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The pricing methods in the continuous and service contracts

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ABSTRACT

The goal of this research is to investigate the pricing methods of the continuous and service contracts. Methodology is analytical-descriptive using the library resources. The investigations showed that the fixed pricing model approach which has been defined for the projects with exact requirements and scope in the best way will not change. Each change needs to the additional estimation and the additional contract. Therefore, one of the main requirements is the use of the fixed cost pricing model, the definition of domain exactly and the technical requirements before it. Also in last years, EPC contract has been considered because of decreasing the employer risk and determination of the contract price and time from between the different methods of performing the project and the different types of the structure contracts. One of the important specifications of this contract is to be long time. By considering to this specification, it gets important to manage the relationship of the parties of contract during the project. The contractual adjustment conditions are going to exhibit the approach for the unforeseen events and or the inevitable changes in the contractual agreements between the parties. Among these inevitable changes are the increasing and or decreasing the narrative values and volumes of the contract, because it is almost impossible to foreseen the values and volumes of the contract exactly.

Keywords: Continuous and service contracts, pricing, fixed pricing, contractual adjustment

INTRODUCTION

It is considered to determine the exchange as one of the substantive and very important conditions to hold the contract in the continuous and service contracts such as other concluded contracts; because the contractual exchange among the price is one of two basic pillars of the contract and its being certain is regarded as the validity and invalidity elements of the contract. There have been two theories about the exchange determination in the contracts from a long time ago. In the first theory, which it is known to the traditional theory too, the bond accuracy condition is to being certain of the exchanges. But based on the new theory which this research is based on it too, the contract is valid and in fact according to the today requirements even if there have not been any the certain exchanges but there have been the specified and exact criterion of their determination. In the contracts traditional theory the lack of exchange determination of the exchange into one of the traditional theories is caused to cancel the transaction, but in the new theory, the contractual exchange can be determined to one of the new methods of the exchange determination which nowadays, is prevalence in the contracts such as the use of the standards, the use of determination by the third party or the use of fixed pricing agreements.



The fixed price is inexpressible amount which it has been accused to a product, service or work piece. The most common reason of the fixed price for a product is to control and or to authorize by an outer existence. For example, a monitoring organization may adjust the fixed price for some goods. The service and fixed price contracts are as a replacement for other models. The fixed price is desirable to the small- and medium-scale projects in which the requirements, specifications and the programs before beginning to develop the project can be determined clearly. If the customer asked to search more about the conclusion and no achieving to the cited goals, this model is suitable. The service provider analyzes the project domain and complexity after requesting the customer, it provides to the customer the project delivery program and the fixed budget to develop the perfect product. The fixed price model has less danger to the customer particularly with the well-defined requirements and the established projects management methods. But after agreement, each change to the specifications or domain is caused to change the price and program. By considering to the topics cited in this research, it is investigated the pricing methods in the continuous and service contracts by the analytical-descriptive methodology.

Research Theoretical Principals:

The Concept Of Fixed Price

This price is including all the overheads and the profit of the contractor and for this same reason it should be defined the clear and perfect scale. In comparison with other contracts, the fixed price contract needs to struggle more for defining the work-scale and requirements and technical needs, thus the contractor accepts the risk created by the fixed price of the work. These risks are including the changes in the labor cost and first elements, need to more labor than what it has been predicted, adding the possible resources to the contract price, tendency of the contractor to decrease the costs for its own and more costs into the employer and etc. One of the important points in these contracts is the project implementing time, because the contractual contractor has signed it with the fixed price, therefore it try to decrease the time and finish the work at shortest time until it can prohibit the double and additional costs.

The contract is complete in which is determined the parties commitments and the contract conditions completely. As in the contract, the seller is committed to deliver the apartment at definite date and with the specified price. Some believe that to being complete the contract depends to the complementary rules highly. Whatever there had been more rich complementary rules in the juridical provision, the contractual gaps have been better covered.

The fixed price contracts exhibit the fixed payments based on an inflection point payment program or the results exhibition. The charges of cost repayment is paid as the calculated and sustained costs as monthly or three-monthly. A considerable difference between the fixed price and the cost repayment contracts is to allocate the risk. The university is subject to more danger by the fixed price agreements, while the sponsor has more risks with the cost repayment contracts.

There is two Articles in Vienna Convention that based on one of them, it is necessary the pricing or determining the criterion for it, the conditions specified to necessitate and the contract accuracy; but based on other Article, if there is a contract and it has not any specified price and also there is not any the criterion to determine, therefore it is assumed that the traders have considered the price implicitly in which it has been common to this type of goods during to hold



the contract, in similar position and the related commerce. Therefore whenever the price is not definite and the criterion has not been exhibited to determine it, this contract is correct.

