



Provisional Sums Checklist

01.

What are Provisional Sums?



In 2006, when reviewing the case of Midland Expressway Ltd v Carillion Construction Ltd & Others in the Court of Appeal Civil Division, Lord Justice May suggested that:

“the term 'provisional sum' is generally well understood in the construction industry. It is used in pricing construction contracts to refer either to work which is truly provisional, in the sense that it may or may not be carried out at all, or to work whose content is undefined, so that the parties decide not to try to price it accurately when they enter into their contract.

A provisional sum is usually included as a round figure guess. It is included mathematically in the original contract price but the parties do not expect the initial round figure to be paid without adjustment. The contract usually provides expressly how it is to be dealt with. A common clause in substance provides for the provisional sum to be omitted and an appropriate valuation of the work actually carried out to be substituted for it. In this general sense, the term 'provisional sum' is close to a term of art but its precise meaning and effect depends on the terms of the individual contract.”

02.

What is the difference between Defined and Undefined Provisional Sums?



It is important for both parties to understand the difference between Defined and Undefined Provisional Sums so that they appropriately use them.

Defined Provisional Sums

Defined Provisional Sums are where the contractor has been provided enough detail to make allowance for works in their price and programme. This detail could include a certain level of design, an understanding of construction phasing, likely quantity and any specific restrictions.

If all of this is provided however, it leads to the question: why include a provisional sum at all as opposed to simply pricing the item? The reason may be that whilst there is enough information against which the contractor can price, there may be a high level of uncertainty. For example, the finished product may not be selected, the conditions are too unknown, or the final quantity may differ.

02.

What is the difference between
Defined and Undefined
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Undefined Provisional Sums

Undefined Provisional Sums are included in a contractor's overall price, but this is only to make allowance for the work that could be required. They are a best guess based on the information available which may be scarce. The client should bear this in mind, as they are unlikely to be able to hold the contractor to the sum quoted.

Also, allowances for Undefined Provisional Sums are not included in the programme. This means that no allowance has been made to their time related elements and, once details are known, the effect on programme will need to be included in any final agreement.

03.

When and how should I use Provisional Sums?



There are four questions we think you should ask yourself about whether or not an item should be a fully priced item, a Defined Provisional Sum or an Undefined Provisional Sum. These are:

1. Do you have a final design?
2. Do you have final quantities?
3. Do you have a final material specification?
4. Do you understand the final site restrictions?

Our general rule of thumb is that if you have all of these you do not need a Provisional Sum at all. If you are missing just one, you can ask for a Defined Provisional Sum and if you are missing multiple, an Undefined Provisional Sum is perhaps the most appropriate.

03.

When and how should I use
Provisional Sums?

The following is a checklist to make sure you use the correct sum in your Bill of Quantities:

Do you have a final design?	Do you have final quantities?	Do you have a final material specification?	Do you understand the final site restrictions?	So, how should it be priced?
✓	✓	✓	✓	Standard Item
✓	✓	✓	✗	Defined PS
✓	✓	✗	✓	Defined PS
✓	✗	✓	✓	Defined PS
✗	✓	✓	✓	Defined PS
✓	✓	✗	✗	Undefined PS
✓	✗	✗	✓	Undefined PS
✗	✗	✓	✓	Undefined PS
✗	✓	✗	✓	Undefined PS

04.

The pros and cons of provisional sums for the client



For the client, the advantages of using Defined Provisional Sums comes in their ability to pass risk onto the contractor. This is because the contractor will be deemed to have made allowance for the effect of the works in their programme and running costs. This will negate the need for the client to establish impacts to the programme and agree any extensions of time later down the line in the event they decide to instruct the Provisional Sum.

The client should be aware that inclusion of undefined Provisional Sums means they could be liable for the entirety of the final costs and programme effect.

05.

The pros and cons of provisional sums for the contractor



For the contractor, a Provisional Sum is intent from the client to undertake additional works. The opportunity is to work with the client to develop the scope and price enabling the employer to instruct the works and increase overall revenues and profit. The disadvantage of Provisional Sums for the contractor however is that they are taking on more risk, in terms of defined sums, where they are deemed to have already priced for the time to carry out the works in their programme.