

## **DELAY AND DISRUPTION PROTOCOL**

### **INTRODUCTION**

The Protocol has been produced by a drafting sub-committee formed by a group of members of the Society of Construction Law.

The Protocol is not intended to be a contract document.

The information, recommendations and/or advice contained in the Protocol are intended for use as a general statement and guide only.

The aim of the Protocol is that in time, building and civil engineering contracts will adopt the Protocol's guidance as the best method of dealing with matters of delay and disruption which arise during the contract.

### **CORE PRINCIPLES**

#### **PROGRAMME AND RECORDS**

Work should be properly programmed and recorded for the benefit of both parties. The programme is the essential monitoring tool for the Protocol.

#### **PURPOSE OF EXTENSION OF TIME**

The Contractor is relieved from his liability for damages for delay in completion normally in the form of liquidated (damages). The mechanism prevents time becoming "at large".

#### **ENTITLEMENT TO EXTENSION OF TIME**

Applications for EOT should be made at or close to the time of the delaying event. The Contractor is only entitled to extensions of time for events for which the Employer has assumed risk and responsibility. Extensions of time should be based on reasonable prediction of the delay.

#### **FLOAT AS IT RELATES TO TIME**

Extensions of time will only be granted to the extent that the Employer Delay is predicted to reduce the total float on the activity path to below zero. This may differ if express provisions in the contract are to the contrary.

#### **FLOAT AS IT RELATES TO COMPENSATION**

The Contractor is entitled to compensation where the Employer's Delay has prevented him from completing to the Contractor's planned completion date (a date earlier than the contract completion date), provided the Employer was aware of the Contractor's intended earlier completion date before the parties

entered into the Contract and that the earlier completion date was realistic and achievable.

### **CONCURRENCY OF DELAY – ITS EFFECTS ON ENTITLEMENT TO EXTENSION OF TIME**

Where the Contractor Delay occurs at the same time as the Employers Delay, this should not reduce the Contractor's entitlement to an EOT.

### **CONCURRENCY OF DELAY – ITS EFFECT ON ENTITLEMENT TO COMPENSATION FOR PROLONGATION**

Where the Contractor Delay and Employer's Delay occur at the same time, the Contractor is entitled to additional costs where the Contractor is able to separately identify those additional costs caused by the Employer's Delay. If the additional costs have occurred as a result of the Contractors Delay, the Contractor is not entitled to the recovery of those costs.

### **MITIGATION OF DELAY AND LOSSES**

The Contractor has a duty to mitigate the effects on his works, minimising loss and attempting to prevent further loss. However, this duty does not extend to requiring the Contractor to add extra resources or to work outside the planned working hours.

### **VALUTAION OF VARIATIONS**

The parties should attempt to fix the price for the variations including the direct costs and the time related costs.

### **BASIS OF CALCULATION OF COMPENSATION FOR PROLONGATION**

The objective is to put the Contractor back into the same position as if the Employer Risk Event had not occurred. Compensation for prolongation (other than variations) is based upon the actual additional cost incurred by the Contractor.

### **RELEVANCE OF TENDER ALLOWANCES**

The tender allowance has limited relevance in the evaluation of costs relating to prolongation and disruption, caused by breach of contract or any other cause.

### **PERIOD FOR EVALUATION FOR COMPENSATION**

The evaluation of the sum due for prolongation costs is based on the period when the effect of the Employer Risk Event was felt and not to the extended period at the end of the contract.

## **GLOBAL CLAIMS**

Global claims are discouraged by the Protocol and indeed are rarely accepted by the Courts.

## **ACCELERATION**

Where acceleration measures are undertaken, payment in accordance with the contract provisions should be made. Where the contract does not provide for the payment of acceleration the Contractor and Employer should agree upon what measures of acceleration are to be undertaken and the basis of payment before any such acceleration measures are undertaken.

## **DISRUPTION**

Disruption is defined as a disturbance, hindrance or interruption to the Contractor's normal working methods which effects the Contractor's efficiency.

## **GUIDANCE NOTES ON THE DELAY AND DISRUPTION PROTOCOL**

### **Guidance Section 1**

The Protocol gives guidance as to why the Protocol has been created and provides additional material on other matters that often occur in delay and disruption.

### **Guidance Section 2**

Is a good practice guide on the preparation of programmes and records and their use in the management of EOT.

### **Guidance Section 3**

Is a good practice guide on how to deal with the EOT applications during the project.

### **Guidance Section 4**

Provides guidance as to how to analyse cause of and responsibility for delay where a project has been delayed.

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