除上述契約變更及實作數量差異會導致一式計價項目金額應否變更之疑義外，於工期展延的情況，也可能有類似爭議。

臺灣高等法院 100 年度建上字第 53 號認為，特定一式計價項目包括工地管理費、勞工安全衛生費、環境保護措施費、品質管理費等，係以原合約工期及原合約工作為基礎計算，並不包含展延工期期間之管理費用，廠商於工期展延期間顯然仍必須支出前開費用，因此受有損害，故廠商主張按原定工期與展延工期之比例計算損害，應屬可採。

other pricing manners or if the lump sum price of project items is agreed by the parties only out of expedience.」

In addition, the Supreme Court rendered the 101-Tai-Shang-729 Decision, holding that 「“although the agreed-upon amount shall be paid in case of lump sum pricing in construction practices regardless of the actual quantity of work involved in project items, still if such lump sum pricing is agreed by the parties out of expedience based on the nature of project items, it is not true, for the sake of fairness, that the parties cannot request adjustment based on the increase or decrease of the actual quantity of work.”」

Based on the gist of the said Supreme Court decisions, the Supreme Court holds that the issue of “whether lump sum priced items should be adjusted by the same ratio if the monetary amount for actually completed work under a unit price construction contract differs from the contract price when the contract is executed” should be addressed by exploring the true intention of the parties agreeing to the amount of a lump sum priced item when the contract provisions are not clear. There are three potential scenarios as follows.

- (1) If the parties intend for the lump sum pricing amount to be fixed no matter what happens, the original amount of the lump sum priced item shall be paid even if the settled amount is higher than the contract price determined when the contract is executed.
- (2) If the parties have agreed to the manners in which the amount of a lump sum priced item is calculated (e.g., if it is illustrated that such calculation should be based on a certain percentage to the contract price), once the contract price is changed after the settlement of the actual quantity of work completed, the lump sum pricing amount shall certainly be

惟應注意，法院承認一式計價項目可因工期展延因素比例調整者，並非全部，而仍應限於與時間有關的一式計價項目。例如，臺灣高等法院 100 年度建上字第 1 號於審酌廠商請求因工期展延增加之雜費時，即以廠商無法舉證證明實際費用支出情形，且其計價單位係採一式計價，以廠商不能證明該等費用與展延工期有相當因果關係，就此部分駁回廠商請求。

changed accordingly based on such illustration.

- (3) If it can be inferred by the contractual arrangements that the lump sum pricing amounts as listed are for reference only, such lump sum pricing amounts shall be calculated based on the ratio of the settled amounts to the original contract prices.

In addition to the issue of whether the amount of a lump sum priced item should be changed as a result of the above-mentioned contractual changes and differences in actual quantities of work completed, similar issues may arise from construction delay.

The Taiwan High Court rendered the 100-Jien-Shang-53 Decision, holding that a specific lump sum priced item includes construction site management fees, labor safety and sanitation fees, environmental protective measures fees, quality management fees, etc., which are calculated based on the construction period and the work set forth in the original contract and do not include the management fees for the extended construction period. The contractor is obviously still required to pay the above-mentioned fees during the extension of the construction period and thus incurs damage. Therefore, the contractor's assertion that the damages shall be calculated based on the ratio of the original construction period to the extended construction period should be acceptable.

However, it should be noted that the court's admittance that lump sum priced items may be adjusted based on the ratio of construction extension does not apply to all cases and is still limited to time-related lump sum priced items. For example, when the Taiwan High Court weighed the contractor's claims for additional miscellaneous costs incurred by the extension of the construction period in the 100-Jien-Shang-1 Decision, such claim asserted by the contractor was rejected by the

Taiwan High Court on the ground that the contract in question is set-based pricing and the contractor cannot substantiate the circumstances of actual cost defrayment and certain causal relationship between such costs and the extended construction period.