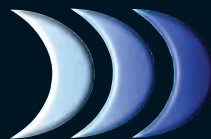


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Extension of Time Claims

Technical Services Information



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What are they?

Construction contracts typically have dates for commencement and completion. The contractor's principal time obligation is to complete the works by the completion date.

Similarly construction contracts typically have liquidated damages clauses. If the contractor fails to complete by the completion date he would have to pay liquidated damages at the stipulated rate. If however, the cause of the delay was due to some action, inaction or default of the employer or persons for whom the employer is responsible, time may become "at large". The contractor's obligation becomes one of finishing in a reasonable time.

To prevent this situation, extensions of time clauses are drafted to provide a means of adjusting the completion date in the event of employer responsible delays and frequently "neutral" events such as weather or force majeure. Extension of time clauses preserve the employer's right to deduct liquidated damages should the contractor not complete by the revised completion date.

Extension of time claims provide the substantiation and information required under the extension of time clauses to demonstrate by how much the completion date should be adjusted. Most standard form contracts have an extension of time mechanism, or a compensation event clause which provides for the completion date to be revised.

Each extension of time claim must be based on the requirements of the specific conditions of contract. Typically such matters as the length of delay and the cause of delay have to be established along with an indication of the effect on programme, including completion or sectional completion dates. Most construction contracts require that some form of contemporaneous notice be given by the contractor as soon as he has, or ought reasonably, become aware of a matter that may delay the completion date. Failure to so notify may lose the right to claim an extension of time.

When do you need them?

Progress of the works should be monitored throughout the duration of the project. If progress falls behind schedule to the extent that completion and/or sectional completion dates have been or are likely to be delayed then you may need to request an extension of time to the end of the relevant section and/or the project as a whole.

Why do you need them?

In respect of the contractor, extension of time claims provide protection from liquidated damages being levied against you by the employer in the event of delay to completion. From an employer's perspective, granting an extension of time maintains the extension of time machinery in the contract and so preserves the right to deduct liquidated damages should the contractor fail to complete by the revised completion date.

An extension of time award when granted during the course of the works provides certainty to the contractor allowing him to plan the remaining works in full knowledge of the revised completion date. If an extension of time application is not made at the time of delay, or an award is not granted in accordance with contractual timescales, this presents considerable uncertainty with forward planning the remaining works. In such circumstances contractors may be put under pressure to spend monies on resources to achieve a completion date which should have been amended.

An extension of time award may also provide justification as to why certain time related costs may have been incurred as a result of employer actions. This would give an opportunity to make separate claim for such costs under the appropriate provisions of the contract.

How do we prepare them?

MBM's initial consideration is to review the contract to establish the contractual requirements upon which a claim should be based. We will then review available information to assess its quality, sufficiency and how best it can be used. The quality of any claim is dependent on the records available, however the difficulty is knowing exactly what records need to be kept and the format and quality of such records. The available data may include progress (updated) programmes, progress percentages and progress reports, as well as written and other documentation required to establish the causes and durations of such delays.

Selection of the appropriate baseline programme(s) is paramount in producing a successful extension of time. MBM has seen how claims fail simply through the use of an incorrect baseline programme. Prior to undertaking any analysis on the baseline programme(s) MBM stress tests, digitally scans and analyses the programme in detail to establish, inter alia, open end activities, false constraints, negative float, inappropriate logic etc. MBM is adept in the latest planning programmes and techniques to undertake these tasks efficiently yet thoroughly.

Once the appropriate baseline(s) is established we analyse the facts and evidence pertaining to the delay(s). We then establish the full history of the delay and pictorialise this into a time line and fragnet format. Dependant on the methodology used, we may insert the delay into the schedule to establish the impact on completion.

The methodology used to analyse and present the extension of time claim is always based upon the records available and the requirements of the contract. If adequate records are available MBM can use 2D or 3D modelling, backed up with a schedule analysis, to present the cause and effect of any delay. Ultimately we prepare extension of time claim submissions that clearly demonstrate and explain, in a clear and robust supporting narrative, an entitlement to a revised completion date.

What value do they bring to our Clients?

A well-produced extension of time claim can bring many benefits:

- Relief from Liquidated Damages/Delay Damages, either for completion overall or for relevant sections.
- Certainty of completion/section dates allowing effective and efficient allocation of resources and subcontractors
- Awareness of the quality of record keeping required on this and other projects to record, particularise and demonstrate delay within an effective extension of time submission.
- The opportunity for the site team on this and other projects to increase their awareness of delays generally, their effect on a project and how they can be identified and managed in future.
- Potential justification for, and recovery of, additional costs through separate claims, e.g. prolongation claims.

Too often extension of time claims are left until the end of the project. This is a risky strategy and one that seriously reduces commercial certainty, increases the potential to lose project knowledge and prevents opportunities to demonstrate effective mitigation measures were taken to deal with delay. Increasingly contracts such as the ECC envisage extensions of time being undertaken prospectively rather than retrospectively. Under these forms it can become excessively time consuming, costly and risky if you try to produce a submission sometime after the event.

How much do they cost?

When considered in relation to the potential losses, they can be very cost effective. The extent of work will determine overall resource requirements and hence cost, whilst adopting a clear structure and approach which all the team can buy into will allow MBM to adopt an efficient process-orientated approach.

MBM would carry out an initial review to establish what is most appropriate for the particular circumstances as we would not advocate an all-encompassing claim if that is not what is required. MBM seeks to act proportionately preparing documentation commensurate with its intended purpose.

Extension of Time Claims

Our successes

Our experience with extension of time claims covers many major projects such as:

- Jubilee Line Extension
- Channel Tunnel Rail Link
- Mons Barracks
- Söderstömstunneln, Stockholm
- Grain LNG
- Monksland Sewerage Scheme
- One Hyde Park
- Gorestone By Pass

Why choose MBM Consulting?

MBM has a wealth of experience preparing extension of time claims. This has been gained on major projects in the UK and overseas, including Europe, the Middle East and the Caribbean. We have worked on major projects in sectors such as build, rail, utilities and oil working for major contractor and subcontractor organisations.

If you would like to know more, please do not hesitate to contact:

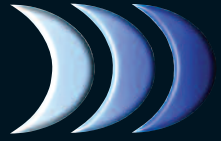
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Progress monitoring and progress updates
Measured mile analysis
Prolongation claims
Head office overhead claims
Acceleration claims
Commercial management
Contentious account management
Adjudication services
Expert witness services