One of the most important conclusions to the pricing and to inform about the transaction is the famous Prophet's tradition "forbid Prophet to the transaction which it has the uncertainty". To investigate the uncertainty, it should be define the word of "uncertainty" at first. The word of uncertainty in the judicial contexts has been applied with the ignorance and also with danger and the deceit too, while the aim of the legislator is only the deceit. It has been stated many meanings for the word of "uncertainty", but two words of the danger and the deceit have overshadowed on all of them.

The damage is not the criterion to cancellation of uncertainty but anywhere there had been the uncertainty, even if there had not been the damage, it is caused to corruption of the transaction. But some jurisconsults consider as necessary also the danger and the damage in addition to the ignorance into the price for realizing the concept of uncertainty and they believe that the uncertainty and corruption will not be arranged by the lack of each one of the two. Therefore, some jurisconsults have known generality and peculiarity in some respect the relationship between those two the public and private during denying implication between the uncertainty and ignorance. Nevertheless the most suitable meaning to the uncertainty in the cited tradition is the danger, because the uncertain transaction is the pseudo-gambling transaction that it can pave the way of the conflict and involvement because of being uncertain and indeterminacy of its conclusion. For this same reason, the rationalists don't proceed the uncertain transaction.

If the project is financed with fixed interest rate or the taken loans had been with the invariable interest rate, it can be said that the risk of the interest rate will not be created. There are the contracts that allow to buy the property with the fixed price in future such as the today price. On opposite of these contracts, there are the optional contracts that allow to accept or reject the contract into the buyer at definite date. The charge of this selection is the amount in which is paid to the seller by the buyer. These contracts are used to decrease the fluctuations of the interest rate too. In fact, by the interest rate cap, the buyer is committed to the seller by paying the amount until it pays it if the interest rate future is higher than the interest rate cap.

Whenever the contract amount and price is specified as the fixed and definite in the contract, it should be had two basic specifications of being certain and definite. In this case and assuming to being fixed and definite of the price, it is specified that the contract price is not the unknown. Because the unknown price can't be fixed and definite. Therefore the price can be fixed and definite if firstly it is definite such as the cash, benefit or goods; secondly it is specified such as how much it should be?, which the legal tender is for that country?

If the contract price is specified as the fixed and definite, so it has all needed conditions to accuracy and there is not any alteration. Of course, this is not meant that the price should be the specified at beginning and the change of the contract conditions is not caused to adjust the contract conditions. The nature of the industrial and contractual works will be the change in the working conditions and position. It is meant that in the industrial mega-projects, the work of the contractors is subject to the employer orders and the project position.

The Contractual Adjustment

Sometimes as a result of the unforeseen events that have not be predicted in the contract too, if implementing the obligations gets impossible by one of the parties which it is adjusted in these conditions, the court leaves beyond of obtaining and implementing the common aim and if it



had been prescribed the law and by inspiration of fairness and good intention and judicial conscience along with appeal and based on the structural and implied term to balance in the reciprocal obligations of the parties, it revises in the contract and adjusts the huge difference of the obligator position.

Of course, at first it may be imaged that there is not the relationship between the interpretation and adjustment, because the adjustment is mentioned after specifying the contract provision by interpretation and completion. In other word, after explaining the bond theme, it disrupts the economic balance of the parties because of happening the events existed during the bond and it is hardened to implement for one of the parties and it is mentioned the adjustment. On other hand, it is certain that the contract can't be changed or transformed by interpretation.

Encouragement (Increase) And Punishment (Decrease)

As the economic fluctuations and the repeated increase and decrease of the service and goods rate is caused to adjust the contracts necessarily, the parties are gotten out to the judicial consults and law offices and the courts to resolve. For example, the contractor who has been committed to construct and deliver the residential complex based on the agreed price is faced to the unexpected events such as flood, earthquake, or war and economic, social and political crises which it has be caused to multiple the prices of the structural elements into the price during the contract and fulfillment of obligations create the damage for the contractor. Here it is that the necessity of the contract adjustment is occurred and it is considerable highly to accept and reject the legal license o the contract adjustment

Based on the contract common conditions, if it is notified the works to the contractor in the contract framework which it has not be predicted the price and amount in the price list and the amount attached to the contract, the contractor should submit to the consultant engineer its own suggested price to implement the cited works along with analyze the price immediately. The price is the criterion for payment that is defined by agreement with the contractor and the consultant engineer and is approved by the employer.

