

Topic 4 Section 6

Common Contract Administration Issues

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Extensions of Time

The contract documents normally identify the period in which all work must be undertaken. The period is determined by taking the date for commencement of work from the date for practical completion.

Requirements to Give Notice of Dates of Possession and Commencement of Work

To enable a contractor to commence work, the principal gives the contractor possession of site. The date of possession is stipulated in the contract documents (see AS 2124, clause 27). The contractor must then commence work on site within 14 days of that date, or within any other such period specified. The contractor must, after being given possession of the site (clause 35.1), give the superintendent seven days' notice of the proposed date of work commencement. However, the superintendent may extend the time of commencement. The contractor must then execute the work under the contract to practical completion by the date for practical completion.

This data is recorded in the job diary, along with other relevant information.

Delays Requiring an Extension of Time

If the contractor is delayed, or the contract is extended by variations to the work, or additional scheduled work is undertaken, the contractor may claim for an extension of time.

Delays requiring an extension of time normally fall into three categories, i.e. those over which:

- neither party has control
- the principal has control
- the contractor has control.

The level of compensation awarded for each of these depends on the circumstances.

- If neither party has control over the cause of the delay, neither party has grounds for compensation over the other; however, the contract time is normally extended, to relieve the contractor of the payment of liquidated damages for late completion.
- If the principal has control, the contractor is compensated in both time and money.
- If the contractor has control, the contractor has no recourse whatsoever.



Guidelines for Dealing with Claims for Extensions of Time

In dealing with extensions of time generally, the following are possible grounds for approving claims:

- Actual delays in progress of work, due to inclement weather.
- Strikes or rolling strikes which have general application to the construction industry.
- Damage caused to the work by circumstances beyond the control of the contractor, provided that the contractor has taken all reasonable precautions.
- Delay in the nomination of subcontractors.
- Alterations to existing, or new, statutes, regulations or by-laws that came into force after the tender closing date.
- Suspension of work for reasons beyond the contractor's control.
- Extended lead times in the supply of materials and the contractor has taken all reasonable action to obtain them, but is nevertheless subject to delay.

In the following circumstances, there are no grounds for an extension of time:

- Lockout by contractor
- Strikes, where the intention was that the strike not apply to the construction industry.

Use of Recorded Information in Arriving at a Decision

In the majority of these cases, factual records kept by the resident engineer will be used in arriving at a decision. This data should be readily available from the job diary.

For example, if there is inclement weather, the inspector may need to provide the following details:

- Rainfall intensity— heavy, medium or light; if possible, number of millimetres of rain recorded
- Rainfall duration— e.g. hour, minutes, day, half-day
- The extent to which the weather has affected the work— e.g. in total, in part, or for particular operations.
- Whether work could commence immediately after the rain, or if a delayed commencement for a period of time was appropriate.
- Recommended period of stoppage— the inspector can make a recommendation, provided it is supported by the above data.

Extension of Time for Practical Completion

Guidelines for the granting of an extension of the time for practical completion are found in AS 2124, Clause 35.5.

On becoming aware of a potential cause of delay, the contractor is required to apply in writing as soon as possible, and the superintendent must make a decision within 28 days of receiving notice from the contractor.

When the superintendent exercises his or her power to grant extensions of time for delays, the effect of the decision is to fix a new date for completion. The contractor is then under an obligation to complete work by the new date. This may occur more than once on any job; the job diary must be amended each time to show the amended date.

Extras and Variations

Clause 40.1 of AS 2124 describes how the work may be varied, and sets out the rights and responsibilities of both parties. Clause 40.2 describes how the contractor is to respond to variations. The contractor may not vary the work under the contract unless the superintendent gives a direction to do so.

An inspector does not have the power to order a variation, because it is an addition to the contract. Any variation must be advised formally, in writing. The contractor will then advise the superintendent of the effect of the variation on costs and times, and the effect on the works program.

Clause 40.5 (Valuation) in AS 2124 provides a method of determining an amount when the contractor and the superintendent do not agree on the price of the variation.

A variation may attract an extension of time, as discussed previously, but this is not automatic (see Clause 40.4).

