



Contractors' Extension of Time Preparation – 10 Top Tips

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Extension of time requests and submissions are being scrutinised in more and more detail these days as margins and cash are tight, PI claims are no longer rare and the need for accuracy in contract administration is paramount. It is therefore important to ensure any extension of time requests are prepared correctly, in sufficient detail and to necessary standard. What does that mean? Well here are 10 top tips to get you going and help protect your commercial position.

1. Make sure your application complies with the contract.

Any application for extension of time must relate to, and comply with, the provisions of the contract including any bespoke amendments. Each contract will potentially have slightly different requirements in respect of how any application should be made and some forms of contract even prescribe the methodology that must be used. One of the most common and worst mistakes that is often made is to use a methodology which is not compliant with the contract. Such mistakes can result in considerable costs being incurred or even a loss of entitlement. Further, make sure your submission doesn't fail on a technicality such as relying on incorrect details, hearsay or by using the wrong programme.

2. Consider who will be reading the request.

As noted above, any submission must comply with the requirements of the contract but consideration should also be given to who will be reading the request and making the decision. Don't rely on the fact that the Contract Administrator knows the job or the delay issues. They might not

be the party who ends up making the final decision if the issue gets referred to Adjudication or Arbitration. You should ensure that it can be understood as a standalone submission and does not rely on a level of pre-existing knowledge.

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3. Demonstrate cause and effect.

The term 'cause and effect' is often used with little thought about what this really means. In reality, for an extension of time request to succeed you must clearly identify a specific discreet cause and the associated specific effect on the programme. The effect should not be an amalgamation or consolidation of several effects or causes otherwise it may be regarded as a global claim. Further, if progress was reduced rather than stopped this should be identified, measured and detailed rather than glossed over or ignored. Finally, any effect should be based on facts rather than a subjective assessment.



4. Evidence your entitlement.

Any submission should be supported by contemporaneous records and facts to fully substantiate the claim(s) being made. This will not only help improve your submission but will also help to expedite any decision from the Contract Administrator or a third party. One of the best ways to summarise evidence is often through the use of fragnet programmes. These summary programmes, supported by an accompanying narrative and the evidence itself, are a powerful tool as they show the key events and activities pictorially over time.

5. Support your application with common sense.

The case of 'Costain v Haswell' highlighted the need for extension of time requests to be supported by common sense. No matter what form of analysis is used, or what planning software is used, the submission must be underpinned by fundamentally sound, robust and sensible logic. This is not programme or software logic but real common sense 'build ability' logic, i.e. how and why the project or section was delayed. If this is supported by a sound programme analysis this will strengthen any case substantially.

6. Analyse all the relevant records available.

Too often only a sample of the records available are analysed and used for the preparation of any extension of time submission. If you claim a delay has occurred in a certain period of time but upon a subsequent review of the labour timesheets it is found that operatives were in fact working on the task in alleged delay, you might end up having some explaining to do! This situation may indeed be explainable but it may also compromise

compromise the submission as it could highlight the fact that the delay was not completely as described. Analysing and considering all the relevant records should result in a more robust submission.

7. Start from a strong baseline

If you perform an analysis on a programme you should ensure that the programme being used is robust and reliable. The programme should be stress tested prior to any analysis being performed to ensure that the logic is sound and complete. Ideally the analysis should be performed in the native software unless there is good reason not to do so. If you need to make changes to the baseline programme this is best identified, justified and presented rather than using a flawed programme.

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8. Consider any culpable delay periods and weak points carefully

It is rare for any contractor not to suffer some form of culpable delay during the course of the works. Rather than try to 'brush it under the carpet' it is often better to deal with it at that time of any submission. What was the effect of it, if any, on the completion date? What was done to overcome it? It is often found that if the proper attention is given to culpable delay periods the effects are often relatively small.



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9. Perform a suitable delay analysis

With extension of time claims being scrutinised more than ever it is vital to the success of any claim that a recognised form of analysis is used and executed correctly. The form of analysis chosen is often driven by the records available but the pros and cons of each of these should be weighed-up carefully before embarking on any analysis. Of course any analysis should be chosen against the commercial backdrop of the related sums involved but there are certain forms of analysis which are generally viewed by the courts as less reliable than others, such as the impacted as-planned analysis and task overrun. These should be avoided if at all possible. Whichever form of analysis is chosen it should be performed skilfully and based on

the evidence available with each delay clearly identified, described and quantified with the aim of demonstrating reality rather than showing a hypothetical answer.

10. Consider the likely submission response

Thinking about how the recipient or a third party might respond to any submission is a good way to strengthen your case. Do all the facts stack up? Are there facts missing? Are there any weaknesses in your baseline programme? What areas of criticism have there been / are likely? Could the submission be viewed as a global claim? Does the submission comply with the contract? Consideration of these issues can actually result in a stronger submission which will in turn increase the chances of ensuring your entitlement is recovered.

Above all else remember that the aim is to try and demonstrate / describe the effect of any delay on the works, be that the end date, a sectional completion date or a section of the programme. Whatever information is provided should be geared to achieving this aim as quickly and efficiently as possible.

Historically extension of time submissions, requests, claims, call them what you like, have been left until the end of the project. Not only is this not the most efficient method in terms of commercial certainty, use of project knowledge and planning and certainty of the works, but increasingly contracts such as the ECC envisage this being undertaken prospectively rather than retrospectively. Under these forms it can be very time consuming, costly and risky if you try to produce a submission some time after the event.

The above list is by no mean exhaustive and whilst they might seem obvious, we often find that these are not followed and as a consequence extension of time submissions fail or are undermined. Hopefully these tips should help you avoid this.