Pricing Through Standard(Regulation)

There is two regulations to the pricing through regulation namely objective and subjective. In objective regulation (standard), it is used to the pricing the objective regulation instead of the human being's will; the regulations such as the exchange price, market price, delivery time and price list. This method is one of the most important methods to the pricing the contractual contracts. It is customary to contract in our country with the method of referring to the price list issued by the government. The price list issued by the government in different courses has been transformed as a suitable method to discover the contractual contract price. Article 55 Unity Nations Organization Convention about the goods international sale contracts (1980) has predicted to the pricing in the form of the determination of the pricing regulations.

Article 216 civil law has prescribed that: the object of transaction should not be ambiguous except in the special cases in which the brief knowledge is enough, it should be corrected as following: In the viewpoint of the traders or tradition, the object of transaction should not be ambiguous except in the cases in which the tradition say that the brief knowledge is enough. The viewpoint of convention than the tradition interference with completing the sale contract without pricing clearly is that Article 14 goods international sale convention says that: "...the



offer is clear enough if it can specify the goods and it can specify the amount or price clearly or implicitly or the regulations to determine them....”

It has been recommended to the governmental party strictly in some guidance provision supervised on the contracts such as the contract common rules that they should specify the object of transaction and if the object of transaction and the contractual price can't be determinable, they can specify the criterions and regulations. Based on this, the governmental authorities of establishing the contract and the juridical consultants should predict the possibility of the contract adjustment and its criterions in the contract text by considering to change the position and to upset the exchange economic balance.

Subject Regulation

The sale contract parties should agree with all pillars of the sale contract, but they should premise the pricing their own next agreement as the sale contract became implementable to realize the above agreement than to determine the definite price. It is not a sure method to the pricing basically. Because it is not certain to agree with the parties subsequently and if there is not any reflection behalf one of the parties, what there is the sanctions for it. This method can be spread to contract the contractual contracts in a method in which a protocol has been signed between the parties and they assign the pricing in the protocol to close future. But there is many difficulties in this method such as the bankruptcy of the company before holding the contract. Of course, according to the common rules of the contracts, this contract is void and this contract is considered as the pre-contract.

Other method is the delegation of authority to the pricing to one of the traders based on the intention governance principle and or it may be assign to the third party except to the interactors. This person is different than the third party who has been specified by the court to pricing as the expert. Nevertheless, this third party, who has be assigned by the parties whereby the condition during the contract or the independent contract, has not to accept the cited assignment and it is free to select.

To Determine Through The Court

When is is discussed about to not implement of a side obligation generally or to not implement of a basic obligation partly, this is the judge who distinguishes that is the cancellation justifiable or no? with its own assessment and interference. When to not implement partly can be lead to cancel all contract that it can be related to a decisive obligation during to hold the contract.

It is not possible to the pricing in the contract text definitely. Because it is rationally and logically impossible the pricing without having a viewpoint of the expert or the expert institutes. Therefore the parties hold the contract and the pricing is assigned to the expert. To assign the pricing to the expert is considered as to determine the regulation to the pricing. In this suggestion, the expert should determine the known price during the contract and has not any right to determine the unknown price. The cited rule is inferred from the intention of parties implicitly (it is understood from Articles 225,220,356 civil law).

The judicial adjustment of the contract created by decreasing the money value is from the economic-judicial concepts which has been created by the economic fluctuations in last century. By considering to the economic, philosophy and judicial foundations exhibited to adjust the contract and to decrease the money value, it seems that to get rich unfairly is the suitable foundation; but the now position of the judicial system accept it less. It seems that the legislator



has accepted this institution as the foundation by accepting the adjusting effect of the distress and constriction. Decreasing the money value is compensable by considering to its nature.

Price Based On Loss

The stop loss is the price or the time that sustaining more than it in the investment is hard to the investor. In fact, if it can make a mistake to select the stocks and or its buying time , the mission of the stop loss is that it can minimize the loss of the investor. You need to know the possible loss maximum in all stages of the margin and not-margin transactions %100 and it is necessary to apply manually and automatically.

The Cases Of Applying

In some contracts, the pricing not only is not determined but the pricing method remains silent. Thus, it can be imaged two states. Firstly, the price can't be determined in the contract and the pricing method remains silent. Secondly, the parties can predict the methods to the pricing of the contract, but the price can't be determined by these methods at next.

On other hand, not having a definite economic strategy and the pre-codified programs are caused to increase the risks of activity in the economic sector, additionally, the general changes in the economic policies will be resulted to instability in the market behavior and the permanent shocks in the market part behavior. There is not any the investor to invest on the short-return plans. Therefore, there should be the minimum stability to agree and trade in the market.