The superintendent may direct the contractor to undertake a variation orally in the first instance, but must confirm it in writing as soon as practicable (Clause 23). In most instances, variations are issued to change some part of the works. The instances in which a resident engineer may order a variation, due to a need to alter some part of the works, are listed under clauses 8.1 Discrepancies, 12.1 Latent Conditions, and 14.1 Complying with Statutory Obligations.

There are, of course, many other situations where the resident engineer may order a variation to the work.

It is also normal practice for the contractor to provide the resident engineer with a valuation in accordance with Clause 40.2 Proposed Variations. This valuation will normally use rates and prices contained in the documents, to the extent that it is reasonable to use them.

The varied work will still need to conform to the standards set out in the specifications. Where no specification for the additional work exists in the contract documents, it should be provided with the variation order. Inspectors should ensure that they are fully aware of the changes and what they entail.

Latent Conditions

Definition of a Latent Condition

As defined in AS 2124, latent conditions may be either:

- physical conditions on the site or in its surroundings, including artificial things but excluding weather conditions, that differ significantly from the physical conditions that the contractor could reasonably have anticipated at the time of submitting a tender
- any other conditions which the contract specifies to be latent conditions.

Conditions that the contractor could reasonably have anticipated include any that would become apparent if the contractor had:

- examined all information made available in writing by the principal for the purpose of tendering
- examined all information relevant to the risks, contingencies and other circumstances having an effect on the tender and obtainable by the making of reasonable enquiries
- inspected the site and its surroundings.

Requirement to give Notice of a Latent Condition

If, during the execution of work under the contract, the contractor becomes aware of a latent condition, the contractor must immediately advise the superintendent in writing. The contractor must make every effort to avoid disturbing the condition and, where possible, advise the superintendent of the latent condition before it is disturbed.

If the Superintendent requires it, the contractor must provide a written statement specifying:

- the latent condition encountered and in what ways it differs materially
- the additional work and additional resources that the contractor estimates will be necessary to deal with the latent condition
- the time the contractor anticipates will be required to deal with the latent condition and the expected delay in achieving practical completion
- the contractor's estimate of the cost of the measures necessary to deal with the latent condition
- other details reasonably required by the superintendent.

Extension of Time and Cost

Delays caused by a latent condition may justify an extension of time under Clause 35.5.

A valuation must be made under Clause 40.5 if a latent condition (i.e. one that could not reasonably have anticipated at the time of tendering) causes the contractor to:

- carry out additional work
- use additional constructional plant
- incur extra cost (including, but not limited to, the cost of delay or disruption).

Time Bar

When a valuation is made under Clause 12.3 Extension of Time and Cost, the value of additional work, additional construction plant used or extra costs incurred do not count if they were incurred more than 28 days before the contractor gave the required notice that a latent condition existed.

Section 6 – Assessment Activities

For information on how these assessment activities may be used as part of the learning process, see the section on ‘Assessment’ in the ‘Topic Descriptor’ section at the front of this topic.

Theory Questions

The following questions allow you to assess your progress in understanding the material presented in Section 6. The questions may be of any of the following types:

- multiple choice (identify correct answer or answers)
- multiple choice (identify incorrect answer or answers)
- fill in the gaps in a sentence or statement
- identify a sentence or statement as TRUE or FALSE
- write a few sentences or a short paragraph.

Answers to the question are shown in the separate ‘Answer’ section.

Question 1

Indicate (true or false) whether the following situations would be valid grounds for claiming an extension of time:

Actual delays in progress of work due to poor weather.

Suspension of work for reasons beyond the contractor’s control.

Lockout by contractor.

An off-site industrial strike (e.g. electricity or fuel workers go on strike).

Damage caused to the work by circumstances beyond the control of the contractor, provided that the contractor has taken all reasonable precautions.

Question 2

On becoming aware of a potential cause of delay, when must the contractor apply for an extension of time for practical completion?

Question 3

What is the time period for the superintendent to make a decision after receiving notice from the contractor?

Question 4

Define 'latent condition'.

Question 5

Suppose that latent conditions have been found during earthworks. What information about the latent conditions should the contractor pass on to the principal?

Question 6

Detail the additional work, resources, cost and time expected to deal with the conditions

Question 7

Name the three types of delay when an extension of time may be given.