It has been recommended to the governmental party strictly in some guidance provision supervised on the contracts such as the contract common rules that they should specify the object of transaction and if the object of transaction and the contractual price can't be determinable, they can specify the criterions and regulations. Based on this, the governmental authorities of holding the contract and the juridical consultants should predict the possibility of the contract adjustment and its criterions in the contract text by considering to change the position and to upset the exchange economic balance. Generally, it has be stated the general rules and principles to the pricing in the civil law, and the new principles were not observed to the pricing in the contracts by searching in other laws and regulations.

But as it was said, it has not be determined the specified and clear method to pricing and holding the contract in any law and regulation supervised on the contractual contracts. Therefore, as for as there is the specified method, it was expressed in other discussions and there is a principle that the specified method has not be specified in the contract. On this base , the legal principles of Europe contracts know correctly the contract in which is not definite the regulation to the pricing, as Article 6-104 appoints that "if the price or the pricing regulation can't be specified in the contract, it is assumed that the parties have agreed with a rational price."

Pot-Agreement Of Parties

Also, the basic criterion and resource to distinguish the seller and buyer obligations is the contract condition and provision. Based on Article 6 of 1980 Vienna Convention, the parties intention is the resource of first sale contract. This Article says : "the parties can except the inclusion of regulation in this convention or can back each regulation out by regarding Article 12 or can change it." Therefore, the intention governance principle in Convention has be accepted. The followers can deny to implement Convention generally, or some regulations except it or transform its effects.



Therefore, if the special obligation had been excepted from the parties obligations territory which there is usually in the sale international contract, to not implement is not considered as the cancellation, although it had been predicted in Convention. It seems that the parties freedom principal has priority over the good-will principle which it comprises the special works and behavior behalf the parties and can't be ignored the clear agreement with the lack of agreement being by considering to the cited principle implementation and can consider their not-implementation as the cancellation.

The Agreement Methods (back out)

Whenever the contract had be hold correctly but the price had not been defined implicitly and explicitly or the regulation had not been predicted to the pricing, if there is not any opposite reason, it is supposed that the traders have considered the price implicitly in which it has be common to sell the these types of goods in similar position in the related commerce during holding the contract. Article 56 of above Convention adds that if the price had been determined according to the goods weight, in case of doubt the net weight is the criterion to the pricing. Also the net weight earns from the difference the gross weight and the goods or package weight.

Other factor to hold the basic breach is the obligator power and ability to implement the contract, while there had not been the possibility to implement the contract (objective impossibility), obligee can cancel the contract according to the basic breach. Therefore if the object of transaction is unique to the unit and there is not to waste the possibility to implement the contract and it is resulted to realize the basic breach. Also, it is supposed that the contract implementation had not been discarded, but the obligator can't implement it by considering to the person position, the basic breach happens(subjective impossibility).

Base of Legitimacy

To being correct each transaction, to being definite is necessary in addition to being specified. Article 190 civil law has mentioned only to "to being definite" which it is from the conditions of the transaction accuracy. Nevertheless, Article 216 has compensate the breach of Article 190 and has added "to being definite" to the numbers of the basic conditions of the the transaction accuracy too. The aim of "to being definite" is that the transaction not be unknown. In administrative contracts the direction of the judicial action should not be the opposite to law and rules governed during holding the contract. If the direction is cited, it is supposed that it is the correct and basic, unless it is proved the opposite of it. Because the direction of the contract is legitimate, the direction of the administrative decision with the legislator intention and aim should be compatible inherently and really, and each type of abusing to hold the contracts that are the opposite of public elements and society benefits, can eliminate the legitimacy direction. Based on the common law and regulations related to (Articles 216,338,348 civil law), the contractual exchange among the transaction price should be specified. But the parties have not to use for the pricing from the special method. There is many methods in this case. Nevertheless, the parties may compromise to all methods in the contract text or before it, or may postpone to hold the contract of pricing to the future. Additionally the parties may confine only to determine the regulation and criterion of the pricing.

The Cases Of Applying

If the parties had been silent about the contractual obligations and also, had not been excepted to some obligations, the best resource to distinguish and achieve the obligations of an international sale contract is Convention. The seller obligations have been predicted in Articles



30 to next and the buyer obligations have been predicted in Articles 50 to next and to not implement each of them is considered as the cancellation of the contract. Other resource to achieve the obligations of the traders and the cancellation consequently is the tradition and habit and transactional procedure between the parties.

In investigating the credit of the contracts in which their price is the percentage of all of the project costs, the criterion to the pricing in this method is the pricing of the contract firstly that or it is the definite or the unit. After the pricing in this method, it is considered the percentage of the contract price as the profit of the contractor and it is added to the price. Thus, this method is including two prices, first price that it is for the contractor based on the taken price, and second price that it is the percentage of the first price, and the final price will be the result of sum first and second prices.

Conclusion

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